

Consolidation of Legal Analysis over draft Law on Association and None Government Organization (LANGO)

No.	Article	Concern/comment	Suggestions/recommendations
1	Art 1	<p>Guarantee the protection of right and freedom to create an association or NGO:</p> <p>Article 1 of LANGO states its purpose is to guarantee and protect the right to freedom of association, but this draft does not grant any rights to associations and NGOs, except for the right to tax exemption for donations under the Law on Taxation and other laws. Only conditions and a long list of obligations are imposed on the associations and NGOs.</p>	<p>The LANGO must be consistent with its purpose.</p>
2	Art 4	<p>Definition:</p> <p>Article 4 presents a somewhat ambiguous definition of a foreign association or NGO as “a group of foreign natural persons or legal entities who agree to establish under the foreign laws for the interests of its members or conducts activities to serve public interests without conducting any activity that generates profit for sharing among their members.”</p> <p>This article removes explicit reference to community based organizations and now seems likely to catch such organizations within the all-encompassing definition of an association, requiring registration. The potential burden of mandatory registration requirements on grassroots groups and community based organizations could have a severe impact on the freedom of association of such groups. Additionally, the vague framing of definitions could place registration restrictions on a broad range of groups conducting legitimate activities, for example, land activism.</p> <p>It creates a risk that the authorities may interpret this provision as comprising CBOs, and misuse/manipulate it to limit grassroots movements.</p>	<p>Article 4 should be clarified to explicitly to allow for non-Cambodians to establish domestic association and NGOs.</p>
3	Art 5	<p>Restrictions on persons who held leading positions of associations or NGOs that have been deleted from the register of local associations or NGOs.</p> <p>Article 5 is problematic at many levels. First, the persons the article seeks to restrict from the freedom of associations are not clearly defined. Second, it has no legal grounds to treat that the organizations deleted from the register as illegal. Finally and importantly, this article is contradictory to the Cambodian and international legal framework that support the civil and political rights of the people.</p> <p>According to the Cambodian Civil Code the grounds for dissolution of a legal entity do not necessarily include the illegality of that entity so there is no reason to treat a dissolved, and therefore deleted, entity as illegal (See Article 64 for all grounds for dissolution). A legal entity may be dissolved by the court because</p>	<p>Revise draft law to conform establishment criteria to international norms relating to freedom of association, particularly relating to minor. More specifically, amend article 5 to eliminate the requirement that founder have never held a leadership position of</p>

	<p>of criminal activity, but it does not necessarily mean members or workers in that entity have committed a crime.</p> <p>Even if a member or worker in an entity that is dissolved by court sentence, the civic right to associate is not among the civic rights that the court can deprive (See Article 53.1 of the Criminal Code)</p> <p>Also, Article 5 is not consistent with Article 22 of the International Covenant on Civil and Political Rights (ICCPR) states that everyone has the right to freedom of association with others and the restrictions on the exercise of this right is permissible only when it is prescribed by law and when it is "necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."</p> <p>It is very clear from Article 22 of ICCPR that there were no criteria to restrict a person from organizing an association because of having membership in an organization that was deleted from a register. The law that restricts a person from exercising his/her right to associate has no justification to meet the requirements of Article 22 restrictions. A person who was in an organization that was deleted from the register may have nothing to do with the harm to national security or public safety, public order, the protection of public health or morals if he or she was not pronounced by the court of such connection.</p> <p>Article 21 (1) of Universal Declaration of Human Rights (UDHR) states "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind...". ICCPR, in article 2(1), illuminates this point, explicitly stating that the rights of the ICCPR extend "to all individuals within its [the state's] territory and subject to its jurisdiction". The ICCPR Human Rights Committee, in its General Comment No.15, explained that "the rights set forth in the Covenant apply to anyone, irrespective of reciprocity, and irrespective of his/her nationality or statelessness;" and that "Aliens receive the benefit of the rights of...freedom of association".</p> <p>Article 5 requires at least five Cambodian founding members be 18 years or older, which restricts minors from founding an association. It violates Article 15 of the UN Convention on the Rights of Child which require State Parties to "recognize the rights of child to freedom of association and freedom of peaceful assembly" and limits restrictions to "those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedom of others."¹</p> <p>Number of organizers of an association or an NGO</p> <p>The draft requires that an association or NGO can be formed by at least 5 persons. This requirement has no legal justification because it deprives the right of fewer people to associate. For example, in its early stage an association may be formed by two promoters and later on the association membership may be</p>	<p>any association or domestic NGOs.</p>
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¹ Cambodia acceded to the UN Convention on the Rights of a Child (CRC) in 1992

