Briefing Paper:
Law on Associations and Non-Governmental Organizations
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Introduction

The purpose of this paper is to provide non-governmental organizations (“NGOs”), national and international, established and working in the Kingdom of Cambodia (“Cambodia”) and other interested parties with a reference guide to read alongside the forthcoming Law on Associations and NGOs (the “NGO Law”) when the next draft, due for release to be released by the Royal Government of Cambodia (the “RGC”) in November or December 2010, is made available.¹ The paper analyzes domestic NGO laws from around the world and provides an understanding of what such laws generally include.

In the course of researching NGO laws around the world, the Cambodian Center for Human Rights (“CCHR”) identified nine recurrent themes, as follows: (i) registration requirements; (ii) NGOs’ right of appeal (with respect to government decisions); (iii) limitations on NGO activities; (iv) monitoring and supervision of NGOs; (v) foreign involvement restrictions; (vi) sanctions and penalties; (vii) implementation of NGO legislation; (viii) benefits conferred on NGOs; and (ix) restrictions on NGO membership. The paper considers how “good” NGO laws, those that facilitate the work of NGOs, and “bad” NGO laws, those that restrict NGOs and provide governments with a legislative tool to control them, are formulated with respect to these nine themes. This paper also provides recommendations to the RGC as to what the NGO Law should contain to ensure that the law acknowledges the essential role played by NGOs in Cambodia and facilitates their ongoing activities for the development and democratization of Cambodia.

In this introduction, CCHR explains the general scope of NGO legislation, and provides contextual background on the work of NGOs in Cambodia and previous efforts by the RGC to frustrate the work of NGOs which have given rise to legitimate fears as to the motivations behind the forthcoming law. The introduction section also sets out the expected timetable for the release of the new draft of the NGO Law and the legal framework, which is composed of international and domestic law, into which the NGO Law must fit. In the following section, CCHR analyzes domestic NGO laws according to the nine themes outlined above and provides recommendations for the Cambodian NGO Law on the basis of our analysis.

Scope of NGO legislation

Laws regulating NGOs can play a legitimate and welcome role in society. In general, a “good” NGO law is one that reflects a contemporary understanding of the importance that NGOs play in the development of a society. This means that the law must not be enacted for the purpose of stifling the beneficial work of organizations, but for the purpose of improving such work. Towards this end, it is acceptable and desirable for laws to increase the transparency and accountability of NGOs, while at the same time encouraging the public’s support of them, for example, requiring NGOs to provide information for public registries that are easily accessible online. Ensuring that it is easy to set up and maintain NGOs also furthers these objectives. Furthermore, it is reasonable to subject NGOs to the

¹ It is understood that the forthcoming NGO Law will regulate NGOs, international and national, as well as smaller associations and community based organizations. Reference to NGOs in this paper is not to the exclusion of other organizations and associations that will fall under the regulatory scheme provided for in the law; rather the paper and the terminology used should be read to include all those falling under the provisions of the forthcoming law.
same generally applicable licensing or regulatory requirements and procedures that apply to the
activities of individuals, business organizations or public bodies. Just as politicians should not be seen
to be above the law and the general public, neither should NGOs. At the same time, such laws should
not overly diminish the autonomy and independence of NGOs as valuable civil society actors. Nor
should any law be so onerous for an NGO that it ceases to be able to operate, for that would clearly be
detrimental to society as a whole and would necessarily ensure that the law is a “bad” one.

The language of any NGO law should be precise and include clear definitions rather than vague
language or open-ended terms. This is particularly important as regards the power of government to
restrict the actions of, or to impose sanctions on, NGOs. Many jurisdictions have laws that exist purely
to provide the government with legitimate cover for stifling the work of NGOs, severely restricting their
actions, and minimizing the risk that they pose to the government’s authority. Such laws need to be
evaluated, first and foremost, for the vagueness of the language and the broad discretionary powers
that they grant to governments and their agents.

**NGOs in Cambodia**

Over the last two decades, NGOs have played an invaluable role in rebuilding Cambodia after years of
civil war. The work of NGOs in Cambodia is varied, as noted by the United Nations (the “UN”): “[t]here
are hundreds of NGOs operating in Cambodia in various sectors: health, agriculture, environment,
education, human rights, gender, etc.”\(^2\) and for two decades they have provided crucial input in
rehabilitating, reconstructing and developing the country, promoting democracy and providing support
to vulnerable people throughout the country.

Since the intention of the RGC to pass the NGO Law was made clear, NGOs and others throughout the
country have questioned the need for such a law, arguing that as NGOs and their members are subject
to existing laws, namely the criminal law, an NGO law is unnecessary. Moreover, given significant
shortcomings in other areas of the law, such as the law regulating the judiciary, many have argued that
an NGO law is not a legislative priority. Regardless of the validity of these arguments, the RGC is a
democratically elected government with the authority to determine legislative priorities and to put
such laws forward for the consideration and endorsement of the National Assembly as it deems
necessary to govern the country.

