



Stiftung Asienhaus

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Cambodia: Shrinking spaces versus empowerment of communities

Analysis of framework conditions & options
for strengthening civil society, democracy &
human rights in Cambodia

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One has a moral responsibility to disobey unjust laws.
Martin Luther King Jr.

*In Germany they first came for the Communists,
and I didn't speak up because I wasn't a Communist.
Then they came for the Jews,
and I didn't speak up because I wasn't a Jew.
Then they came for the trade unionists,
and I didn't speak up because I wasn't a trade unionist.
Then they came for the Catholics,
and I didn't speak up because I was a Protestant.
Then they came for me
and by that time no one was left to speak up.*

Martin Niemöller

*You assist an evil system most effectively by obeying
its orders and decrees.
An evil system never deserves such allegiance.
Allegiance to it means partaking of the evil.
A good person will resist an evil system
with his or her whole soul.*

M. K. Gandhi

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Vorwort

Die Geschichte Kambodschas seit der Mitte des 20. Jahrhunderts ist ein Beispiel für die Hoffnungen der Dekolonisierung und für die Schwierigkeiten, die ihr bereitet wurden: Der Versuch einer eigenständigen nationalen Entwicklung wurde rasch durch die Verstrickungen in den antikommunistischen Vietnam-Krieg beendet. Es folgte die brutale Herrschaft der Roten Khmer, deren Vertreibung Hoffnungen auf einen wirtschaftlichen, politischen, und sozialen Wiederaufbau der Landes weckten. Dabei prägen sehr unterschiedliche und widersprüchliche Interessen die Richtung und die Form dieser Entwicklung. Teils zu Recht, teils zu Unrecht, gilt Kambodscha als ein insgesamt durchaus positives Beispiel für eine Rückkehr zu staatlicher und gesellschaftlicher Normalität. Ausdruck davon sind Wirtschaftswachstum und ausländische Investitionen, ein Aufschwung des Tourismus, Pressefreiheit und formal demokratische Strukturen.

Aktuell stehen die Zeichen allerdings auf einer zunehmend autoritären, repressiven Regierungsweise, in der sich die Ungerechtigkeiten, Gewaltförmigkeit und Korruption dieser Entwicklung niederschlagen. Einer der Bereiche, in dem sich diese Tendenzen zeigen, ist die Situation zivilgesellschaftlicher Organisationen und sozialer Bewegungen. Einerseits ist die Zahl der Menschen und Organisationen gestiegen, die ihre Stimme erheben und von den Regierenden Rechenschaft verlangen. Gestärkt wird dieser Trend durch eine wachsende politische und gewerkschaftliche Oppositionsbewegung, die das autoritäre Regime herausfordert und mit Forderungen, Demonstrationen und Wahlerfolgen auf kommunaler Ebene unter Druck setzt. Gleichzeitig beschränken die Einführung neuer, repressiver Gesetze und eine obrigkeitshörige Justiz die Versammlungs- und Meinungsfreiheit der Opposition stark. In dieser Situation, in der die demokratischen Spielräume eingeschränkt werden, gleichzeitig aber eine aktive Bürgerbewegung wächst, lotet die Studie sowohl die

Bedrohungen als auch die Chancen für Akteure aus, die Demokratie, Menschenrechte und sozialen Wandel voran bringen wollen.

Dabei ist die Studie eher pessimistisch: Anstatt die Bevölkerungsgruppen, mit denen sie arbeiten, in die Lage zu versetzen, die Ursachen von Rechtsverstößen, Korruption und Ausbeutung anzugehen, eröffnen viele NGOs und Entwicklungspartner staatlichen Institutionen, die synonym sind mit der regierenden Cambodia People's Party (CPP), Möglichkeiten, sich an NGO-Projekten zu bereichern. Das trägt dazu bei, die Macht der CPP, die wesentlich auf Patronage und Korruption beruht, weiter zu stärken. Ein zentrales Instrument dafür ist das Gesetz über Vereinigungen und Nichtregierungsorganisationen (LANGO), das die Möglichkeiten der CPP, von NGO-Projekten zu profitieren, noch weiter ausweitet.

Diese Studie, die von einer internationalen Nichtregierungsorganisation in Auftrag gegeben wurde, soll einen Beitrag zur Entwicklung von Strategien leisten, um die Zivilgesellschaft in Kambodscha zu stärken. Auf dieser Grundlage formuliert sie eine Reihe von Empfehlungen. Seit der Fertigstellung 2016 hat sich die Situation im Vorfeld der Wahlen im kommenden Jahr für einheimische und internationale Nichtregierungsorganisationen, Menschenrechtsorganisationen und selbstbewusste Gewerkschaften, sich mutig gegen die neuen Gesetze wehren, allerdings dramatisch weiter verschlechtert. Insofern steht die innenpolitische Entwicklung an einem Scheideweg. Deshalb ist eine klare Positionierung zivilgesellschaftlicher Akteure, internationaler Geberorganisationen und demokratischer Staaten gegenüber der Regierung in Phnom Penh erforderlich, um die Rolle der Zivilgesellschaft bei der Verteidigung von Demokratie und Menschenrechten zu respektieren.

Executive summary

This study, finalised in 2016, was commissioned by an international NGO as part of a process to develop strategies for strengthening civil society in Cambodia following the introduction of a number of new, oppressive laws that seriously limit freedom of association and expression.

This study was commissioned by an international NGO as part of a process to develop strategies for strengthening civil society in Cambodia following the introduction of a number of new, oppressive laws that seriously limit freedom of association and expression. In a situation where democratic space is decreasing but active citizenship is increasing, the study looks at threats as well as opportunities for actors working to support democracy, human rights and social change.

Cambodia has reached a historical moment in which an increasing number of citizens and community based groups (CBOs) are willing to speak out and demand accountability. How NGOs and INGOs respond to the new laws, and if they choose to succumb to fear, could determine if this momentum will be sustained or not. With outreach to tens of thousands of villages and CBOs, NGOs are both in a position to empower communities and to constrain them.

Cambodia has a decreasing number of outspoken human rights NGOs and it is unlikely that the government would develop a new legislative framework solely to silence this handful of NGOs – particularly as existing laws have already proved sufficient to use the judiciary against perceived opponents of the regime. Rather, the primary target group is the new proliferation of CBOs and membership-based organisations. Meanwhile, only NGOs and INGOs are in a position to provide CBOs/associations with the financial and practical resources needed to comply in broad numbers with new repressive legislation.

As described by a number of observers quoted in the study, many NGOs and development partners avoid empowering approaches that allow rights holders to address root causes of their problems. Organisations that do not carry out or encourage a proper analysis of the power structures facing the communities in

which they work risk enforcing the very structures that maintain corruption and exploit the poor, in line with Caroline Hughes' description of CPP's model of governance. Instead authorities – in Cambodia synonymous with the ruling Cambodia People's Party (CPP) – are frequently given a role in planning, implementing and benefitting from NGO projects in a way that is contrary to empowering communities.

CPP's hold on power is intrinsically linked to their ability to extract resources – especially from the poor – by drawing citizens into power hierarchies based on patronage and corruption. This is equally evident in underdeveloped rural areas where aid/NGO funding constitutes one of very few sources of revenue. The Law on Associations and Non-Governmental Organisations (LANGO) increases the pressure on NGOs to abide by corrupt practices and opens up many new opportunities for authorities to extract resources from NGOs. LANGO will also increase the pressure on NGOs to allow their projects to be directed by CPP development committees or by CPP-controlled government institutions – allowing CPP even more influence over who benefits from NGO projects. Compliance with LANGO would therefore mean that NGOs abide with a system that entrenches CPP's grip of power – especially if they are contributory in forcing associations/CBOs to register. This is far from the ideal of civil society acting as a guardian of democracy and human rights.

Key findings of the analysis of LANGO, based on desk research and interviews with 60 respondents are:

It remains unclear who will be required to register. The extensive registration and reporting requirements of LANGO will pose financially and practically impossible to comply with for associations/CBOs but also for many NGOs.

The number of bureaucratic barriers will make it very easy to prevent well-resourced NGOs from being able to comply fully, even if they have the ambition to do so. It will open up many new possibilities for civil servants to drain NGOs on money.

The government is already able to arbitrarily clampdown on NGOs and use the judicial system to intimidate NGOs. Cambodia is not characterised by rule of law and there is no need for the government to have LANGO to assert its powers. Instead the most likely reason for its enactment is to install fear with CSOs to make them self-censor and self-regulate. Many terms and definitions in LANGO, the Trade Union Law and the Telecommunications law – such as “neutrality”, “if necessary”, violations of “national culture” etc. – are intentionally kept vague to give authorities broad powers to control and intimidate CSOs

If LANGO is successfully rolled out, it will help CPP to extract resources from Civil Society Organisations (CSOs) by extorting considerable fees. It will align CSO projects even closer with CPPs objectives.

It is likely that many of the costs for registration and reporting of community based groups & associations founded and supported by NGOs will be passed on to NGOs. With the financial and administrative resources needed to register, it is difficult to see that CBOs could be registered in broad numbers without the active “support” from NGOs.

An overwhelming majority of respondents rejected the idea of accepting requirements to register community groups. While there were expectations on oppression to increase, most respondents expressed a commitment to face these risk and try to continue their activities. Both donors and CSO actors should urgently prepare for the situation to deteriorate further in the run up to commune and national elections.

Based on the strategies expressed by Cambodian NGO a set of recommendations were formulated:

Do not encourage self-censorship: *Self-censorship, fear and compliance exercised by NGOs risk spreading to the communities they work with and would help the government to stop the movement towards active citizenship.* If impossible to articulate problems and their underlying causes it is also impossible to have a dialogue about how to solve them.

Address the RBA deficit: The greatest threat to NGOs’ and people’s ability and willingness to organize and to advocate for democracy, human rights and social change is not posed by LANGO but by practices inside the NGO community itself. Increasingly few NGOs are willing to challenge power and act as a force for democracy. At the same time, the established practices of community organising tend to more resemble committee organising and programmes are not designed in a way that spurs the growth of a democratic civic culture. All-too-willing cooperation with authorities in planning and implementing aid programs has enabled CPP to use NGOs to cement their power. Assess who is planning, implementing and benefiting from NGO programs to make sure that they do not disempower citizens.

Support deliberative education & critical thinking: International NGO should consider, together with like-minded groups, supporting the initiative to establish long-term trainings of NGO workers and community activists based on the Earth Rights curriculum. If deliberative education is allowed to be the foundation of amelioration projects, they can indeed become a seedling ground for critical thinking and voluntary collective action, i.e. the backbones of democratic transformation. Combining rights activism with organising around amelioration projects might also provide long-term sustainability for activism.

Close the gap between NGOs and CBOs: There is a need to develop modalities for channelling funds and reporting procedures that do not exclude key groups from receiving support or taking an active role in program management. The donor community should consider how donor demands for formal education, administrative and language skills have narrowed down who staffs NGOs and their choice of target groups. In case there is a strong conflict of interest between personal motivation of NGO workers and the groups they are meant to serve, they will not be able to fulfil the official mission of the NGO. International NGO could address legitimacy deficits by partnering with membership-based groups to a greater extent.

Increasingly scarce human rights funding should go to human rights defenders: it is important that scarce resources support those who take on the role to defend “democracy, human rights and social change”. While a plurality of approaches for how to achieve democratic change may be healthy, it is important to see if there

is any substance and real commitment to democratic change among those “human rights defenders” who comply with government demands that infringe democracy.

Support well-informed risk taking: If everyone abstains from speaking out or taking actions that could trigger oppression, there will be no one fulfilling the safeguarding role of civil society. Only acting within a framework approved by the government inevitably helps an undemocratic government to cement its power. It is crucial *that NGOs do not assist the government in registering CBOs/associations* and collectively *resist attempts to drain CSO funds through corrupt procedures which entrench CPP’s patronage system*. NGOs should not rush to comply with LANGO and other unjust laws, but rather let the government “push first”. While there are limits to how much oppression the government can exert, fear and self-censorship are much more efficient tools for achieving broad obedience and control. It is also important that those who make the choice to challenge power, knowing the risks involved, are morally and financially supported and that efforts are made to share the risk through collective action.