		<p>expanded to a larger one. There is no legal basis why an association cannot be formed by 2, 3, or 4 persons as in the case of commercial association (See Law on Commercial Enterprise).</p> <p>The minimum number of founding members have been increased from three to five. While five members is not an overly burdensome requirement, the government's justification for this higher threshold is unclear and does not constitute a "best practice"²</p> <p>Article 5 limits eligible founding members to those that have not held leadership position in an association or domestic NGOs that "deleted from registration". The association and domestic NGOs can be deleted from registration for a variety of reasons, including vague and arbitrary reasons. Moreover, organizations that may voluntarily seek termination for benign reasons would also be subject to this restriction. Regardless, however, leadership in a prior organization that have been removed from the registry should not result in loss of a fundamental freedom like freedom of association.</p>	
4	Art 6	<p>Documentation requirement: Article 6, requires that registration applicants submit "Profile of each founding member with a recent 4x6 photograph". The term "Profiles" is undefined and could lead to open-ended inquiries by the government into the biographies of the founding members. Moreover, it's unclear how this information would be used. <i>Everyone</i> has right to associate and "Authorities must...respect the right of associations to privacy as stipulate in article 17 of ICCPR³. The submission of "Profiles of each founding members" could invite government vetting of those individuals seeking to form organizations as legal entities. The problem is compounded by the lack of objective standards in reviewing registration applications, consequently, the founding member profiles could fuel the exercise of unbridled discretion.</p> <p>Registration office: Article 6 essentially requires associations and domestic NGOs to have an office in the Kingdom of Cambodia. While it's common in many countries to require that organizations provide an address, requirements to secure actual office spaces are potentially more burdensome. A central office may be appropriate for well-funded NGOs, but smaller community-based associations and NGOs may simply operate in the community, hold meetings in members' homes, have no need for a central office. It additionally requires that registration applicants submit a "letter stating the address of central office...recognized by the Commune or Sangkat Chief". The requirement to submit such a letter is unnecessary bureaucratic step in the registration process, which is likely to lead to delay for registration applicant.</p>	Amend article 6 to reduce documentation requirements; in the case of founding members. Eliminate the vague requirement of 'profiles' and simply require their name and addresses; and only require that applicants have an address, but not necessarily a central office.
5	Art 8	<p>Criteria for approval of application for registration Issues:</p> <ol style="list-style-type: none"> 1. What are the criteria for rejection of the application? 	Since these words are so vague and contextual and fact-based

² Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, par.54, U.N.Doc.A/HRC/20/27 (21 May 2012)...considers as a best practice the Armenian and Estonian legislation that require no more than two persons to establish an association. A higher number may be required to establish a union or a political party, but this number should not be set at a level that would discourage people from engaging in association.

³ Report of Special Rapporteur on the rights of freedom of peaceful assembly and of association, Maina Kiai, para.65, U.N.Doc. A/HRC/20/27 (21 May 2012)

	<p>2. Even the non-response by the Ministry of Interior is tantamount to acceptance of registration, is it practical for an association/NGO to operate?</p> <p>3. Whether a judicial recourse is practical for a newly-formed association/NGO?</p> <p>1. Criteria for rejection of application</p> <p>Ministry of Interior to “examine the document and the legality of the statute” and to decide “whether to accept or reject the registration” of the organization. It’s not clear if the “legality” standard is intended to limit government discretion in deciding to accept or reject registration; it’s not clearly presented as the sole basis for denial. Even if “legality” is intended as the sole criterion for denial on inconsistency with <i>any provision of law</i>; whether compliant with international human rights law or not.</p> <p>Article 8 specifies that the Ministry of Interior may reject an application for registration if it judges that the object and purpose (Article 7.1) of the proposed association or NGO <u>can</u> affect public security, safety and order, or harm the national security, national unity, culture, tradition, and the customs of national society of Cambodia.</p> <p>This draft subscribes to the abstract review, which means the reviewer looks at the wordings of the Object and Purpose of the Article of Incorporation and interpret those wordings if it expressly or impliedly intended to affect the "public security, safety and order, or harm the national security, national security, culture, tradition, and the customs of national society of Cambodia."</p> <p>Abstract review may involve guessing. For example, if an Article of Incorporation states in the Object and Purpose that the proposed association or NGO supports the community action against illegal economic land concession, then the reviewer may interpret that the Object and Purpose of the association or NGO as intending to stir calmness of the communities and disturb "public order," "public security and safety" and reject the application, even though the proposed association or NGO will only conduct legal awareness of the economic land concession.</p> <p>In this way, the reviewer acts not just as a registrar, but as a legal interpreter, which is the job of the court. Cambodian NGOs, especially human rights NGOs, have avoided wordings in their Article of Incorporation that they thought were sensitive to the government so to avoid their application being rejected or frustrated. Although they could frame the wording in order just to get registered, it would fall into another trap when the actual activities are not fully consistent with the Object and Purpose. The government may stop activities because they are not consistent with it said in the Article of Incorporation.</p> <p>Of course, the draft may use the criteria of permissible restrictions under Article 22 of the ICCPR to justify the restrictions contained in Article 8 of LANGO. But, experiences show that the words "national or social security," "safety," "public order," "tradition," "customs" have been abusively used against the free speeches. These words can be interpreted as anything from littering certain places to obstructing the traffic, etc. Moreover, term--public order and national security- are consistent with international norms,</p>	<p>(rather than document-based), they should be left to the judicial interpretation rather than the registrar's interpretation.</p> <p>Documentary review should be enough. This means the registrar should make decision to register based only on the completeness of documentation for registration.</p> <p>Amend article 8 to include appropriate safeguards for registration applicants, including a clear and limited list of objective ground for denial.</p>
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many other term—e.g, “national unity, culture, and traditions of the Cambodian people”—are vague and open to subjective interpretations, which could lead to registration being denied arbitrary. In addition, these are not legitimate aims under the ICCPR for interfering in the rights to freedom of association. Denial of registration clearly amounts to interference with freedom of association, and consequently can only be justified where denial is both “prescribed by law” (meaning that the law is accessible and that concerned persons are able to foresee the consequences of their actions) and “necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedom of others”.

