



Comments on the Fifth Draft
Law on Associations and Non-Governmental Organizations
of the Kingdom of Cambodia

June 11, 2015

The International Center for Not-for-Profit Law (ICNL) is an international organization that provides technical assistance, research, and education to support the development of appropriate laws and regulatory systems for civil society in countries around the world. ICNL has worked on civil society law reform projects in over one hundred countries; in Asia, ICNL has worked in Bangladesh, China, Indonesia, Lao P.D.R., Mongolia, Myanmar, Nepal, Pakistan, Timor-Leste and Vietnam. ICNL has worked with the United Nations Development Programme, United Nations Volunteers, the Community of Democracies Working Group on Enabling and Protecting Civil Society, the European Union, the Organization for Security and Cooperation in Europe, the United States Agency for International Development, New Zealand AID, the Swedish International Development Agency, human rights groups, private foundations, and scores of in-country colleagues.

These comments address the fifth draft of the Cambodian Law on Associations and Non-Governmental Organizations. ICNL has obtained an unofficial copy of the fifth draft, along with an unofficial English translation. The Royal Government of Cambodia has not released an official copy of this fifth draft. ICNL has reviewed the draft law solely based on the unofficial translations it received of the fifth draft itself¹ and a comparison with earlier draft versions of the law, and not based on a review of the broader legal framework within Cambodia, such as the Cambodian Civil Code, labor law or existing memoranda of understanding that may exist between the Cambodian Government and NGO sector.

ICNL believes that sound legislation is the result of a fully participatory and inclusive consultation process, which provides sufficient opportunity for meaningful dialogue between the government and civil society. We urge the Government of Cambodia to provide a meaningful opportunity for additional dialogue and meaningful consultation with relevant stakeholders in order to take into more fulsome account the views of organizations to be governed by the new law. ICNL stands ready to provide additional information or technical assistance as necessary and appropriate.

Executive Summary

As a threshold issue, we note that the latest version of the draft Law on Associations and NGOs includes some improvements over prior versions of the draft law. Specifically:

¹ ICNL received unofficial translations from the Cooperation Committee for Cambodia (CCC) and LICADHO. ICNL relied primarily on the CCC translation (which was received earlier) and significant discrepancies are noted.

- **The draft law removes the express limitation against non-Cambodians establishing domestic associations and NGOs.** The wording of Article 4 has been amended allowing for a domestic association or NGO to be "established under Cambodian law by natural persons or legal entities." Additionally, Article 11 states that the Ministry of Interior must set the conditions, formalities and procedures for establishing and registering a domestic association or NGO "for a legal person (entity) or a foreigner." These provisions would seem, at least implicitly, to allow non-Cambodians to form domestic associations and NGO.²
- **The draft law eliminates the budget cap on overhead expenses.** The article that would have limited foreign NGOs' spending on administrative costs to 25% of their total budget has been removed. Such a ceiling would have seriously inhibited their work.
- **The draft law provides for automatic registration if the Ministry of Interior does not respond to a registration application in the requisite amount of time.** Pursuant to Article 8, if the Ministry of Interior fails to accept or deny the registration of a domestic association or NGO within 45 working days from receipt of the required documents or 15 working days after receiving modified documents, the association or NGO will be automatically considered as registered. While this is an important improvement, there may well be practical challenges with implementing such a presumption of approval. It is not clear, for example, how a domestic association would prove to the bank or other third parties that it has been "automatically" registered. Moreover, according to Article 8, the Ministry of Interior is required to take appropriate measures to register the association or NGO, but it is unclear how an association or NGO can ensure that the Ministry of Interior takes that action.

At the same time, the current draft law raises several fundamental concerns, including the following:

- **The draft law restricts leaders of associations or NGOs that have been terminated from serving as founders of new associations or NGOs.** Individuals that have held a leadership position in a domestic association or NGO that was terminated are barred from establishing a new association or NGO. This restriction could be used to target individuals critical of the government or those exposing human rights abuses or other governmental irregularities. Such a restriction amounts to an infringement on the right to freedom of association.
- **The draft law imposes mandatory registration requirements and criminalizes unregistered groups.** All associations and NGOs are required to register. Article 9 explicitly states, "Domestic associations and non-governmental organizations that are not registered are not allowed to conduct any activities in the Kingdom of Cambodia." Prohibiting the existence of unregistered groups constitutes an impermissible restriction on the freedom of association under Article 22

² Under Article 4, a domestic association or NGO may be "established under Cambodian law by natural persons or legal entities." Licadho's translation mirrors this language. CCC's translation is slightly different. ICNL verified this language and translation with an independent third-party. While ICNL prefers to rely on official translations, no such translation is available.

of the ICCPR. Moreover, associations and NGOs operating without being registered are subject to large fines, criminal prosecution, and, in the case of foreign NGOs, expulsion.