Previous actions on the part of the RGC to frustrate the work of NGOs and to criminalize their activities
as well as comments by senior government officials concerning NGOs and the NGO Law, do however
give rise to serious and legitimate concerns as to what the NGO Law will include. Cambodian Prime
Minister, Hun Sen, has stated that: “Cambodia has been heaven for NGOs for too long”,\(^3\) and hinted at
the likely objectives of the NGO Law when he stated that the RGC “respect[s] the local and
international NGOs whose activities serve humanity and help the government of Cambodia [...] they

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\(^3\) National radio broadcast, 26 September 2008.
will not be threatened by this draft law […] But we believe that some NGOs whose activities seem to serve the opposition party will be afraid of it". 4

These comments by the Cambodian Prime Minister reflect the apparent tendency within the RGC to view criticism of the actions, policies or laws of the government, however measured or constructive, as subversive and in support of the political opposition. This tendency has manifested itself in recent years in criminal convictions and other measures against NGOs and their members. On 15 July 2009 Moeung Sonn, the head of the Khmer Civilization Foundation, an NGO with a mandate to protect Khmer heritage and culture, was sentenced in absentia to two years’ imprisonment on a charge of disinformation for criticisms he made in relation to a light installation at Angkor Wat. The criticisms were described by court officials as “difficult to forgive” and an embarrassment to the RGC and, particularly, to Sok An, the Minister of the Council of Ministers and chairman of the Apsara Authority, the government agency which permitted the installation of the lights. Similarly, on 30 August 2010, the Takeo Provincial Court sentenced Leang Sokchouen, a staff member at prominent human rights NGO, LICADHO, to two years in prison on charges of disinformation. 5 Leang Sokchouen was held to have been involved in the distribution of anti-government leaflets in Takeo, a charge that has been strenuously denied by Leang Sokchouen and condemned by various national 6 and international commentators. 7

Given the tendency of the RGC to use open-ended terms to violate fundamental human rights, such as the right to freedom of expression, there are legitimate concerns within the NGO community that the RGC may adopt such an approach with regard to the NGO Law to stifle the work of NGOs. There are also concerns that if the NGO Law is too onerous, in terms of registration, monitoring and supervision, or foreign involvement, NGOs in Cambodia will not be free to pursue their activities and continue their invaluable work assisting Cambodian people and society.

**Timetable of the NGO Law**

As regards the timetable of the NGO Law, on 10 August 2010 the Ministry of the Interior (the “MOI”) issued a notification 8 appealing to all national and international associations, NGOs and development partners within Cambodia to help support and prepare a national consultation seminar in an effort to discuss the contents of the NGO Law. 9 According to the MOI’s spokesman, the NGO Law has recently been finalized, the NGOs’ collective requests in response to the notification (asking for a consultation period of at least one month and for the NGO Law to be circulated as soon as possible) have been shared with the MOI, and a timing of one week has been proposed as adequate for public release of

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4 Thin Lei Win, ‘Cambodia’s proposed NGO law stirs suspicion and concern’ Reuters AlertNet (5 March 2010) (http://www.alertnet.org/db/an_art/52132/2010/02/5-155332-1.htm) [last accessed 17 November 2010].
5 ‘Four sentenced over leaflets’ The Phnom Penh Post (Phnom Penh 31 August 2010).
6 ‘Licadho wants staffer freed’ The Phnom Penh Post (Phnom Penh 30 August 2010).
8 Notification No. 1207 (Phnom Penh 10 August 2010).
9 Ministry of Interior’s Spokesman’s Denouncement (Phnom Penh October 2010) (unofficial trans.).
the NGO Law before the national consultation seminar is held. Furthermore, the MOI has said recently that it expects to circulate the NGO Law sometime around the end of November or the beginning of December.\(^\text{10}\)

**Current legal framework**

The NGO Law, in order to be valid, must be consistent with Cambodia’s human rights obligations in domestic and international law. In particular, the NGO Law must abide by Cambodia’s obligations in domestic and international law with regard to the freedoms of expression and assembly. Article 41 of the Constitution of the Kingdom of Cambodia (the “Constitution”) expressly provides for these freedoms, in the following terms:

>“Khmer citizens shall have freedom of expression, press, publication and assembly. No one shall exercise this right to infringe upon the rights of others, to affect the good traditions of the society, to violate public law and order and national security.”**\(^\text{11}\)**

These freedoms are also provided for in the Universal Declaration of Human Rights (the “UDHR”). Article 20(1) of the UDHR states that “[e]veryone has the right to freedom of peaceful assembly and association” whereas Article 19(1) provides that “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. The UDHR was adopted by the UN General Assembly and provides for human rights standards accepted by all member states of the UN. Generally speaking, UN General Assembly Resolutions, such as the UDHR, are not directly binding on states. However, much of the UDHR is widely regarded as having acquired customary international law status and therefore considered to carry legal force.\(^\text{12}\)

The International Covenant on Civil and Political Rights\(^\text{13}\) (the “ICCPR”), which Cambodia ratified in 1992, also obliges states to respect and uphold the freedoms of expression and assembly. In terms almost identical to those contained in the UDHR, Article 19 of the ICCPR provides that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” Article 21 of the ICCPR provides that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”

\(^{10}\) Summary notes of meeting between NGO delegation and H.E. Nuth Sa An (Secretary of State – Ministry of Interior) (Phnom Penh 20 October 2010).

\(^{11}\) The Constitution of the Kingdom of Cambodia (trans.) art. 41.


The freedoms of expression and assembly, as they are formulated in these international instruments are part of Cambodian law as a result of Article 31 of the Constitution, which provides that Cambodia “shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women’s and children’s rights”. Importantly for the current debate, the Constitution also provides, at Article 35, for the right of all Khmer citizens “to participate actively in the political, economic, social and cultural life of the nation”.
Overview of domestic NGO laws around the world

For our comparative research, we have analyzed the laws governing NGOs in addition to the commentary on such laws from over 50 jurisdictions around the world. This section comprises a compilation of our research, in which we present the factors that we consider make a “good” NGO law and those that make a “bad” NGO law. Analysis of the comparative NGO Laws is divided into the same nine categories as set out in the Introduction above.

