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Briefing Book for Donors and Others on  
the Law on Associations and Non-Governmental Organizations  
and the Shrinking Space for Civil Society in Cambodia



**មជ្ឈមណ្ឌលសិទ្ធិមនុស្សកម្ពុជា**  
Cambodian Center for Human Rights

### **About the Cambodian Center for Human Rights**

The Cambodian Center for Human Rights (“CCHR”) is a leading 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”). CCHR is well-known for its success in empowering communities and for its strong and principled voice for human rights. CCHR’s vision is of a non-violent Cambodia in which people enjoy their fundamental human rights, are treated equally, are empowered to participate in democracy, and share the benefits of Cambodia’s development. CCHR advocates for the rule of law rather than rule by law; strong institutions rather than strong men; and a society in which diversity is harnessed rather than punished. The CCHR logo – a white dove flying in a circle of blue sky – symbolizes Cambodia’s bid for freedom. In order to promote and protect democracy and human rights, CCHR empowers society to claim its rights and push for change; and, through detailed research and analysis, CCHR develops innovative policy and advocates for its implementation. Accordingly, the elements of empowerment and policy development are core to all CCHR initiatives.

### **Supporting documents**

All Annexes referred to in this Briefing Book are available on a dedicated page on the Cambodian Human Rights Portal hosted by CCHR (“Sithi”) at [http://sithi.org/annex\\_view.php](http://sithi.org/annex_view.php). Sithi is generously funded by The United States Agency for International Development (“USAID”) and The Asia Foundation (“TAF”). Sithi is the 2011 winner of the Information Society Innovation Fund Award in the category of Rights and Freedoms.

### **Queries and feedback**

Should you have any questions, comments, suggestions or feedback in relation to this Briefing Book, or if you should require any further information about this Briefing Book or the subject in general, please do not hesitate to e-mail CCHR at [info@cchrcambodia.org](mailto:info@cchrcambodia.org).

## Contents

1. <i>Introduction</i> .....	1
2. <i>Executive Summary</i> .....	1
3. <i>Background</i> .....	4
4. <i>The LANGO as part of a wider legislative agenda to control society and silence opinion</i> .....	5
5. <i>The silencing of civil society and other opposition voices and the shrinking of democratic space – the recent suspension of STT and threats against other NGOs</i> .....	7
a. <i>The case of STT and others</i> .....	7
b. <i>The case of CCHR and NRPNG</i> .....	9
c. <i>Prey Lang network</i> .....	10
d. <i>The impact on civil society and donors</i> .....	11
6. <i>The LANGO: a failure to protect the rights to association, assembly and expression as provided for under domestic and international law</i> .....	11
7. <i>The LANGO: other key criticisms of the third draft</i> .....	13
8. <i>Use of the LANGO to silence NGOs critical of the RGC</i> .....	14
9. <i>Increased corruption: a hindrance for Western businesses in Cambodia</i> .....	16
10. <i>Increased corruption: opportunity for non-Western countries and corresponding fall-out for the Cambodian people</i> .....	18
11. <i>Impact on aid and development effectiveness</i> .....	19
12. <i>Donors can prevent the destruction of Cambodia’s civil society and democratic space</i> .....	20
13. <i>Conclusion – Donors should look at the spirit, not the letter, of the law</i> .....	22

## **Definitions**

"ADB"	Asian Development Bank
"Anti-Corruption Law"	Anti-Corruption Law 2010
"AusAID"	Australian Government Overseas Aid Program
"BABC"	Bridges Across Borders Cambodia
"CBO"	Community-Based Organization
"CCHR"	Cambodian Center for Human Rights
"Circular"	MoI Circular 2004
"Constitution"	Constitution of the Kingdom of Cambodia
"CPP"	Cambodian People's Party
"Demonstration Law"	Law on Peaceful Assembly 2009
"EU"	European Union
"FCPA"	US Foreign Corrupt Practices Act
"Freedom of Information Law"	Draft Cambodian Freedom of Information Law
"GDP"	Gross Domestic Product
"ICCPR"	International Covenant on Civil and Political Rights
"INGO"	International Non-Governmental Organization
"LANGO"	Law on Associations and Non-Governmental Organizations
"MoEF"	Minister of Economy and Finance
"MoFAIC"	Ministry of Foreign Affairs and International Cooperation
"MoI"	Ministry of Interior
"NGO"	Non-Governmental Organization
"NRPG"	National Resource Protection Group
"Penal Code"	Penal Code 2009
"RGC"	Royal Government of Cambodia
"SRP"	Sam Rainsy Party
"STT"	Sahmakum Teang Tnaut
"TAF"	The Asia Foundation
"UDHR"	Universal Declaration of Human Rights
"UK"	United Kingdom
"UN"	United Nations
"US"	United States
"UNCAC"	UN Convention Against Corruption
"USAID"	United States Agency for International Development
"WGP"	Working Group for Peace

## Annexes

- Annex 1: STT Blasts its Suspension
- Annex 2: ADB Meets Wall of Silence
- Annex 3: ADB Still Puzzled by Controversial Letter
- Annex 4: PowerPoint Presentation by the INGO Working Group to Donors on 1 April 2011
- Annex 5: Second Draft of the LANGO
- Annex 6: Penal Code
- Annex 7: Anti-Corruption Law
- Annex 8: Demonstration Law
- Annex 9: CCHR Factsheet on the Demonstration Law
- Annex 10: STT Timeline
- Annex 11: MoI Letter to STT on 2 August 2011
- Annex 12: Letter to Baroness Ashton on 23 August 2011
- Annex 13: STT Background
- Annex 14: Rehabilitation of Cambodia's Railways: Comparison of Field Data
- Annex 15: ADB's Statement about STT's Suspension
- Annex 16: Cambodian Foreign Minister Tells NGOs to "Readjust" their Actions
- Annex 17: Cambodian NGOs Under the Gun
- Annex 18: CCHR Press Release on 7 September 2011
- Annex 19: Constitution
- Annex 20: Constitutional Council Decision on 10 July 2007
- Annex 21: ICCPR
- Annex 22: ICNL Comments on First Draft of the LANGO on 22 December 2010
- Annex 23: *Conseil Constitutionnel*
- Annex 24: Third Draft of the LANGO
- Annex 25: PACT's 2010 Survey on Cambodian Households
- Annex 26: Table of News Articles
- Annex 27: Circular
- Annex 28: UNCAC
- Annex 29: Trust Law Statistics on Percentage of GDP Lost Due to Corruption
- Annex 30: 2006 Assessment of Corruption in Cambodia's Private Sector
- Annex 31: Sub-decree on Migrant Workers
- Annex 32: Estimated Costs for Processing NGO Registration with MoI
- Annex 33: Lakeside Deal Brokered

## **1. Introduction**

This Briefing Book discusses the threat posed to civil society and democratic space in Cambodia in light of recent actions by agencies of the Royal Government of Cambodia (“RGC”) and the controversial draft Law on Associations and Non-Governmental Organizations (“LANGO”). Primarily, this Briefing Book focuses upon: (1) the ongoing efforts to silence NGOs and dissenting voices, as well as the erosion of democratic space in Cambodia; (2) the fundamental deficiencies in the most recent draft of the LANGO; and, most importantly, (3) the improper use to which the LANGO may be put, given the current context. The conclusions as to the danger that the LANGO poses to civil society and to donor programs – as highlighted by recent events – are fully documented through Annexes to this Briefing Book available on Sithi – the award-winning Cambodian Human Rights Portal hosted by CCHR – at [Briefing Book Annexes](#).