In its General Comment No. 34, the UN Human Rights Committee, in response to the abusive interpretation of the words " public order," "national security," or "morals," recommends to the State Party that "restrictions must not be overbroad" (paragraph 34) and that the law "must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public." So, the use of the criteria of "public order," "national security," etc., is against that spirit and will undermine the fundamental right of association.

2. De facto registration

Article 8 of LANGO states that if after 45 working days, then the proposed association or NGO is considered to be automatically registered. There is no specification as to whether the Ministry of Interior will issue a certificate of registration, or the applicant association/NGO can just operate freely.

Though it can operate freely by virtue of non-response from the Ministry of Interior, practical challenges will be met by the applicant association/NGO because of lack of legal identity. Certain laws require the presentation of the legal identity in order for that organization can deal with others. For example, an entity cannot open account in its own name without the certificate of registration (legal identity), cannot register tax entity, cannot buy land, etc. Worse is that the local authorities may ask for an evidence of registration to confirm that the organization really exists and to allow its operation (this is because this LANGO does not allow an organization to operate without registration). Also, the organization cannot even receive funding from donors if it has no certificate of registration.

It may be an incidental issue, but it is important when the association or NGO has to deal with others. The draft LANGO must explicitly mention about the certificate of registration.

3. Judicial recourse

The law says an applicant association/NGO can appeal the decision to not register to the court. This is not practical for the applicant. It would take a lot of time and resources for an applicant to pursue a court case to decide on the registration. It could take years to get the final decision of the court (usually Supreme Court if one party appeals and appeals), let alone the independence of the Cambodian judiciary. The association or NGO's promoter will spend a lot in legal fee before it the association or NGO exists as an entity. It is absurd to fight on the literature of the Article of Incorporation rather the actual controversies.

Judicial recourse is not available for small association or NGO because it has little resource to pursue legal

		case. This can be considered as one form of restriction of the right to freedom of association.	
6	Art 9	<p>No registration no operation:</p> <p>Article 9 has been expanded to ban any kind of activity by all unregistered domestic NGOs and associations as defined by Article 4. This baseline threshold is disproportionately restrictive and could treat the activities of grassroots groups and community based organizations in the same manner as national domestic NGOs and associations. All such activity is now subject to sanction under Article 32 and opens the door to criminal offences under the Penal Code. Previously, unregistered domestic NGOs and associations were denied legal capacity but were still permitted to conduct activities.</p> <p>Will only formal associations/NGOs be able to operate?</p> <p>Cambodian legal framework: This draft LANGO recognizes only formal associations or NGOs because it vaguely prohibits any association or NGO that is not registered from conducting activities. In Cambodia, there are a lot traditional mutual assistance associations that are informal, but also fall under the LANGO definition of an association; for example, the association for mutual funeral assistance, association to support widows, association to support the construction of road, etc. These associations can exist informally and sometimes are project-based. Registration is not necessary or practical for them. If the LANGO is strictly applied, the formation of these organizations will be discouraged if not impossible.</p> <p>The Civil Code does not require any entity to register. The only condition of registration is to acquire the status of legal entity. Article 49 of the Civil Code says: "A legal entity shall be established by the registration at the place where the central office of that legal entity is situated at." According to Article 50 of the Civil Code, the advantage of being registered is to obtain the legal protection of the members against a third party, especially in liability issue. Legal entity is a legal shield to protect members from personal liability to a third party. If an association or NGO is to assume that liability, it is their assumption of risks. But, to prevent an existence of association or NGO because of non-registration is a violation of the right to freedom of association.</p> <p>This registration requirement will affect the community-based organizations' freedom of associations, for example, community-based fishery associations, associations to protect natural resources, university students' associations, mutual assistance associations (for example rice bank association, etc.).</p> <p>International legal framework: Mandatory registration constitutes an impermissible restriction on the freedom of association under article 22 of the ICCPR. Under article 22, as well as other major international conventions, "freedom of association is a right, and not something that must first be granted by the government to citizen."⁴. The associations and NGOs may be formed as legal entities does not mean that individuals can be <i>required</i> to form legal entities in order to exercise the freedom of association. Mandatory</p>	<p>The requirement of no registration no operation is against the Cambodian tradition and against the general legal norm for the recognition of an informal association or grouping.</p>

⁴ Public International Law Initiative, *Enabling Civil Society: Practical Aspect of Freedom of Association Source Book* (Budapest 2003), p.4

