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November 19, 2011

Haruhiko Kuroda  
President  
Asian Development Bank  
6 ADB Avenue  
Mandaluyong City  
1550 Metro Manila  
Philippines

*Via facsimile: +63-2-636-2683*

Re: Draft law threatening civil society in Cambodia

Dear President Kuroda:

We write to bring your immediate attention to Cambodia's draft Law on Associations and NGOs (LANGO). The draft law poses a serious threat to civil society's freedom of association and freedom of expression as it contains broad and vague provisions that could be used to arbitrarily deny registration or close NGOs or associations. The ADB should convince the Cambodian authorities to immediately withdraw the draft law.

The implications of the third version of the draft law could not be more serious because it requires all associations and organizations to register before they are permitted to conduct any activities in Cambodia.

In a recent statement from the Office of the High Commissioner for Human Rights criticizing the draft law, Maina Kiai, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, noted that mandatory registration schemes and prohibiting activities by unregistered groups clearly infringe on the right to freedom of association. Mr. Kiai also highlighted that "legal status is not necessary for the enjoyment of the right to freedom of association."

The UN Special Rapporteur on the right to freedom of opinion and expression, Frank La Rue, and the UN Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, who co-signed the statement, joined Mr. Kiai in calling for changes to bring the draft law in line with international standards.

Many governments, including the United States, Great Britain, Sweden, Australia, and Switzerland have publicly and privately expressed concerns about the draft law and its likely negative impacts on civil society and freedom of association.

The LANGO's requirement that all associations and organizations seek prior registration approval violates the rights to freedom of association and expression enshrined in Cambodia's Constitution. It also poses a direct threat to Articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), which Cambodia has ratified. Indeed, the UN Human Rights Committee, charged with monitoring compliance with the ICCPR, has stated unequivocally that prior authorization schemes for NGO conduct are inconsistent with the treaty.<sup>1</sup> Requiring prior approval through mandatory registration also creates a situation ripe for abuse and arbitrary decision-making.

On October 27, Mey Narath, a Ministry of Interior official, stated at a seminar in Phnom Penh that the government will respond to concerns about mandatory registration in a still yet to be released fourth draft of the law. Obviously until that draft of the law is provided to civil society groups, it will not be possible to assess whether any substantive changes have been made to address the very serious concerns outlined above. Importantly, even if registration is changed to not be "mandatory," there should not be other punitive provisions for un-registered NGOs, community organizations, and civil society networks, such as an inability to open bank accounts, receive funds from domestic or foreign sources, or enter into contractual arrangements.

The Royal Government of Cambodia (RGC) recently took actions that clearly demonstrate its intent in controlling NGOs. On August 2, the Ministry of Interior sent a letter to local NGO Sahmakum Teang Tnaut (STT), ordering its suspension for five months. Subsequently, the RGC issued formal warnings to two other rights groups: Bridges Across Borders Cambodia, and NGO Forum on Cambodia. A third group, Housing Rights Task Force, was also threatened by the government. The extralegal suspension and multiple warnings have since been directly connected to the four organizations' work studying the impact of government-sponsored development projects.

The ADB has worked with civil society in over three quarters of its projects. As ADB has noted, this collaboration has increased the "effectiveness, quality, and sustainability of its operations." Civil society actors have assumed an increasingly vital role in the country's development through monitoring, documentation, community relations, provision of social services, poverty alleviation, humanitarian outreach, research, and advocacy.

If enacted, the LANGO threatens to prevent Cambodia's civil society groups from fulfilling this role. Efforts that appear critical to the government, including in relation to transparency and accountability, may be curtailed, limiting further any independent monitoring of the government, in a country with little independent media and a weak opposition. Decreased independent scrutiny

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<sup>1</sup> See Concluding Observations: Egypt, CCPR/CO/76/EGY, 28/11/2002, paragraph 21.

may have a direct impact on the ability of development partners such as ADB to implement their programs effectively.

While we recognize that governments have a legitimate regulatory interest in the activities of non-profit entities, there is a real risk the provisions of the law be used to undermine freedom of association, expression, or assembly. The RGC already has a detailed legal framework for the registration and operation of non-profit entities in the new Civil Code, which will take effect in November 2011.

As such, we believe that Cambodia's development partners should encourage the implementation of the Civil Code and other relevant Cambodian laws related to the regulation of non-profit entities, rather than the fundamentally flawed LANGO. In light of this, we urge you to:

- Press the RGC to end efforts to promulgate this law.
- Make it clear to the RGC that if the law is adopted in its current form you will be compelled to reassess your project funding and assistance with a particular emphasis on projects directly involving RGC agencies.

We thank you for your attention to this important matter.

Sincerely yours,

Brad Adams, Asia Director  
Human Rights Watch

Souhayr Belhassen, President  
International Federation for Human Rights (FIDH)

Brittis Edman, Program Director, Southeast Asia  
Civil Rights Defenders

David J. Kramer, President  
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Mary Lawlor, Director  
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