- **The draft law compels all domestic and foreign NGOs to be “neutral toward all political parties.”** Article 26 does not define “neutral” and therefore may be subject to arbitrary interpretation by government officials. Indeed, the neutrality requirement is so vague and broadly sweeping as to almost certainly amount to an unlawful restriction on the freedom of expression under Article 19 of the ICCPR. (Domestic associations are excluded from this blanket neutrality requirement.)
- **The draft law fails to ensure that denial of registration is consistent with international law standards.** Article 8 states that the Ministry of Interior “shall examine the documents and legality of the statute of a domestic association or NGO, and shall decide whether to accept or reject the registration ...” Reliance on the “legality” standard would allow the government to base denial on inconsistency with any provision of law, whether compliant with international human rights law or not. Furthermore, the Ministry of Interior may now deny registration if it deems the association or NGO has objectives which “jeopardize peace, stability and public order or harm the national security, national unity, culture, and traditions of the Cambodian national society.” The use of vague terms – e.g., “national unity, culture, and traditions of the Cambodian people” – invites subjective interpretations, which could lead to registration being denied arbitrarily. Taken together, the absence of a clear, limited list of objective grounds for denial could have a disproportionate impact on groups that engage in advocacy, support unpopular causes, or are critical of the government.
- **The draft law provides inadequate standards to guide the government’s supervisory powers.** First, there is no clear and limited list of grounds for suspension or deletion from the registration list for domestic associations and NGOs. Second, the Ministry of Economy and Finance and the National Audit Authority can conduct audits of associations or NGOs “in cases of necessity”; specific criteria that would trigger an audit are absent from this draft. Such broad authority may result in unlawful interference with the activities of associations and NGOs and could violate the right to privacy under the ICCPR.
- **The draft law erects barriers to the registration and activity of foreign NGOs.** Among other issues, the draft law outlines a heavily bureaucratic, multi-staged registration process, which lacks procedural safeguards, and is therefore subject to delays and subjective, arbitrary and politicized decision-making. In addition, the draft law limits the registration period for foreign NGOs to no more than three years, effectively requiring periodic re-registration for NGOs interested in more sustained engagement. Grounds for terminating the requisite memorandum of understanding are vague and overbroad.
- **The draft law imposes burdensome reporting constraints on associations and NGOs.** Among other requirements, the draft law requires all domestic associations and NGOs to submit to

governmental authorities copies of any and all reports that are sent to donors. All successful funding proposals and all financial or grant agreements must be submitted to the Ministry of Interior and Ministry of Economy and Finance. And all foreign NGOs must also submit to governmental authorities copies of annual reports that have been submitted to their donors. Such requirements may compel associations and NGOs into disclosing confidential or proprietary information.

Analysis

Freedom of association is enshrined in the Universal Declaration of Human Rights, the International Covenant for Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and a range of other human rights conventions, treaties and declarations. The Kingdom of Cambodia became a party to the ICCPR on 26 August 1992 and to the ICESCR on 26 May 1992.

Article 22 of the ICCPR guarantees the right to freedom of association as follows:

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

International law creates a presumption against any state regulation that would amount to a restriction of recognized rights.³ The ICCPR lists only four permissible grounds for state interference; those grounds are an exhaustive list. It is the state's obligation to demonstrate that any interference is justified; interference can only be justified where it is prescribed by law, in the interests of a legitimate government interest, and "necessary in a democratic society." The ICCPR Human Rights Committee has stated, in its General Comment 31(6): "Where such restrictions are made, states must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right."⁴

³ ICNL and the World Movement for Democracy Secretariat at the National Endowment for Democracy, *Defending Civil Society: A Report of the World Movement for Democracy* (2008), p. 30.

⁴ ICCPR Human Rights Committee, General Comment No. 31(6), Nature of the General Legal Obligation Imposed on States Parties to the Covenant (26 May 2004); see also Report of the Special Rapporteur on the rights to freedom

I. Restrictions on Founding Members

Issue: Article 5 requires domestic associations and NGOs to have at least five “founding members whose age is from eighteen (18)” and have never held a leadership position in any association or domestic NGO that has been “deleted from registration.”

Discussion: The Universal Declaration of Human Rights recognizes, in Article 2(1), that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind ...” (emphasis added). The ICCPR, in Article 2(1), illuminates this point, explicitly stating that the rights of the ICCPR extend “to all individuals within its [the state’s] territory and subject to its jurisdiction.” The ICCPR Human Rights Committee, in its General Comment No. 15, explained that “the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness;” and that “Aliens receive the benefit of the right of ... freedom of association.”⁵

Article 5 requires that the five Cambodian founding members be 18 or older. In other words, minors are restricted from founding associations. Restrictions on the ability of minors to form and participate in associations are clear violations of international law. Article 15 of the UN Convention on the Rights of a Child (CRC) requires State Parties to “recognize the rights of the child to freedom of association and to freedom of peaceful assembly” and limits restrictions to “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 (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.”⁶ Similarly, according to the UN Special Rapporteur, “International human rights law stipulates that everyone has the rights to freedom of association. As a result, legislation that does not set any specific limitation on individuals, including children...complies with international standards.”⁷ While there may be strong reasons to require parental consent or supervision for certain ages, a blanket prohibition applicable to all minors will be difficult to justify under the CRC and international human rights law.

The minimum number of founding members has been increased from three to five. While five members is not an overly burdensome requirement, the government’s justification for this higher threshold is unclear and does not constitute a “best practice.”⁸

of peaceful assembly and of association, Maina Kiai, para. 17, U.N. Doc. A/HRC/20/27 (21 May 2012) “When such a pressing social need arises, States have then to ensure that any restrictive measures fall within the limit of what is acceptable in a ‘democratic society.’ In that regard, longstanding jurisprudence asserts that democratic societies exist only where ‘pluralism, tolerance and broadmindedness’ are in place. Hence, States cannot undermine the very existence of these attributes when restricting these rights.”

⁵ ICCPR Human Rights Committee, General Comment No. 15, *The position of aliens under the Covenant* (1986) ([http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/bc561aa81bc5d86ec12563ed004aaa1b?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/bc561aa81bc5d86ec12563ed004aaa1b?Opendocument)).

⁶ Cambodia acceded to the UN Convention on the Rights of a Child (CRC) in 1992.

⁷ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 54, U.N. Doc. A/HRC/20/27 (21 May 2012).