Cultivate a new ethos, articulate a clear theory of change and think towards movement building: International NGO and their partners should reflect on the role of awareness-raising, organising and collective action in their strategies and articulate a clear theory of change. There is a need to assess to what extent individual NGOs are seeking to be part of a collective effort and how their strategies and work relates to the bigger picture of democratising society. NGOs should learn from membership-based groups how to build unity and strength based on a shared vision and a shared theory of change

Build strength through numbers, reducing individual risks by acting collectively: While membership-based groups such as trade unions have largely been outside the focus of NGOs, a common practice has been to create artificial groupings of people with the help of per diems and other benefits. INGOs/NGOs need to consider how they can support the growth of more organic groupings that share strong enough common denominators to be willing to act together even if they lose NGO support.

Prepare for how to circumvent internet censorship & communication surveillance: The importance of internet in raising awareness and enabling people to express

their views cannot be overestimated when explaining the current transformation of Cambodia. It should be a top priority to prepare practical measures to improve communication security – for example, by increasing security awareness and using simple tools for encryption – and to circumvent internet censorship. It is essential that Cambodia’s few remaining independent Khmer language media institutions be supported.

Circumvent control efforts by changing funding and reporting modalities: LANGO requirements on INGOs/NGOs to share all project documentation with authorities can be handled in a variety of ways: by drowning authorities in reports; through vague reporting; or by actively avoiding reporting on sensitive areas and by channelling funds through unsurveyed channels. If constrained by back-donor requirements, there should be concerted lobbying efforts by Cambodian CSOs and INGOs to influence back-donors to change reporting, registration and admin requirements to allow for cooperation with illiterate, underprivileged and outlawed groups of human rights defenders. It could also be helpful to pro-actively create a new reporting “best-practice” through cooperation between likeminded INGOs through collectively developing new, covert procedures.

Fight corruption & patronage, strengthen democratic accountability: LANGO increases pressure on CSOs to bribe authorities. This corruption in turn strengthens CPP’s grip of power. INGOs need to face the obvious inconsistency between zero tolerance to corruption and knowing that their partners fuel government corruption by spending outside the books.

A study of the estimated total costs for civil society for increased administration, registration costs and other bribes induced by LANGO could be used to raise awareness about the financial burden on NGOs resulting from LANGO. This could be a way to find a common ground to engage more groups in resisting LANGO.

Increased accountability is also strongly dependent on strengthening the internal democratic structures in CSOs. Encouraging democratic accountability through deliberative and democratic education, transparent and democratic decision-making and abandoning “one-man show” centred, hierarchical leadership ideals will effectively help address corruption. Concerted efforts to address gender equality would be key to democratising CSOs.

Introduction

This study was commissioned by an international NGO as part of a process to develop strategies for strengthening civil society in Cambodia following the introduction of a number of new, oppressive laws that seriously limit freedom of association and expression. In a situation where democratic space is decreasing but active citizenship is increasing, the study looks at threats as well as opportunities for actors working to support democracy, human rights and social change.

Four sets of questions, as formulated in the terms of reference for the study, will be addressed:

- *What impact has the new oppressive, legal framework, especially the LANGO, on NGO's and people's ability and willingness to organize and to advocate for democracy, human rights and social change? What are their fears?*
- *How have CSOs prepared for the situation after the law has been passed? What are their strategies to address problems connected to registration and increased control? What are the CSO strategies to continue pursuing their objectives?*
- *What kind of support/additional support do partners need to pursue their objectives considering the changed regulatory environment? What role can international NGO play in Cambodia and at international level to support partners' strategies?*
- *What processes has the international community initiated to react to the new laws?*

In order to answer the questions, semi-structured interviews were carried out with sixty respondents who have different insights into Cambodian civil society

(see a list of respondents and interview questions in the appendix). This included a selection of NGO who have an articulated human rights agenda as well as representatives of other human rights NGOs. It also included 35 community-based human rights defenders and also several representatives from international NGOs (INGOs). The interviews with community activists were carried out in seven group forums which were also used to share and discuss basic contents of the Law of Associations and NGOs (LANGO) which was passed by the National Assembly in July 2015. The report aims to describe general perceptions among Cambodian NGO partners and therefore it was not found necessary to identify respondents by name; instead, respondents are referred to according to the kind of organisation they represent. If, in name of inter-observer reliability, there is an interest in knowing the exact source of a quote, the author is happy to establish contact with the respondent.

The first chapter looks at the nature of the relationship between civil society organisations (CSOs) in Cambodia and discusses the ability and willingness of CSOs to defend democracy, human rights and social change *before* the introduction of the new oppressive laws. It also discusses the government's rationale for introducing the new legislation. The second chapter gives an overview over key components of LANGO and discusses preconditions for implementing the law. In chapter three a discussion follows about the practical implications of LANGO on CSOs, if complied with. Finally, respondents' strategies for addressing the increased oppression are presented and a set of recommendations are formulated.

1. The ability of Cambodian CSOs to promote democracy & human rights

In order to explore the overarching research question – what is *the impact of the new regulatory framework on NGOs and people’s ability and willingness to organize and to advocate for democracy, human rights and social change* – it is relevant to first ask two sub-questions: to what extent there was an ability and willingness from the side of civil society to take on such a role *before* the introduction of the new laws, and what is the impact expected by the government of the laws? In this chapter we will look at the nature of the relationship between CSOs and the state in Cambodia, followed by a discussion of the rationale behind the new legislation.

The relationship between civil society and the state in the literature

Academic literature discusses different, contradictory roles of civil society. The most common view of civil society sees it as a buffer between the state and the citizens. In this model civil society is able to hold the government to account and is a counter-force to authoritarian and undemocratic tendencies of the state. Independent of the nature and purpose of the various organisations inhabiting civil society, their mere existence is seen as beneficial for the development of a democratic culture and of active citizenship (See f.ex. Öjendal 2014, Ou 2013, Bread for the World 2013¹).

A very different perspective is offered by the Gramscian world view. Here the government obtains power by controlling two overlapping spheres. The first sphere is the ‘political society’, which rules over citizens through force and laws. The other sphere is a ‘civil society’ which rules by controlling how we think, what we find normal, legitimate and possible (Tanja Kleibl, 2015). While civil society in the first perspective is a counter-force to authoritarian tendencies of the state, in the latter perspective it can instead be a means for an undemocratic government to increase its control over society – by hampering critical thinking and by affecting the perceptions about how citizens should relate to those in power. Civil society is a means for the government to ingrain perceptions that keep citizens passive when facing oppression from the state (Ou 2013).

With these two models in mind, to what extent are Cambodian CSOs a force for democracy, and challenging the undemocratic tendencies of the government, in line with the first perspective? Or to what extent are CSOs instead a tool for the ruling party to entrench itself further, in line with the second perspective? If there are CSO qualities that make them more or less likely to take on either of the two roles it is relevant to ask what these qualities are when thinking about ways forward.

1 Bread for the World, 2013, *Civil Society – A Strong Pillar of Democracy*. The commitment of civil society to justice and political participation around the world https://www.brot-fuer-die-welt.de/fileadmin/mediapool/2_Downloads/Fachinformationen/Analyse/Analyse_38_civil_society.pdf Retrieved October 2015; Ou Sivhuoch, 2013, *Sub-National Civil Society in Cambodia: A Gramscian Perspective*. CDRI Working Paper Series No. 84; Öjendal, J, 2014, “In search of a civil society, re-negotiating

state society relationships in Cambodia”, in *Southeast Asia and the Civil Society Gaze: Scoping a Contested Concept in Cambodia and Vietnam*, Ed. Waibel, Gabi. Routledge, N.Y.

The nature of the state in Cambodia – all state functions are inhabited by and controlled by the ruling party

As noted by several authors, the lines between the state institutions and the ruling Cambodian People's Party (CPP) are blurred in Cambodia. There is no separation between government structures and CPP structures.² The CPP controls all the government institutions and the government institutions are used to protect CPP's grip of power and to extract resources for CPP loyalists. This was recently illustrated when a four-star General, who is also a member of the CPP central committee, declared that the army belongs to CPP as Hun Sen is "is the feeder, caretaker, commander and leader of the army".³

Not only the military but also the judiciary are entirely in the hands of the ruling party and are used against those threatening CPP interests.⁴ The foundations of the ruling party as well as the institutions of the state are structured according to a centralist socialist-in-

spired model (Lintner 2013; Trankell et al. 1996 p. 74), i. e. a model where the state/the ruling party has aspirations to control every aspect of civilian life and to pacify any potential sources of opposition. This is, however, not a model as fully or "sophistically" implemented as in Vietnam, upon which many of the state institutions were originally modelled during the Vietnamese occupation of Cambodia. CPP rules through a patron-client system, where "pyramids" of "strongmen", with PM Hun Sen in the top, makes up the power apparatus. Over the years, the ruling party has tried to gradually increase its grip of power and meanwhile prime minister Hun Sen has gradually increased his control over the ruling party (Gottesman 2003; Strangio 2014). Cambodia is now described as a de-facto one-party state (Lintner 2013).⁵

Caroline Hughes, one of the most well-published and well-renowned Cambodia scholars, describes how CPP's model of governance is based on the leaders obtaining loyalty by protecting rent-seeking activities of the members of the government apparatus. This includes extracting resources from aid and directly from the poor:

"Loyalty within the state apparatus is organised through networks of personal allegiance, friendships, kinship, and patron-client relations. These tie the state to the party and the civilian bureaucracy to the military. They are capable of very effective mobilisation at times – for example, during election periods they are mobilised to support the campaigning of the dominant party, the Cambodian People's Party. However, they are also dependent to a significant extent upon informal flows of resources, including funds skimmed from international aid donations, "gifts" and bribes extracted from the population and foreign investors, and rents gained from illegal expropriation of natural resources such as timber and land. The networks of loyalty that underpin the state apparatus consequently resemble informal networks for the extraction of resources from society – and frequently directly from the poor. Loyalty from state officials is elicited through the protection of rent-seeking

2 See for example Lintner B., *Power and Politics in Cambodia today*. Unpublished paper commissioned by Danchurch Aid, March 2013;

3 "Every soldier is a member of the People's Army and belongs to the CPP because Samdech Decho [Hun Sen] is the feeder, caretaker, commander and leader of the army," said Chea Dara, who is among several high-ranking military officers recently incorporated into the CPP's Central Committee. "I speak frankly when I say that the army belongs to the Cambodia People's Party." Quoted from "Cambodia's Armed Forces 'Belong' to The Ruling Party: Four-Star General, Radio Free Asia, July 29, 2015, <http://www.rfa.org/english/news/cambodia/military-07292015145855.html> Accessed December 2014.

4 Quoting a 2015 report by the International Bar Association the Cambodia Daily reported: 'There are credible allegations that the BAKC accepts bribes from lawyers entering into training, artificially restricts the number of lawyers entering the profession, permits entry by unqualified members of the CPP and is controlled by the CPP and government,...This last allegation is evidenced by the BAKC's withholding of support from lawyers who are known to represent clients litigating against the interests of the state, where those lawyers then become the subject of spurious criminal charges.' The report says that bribes are standard practice throughout the judicial system, required for everything from securing a spot in a training program to settling a case, and even for accessing court records. 'The result of all this is that the judiciary is perceived to be an extension of the government in Cambodia.' Zsombor P., *Legal Group Urges Review of Cambodia's Bar*. The Cambodia Daily, September 18, 2015.; International Bar Association, *Justice versus Corruption: Challenges to the Independence of the Judiciary in Cambodia*, London, September 2015;

5 See also Jensen, A, *Cambodia on cusp of authoritarianism: Report*. The Cambodia Daily, January 27, 2016, <https://www.cambodiadaily.com/news/cambodia-on-cusp-of-authoritarianism-report-106504/> Accessed on the same date.

activities conducted by officials at every level from the lowliest rural school to the office of the Prime Minister.”⁶

The new laws need to be interpreted within this framework, i. e. how they fit into CPP’s strategy of increasing control and extracting revenue. In order to see what ability CSOs have to act as “advocates for democracy, human rights and social change” it is important to analyze to what extent CSOs are integrated into CPPs system of governance and to what extent they instead challenge the system.