The purpose of this Briefing Book is to provide the factual, material and legal context to donors and their constituents and publics that will assist them in taking informed positions regarding the RGC’s policies and practices relating to the LANGO and associated human rights issues. These issues are central to donor programs; for some donors, NGOs and other civil society organizations are conduits for aid delivery and, for others, the development of civil society and democratic space represent the actual objectives of aid assistance. At a government/donor co-ordination conference in April of this year, Flynn Fuller, Mission Director of USAID, suggested that, for some aid providers, pressure on civil society would make funding harder to justify: *“In these times of fiscal constraint, justifying increased assistance to Cambodia will become very difficult in the face of shrinking space for civil society to function”*. This Briefing Book aims to describe the nature of the shrinking democratic space, and to identify actions that donor nations may wish to consider to improve the current situation in Cambodia.

## **2. Executive Summary**

So far, the attention given to the LANGO – from NGOs, community-based organizations (“CBOs”), donors, foreign governments and the media – has focused upon the elements of the LANGO, not that this focus has been unwarranted. The most recent draft makes no provision for the protection of fundamental constitutional rights, despite the RGC’s claims that the LANGO will protect these rights. In fact, it: (1) contains mandatory and onerous registration requirements that suggest that many CBOs and smaller NGOs will be prevented from operating; (2) will, as is discussed below, allow the RGC to wield unfettered power in suspending or closing

NGOs through administrative provisions; and (3) permits selective and adverse treatment of NGOs and CBOs that are critical of the RGC or its policies, acts or omissions.

Fears raised by international NGOs (“INGOs”) at a meeting of donors on 1 April 2011 as to the threat posed by the LANGO are proving to be well-founded. However, the LANGO and its provisions are only part of the problem: recent events, in which the RGC suspended – without an apparent procedural basis and under otherwise questionable circumstances – an NGO involved in monitoring an RGC compensation program, suggest that, if passed, the LANGO would serve to legitimize and streamline the termination of NGOs for reasons both invalid and unjustified.

The NGO mentioned above – Sahmakum Teang Tnaut (“STT”) – was suspended shortly after it released a report critical of the RGC’s compensation practices relating to people resettled by the railway rehabilitation project funded by the Asian Development Bank (“ADB”) and the Australian Government Overseas Aid Program (“AusAID”). Although the RGC’s explanation was that STT was being suspended for procedural/administrative irregularities, a letter from the Minister of Economy and Finance (“MoEF”) to the Prime Minister – made public last month – appears to establish that the sole motivation for STT’s suspension was that the RGC viewed STT’s activities as hostile to its financial interests.<sup>1</sup> In that letter, which reportedly urged the suspension of STT and another NGO, the MoEF also urged the Prime Minister to hasten the passage of the LANGO, leaving no doubt as to the way that the RGC intends to use the LANGO.

Other watchdog or advocacy NGOs have been similarly threatened with closure or suspension, harassed, intimidated, monitored or told to amend their activities, without any basis in domestic law and in contravention of applicable international treaties. With or without the LANGO, democratic space is being rapidly eroded, and civil society and dissenting voices stifled.

The RGC’s reaction to the decision by the World Bank to suspend further funding to Cambodia, in response to the serious abrogation of human rights in connection with the Boeung Kak lake development project, demonstrates the potential power of donor resolve and action. Following the World Bank’s public declaration that future loans were frozen pending a fair settlement, the RGC answered by offering plots of land to most of the residents who had persisted in challenging their eviction.

While Cambodia increasingly seeks Chinese loans, trade and assistance, it is clear that the country’s dependence on Western aid and trade continues, and that it both seeks and enjoys the international legitimacy that comes with interaction with the West and international bodies

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<sup>1</sup> STT reports that it was shown a copy of the MoEF letter, which bears the ministry’s official stamp, and permitted to photograph it ([Annex 1](#)). To date, no RGC official has either contested or confirmed the MoEF letter’s authenticity ([Annex 2](#) and [Annex 3](#)).

such as the United Nations (the “UN”). If donors were to take an immediate and principled position against the shrinking of democratic space and civil society in Cambodia, there is good reason to think that this decline may be halted and even reversed.

Current efforts by the RGC to “window dress” the LANGO (a fourth draft is reportedly in the process of being worked on) should be considered in light of the reality on the ground: any law that regulates NGOs and civil society will be harmful in the current context. Even if the current suite of burdensome administrative provisions are largely abandoned in the next draft, such amendments will in practice prove to be superficial as long as the context remains unchanged. Until the LANGO ceases both to require some form of registration as a condition for an organization’s operation and to contain provisions for organizations’ suspension and/or termination, such requirements can and will be used – as in the case of STT – to suspend or terminate organizations arbitrarily on the basis of political concerns. Within the current legislative framework, the RGC can continue to control errant NGOs and associations by taking action with regard to their managers or directors, but such action should require first a criminal violation and then public monitoring of the sanctions process.

Donors should consider what a continuation of the status quo – with or without the LANGO – would mean for them and their countries. Such consequences would appear to include: (1) an increase in already extreme levels of corruption in Cambodia; (2) diminished access for businesses to a high-potential frontier market; (3) a disintegration of donor trust in corporate activities and a breakdown in donor-corporate relationships; (4) a defeat for meaningful accountability at a systemic level; (5) a loss of twenty years – and billions of dollars – of investment in civil society, democracy and human rights; (6) a poor “enabling environment” for aid and development effectiveness; and (7) a corresponding decline in the quality of life for millions of poor and marginalized Cambodians. Most of all, though, donors will have to face up to the failure to provide the people of Cambodia with the developing democratic society that was the promise of an agreement two decades ago in Paris.

On 23 October 1991, 17 foreign countries joined Cambodia in signing the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict, a document that brought an end to decades of war and hardship, and which promised the long-suffering Cambodian people democracy and human rights. The STT episode confirms that the RGC fears further whistle-blowing by NGOs, particularly where it includes or even implies criticism of RGC practices; the recent World Bank episode shows that Western money and validation still speaks volumes in Cambodia. However “friendly” the next draft of the LANGO might appear, donors should consider acting now to ensure that the RGC does not move further away from the promises which foreign nations made to the Cambodian people twenty years ago this month. Absent current and concerted action on the part of the RGC, there may be good reason to refuse



additional funding to Cambodia, since the Cambodian state is deliberately jeopardizing the value of past, present and future contributions.

### **3. Background**

On 1 April 2011, the INGO working group on the LANGO organized a briefing for the donor partners on the LANGO and its likely impact; the European Union (“EU”) kindly agreed to host the event. A PowerPoint presentation ([Annex 4](#)) provided the core content of the meeting; it focused on the substance of the then-current second draft of the LANGO ([Annex 5](#)) and the manner in which it could, and likely would, be applied.