⁸ *Id.* (“The Special Rapporteur...considers as a best practice the Armenian and Estonian legislation that require no more than two persons to establish an association. A higher number may be required to establish a union or a

Finally, the draft law, with respect to both associations and domestic NGOs, limits eligible founding members to those that have not held leadership positions in an association or domestic NGO that was “deleted from registration.” As detailed in Sections III and V below, associations and domestic NGOs can be deleted from registration for a variety of reasons, including vague and arbitrary reasons. Moreover, organizations that may voluntarily seek termination for benign reasons would also be subject to this restriction. Regardless, however, leadership in a prior organization that has been removed from the registry should not result in a loss of a fundamental freedom like freedom of association. Such an infringement on the right to freedom of association is almost certainly a disproportionate restriction and amounts to a violation of the freedom of association, as protected by the ICCPR and other international instruments. Even restrictions that limit the ability of those convicted of crimes from founding or holding leadership positions in associations are problematic under international standards, and this prohibition goes much further in seeking to limit eligible founders.

Recommendation: Revise draft law to conform establishment criteria to international norms relating to freedom of association, particularly relating to minors. More specifically, amend Article 5 to eliminate the requirement that founders have never held a leadership position of any association or domestic NGO that has been deleted from registration and ensure that minors are eligible to form associations and NGOs. Additionally, Article 4 should be clarified to explicitly allow for non-Cambodians to establish domestic associations and NGOs.

II. Mandatory Registration

Issue: Article 9 states, “Domestic association[s] and non-governmental organization[s] which are not registered are not allowed conduct any activities in the Kingdom of Cambodia.” This is a significant change from the fourth draft, which allowed associations and NGOs to be established “without necessarily obtaining permission or prior notice.”⁹ Under the current draft law, registration is mandatory, and unregistered groups are banned. Penalties for operating an unregistered association or NGO include fines, criminal prosecution and, in the case of foreign associations or NGOs, expulsion from Cambodia.

Discussion: Mandatory registration constitutes an impermissible restriction on the freedom of association under Article 22 of the ICCPR. Under Article 22, as well as other major international conventions, “freedom of association is a right, and not something that must first be granted by the government to citizens.”¹⁰ That associations and NGOs may be formed as legal entities does not mean that individuals can be *required* to form legal entities in order to exercise the freedom of association. As the UN Special Rapporteur has stated, “the right to freedom of association equally protects associations that are not registered...Individuals involved in unregistered associations should indeed be free to carry

political party, but this number should not be set at a level that would discourage people from engaging in associations.”)

⁹ See, Cambodian Law on Associations and Non-Governmental Organizations, Fourth Draft, December 2011, Article 5.

¹⁰ Public Interest Law Initiative, *Enabling Civil Society: Practical Aspects of Freedom of Association Source Book* (Budapest 2003), p. 14.

out any activities, including the right to hold and participate in peaceful assemblies...This is particularly important when the procedure to establish an association is burdensome and subject to administrative discretion, as such criminalization could then be used as a means to quell dissenting views or beliefs.”¹¹

Mandatory registration is particularly problematic when registration is difficult to achieve, as is true under this draft law, especially for would-be smaller organizations seeking to address needs at the community level or the interests of members. In such circumstances, individuals are forced to choose between operating as an unregistered group – and therefore illegally – or seeking to comply with burdensome registration requirements.¹² (See Section IV for an overview of registration requirements).

It is, of course, understood that legal entities will reasonably enjoy different legal rights from those groups that do not have legal personality. The rights of a legal entity, such as limited liability for its members/founders, tax incentives, authority to possess a property title, and the ability to sue and be sued in courts, among other rights, have traditionally made registration of a legal entity an attractive option for associations. The decision about whether or not to register and become a legal entity, however, should be a purely voluntary one. And individuals have the right under international law to associate without registering a legal entity.

Moreover, as a policy matter, enforcement of mandatory registration requirements, and the corresponding prohibition of activities carried out by unregistered groups or organizations, may be difficult to implement and unworkable in practice. No regulatory body responsible for gathering such information has the means to pursue every group (two and more) of individuals who gather together with a differing level of frequency and may be performing the broadest variety of imaginable activities, from harvesting crops, to playing chess or Pétanque, to producing handicrafts. Furthermore, there is no need for the government to waste its resources in seeking to limit the activities of such groups.

The penalties for conducting activities as an unregistered association or NGO are severe. Unregistered associations or NGOs – meaning those that either fail to register or those that have been deleted from the registry – face mandatory sanctions. The Ministry of Interior may fine unregistered domestic NGOs or associations between 5 million riel up to a maximum of 10 million riel and forward the case to courts for prosecution. Foreign NGOs that operate after the memorandum has been terminated are subject to their staff being expelled from the country, as well as their staff facing criminal prosecution. The competent authorities are mandated to “take immediate action” against both domestic and foreign associations and NGOs that operate without proper authority.

¹¹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 56, U.N. Doc. A/HRC/20/27 (21 May 2012); *see also*, Report submitted by the UN Special Representative of the Secretary-General on human rights defenders, Hina Jilani, in accordance with General Assembly resolution 58/178 (1 October 2004) page 21 (<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/533/18/PDF/N0453318.pdf?OpenElement>) (“[R]egistration should not be compulsory. NGOs should be allowed to exist and carry out activities without having to register if they so wish.”)

¹² We also note that Article 23 seems to prevent unregistered groups from cooperating with partners for implementing aid projects.

Recommendation: Amend Article 5 and Article 9 to eliminate the mandatory registration requirement and, instead, explicitly allow for unregistered groups to operate.

III. Requirement of Neutrality

Issue: The draft law limits permissible activities by requiring all domestic NGOs, foreign associations and foreign NGOs to be politically neutral. Article 26 states, “Domestic non-governmental organizations, foreign association or non- governmental organizations must be neutral toward all political parties in the Kingdom of Cambodia.”