The relationship between civil society and the state before LANGO – attempts to harmonise civil society with CPP

Needless to say, in this kind of governance model, government involvement in the planning and implementation of aid programs would be problematic. Sophal Ear (2013) notes how foreign aid has indeed been used by CPP to entrench itself:

“based on extensive field interviews and a handful of focused case studies, Ear concludes that billions of aid have done little to improve governance, promote democracy, or lift the country out of poverty. Moreover, he claims that Cambodian civil society is an example of the ‘shallow democracy’ implanted by the UNTAC mission. He argues that Cambodian civil society remains weak and too reliant on foreign funding. Even its successes, such as a 2006 campaign for the release of a handful of high-profile activists, ‘rely on pressure from the outside and do little to alter prevailing power structures’/.../To

6 Hughes, C. & Conway, T, *Understanding pro-poor political change: the policy process, Cambodia*. Overseas Development Institute, London, 2003; See also Pak Kimchoen, 2011, A Dominant Party in a weak state – How the Ruling Party in Cambodia has Managed to Stay Dominant. The Australian National University; Strangio, S. 2014, *Hun Sen’s Cambodia*, Yale University Press, U.K., for example p. 36 & p. 129 “*Hun Sen’s reliance on the Cambodian elites meant that even had he wanted to, he had little real power to rein in corruption and other abuses. Land, forest, and natural resources were all fed into a machine that produced little for ordinary people. Cambodia’s health, education, and justice systems were neglected – its future mortgaged – in order to keep the Ponzi scheme of patronage afloat.*”

*the extent that it exists, accountability flows from the prime minister – a system that has only been strengthened and legitimized by foreign aid. He concludes that donors should get tougher on corrupt behavior and build up civil society as a counterweight to government cronyism. But without the political will for a thorough structural reform of the Cambodian system, any victories will likely be confined to the margins.*⁷

CPP tries to control or neutralise organisations with a potential for mass mobilisation or institutions with a potential to have an impact on the perceptions of broader layers of society: religious institutions are controlled by the ruling party; the education system is biased towards CPP⁸; a vast majority of trade unions are controlled by the government⁹; the ruling party encourages self-censorship on media institutions through ownership and intimidation of journalists¹⁰; academic institutions are not allowed to research or teach on topics deemed sensitive by CPP¹¹. The regime encourages mass enrolment of youth into the Red Cross Youth and the scouts, which are both tightly associated with the ruling party. Membership in these two youth

7 Quotes from Strangio S., *Review: Aid Dependence in Cambodia*, by Sophal Ear, Asia Times, Nov 1, 2012, <http://www.sebastianstrangio.com/2012/11/01/review-aid-dependence-in-cambodia-by-sophal-ear/> Accessed December 2012.

8 Recently teachers in Phnom Penh schools were instructed to protect CPP from criticism by students on social media. Strangio S., With Connectivity boom, Cambodia’s political battles shift online. Nikkei Asian Review, Dec 25, 2016. <http://asia.nikkei.com/Politics-Economy/Policy-Politics/With-connectivity-boom-Cambodia-s-political-battles-shift-online?page=2> accessed Jan. 7, 2016

9 Veasna Nuon & Melissa Serrano, 2010, Building unions in Cambodia. History, challenges, strategies. Friedrich Ebert Stiftung, Singapore; See also Zsombor Peter, ‘Labor Advocate Launches NGO to Unite Union’, The Phnom Penh Post, December 31 2015, <https://www.cambodiadaily.com/news/labor-advocate-launches-ngo-to-unite-unions-104171/> Accessed December 2015.

10 In 2015 Cambodia ranked 139 of 180 countries in the World Press Freedom Index of Reporters Without Borders. Cambodia has been sinking steadily in the ranking, in 2002 it was ranked as number 71. www.rfs.org/ – ranking of freedom of media, committee to protect journalists, International Press institute/

11 Master students at Cambodia’s most prestigious law school, RULE, have been instructed not to write about a number of politically sensitive issues, including land evictions, the management structures of the Cambodian Red Cross – where the first lady is president – or the internal life of CPP. See Born Phopa, Law Students Told to Avoid Thesis Topics. The Cambodia Daily, March 5, 2012. Accessed January 2016 from <http://www.opendevelopmentcambodia.net/news/ban-on-thesis-topics-needed-scholars-say/>

organisations is seen as beneficial for a career in the sectors under government influence. With the above in mind it should be of no surprise if CPP also strives to have an influence on NGOs and on associations who have an outreach to millions of Cambodians.

Increased attempts to control civil society:

While opposition parties and independent media have always been targets of CPPs control ambitions, civil society has seen fewer overt attempts by the government to control or intimidate. Compared with the years after the 1997 coup, when extrajudicial killings and violence against government opponents were common, Cambodia for many years saw a trend of declining political violence as Hun Sen had managed to neutralise any serious competitors or potential forces for democratisation. Sebastian Strangio describes the period following the 1997 coup as follows:

“According to Human Rights Watch, hundreds of politicians, union leaders and journalists have been killed in politically motivated attacks since the late 1990s; virtually no one has been brought to justice. Violence has since receded in Cambodian politics just as most national institutions – from the Buddhist monkhood and the monarchy to the boy scouts and the Cambodian Red Cross – have been “harmonised” with the CPP’s political consensus. Today, true power resides not in the democratic institutions imported by the UN, but in the flows of influence and mutual obligation linking Hun Sen with dense networks of business and political elites.”¹²

LANGO and other new oppressive laws must be seen as an increase in attempts to “harmonise civil society with CPP” in the face of new threats to its power ambitions. However, the new laws cannot be explained by arguing that the pre-LANGO legal framework hindered government attempts to intimidate individual CSOs. Community-based networks focusing on land rights and access to natural resources have seen the judicial system regularly used against them in particular, often on the most arbitrary grounds.

12 Strangio S. ‘A one-man dynasty’, Phnom Penh Post, January 15, 2015. referring to Adams B., *30 Years of Hun Sen: Violence, Repression and Corruption in Cambodia*, Human Rights Watch 2015. <http://www.phnompenhpost.com/national/one-man-dynasty> Accessed October 2015

While community activists have been frequently targeted and arrested, only on very rare occasions have NGO staff been arrested. Meanwhile, INGO staff have faced almost no government intimidation at all.¹³ It appears likely that the main target of the new laws are, again, the community-based networks and an attempt to stop the growth of membership-based groups.

Why is the government stepping up efforts to control civil society? Less fear of criticizing power

Many of the new oppressive laws have been prepared for years, including LANGO, while others have been rushed through in a short time. All respondents interviewed for this study agree that the reason that the government is now stepping up control efforts include the threats to the ruling party exposed by the 2013 elections. Similarly to how the CPP stepped up repression after losing the 1997 election the CPP now again resorts to oppression to counteract the increased threat to its power.

Never before in Cambodian history have people openly expressed dissent at such a scale as in the run up to the 2013 elections. Hundreds of thousands took to the streets to protest against CPP, who possibly could have lost the elections after ruling for more than three decades, had there been no serious election fraud.¹⁴ The electoral success of the opposition CNRP party came

13 In 2006 several NGO leaders were briefly detained after human rights day celebrations. One staff of LICADHO, Leang Sokchoeun, was imprisoned on dubious charges for two years. On several occasions during recent years have other NGO staff been threatened with different kinds of legal action but so far without any prison terms. Currently three Cambodian staff of the activist oriented NGO mother nature are detained. Their Spanish co-founder was denied a visa renewal after setting up a road-block but charged against him were dropped. INGOs have faced little pressure: Years ago the International NGO Global Witness had the visa revoked for one of its staff for three-week period after mapping the business interests of the Prime Minister and another staff member was beaten up by unknown attackers. One of the respondents for this study, the Director of an INGO, mentioned that an unnamed source had informed the respondent that the authorities had established a list of unwanted, blacklisted INGOs. See Aun Pheap, *Environmental Campaigner Convicted of Forestry Crime*, The Cambodia Daily, March 4, 2016 <https://www.cambodiadaily.com/news/109399109399/> Accessed on the same date.

14 Transparency International, 2013, *Final Election Observation Report on Cambodia’s 2013 National Election*, http://www.ticambodia.org/files/TICs_Report_on_2013_National_Election.pdf Accessed January 2016

as a big surprise, perhaps even for the party leader Sam Rainsy, whose daughter's American wedding was planned for less than two weeks after the election¹⁵.

Throughout the interviews with community activists made for this study it was clear that CPP now faces a new environment all the way to the village level. Citizen's attitudes towards those in power seems to be changing. It was a general impression among respondents that citizens are now less fearful of expressing criticism of the regime:

"When we come to the coffee shop the village chief leaves because he does not want to hear us ask again about why nothing happens with the promised projects" (community activist)

"They tell us if you vote CPP you will get your land back. We tell them you told us that already before the previous election". (community activist)

From an early age and in all public education, Cambodians are taught not to question those in authority:

"The social order is felt to depend upon everybody observing this status hierarchy and keeping his/her place in it. The primary social rule, says Martin (1994: 11), is "be discreet, unobtrusive, keep to your station". "In the traditions of Khmer moral training, to protest against a parent's decision, to criticize one's boss or spiritual master, to rebel against a husband is inadmissible" (ibid.). Not only are such acts inadmissible, they are also foolish. "Going up against one's superiors is considered futile because losing is inevitable."¹⁶

As expressed by Tim Frewer:

"An enduring history of invasion, violent suppression of political opposition, state extraction of surplus produce, and political instability has resulted in a significant gap between the rural populace and the ruling elite which is often characterised by fear of

authorities and low expectations of the state ... The politics of fear which plays out amongst the predominantly rural populace of Cambodia is at fundamental odds with the liberal democratic conception of a citizenry that internalises the duties and rights of citizenship and places themselves within an autonomous sphere of society able to freely challenge and stand up against state power."¹⁷

One reason for the changing attitudes could be increased threats to Cambodian's traditional livelihood. More than 70 percent of Cambodians depend on agriculture for their living¹⁸. At the same time, during the last ten years, over half Cambodia's arable land has been expropriated by interests close to the CPP. Cambodians in large numbers have seen their livelihood prospects rapidly change, not only losing land but also the access to forest and fish stocks have been depleted. A 2010 survey found that seven percent of 2000 of the respondents had themselves faced attempts to steal their land only during the last three years. Since then the pace of land grabbing has increased further.¹⁹

The scale and urgency of the land crisis could be changing norms about how to relate to those in power. Several of the interviewed community activists expressed that there is nothing more to lose when they have no land and no livelihood, while if they protest they might at least have a chance to win the right to their land. Land grabbing also ended up being a dominant theme in the 2013 election campaign messaging of the opposition. The increase of land-related dissent even recently forced authorities to publicly state that *"Cambodia will not have a land revolution"*.²⁰

15 Weddings/Celebrations: Rachel Sam, William Rubenstein, The New York Times, August 8, 2013, http://www.nytimes.com/2013/08/11/fashion/weddings/rachel-sam-william-rubenstein.html?_r= Accessed December 2016

16 Martin 1994 quoted in Trankell, Ovesen & Öjendal, 1996, *When every household is an island. Social organizing and power structures in rural Cambodia*. Stockholm, SIDA. P. 34.