		<p>registration is particularly problematic when registration is difficult to achieve, as it is true under the draft law, especially for would-be smaller organizations seeking to address needs at the community level for interests of members. In such circumstances, individuals are forced to choose between operating as an unregistered group- and therefore illegally- or seeking to comply with burdensome registration requirement.⁵</p>	
7	Art 10	<p>Account information: What is the information of the accounts? Is it about the account names and numbers or account transactions? If it is account transactions, would be legal to request the statements of account transactions?</p> <p>Article 10 requires that the association or NGO provide the information in writing of every bank account it holds within 30 days after the date of registration.</p> <p>Account name and number are generally provided by the owner of the account to a third party he/she deals with. But, account transactions are privileged information. Article 47 of the Law on Banking and Financial Establishment (1999) states any person in the establishment cannot disclose the confidential information contained in the declaration, figures or meaning of the accounting documents to a third party, except to the judicial authorities in the criminal proceedings.</p>	<p>It is not clear if Article 10 intends to impose on the association to release the account name and number or the detailed information of account transactions. If it is the latter case, this is a serious violation of banking privileged information.</p> <p>Article 10: Filing the amendment of Article of Incorporation It is ok, but there should be no fee or small fee for filing the amendment.</p>
8	Art 11	<p>Detailed conditions, formalities, and procedure of registration:</p> <p>Article 11 inserts powers for the Minister of the Interior to determine conditions and procedures for the establishment and registration of both domestic and foreign NGOs and associations. This means the practical burden of registration remains unknown.</p> <ol style="list-style-type: none"> 1. Are there any other conditions aside from the criteria in Article 8 to impose on the registration? 2. Should the procedure of registration be defined in this LANGO or in the Prakas of the Ministry of Justice? <p>The draft LANGO Article 11 says that the conditions, formalities, and procedure of registration of the local and foreign associations and NGOs will be determined by the Prakas (executive act) of the Ministry of Interior.</p> <p>It is unclear at the moment if there are more hidden conditions that will be included in the Prakas or there will be more clarifications of the undefined terms such as "national security," "public order," or else in the Prakas. The same for formalities. In Article 8, the documents required are already not complicated, but if other formalities are required in the Prakas, then more documents must be supplied, which would create a hardship or cost for the registration. Also, there could more conditions put on the associations/NGOs that</p>	<p>In order for the LANGO can be settled once and for all, the procedure must be in place in this LANGO.</p>

⁵ It note that Art 21 seems to prevent unregistered groups from cooperating with partners for implementing aid projects.

		may contradict with the current draft, on the one hand, and with existing legal norms, such as the Constitution and the international instruments, on the other.	
9	Art 12	<p>Registration of foreign associations and NGOs:</p> <p>Article 12 establishes a new requirement for short term international NGO or association projects to request approval from the Ministry of Foreign Affairs and International Cooperation through a local partner. Previously, international NGOs and associations were required only to notify the Ministry. There is no specified duration of a short term project.</p> <p>What is short-term project?</p> <p>The draft should clarify between country office and project office. Some of the foreign organizations are awarded a project. The period of the project can last for 5 years for example. When the project ends their office is closed. Should short project measured by the length of the project or by the project itself? For example, a project of less than 3 years is to be considered short-term or one project itself is to be considered short-term?</p> <p>It would be useful to distinguish between country office and the project office of the foreign organizations. Also, it is not clear between securing a memorandum of understanding and a permission.</p>	
10	Art 13	<p>Documents of registration of foreign organizations: Lack of clarities; support of the concerned ministry or agency.</p> <p>Article 13, a foreign association or NGO “shall submit an application for the signing of a memorandum to the Ministry of Foreign Affairs and International Cooperation” supported by specified documentation. Certain documentation requirements include article 13 raise concerns. First, in the letter requesting to open a foreign office, the foreign applicant must provide “the attachment of the profile of person requested to be appointed” as country representative. While it is common for a foreign NGOs to be required to designate a representative, the requirement of providing the “profile of a person’ is vague. It would be preferable for the law to require the name and contact information of the designated representative. Second, the foreign applicant must submit a “letter indicating the address of the representative office in the Kingdom of Cambodia, from the Commune or Sangkat Chief.” It is unclear whether the procuring of such a letter from the Commune or Sangkat Chief is a straightforward, routine task or more of a bureaucratic hurdle that could create delays. Additionally, it may be difficult to find a representative office <i>before</i> being able to legally operate in Cambodia; it may be impossible to sign a lease, for example, without being legal entity. Third, article 13 also requires that the foreign association or NGO submit budget declaration for implementing its projects for at least six months, as well as a “pledged letter” guaranteeing that it will provide all bank account information in Cambodia.</p>	