Registration requirements

In many jurisdictions NGOs are required to register with the government or other central agency or executive body. Requirements differ from jurisdiction to jurisdiction as to whether NGOs are obliged to register, how they are to register, and what the registration requirements are. Registration may involve many requirements, including lists of members, information on representatives of the organization, copies of charters or constitutions, records of assets, a certain amount of proven funding, budgets for the future, lists of donors and lenders, internal auditing measures, procedures for charter amendment, and stated procedures for dissolving the organization. The question as to whether there should be a system of NGO registration must be decided after weighing up the advantages and disadvantages.

If there is a registration process, it should be quick and efficient, and the government or relevant executive body should provide guidance and assistance to NGOs to facilitate the registration process. It is worth noting the sheer number of NGOs and other associations in Cambodia – approximately 2,465 registered NGOs and other associations (including roughly 300 international NGOs) as of 8 October 201014 – and the lack of sophistication among many of them: the NGO Law would have an awful legacy if it meant that NGOs were closed down for want of the ability to fill out forms and so on. Laws governing NGOs should be in written form and easily accessible so that all persons (including natural and legal persons) can register or incorporate an NGO. The language of the law should be specific and precise with clearly defined terms.

If there is to be a system of NGO registration, it is important to ensure that the process is transparent and fair, that all parties involved remain impartial and are not motivated by political or other concerns. It is also imperative that whatever executive body in charge of NGO registrations is totally transparent and remains free from corruption. In Bulgaria, registration is effected through the Ministry of Justice.15 Other jurisdictions have a separate body to monitor and register NGOs (usually supervised by the government), or assign the task to a branch of the government. Some jurisdictions provide that national organizations must register with a national government body, while organizations working at the local level are only required to register with the provincial or local municipal office.

14 The International Center for Not-for-Profit Law: Cambodia (http://www.icnl.org/knowledge/ngolawmonitor/cambodia.htm) [last updated 8 October 2010].
Restrictive requirements are discouraged, for instance ones prescribing declarations of staff and officers or a minimum number of members. It is worth highlighting again the lack of sophistication of a lot of NGOs in Cambodia: many of them are informal and do not have “procedures for charter amendment” and so on. The greater the number of requirements, and the more restrictive those requirements are, the more onerous the registration process becomes, and the greater the scope for abuse by the government or relevant executive body. In Russia, for example, a highly restrictive system of registration has been criticized by both Human Rights Watch and Amnesty International.\(^\text{16}\) It is recommended that requirements for registration be kept to a moderate level, such as a fixed registered address within the country and the organization’s statute of incorporation (or equivalent). Palestine, for example, only requires an NGO to submit copies of its by-laws.\(^\text{17}\) NGOs based in foreign countries, in particular, should not have stringent requirements or procedures for registration. In Peru, for example, NGOs that are completely funded from sources abroad, without help from the state, are exempt from registration.\(^\text{18}\)

Some jurisdictions also require that organizations pay a service (or other) fee when applying for registration. As long as such fees are reasonable and cover the administrative costs of reviewing registration applications, then they are not necessarily objectionable. Furthermore, they indicate that NGO applicants are serious about their work. It is important, however, that such fees do not prohibit legitimate NGOs from being established and carrying out their work: it is possible, in a poor country such as Cambodia, that certain organizations, especially local ones, might be prohibited from registering in such circumstances, due to a lack of funds.

Most laws require the executive body processing registration applications to provide written reasons for any denial of registration, which encourages transparency.\(^\text{19}\) If not, it makes it easy for the government to dissolve any organization that it finds objectionable. Some laws set out in detail the specific reasons why an agency may deny an NGO registration, although, if the language is vaguely drafted, the executive body will have too much discretion while appeal processes may be hindered. Some laws prohibit the establishment of NGOs if they violate public order or moral codes, are politically motivated, if an NGO already exists with a similar purpose, or as a result of minor errors in the application. Such vague provisions clearly allow for abuse.

Any NGO law should clearly state the reasons why an NGO may be legally denied registration, with decisions on registration involving relatively little bureaucratic judgement. The relevant executive body’s powers of discretion will thereby be kept in check, while ensuring a fair and effective system of registration. For example, Japan has specified that a government agency must approve an NGO’s

\(^{16}\) ‘Amnesty International Urges Putin to Review NGO Legislation’ MosNews (Moscow 5 July 2006), found on website of NCSJ (Advocates on Behalf of Jews in Russia, Ukraine, the Baltic States & Eurasia) ‘Russian Civil Society Examined, as G-8 Looms’ (http://www.ncsj.org) [last updated 12 November 2010]; Human Rights Watch, ‘Russia: Revise NGO Law to Protect Rights’ (13 May 2009) (http://www.hrw.org/node/83164) [last accessed 17 November 2010].

\(^{17}\) Law of Charitable Associations and Community Organizations (No. 1, 2000) art. 4(1).


\(^{19}\) Law to Promote Specified Non-Profit Activities 1998 (as amended, 2003) (unofficial trans.) (the Japanese NGO Law) art. 12; Law 84 of 2002 on Non-Governmental Organizations (trans.) (the Egyptian NGO Law) art. 6.
registration if certain specified criteria stipulated in its NGO legislation are met,\textsuperscript{20} a requirement that has been regarded favourably by other jurisdictions.

Laws should provide a certain date or duration of time within which the application must be processed by the government or other executive body, so as to ensure a speedy system of registration. This period should not be long and should be strictly enforced. Laws differ as to what occurs if the ministry or government body in charge of registration does not respond within the required time: some jurisdictions’ laws provide that a lack of response should be interpreted as an approval of the registration application,\textsuperscript{21} while others state that it means that the application was rejected.\textsuperscript{22} The former, a presumption for registration, is clearly more favourable for NGOs. Either way, it should be clear what the process is, so that there is no confusion and so that proper avenues of appeal can be pursued if necessary.