17 Frewer, Tim, 2013, *Doing NGO Work: the politics of being 'civil society' and promoting 'good governance' in Cambodia*, Australian Geographer, 2013 Vol. 44, No. 1, pp. 97-114

18 See also Open Development Cambodia, "Agriculture and Fishing", <https://cambodia.opendevdevelopmentmekong.net/topics/agriculture-and-fishing> Accessed February 2016

19 LICADHO, "Concession timelapse" http://www.licadho-cambodia.org/concession_timelapse/ Accessed December 2015; In a 2010 poll carried out by the International Republican Institute found that seven percent of respondents had themselves experienced threats to their land. Miller, Thomas, 2011, *Poll says land theft remains key concern*. The Phnom Penh Post, 25 Jan 2012. <http://www.phnompenhpost.com/national/poll-says-land-theft-remains-key-concern> Accessed March 2016

20 Lay Samean & Davis, J.; 'No land revolution' coming: official, *The Phnom Penh Post*, March 1, 2016. <http://www.phnompenhpost.com/national/no-land-revolution-coming-official> Accessed on the same date.

Thanks to access to independent information about the land situation, created by a small number of outspoken human rights organisations and community activists, awareness about the land situation is widespread and growing. It is likely that broad layers of the population now understand that showing unlimited respect for those in power will not necessarily save them from being victimised. Activists such as the Boeung Kak Lake community or the videos of Venerable Luon Sovath, “the multimedia monk”, have shown that even families of the military can fall victim to land grabbing²¹. Thanks to internet, news about demonstrations and other protests against human rights abuse is offered to Cambodians on a weekly if not on a daily basis. Through the example of the activists, broader layers of citizens are becoming accustomed to the idea that one can actually challenge those in power. Facebook is now the second most important source for news in Cambodia²² and is frequently used by land activists.

The growth of social media and the improved access to independent information was undoubtedly a major factor behind the 2013 protests. A third of the population now has access to internet, 30–40 percent of Cambodians own a smartphone and more than 98 percent of those accessing internet do so from mobile devices. Three million Cambodians are estimated to be on Facebook, and with the possibility of online anonymity people are encouraged to express their views in way and in a scope that is entirely unseen before.²³

The environment that CPP faces is changing, but despite announcements of reform, it seems that the regime applies the same methods to remain in power as before: by intimidation of opponents and by creating opportunities to create revenue²⁴ for loyalists. As

elaborated more on later, the practical implications of LANGO will serve the same purpose: it serves as a warning to CSOs and it opens up revenue opportunities for authorities regulating CSOs. Or as expressed by Sebastian Strangio when commenting on reform attempts:

“Since the 2013 election, Hun Sen has been forced to confront the essential contradiction of the system: the question of whether it can be reformed without undermining CPP’s political financial base,... In line with this most of the changes so far have been quantitative – more handouts to the poor, more populist decrees. Beyond that the system has mostly remained unchanged.”²⁵

One of the respondents, an NGO with presence in half of the Cambodian provinces made a similar observation: *“There is stronger pressure on CPP strongmen to show presence at the local level. However, while being more visible now compared to before the election, they fail to approach the changed environment with a different tactic and they fail to stop abusing citizens. They behave in the same way as before, they just do more of the same.”*

NGOs increasingly act within the boundaries set by those in power while a growing number of CBOs challenge power

In comparison to CBOs, NGOs have long seen few overt control attempts from the regime. This could be

traffickers and asking for fines for imaginary or real traffic offences, especially before holidays, or in the run up to elections when there is pressure from CPP to extract funds for the campaign budget. In January 2016 the official fines for traffic offences increased fivefold and it was announced that the fining officers would be allowed boost their income with the fine. See Parkinson, C., *Traffic cops to pocket 70 % of fines*. ‘The Phnom Penh Post’, July 28, 2015. <http://www.phnompenhpost.com/national/traffic-cops-keep-70-fines> Accessed September 2015; Another example is a recent announcement saying that 70 % percent of official fees paid for a one window service at a Ministry were to be kept by the officials working at the ministry as a bonus. Kali Koboski, 2016, *MLMUPC one window service provides bonuses for civil servants*. The Phnom Penh Post, 3 March 2016, Accessed the same day <http://www.phnompenhpost.com/post-property/mlmupc-one-window-service-provides-bonuses-civil-servants>

21 For a description of some high-profile land rights communities see Stanford International Human Rights and Conflict Resolution Clinic, 2015, *Seeding the Ground, Promoting Community Empowerment in Cambodia*

22 Doyle, K., *Cambodian leader’s love-hate relationship with Facebook*, BBC News, Jan 7, 2016. <http://www.bbc.com/news/world-asia-35250161> Accessed Jan 7, 2016

23 Strangio S., *With Connectivity boom, Cambodia’s political battles shift online*. Nikkei Asian Review, Dec 25, 2016. <http://asia.nikkei.com/Politics-Economy/Policy-Politics/With-connectivity-boom-Cambodia-s-political-battles-shift-online?page=2> Accessed Jan. 7, 2016

24 The post-election period has seen the government raising salaries and increasing sources of revenue for government loyalists in other ways. As an illustration, the police has been allowed to radically increase its revenue through new traffic laws. An all too familiar feature of the Phnom Penh street picture is police randomly stopping

25 Sebastian Strangio quoted in Turton, Shaun, “Reshuffle weighed, found wanting”, The Phnom Penh Post, April 8, 2016; See also Strangio, S., 2014, *Hun Sen’s Cambodia*, p. 129

because of the nature of NGOs – it is quite likely that NGOs, in general, are not perceived as constituting any substantial threat to the CPP’s power ambitions. As noted by Öjendal (2014), a long-term scholar on Cambodia, there are two parallel trends: while NGOs initially were the product of the UN and INGOs, NGOs have now become more localized and firmly established in Cambodia. However, at the same time they are also increasingly interlinked with the government. Öjendal notes that there are increasingly fewer NGOs willing to challenge the government or engage in human rights advocacy. In other words, NGOs are moving away from the function of holding the government to account and as acting as a buffer between the state and the citizens²⁶. On the contrary, many Cambodian NGOs see themselves as an extension of the state, carrying out service-delivery projects within a framework dictated by the government and replacing the government in failed state services, rather than being a force that hold the government to account for said failed services.²⁷

It is common that NGOs actively seek the involvement from authorities in the planning and implementation of their programs: Authorities are allowed to dictate who will be the target that should benefit from NGO projects and the provincial governor’s office directs NGOs where to carry out their projects.²⁸ Several respondents to this study reported that it is a frequent suspicion that development projects are directed to certain areas to reinforce CPP support, while villages or villagers voting for the opposition are punished by blocking their inclusion in development projects. Pak (2011) makes a similar observation and describes how local CPP development committees or “party working groups” try to control and put their name on NGO and aid funded projects in order to increase their popularity. At the same time there was almost no development spending from the official budget in the same com-

munes studied by Pak.²⁹ Ou (2013) observes an increasing pressure on NGOs to integrate their projects with the commune investment plans and coordinate with village development committees, which are led by the village chief and deputy village chief and an assistant, appointed by authorities.³⁰

The village chief – almost exclusively a CPP cadre – and the village development committee members/family members are often found to be part of “self-help groups” supported by NGOs, in case there are any benefits to be made.³¹ Brown (2015) notes how *a rights-based approach to development has failed to take strong root in Cambodia*. Although projects in language adhere to empowerment, in practice NGOs often engage in something very different: “community organising” in Cambodia tends to be confused with “committee organising”, giving a key role to local power structures, and is anything but empowering.³² Standard NGO interventions are top down and do not encourage organic organising of communities.³³ Instead NGOs tend to depend on the local authorities, i. e. the CPP, to select participants for their projects. Typically, the project starts with a training for which community members have been selected and commandeered to attend by local authorities. At the end of the training an action plan is produced, and a committee is “elected” to implement the plan. Often the implementation of the plan is a result of financial incentives paid to committee members by an NGO, rather than a collective effort carried out by the community. There are few organic links keeping the beneficiaries together as a group.³⁴

26 Hughes & Conway also note how “the adversarial function of NGOs in demanding accountability from the government over sensitive cases has remained uncertain and highly politicised.” Hughes, C. & Conway, T., 2003, Understanding pro-poor political change: the policy process. Cambodia. 2nd draft August 2003, P.32, London, ODI

27 Henke, R, in Hughes, C & Kheang Un Eds., 2011, “NGO’s, People’s movements and Natural Resources Management” in *Cambodia’s Economic Transformation*. pp. 288–309, p. 309

28 Brown, Graeme, 2015, *Language, Management, Culture and Community Development*. Unpublished paper.

29 See also Pak Kimchouen, 2011, *A Dominant Party in a Weak State. How the Ruling Party in Cambodia has Managed to Stay Dominant*. Australian University. PP. 126–129

30 Ou Sivhuoch, 2013, *Sub-National Civil Society in Cambodia: A Gramscian Perspective*. CDRI Working Paper Series No. 84, p. 5.

31 Biddulph, R., *The Geographies of Evasion*, Gothenburg University, 2010.; Ou Sivhuoch, 2013, *Sub-National Civil Society in Cambodia: A Gramscian Perspective*. CDRI Working Paper Series No. 84, p. 7

32 Brown, Graeme, 2015, *Language, Management, Culture and Community Development*. Unpublished paper.

33 “Since the poor are rarely asked for their opinion about development, they are often the first to suffer its unintended consequences. Far from “empowering” local people, the development complex and its templates of betterment have merely reinforced an age-old pattern, in which well-dressed outsiders drive into a village, briefly break the surface of rural life with gifts and promises, and then vanish back to where they came from.” Strangio, S., 2014, *Hun Sen’s Cambodia*, Yale University Press, U.S., p. 234.

34 Brown, Graeme, 2015, *Language, Management, Culture and Community Development*. Unpublished paper.

In a study of the use of rights-based approach to NGO work in Cambodia Ou (2015) writes:

“At its core is the argument that human rights and development converge and, unless the socio-economic rights of the poor are attained, poverty cannot be alleviated. Its approach is to shift NGOs’ strategy from providing charity to empowering the poor politically so that they are able to claim their rights.” and he continues “Central to the relevance of RBA to development is that unequal power relations constrict efforts to reduce poverty. Proponents are confident in removing structural barriers to the poor realizing their dream of enhanced livelihoods and social and political status. However, critics argue that altering such deep-seated power is impossible and project that RBA will be discarded like other approaches.”

Sometimes critics instead favour a “moderated RBA”, “embedded advocacy” and an approach of “changing from within” the structures.³⁵ It is however difficult to see how this strategy would succeed without a power analysis in place before/while engaging with those in power or without obtaining collective power before engaging with authorities. The presence and close involvement of local CPP structures in the planning and implementation of development projects makes it difficult for participants to *speak out*³⁶ about root causes of peoples’ problems in cases in which CPP is a part of the problem. It is impossible to organise as a counterbalance to power – and empower communities by making them aware of oppressive power structures – if people from said power structures are an integrated part of NGO projects. Or as expressed by Maffi and Meas (2015):

“Community organizing, if genuine, is a comprehensive coming together and mobilisation of groups within communities that enables them to analyse issues and their root causes and to collectively advocate and negotiate their own agenda. This is a relatively new notion for Cambodia/..../To avoid

35 Ou Sivouch, 2015, *A Rights-Based Approach to development: A Cambodian Perspective*. CDRI Working Paper Series No. 101, April 2015.

