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Your Excellencies:

Re: Fourth draft Law on Associations and Non-Governmental Organizations

We are writing on behalf of Lawyers Rights Watch Canada (LRWC) and the Centre for Law and Democracy (CLD). LRWC is a committee of Canadian lawyers who promote human rights and the rule of law internationally, and provide support to lawyers and other human rights defenders in danger because of their advocacy. CLD is an international human rights NGO that specialises in providing legal and policy expertise to promote foundational rights for democracy, including freedom of association and of expression.

LRWC and CLD were pleased to learn that on 27 October 2011, a Ministry of Interior official, Soeung Saroeun, announced at a conference on aid effectiveness that civil society groups will be invited to meet with officials of

the Ministry of Interior to discuss a fourth draft of the Law on Associations and Non-Governmental Organizations (NGO law). We noted the following positive developments:

- Comments reportedly made by a Council of Ministers' spokesman Phay Siphon (reported on 13 September 2011) that the NGO law is now in a period of consultation, during which civil society groups have the opportunity to write to the relevant ministries regarding the draft law.
- Comments reportedly made by the Ministry of Interior Deputy Director of Political Affairs, Mey Narath, indicating forthcoming changes to the draft NGO law including removal of mandatory registration provisions.
- Reports that the Ministers of Interior and Foreign Affairs plan to invite representatives of civil society to meet with them or their secretaries of state by mid-November or December to discuss the NGO law.

To take advantage of this consultation period, our organizations are submitting the following comments and suggestions for consideration by the Ministry of Interior and the Ministry of Foreign Affairs. However, we emphasise the importance of broad and sincere public consultation after the fourth draft is released. The process of drafting of NGO legislation should be inclusive and participatory, with a view to enhancing the ability of the non-profit sector to serve the public interest.

LRWC and CLD have no objection to laws regulating NGOs as long as they genuinely protect legitimate public interests and adhere to the standards and principles of international human rights law binding on Cambodia, including the *Universal Declaration of Human Rights* (UDHR) and the *International Covenant on Civil and Political Rights* (ICCPR) ratified by Cambodia 26 August 1982. There may be legitimate reasons to regulate certain NGOs and associations; for example, to prevent abuse of the rules relating to special tax benefits. At the same time, any such regulatory measures must adhere to international human rights standards. In particular, there must be no limitations on associations and NGOs that go beyond what is "necessary in a democratic society" (Article 22(2) of the ICCPR). Article 31 of Cambodia's Constitution stipulates that Cambodia shall recognize and respect human rights as stipulated in the UN Charter, the UDHR and other human rights covenants and conventions.

LRWC and CLD welcome the consultation period and the reported changes. We call for the following recommendations to be reflected in the redrafted NGO law:

- Ensure broad-based public consultation and participation in the drafting process. To date, the drafting process has not been the subject of adequate consultation. The first draft of the draft Law provided for a very short period of review between the release of the draft on 15 December 2010 and a public consultation workshop hosted by the Ministry of Interior on 10 January 2011. We understand that more than 200 national and international NGO representatives attended, and that after the workshop local NGOs submitted their recommendations to the government. On 24 March 2011, a second draft was released, but no consultation meeting was held despite concerns that problems in the first draft had not been addressed and new concerns had emerged. On 29 July 2011, a third draft was released with only a few changes and a report that it had been presented to the Council of Ministers and that there would be no further consultation. The regulation of NGOs has the potential to impair a fundamental human right, namely the right to association. As a result, it is imperative that the adoption of the law be inclusive and participatory, and aim to achieve broad-based public consensus.
- Provide for voluntary registration only: We welcome reports that the mandatory registration provisions in the draft law will be eliminated, and that the next draft will provide only for *voluntary* registration for civil-society groups (i.e. groups may register where they wish to take advantage of the benefits this offers, but they are not required to). We note that under international law, mandatory registration requirements may be imposed only on groups seeking special tax benefits or other forms of public subsidy. Registration should not be a pre-condition for any group, large or small, national or provincial, to carry out lawful

activities. We note that civil society organisations, which play an indispensable role in economic and democratic development in Cambodia, have already experienced official harassment in Cambodia and it is essential that they be able to undertake legitimate activities without fear of this in future.

- **Remove onerous registration processes for organizations wanting to register voluntarily:** Articles 14 and 15 of the third draft provided for a registration process which was unnecessarily complex and onerous. We understand that the fourth draft relies on a much simplified registration process. We welcome this development and look forward to seeing the provisions of the draft that reflect this. The process should, in particular, take into account the needs of NGOs in Cambodia with differing resources in both rural and urban locations.
- **Clarify grounds for refusal of registration and require written reasons for refusal to register.** LRWC and CLD recommend that the fourth draft clearly define grounds for refusal of registration, and that these grounds be limited to what is necessary as defined by Article 22(2) of the ICCPR. Furthermore, officials should be required to provide applicants with clear reasons for any refusal of registration, in part to provide grounds for the appeals provided for by Article 17 of the third draft.
- **Simplify annual reporting requirements.** The annual reporting requirements should be simplified. Article 46 of the third draft required associations and NGOs to submit annual reports, budget information, an annual action plan, and considerable other information to different ministries. These reporting requirements should be simplified and the required level of detail limited. We suggest that reporting requirements be limited to key issues such as the names and addresses of directors, information about general meetings and summary financial information. Requirements to report on action plans and forward-looking budget information should be eliminated.
- **Amend and limit inspection provisions.** Article 48 of the third draft empowered the Ministry of Economy and Finance, and the National Audit Authority, to examine financial reports or property of NGOs upon two weeks notice with no limitations as to the ground that might justify this, or the frequency or scope of examinations, and no safeguards against abusive examinations. We recommend that grounds for inspection be limited to what is necessary pursuant to Article 22(2) of the ICCPR, and that more appropriate notice requirements be added. These grounds might include reasonable grounds for suspecting an NGO of serious malfeasance such as corruption, neglect or abuse of children or other vulnerable persons, or internationally recognized criminal offences.
- **Provide clear and limited criteria for suspension or termination by the courts:** The NGO law should set out clear grounds for cancellation or suspension of registration limited to technical grounds such as situations in which the organisation is no longer in operation as an entity.
- **Provide appeal processes:** The draft law should be amended to include the right of appeal to an independent and impartial body for the following issues:
 - Refusal of registration.
 - Official breaches of registration timelines.
 - Suspensions or termination of registration.
 - Unlawful official demands for inspections or reports.

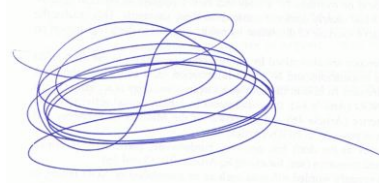
It is crucial that the NGO law enable and safeguard the lawful activities of NGOs and associations and prevent interference and harassment by State agents and others. It is particularly important that the NGO law not lend itself to use as a tool to curtail dissent or otherwise restrict internationally protected rights to freedom of association and expression.

We look forward to reviewing the fourth draft of the NGO law.

Yours sincerely,



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