		<p>Point 13.3 is not clear if the application needs a certificate of incorporation issued by the country of origin or a certification by the country of origin that the applicant organization can operate in a foreign country.</p> <p>Point 13.4 requires the support of concerned ministry or agency in order for a foreign association or NGO to open a country or project office. If the foreign association or NGO cannot secure the endorsement of a concerned ministry or agency, it cannot implement its work in Cambodia.</p> <p>Again, since the memorandum of understanding establishes a contractual relationship between the Ministry of International Cooperation and Foreign Affairs and the foreign association or NGO, it is unknown about the terms and conditions of such contract. So, it is unknown if the foreign association or NGO can secure decent or limited space for their operations.</p>	
11	Art 14	The Ministry review of the application then follows within 45 working days in order to decide “whether or not to sign a memorandum”	
12	Art 15	A foreign association or NGOs “shall discuss and agree with public authority on projects/programs before submitting an application for a memorandum of understanding with Ministry of Foreign Affairs and International Cooperation...” A letter issued by the public authority to support the projects of the foreign NGOs must be included as part of the application process, as outline in article 13.	
13	Art 16	Article 16 limits the validity of the memorandum to no more than three years, and requires those foreign NGOs wishing to continue activities in Cambodia to request an extension of the memorandum. In essence, therefore, foreign NGOs are subject to re-registration process. The UN Special Rapporteur on the situation of human rights defender has noted concerns with re-registration requirement: “in certain countries NGOs are required to re-register in certain with certain periods, be it every year or more often, which provides additional opportunities for Governments to prohibit the operation of groups whose activities are not approved by the Government. Requirements for periodic re-registration may also be induce a level of insecurity....resulting in self-censorship and intimidation.” ⁶	Amend article 16 to remove re-registration requirement for foreign NGOs and allow indefinite period of registration.
14	Art 17	<p>Providing information about the accounts held by existing foreign associations or NGOs</p> <p>See in Article 10.</p> <p>Foreign association or NGO in Cambodia shall notify the Ministry of Foreign Affairs and International Cooperation and Ministry of Economy and Finance of its bank account in Cambodia within 30 working days after signing the memorandum</p>	
15	Art 24	<p>Article 24 and Article 30: Neutrality of the associations and NGOs:</p> <p>Article 24 vaguely states that political neutrality is required for domestic and international NGOs and</p>	Consequently, the effect of imposing neutrality on the associations or NGOs is to curtail,

⁶ Report submitted by the UN Special Rapporteur on the situation of human rights defenders, Magraret Sukaggya, in accordance with General Assembly resolution 62/152 (4 August 2009) p.28 (http://www.icj.org/IMG/report_of_sr_on_hrds_to_ga.pdf)

	<p>international associations, under threat of de-registration. Significantly, this provision does not apply to domestic associations. This provision could be misapplied to suppress legitimate reporting and dissent, with the government responding to criticism by permanently de-registering organizations under the LANGO sanctions regime.</p> <p>Is "neutrality" a matter of choice or can be legislated?</p> <p>The Article 24 says associations/NGOs must maintain neutral positions or stances vis-a-vis all political parties in Cambodia. The Ministry of Interior can notify an association or NGO of its non-neutrality and if such non-neutrality persists, that association or NGO would be suspended or deleted from the register.</p> <p>Over the past, the government has complained that certain associations/NGOs were biased in favor of the opposition. This is because those associations/NGOs issued statements or produced reports critical of the government in issues of governance, land grabbing, corruption, management of natural resources, violation of human rights, etc. Some of the issues were overlapped with those campaigned by the opposition or taken up by the opposition for their campaign agenda.</p> <p>The statements or reports produced data or opinions that are critical of the government and the ruling party. Because of these unfavorable, critical data or opinions that the government/ruling party accused those associations of supporting the opposition, then not showing neutral stances vis-a-vis all political parties.</p> <p>Stances may be expressed outward by opinions. Also, to show that he/she does not take stance, a person has to abstain from voicing an opinion. Regulated stances means regulating opinions.</p> <p>Under the national legal framework</p> <p>The Cambodian Constitution granted the freedom of opinion (Article 41). The Constitution does not restrict a political opinion or an opinion that is biased against any person or entity. The only restrictions are those expressions of facts that harm the reputation of others, good customs of the society, public order, and national security.</p> <p>Further, the Constitution encourages citizens' active participation in the political, economic, social and cultural activities of the nation (Article 35). Active participation entails vigorous contributions to those activities, including sharing ideas and opinions. To stifle the freedom of opinion is to suppress the opinion itself and to curtail the freedom to participate.</p> <p>Under the international legal framework</p> <p>The neutrality requirement imposes a severe restriction on the freedom of expression. The freedom of association and the freedom of expression are inextricably linked: "Associations should enjoy, inter alia, the rights to express opinion, disseminate information, engage with the public and advocate before</p>	<p>if not suppress, the right to freedom of opinion. Finally, there is no national or international legal basis to allow the government to regulate the neutrality of a civic organization. It is a matter of choice of the concerned organization. They may want to behave neutrally for their public relations purpose or they may choose to take strong stance for their advocacy purpose.</p> <p>Neutrality can be regulated by a code of conduct and not by law.</p> <p>Article 24 should be removed as it constitutes an impermissible restriction on the freedom of expression.</p>
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	<p>Governments and international bodies for human rights, for the preservation and development of the minority's culture or for changes in the Constitution.”⁷</p> <p>Associations and NGOs should not be denied registration or have their legal status threatened because they carry out what the authorities consider to be non-neutral or “political” activities.</p> <p>“It is a source of serious concern that the term “political” has been interpreted in many countries in such a broad manner as to cover all sorts of advocacy activities; civic education; research; and more generally, activities aimed at influencing public policy or public opinion. It is clear that this interpretation is solely motivated by the need to deter any forms of criticism.”⁸</p> <p>The International Covenant on Civil and Political Rights Article 19 provides for a freedom of opinion:</p> <ol style="list-style-type: none"> 1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. <p>[...]</p> <p>As with the Cambodian Constitution, the international law promotes uncensored opinions and free flow of information and ideas between those who share and those who receive those opinion and information and ideas. Opinion and information and ideas may not be favorable to a party or to both opposing parties. Party who receives a favorable opinion would judge that the opinion-maker is neutral and the party who receives an unfavorable opinion would deem the opinion-maker biased against it, and vice-versa. There is no standard to measure the neutrality since it is derived from the subjective judgment. A person who judges another person to be non-neutral vis-a-vis Party A may fall under the Party A's judgment that he is in favor of Party B.</p> <p>The UN Human Rights Committee, in its General Comment No. 34, stressed that "All forms of opinions are protected, including opinions of a political, scientific, historic, moral or religious nature" (Paragraph 9) and that a "stigmatization of a person... for reasons of the opinions they may hold, constitutes a violation of article 19, paragraph 1" (Paragraph 9) (Emphasis added). The Committee continues that "when a State Party imposes restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself" (Paragraph 21). In the case of LANGO, to curb a stance is to suppress an opinion or expression because it would render a person to stop voicing one's opinion and expression and to stop disseminating information and ideas or would render a person to disseminate censored information to avoid being labeled as biased.</p> <p>A blanket requirement forcing associations and NGOs to “be neutral toward all political parties” fails to</p>	
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⁷ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para.64, U.N. Doc. A/HRC/20/27 (21 May 2012).