36 Empowerment is not easily translated into Khmer but O’Leary and Meas suggests “to enable people to dare to speak” or “to give power and rights”. Quoted in Hughes, C. & Conway, T. 2003, *Understanding pro-poor political change*, London, ODI, p. 29

capture by patronage and instead support organic structures that represent all groups within communities, is the greatest current challenge of community organising.”³⁷

Frewer has made similar observations:

“The vast majority of NGOs (over 80 per cent) are involved in service provision of different descriptions (CCC 2011). Although human rights and corruption remain high on donors’ agendas, very few NGOs are able to successfully navigate the near impossible constraints of working in partnership with an authoritarian government while simultaneously having the space to criticise and challenge state actors.”³⁸

Anecdotal evidence from interviews held for this study illustrate how authorities/CPP tries to use and control NGO projects through yet other means:

- One respondent, a board member of a major NGO umbrella organisation and thus with an overview over many NGOs, reported that NGO leaders are frequently courted by CPP and even paid to make the NGO beneficiaries to attend CPP meetings and associate the ruling party with successful NGO work. In order to improve its popularity CPP seeks to take credit for successful NGO projects.³⁹
- An NGO director witnessed how two very popular community leaders supported by the NGO had been pressured to join CPP and had since been pacified. The leaders had previously stood up for the community which had been subject to land grabbing. However, through a combination of carrots and sticks they had agreed to candidate for CPP in the commune council election – and attract votes due to their previous track record – but had now given

37 Maffi, Marherita and Meas Nee, 2015, *Peoples’ Representation in Cambodia, A scoping study*. P. 4.

38 Frewer, Tim, 2013, *Doing NGO Work: the politics of being ‘civil society’ and promoting ‘good governance’ in Cambodia*, Australian Geographer, 2013 Vol. 44, No. 1, pp. 97–114

39 Compare with Ou quoting an NGO Director “After we had built a school, we invited the provincial governor to inaugurate the building. He came, but made a speech suggesting that the school was constructed by his political party or the government.” Ou Sivhuoch, 2013, *Sub-National Civil Society in Cambodia: A Gramscian Perspective*. CDRI Working Paper Series No. 84, p. 6; See also Pak Kimchouen, 2011, *A dominant party in a weak state*. pp. 126–129.

up their advocacy for land rights and had nothing to do with the community anymore.

The interviews also provided illustrations of how the personal motivation of NGO leaders prevents them from fulfilling the role in the official mission statement of their NGO⁴⁰. While fear levels seem to be decreasing among citizens in general, they seem to be increasing among NGO leaders:

- Staff in one organisation interviewed by the author accused their new director of steering the organisation away from land rights advocacy in order not to risk the career of his partner who was working for a government ministry. While the organisation had earlier clearly expressed a human rights agenda, the new director told the author that the organisation was *not* a human rights organisation.
- Another respondent, a board member of a major umbrella organisation, reported being careful not to provoke the government in their advocacy as the organisation had yet to receive a receipt from authorities acknowledging their change of director several years ago. Without this receipt, the respondent feared they might face problems with authorities under the pretext of not complying with bureaucratic requirements.
- An anecdote from another major NGO appearing in the study provides an illustration of NGOs actively censoring discussions about root causes of poverty: when a donor INGO organised a “capacity development” workshop for staff of one of Cambodia’s major service delivery NGOs, the NGO managers intervened to end the workshop when participants started to discuss the role of the government in maintaining poverty. The leaders of the NGO in question frequently claimed that they used empowerment strategies and used a strategy of embedded advocacy when they describe their work. About the same time the NGO was appointed to train the members of a major umbrella organisation in adopting a rights-based approach. One key task was training NGOs in how to interact with commune councillors.

40 Compare with similar findings by Frewer, Tim, 2013, *Doing NGO Work: the politics of being ‘civil society’ and promoting ‘good governance’ in Cambodia*, Australian Geographer, 2013 Vol. 44, No. 1, pp. 109–111

Development partners: pressure on CSOs to work within the government framework & cautious criticism of LANGO

While Öjendal notices a decrease in human rights advocacy following a localisation of the NGO community, there are instances of development partners pressuring NGOs to move in this direction. Many NGOs have grown out of development partners – UN, multi-lateral donor institutions, government donor agencies – initiatives that were based on the assumption of the government being guided by development ambitions. As pointed out by Tim Frewer, there is pressure from development partners and for NGOs to work within a narrow framework dictated by the government, without critically analysing what role the government has in enabling or hindering development and with a very non-pluralistic view about what civil society should look like:

“Much of the development industry is cautious about the two active human rights NGOs...and often suggestions are made that they are biased and aligned with the opposition party/..../Under the rhetoric of partnership and good governance, any mechanism which isn’t legalistic in nature or framed in terms of working in cooperation with government actors, is deemed as provocative, unhelpful and even illegal/.../Yet few people seem to consider it problematic when NGOs and donors, through their support for establishing and implementing forest laws, land laws and land demarcation activities, sometimes inadvertently legitimise the government’s interests in controlling and exploiting locally managed land. Far from being resistant to new laws and bureaucratic mechanisms for managing land, the Government has enthusiastically used these new institutions and laws to push its own interests while NGOs are largely left behind to work within the framework of an imaginary utopian liberal democratic society.”⁴¹

41 Frewer, Tim, 2012, *Land and Conflict in Cambodia*. <http://asiapacific.anu.edu.au/newmandala/2012/01/06/land-and-conflict-in-cambodia/>; See also Frewer, Tim, *Doing NGO Work: the politics of being ‘civil society’ and promoting ‘good governance’ in Cambodia*, Australian Geographer, 2013 Vol. 44, No. 1, pp. 97–114; See also Lintner B., *Power and Politics in Cambodia today*. Unpublished

The author experienced the same attitudes from development partners while working for a human rights INGO in Cambodia. As an illustration, he was told by an embassy-affiliated development agency to erase quotations citing government involvement in human rights abuse, made by the UN Special Rapporteur on human rights in Cambodia, from a funding proposal to the agency. The same agency funded the office of the rapporteur but feared that mentioning his findings might risk the relationship between the embassy and the government. It was frequently stressed by the agency staff that all projects funded by them, ostensibly to promote democracy and human rights, should preferably involve the government in dialogue initiatives.

While channelling funds through an INGO, to a Cambodian human rights organization well-renowned for its evidence-based advocacy and high research standards, the same development agency frequently expressed it as problematic that the organisation was responsible for spreading “a one-sided picture” abroad of the government as a human rights violator. To this date the officer in charge of human rights at the Embassy, who has been in place for years, has however, refused invitations to meet and inform himself about the organization in question which remains the main source for all the major international human rights actors when engaging on Cambodia. The same human rights NGO recently faced attempts to exert pressure from another European government funding agency when providing evidence questioning the official claims about social land concessions.

In a parallel, Robin Biddulph’s research has shown how development partner efforts to involve authorities in the planning of a project against deforestation resulted in the project being directed by authorities to a geographic area and target group not facing deforestation. The project was deliberately made not to address key drivers of deforestation.⁴²

paper commissioned by Danchurch Aid, March 2013. “Foreign donors are also contributing to the prevailing patronage system through its close cooperation with government officials on all levels of society.”...“It is not unusual that local government officials collect “gratitude” payments from villagers for projects that have actually been paid for by foreign NGOs and other international organisations.”; See also Global Witness, 2007, *Cambodia’s Family Trees*. <https://www.globalwitness.org/en/reports/cambodias-family-trees/>

42 Biddulph, R., *The Geographies of Evasion*, Gothenburg University, 2010.

In a comment on the global trend of development partners increasingly supporting “Good Governance”, Thomas Carothers – one of the most high-profile names in research on democracy and human rights support – claim that this trend reflects increased pressure on development partners from their constituencies to actively support democracy and human rights. However, rather than empowering democrats and human rights defenders to change their societies and challenge those in power through a rights based approach, the institutions responsible for implementing the aid programs have depoliticized democracy support into an issue of transferring technical skills to undemocratic host governments:

“When it comes to fostering accountability for example, governance specialists often approach the task as a narrow, technocratic enterprise centered on procedural and regulatory improvements in public financial management. Yet for democracy buffs accountability is all about strengthening parliaments, parties, and political contestation.”⁴³

In other words, along with a global trend in which increasingly authoritarian governments introduce NGO-hostile legislation – 60 countries over the past decade⁴⁴ – development partners also pressure aid-dependent NGOs and communities not to challenge their governments. This of course has an impact on NGOs and people’s ability and willingness to organize and to advocate for democracy, human rights and social

43 Carothers, Thomas and Brechenmacher, Saskia, 2014, *The four magic words of development*. <http://blogs.worldbank.org/publicsphere/four-magic-words-development-tom-carothers-and-saskia-brechenmacher> Accessed February 2016; See also Carothers and Brechenmacher, 2013, *Development Aid Confronts Politics: The Almost Revolution*. Carnegie Endowment, Washington; Carothers, T and Brechenmacher, S, 2014, *Closing Space, Democracy and Human Rights Support under Fire*. Carnegie Endowment, Washington; “The donors keep coming up with strategies to use the government, to change the government from within...The CPP is much smarter than that.”/.../Seeking the greatest “outcomes” at the smallest cost, donors have shifted their focus to social sectors like health and education,” “as Caroline Hughes has argued, this bifurcated system churns out laws and reform designed to appease donors while resisting any changes that would throw light on its own opaque operations.” Quotes from Strangio, S. 2014, Hun Sen’s Cambodia, pp. 226–227 & p. 139

44 Cooley, Alexander, 2015, ‘Authoritarianism goes Global: countering democratic norms.’ *Journal of Democracy*. July 2015, Volume 26, Number 3

change even before new legislation was introduced in Cambodia.

These attitudes have also been reflected in the cautious reactions to LANGO from the international community. The U.S. government has been the most outspoken, deeming the law “unnecessary” and warning about consequences on foreign investments in Cambodia. A U.S. envoy stated “I urge it [the government] to reconsider whether an NGO [law] is needed at this time, as there are already Cambodian laws on counter-terrorism and criminal activity, as well as a civil code, that address the concerns this proposed legislation is intended to address.”. Meanwhile the European Commission seems to have been pre-occupied by – very – quiet diplomacy. After the European Parliament condemned the LANGO and draft trade union law, the EU Ambassador uttered “As we have already said, the E.U. hopes that the authorities will give more time to consultations. Cambodia has still the golden opportunity to produce a much better law and, by doing so, to show internationally its democratic evolution”. In contrast, the U.N. special rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kai, has been more outspoken, describing LANGO as “repressive” legislation “meant to restrict people’s ability to organize.” ... “Cambodia...passed troubling laws which threaten to snuff out independent civil society,” ... “The law is already restrictive enough; the uncertainty that we’re seeing now around its implementation is not helping. Instead, it’s contributing to what is already a very disempowering environment.” One respondent described frustration over the lack of involvement from Embassies in Phnom Penh “It was so much more difficult compared to the previous [LANGO] campaign to create a basic understanding within the international community based in Cambodia.”⁴⁵

45 The EU Parliament resolution: <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=P8-RC-2015-0689&language=EN>; See also reports in the Cambodia Daily: <https://www.cambodiadaily.com/archives/prime-minister-us-spar-over-pending-ngo-law-84863/>; <https://www.cambodiadaily.com/news/un-envoy-slams-ngo-law-in-report-105631/>; <https://www.cambodiadaily.com/archives/eu-adopts-resolution-against-ngo-law-87955/>; http://www.huffingtonpost.com/patrick-alley/allout-attack-on-cambodia_b_7770850.html

CBOs are the primary target of LANGO, the government depends on NGOs to implement it

While NGOs increasingly act within the narrow framework prescribed by authorities, as described by Öjendal and Frewer, there is also a parallel trend which is more likely to be the prime target of the new laws. Cambodia has seen the growth of community-based groups and loose networks of activists who are vocal and effective in raising awareness about the problems they face, particularly in relation to the land grabbing crisis. Most of these groups are self-established and only rarely work with substantial support from NGOs. Cambodia has also seen the growth of a strong garment workers’ movement which has pressed the government and the business interest close to them into major concessions – the minimum wage of the garment workers has seen big hikes over the last three years. These membership-based groups represent a new and increasing challenge to CPP’s power ambitions. While the role of the government in causing poverty and human rights abuse is rarely addressed by NGOs, the CBOs constantly challenge the government. Or as expressed by one of the respondents, the director of a major NGO umbrella organization who was critical of outspoken advocacy strategies:

“Why does the government want to target the CBOs and the NGOs working with CBOs? Because they know that they [the CBOs] can mobilize people who can shout at them outside the national assembly.”