The INGOs discussed likely consequences of the passage of the LANGO, such as the elimination of numerous networks, groups, associations and NGOs because of their inability to fulfill the rigorous registration and reporting requirements of the LANGO. Also highlighted was the likely severe adverse impact on the delivery of aid in Cambodia because of the potential inability of grassroots-level organizations to deliver that aid. However, the INGOs expressed particular concern that the RGC would use administrative technicalities under the LANGO, such as a violation of an organization’s by-laws, in a discriminatory manner in order to silence organizations that expressed criticism of the RGC. The INGOs also expressed concern that such criticisms of the RGC might be deemed criminal conduct, but summarily by the administrative bodies responsible for enforcing the LANGO rather than by the courts, as would otherwise be the case and as would be expected for any potentially criminal violations.

The briefing generated a robust dialogue between the INGOs and the donors, which revolved around differing views of how the LANGO might operate in its application. Not surprisingly, the discussion reflected differing projections about the LANGO’s prospective use and consequences.

In light of the issues addressed at the INGO-donor meeting, we discuss here recent events which add weight to those concerns – in the broader context of the erosion of civil society and democratic space, rather than the narrower confines of the LANGO as an isolated piece of legislation. In order to appreciate the intended aim of the LANGO, it is helpful first to consider other recently-passed laws which together indicate a concerted legislative agenda on the part of the RGC to control civil society and silence critical opinion.

#### **4. The LANGO as part of a wider legislative agenda to control society and silence opinion**

In the previous general election in 2008, the Cambodian People's Party ("CPP") won 58% of the popular vote<sup>2</sup> – approximately 3.5 million of the 6 million voters who turned out to exercise their right to vote. Cambodia's proportional representation system – which is based upon multi-member provincial constituencies – affords the largest party a significant advantage, allowing the CPP to take 90 of the 123 seats in the National Assembly as a result of that election. Moreover, new rules on the formation of governments – agreed to by the Sam Rainsy Party ("SRP") in 2006<sup>3</sup> – allowed the CPP to form a government without the support of any coalition partner for the very first time. All ministerial positions, as well the position of National Assembly president and the heads of the nine National Assembly committees, are now occupied by members of the CPP.

Since taking unfettered control of the country in 2008, the CPP has embarked on a legislative agenda to control every aspect of the lives of Cambodia's citizens. Central to this agenda have been the goals of minimizing the expression of opinions that run contrary to those of the CPP and eliminating criticisms of RGC policy. These objectives are evident in a number of laws passed by the National Assembly since 2008, including:

- The Penal Code 2009 ("Penal Code") ([Annex 6](#)): in December 2010, a new penal code came into force. This instrument was long overdue, as the country had for 17 years since the UN Transitional Authority in Cambodia period relied upon a criminal code drafted during that transitional period (1991-3). The Penal Code has, however, been the subject of criticism from Cambodian and international observers alike. Criticisms have focused primarily on the extent to which the Penal Code establishes the criminalization of the expression of opinion, especially that which is critical of RGC institutions or members. In all, there are nine provisions in the Penal Code which undermine the right to freedom of expression.<sup>4</sup>

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<sup>2</sup> *Cambodia in 2008: Consolidation in the Midst of Crisis*, Caroline Hughes, Asian Survey, Vol. 49, Issue 1, pp. 206-212.

<sup>3</sup> EU Observation Mission, Cambodia, Final Report on the National Assembly Elections, 27 July 2008, p. 8, available at: [http://www.euomcambodia.org/English/PDF/PDF/Final%20Report/final%20report/English/EU\\_EOM\\_Final\\_Report\\_Com.pdf](http://www.euomcambodia.org/English/PDF/PDF/Final%20Report/final%20report/English/EU_EOM_Final_Report_Com.pdf).

<sup>4</sup> These provisions include a defamation offense which is extended to include comments which are deemed to undermine the reputation of a government institution (Article 305), notwithstanding promises previously made by the Prime Minister that the offense of defamation would be removed from the statute books. Please see "Hun Sen: Defamation Should Be Decriminalized", *The Cambodia Daily*, Yun Samean, 15 February 2006; "Prime Minister Promises to Decriminalise Defamation", *Reporters Without Borders*, 7 March 2006, available at: <http://en.rsf.org/cambodia-prime-minister-promises-to-07-03-2006,16180.html>. Also included in the Penal Code is an offense for words, gestures, written documents, pictures of objects that are held to undermine the dignity of

- The Anti-Corruption Law 2010 (“Anti-Corruption Law”) ([Annex 7](#)): in February 2010, following years of requests by donors and development partners, the Anti-Corruption Law was sent for approval by the National Assembly. Much to the chagrin of those who have for years fought to stamp out corruption in Cambodia (for more on corruption in Cambodia, please see section 9 below), the Anti-Corruption Law failed to provide for an independent and transparent mechanism to combat corruption. Furthermore, it was rushed through the National Assembly without amendments, with 16 members of the SRP walking out on the discussions in protest.<sup>5</sup> Criticisms of the Anti-Corruption Law have included: that the anti-corruption mechanism answers to the office of the Prime Minister (Article 10); that there is an absence of meaningful safeguards for whistle-blowers; and that it fails to provide for the publication of asset declarations by public officials (who have not been required to report on assets held in spouses’ names, or on their own bank accounts). Much less a panacea for corruption, it is plausible that the Anti-Corruption Law could in time be used as a political weapon to prosecute individuals who fall out of favor with the ruling CPP.
- The Law on Peaceful Assembly 2009 (“Demonstration Law”) ([Annex 8](#)): in October 2009, the RGC passed the Demonstration Law, which provides an important point of consideration and reference in the current discussion relating to the LANGO. As a piece of legislation, read in isolation, the Demonstration Law – which states as its aim the objective of guaranteeing the right to freedom of expression of all Khmer citizens – is a rather liberal and progressive document (please see the CCHR factsheet on the Demonstration Law at [Annex 9](#)). However, as interpreted by local authorities, the Demonstration Law has been applied to stifle freedom of expression and frustrate the efforts of citizens to voice their opinions through public demonstration, suggesting that it is more honored in its breach than in its observance. Examples include: (1) in 2010, the Phnom Penh Municipality banned a large garment workers’ forum – the ban was then approved by the Ministry of Interior (“MoI”) on the basis of groundless concerns about public order and security; (2) the same year, a teacher informed CCHR that an informal gathering of teachers held at another teacher’s private residence was interrupted by police, who incorrectly said that by law the teachers needed permission to hold the meeting; (3) in June 2011, workers from June Textile Factory were banned from marching to the Prime Minister’s house in relation to a labor dispute and were instead only permitted to gather at the Phnom Penh freedom park, despite the fact that

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a public official or “holder of public elected office” (Article 502), and an offense for criticisms of court decisions which are said to be aimed at “disturbing public order” or “endangering an institution” (Article 523).