⁸ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, para.43, U.N. Doc. A/HRC/68/299 (7 August 2013).

		<p>meet all the branches of the enumerated three-part test. First, the requirement is so vague that it fails the principle of predictability or transparency. Second, the restriction does not pursue any of the aims stated in article 19(3). Finally, there is no indication that this restriction is necessary or the least restrictive means required to meet its purported aim. Nearly every NGO or association, as part of pursuing its mission, may seek to take a stand on an issue of public importance; in doing do, however, the NGO/association may run the risk of violating the neutrality restriction. Thus, this requirement is an impermissible restriction to the freedom of expression; regardless of the regulation intent, it will lead to the stifling of dissent and criticism and could be used to arbitrarily prevent the registration of associations and NGOs or be used as grounds for their subsequent termination.</p> <p>Usurping the judicial power The draft LANGO allows the Ministry of Interior to judge the neutrality of an association or NGO and punish it by suspension or dissolution (Article 30).</p> <p>According to the Civil Code, there are 6 grounds for dissolution of an incorporated legal entity, none of which is by the administrative decision (Article 64). A legal entity, according to this Article, can be dissolved by itself, its members, bankruptcy, or by the court. Also, as described earlier, the deprivation of a civil right under the criminal legal system can be made by the court sentence.</p> <p>To allow the Ministry of Interior to pass a judgment to deprive the fundamental right of association of an association or NGO is a violation of the Constitutional principle of separation of powers and the violation of existing legal framework. Article 128 of the Cambodian Constitution states that the judiciary holds independent judicial powers; protects the rights and freedoms of the citizens; has jurisdiction over all cases, including administrative case. In exercising this judicial power, the jurisdiction is granted to the supreme court and courts at all levels. So, the Ministry of Interior has no constitutional power to act as a court, including as an administrative court to take away the constitutional rights of the citizens.</p>	
16	Art 25	<p>Article 25 and Article 30: Submission of activity and financial report and sanction for failure to submit</p> <p>Can the Ministry of Interior suspend or dissolve a legal entity for failure to submit annual activity and financial report?</p> <p>Article 25 divides the reports into two categories: activity and financial report of an association/NGO who receives no funding from the donors and activity and financial report of an association/NGO who receives financial support from donors.</p> <p>For the first category, only condensed activity and financial report is required. For the second category, an association/NGO must submit project document, funding agreement, and copied versions of the annual activity and financial reports to donors.</p>	<p>The reports may be submitted in any format that is convenient to the associations/NGOs in the interest to protect the confidentiality of sources.</p> <p>There is no need to include this auditing requirement in the LANGO.</p> <p>Regarding article 25's reporting requirement, the draft should be amended so that organizations do not have to provide copies of their</p>