Could NGOs be used to contain CBOs?

With citizens depending on NGOs for service delivery, in possibly tens of thousands of “self-help groups” in thousands of villages, the NGOs are – would they want to – in a position to use their influence to contain community members who could otherwise follow the trend to speak out and request government accountability. When citizens increasingly question the government, it is also likely that NGO target groups increasingly challenge inefficient implementation of service delivery projects that involve authority representatives. Ou (2013) reports how authorities are indeed wary of NGO practices that would empower project participants and try to contain them:

“it is clear that sub-national government, under the direction of the central government, aims to limit the empowerment objectives of civil society, which are perceived to ignite people’s understanding of their roles as rights holders. Further, the fact that VDCs [Village Development Committees] have been integrated into the state system allows the state to have counter-forces against the activities promoted by civil society groups.”

There is already plenty of anecdotal evidence of NGOs who claim to have a human rights agenda trying to constrain and “moderate” CBOs who articulate government involvement in poverty and human rights abuse:

One of Cambodia’s major umbrella organisations for NGOs has since a few years back stopped mentioning any involvement of the government in its reports covering human rights abuse and especially land grabbing affecting communities supported by the organisation after receiving threats from authorities. The director of the same NGO, according to several separate witnesses, went at length to try to persuade the land activists from staging a protest with the motivation that “it was illegal”. At the Asean People’s Forum, organised in Phnom Penh in 2013 and meant to be an annual “show of strength” of the regional civil society, the same activists were barred from entering the venue and the NGOs organising the event decided to take land rights off the agenda after pressure from the government. The Director of another prominent human rights NGO made the effort to publicly explain to the land activists that they were not welcome inside the venue. Indicative of NGO sentiments towards community group activists, an entrance fee also effectively closed the event for poor activists.

Similar attitudes have been present during LANGO campaigns, illustrating increasing differences between NGOs and CBOs.

During the campaign against the fourth LANGO draft, the author witnessed at least two dominant NGOs initially attempting to keep CBOs and member-based organisations outside joint civil society initiatives, believing that CBOs were too radical in their approach to the government.

Similarly, some dominant NGOs resisted calls for including CBOs as equal partners in organising events during the Asean People’s Forum, resulting in CBOs

instead organising the parallel ASEAN Grassroots Peoples’ Assembly⁴⁶.

The campaign against the fifth and final version of LANGO ended as two campaigns: “Stop and Consult”, dominated by NGOs, and “Say No to LANGO” dominated by CBOs and CBO-focused NGOs.

As elaborated on later, the costs and the bureaucratic challenges involved in complying with LANGO makes it practically difficult for associations and small NGOs to abide by the law. *The only way that associations would hypothetically be able to access funds and administrative resources needed to pay the costs and carry out the paperwork associated with registration is through NGO support.* It is therefore problematic that Cambodia’s two major NGO umbrella organisations have already articulated post-LANGO strategies to give technical advice to members on how to comply with the law, while trying to engage the government in dialogue about and monitor difficulties in carrying out the implementation. While their NGO members are already registered, the communities and self-help groups that they work with are most often not and compliance could therefore mean that they play a proactive role in pushing communities to register. If associations register this will increase opportunities to control them and will thus severely hamper their ability “to organize and to advocate for democracy, human rights and social change”.

Conclusion

Cambodia has reached a historical moment in which an increasing number of citizens and CBOs are willing to speak out and demand accountability. How NGOs and INGOs respond to the new laws, and if they choose to succumb to fear, could determine if this momentum will be sustained or not. With outreach to thousands of villages and CBOs, NGOs are both in a position to empower communities and to constrain them.

As pointed out by Öjendal, Cambodia has a decreasing number of outspoken human rights NGOs. It is therefore unlikely that the government would develop a new legislative framework solely to silence this handful

46 Stanford International Human Rights and Conflict Resolution Clinic, 2015, *Seeding the Ground, Promoting Community Empowerment in Cambodia*. P. 41.

of NGOs – particularly as existing laws have already proved sufficient to use the judiciary against perceived opponents of the regime. Rather, the primary target group is the new proliferation of CBOs and membership-based organisations. Meanwhile, only NGOs and INGOs are in a position to provide CBOs/associations with the financial and practical resources needed to comply in broad numbers with the new legislation.

As described by a number of observers quoted in the study, many NGOs and development partners avoid empowering approaches that allow rights holders to address root causes of their problems. Organisations that do not carry out or encourage a proper analysis of the power structures facing the communities in which they work risk enforcing the very structures that maintain corruption and exploit the poor, in line with Caroline Hughes' description of CPP's model of governance. Instead authorities – in Cambodia synonymous with the ruling Cambodia People's Party (CPP) – are frequently given a role in planning, implementing and benefitting from NGO projects in a way that is contrary to empowering communities.

As noted by Hughes et al., CPP's hold on power is intrinsically linked to their ability to extract resources – especially from the poor – by drawing citizens into power hierarchies based on patronage and corruption. This is equally evident in underdeveloped rural areas where aid/NGO funding constitutes one of very few sources of revenue. LANGO increases the pressure on NGOs to abide by corrupt practices and opens up many new opportunities for authorities to extract resource from NGOs. LANGO will also increase the pressure on NGOs to allow their projects to be directed by CPP development committees or by CPP – controlled government institutions – allowing CPP even more influence over who benefits from NGO projects. Compliance with LANGO would therefore mean that NGOs abide with a system that entrenches CPP's grip of power – especially if they are contributory in forcing associations/CBOs to register. This is far from the ideal of civil society acting as a guardian of democracy and human rights.

2. Cambodia's new oppressive legal framework

The following gives an overview of key requirements under the Law on Associations and Non-Governmental Organisations (LANGO). It is still extremely unclear how it will be implemented, not least as there are multiple vague clauses left open to interpretation. Article 11 declares that “conditions, formalities and procedures” for registration shall be determined by a MoI Prakas. A Prakas is currently said to be prepared.

Moreover, as will be explained, the scope of the requirements is so broad, expensive and practically complicated to implement that it is difficult to see how they could possibly be widely complied with or even more so, how compliance could be monitored by the government on more than a very selective basis.

Mandatory registration – but for whom and as what?

The law imposes mandatory registration requirements for all associations and NGOs and criminalizes unregistered groups: “Any domestic association and non-governmental organisations that is not registered shall not be allowed to carry out any activity within the Kingdom of Cambodia.” (Article 9)¹. If they operate without registration they are subject to fines between five and ten million Riel, criminal prosecution, and in the case of foreign NGOs, expulsion.

While the constitution only refers to associations the LANGO, for unclear reasons, differentiates between “associations” and “NGOs”. “Domestic associations” in LANGO refers to membership organisations which represent and protect the interest of their members *without generating or sharing profits* (Article 4). “Domestic

NGOs” refers to *non-membership* organisation which provide funds and services for the public interest without generating or sharing profits (Article 4). There is no definition of what “public interest” means. According to OHCHR this vagueness leaves open the possibility for abusive application of the law.²

It is also unclear how “*generating or sharing profits*” will be interpreted. Many NGOs are involved in supporting livelihood projects based on saving groups, buffalo banks and micro-enterprises of various kinds which are meant to generate a profit, although normally a very modest one. If these groups are required to register – either under LANGO as associations, or as economic cooperatives under the Law on Economic Cooperatives, or as micro-finance institutions under banking laws – the registration costs and requirements will pose a significant challenge given their modest profits.³ Article 20 briefly lists allowed funding sources and does not

1 OHCHR, *Unofficial translation on 19 August 2015, Law on Associations and Non-governmental Organisations*.

2 OHCHR, *A Human Rights Analysis of the Law on Associations and Non-governmental Organisations*, 4 August 2015, P. 5

3 The Law on Agricultural Cooperatives defines cooperatives like this: 1. Consists of 15 (fifteen) members or more, who are the Cambodian national and at the ages of 18 or above, who live in the geography of specific village, commune, Sangkat, municipal, district or Khan administrations of Capital/provinces in the Kingdom of Cambodia, and who have major businesses within the framework of the system of agricultural production, agro-business, agro-industry or services that are related to an agricultural sector; 2. Consists of members who invest their capital by paying shares that were bought, but each member shall own at least one share. Owning of the shares of the members shall be in accordance with a statute of the Agricultural Community (AC) concerned. 3. Has at least one type of major businesses within the framework of the system of agricultural production, agro-business, agro-industry or services that are related to the agricultural sector. (Law on Agricultural Cooperatives, Article 16.) According to Praka B7.00-06, issued by the National Bank of Cambodia (NBC) in 2000, registration as a Micro Finance Institution is compulsory for any organisation that meets one or more of the following conditions:

- a loan portfolio outstanding equal to or greater than KHR 100 million;

explicitly say that domestic NGOs and associations are allowed to engage in economic activities in order to pursue their primary purposes. At the same time the Law on Agricultural cooperatives requires a membership of at least 15 which is more than many self-help groups. Meanwhile, the banking laws prescribes that micro saving groups that raise more than 1.000.000 Riel (USD 250) from their members should register as a micro finance institution, and many micro saving groups probably reach that amount.

In the 4th draft of LANGO community based organisations (CBOs) were explicitly referred to, but were later taken out in the final version of the law. In the 4th draft CBOs were defined as “a group of Cambodian citizens who voluntarily agree to establish, manage and conduct ... activities to serve and protect the interests within its local community.” It is not clear whether or not CBOs are now to be included under “associations”.

There have been contradictory messages from the authorities on the need for CBOs to register. An open letter to MoI from CCHR (the Cambodian Centre for Human Rights) referring to a group of land rights activists – 71 families – in Kratie who had been told by the local authorities to register under LANGO, requested clarification. MoI responded that CBOs “that do not have enough [structure] to comply with Article 6 and Article 7 of this law,” were not to register under LANGO. However, at the same time it was said that the Kratie community still was required to register, but under the Land Law. The Minister referred to provisions for indigenous communities applying for communal land; however, the community in question was not an indigenous community, neither were they applying for communal land.⁴

- savings mobilized from the general public amounting to KHR1 million or more;
- 100 depositors or more.

4 “In accordance with Article 4 of this law, its scope doesn’t cover community-based organizations that do not have enough [structure] to comply with Article 6 and Article 7 of this law,” the minister wrote, referring to provisions on filing statutes, leadership biographies and other paperwork. In his letter, Minister Kheng said the 71 families in Snuol did not have to register under the NGO law. But he said the request from local police that they register was “correct in principle because indigenous communities can only get communal [land] ownership if the communities register with the Ministry of Interior in compliance with the 2001 Land Law.” To apply for communal land titles, designed to protect indigenous communities from private developers, groups must register with the government. However, Hak Nhen, a representative of the 71 families,

It is unclear how to define “enough [structure] to comply” with regards to Articles 6 and 7, which refer to administrative requirements of the registration process (see below). It is also unclear whether there CBOs are required to acquire such structure before they are allowed to carry out certain group activities.

Additional confusion is added by the fact that the final article of LANGO declares all other legislation covering the same area to be void: “Any provisions to this law shall be abrogated.” (Article 39). In the above case the Land Law referred to by the Minister is already void. This last article of LANGO also raises questions about the status of the law in relationship to the constitution.⁵

Children and non-Cambodians are not allowed to organise: Article 5 requires domestic associations and NGOs to have at least three “founding members” who need to be of Cambodian nationality. The draft law said they need to be at least 18 years old; however, in the passed law, MoI has been given powers to pass Prakas, should they want to, to allow minors to form associations or NGOs (Article 11).

If the MoI does not respond to an application within 45 days of receipt the applicant will be automatically registered (Article 8). However, it is still unclear how NGOs and associations can prove to third parties, such as banks, that they have been automatically registered.