<sup>5</sup> “Cambodian legislature passes anti-corruption law”, *Asian Correspondent*, 11 March 2010, available at <http://asiancorrespondent.com/29742/cambodian-legislature-passes-anti-corruption-law/>.

the Demonstration Law does not require freedom parks to be used to the exclusion of demonstrations at other public venues; (4) the incidents relating to CCHR and the Natural Resource Protection Group (“NRPG”) (discussed at section 5(b) below); and (5) on 21 September 2011, district authorities in Phnom Penh prevented a group of 150 people from conducting a march organized by the Working Group for Peace (“WGP”) to celebrate International Day of Peace, on the basis that WGP had not informed the district and that the march would cause a disruption to traffic. Quoted in *The Cambodia Daily*,<sup>6</sup> representatives from WGP stated that they had filed the requisite notification of the march with City Hall six days in advance, more than the time period stipulated under the Demonstration Law (Article 7). Where, as with WGP, authorities do not respond to a notification request, the Demonstration Law provides that the organizers can proceed on the basis of tacit consent (Article 10).

#### **5. The silencing of civil society and other opposition voices and the shrinking of democratic space – the recent suspension of STT and threats against other NGOs**

Since the donor briefing by INGOs on 1 April 2011, cases of RGC intimidation of NGOs have seriously affected the civil society landscape in Cambodia and have provided a whole new context for discussion of the LANGO. These cases illustrate the need to look not just at the content of the LANGO, but also the environment in which it will be applied.

##### **a. The case of STT and others**

Since 1 April 2011, the RGC has demonstrated its willingness to apply sanctions similar to those provided for in the LANGO to NGOs who criticize RGC policy, in contravention of the rights to freedom of expression and association – and in the absence of the legal authority that the RGC seeks through the LANGO. However, the true extent of the RGC’s plan to use administrative violations to silence its critics did not become apparent until last month, when the facts behind the suspension of STT were made public on 19 September 2011. To fully understand these events, it is necessary to appreciate the order in which they became public (for a more detailed chronology, please see the STT Timeline at [Annex 10](#)):

On 2 August 2011, the MoI suspended for five months the activities of a local NGO, STT. In its suspension letter, the MoI gave as the basis for the suspension STT’s alleged failure to modify its leadership structure and revise its statute ([Annex 11](#)). The MoI justified STT’s suspension on

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<sup>6</sup> “District Police Halt March for World Peace Day”, *The Cambodia Daily*, 22 September 2011.

this basis, even though no current law or regulation imposes such requirements or authorizes the suspension of an NGO in such circumstances.<sup>7</sup>

A more substantive justification for STT's suspension became clear on 13 August 2011, when the MoI publicly accused STT of incitement, claiming that it was opposing RGC development policy – namely the rehabilitation of a railway linking Cambodia and Thailand (detailed in a letter to Baroness Ashton on 23 August 2011, at [Annex 12](#)), a project funded by ADB and AusAID. In so doing, the MoI seemed to have made an administrative determination that STT had committed misconduct exposing it to criminal liability, which allowed the MoI to justify an administrative suspension based on the finding of alleged criminal conduct. This development illustrated a major weakness in the LANGO, namely that an administrative determination of a violation of law can – and will – be used as a basis for suspension without requiring an impartial judicial body, such as the courts, to make that determination.

The MoI's actions were of particular concern as STT is not a “typical” advocacy NGO. Rather, as indicated in a summary of STT's background drawn from its website ([Annex 13](#)), STT works with the RGC to transform information that STT gathers into verifiable data, surveys and mapping that can be used as a reference point and basis for informed dialogue by communities, NGOs, donors, researchers and government bodies – precisely the type of conduct that will promote sound policy development by governments. In the context under discussion, STT was acting as a partner for ADB, in a role that specifically involved acting as a watchdog against abuses in the treatment of project evictees as regards their resettlement conditions.<sup>8</sup>

Upon learning of STT's suspension, ADB publicly stated:

*“Since the inception of the railway project, STT and [the international NGO Bridges Across Borders Cambodia] have provided the railway project's resettlement team with important information about the resettlement process, information that has helped address the needs of families affected by the project [...] ADB believes that NGOs and civil society play an important role in the successful implementation of development projects, and hopes that NGOs will be allowed to continue making contributions.”* ([Annex 15](#))

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<sup>7</sup> By contrast, the LANGO – a draft law that has not yet been considered by the National Assembly – does provide for the suspension of NGOs in such a manner that could be applied to the case of STT, however arbitrarily.

<sup>8</sup> In connection with the railway project, STT released a report entitled “*Rehabilitation of Cambodia's Railways: Comparison of Field Data*”, which presents research related to the displacement of thousands of households living along Cambodia's railway as a result of the railways project; the report compares independently gathered household data from four communities located along the tracks in Phnom Penh to data gathered by the RGC's Inter-Ministerial Resettlement Committee ([Annex 14](#)).

Despite the ADB's statement, on 22 August 2011, the Ministry of Foreign Affairs and International Cooperation ("MoFAIC") and the Mol increased the pressure on civil society. The MoFAIC warned Bridges Across Borders Cambodia ("BABC") and NGO Forum (a membership organization for NGOs and INGOs) that they were violating their registration documents because they had "*incited*" opposition to the railway project, and urged them to "*readjust their work in order to work closely with the government*" ([Annex 16](#)). In addition, the Mol issued a similar warning to the Housing Rights Task Force, a coalition of NGOs and INGOs working on the promotion of the right to adequate housing.

The full story behind the RGC's suspension of STT and the threatening of other NGOs, however, did not become public until 19 September 2011, when two media sources issued stories that pulled back the curtain on the RGC's assault against these NGOs. According to the German Press Agency DPA and the Asia Times online, in a 17 June 2011 letter to the Prime Minister, MoEF Keat Chhon wrote asking the Prime Minister to "*take immediate action*" to stem the activities of STT and BABC, and to "*nullify the eligibility of these NGOs*". Keat Chhon reportedly went on to write: "*I would like to request the Council of Ministers to review and implement the draft law on Association and Non-Governmental Organizations in a speedy manner.*"<sup>9</sup> A little more than one month later, STT had been suspended and the draft LANGO had been delivered to the Council of Ministers.

As the letter from Keat Chhon allegedly indicates, four NGOs/coalitions were either suspended or threatened with sanctions for encouraging their clients (evictees and ADB) to question the apparent under-compensation of evictees by the RGC's resettlement program. These events represent a watershed moment for Cambodia for the following reasons:

- The groups were directly supporting a major donor in acting as a watch-dog over the RGC's conduct;
- They were suspended or warned because they were doing their job properly, *i.e.*, they identified the RGC's manipulation of resettlement criteria, thereby protecting the interests of their clients; and
- The action taken by the RGC essentially blinded the ADB by removing their eyes on the ground – STT.

#### **b. The case of CCHR and NRP**

On 9 August 2011, a human rights training event was disrupted by armed police in Kampong Thom province. The event, conducted by CCHR and NRP, was organized to provide local villagers with training on their rights in relation to the destruction of Prey Lang forest – the

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<sup>9</sup> An article in the *The Siem Reap Times* dated 19 September 2011 reports the contents of Keat Chhon's letter ([Annex 17](#)), while additional articles in *The Cambodia Daily* and *The Phnom Penh Post* also confirm the existence of the letter.

largest remaining primary forest on the Indochinese peninsula – and the resulting loss of their homes and livelihoods.