Discussion: The neutrality requirement imposes a severe restriction on the freedom of expression. The freedom of association and the freedom of expression are inextricably linked: “Associations should enjoy, *inter alia*, the rights to express opinion, disseminate information, engage with the public and advocate before Governments and international bodies for human rights, for the preservation and development of a minority’s culture or for changes in law, including changes in the Constitution.”¹³

Associations and NGOs should not be denied registration or have their legal status threatened because they carry out what the authorities consider to be non-neutral or “political” activities.

“It is a source of serious concern that the term “political” has been interpreted in many countries in such a broad manner as to cover all sorts of advocacy activities; civic education; research; and more generally, activities aimed at influencing public policy or public opinion. It is clear that this interpretation is solely motivated by the need to deter any forms of criticism.”¹⁴

The freedom of expression is enshrined in Article 19 of the ICCPR and restrictions to this right are lawful only when such restrictions pass a three-part, cumulative test derived from Article 19. The test is: (1) the restriction must be provided by law, which is clear and accessible to everyone (principles of predictability and transparency); (2) the restriction must pursue one of the purposes set out in article 19(3) of the ICCPR, namely: (i) to protect the rights or reputations of others; (ii) to protect national security or public order, or public health or morals (principle of legitimacy); and (3) the restriction must be proven as necessary and the least restrictive means required to achieve the purported aim (principles of necessity and proportionality).¹⁵

A blanket requirement forcing associations and NGOs to “be neutral toward all political parties” fails to meet all the branches of the enumerated three-part test. First, the requirement is so vague that it fails the principle of predictability or transparency. Second, the restriction does not pursue any of the aims

¹³ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 64, U.N. Doc. A/HRC/20/27 (21 May 2012).

¹⁴ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 43, U.N. Doc. A/68/299 (7 August 2013).

¹⁵ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, para. 69, UN Doc. # A/HRC/17/27 (May 2011).

stated in Article 19(3). Finally, there is no indication that this restriction is necessary or the least restrictive means required to meet its purported aim. Nearly every NGO or association, as part of pursuing its mission, may seek to take a stand on an issue of public importance; in doing so, however, the NGO/association may run the risk of violating the neutrality restriction. Thus, this requirement is an impermissible restriction to the freedom of expression; regardless of the regulatory intent, it will lead to the stifling of dissent and criticism and could be used to arbitrarily prevent the registration of associations and NGOs or be used as grounds for their subsequent termination.

Recommendation: Article 26 should be removed as it constitutes an impermissible restriction on the freedom of expression.

IV. Registration Requirements

Issue: Chapter 2 of the draft law generally outlines the registration requirements and procedures for domestic associations and NGOs. Article 6 requires associations and domestic NGOs to register with the Ministry of Interior by filing the following documents: “Application forms for registration, A letter stating the address of the central office of a domestic association or non-governmental organization, recognized by the Commune or Sangkat Chief, Profiles of each founding member with a recent 4x6 size photograph, and A statute signed by the president of a domestic association or non-governmental organization.” Article 7 lists the contents of the governing statute. Article 8 prescribes the registration procedures, including the review of the application by the Ministry of Interior, applicable timelines, and the right to appeal. Of note, Article 8 now states that if the Ministry of Interior does not approve or deny registration within the 45 working days period, or does not approve or deny registration within the 15 working days period for modified document registration, the domestic association or NGO is automatically considered registered. Furthermore, the Ministry of Interior may deny a registration request “in the event that the domestic association or non-governmental organization aims and objectives which jeopardize peace, stability and public order or harm the national security, national unity, culture, and traditions of the Cambodian national society.” Article 9 affirms that the applicant becomes a legal entity upon approval by the Ministry of Interior.

Finally, Article 10 requires domestic associations and NGOs to notify, in writing, the Ministry of Interior and Ministry of Economy and Finance of (i) its bank account in Cambodia within 30 days of registration; and (ii) any changes to its statute, relocation of its office, changing presidents or executive directors, or changing bank accounts within fifteen days from the change. The failure to comply could result in the organization’s removal from the registration list (Article 32).

Discussion: The right to obtain legal entity status is well protected in international law. Article 22 of the ICCPR would have little meaning if individuals were unable to form NGOs and attain legal entity status.¹⁶

¹⁶ See Sidiropoulos and others v. Greece, European Court of Human Rights, 10 July 1998, Reports of Judgments and Decisions, 1998-IV, para. 40 (“That citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning.”) The language of the ICCPR and the European Convention on Human Rights is virtually identical; in light of this, the European Court’s judgments on the scope of the freedom of association have persuasive value for the meaning of the freedom of association as guaranteed by the ICCPR.

The UN Special Representative on Human Rights Defenders has noted that, “NGOs have a right to register as legal entities and to be entitled to the relevant benefits.”¹⁷

As noted by the ICCPR Human Rights Commission, states employing a registration system must ensure that it is truly accessible, with clear, speedy, apolitical, and inexpensive procedures in place.¹⁸ The registration body should be guided by objective standards and restricted from arbitrary decision-making.¹⁹ “[I]t is vital that Government officials act in good faith, in a timely and non-selective manner.”²⁰ Safeguards are commonly used to help ensure a well-implemented registration process. Examples include a clear and limited list of objective grounds for refusal of registration; a fixed time period for the government review of applications; a written explanation to the applicant in case of refusal; and the right to appeal, in case of refusal, to an independent court.²¹ Article 14 of the ICCPR enshrines the right to a fair hearing by a competent, independent, and impartial tribunal,²² and Article 2(3) guarantees the right to an effective remedy.²³

This draft law improves upon the fourth draft in one notable area – automatic registration upon the expiration of time limits to respond to registration requests. Yet, while the fifth draft keeps certain critical safeguards from the fourth draft – such as a fixed time period for government review (45 days), a written explanation in case of denial²⁴, the ability to make modifications to the application, and the right to appeal to a court – fundamental flaws remain. Most notably, the fifth draft law fails to include a clear

¹⁷ Report submitted by the UN Special Representative of the Secretary-General on human rights defenders, Hina Jilani, in accordance with General Assembly resolution 58/178, page 21.