Reasons for denial and suspension of registration are very vague

The government has broad authority to suspend a domestic NGOs or association. Article 8 states that MoI “shall examine the documents and legality of the statute of a domestic association or NGO, and shall decide whether to accept or reject the registration...”. However, there is no list of clear, objective grounds

said the families were not minorities and were not seeking a communal land title. See Kuch Naren, »Minister Insists Community Groups Are Exempt From NGO Law«, *Phnom Penh Post*, 24 September, 2015, <https://www.cambodiadaily.com/news/minister-insists-community-groups-are-exempt-from-ngo-law-95296/> (accessed 24 September 2015).

5 See also OHCHR, *A Human Rights Analysis of the Law on Associations and Non-governmental Organisations*, 4 August 2015, p. 24.

for when Mol is allowed to deny registration. Mol is not required to communicate the decision for denial or registration in writing.

Requirement of neutrality: The law compels all NGOs, domestic and foreign, to be “neutral toward all political parties”. (Article 26). However, it is not defined what “neutral” means which leave open the possibility for arbitrary interpretation by government officials. In the Cambodian context this is particularly problematic, as legitimate criticism of government involvement in human rights abuse by human rights defenders has often led to such critics being labelled as CNRP/opposition by government representatives⁶. Hence, the lack of definitions allows for a restriction of freedom of expression (guaranteed under article 19 of the ICCPR). Domestic associations are excluded from the neutrality requirement.

Even more confusing is the provision that registration may be denied and organisations suspended if Mol deems that the association or NGO has objectives that “jeopardize peace, stability and public order or harm the national security, national unity, culture, and traditions of the Cambodian society” (Article 8 & 30). How to interpret these provisions is not defined, meaning that the Government can deny or suspend organisations completely arbitrarily. Failure to comply with reporting requirements may also result in terminated registration.

The LANGO provides domestic NGOs and associations the right to appeal a registration decision to the court, but no further details about how to exercise this right are provided in LANGO⁷.

In the wake of involuntary termination, LANGO states that assets shall be distributed in compliance with court decisions, (Article 31). However, Article 32 also authorizes Mol to deregister a domestic association of

NGO without involvement of a court. In such a situation it is unclear how an association or NGO’s assets are to be distributed. This gives incentives to corrupt authorities to deregister an organisation in order to confiscate their assets. According to several respondents, a frequently occurring problem is that after reporting fraud in corrupt NGOs to authorities, corrupt officials rather than punish perpetrators, confiscate the remaining assets for their own benefit.

Registration requirements:

Article 6 requires associations and domestic NGOs to register with the Ministry of Interior by filing the following documents:

- Application form (2 copies).
- A letter stating the address of the central office a domestic association or non-governmental organisation, recognized by the Commune or Sangkat Chief. If this is interpreted as a need to have an physical office, not just an address for communication, this will make registration impossible for associations and NGOs that do not have the resources to support an office.(1 copy)
- Profiles of each founding member with a recent 4x6 size photograph. As it is unclear what profiles means this invites open-ended inquiries by the government into the biographies of the founding members.⁸ (2 copies).
- A bylaw/statutes signed by the president of the domestic association/non-governmental organisation (2 copies). With many small associations not even being computer literate this is a huge barrier.

The governing statutes need to have the following contents (Article 7):

- Purpose and goal;
- Name written in full and abbreviation that does copy the full name or abbreviation of any registered association or non-governmental organization;
- Logo that does not copy that of any national or state institution, any registered association or

6 For example several regional and international organisations were accused by the spoke person of the Council of Minister of being CNRP supporters when they criticized LANGO and the other new oppressive laws. Radio Free Asia, *Cambodian laws curtailing freedoms Groups says*. 2014-10-10 <http://www.rfa.org/english/news/cambodia/new-laws-10102014182751.html> (Accessed October 2015)

7 However, there is the procedure for civil complaint in the civil court that should logically apply. See Article 4 of the Law on Court Administration and Function, passed by National Assembly in 2015.

8 International Center for Not-for-Profit Law, *Comments on the Fifth Draft Law on Associations and Non-Governmental Organizations of the Kingdom of Cambodia*, June 11, 2015, P. 11.

non-governmental organization, or the Red Cross or Red Crescent or international institutions;

- Rules for selecting, terminating, dismissing, transferring and removing the position of the president or executive director;
- Rules for changing the organization's name and logo, and for amending its statutes;
- Sources of resources and properties;
- Rules for managing resources and properties;
- Rules for dissolving and disposing resources and properties upon dissolution of the organization.

Excessive reporting requirements:

Article 10 requires domestic associations or NGOs to notify, in writing, the Mol and the Ministry of Economy and Finance of:

- Its bank account in Cambodia within 30 days of registration.
- Any changes to its statute, relocation of its office, changing presidents or executive directors, or changing bank accounts within fifteen days from the change. The failure to comply to these notification requirements could result in the organisation's removal from the registration list (article 32).

Domestic NGOs also have to submit (Article 25):

- A copy of its annual activity report and its annual financial report to the Mol and the Ministry of Economy and Finance by the end of February of the following year. The Mol may "if necessary" request the same from associations.
- Copies of all financial agreements with donor must be submitted to the Ministry of Interior and Ministry of Economy and Finance within thirty days from the donor agreeing to the proposal.
- Copies of all reports that are sent to donors within thirty days of submission. All successful funding proposals and all financial or grant agreements need to be submitted to the Ministry of Interior and to the Ministry of Economy and Finance.

Moreover, Article 25 says "*The Ministry of Economy and Finance or the National Audit Authority may, if necessary, check and audit an association or non-governmental organization.*" There is no definition of necessity or of who would make this decision, making this provi-

sion problematic – the vague wording leaves open the possibility of abuse, allowing punitive financial investigations and intrusions into the operation of NGOs and associations. There also appears to be no method of challenging a decision to audit or a definition of what the government considers an audit to entail; for example, would this mean seizure of records, computer data, physical investigations on NGO property?

Procedures for registration of INGOs

For INGOs, registration with the MoFA/IC requires the applicant organization to provide:

1. A letter of the director of a foreign association or non-governmental organization which has its permanent office in a foreign country, requesting to appoint its representative with the attachment of the "profile" of a person requested to be appointed as a country representative, one (1) copy and the request to open a representative office, one (1) copy. This means staff need to be recruited before registration.
2. A letter stating the address of the representative office in the Kingdom of Cambodia issued by the Commune or Sangkat Chief, one (01) copy. This means the organisation is required to open an office before receiving a registration, which might prove difficult.
3. An operation permit for the foreign association or non-governmental organization issued by a foreign competent authority of the country of origin, one (1) copy;
4. A supporting letter of the projects of the foreign association or non-governmental organization issued by the public authorities of the Kingdom of Cambodia, one (1) copy. INGOs that support human rights and democracy might find it hard to receive a supporting letter from a line ministry as these INGOs are normally not working directly with any line ministry.(Article 13)
5. A certifying letter declaring the budget for implementing the projects of the foreign association or non-governmental organization for at least six (06) months, issued by its permanent office in the foreign country, one (1) copy.
6. A pledging letter to provide all accounts of the foreign association or non-governmental organization in the banks in the Kingdom of Cambodia, one (01) copy. The INGO also has to notify the MoFA and

the Ministry of Economy and Finance of its bank account in Cambodia within 30 days after signing the MoU.

INGOs are required to renew their MoU every 3 years. The timeframe for submission of a request to extend the validity an MoU is 90 days. However, only 45 days are required to examine a new application (Article 16). It is unclear why it takes double the time to consider the application from an already known organisation. Moreover, there is no timeframe for the MoFA to issue a decision before the expiry of a current MoU, even when the extension request is submitted on time.

No grounds for denial of registration are provided for INGOs and there is no right to appeal. However, as in the case of domestic NGO's, registration can be terminated if they are deemed to "jeopardize peace, stability and public order or harm the national security, national unity, culture, and traditions of the Cambodian society" (Article 35). They are also obliged to maintain "neutrality" towards political parties (Article 24) and likewise they can be terminated if they fail to comply with reporting provisions.

If an INGO only wants to "implement a short-term project" in Cambodia, presuming meaning they do not want to open an office in Cambodia, then they have to ask for approval from MoFA through a local organisation. However, what defines a short-term project is ambiguous. Neither is it clear what it might implicate for INGOs not interested in opening a local office but intend to implement long-term projects.

Reporting requirements for INGOs

INGOs must inform authorities of their bank account information within 30 days of registration (Article 17). INGOs also have to submit a copy of their annual report on "activities and finances status" to the MoFA and to the Ministry of Economy and Finance, within 30 days of the date of submission to their donors. (Article 25)

INGOs are also required to submit copies of "the project documents and financial agreements with donors by copying original documents " to the MoFA and to the Ministry of Economy and Finance, within 30 days of the date the agreement with donors. It should be noted that this is not a requirement explicitly limited

to proposals and financial agreements for projects taking place within Cambodia.⁹

Implications of LANGO on the access to fundamental human rights

LANGO threatens the freedom of association, expression and assembly¹⁰ and conflicts with the Cambodian constitution where these rights are guaranteed:

Article 31, para. 1: The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, and the covenants and conventions related to human rights, women's and children's rights.

Article 41: Cambodian citizens shall have the freedom of expression, press, publication and assembly. No one shall exercise this right to infringe upon the rights of others, to affect the good traditions of the society, to violate public law and order and national security. The regime of the media shall be determined by law.

Article 42: Citizens of Cambodia shall have the right to establish associations and political parties. These rights shall be determined by law. All citizens of Cambodia may participate in mass organisations for the mutual benefit to protect national achievement and social order.

These rights are also protected by the international Covenant for Civil and Political Rights (ICCPR) to which Cambodia is a party. There may be legitimate concerns about criminal activities involving civil society groups, however, as expressed by OHCHR, existing criminal law is the proper vehicle by which to address such concerns.¹¹ The constitutional council did not rule LANGO

9 International Center for Not-for-Profit Law, *Comments on the Fifth Draft Law on Associations and Non-Governmental Organizations of the Kingdom of Cambodia*, June 11, 2015, P. 17

10 OHCHR, *A Human Rights Analysis of the Law on Associations and Non-governmental Organisations*, 4 August 2015.

11 OHCHR, *A Human Rights Analysis of the Law on Associations and Non-governmental Organisations*, 4 August 2015, p. 3; See also Szombor, P. 2015, 'The government, U.S. spar over pending NGO law', *The Cambodia Daily*, June 3, 2015. <https://www.cambodiadaily.com/archives/prime-minister-us-spar-over-pending-ngo-law-84863>

unconstitutional. However, it is very clear several provisions of LANGO are not in line with the constitution. The ruling party has very effectively abused its control over constitutional institutions to severely inhibit, exhaust or block all avenues of legal recourse against LANGO.

Other new, oppressive laws

In addition to LANGO a number of other oppressive laws have been enacted over the last two years which, taken together, clearly demonstrate that suppression of criticism and dissent, rather than support of democracy and accountability, is a government priority.

On 16 July 2014, the **Law on the Organization and Functioning of the Supreme Council of Magistracy, the Law on the Statute of Judges and Prosecutors and the Law on the Organization and Functioning of the Courts** were adopted. All three laws further undermine the independence of the judiciary. The Law on the Supreme Council of Magistracy gives the Minister of Justice a greater role within the Council and greater influence over judges and prosecutors.