In the case of approval, provisions should be included which clearly state the length of the registration’s validity, whether for a term of years or until the NGO dissolves or violates any laws, and must also provide for a system of registration renewal. Provisions addressing both the transformation or merger and the dissolution of organizations should be included. The right of NGOs to establish regional or branch offices should also be clearly stated in the laws.

When a registration application is rejected, the decision should be automatically appealed or transferred to the courts or other independent arbiter rather than merely referred back to the executive body in question.\textsuperscript{23}

Some laws require that records of registration be made public and included in a central register.\textsuperscript{24} This is helpful if made available to citizens who are interested in volunteering or donating, or for organizations seeking other organizations to work with. It will also contribute to increased transparency.

**Recommendations for Cambodia’s NGO Law:**

- The registration process should be quick and efficient.
- Guidance notes and assistance from the relevant ministry (the MOI for national NGOs and the Ministry of Foreign Affairs and International Co-operation for foreign/international NGOs) should be provided to NGOs to facilitate registration.
- The NGO Law should be written in clear and precise language and should avoid vague and open-ended terms.
- Registration applications should be treated impartially without motivation by political concerns.
- The registration process should be transparent and free of corruption.

\textsuperscript{20} The Japanese NGO Law (n. 19) art. 12.
\textsuperscript{21} The Egyptian NGO Law (n. 19) art 6; Associations Act 1990 (Act 90-31) (trans.) (the Algerian NGO Law) art 8.
\textsuperscript{22} The Bulgarian NGO Law (n. 15) art 45(4).
\textsuperscript{23} Please refer to the section on NGOs’ right of appeal below.
\textsuperscript{24} The Bulgarian NGO Law (n. 15) art. 45.
Registration requirements should not be excessive or onerous: a balance needs to be struck between satisfying the RGC’s legitimate and reasonable concerns and allowing NGOs the freedom to carry out their positive and beneficial activities.

Any registration fees should not be so high that legitimate organizations are prohibited from being established and carrying out their work.

There should be clear and predictable reasons given for denying a registration application, with limited discretionary powers on the part of the executive body responsible for applications; such reasons should be given within a clearly defined timeframe.

Clear, consistent and reasonable terms should accompany any registration approvals (e.g., length of duration).

Proper avenues of appeal should exist for NGOs that have been denied registration.

Records of registration should be made public and collated in an easily accessible central register.

**NGOs’ right of appeal**

Many NGO laws give organizations the right to appeal the government’s regulatory decisions, either through the courts or directly with the executive body in question. Such decisions include rejecting registration applications, merging and dissolving NGOs, and any other actions taken against NGOs. A system of appeal is highly recommended in any NGO law in order to ensure that all relevant processes are fair and transparent. Furthermore, this right of appeal is an important check on the government’s power to impede the work of NGOs. Some countries, such as Algeria, do not provide for a right of appeal at all.²⁵ Without a right of appeal, the government is free to apply NGO legislation as it wishes and regulate NGOs with total abandon.

However, such appeals are only fully legitimate when they are taken to an independent neutral body such as the courts or any other independent arbiter. Unfortunately, many laws do not allow for such a process: NGOs are often only allowed to appeal to the governmental organization that was responsible for making the regulatory decision in the first place. Additionally, whether or not the court or body responsible for reviewing appeals is an objective, independent, third-party group depends upon the jurisdiction in question. In many countries, such as Cambodia, the courts are openly controlled by the executive branch of the government and have little independent power.²⁶ It is not within the scope of this paper to consider the steps that are necessary to ensure the independence of the Cambodian judiciary.²⁷ It is clear however, that a right to appeal to the courts which entails the presentation of evidence at a public hearing and the re-examination of the reasoning of a decision by a different branch of government is preferable to an administrative decision by a government agency.

**Recommendations for Cambodia’s NGO Law:**

²⁵ The Algerian NGO Law (n. 21).
²⁶ See for example; European Parliament ‘Joint Motion for a Resolution on Cambodia, in particular the case of Sam Rainsy’ (Joint Motion for a Resolution, Procedure 2010/2931(RSP), Text Tabled RC-B7-0550/2010) 20 October 2010 (http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P7-RC-2010-0550+0+DOC+XML+V0//EN) [last updated 28 October 2010].
• There should be a proper system of appeal in place for NGOs to appeal any decisions by the relevant ministry.
• The right of appeal should be to the courts.
• The right to appeal should be maintained even if the courts are not fully independent of the executive.\(^{28}\)

**Limitations on NGO activities**

It is common for governments to limit the range of activities that NGOs can carry out. Since many governments pass NGO laws in order to stifle political dissent, the most obvious recurring restriction on NGO activities among repressive regimes is a ban on political activities. Such restrictions can range from an outright ban on any political activity to only prohibiting direct endorsement and financial support for political candidates. For instance, in Algeria NGOs are only prohibited from having any “institutional or structural relations” with political associations, but are allowed to engage in policy debates or even endorse political candidates.\(^ {29}\) Other jurisdictions place bans on activities that threaten national policy or undermine cultural ideas, China being a notable example: China’s relevant legislation states that NGOs “must not endanger national security, national unity or the unity of [China’s] nationalities, nor must they transgress social morality.”\(^ {30}\) Additionally, Chinese law states that NGOs must not “harm the unity, security or ethnic harmony of the state, or interests of the state and society.”

Other jurisdictions do not specifically ban NGOs from taking part in certain activities, but merely provide a list of approved NGO activities. Those NGOs carrying out activities that are not approved are not allowed to register or to carry out their business. It is not unusual for the list of approved activities only to permit a range of fairly innocuous or politically “safe” activities, such as providing medical care to people in need.

