

**Cambodia**  
**Briefing Note on CSO Law Issues**  
**by**  
**The International Center for Civil Society Law**  
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The current situation in Cambodia with respect to the law affecting civil society organizations (CSOs) should be explored to see the extent to which technical assistance might be provided to assist the development of a good legal enabling environment for CSOs. There are two pieces of pending legislation that provide ample room for working with the government and CSOs – one is the Draft Civil Code and the other is the so-called “NGO Law, which was in draft in 2000/2001, but is now being reconsidered. This Note describes the current issues in Cambodia and recommends that there be a scoping study to assess the needs within the next few months.

### **Civil Code**

The Draft Civil Code of Kingdom of Cambodia has been developed, since 2001, with technical assistance from Japanese legal academics at various universities in Japan through a JICA grant administered by the International Civil and Commercial Law Centre Foundation <http://www.icclc.or.jp/english/index.html>. According to a donor meeting held in December 2004, adopting the Draft Civil Code is seen as an urgent priority for all the donors at the present time.<sup>1</sup> The specific aid “benchmark” on judicial and legal reform refers to adoption of the Civil Code as one of the fundamental pieces of legislation that must be adopted in order to “strengthen the rule of law, promote social justice, reduce corruption, eliminate the culture of impunity, and strengthen the culture of peace and the primacy of law.”

On the other hand, the adoption of the Civil Code appears to be held up for reasons unrelated to the issue of CSOs. There is a dispute about the land title registration system; this does not have anything to do with our concerns, but it has held up the progress for over a year now.

The Draft Civil Code will permit two different types of “non-profit”<sup>2</sup> legal persons to be formed under Cambodian law -- associations and foundations. According to a Japanese law professor who worked on the Draft Civil Code, the new provisions will make it easy to establish an association, but the founders

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<sup>1</sup> See Report of the Consultative Group Meeting on Cambodia, held in Phnom Penh, December 6-7, 2004, available at <http://siteresources.worldbank.org/INTCAMBODIA/Resources/CG-Indicators.pdf>.

<sup>2</sup> The author quoted in note 3 below, says that the for-profit legal persons are dealt with in more detail in the Companies Act and Commercial Law.

will require “permission” to establish a foundation.<sup>3</sup> It is interesting to see this, because the Japanese themselves are moving away from the permission requirement for general NPOs, but retaining it for PBOs.<sup>4</sup> The Draft Civil Code of Cambodia would permit foundations to be established only for public interest purposes, which may make this consistent with current Japanese reform efforts, but it would be helpful to study this more carefully. The extensive provisions of the Draft Civil Code, particularly those dealing with foundations, need to be analyzed in detail to see the extent to which they would promote an enabling environment for CSOs.

### **NGO Law**

A friend who was in Cambodia recently writes that the “NGO Law” issue has been dormant since about 2001. However, the two main parties who form the new government have a 71-point common platform - one of the points is to pass an “NGO Law” this year. The process has started with the drafters in the Ministry of Interior going back to the 2000 draft, which will be amended and put out for consultation with Council of Ministers. At a meeting with CSOs, some voiced concern about the possibility that the draft law could go in wrong direction, and some doubted that a law could ever be passed. But the general conclusion of the CSOs is that it is important to engage on the issues, that a decent law would be worth having (instead of none), and that at least it could be a good context in which to have debate about the role of civil society in Cambodia.

### **Context**

At the present time several countries in Asia are undergoing legal reform efforts with the assistance of ICCSL and its founders Dr. Leon Irish and Prof. Karla Simon.

1. Bangladesh

Under a contract with UNDP, ICCSL has conducted a major scoping study with respect to the legal and fiscal framework for CSOs. The report will be published later this month.

2. China

We have worked in China for over ten years. The most recent projects include writing a major study on CSO taxation for the Chinese government (funded by the World Bank).

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<sup>3</sup> See Yamamoto, Yukata, “Overview of the Draft Civil Code of the Kingdom of Cambodia: Book on Persons and Book on Obligations,” no date; published on GOJ website.

<sup>4</sup> Another Japanese law professor who worked on the Draft Civil Code clarified that the legal team knew very little about the current reform efforts in Japan and thus the draft for Cambodia did not reflect theoretical changes in laws affecting civil society in Japan.

3. Japan

We have also worked in Japan for over ten years, with the latest visit having occurred in March 2005. The Government is in the process of developing major legal and fiscal reforms for the sector and has asked for ICCSL's ongoing assistance.

4. Mongolia

The Task Team for drafting a new CSO law has requested comments from ICCSL on pending legislation.

5. Pakistan

We have worked for many years on projects in Pakistan and are currently waiting for the publication of the proposed new CSO law in order to assist with its adoption (assisting the Pakistan Centre for Philanthropy, and ICCSL partner).

6. South Korea

Officials of Volunteer 21, an NPO active in supporting legislation affecting volunteers, has asked for ICCSL's help in formulating arguments for volunteer legislation in Korea

7. Viet Nam

We have worked for over ten years on these issues in Viet Nam, and we recently led a study tour for a high level Vietnamese delegation to Japan and Korea. ICCSL also submitted comments on the draft Civil Code provisions that will affect CSOs.

ICCSL personnel have also worked in the following Asian countries - Australia, East Timor, India, Indonesia, Lao PDR, and Taiwan -- in the past.