¹⁸ Id. (“Where a registration system is in place, the Special Representative emphasizes that it should allow for quick registration ... Decisions to deny registration must be fully explained and cannot be politically motivated ... NGO laws must provide for clear and accessible information on the registration procedure.”)

¹⁹ ICNL and the World Movement for Democracy Secretariat at the National Endowment for Democracy, *Defending Civil Society: A Report of the World Movement for Democracy* (2008), p. 30.

²⁰ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 57, U.N. Doc. A/HRC/20/27 (21 May 2012).

²¹ See, Id., para 61, (“Any decision rejecting the submission or application must be clearly motivated and duly communicated in writing to the applicant. Associations whose submissions or applications have been rejected should have the opportunity to challenge the decision before an independent and impartial court.”)

²² Article 14 of the ICCPR reads as follows: “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law.”

²³ Article 2(3) of the ICCPR reads as follows: “Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted.” Article 8 of the Universal Declaration of Human Rights reinforces this principle: “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”

²⁴ Based on the translation, ICNL understands that the Ministry of Interior is obligated to provide a written explanation to applicants in case of denial. The Ministerial obligation to provide a written explanation should apply not only where inviting the applicant to modify the application, but also in the case of outright denial. If this is not clear, then we recommend affirming this safeguard.

and limited list of objective grounds for denial of registration, and now permits denial of registration for vague and unclear reasons.

Article 8 authorizes the Ministry of Interior to “examine the documents and the legality of the statute” and to decide “whether to accept or reject the registration” of the organization. It is not clear if the “legality” standard is intended to limit government discretion in deciding to accept or reject registration; it is not clearly presented as the sole basis for denial. Even if “legality” is intended as the sole criterion for denial, however, it is not consistent with international law. It would allow the government to base denial on inconsistency with *any provision of law*, whether compliant with international human rights law or not.

Furthermore, the Ministry of Interior may now deny registration if it deems the association or NGO has objectives which “jeopardize peace, stability and public order or harm the national security, national unity, culture, and traditions of the Cambodian national society.” While some of the terms – e.g., public order and national security – are consistent with international norms, many other terms – e.g., “national unity, culture, and traditions of the Cambodian people” – are vague and open to subjective interpretations, which could lead to registration being denied arbitrarily. In addition, these are not legitimate aims under the ICCPR for interfering in the right to freedom of association. Denial of registration clearly amounts to interference with freedom of association, and consequently can only be justified where denial is both “prescribed by law” (meaning that the law is accessible and that concerned persons are able to foresee the consequences of their actions) and “necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.” The standards for denial enumerated in Article 8 fail to meet the “prescribed by law” standard from Article 22 of the ICCPR. The absence of a clear, limited list of objective grounds for denial could have a disproportionate impact on groups that engage in advocacy, support unpopular causes, or are critical of the government. Such groups would be particularly susceptible to denial of registration under the jeopardizing of “national unity, culture, and traditions of the Cambodian national society” grounds.

Additional concerns include:

- *Documentation requirements.* The draft law, in Article 6, requires that registration applicants submit “Profiles of each founding member with a recent 4x6 photograph”. The term “Profiles” is undefined and could lead to open-ended inquiries by the government into the biographies of the founding members. Moreover, it is unclear how this information would be used. *Everyone* has the right to associate and “Authorities must ...respect the right of associations to privacy as stipulated in article 17 of the Covenant on Civil and Political Rights.”²⁵ The submission of “Profiles of each founding member” could invite government vetting of those individuals seeking to form organizations as legal entities. The problem is compounded by the lack of objective standards in reviewing registration applications; consequently, the founding member profiles could fuel the exercise of unbridled discretion.

²⁵ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 65, U.N. Doc. A/HRC/20/27 (21 May 2012).

- *Requirement of office.* Article 6 essentially requires associations and domestic NGOs to have an office in the Kingdom of Cambodia.²⁶ While it is common in many countries to require that organizations provide an address, requirements to secure actual office space are potentially more burdensome. A central office may be appropriate for well-funded NGOs, but smaller community-based associations and NGOs may lack sufficient resources to support an office. Indeed, such small organizations may simply operate in the community, hold meetings in members’ homes, and have no need for a central office. Article 6 additionally requires that registration applicants submit a “letter stating the address of the central office... recognized by the Commune or Sangkat Chief.” The requirement to submit such a letter is an unnecessary bureaucratic step in the registration process, which is likely to lead to delay for registration applicants.

Recommendation: Revise Chapter 2 of the draft law to streamline the registration process. More specifically:

- Amend Article 8 to include appropriate safeguards for registration applicants, including a clear and limited list of objective grounds for denial.
- Amend Article 6 to reduce documentation requirements; in the case of founding members, eliminate the vague requirement of “profiles” and simply require their names and addresses; and only require that applicants have an address, but not necessarily a central office.