One of the major problems with placing limitations on the activities of NGOs is that such limitations usually sweep broadly but are defined vaguely, which allows for the restriction of fundamental human rights, while making it difficult for NGOs to know what is or is not acceptable behaviour. Furthermore, the government is able to decide after the event what is permissible and to punish accordingly. The RGC routinely uses vague language to stifle dissent. Overall, this approach severely restricts freedom of expression in the country in question: NGOs are more likely to be afraid to act if in theory they could be punished for anything. Limitations on NGO activities should be specific and detailed to minimize government discretion.

Additionally, there should only be such limitations as are necessary to promote a liberal democratic society. For instance, prohibition of NGOs’ participation in political activities should be limited to directly funding or supporting candidates or political parties, and receiving a majority of their funding from a political party. This ban would maintain a clear division between NGOs and politicians, which is

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29 The Algerian NGO Law (n. 21) art. 11.
necessary to maintain autonomy and independence in the NGO sector. However, groups should also have the right to speak freely about all matters of public significance, including the ability to debate and criticize existing or proposed state or government policies and actions. NGOs should be permitted to engage in activities for the benefit of the general public in the country in question. As mentioned in the Introduction above, Cambodian citizens have the constitutional right to participate in the political life of the country.

**Recommendations for Cambodia’s NGO Law:**

- There should be minimal limitations on the activities that NGOs can carry out in order to encourage NGOs to engage in activities for the public benefit, in other words, the NGO Law should not be viewed by the RGC as a way to close down NGOs that they do not like.
- Any limitations deemed necessary should be narrowly drafted and applied so as to minimize confusion, government discretion and the restriction of fundamental human rights such as freedom of expression.
- Any limitations should be restricted to those that are strictly necessary to promote a liberal democratic society.
- Any limitations on political activities should be restricted to prohibiting direct endorsement and financial support for political candidates and receiving majority funding from a political party.
- The NGO Law should expressly protect the constitutional right to participate in the political life of the country and allow for the participation of NGOs in political discussions and criticism.

**Monitoring and supervision of NGOs**

The monitoring and supervision of NGOs by governments around the world ranges from highly restrictive to minimal. Generally, commentators have regarded laws that provide for less government (or executive) monitoring and supervision of NGOs as more favourable than laws with extensive such provisions. An exception is Bulgaria, whose NGO legislation has been regarded favourably despite implementing a structured system of NGO monitoring and supervision. It is important, though, to consider the potential for the abuse of such governmental power: allowing a corrupt or unaccountable government to monitor and supervise the activities of NGOs could be highly detrimental to their purposes.

Some jurisdictions require that NGOs submit regular (*i.e.*, annual) reports to the relevant executive body. Such reports may be required to include: information on an NGO’s activities; updated lists of its members; declarations of its taxes; amendments to its statutes; changes to its administration; notifications of any mergers, divisions or dissolutions; inventories of its assets; statements of its revenue and expenditures; information on any foreign donations; sources of its funding; and its annual budgets. There is a concern, however, that the government or executive body in question may use such information to revoke an NGO’s license or to apply sanctions and penalties, especially if the jurisdiction’s NGO legislation is vague and/or grants broad discretion to the relevant executive body.

Examples of jurisdictions where the NGO legislation allows great potential for abuse and corruption include: (i) Bangladesh, where the government is allowed “at any time” to inspect or seize an NGO’s
accounts or documents;\textsuperscript{31} (ii) Japan, which provides for a similar power;\textsuperscript{32} (iii) Zimbabwe, where the government is allowed to instigate an investigation of an NGO if it has “reasonable grounds” to suspect maladministration\textsuperscript{33} (often, however, it is unclear what constitutes “reasonable grounds” and there is no check on this power); (iv) Russia, where planned and unplanned audits are permitted at any time, for any length of time;\textsuperscript{34} (v) Jordan and Oman, where the relevant ministries are further vested with the power to send representatives to observe any NGO meeting or election\textsuperscript{35} (the ministries are then able to appoint a temporary board of directors and call for a re-election if they are not happy with what they observe); (vi) China, where the body in charge of registration of NGOs is vested with the power to conduct both annual inspections of NGOs, including those from abroad, and day-to-day monitoring and supervision of NGOs’ activities\textsuperscript{37} – similar provisions apply to social organizations\textsuperscript{38} – which essentially allows the government to find any reason to sanction or penalize an NGO; and (vii) Thailand, where the National Police Office Bureau that oversees and supervises associations and the Ministry of Interior that oversees and supervises foundations\textsuperscript{39} are both highly subject to government discretion. In Oman, an NGO needs the ministry’s permission for practically everything, from exercising property rights to holding public events and lectures.\textsuperscript{40}

Examples of laws prescribing a monitoring and supervision system that has worked include Bulgaria, where an NGO may be subject to an independent audit if it reports a high revenue or balance of funds.\textsuperscript{41} Reports of income, expenditures, and finances are required annually in South Africa, where the relevant NGO legislation has also been successful.\textsuperscript{42} The problem with such laws, however, is that there is great potential for abuse.