According to *The Cambodia Daily*, the police chief of Kampong Thom province declared that he would seek the suspension of CCHR and NRPG if they continued to hold such events ([Annex 18](#)). *The Cambodia Daily* quoted the provincial police chief as claiming that CCHR's and NRPG's activities "included acts to incite citizens to oppose government [approved] land concessions." Contrary to this statement, the people of Prey Lang forest actively contacted CCHR and NRPG and invited them to provide training after experiencing difficulties arising from land rights issues and evictions in and around Prey Lang forest.

Police also said that CCHR and NRPG had no official permission to conduct the training; yet the two groups were under no legal obligation to apply for permission. The Demonstration Law expressly exempts organizers of activities for "education dissemination purposes" – a term interpreted in the Mol's guidance on the Demonstration Law to include trainings – from providing notification of such events ([Annex 8](#), Article 3(3)). Furthermore, CCHR did in fact notify authorities in writing (as a courtesy) despite there being no legal requirement to do so – the 2004 Mol Circular ("Circular"), discussed at section 8 below, does not constitute a requisite legal basis.

Notwithstanding the threats of suspension, both CCHR and NRPG proceeded with a second training in the same district on 7 September 2011. Although many potential participants were prevented from traveling to the meeting by local authorities, the training went ahead. Once again, police arrived with AK-47s and broke up the training. In addition, police threatened to arrest the organizers of the event, and the district governor ordered police to photograph all participants, organizers and observers; he also demanded that organizers provide identification cards for all participants. Later that same day, the deputy governor of Kampong Thom province declared at a meeting that NGOs without offices in Kampong Thom could no longer conduct activities in that province without permission from the authorities. He also said that no members of communities outside Kampong Thom would be able to travel to that province to participate in events held and conducted by NGOs, even if they live in provinces that are also affected by the destruction of Prey Lang forest.

### **c. Prey Lang network**

Further evidence of the increasingly difficult environment for human rights activism was provided in August 2011 when members of the Prey Lang network – a network of communities whose lands and livelihoods have become victim to land and resource mismanagement – gathered in Phnom Penh to pray and disseminate information about Prey Lang forest. On 18 August, this network held their "Pray Long for Prey Lang" event, as part of which communities gathered in 146 areas throughout Cambodia to pray for better management of Cambodia's land

and natural resources, particularly the Prey Lang forest. That morning, around 200 individuals gathered at Preah Ang Dang Keu shrine in Phnom Penh. After the praying ended, community members – many dressed in leaf hats and vibrant colors in the style of the Navi people from the Hollywood blockbuster film *Avatar* – disbursed throughout Phnom Penh to distribute leaflets about the destruction of Prey Lang forest. This peaceful event was brought to a premature end when as many as 106 community members were arrested and detained.

While all the detainees were eventually released, this episode provides further evidence of the tendency of authorities to stifle civil society's and communities' efforts to highlight issues that have a negative impact upon their lives – at least when the issues highlighted call into question the RGC's development policy and practice.

**d. The impact on civil society and donors**

These acts by the RGC reveal not only the weak state of governance in Cambodia, but that a dual system of law and administrative approval exists as regards civil society activities: under that system, any member of civil society wanting to conduct an activity must secure administrative clearance from not only village, commune, district and provincial authorities but also from various RGC ministries, in direct contravention of the law. There can be little doubt that activities viewed as potentially critical of the RGC – or indeed of any individual or institute in the vast network of ministries and provincial, district, commune and local authorities empowered by this dual regime – will be stifled through this process.

The RGC's recent actions further reveal the significant difficulty that donor programs will face in proceeding in an equitable, efficient and transparent manner. The RGC's willingness to silence its critics and hobble a donor-established accountability mechanism has been proven by the cases of STT and others. Given the roles that NGOs serve, both in generating social accountability and supporting donor aid delivery, these acts demonstrate that the LANGO, if passed, will be applied to justify the RGC's efforts to constrain and hinder such donor initiatives and programs. The RGC's actions also demonstrate that the billions of dollars that donors have spent to bring civil society to its current vitality over the 20 years since the Paris Peace Accords in 1991 will have been wasted unless something is done to reverse the erosion of democratic space.

**6. The LANGO: a failure to protect the rights to association, assembly and expression as provided for under domestic and international law**

The Constitution of the Kingdom of Cambodia ("Constitution") ([Annex 19](#)) expressly grants Cambodians the fundamental rights to freedom of association, assembly and expression. Article 41 confers upon Cambodian citizens the right to freedom of assembly and expression,



while Article 42 confers the right to freedom of association. Furthermore, Article 35 grants Cambodians the right to *“participate actively in the political, economic, social and cultural life of the nation.”*

These rights are further provided for under the international covenants to which Cambodia is a party and which, along with the Universal Declaration of Human Rights (“UDHR”), are incorporated into Cambodian law by virtue of Article 31 of the Constitution.<sup>10</sup>

Article 19 of both the UDHR and the International Covenant for Civil and Political Rights (“ICCPR”) – ratified by Cambodia on 26 August 1992 – provide for a universal right to freedom of expression. Although it is not an absolute right, any restrictions must fall within the strict parameters of Article 20 of the ICCPR. Furthermore, Article 22 of the ICCPR guarantees the right to freedom of association. It further provides:

*“No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”* ([Annex 21](#))

The ICCPR Human Rights Committee has further clarified:

*“Where such restrictions are made, states must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.”*<sup>11</sup> ([Annex 22](#))

A similar conclusion is reached under French law, which serves as the basis for the Constitution and other Cambodian laws. The *Conseil Constitutionnel* has explicitly held that an association cannot be required to register, and that its freedom of association may not be constrained except in certain restrictive circumstances ([Annex 23](#)).

Article 2 of the third draft of the LANGO ([Annex 24](#)) acknowledges these rights, listing the right to establish associations or domestic NGOs as the primary purpose of the LANGO. The RGC has even defended the LANGO publicly by referring to the above fundamental freedoms as an objective for passing the LANGO. However, the LANGO improperly constrains this fundamental right, requiring that citizens who wish to associate join into formal associations and that 11

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<sup>10</sup> This fact was confirmed by a decision of the Constitutional Council, dated 10 July 2007 ([Annex 20](#)).

<sup>11</sup> ICCPR Human Rights Committee, General Comment No. 31[80], para. 6, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004.

citizens join together before an association can be formed. That number may be reduced in the next draft, but this point about limiting fundamental freedoms still stands. It is worth recalling that the Demonstration Law includes in its text the stated goal of upholding the right of all Khmer citizens to freedom of expression, yet it is routinely applied in order to usurp attempts to exercise that right.

