

Fact Sheet: Draft Law on Associations and Non-governmental Organizations (the “Law”)

Law’s Current Status: In the process of being finalized

CCHR Classification: RED

The Cambodian Center for Human Rights (“CCHR”) has classified the Law red on the grounds that (i) it is draconian, (ii) in violation of the Constitution of the Kingdom of Cambodia (the “Constitution”) and/or applicable domestic and international law and (iii) fails the human rights principles test. Laws classified red should be rejected, annulled or re-drafted, as appropriate.



Introduction

This factsheet provides an overview of CCHR’s key concerns and recommendations relating to the Law as per the latest draft of 25 March 2011, in addition to some background information relating to the rationale behind the Law and the consultation process to date. CCHR is a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia (“Cambodia”).

Background

The Royal Government of Cambodia (the “RGC”) has attempted on numerous occasions, albeit unsuccessfully, to regulate NGOs and associations that operate in Cambodia. In its latest attempt the RGC has proffered numerous justifications for the Law, from the prevention of crime and terrorism to the need to ensure transparency within NGOs. However, critics of the Law have characterized these justifications as pretexts that mask the true motivations for the enactment of the Law, namely to curb dissent, silence political opposition and maintain the RGC’s stranglehold on power.

Throughout the legislative process, the RGC has been lambasted by civil society for its failure to engage in any form of open or meaningful consultation with civil society. The Law has been drafted in utmost secrecy, consultation has been minimal and, for many NGOs, limited to a single day. However, despite receiving such fierce criticism from both civil society and the international community – including aid donors – with many questioning the need for the Law, the RGC has continued regardless, showing a resolute determination to bring the last bastion of political opposition in Cambodia under its control.

CCHR’s key concerns and recommendations relating to the Law

Associations - The Law currently applies to associations, namely informal popular groups/movements and grassroots networks. While there are arguments for a law regulating NGOs, subjecting these informal associations to the burdensome registration and reporting requirements imposed by the Law would serve to stifle democratic politics at a grassroots level.

Registration process - Under the Law, registration of civil society organizations will be mandatory. The registration process, as currently formulated, is also unduly onerous and excessive. Small or provincial NGOs and community-based organizations in particular might find the registration process prohibitively onerous in the absence of expert legal advice and resources.

Right to appeal – The Law currently provides for no system of appeal. The RGC has total discretion as to whether NGOs and associations are registered or re-registered, in addition to all other decisions that affect NGOs (*e.g.*, sanctions imposed). Decisions could thus be selectively applied to NGOs that the RGC considers “undesirable”. The Law should include a right to appeal any decisions to the courts – particularly with regard to registration – with such right maintained even if the courts are not fully independent of the executive. All relevant processes must be seen to be fair and transparent, with reasons provided for any decisions.

Monitoring and supervision of NGOs - The Law requires that NGOs and associations submit annual reports and action plans to the relevant executive body. These requirements are onerous, particularly for associations and small and/or provincial NGOs that are loosely organized and/or have little administrative support. Provisions for the monitoring and supervision of NGOs should not be excessive or intrusive, while a system of annual reporting is not recommended because it can result in the abuse and harassment of NGOs. In addition, the rationale behind any monitoring and supervision systems should be clearly stated.

Sanctions and penalties - Provision is made for the court to “postpone or dissolve” all NGOs, both domestic and foreign, but no criteria for impositions of postponement or dissolution are outlined. This omission violates the Civil Code, which specifies the limited grounds on which a court may order the dissolution of a juridical person. Sanctions and penalties must always be administered by the courts (or other independent arbiter), since they have the potential to be arbitrary and unreasonably severe. The provisions regarding breaches of the same requirements by foreign NGOs are unusually onerous: a decision shall be issued that postpones the NGO’s activities and invalidates its memorandum. This provision is far too severe: international NGOs should be subject to the same requirements as their domestic counterparts, and sanctions and penalties should be proportionate to the severity of the violation.

Recent update

CCHR understands that as a result of recent pressure by civil society, aid donors and the international community, the Law is currently being re-considered by the RGC. Although exact details of any amendments remain undisclosed, indications suggest that the recommended changes proposed by NGOs during the consultation meetings held in January 2011 might be taken into account as originally suggested, and a third draft of the Law delivered. However, once the Law has been finalized, it will likely be sent directly to the Council of Ministers for approval, denying civil society the opportunity to review any revised draft.

Conclusion

The Law in its current form is flawed on many levels. The latest draft fails to take account of the majority of NGO and donor recommendations (despite the RGC’s recent arbitrary and fictitious claims that 90 per cent of NGO recommendations have been accepted and incorporated); some of the few amendments made actually serve to move the Law even further away from the reasonable and mutually beneficial law that all concerned parties want to see; and the numerous inconsistencies and ambiguities that characterized the first draft of the Law have still not been addressed and will likely cause significant confusion in the future.

CCHR re-iterates its position that an NGO law should be passed that represents both a clear and positive step in Cambodia’s development and democratization, and a commitment by the RGC to uphold human rights, particularly the rights to freedom of expression and association – as enshrined under international and domestic law – as well as the constitutional right to “participate actively in the political, economic, social and cultural life of the nation”. It hopes that the RGC will belatedly recognize the positive effect that NGOs have upon Cambodian society, while also allowing grassroots democratic politics to flourish.

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CCHR classifies each law according to whether it passes the human rights principles test and is consistent with the Constitution and applicable domestic and international law. Laws that are classified green are acceptable in the opinion of CCHR; laws classified yellow contain a number of concerns that should be reviewed and amended; and laws classified red are draconian, in violation of the Constitution and/or applicable domestic and international law, and/or fail the human rights principles test, and should therefore be rejected, annulled or re-drafted, as appropriate.