

Regards to
Your Excellency Hor Nam Hong
**Deputy Prime Minister, Minister of the Ministry Foreign Affairs and International
Cooperation**

Your Excellency Sar Kheng
Deputy Prime Minister, Minister of the Ministry of Interior

Subject: International Non-Governmental Organizations' (INGO) Concerns Regarding Draft Law on Associations and Non-Governmental Organizations

Recognizing the importance that the Royal Government of Cambodia (RGC) has placed on strengthening institutions of governance and implementing reforms aimed at ensuring sustainable development and long-term poverty reduction; and the commitment to strong cooperation among all ministries and agencies, development partners, the private sector, civil society organizations, and other relevant stakeholders embodied in key policy documents such as the “National Strategic Development Plan” and the “Rectangular Strategy”; the INGO community has been a dedicated partner in Cambodia’s development efforts for decades. As the 2009 National Strategic Development Plan Update notes, “Civil society is an important partner and many NGOs, both national and international, play an active and vigilant role in social and economic development efforts as well as in promotion of democracy and human rights.”

It is in the spirit of this shared interest in Cambodia’s long-term development that we, the undersigned INGOs, respectfully submit the comments below to express concern with the likely impact of Cambodia’s draft Law on Associations and NGOs, and to offer our support to a new drafting process that promotes civil society. Our concern for Cambodia’s domestic associations and NGOs is based not only on their obvious importance to the development of Cambodian society, but our relationship with them as partners in the provision of humanitarian assistance and delivery of vital services. They are essential actors in the development of civil society, in building partnerships with local and national government, and in the delivery of aid. If these

organizations are weakened, our programs – and the people of Cambodia – will suffer with them.

As it stands, the draft law inherently undermines its primary purpose, “to promote the practice of rights and freedoms of Khmer citizens in registering associations and domestic non-governmental organizations in order to jointly and lawfully protect personal and public interest.” (Article 2) Restrictive, ambiguous, and allowing for unfettered discretion, the draft does more harm than good to associations, NGOs and the Cambodian public. In addition, the draft conflicts with international human rights standards that Cambodia has accepted as its own law.

Article 6 states that associations, domestic NGOs and alliances that are not registered are illegal and not allowed to engage in any activity. In addition, though only NGOs that act in the “public interest” (Article 4) would be recognized under this law, nowhere is “public interest” defined. These provisions and the ambiguities they contain make it unclear whether government officials will recognize advocacy activities, which may sometimes involve the expression of positions divergent from government policy, as in the public interest. Currently, NGOs stand as advocates for the protection of land rights, other human rights, natural resource management and environmental preservation, and on other issues important to the well-being of the people of Cambodia.

Cambodia is a party to the International Covenant on Civil and Political Rights (ICCPR), Article 22 of which guarantees the freedom of association, and limits the conditions that parties may place on their citizens’ exercise of this right – including registration requirements. The International Center for Not-for-Profit Law (ICNL) conducted a review of the draft NGO law when it was released in December 2010. ICNL’s analysis was informed by a decision of the ICCPR Human Rights Commission affirming that “states employing a registration system must ensure that it is truly accessible, with clear, speedy, apolitical, and inexpensive procedures in place. The registration body should be guided by objective standards and restricted from arbitrary decision-making.” Applying this standard, ICNL concluded that the draft NGO law’s “lack of a

clear and limited list of grounds for denial of registration” weakens the transparency of the process.

The December draft law that ICNL reviewed required that the government advise registration applicants of any defect in their submission and provide them an opportunity to correct it. It also provided for an appeal from an adverse decision. Those mechanisms, which provided some protection from arbitrary decisions, have now been removed. Under the current draft, the government’s response to registration applications is only to “agree or disagree to register.”(Article 17)

The ICNL also noted that the “draft law’s mandatory registration requirements constitute restrictions on the freedom of association under Article 22 of the ICCPR.” To the undersigned INGOs, the framework for registration appears to conflict not only with an international legal standard that Cambodia has accepted as its own, but with the objective of promoting “the practice of rights and freedoms of Khmer citizens in registering associations and domestic non-governmental organizations”, the stated primary aim of the draft law.