### **7. The LANGO: other key criticisms of the third draft**

The third draft of the LANGO, released on 29 July 2011 ([Annex 24](#)), arguably reflects a marginal improvement on the second draft, in that it provides for a court appeal for domestic – but not foreign – associations and NGOs in circumstances where an application for registration is denied (Article 17). However, as the third draft does not require the MoI to provide the basis for its denial of registration, the ability of an organization to contest its denial would be marginal in any jurisdiction. Furthermore, in Cambodia, where the court system is widely recognized as corrupt,<sup>12</sup> a domestic entity’s supposed right and ability to contest an unfavorable decision by the MoI is even further impeded. The third draft’s provisions for foreign NGOs denied registration are also ineffective, but in a completely different way: unlike domestic associations and NGOs, foreign NGOs *are* entitled to an explanation as to why their application for a Memorandum of Understanding is denied – they just are not given any right to appeal that determination (Article 33).

The third draft is also replete with ambiguities and procedural laxities that will allow the RGC to employ a technical failure by an association or NGO either to refuse to register an organization or to justify its suspension or dissolution. As discussed above, the third draft provides no guidance as to the basis on which an association or NGO may be denied registration or a memorandum of understanding; instead, the decision is left to the discretion of the reviewing official (Article 17). The same article states that there is no recourse if the ministries simply refuse to act on a registration application, which leaves the process wide open to politically-based determinations and provides fertile ground for the solicitation of facilitation payments by ministry officials.

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<sup>12</sup> In Transparency International's most recent Corruption Perception Index, Cambodia was 154th of 178 countries ranked, with number 178 being the country perceived as the most corrupt in the world. Cambodia’s raw score was 2.1 out of a possible 10.0, with 10.0 representing a “highly clean” country and 0.0 representing a “highly corrupt” country. Please see [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results). It should also be noted that Transparency International’s most recent Global Corruption Barometer found that 70% of Cambodians reported that corruption had either increased or remained unchanged in the past three years. Please see [http://www.transparency.org/policy\\_research/surveys\\_indices/gcb/2010/results](http://www.transparency.org/policy_research/surveys_indices/gcb/2010/results). Finally, it is worth noting (and perhaps ironic) that PACT’s 2010 survey of Cambodian households ranked the courts as the most corrupt institution in Cambodia, whereas NGOs – which the RGC claims are in need of regulation – were ranked among the cleanest ([Annex 25](#)).

Similarly, the third draft provides for the involuntary suspension or dissolution of an association or NGO, but provides neither the grounds on which such penalties may be imposed nor any guidance as to the circumstances under which the penalties should be ordered (Articles 49-50, 53-54). The third draft also fails to provide any clear right to appeal a decision of suspension or dissolution. The power of suspension and dissolution are the core of the LANGO and reflect the existential threat that faces civil society in Cambodia.

In summary, any variation of the LANGO that requires a form of registration as a condition for operation, and provides the state with a mechanism for denying that status or withdrawing it, whether by suspension or dissolution, would institutionalize the means already used to silence STT – an organization whose only real offense was assisting ADB in monitoring RGC compliance with an established compensation policy.

### **8. Use of the LANGO to silence NGOs critical of the RGC**

A key issue discussed at the donor-INGO meeting on 1 April 2011 was the INGOs' concern that the LANGO would be used to suppress NGOs viewed as critical of the RGC. At the time, the primary arguments to support this concern were the use of similar laws in other countries to suppress civil society, and the numerous statements by senior officials indicating the RGC's similar intent. These statements (detailed in a table at [Annex 26](#), which in turn contains hyperlinks to the relevant news articles) include the following:

*"If NGOs want to be independent, they should go to a country where they can stay alone."*

**Ministry of Interior spokesman Khieu Sopheak, 6 January 2011**

*"Today, so many NGOs are speaking too freely and do things without a framework. When we have a law, we will direct them."*

**National Assembly President Heng Samrin, 16 June 2006**

However, perhaps the clearest statements of the RGC's intent to target advocacy NGOs have come from the Prime Minister and the Secretary of State responsible for drafting the LANGO:

*"Cambodia has been heaven for NGOs for too long ... The NGOs are out of control ... they insult the government just to ensure their financial survival."*

**Prime Minister Hun Sen, 26 September 2008**

*"We respect the local and international NGOs whose activities serve humanity and help the government of Cambodia ... They will not be threatened by this draft"*

*law ... But we believe that some NGOs whose activities seem to serve the opposition party will be afraid of it.*

**Prime Minister Hun Sen, 5 November 2009**

*“[NGOs] need to be protected and preserved as you expressed. Subsequently the rule of law is the necessity for Cambodia to ensure the activities of the national and international NGOs to be protected from the unnecessary activities that may hamper their objectivity.”*

**H.E. Nuth Sa An, 24 February 2011 [public written response to statements by the United States (“US”) State Department representative]**

Nonetheless, as at 1 April 2011, it remained somewhat conjecture as to whether these statements accurately expressed the intent of the RGC. However, as the suspension of STT and the threats against other NGOs make clear, the intent of the RGC can no longer be in doubt: the LANGO’s administrative provisions can – and will – be used to silence organizations critical of the RGC.

The RGC’s perception that human rights NGOs are acting as agents of the opposition – and possibly worse – was reiterated last month by a member of the Press and Quick Reaction Unit of the Office of the Council of Ministers:

*“The sponsors and funding partners of legal and human-rights NGOs, however, have a hidden agenda. They seemingly aspire to become famous by bringing down an elected government that, for myriad reasons, they don't like.”*

**Pen Ngoeun, member of the Press and Quick Reaction Unit of the Office of the Council of Ministers, 19 September 2011**

The intent behind the LANGO is made further apparent by the Circular ([Annex 27](#)) – never publicized, never consulted upon – that appears to be the basis for the increasingly common interruptions and terminations of community and NGO meetings.

The Circular states:

*“Regarding associations or non-governmental organizations which already got permit to open their branch office in the provinces/towns and wish to conduct vocational training, conference/workshop or assembly, the association or NGO shall notify local authority 5 days in advance.”*

The wording of the Circular – more proof of the dual legal and administrative regime that prevails over the activities of NGOs and others in Cambodia – makes apparent the true intentions of the RGC: (1) to exert control over even registered organizations; (2) to infringe

upon Cambodians' fundamental rights to freedom of assembly, expression and association; and (3) to thereby stifle voices that might be critical of the RGC. Although the RGC has provided other justifications for the LANGO – such as terrorism ([Annex 26](#)) – the words, acts and official pronouncements of the RGC belie these assertions.

### **9. Increased corruption: a hindrance for Western businesses in Cambodia**

Cambodia is ranked 154<sup>th</sup> out of 178 countries in Transparency International's most recent Corruption Perception Index, putting Cambodia among the 15% most corrupt states. Some might think that things could not get any worse; unfortunately, that is not the case.

In Cambodia – where the courts, the political opposition, the National Assembly and the press are unable to fulfill their role as check-and-balance institutions or create government accountability – NGOs have taken on the role of watchdogs. The World Bank's investigation of the Boeung Kak lake resettlements and the EU's review of Cambodia's duty-free sugar imports were both generated by civil society action. The same is true for various other challenges, such as forced evictions, economic land concessions that fail to meet legal requirements, inadequate environmental impact assessments, and other situations where the RGC is reportedly acting outside the law. NGOs' actions therefore create some degree of transparency and accountability in Cambodia.