V. Suspension, Termination and Dissolution

Issue: Chapter 6 addresses suspension and termination of associations, NGOs, and foreign organizations.²⁷ Articles 28 and 29 address voluntary suspension and dissolution, while Article 31 focuses on involuntary suspension and dissolution, but only superficially, by referring to the dissolution “by court decisions or deleted from registration at the Ministry of Interior.” In the wake of voluntary termination, according to Article 30, the management of remaining resources and property “shall comply with its organization’s statutes in accordance with existing laws and regulations.” In the wake of involuntary termination, remaining assets shall be distributed in compliance with court decisions, (Article 31).

Article 32, however, authorizes the Ministry of Interior to remove a domestic association or NGO from the registration list on its own accord, that is, without the involvement of a court; in such a case it is unclear how an association’s or NGO’s assets are to be distributed. While there are requirements that the Ministry of Interior provide written notice and an opportunity for the domestic association or NGO

²⁶ While this requirement was explicitly stated in the fourth draft, Article 6, in the fifth draft associations and domestic NGOs must include in their request to register “A letter stating the address of the central office...recognized by the Commune of Sangkat Chief.”

²⁷ See section below on “Foreign Non-Governmental Organizations” for commentary on termination of foreign NGOs.

to respond before such removal can take place, the Ministry of Interior's decisions can be arbitrary since there are no criteria to determine when an association does not comply with its statute.²⁸

Discussion: Involuntary termination is a clear example of interference with freedom of association, and like any other government intrusion, must meet the standards outlined in the ICCPR:

The right to freedom of association applies for the entire life of the association. The suspension and the involuntarily dissolution of an association are the severest types of restrictions on freedom of association. As a result, it should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law. It should be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient.²⁹

Furthermore, "[t]he relevant government authority should be guided by objective standards and restricted from arbitrary decision-making."³⁰ The draft law provides inadequate standards to guide the government's determination of suspension or termination. The draft law does not expressly limit the use of termination as a sanction of last resort. There is no requirement for the governmental authorities to provide notice and an opportunity to rectify problems prior to the suspension or termination in all instances, and the right to appeal after suspension or termination remains questionable.³¹ Taken together, the process of suspension and/or termination is open to government manipulation and overreach.

The provisions addressing the distribution of remaining assets would also benefit from additional limits in order to ensure that the assets are transferred to another association/NGO or alliance with the same or similar purposes, as commonly provided in countries around the world.

²⁸ The corresponding right to appeal, outlined in Article 33, may be a legal fiction because once the Ministry of Interior removes an association or NGO from the registration list, the organization is no longer allowed to operate and it has lost its legal status. Therefore questions remain as to whether it could even submit an appeal.

²⁹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 75, U.N. Doc. A/HRC/20/27 (21 May 2012).

³⁰ ICNL and the World Movement for Democracy Secretariat at the National Endowment for Democracy, *Defending Civil Society: A Report of the World Movement for Democracy* (2008), p. 31; see also, Report submitted by the UN Special Representative of the Secretary-General on human rights defenders, Hina Jilani, in accordance with General Assembly resolution 58/178, page 23 ("Actions by the Government against NGOs must be proportionate and subject to appeal and judicial review. Administrative irregularities ... should never be considered as sufficient grounds for closing down an organization.")

³¹ There is no right to appeal decisions of the Ministry of Interior to submit additional reports and financial records or decisions of the Ministry of Interior or National Audit Authority to conduct an audit under Article 27. Additionally, LICADHO's translation of Article 33 only references a right to lodge a complaint, not appeal, "A domestic association or non-governmental organization has the right to lodge a complaint with the courts protesting a decision of the Ministry of Interior connected to non- registration, termination of activities, deletion from listing and fines."

Recommendation: Revise Chapter 6 to include an exhaustive list of objective grounds for suspension and termination, along with accompanying procedural safeguards as outline above. Revise Article 31 to help ensure that, upon liquidation, assets are transferred to organizations with the same or similar purpose.

VI. Foreign Non-Governmental Organizations

Issue: Chapter 3 addresses registration requirements for International Associations and NGOs. The draft law erects barriers to the registration and activities of foreign NGOs. First, Article 12, read together with Articles 13, 14 and 15, outlines a heavily bureaucratic, multi-staged registration process. Second, Article 18 limits the validity of the memorandum of understanding to no more than three years, thereby requiring foreign NGOs to undergo the equivalent of a re-registration process.

Discussion: As a threshold issue, Article 4 – at least in translation – presents a somewhat ambiguous definition of a foreign association or NGO as “a group of foreign natural persons or legal entities who agree to establish under the foreign laws for the interests of its members or conducts activities to serve public interests without conducting any activity to generate profits for sharing among their members.” ICNL assumes this means that foreign founders may establish a non-membership organization, but if there is ambiguity in the Khmer version, then this should be clarified. The point is that in many countries, foundations, think tanks, and other organizations are non-membership organizations.

Registration Procedures. Any foreign association or NGO seeking to operate must conclude a memorandum with the Ministry of Foreign Affairs and International Cooperation.³² The signing of a memorandum is analogous to a registration process and requires the submission of an application, along with supporting documentation. Moreover, there is a multi-tiered approval process:

- First, according to Article 15, a foreign association or NGO “shall discuss and agree with public authority on projects/programs before submitting an application for a memorandum of understanding with Ministry of Foreign Affairs and International Cooperation ...” A letter issued by the public authority to support the projects of the foreign NGOs must be included as part of the application process, as outlined in Article 13.
- Second, according to Article 13, a foreign association or NGO “shall submit an application for the signing of a memorandum to the Ministry of Foreign Affairs and International Cooperation” supported by specified documentation. Certain documentation requirements included in Article 13 raise concerns. First, in the letter requesting to open a foreign office, the foreign applicant must provide “the attachment of the profile of a person requested to be appointed” as country representative. While it is common for a foreign NGO to be required to designate a representative, the requirement of providing the “profile of a person” is vague. It would be preferable for the law to require the name and contact information of the designated representative. Second, the foreign applicant must submit a “letter indicating the address of the

³² This is contrasted with a foreign association or NGO seeking to “implement a short project;” these associations or NGOs “must ask for approval from the Ministry of Foreign Affairs and International Cooperation through a local partner.” The term “short” is undefined.

representative office in the Kingdom of Cambodia, from the Commune or Sangkat Chief.” It is unclear whether the procuring of such a letter from the Commune or Sangkat Chief is a straightforward, routine task or more of a bureaucratic hurdle that could create delays. Additionally, it may be difficult to find a representative office *before* being able to legally operate in Cambodia; it may be impossible to sign a lease, for example, without being a legal entity.