	<p>The requirement that an association/NGO must copy the activity and financial report to donors is probably the government's response to the LANGO coalition's demand in 2011 that reporting requirement was burdensome because they had to prepare a report from multiple reports sent to donors. Reports that are submitted to the government will become public. Therefore, the confidentiality of the sources of information will not be protected or will put the sources in jeopardy when the reports are accessible to the public.</p> <p>The sanction is disproportionate. Failure to submit the reports are administrative offense, which should not result in deprivation of a civil right.</p> <p>Article 25 permits the Ministry of Economy and Finance and the National Audit Authority to check and audit all domestic and foreign associations and NGOs "in necessary cases," and the Ministry of Interior may demand additional reports and financial report from domestic association and NGOs "in necessary cases". The phrase "in necessary case" is vague and could be used to arbitrarily subject associations and NGOs to unlawful interference into their activities and confidential records. This is especially concerning since there are no criteria or regulation defining the scope of any such audit or demand for additional records. Associations and NGOs do not have rights to appeal these decisions.</p> <p>The draft law mandates burdensome reporting requirements for both domestic and foreign organizations. As currently written, the draft law requires all domestic associations and NGOs to submit copies of any and all reports that are sent to donors. Additionally, there is an "upfront" requirement that all successful funding proposals and all financial or grant agreements be submitted to the ministry of Interior and Ministry of Economy and Finance. Associations and NGOs often have numerous reporting requirements to a variety of donors. Requiring them to submit essentially every report sent to each donor is onerous and will likely affect their ability to carry out projects, increase administrative costs, and taint their relationship with donors.</p> <p>Furthermore, all domestic associations and NGOs "receiving financial support" and all foreign NGOs, must provide copies of their annual reports submitted to their donors to governmental authorities. Reports submitted to donors may include confidential information that has no direct bearing on the association's work, and therefore such as requirement likely violates the rights to privacy.⁹ Fundamentally, this amounts to government interference in private contractual relations. It would be unlikely for the government to require for-profit business to share reports on agreement between two private parties. In the case of NGOs and associations, whether the government is already receiving annual reports on their activities and finances, the justification for this additional reporting requirement is unclear.</p> <p>As an alternative, one could envision a system where organizations with no tax benefits or public funding</p>	<p>annual reports, proposals and financial agreements to government authorities. A graduated reporting requirement that would exempt smaller organizations from reporting or at least simplify their reporting obligation should considered.</p> <p>The criteria for when the Ministry of Economy and Finance or National Audit Authority can conduct an audit should be explicitly defined, and the scope of such an audit should be narrowly defined.</p>
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⁹ Article 17 of the ICCP ready follows : "1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. 2. Everyone has the rights to the protection of the law against such interference or attacks." See *also*, Report of the Special Rapporteur on the rights of freedom of peaceful and of association, Maina Kiai, para.65, U.N.Doc.

		<p>would be accountable to their members but would have no public reporting requirements. Organizations below a certain threshold would be subjected to simplify reporting, even if they receive tax benefits or public funding. More fulsome reports would only be required of large organizations receiving substantial tax benefits or public funding. Details and distinctions would be worked out after meaningful consultation with civil society.</p> <p>Article 22 of the ICCPR limit s government supervisory actions in clear terms: “No restrictions may be placed on the exercise of this right [freedom of association] other than those which are prescribed by law and which necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.” The recognition of freedom of association as a right “that must be respected necessarily entails some limits on the degree of regulation...The very essence of the freedom of association in the ability of those belonging to a body to decide how it should be run; this necessitates both a minimalist approach to regulation and very close scrutiny of attempts to interference with the choices that associations and their members make about the organization of their affairs.”¹⁰</p> <p>Auditing an association/NGO: Can the government audit the associations/NGOs? The associations/NGOs, if they do not receive funding from the government, have no financial obligations to the government. They government can make financial audit of only suspected organization at the court order for investigation purpose.</p>	
17	Art 29	<p>Article 29 places the assets and resources of domestic NGOs, and associations at risk of seizure; any domestic NGO or association dissolved or deleted on appeal by a court decision must comply with all court decisions regarding the management of their resources and property. This risk to assets also acts as an inbuilt deterrent against appealing MOI decisions.</p>	
18	Art 30	<p>Sanctions for conducting activities that affect the public security, safety, and order or cause danger to national security, culture, tradition, customs of Cambodian society See analysis in Articles 10, 24, and 25 on the judicial power of the Ministry of Interior.</p> <p>Article 30 provides that domestic NGOs can now be deleted from registry for being found to have breached political neutrality, as well as for violating the now expanding financial reporting obligations. Article 30 also adds broad and vaguely-worded discretionary powers for the Minister to delete domestic NGOs and Associations for activities and objectives which jeopardize peace, stability and public order or harm the national security, national unity, culture, and traditions of the Cambodian national society. The government may also suspend or delete domestic associations and NGOs for violation of their own bylaws.</p>	

¹⁰ Public Interest Law Initiative, *Enabling Civil Society: Practical Aspects of Freedom of Association*, (Butapest 2003), p.42. Recommendation CM/Rec (2007)14 of the Committee of Ministers of the Council of Europe states, in section VII (#70) that “No external intervention in the running of NGOs should take place unless a serious breach of the legal requirement applicable to NGOs has been established or it reasonably believed to be imminent.”