When the voices of these advocacy NGOs are silenced, corruption in Cambodia is likely to increase even more. This fact was recognized in the UN Convention Against Corruption ("UNCAC"), which emphasizes the importance of a vibrant civil society in combating corruption. Article 13 states:

*"Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption."* ([Annex 28](#))

While it may not be immediately apparent why the erosion of civil society and democratic space in Cambodia is relevant to business interests, Western businesses operating here will be significantly impacted if the activities of civil society are restricted. In particular, if advocacy NGOs are suspended or closed down, there will be no alternative viable watchdog to highlight the corrupt practices of domestic companies or institutions. Such a void, in turn, will lead to

increased corruption, which will have severe consequences for foreign companies operating here, both inside Cambodia and beyond its borders. Already it has been reported that FedEx is limiting its operations in Cambodia to low-value shipments, due to the facilitation payments that it would otherwise have to pay to conduct its business. Such fees are “*regularly imposed by Customs and CamControl<sup>13</sup> officials to cover the costs of clearance of high-value shipments,*” FedEx has claimed.<sup>14</sup>

As Cambodia tries to attract more investors and capital inflows – the national stock exchange opened on 11 July 2011 – Cambodian and some foreign legislation now imposes new rules on companies from certain Western countries, with experts saying that recent changes could radically alter the way in which foreign businesses view the risk of operating in Cambodia. For example, with regard to the United Kingdom (“UK”), companies, organizations and individuals will now find it increasingly hard to conduct business in countries such as Cambodia as a result of the Bribery Act 2010. This piece of legislation criminalizes bribes made to foreign public officials for the purposes of obtaining or retaining business or an advantage in the conduct of business (Article 6); moreover, under the Anti-Corruption Law, paying facilitation fees to government officials is punishable in Cambodia by between five and ten years in jail, while foreign companies are made liable under the foreign bribery laws in their own countries.

Analysts are divided as to whether US companies can and will face equivalent penalties under their domestic law, the Foreign Corrupt Practices Act (“FCPA”): like under English law, US companies are prohibited from making “facilitation payments” in other jurisdictions; yet such payments, if they are “*routine governmental actions*” (Article 3(A)), *i.e.*, made during the normal conduct of business (such as payments for licenses, visas, delivery, utilities, “*and actions of a similar nature*”), are *not* prohibited. While facilitation payments are illegal under Cambodian law (unlike, say, license payments), they are certainly “*routine governmental actions*” – and could easily be viewed as payments falling within the exemption – therefore it is not clear whether such payments would trigger the FCPA prohibition. However, there is certainly the risk that they would do so, which could at the very least deter some US companies from remaining or setting up in Cambodia.

Foreign companies thinking of setting up or investing in Cambodia with a view of taking advantage of its high-risk high-returns frontier market may think twice if the economic landscape is perceived to present unpredictable risks, due to endemic corruption and a lack of rule of law. Furthermore, since corruption will only increase if advocacy NGOs are suspended or closed down, those international companies which do decide to remain in Cambodia will face

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<sup>13</sup> CamControl is the Cambodia Import-Export Inspection and Fraud Repression Directorate General, which regulates imports and exports in Cambodia and operates under the Ministry of Commerce.

<sup>14</sup> “Graft Risk Lead FedEx to Limit Local Business”, *The Cambodia Daily*, 12 June 2011.

a greater likelihood of being asked to pay facilitation payments as a result of the further entrenchment of corrupt practices, with the result that their risk of liability under the Bribery Act 2010, the FCPA or their equivalents in other jurisdictions would also increase.

**10. Increased corruption: opportunity for non-Western countries and corresponding fall-out for the Cambodian people**

Legislation similar to the Bribery Act 2010 and the FCPA is either already in force or pending in other Western countries.<sup>15</sup> These laws are likely to force other Western companies to follow FedEx's lead, and either curtail or cease their operations in Cambodia. This flight of Western business influences will reflect and reinforce a general decrease in the influence of Western nations in Cambodia, with all the economic and political implications that such a loss of influence would entail.

At the moment, Cambodia enjoys a balance between Eastern and Western power and influence. The flipside of a decrease in Western corporate and political influence will be a corresponding increase in the influence of countries with less regard for human rights in Cambodia. The balance between East and West would then be lost, as would the stamp of legitimacy that the RGC's engagement with the West seems to bring. This loss of balance and legitimacy would not only be greatly detrimental to the RGC's own position – it will lose the ability to play one power off against the other and maintain its independence – but also to the Cambodian people.

Chinese and Vietnamese companies are behind much of the development activity that is causing many of the land evictions across Cambodia, because of competition for land use in an environment where the rule of law may be said to be lacking. In the absence of comprehensive land titling, families and communities are being devastated as they lose everything to companies that are aggressively pursuing soaring real estate prices. Already more than 2,600 families – the final figure is likely to increase – have been evicted from the Boeung Kak lake area on the back of a joint venture development project initiated by Shukaku, Inc. (owned by ruling party Senator Lao Meng Khin) and the Inner Mongolia Erdos Hung Jun Investment Company (a Chinese company). Cambodia is likely to see additional Chinese and Vietnamese political influence and a commensurate increase in business dealings without the stabilizing effect of Western businesses and international civil society.

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<sup>15</sup> Australia has also enacted provisions prohibiting the bribing of foreign officials, and 38 countries are party to the Anti-Bribery Convention of the Organization for Economic Co-operation and Development.

Finally, there is the economic cost to the Cambodian people of the increase in corruption that will result from the elimination of watchdog groups enabled by the LANGO. According to Trust Law (Thomson Reuters), 10% of Cambodia's annual gross domestic product ("GDP") is lost due to corruption ([Annex 29](#)). Furthermore, a 2006 study of corruption in Cambodia's private sector estimated that approximately US\$400m is lost annually to corruption ([Annex 30](#)). Even if corruption were to increase by only 10% as a result of the loss of watchdog advocacy groups, that alone would represent a loss of approximately US\$40m (although even a 1% GDP loss would represent an even greater figure). Such an increase in corruption could easily push Cambodia almost to the bottom of the corruption rankings, down with the likes of Burma and Afghanistan – a damning fate for a country that has ambitions of being a center of manufacturing, agro-industry, international finance and tourism.

### **11. Impact on aid and development effectiveness**

The erosion of democratic space in Cambodia and the silencing of civil society – as legitimized by the LANGO, if passed – will reduce the delivery of donor aid to Cambodia in multiple ways, and reverse the progress of the civic participation programs on which donors have spent untold funds over the past 20 years.

First, the LANGO proposes to institute a tax as part of the registration process ([Annex 24](#), Article 13). Although the extent of this tax is presently unknown, it will place a burden on organizations – especially smaller and nascent organizations – and reduce the funds available as aid.<sup>16</sup> In addition, in view of the LANGO's clear intent, it is not unreasonable to anticipate that such tax may be applied in an opaque and arbitrary manner.