- Third, Article 13 also requires that the foreign association or NGO submit a budget declaration for implementing its projects for at least six months, as well as a “pledged letter” guaranteeing that it will provide all bank account information in Cambodia.
- Fourth, the Ministry review of the application then follows within 45 working days in order to decide “whether or not to sign a memorandum.” (Article 14)
- Fifth, the foreign association or NGO in Cambodia shall notify the Ministry of Foreign Affairs and Ministry of Economy and Finance of its bank account in Cambodia within 30 days after signing the memorandum. (Article 19). The failure to comply could result in the cancellation of the memorandum (Article 35).

Significantly, the draft law lacks important safeguards (e.g., objective standards for review and denial of registration, a written explanation in case of denial, and the right to appeal to a competent and independent court) for the registration of foreign NGOs. Taken together with the multi-staged registration process, the registration of foreign NGOs could be beset by delays and subject to subjective, arbitrary and politicized decision-making,

Re-registration. Article 18 limits the validity of the memorandum to no more than three years, and requires those foreign NGOs wishing to continue activities in Cambodia to request an extension of the memorandum. In essence, therefore, foreign NGOs are subject to a re-registration process. The UN Special Rapporteur on the situation of human rights defenders has noted concerns with re-registration requirements: “In certain countries NGOs are required to re-register in certain periods, be it every year or more often, which provides additional opportunities for Governments to prohibit the operation of groups whose activities are not approved by the Government. Requirements for periodic re-registration may also induce a level of insecurity ... resulting in self-censorship and intimidation.”³³

Termination of Memorandum. Article 37 authorizes the Ministry of Foreign Affairs to terminate the memorandum, “in the event that a foreign association or non-governmental organization conducts activities which jeopardize peace, stability and public order or harm the national security, national unity, culture, customs and traditions of the Cambodian national society.” The grounds for termination are vague and subject to subjective interpretation. How will terms like the “national unity, culture, customs and traditions of the Cambodian national society” be interpreted? Will such a vague standard limit the

³³ Report submitted by the UN Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, in accordance with General Assembly resolution 62/152 (4 August 2009) p. 18 (http://www.icj.org/IMG/report_of_sr_on_hrds_to_ga.pdf).

ability of foreign NGOs to engage in environmental advocacy, human rights, or minority protection? The standard applicable to the termination of domestic organizations is applicable here: “The relevant government authority should be guided by objective standards and restricted from arbitrary decision-making.”³⁴ Moreover, there is no requirement for the governmental authorities to provide notice or an opportunity to rectify problems prior to the suspension or termination, and there is no mention of a right to appeal after suspension or termination. Taken together, the process of terminating the memorandum is open to government manipulation and overreach.

Recommendation: Revise the regulatory approach toward foreign NGOs through the following specific changes:

- Streamline the registration process and include safeguards to ensure a more objective, consistent, apolitical, and professional registration decision-making process.
- Amend Article 18 to remove re-registration requirement for foreign NGOs and allow for indefinite period of registration. Amend Article 37 to base termination of the memorandum under which a foreign organization operates in Cambodia on objective grounds, with appropriate procedural safeguards, and a right to appeal.

VII. Reporting

Issue: The draft law places requirements on associations and NGOs relating to reporting to governmental authorities (Article 27).³⁵

Discussion: Article 22 of the ICCPR limits government supervisory actions in clear terms: “No restrictions may be placed on the exercise of this right [freedom of association] other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” The recognition of freedom of association as a right “that must be respected necessarily entails some limits on the degree of regulation ... The very essence of the freedom of association is the ability of those belonging to a body to decide how it should be run; this necessitates both a minimalist approach to regulation and very close scrutiny of attempts to interfere with the choices that associations and their members make about the organization of their affairs.”³⁶ Article 27 defines reporting requirements.

³⁴ ICNL and the World Movement for Democracy Secretariat at the National Endowment for Democracy, *Defending Civil Society: A Report of the World Movement for Democracy* (2008), p. 31; see also, Report submitted by the UN Special Representative of the Secretary-General on human rights defenders, Hina Jilani, in accordance with General Assembly resolution 58/178, page 23 (“Actions by the Government against NGOs must be proportionate and subject to appeal and judicial review. Administrative irregularities ... should never be considered as sufficient grounds for closing down an organization.”)

³⁵ The analysis of reporting requirements is based upon ICNL's interpretation of the English translation, which is unofficial, still in draft form and unclear in some instances.

³⁶ Public Interest Law Initiative, *Enabling Civil Society: Practical Aspects of Freedom of Association*, (Budapest 2003), p. 42. Recommendation CM/Rec(2007)14 of the Committee of Ministers of the Council of Europe states, in

Article 27 requires domestic associations and NGOs to submit an annual report on “activities and budget status” to the Ministry of Interior and Ministry of Economy and Finance by the end of February of the following year. Additionally, those domestic associations and NGOs that receive foreign funding must also provide the Ministry of Interior and Ministry of Economy and Finance a copy of their reports submitted to their donors within thirty days of submission. Additionally, copies of all proposals and financial agreements with donors must be submitted to the Ministry of Interior and Ministry of Economy and Finance within thirty days from the donor agreeing to the proposal.

