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May 29, 2015

The Hon Julie Bishop MP
Minister of Foreign Affairs
House of Representatives
Parliament House
Canberra ACT 2600
Commonwealth of Australia
Via Email: julie.bishop.mp@aph.gov.au; Kirsten.Barker@dfat.gov.au

RE: Call on Cambodia government to drop draft NGO Law

Dear Hon Julie Bishop MP,

The undersigned organizations write to urge your government to publicly and privately call on the Cambodian government to drop plans to adopt a new law on non-governmental organizations and associations (“NGOs”). The draft law follows previous attempts, later withdrawn in response to domestic and international opposition, to enact a law that would impose unwarranted restrictions on the rights to freedom of association and expression and create legal grounds on which to arbitrarily close or deny registration to politically disfavored NGOs, including those employing human rights defenders.

Prime Minister Hun Sen has long expressed hostility towards independent NGOs, particularly those that criticize human rights violations, a culture of impunity for officials committing them, government development priorities, the extractive industries and deforestation, and corruption. In April 2015, he restated his intention to proceed with the draft law without allowing the Cambodian public an opportunity to comment before sending it for quick adoption by the National Assembly. The draft text is reportedly before the government’s Council of Ministers, which could send it to the National Assembly at any time.

The draft with the Council of Ministers is reportedly the same as the last draft NGO law made public in December 2011. That version gave the government control over NGOs in various ways and was inconsistent with the right to freedom of association under Cambodia’s

constitution, the International Covenant on Civil and Political Rights, and other human rights treaties to which Cambodia is a party. Instead of enhancing the right to form NGOs, associations, and other independent organizations, the draft bill provides legal grounds by which to encumber and unnecessarily restrict NGOs and gives the government wide discretion to close critical organizations.

The December 2011 draft was opposed by a broad grouping of domestic and international NGOs and foreign donor countries. Many have reiterated their concerns since Hun Sen announced that he wanted to pass an NGO law by the end of May. The UN special rapporteur on the rights to freedom of peaceful assembly and association has recently stated his objections to the draft's problematic provisions. UN agency heads in Cambodia have expressed concerns. Requests by domestic NGOs and others for the draft law to be made public to allow discussion of its provisions have been rejected by Hun Sen and other government officials.

During discussion of the draft law in 2011, NGOs and governments had raised concerns that the proposed law contained vague and unspecified terms that will enable government ministries to force critical NGOs to terminate their work by ordering their closure or denying them registration without due judicial process or even quasi-judicial review. Small and new NGOs will find the requirements for registration unnecessarily burdensome and difficult to fulfill. The draft also fails to include clear or objective standards concerning suspension or termination of registration. There are no provisions for appealing a suspension or termination, and the draft lacks procedural safeguards such as advance notice of regulatory action, opportunities to solve problems prior to termination or suspension, or limiting termination to a sanction of last resort. These provisions give the government wide scope to misuse the law politically in order to restrict freedom of association and expression by NGOs and their engagement in human rights advocacy.

The draft also provides that domestic organizations can be “dissolved by court decisions,” without specifying the grounds, leaving such rulings to a politicized judiciary that operates under the control of the ruling Cambodian People's Party.

The last draft also extends its coverage to all independent associations, organizations, and other such entities “conducting activities” in Cambodia. This means its provisions would require “community-based organizations” to notify local authorities in advance about their activities and appears to restrict them to acting only within their communities. National and sub-national government authorities have a long history of abusing already existing laws and regulations to curtail the exercising of freedoms of association and expression by human rights defenders and others at the grassroots level. The draft law would reinforce and extend these infringements of rights.

Government restrictions are significantly expanded over activities of international NGOs, which are entitled only to implement “aid projects.” To obtain a required memorandum of understanding with the government, foreign NGOs must have the approval of their activities from a ministry or other government institution. This empowers the government to restrict or

end the activities of foreign NGOs it does not like merely by asserting that such NGOs or their activities jeopardize “peace, stability, and public order or harm national security, national unity, culture, customs, and traditions”—all vague terms open to broad interpretation. The period of validity for memorandums of understanding is short and the procedure for extending them is onerous, making activities by foreign NGOs particularly precarious. In addition, the draft requires that foreign NGOs not spend more than 25 percent of their total budget on “administrative expenses, including staff salaries, office equipment, and other expenditures for office functioning.” This provision would have a major impact on the activities of foreign NGOs that engage primarily in human rights and other forms of advocacy which, unlike humanitarian and development organizations, do not spend most of their budgets on aid or other forms of direct assistance.

We believe there is no need for a law in Cambodia specifically targeting NGOs. Any legitimate government concerns about preventing criminal activity by independent organizations or their members would already be fully addressed by legislation in force. For example, the Cambodian Civil Code provides details on registration and dissolution of non-profit legal entities, the right to appeal government decisions about such matters, and workable registration requirements. Similarly, the Penal Code and other criminal laws spell out and provide sanctions for a broad range of recognizably criminal offenses.

We ask you to press the Cambodian government to drop this legislation entirely, and thus allow Cambodia’s vibrant civil society to develop and further fulfil its crucial democratic function as a promoter and protector of the full spectrum of economic, social, cultural, civil, and political rights in Cambodia.

Sincerely yours,

Article 19

Asian Forum for Human Rights and Development (Forum Asia)

Civil Rights Defenders

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