Given this background and comparative knowledge of developments in Asia, ICCSL is well-placed to provide assistance to develop a legal framework for CSOs in Cambodia that will further their growth and development. ICCSL's founders are also the leading scholars of NPO law in the world and are co-authors with Robert Kushen, of the Open Society Institute, of OSI's GUIDELINES FOR LAWS AFFECTING CIVIC ORGANIZATIONS, the second edition of which came out in 2004. It is available on the web and could be easily translated into Khmer (it is already available in Vietnamese and Chinese).

### **Conclusion**

With both the Civil Code and the "NGO Law" now up for discussion and adoption, it is crucial to begin a process of technical assistance in Cambodia to develop a sound legal framework that will allow Cambodian civil society to grow and thrive. ICCSL is prepared to offer its services in that regard.

## Appendix

The following describes earlier efforts and comments on the then-existing draft law by NGOs.

### **The Fifth NGO Fair Turned in Comments on NGO Law**

*This article was published in the Star Kampuchea Legislative Newsletter (Friday, April 20, 2001).*

On 30-31 March 2001, the 5<sup>th</sup> NGO Fair took place in the premise of the Chaktomok Hall Theatre, Phnom Penh.

H. E. Sar Keng, Deputy Prime Minister and Co-Minister of the Ministry of Interior, was invited to preside over the Fair. The local and international NGOs are key potentials and partners of the Royal government in rebuilding the nation in all fields, said H. E. Sar Kheng. He added that in developing the country, the government needs more participation from all activities in which civil society actors are the key components as they are belonged to people and that their goals are to meet requests and serve the need related to living conditions, well-being, rights and freedom, and the happiness of the people, except the political activities. According to the statement of Ms. Pok Nanda, President of the Board of Directors of STAR Kampuchea and Executive Director of Women for prosperity, the national and international organizations currently operating in Cambodia are to serve the general interests or to rebuild the civilization, culture and Khmer civil society of which the infrastructures, national and human resources were completely destroyed by decades of civil war.

The 2-day NGO Fair was to make comments to the draft, which are summed up as follows:

#### **I. Registration**

Article 5 describes documents, which associations are required to fill up application in order to register with the Ministry of Interior.

#### **\* Recommendation**

- The documents shall have the same sample and clearly emphasize the territorial authorities.
- The application for registration shall be directly filed with the Ministry of Interior without going through the hierarchy of local authorities.

## **II. Approval of registration**

Article 9 describes responses from the Ministry of Interior to founders of associations which read "approval of legal registration on – which requests for modification or additional file of documents of application, and a reject of the registration".

### **\* Recommendation**

- Reapplication should be done only one time if any article does not follow the principles or needs additional file or modification.
- The supervision of application for registration with the Ministry of Interior shall not be done more than two times.

Article 10 entitles associations to make a motion with a court, if the Ministry of Interior rejects their application.

### **\* Recommendation**

- If the court finds out any improper reasons of the application of the associations.

## **III. Dissolution**

Article 16 states the dissolution of the associations.

### **\* Recommendation**

- If any person is doing wrong, he/she shall be a subject to the judicial recourse, not the organization or association which is to be dissolved.
- The Ministry of Interior shall be responsible for paying compensation to the association or organization if the court finds that the association or organization has not committed an offense.

## **IV. Transfer of properties**

Article 17 states the transfer of properties of the associations after the dissolution.

### **\* Recommendation**

- The transfer of properties shall be done to any organization or association, which has the same project, or be otherwise transferred to the donors.
- Or to be transferred to any organization or association.

## **V. Determination of the areas of NGOs**

Article 19 states the similar and different provisions between associations and non-governmental organizations. The NGOs are required to follow all by-laws of the associations, except the contrary provisions.

### **\* Recommendation**

Support the phrase "the Non-Governmental organizations can carry out free activities, which are legally serving the public interests".

## **VI. Report**

Article 21 requires NGOs to identify their original financial resources and submit annual report before the end of the year.

### **\* Recommendation**

Concerns expressed on the assessment of carrying out of the projects as they are related to determination of tax on the salary. Some organizations cannot finish their reports at the end of December.

## **VII. Final provisions**

Article 27 states the conditions that require the associations and NGOs to pay a fine of ten thousand Riels (100,000 Riels) for their failure of submission the report on time, while paragraph 2 states the Ministry of Interior's power in postponing temporarily the activities of the associations and NGOs.

### **\* Recommendation**

- Request for a one-month prior notice so that the associations or organizations are able to give an excuse for providing late report.
- After the one-month period, the sum of 20000 Riels shall be fined.

The new draft law does not stipulate the penalty of the governmental official (s), who intentionally create obstacles to the registration of the associations and organizations.

### \* **General suggestions**

- The Legislation Commission of the National Assembly organizes a public forum on the NGO Draft Law before it is submitted to the National Assembly.
- The Ministry of Interior indicates the exact number of the local and international associations and NGOs.
- The clear determination of the duration of the registration accounting from the commune level (45 days).
- All recommendations are taken into consideration so that the draft will be adopted in a logical way.
- Administrative dissolution removed.
- The Ministry of Interior should create a good atmosphere at the local authorities for NGOs.
- Tax incomes should not be imposed on the staff of the NGOs, as they don't get pension.
- Participation from civil society in legislative draft making.
- Allow the associations and organizations to have their networks in provinces in order to resolve problems.

*The collected recommendations on the Local Association and Non-Governmental Organization Draft Law, which were made at the 5th NGO Fair, need to be finally reviewed again by the expert working group of civil society before being submitted to the Ministry of Interior.*