In some jurisdictions, NGO laws contain provisions that limit the government’s powers and activities. In Palestine, for example, the Ministry of the Interior must secure a court order before taking any action against an NGO, such as the dissolution or seizure of assets.\textsuperscript{43} Palestine’s laws on NGOs have been lauded as the most liberal in the Middle East, although an amendment currently on hold may change the status quo.\textsuperscript{44}

\textsuperscript{31} Foreign Donations (Voluntary Activities) Regulation Ordinance 1978 (Ordinance No. XLVI of 1978) (the Bangladeshi NGO Law) art. 4.
\textsuperscript{32} The Japanese NGO Law (n. 19) art. 41.
\textsuperscript{33} Non-governmental Organizations Bill 2004 (as amended, 2004) art. 23.
\textsuperscript{36} The Jordanian NGO Law (n. 35) art. 18; the Omani NGO Law (n. 35) art. 34.
\textsuperscript{37} The Chinese NGO Law (n. 30) art. 34.
\textsuperscript{38} Ibid. art. 34.
\textsuperscript{39} Simon, Karla W., ‘NGO Regulation in East and Southeast Asia: A Comparative Perspective’ (Thailand Law Forum, para. 3(g)) (http://www.thailawforum.com/articles/ngo2.html) [last accessed 17 November 2010].
\textsuperscript{40} The Omani NGO Law (n. 35) arts 5 and 13.
\textsuperscript{41} The Bulgarian NGO Law (n. 15) art. 39(3).
\textsuperscript{42} Non-Profit Organizations Act (1997) art. 17.
\textsuperscript{43} Law of Charitable Associations and Community Organizations (2000) arts 41 and 38(2).
\textsuperscript{44} Elbayar K., ‘NGO Laws in Selected Arab States’ (September 2005) 7 The International Journal of Not-for-Profit Law (http://www.icnl.org/knowledge/ijnl/vol7iss4/special_1.htm) [last accessed 17 November 2010].
A system of annual reporting is not recommended because it can be highly intrusive and can result in the abuse and harassment of NGOs. NGOs should, of course, maintain books and accounts to monitor their own activities, but they should not be subject to government scrutiny unless so required by court order. An NGO cannot function effectively or remain objective (as it should) if it must act under constant fear of audits or inspections by the government or relevant executive body, especially when such powers may be abused. Factors to consider if there is to be a system of reporting, however, are: whom the NGOs should report to (i.e., the government, the courts, or a separate body) and the purpose and rationale behind such reporting obligations. The same considerations apply with regard to a system of monitoring and supervision by an executive body, namely who will oversee the monitoring and supervision, and what the objectives are.

Governments have cited concerns over corruption, misuse of funds, money laundering, terrorism and criminal activity by NGO representatives or members as reasons for implementing a system of monitoring and supervision. There are good arguments for saying that such concerns can be fully addressed in the courts by way of criminal law systems and by the NGOs themselves, without vesting any power in the government or relevant executive body. For example, the anti-corruption law in Cambodia already includes the provision that civil society leaders (which would include heads of NGOs) provide asset declarations to the anti-corruption authorities. This was a surprising and unnecessary inclusion in that law, which should have been directed at the RGC and its subsidiary executive bodies. Any additional obligations on civil society leaders or on NGOs that exceed those of civil servants and government institutions would be a clear indication of unfavourable treatment of NGOs and their leaders.

**Recommendations for Cambodia’s NGO Law:**

- The NGO Law should follow the Palestinian template by expressly limiting governmental powers to interfere with NGOs and also requiring the executive to secure a court order before carrying out certain actions against NGOs such as dissolving them or seizing their assets.
- Provisions for the monitoring and supervision of NGOs by the RGC or a subsidiary executive body should not be excessive or intrusive.
- 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.
- A system of annual reporting is not recommended because it can be highly intrusive and can result in the abuse and harassment of NGOs.
- The rationale behind any systems of monitoring and supervision should be clearly stated.
- No further obligations should be imposed upon civil society leaders or NGOs that exceed beyond those imposed upon civil servants and government institutions.

**Foreign involvement restrictions**

Foreign involvement restrictions in NGO legislation can include limiting foreign donations and donors, banning or limiting the ability of foreign NGOs to establish themselves in a given jurisdiction, and regulating the work of foreign nationals in the jurisdiction in question. Whereas the previously
published draft of the NGO Law, which was made available in 2006, concerned only national NGOs, it is understood that the NGO Law will regulate international NGOs as well as national NGOs.

Many jurisdictions require that foreign donations be reported to the government or executive body in charge of registration and be pre-approved: in Oman, for example, NGOs are not permitted to receive funds from foreigners or foreign associations at all;\(^{45}\) in Turkmenistan NGOs supported by foreign funding must be registered with the Ministry of Justice;\(^{46}\) and, in Bangladesh, every single foreign contribution, whether in cash or a ticket for a journey abroad, must be approved by the government.\(^{47}\) It is a huge burden on NGOs to report every single foreign contribution or donation, and a “good” NGO law should not place unreasonable barriers on receiving foreign funding, since, in many cases, such funding is essential to the running of the NGO.

Restrictions may also be imposed on joining international umbrella organizations or working with foreign counterparts abroad. In Algeria, the Interior Ministry must grant approval before any NGO can join an international association or federation.\(^{48}\) Similar provisions exist in Oman and Egypt.\(^{49}\) Such restrictions prevent NGOs from meeting their peers in the international community to compare ideas and learn from groups with more experience and expertise, and there is no discernible reason for this kind of restriction.