Other provisions present concerns. Article 54 permits the government to punish associations and NGOs for serious violations of their own charter or memorandum. The provision does not explain the criteria for determining which violations are “serious”, who determines this, who determines the punishment, or whether the subject organization has an opportunity to appeal or even be heard.

International and domestic NGOs engaged with the Ministry of Interior (Mol) and the Ministry of Foreign Affairs and International Cooperation (MoFAIC), whom we continue to respect as valued partners, in an effort to improve the draft law. Our objective was the promotion of civil society, and we suggested such elements as voluntary registration, which could have supported the positive objectives of Article 2. These proposals were not accepted. Moreover, while some of the adopted changes would make the law less burdensome in its administration; these are superficial in comparison to the deeper flaws in the draft, which in some instances have worsened.

To this point, our engagement has failed. Regardless of the good intentions expressed in Article 2, the draft contains numerous provisions that could constrain and control associations and NGOs, rather than promote and protect them. Moreover, the current draft leaves many crucial issues and procedures undefined, creating ambiguity that allows for administrative confusion and corruption. It would have substantial adverse impact on the programs that we undertake in partnership with domestic associations and NGOs on behalf of donors, development partners and the Royal Government of Cambodia. Damage to these associations and NGOs will hurt donor aid programs, and more fundamentally, the development of Cambodian democracy.

Development partners have publicly expressed concerns about the draft's possible impact on the legitimate activities of civil society organizations. We anticipate that other donors and development partners may join them in speaking publicly to these issues.

We invite our colleagues in the MoI and MoFAIC, and other officials who may now be considering the merit of this draft, to stop its movement toward adoption until it is substantially re-written to address the concerns identified above. We offer our full support to a revision consistent with the International Covenant on Civil and Political Rights, and with Article 2's intention to promote the practice of rights and freedoms of Khmer citizens: a law that provides for voluntary registration and which supports the full and essential role of civil society in Cambodia's development.

Please accept the renewed assurances of our highest consideration.

1. ActionAid Cambodia
2. Aide et Action International
3. Amici dei Bambini (Ai. Bi.)
4. Association of School Aid in Cambodia (ASAC)
5. Australian People for Health, Education and Development Abroad (APHEDA)

6. Baptist Missionary Association of the Philippines (BMAP)
7. Bridges Across Borders Cambodia
8. Cambodia International Education Support Foundation (CIESF)
9. Cambodia Mines-remove Campaign (CMC)
10. Cambodian Traditional Medicine Organization NGO (NGO-CaTMO)
11. CARE
12. Centre on Housing Rights and Evictions (COHRE)
13. Cesvi
14. ChildFund
15. Christian Aid
16. Concern
17. C-Rights
18. DanChurchAid
19. Diakonia
20. DTW Organization
21. Educational Supporting Center "KIZUNA" (ESC)
22. EWMI-PRAJ
23. Forum Syd
24. Golden Children/Sovann Komar-Cambodia
25. Good Earth Japan (GEJ)
26. Health Unlimited
27. Heinrich Böll Foundation
28. IDE

29. Ideal Family Federation
30. International Volunteers of Yamagata (IVY)
31. Istituto per la Cooperazione allo Sviluppo
32. Japan International Volunteer Center (JVC)
33. Japan Lay Missionary Movement (JLMM)
34. Japan Mine Action Service (JMAS)
35. Japan Team Young Human Power (JHP)
36. Live & Learn Environmental Education International
37. Medical Teams International
38. Mekong Plus
39. Mennonite Central Committee
40. Mercy Teams International
41. NDI
42. NPO / NGO Hearts of Gold
43. Oxfam
44. PACT Cambodia
45. People in Need
46. People's Forum on Cambodia, Japan (PEFOC,J)
47. PH - Japan Foundation (PHJ)
48. PSI
49. Pure Water, Hygiene and Literacy Project
50. Save the Children Australia
51. Save the Children Norway

52. Servants to Asia's Urban Poor, Cambodia
53. Services for the Health in Asian & African Regions (SHARE)
54. Shanti Volunteer Association (SVA)
55. SNV Netherlands Development Organisation
56. The Asia Foundation
57. Union Aid Abroad - Australian People for Health, Education and Development Abroad (APHEDA)
58. Veterans International
59. Volunteer Service Abroad
60. VSO
61. Welthungerhilfe
62. World Vision