Second, there will be numerous administrative costs associated with the registration process, including informal payments. Those costs have been roughly estimated at between US\$1,900 and US\$2,900 per registration ([Annex 32](#)). If each of the approximately 3,000 registered organizations in Cambodia end up having to re-register, the donor funds available to aid Cambodia's poor could easily be reduced by US\$5 million or more. Although, recently, there have been rumors that the fourth draft of the LANGO will eliminate the requirement that currently registered organizations register again under its provisions, given history and context, it may be fair to say that such organizations will at some point be required to resubmit their paperwork under the new regime.

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<sup>16</sup> By contrast, Article 6 of the recent Sub-decree on Migrant Workers specifically provides that the recruitment agencies which operate in Cambodia are to receive permission to operate for free ([Annex 31](#)).



Third, there are the incalculable costs that will be incurred as a result of the disruption of donor aid delivery that will result from the LANGO's impact on – and possible closure of – organizations that currently assist in the distribution of aid, with the result that the amount of aid actually reaching project beneficiaries can be expected to decrease.

Finally, the devastation of civil society caused by the erosion of democratic space will undermine the value of the billions of dollars in donor aid expended to promote civil society and civic participation in Cambodia.

It is vital that donors appreciate the gravity of the current situation and assess where their funds are being directed. If NGOs continue to be suspended or shut down: (1) valuable public services will be curtailed; (2) development at the community level will be stunted; and (3) poverty and corruption will rise. Furthermore, such consequences will occur at the expense of those who need the assistance most – the Cambodian people.

### **12. Donors can prevent the destruction of Cambodia's civil society and democratic space**

The RGC is justifiably concerned that foreign states do not interfere with its internal matters, as they fall under its sovereign jurisdiction. In respecting that, donor states are encouraged to share concerns with the RGC in matters that fall within two particular areas (as outlined below): matters of international treaty compliance and matters that bear on their own donor assistance.

Among the former (treaty compliance):

- 1) Press the RGC to comply, in a transparent and accountable manner, with all international treaties bearing on human, civil and political rights to which it is a party, including the ICCPR, the International Covenant on Economic, Social and Cultural Rights, and the UNCAC.
- 2) In this context, encourage the RGC to abandon any draft of the LANGO that includes mandatory registration to operate as an association or NGO, or provides for administrative revocation by RGC officials, as it will support arbitrary suspension in violation of human rights standards (*e.g.*, STT).
  - a. If the RGC persists in its goal of adopting some type of LANGO, it should be encouraged to adopt a law that protects the right to freedom of association (*e.g.*, prohibits local authorities from restricting or interfering with meetings, prohibits commercial venues from

discriminating against NGOs or associations which seek to rent facilities, etc.).

b. In keeping with the above, donors should specifically encourage the RGC to withdraw the Circular that allows local authorities to interfere with NGOs' or associations' meetings, in violation of the right to freedom of association.

c. These issues can also be addressed to the RGC by donors who use NGOs and associations as conduits for the delivery of assistance, or whose assistance includes the objective of civil society development, as integral to the conditions of donor assistance.

3) Encourage the RGC to observe the UNCAC. The UNCAC requires the RGC to provide civil society with opportunities to participate in government decision-making and to provide access to information (Article 13). Pending in the Cambodian parliament is a law that would provide for access to government information ("Freedom of Information Law"), a bill proposed in 2010. Donors could call for the adoption of this law, in a credible form, as a step towards complying with the UNCAC. In addition, the draft Law on Public Procurement is pending at the Council of Ministers. That law, unlike similar laws in the Republic of the Philippines and some other countries, lacks any provision for civil society participation in the public procurement process. Donors could encourage the addition of such provisions as both a step towards improving compliance with the UNCAC's Article 13, and as a means of further safeguarding donor funds that are expended through RGC procurement processes.

4) Maintain pressure on the RGC to improve the integrity and efficiency of the judiciary, as an essential mechanism to protect human rights and to provide for the rule of law – a fundamental necessity for sustainable development.

Among the latter (donor assistance issues):

1) Press ADB to suspend support to the railway rehabilitation project unless and until STT is reinstated to operational status. The suspension of STT creates a precedent potentially damaging to all donor programs: an ADB partner was removed by the RGC, apparently because it was performing effectively. If the railway project continues without STT, it means that the RGC is permitted to remove donor mechanisms designed to ensure the RGC's complete performance in a collaborative project.

2) Support programs increasing the RGC's transparency and accountability as a means to: further safeguard donor assistance to Cambodia; improve the RGC's capacity for managing aid; and provide donors with a more complete basis for determining aid requirements. Such mechanisms could include:

- a. The Freedom of Information Law;
- b. A policy establishing budget transparency specifically; and
- c. A policy establishing the reporting and use of extractive industry revenue.

Recent experiences show that such actions by donors can have an effect: for years, the World Bank and residents of Boeung Kak lake attempted unsuccessfully to cajole the RGC into a settlement of the residents' claims. Finally, on 8 August 2011, the World Bank announced that it would freeze further loans in Cambodia unless and until a meaningful resolution was reached. Three days later, the Prime Minister signed a sub-decree giving approximately 10% of the lake development to the residents contesting their eviction ([Annex 33](#)). Such events show that donors can encourage the reconsideration of policy by freezing funds and withholding the "international legitimacy" that flows with those funds. It is time for the donors to work to preserve civil society – and their own interests – before it is too late.

### **13. Conclusion – Donors should look at the spirit, not the letter, of the law**

Though addressing some deficiencies identified in previous drafts, the third draft of the LANGO does not present any significant improvements over prior drafts, and fails to address the multiple serious flaws that make it susceptible to arbitrary enforcement without effective redress, while creating unreasonable burdens on the fundamental rights to freedom of association, assembly and expression.

Even if the LANGO is improved, however, those amendments are unlikely to correct the primary harm that it represents. The statements made by the RGC regarding how the LANGO will be applied, and "who should be afraid of it" make clear that it will be used to stifle advocacy NGOs that hold the RGC accountable. STT's suspension and the recently publicized letter by the Minister of Finance demonstrate that minor technical defects – real or imagined – can and will be used selectively to silence those critical of the RGC. The reality today is that *any* law that regulates civil society in Cambodia is a bad law because of the current context.

Most importantly, however, the LANGO is *not* the central issue here. Regardless of whether or not the RGC revises the LANGO to take into account donors' and civil society's original

recommendations and suggested amendments, recent events have made clear that the critical concern is the rapid and continuing erosion of democratic space in Cambodia and the RGC's attempt to exert total control over civil society to the detriment of a wide range of stakeholders. If this is allowed to happen, a multitude of negative consequences will result: reduced delivery of aid to the neediest Cambodians, the deterioration of human rights, an increase in corruption, a loss of opportunities for Western businesses, and a loss of influence for Western nations.

The recent experience of the World Bank makes clear that if donors take strong action, there is a good chance that they will favorably influence the RGC. The donors need to use their funds and influence to ensure the survival of civil society and democratic space in Cambodia.

Cambodian Center for Human Rights  
October 2011  
Phnom Penh  
Kingdom of Cambodia