Foreign NGOs pursuing their activities in other jurisdictions should not have to face stricter requirements or obstacles to registration. Unfortunately, in many jurisdictions, foreign NGOs have difficulty registering because of NGO laws that restrict foreign involvement: in Egypt, for example, foreign NGOs need governmental approval to operate, and the government’s decision is based on unspecified factors and cannot be appealed against;\(^{50}\) in Turkmenistan founders of NGOs must be citizens of Turkmenistan;\(^{51}\) in the United Kingdom foreign NGOs must register under six specified categories of activities,\(^{52}\) and Russia imposes stricter requirements for foreign NGO registration, which result in many NGOs’ being denied registration.\(^{53}\)

A “good” NGO law should state that foreign nationals can work for NGOs in the jurisdiction in question without needing to register or be pre-approved. By way of contrast, Bangladeshi law requires any non-Bangladeshi national wanting to engage in volunteer activities to submit his or her personal details (including nationality, period of stay, and the NGO for which he or she will be working) to the NGO Affairs Bureau and Ministry of Home Affairs, and apply for pre-approval.\(^{54}\) Such obligations can be

\(^{45}\) The Omani NGO Law (n. 35) art. 42.
\(^{46}\) The International Center for Not-for-Profit Law [http://www.icnl.org/knowledge/ngolawmonitor/turkmenistan.htm] [last updated 30 July 2010].
\(^{47}\) The Bangladeshi NGO Law (n. 31) art. 4.
\(^{48}\) The Algerian NGO Law (n. 21) art. 40.
\(^{49}\) The Omani NGO Law (n. 35) arts 8 and 42; the Egyptian NGO Law (n. 19) art 17.
\(^{50}\) The Egyptian NGO Law (n. 19) art. 1.
\(^{51}\) The International Center for Not-for-Profit Law [http://www.icnl.org/knowledge/ngolawmonitor/turkmenistan.htm] [last updated 30 July 2010].
\(^{52}\) Charities Act 1993 (the England and Wales NGO Law) art. 3.
\(^{53}\) The Russian NGO Law (n. 34).
\(^{54}\) The Bangladeshi NGO Law (n. 31) arts 3-5.
restrictive and burdensome for foreign nationals who wish to work for NGOs in Bangladesh, and the result is that the Bangladeshi people and society as a whole suffer the consequences.

**Recommendations for Cambodia's NGO Law:**

- Unreasonable barriers should not be placed on NGOs’ receiving foreign funding, since, in many cases, such funding is essential to NGOs’ existence.
- Restrictions should not be imposed on NGOs’ joining international umbrella organizations or working with foreign counterparts abroad.
- Foreign NGOs pursuing their activities in Cambodia should not have to face stricter requirements or obstacles to registration than national NGOs.
- Foreign nationals should be able to work for NGOs in Cambodia without needing to register or be pre-approved.

**Sanctions and penalties**

Sanctions and penalties can be administered for a variety of acts, including: (i) receiving foreign funds and donations without the approval of the government or relevant executive body; (ii) taking part in activities deemed contrary to or not in line with the purpose or remit of a given NGO; (iii) using an NGO for private rather than public benefit; (iv) falsifying information on a registration application or annual report; (v) commencing NGO activities prior to registration; (vi) misappropriating funds; (vii) threatening “national order” or “public order or morals”; and (viii) acting for or behind a dissolved or suspended NGO. Offences such as threatening national order are very open to discretion (and therefore abuse) on the part of governments and executive bodies so are best avoided when drafting NGO legislation.

Sanctions and penalties imposed on NGOs for breaches of NGO laws can either be administered by governments (or whichever executive body is in charge of NGOs) or by the courts (or other independent arbiter). It is far preferable that they are administered by the latter, since governmental (or executive) sanctions and penalties are often arbitrary and unreasonably severe. Standards for sanctions and penalties should be clearly described and proportionate to the severity of the violation.

Governments and executive bodies should only have the power to fine and use administrative penalties. Criminal penalties should not be enforced by the executive, but by the courts in the event that the criminal law or penal code of the jurisdiction in question is violated. There is no reason why NGOs and their staff should be subject to additional criminal measures that others are not subject to. Nor should governments or executive bodies be allowed to confiscate NGO property without proper direction from the courts.

Many jurisdictions administer criminal penalties such as imprisonment for violations of their NGO laws. In Algeria, for example, one can be imprisoned for between three months to two years for acting under a non-accredited, suspended or dissolved association. In Bangladesh anyone who receives a foreign

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55 The Algerian NGO Law (n. 21) art. 45.
contribution not approved by the government will be imprisoned or fined, or both.\textsuperscript{56} Egypt allows for a maximum of one year’s imprisonment in addition to a fine for carrying out a variety of acts without the government’s or court’s permission (as the case may be).\textsuperscript{57} In Yemen individuals who are not members of an NGO but who participate in either the management or internal decision-making of an NGO without the express approval of its board of directors are liable to up to six months in prison and/or a fine of 50,000 Yemeni rials.\textsuperscript{58}

Imprisonment, however, is an inappropriate sanction, since it is unreasonably severe and is necessarily levied against individuals, rather than the NGO itself. In the same way that unions in Cambodia have legal personality, sanctions should be against the NGO as a legal personality rather than against those who work for them (unless of course an individual breaks the criminal law of the jurisdiction in question, in which case he or she should be tried for that crime under the relevant penal code in the criminal courts).

There are several alternatives to criminal sanctions, including the revocation of an NGO’s registration, and fines. If a government or executive body is to have any power to administer sanctions, it should be restricted to these alternatives. Both, however, could potentially be abused by the government or executive body concerned, by revoking registration for unfounded reasons and administering arbitrary fines. If they are to be included in NGO legislation, the requirements for revoking registration and administering fines should be clearly stated, permitted only in extreme circumstances where such action is proportionate to the offence in question, and supported by an independent system of appeals to the courts or other independent arbiter.