19	Art 34	<p>Sanctions against unregistered local associations/NGOs:</p> <p>Is informal association or interest group not recognized by law?</p> <p>Article 32 inserts a stringent new fines regime for activities by unregistered domestic NGOs and associations. The article stresses that relevant authorities must act immediately in the event of activity conducted by unregistered groups of citizens. In the case of continued activity the MOI may fine unregistered domestic NGOs or associations between 5 million riel up to a maximum of 10 million riel and forward the case for prosecution by the courts. This level of fine could be prohibitively large for grassroots groups and community based organization. The sanctions regime also applies to domestic NGOs and associations that continue their activities after deletion from the register.</p> <p>This Article will affect the informal associations or NGOs, the existence of which is not recognized by this draft LANGO. For more, see comment in Article 8 above.</p>	
20	Art 33	<p>Sanctions for failure of foreign associations/NGOs to report about account information and changes of address, representatives, and bank account information, maintain neutrality and submit activity and financial reports</p> <p>Article 33 amends sanctions for foreign NGOs and associations, with an initial Ministerial notification with 30 days' notice now being followed directly by termination of MOU. Grounds for termination include continued non-compliance with the financial reporting provisions of Article 17 and 25, and the political neutrality conditions of Article 24.</p> <p>Significantly, the draft law lacks important safeguards (<i>e.g., objective standards for reviewing and denial of registrations, a written explanation in case of denial, and the right to appeal to a competent and independence court</i>) for the registration of foreign NGOs. Taken together with the multi-staged registration process, the registration of foreign NGOs be beset by delays and subject to subjective, arbitrary and politicized decision making.</p> <p>Furthermore see analysis in Articles 10, 24, and 25.</p>	Streamline the registration process and include safeguards to ensure a more objective, consistent, apolitical, and professional registration decision making process.
21	Art 34	<p>Article 34 emphasizes that relevant authorities must act on foreign NGOs or associations operating without registration or continuing to operate following the termination of an MOU. Foreign individuals working for unregistered foreign NGOs or associations may be deported, and or subject to further criminal sanction.</p> <p>This poses a particular risk to foreign NGO staff conducting investigations who will be placed under continuous threat of immediate deportation if their organization is summarily de-registered.</p>	

22	Art 35	<p>Termination of Memorandum of Understanding with foreign associations/NGOs</p> <p>Article 35 authorizes the Ministry of Foreign Affairs to terminate the memorandum, “in the event that a foreign association or NGO conducts activities which jeopardize peace, stability and public order or harm the national security, national unity, culture, customs and traditions of the Cambodian national society.” The grounds for termination are vague and subject to subjective interpretation. How will term like the “national unity, culture, customs and traditions of the Cambodian national society” be interpreted? Will such a vague standard limit the ability of foreign NGOs to engage in environmental advocacy, human rights, or minority protection? The standard applicable to the termination of domestic organization is applicable here: “The relevant government authority should be guided by objective standards and restricted from arbitrary decision making.”¹¹ Moreover, there is no requirement for the governmental authorities to provide notice or an opportunity to rectify problems prior to the suspension or termination, and there is no mention of rights to appeal after suspension or termination. Taken together, the process of terminating the memorandum is open to government manipulation overreach.</p> <p>The operations and legal status of the foreign associations/NGOs are determined by the contractual rights and obligations spelled out in the Memorandum of Understanding. The termination should be based on the terms and conditions mutually agreed between the government and those associations/NGOs.</p>	Amend article 35 to base termination of the memorandum under which a foreign organization operates in Cambodia on objective grounds, which appropriate procedural safeguards, and a rights to appeal.
23	Art 36	Article 36 adds the unnecessary mention of the potential for criminal punishment of associations or domestic NGOs whose activities jeopardize peace, involve money laundering, finance terrorism or other unlawful activity.	
24	Art 37	<p>Legal status of existing associations and NGOs recognized without re-registration:</p> <p>Are existing associations/NGOs that have not deposited their documentation with Ministry of Interior recognized as registered?</p> <p>In practice, there are associations and NGOs who have deposited their documentation with the Ministry of Interior and there are also associations and NGOs who have been approved by the Council of Ministers to operate as associations and NGOs.</p> <p>This draft LANGO specifies only those associations and NGOs that have deposited documentation with the Ministry of Interior. If this law applies straightforward, those who have approvals from the Council of Ministers would have to re-register with the Ministry of Interior.</p>	This draft LANGO must include those associations/NGOs who have deposited documentation or approvals with other government agencies must continue their existence as a legal entity without re-registration. For those who have not dealt with the Ministry of Interior must submit their approvals for the Ministry of Interior's record.

¹¹ ICNL and the World Movement for Democracy Secretariat at the National Endowment for Democracy, *Defending Civil Society: Report of the World Movement for Democracy* (2008), p.31; see also, Report submitted by the UN Special Representative of the Secretary-General on human rights defenders, Hina Jilani, in accordance with General Assembly resolution 58/178, p.23 (“Actions by the Government against NGOs must be appropriate and subject to appeal and judicial review. Administrative irregularities...should never be considered as sufficient grounds for closing down an organization.”)

25	Art 39	<p>Abrogation of other laws that conflict with LANGO:</p> <p>Can this LANGO abrogate other laws?</p> <p>The Article states that all legal provisions that are in contradiction with this law shall be abrogated. This is a blank check abrogation of other laws, which should include the Constitution, the ICCPR, the Civil Code, the Criminal Code, to name a few.</p> <p>This LANGO will make, for example, Articles 35, 41, 42, and 128 of the Constitution; Articles 19 and 42 of the ICCPR; Articles 55, 56 of the Criminal Code; Articles 46 and 69 of the Civil Code inoperative or inapplicable.</p>	<p>Article 39 violates the Constitution and undermines the legal security of other laws.</p>
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