Foreign NGOs, under Article 27, are required to submit a copy of their annual report on “activities and finances status” to the Ministry of Foreign Affairs and Ministry of Economy and Finance “within thirty days from the date of submission to donors.” Foreign NGOs are also required to submit copies of all proposals and financial agreements with donors to the Ministry of Foreign Affairs and Ministry of Economy and Finance within thirty days from the donor agreeing to the proposal. Notably, this requirement is not limited to proposals and financial agreements for projects taking place within Cambodia.

Finally, Article 27 permits the Ministry of Economy and Finance and the National Audit Authority to check and audit all domestic and foreign associations and NGOs “in necessary cases,” and the Ministry of Interior may demand additional reports and financial records from domestic associations and NGOs “in necessary cases.” The phrase “in necessary cases” is vague and could be used to arbitrarily subject associations and NGOs to unlawful interference into their activities and confidential records. This is especially concerning since there are no criteria or regulation defining the scope of any such audit or demand for additional records. Associations and NGOs do not have the right to appeal these decisions.

Thus, the draft law mandates burdensome reporting requirements for both domestic and foreign organizations. As currently written, the draft law requires all domestic associations and NGOs to submit copies of any and all reports that are sent to donors. Additionally, there is an “upfront” requirement that all successful funding proposals and all financial or grant agreements be submitted to the Ministry of Interior and Ministry of Economy and Finance. Associations and NGOs often have numerous reporting requirements to a variety of donors. Requiring them to submit essentially every report sent to each donor is onerous and will likely affect their ability to carry out projects, increase administrative costs, and taint their relationship with donors.

Furthermore, all domestic associations and NGOs “receiving financial support” and all foreign NGOs, must provide copies of their annual reports submitted to their donors to governmental authorities. Reports submitted to donors may include confidential information that has no direct bearing on the association’s work, and therefore such a requirement likely violates the right to privacy.³⁷ More

section VII (#70) that “No external intervention in the running of NGOs should take place unless a serious breach of the legal requirements applicable to NGOs has been established or is reasonably believed to be imminent.”

³⁷ Article 17 of the ICCPR reads as follows: “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.” *See also*, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 65, U.N. Doc.

fundamentally, this amounts to government interference in private contractual relations. It would be unlikely for the government to require for-profit businesses to share reports on agreements between two private parties. In the case of NGOs and associations, where the government is already receiving annual reports on their activities and finances, the justification for this additional reporting requirement is unclear.

As an alternative, one could envision a system where organizations with no tax benefits or public funding would be accountable to their members but would have no public reporting requirements. Organizations below a certain threshold would be subjected to simplified reporting, even if they receive tax benefits or public funding. More fulsome reports would only be required of large organizations receiving substantial tax benefits or public funding. Details and distinctions would be worked out after meaningful consultation with civil society.

Recommendation: Revise the regulatory approach toward associations/NGOs through the following specific changes:

- Regarding Article 27's reporting requirements, the draft law should be amended so that organizations do not have to provide copies of their annual reports, proposals and financial agreements to government authorities. A graduated reporting requirement that would exempt smaller organizations from reporting, or at least simplify their reporting obligation should be considered.
- The criteria for when the Ministry of Economy and Finance or National Audit Authority can conduct an audit should be explicitly defined, and the scope of such an audit should be narrowly defined.

VIII. Miscellaneous Issues

Scope of Law. Article 3 states the law applies to registered associations and NGOs "which are conducting activities in the Kingdom of Cambodia." Article 4 then defines the terms "association" and "non-governmental organization" to embrace both domestic and foreign organizations. There are questions relating to the distinction between associations and domestic NGOs and the permissible purposes each can pursue. Reference is made to "the interests of its members" and "public interests" (Article 4). Without any definition provided of "public interests", the Ministry of Interior is placed in a position to decide what purposes do and do not qualify, and in turn, what organizations may be registered as NGOs (versus associations).

Funding Sources for Domestic Organizations. Article 20 defines the available resources for domestic associations to include donations, contributions, or membership fees; own resources and assets; lawful gifts from natural persons or legal entities; and "other incomes generated from lawful sources." Domestic NGOs' resources include its own resources and assets; lawful gifts from natural persons or legal entities; and "other incomes generated from lawful sources." It is not clear whether this last

A/HRC/20/27 (21 May 2012), ("Authorities must ...respect the right of associations to privacy as stipulated in article 17 of the Covenant on Civil and Political Rights.")

category – other incomes generated from lawful sources – is intended to refer narrowly to economic activities, or is intended more broadly to serve as a “catch-all” category that would allow for resources from legitimate sources that are not listed. “The right to freedom of association not only includes the ability of individuals or legal entities to form and join an association but also to seek, receive and use resources – human, material and financial – from domestic, foreign, and international sources.”³⁸ It is well accepted under international good regulatory practice that associations and NGOs should be allowed to engage directly in economic activities in order to pursue their primary purposes; in light of the importance of this category of funding, the draft law should expressly allow for it. In addition, it is important to ensure, through a “catch-all” phrase, that funding from other legitimate sources is allowed. For example, funding from multilateral organizations, like the UN, or bilateral aid agencies, like USAID or DFID, is not explicitly included in the list of available resources; the inclusion of clear catch-all category would cover this gap.

³⁸ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para. 8, U.N. Doc. A/HRC/23/39 (24 April 2013).