\textbf{Recommendations for Cambodia’s NGO Law:}

- The NGO Law should avoid such vaguely-defined language as “threatening national order” since such offences would be very open to discretion (and therefore abuse) on the part of the RGC or the relevant ministry.
- Sanctions and penalties should be administered by the courts (or other independent arbiter), since governmental (or executive) sanctions and penalties are likely to be arbitrary and unreasonably severe.
- Standards for sanctions and penalties should be clearly described and proportionate to the severity of the violation.
- The RGC and the relevant ministry should only have the power to fine and use administrative penalties; criminal penalties should not be enforced by the executive, but by the courts in the event that either the criminal or penal code is violated.
- Neither the RGC nor the relevant ministry should be able to confiscate NGO property without proper direction from the courts.
- Imprisonment should not be employed as a sanction for a breach of the NGO Law since it is unreasonably severe and can only be levied against individuals rather than against the NGO itself.

\textsuperscript{56} The Bangladeshi NGO Law (n. 31) art. 5.
\textsuperscript{57} The Egyptian NGO Law (n. 19) art. 76.
\textsuperscript{58} Law Concerning Associations and Foundations (No. 1 of 2001) (2001) (trans.) art. 69(1).
• Alternatives to criminal sanctions should be provided for, including the revocation of an NGO’s registration, and fines. The circumstances in which such measures may be taken must be clearly defined and strictly applied.
• Such sanctions should be clearly stated and supported by an independent system of appeals to the courts (or other independent arbiter).

Implementation of NGO legislation
There are many different ways to implement NGO legislation. The most simple and accommodating way to do so is by allowing all pre-existing NGOs to be automatically deemed registered. Another option is to state that all NGOs registered under a previous law will be deemed registered, but those organizations who failed to do so must meet the requirements of the new law. Bulgaria is an example of the latter approach, by which pre-existing legal NGOs maintain their status, while those NGOs considering themselves to be pursuing activities for the public benefit would need to register within three years of the legislation’s enactment.59

However, the most common practice is to insist that all NGOs must re-register under the new legislation. Many governments use such re-registration requirements as an excuse to get rid of certain undesirable NGOs. The major consideration as regards this option is whether or not NGOs are given a reasonable amount of time to re-register, in light of the amount of information that is required for re-registration. A reasonable amount of time must be allowed for NGOs to comply with the new legislation before becoming liable for any sanctions. NGOs should not become the victim of the logistical mess that would likely follow the passage of the NGO Law as a result of a lack of time or capacity to fill out the necessary forms or to comply with the necessary procedures.

Recommendations for Cambodia’s NGO Law:
• All pre-existing NGOs should be automatically deemed registered.
• If all NGOs must re-register, a reasonable amount of time must be allowed for NGOs to comply with the NGO Law before becoming liable for any sanctions.
• Guidance and assistance should be provided to NGOs as and where necessary.

Benefits conferred on NGOs
NGOs can assist in promoting a country’s development. They can hold politicians more accountable for their actions, and spread education and awareness of democratic ideals and rights. They can also provide a swathe of much-needed public services. Overall, they allow society to become richer and more fulfilling. Truly democratic and liberal governments understand and acknowledge this.

As a result, many governments provide various economic incentives to encourage and support the growth of the NGO sector. Most of these incentives come in the form of untaxed income, as is the case in the United Kingdom.60 Many countries also provide tax benefits and credits for people who donate to NGOs, as in the United States. Some governments go even further by allowing NGOs to

59 The Bulgarian NGO Law (n. 15).
60 The England and Wales NGO Law (n. 52).
purchase certain goods and necessities at duty-free rates. NGOs may also sometimes benefit from reduced utility rates.

**Recommendations for Cambodia’s NGO Law:**

- The good work and positive effect that NGOs have upon society should be recognized by the RGC.
- NGOs should be given reasonable economic incentives to encourage and support the growth of the NGO sector.

**Restrictions on NGO membership**

International jurisprudence states that an individual’s freedom of association is a right granted to all people. Despite this, many countries restrict minors from participating and founding NGOs. In many jurisdictions people must be at least 18 years old to be able to become a member of an NGO; however, many of the same jurisdictions with such age restrictions apply a threshold of a minimum number of members in order for NGOs to register or to continue to exist.

Many jurisdictions also restrict the ability of convicted criminals to participate in NGOs, although for the most part only if the person concerned has been convicted for a crime involving dishonesty. Some jurisdictions expand this restriction to include persons who have been convicted in foreign countries. Additionally, some jurisdictions only prohibit convicted criminals from participating in NGOs within five years of being convicted.

It is clear that some restrictions on NGO membership may be preferable or even necessary in order for the NGO in question to promote a clean image and function most effectively. However, a balance needs to be struck, since restrictions in general merely serve to make it more difficult for NGOs to exist and operate.

**Recommendations for Cambodia’s NGO Law:**

- Restrictions on NGO membership must be towards legitimate goals and must not be articulated or applied in such a manner as to prevent NGO operations or membership on arbitrary grounds.
- Individuals who are barred from joining an NGO should be given a written explanation and should be provided a right to appeal to the courts.
Conclusion

It is hoped that the NGO Law is articulated and applied in such a manner as to facilitate the operations of Cambodian and international NGOs and other organizations and associations that fall within the regulatory framework that it puts in place. For twenty years, NGOs have worked tirelessly to enhance the lives of the Cambodian people and to maximize the capacity and ability of the people to have a say in the development of their country. During those twenty years, lasting peace has enabled an ambitious program of economic development to take place and some of the mechanisms of a modern state to be established. Nevertheless, significant challenges continue to face the Cambodian people and Cambodian society. The rights and freedoms of groups and individuals are routinely breached with few, if any, consequences, and efforts by the RGC to shrink the democratic space and to criminalize dissent and criticism have seriously undermined the country’s progress towards the principles of liberal democracy and pluralism as set out in Article 1 of the Constitution.

CCHR urges the RGC to adopt the recommendations outlined in this paper so as to ensure that the passing of the NGO Law represents a positive step in Cambodia’s development and democratization, while also representing the commitment of 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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