In March 2015 two new election laws were passed by the National Assembly: the **Law on the National Election Committee (NEC)** and the **Law on the Election of Members of the National Assembly (LEMNA)**. NGOs are barred from criticising parties during the election campaign with provisions banning NGOs from “insulting” or showing bias to parties.¹²

In December 2015 a new **Telecommunications law** was passed that gives the government sweeping powers to spy on electronic communication. It also criminalizes any electronic communication – for example Facebook posts – deemed to cause “national insecurity” with up to 15 year prison sentences. The law requires telecommunication firms to provide the Ministry of Posts and Telecommunications with all of their service data, without the need for a warrant. In a comment on the law LICADHO said *“Every phone conversation, text message, email, or social media activity could be under observation – and subject to punishment – at any time*

12 See Cambodia Daily reporting on the laws <https://www.cambodiadaily.com/archives/national-assembly-passes-election-laws-80199/> <https://www.cambodiadaily.com/archives/constitutional-council-approves-judicial-laws-sends-to-king-63282/>

without the knowledge of those involved.”/.../“the law is so vague that it is very difficult to determine the legality of an act at the point of commission.” The law also enables prosecutors to order the destruction of “prohibited or harmful” evidence prior to trial, which could permit the destruction of evidence proving the innocence of those facing charges. It allows for government to essentially nationalise private telecoms firms if compelled by vague “force majeure” circumstances, and for the government to terminate and replace senior management staff if a firm is deemed to have violated the law. All Telecoms operators are now required to apply for a new license within one year, meaning the government will decide on the continued existence of the internet providers, TV and radio stations shortly before for the 2017 commune election.¹³

In April 2016 a **Trade Union Law (TUL)** was passed that seriously undermines the freedom of association, the right to organise and the right to collective bargaining – rights that Cambodia has committed to by ratifying the ILO conventions 87 and 98:¹⁴

The TUL stipulates minimum requirements of the number of local unions needed to form a federation (nine) and the minimum number of federations needed to form a confederation (six). These are high requirements for some sectors and is a means to prevent unions from building strength through numbers. (Article 10)

13 In an interview reported by the Cambodia Daily a spokesperson for the Ministry of Posts and Telecommunications uttered: “Mr. Makara added that his ministry was not involved in eavesdropping on communications and that the “legitimate authorities” vested with the power to approve such activity were at the ministries of interior and justice. Neither could offer an explanation of how this power would be exercised. Interior Ministry spokesman Khieu Sopheak said, “I’m not a lawyer, thank you,” and hung up on a reporter. Justice Ministry spokesman Chin Malin said he did not know who the “legitimate authorities” were, either, but would try to find the “technical experts” who did. Szombor, P. ‘Rights Groups Warn of Tough Telecoms Law’, *The Cambodia Daily*, March 14, 2016 <https://www.cambodiadaily.com/news/rights-groups-warn-of-tough-telecoms-law-109837/>; See also Licadho, *Cambodia’s Law on Telecommunications, A Legal analysis*, March 2016. https://www.licadho-cambodia.org/reports/files/214LICADHOTelecomsLawLegalAnalysis_March2016ENG.pdf

14 OHCHR, 2016, A Human Rights Analysis of the Draft Law on Trade Unions, http://cambodia.ohchr.org/WebDOCS/DocNewsIndex/2016/032016/TUL_Analysis-Eng.pdf; International Trade Union Confederation, 2015, *Ten top concerns with the November Trade Union Law*.

TUL requires a presence of at least 51% of the members of a union for a strike ballot, for holding a general assembly or for deciding about amendments to the statutes. For larger unions in particular, this is a difficult requirement to meet. (Article 13)

Unions are prevented from entering any legal arrangements – opening bank accounts or entering into contracts etc – prior to being registered. (Article 14)

Unions are required to report on all their activities on an annual basis and to provide details of their bank accounts. As under LANGO, the government has a discretionary right to carry out inspections and request information at any time. Unions are required to provide information about changes of bank account or membership numbers within 15 days – a bizarre requirement considering how fluid union membership tend to be. (Article 17)

Union leaders are required to be literate and TUL prevents anyone who have ever been convicted of crime from holding elected office. Considering the high proportion of illiterate people among workers and Cambodians in general this is a serious limitation. The law also requires elected officials to be a minimum of 18 years old, which could have serious implications in for example garment factories where most of the employees are young, illiterate women. (Article 21)

Instead of following provisions for dissolution as prescribed in the union's bylaws, Article 29 prescribes that

a union can be dissolved if 51% of members bring the issue to court.

Article 65 uses vague language that could be used to punish unions. In a parallel with LANGO it says that unions are not allowed “to agitate for purely political purposes or for their personal ambitions”. Another otherwise lawful strike could be deemed illegal if the union has a picket line outside an enterprise during a strike and is found “To cause a congestion or block an entrance and exit gate in the premises of the enterprise or establishment or to violently incite or threaten or prevent or coerce, through all means, non-striking workers not to work and close public streets.” Article 24 says that “relevant parties” may request an audit of a union. It is unclear who is a “relevant party” and it risks subjecting unions to harassment and having to pay the expenses of numerous audits

Chapter 15 includes provisions about sanctions. Employer sanctions are too low to be dissuasive. For almost all violations, the maximum fine is a mere five million riel (USD 1250), which is not a significant amount for a factory owner. The maximum sanction for obstructing the formation of a trade union is just one million Riel. At the same time worker sanctions are high relative to union income – five million riel – which could be used to drain unions of money.

In addition to the above laws, a pending Accounting and Audit Law may impose mandatory external audits on NGOs.

3. LANGO, practical implications for CSOs: increase of costs & bureaucracy

In the following some likely practical implications of LANGO will be presented.

Increased interaction with government bureaucracy will escalate demands for bribes: There is an established practice of authorities requesting bribes whenever citizens depend on their cooperation. Likewise, NGOs are requested to pay “fees” for licenses, permissions, forms, receipts or whenever any documents can be issued or received. LANGO’s mandatory registration and increased reporting requirements, which place an extensive administrative burden on CSOs, will inevitably lead to an increase in the quantity and overall level of bribes requested by authorities. The following examples show interactions with government bureaucracy illustrating how LANGO will be used to drain CSOs of money.

Escalating registration costs: While there is no official registration fee, several respondents described how the unofficial fee paid to Mol in order to receive the registration license has increased dramatically; from a fee of USD 300 in 2013, by 2015 the requested fee was frequently as high as USD 1,200. As the cost of registering community groups formed through NGO projects will almost certainly fall on NGOs, this will prove a substantial extra financial burden.

Refusal to pay the requested unofficial fees generally results in delays on the side of authorities, and there is little to prevent authorities from dramatically increasing bribes requested from NGOs since it is common practice to simply comply with their requests. In 2013, a suggestion was circulated throughout a major NGO/INGO umbrella organisation that members share information and agree among each other accepted maximum amounts, in order to push back on the dramatic increase in the amounts requested, but the initiative never materialised.

Producing written bylaws and approaching the Mol for approval is the first hurdle in the registration process, and a particularly burdensome one for associations with weak administrative resources and skills. Even with the less rigorous pre-LANGO requirements the registration process normally required that provincial organisations make at least one trip to Phnom Penh, and it was very common for authorities to delay and try to find errors in submitted documentation in order to increase the pressure to pay bribes. The International Center for Non-profit Law (ICNL) describes the pre-LANGO process to register with Mol as follows: “*Local NGOs that register with Ministry of Interior (Mol) are also subject to complex and lengthy procedures, pursuant to the LANGO. The process starts with securing approval on key documents from local authorities and submitting them to the Mol. Most of the applications do not meet the requirements for registration without assistance from Mol officials. The applicant may need to make revisions and/or wait for approval from one official or another. Reportedly, this process can be even more difficult if no payments are made to officials.*”¹

Costs for reporting and submitting documents: In a context in which small provincial NGOs and associations are frequently computer illiterate, the amount of paperwork imposed by LANGO will prove extremely challenging. It will be difficult to find the means to produce and regularly submit the numerous required documents. Furthermore, bribes are frequently requested for authorities to even issue receipts confirming that they have received mandatory documentation. One well-known national NGO that engages in soft advocacy was asked to pay for a receipt confirming that they had notified authorities of a change of their executive director. They are still waiting to receive the receipt after two years.

1 <http://www.icnl.org/research/monitor/cambodia.html> (accessed October 2015)

Costs for implementation of legislation that was previously ignored: The entire spirit of LANGO is one of controlling civil society through red-tape barriers. Therefore, as LANGO gives authorities increased control over and information about NGOs/associations, there will be increased pressure to comply with other areas of legislation as well. As an example, an NGO director told the author about challenges in connection with the registration of assets belonging to the NGO. The organisation was instructed to either bring their cars for registration in Phnom Penh, which could potentially halt their provincial operations for months while the car was in Phnom Penh awaiting registration, or pay a hefty bribe to enable smooth registration. Instead, the organisation choose to register the vehicles as private property of the director of the organisation, which required a smaller bribe and did not technically require the NGO itself to pay the bribe. This increased the risk of the organisation losing their assets in the case of a dispute with the director. According to the auditor this is not a unique situation; audit reports regularly point out situations in various NGOs whereby assets paid by donors have wrongly been registered as private property of the director.

Increase of kick-back requirements: When authorities are in a position to determine who will benefit from projects it is not uncommon that there are expectations of kick-backs from prospective beneficiaries. One respondent reported that in one case of an INGO working in cooperation with authorities, channelling money to a local association, authorities requested compensation from the association amounting to half the amount channelled to it (USD 250 from a total USD 500). With an already-established culture of kick-backs, increased coordination with line ministries, in addition to authorities' increased insights into NGO budgets, is likely to increase the size of the budget share requested by authorities. Today there are frequently a more or less open price tag on many positions with Ministries involved in the implementation of aid programs due to the possibilities to extract profits. Increased possibilities for the Ministries to influence and control the implementation of CSO programs risks permeating NGOs with the same culture.²

2 Recent corruption in MEDICAM offers an illustration to large scale corruption in a program run in coordination between Government and NGOs. See reports in Cambodia Daily and in BBC <http://www.bbc.com/news/uk-25141586>; <https://www.cambodiadaily.com/>

Encouragement of fraud: When donors demand zero tolerance of corruption, and in an international aid environment increasingly sensitive to CSO corruption, there is much at stake for NGOs willing to pay substantial bribes. The unofficial registration fee, as well as other bribes, are paid without receipts and cannot be accounted for or openly funded from donor budgets. Trying to raise an increasing amount of bribes to comply with demands from corrupt officials comes with the risk of encouraging fraud within NGOs if funds are diverted from donor budgets and hidden in manipulated financial reports.

Rigged competition for grants: The extensive amount of information shared with authorities– including successful proposals and donor reports – will result in corrupt officials having access to detailed project designs from organisations competing for the same grants. This could possibly lead to confidential information being leaked/sold from authorities to competitors.

Costs of financial audits: It is not clear whether “financial reports” and rights to audit expressed in Article 25 of LANGO refer to financial audits by external auditors. However, it is clear that external auditor reports required by donors will have to be submitted to authorities along with all other reports shared with donors (Article 25).

Access to external audit reports would provide the easiest way for authorities to control and monitor the financial status of an organisation – it would tell authorities if the information shared in financial reports is correct and if tax has been paid. If authorities interpret their right³ to audit and check organisations as a right to demand external audit reports a number of complications will arise. For example, auditor fees are likely to increase substantially if there is a further increase in demand for Cambodia's limited number of auditors. Furthermore, Article 25 prescribes that the annual financial reports are to be submitted to the authorities by the end of February – one month earlier than the reporting date for NGOs to back donors, which also allows one further month to produce the

[archives/anti-corruption-unit-reports-on-health-sector-bribe-case-49863/](https://www.cambodiadaily.com/archives/anti-corruption-unit-reports-on-health-sector-bribe-case-49863/)

3 “The Ministry of Economy and Finance or the National Audit Authority may, if necessary, check and audit an association and a non-governmental organization.” (LANGO, Article 25)

audit reports. The decreased reporting timeframe risks further affecting the availability of auditors and hence contributing to increased audit costs.⁴

In January 2016 the National Assembly passed a new accounting and audit law, regulating accounting and audit procedures for among others NGOs which is now awaiting approval by the Senate. It remains to be seen how this will be applied and if it will extend requirements on NGOs to carry out external audits. In comments on the law IFAC, the International Federation of Accountants, points out that Article 3 of the law makes the same regulations apply for all kinds of organisations, disregarding their size, which they say is unlike what jurisdiction normally looks like in other countries.⁵ Asked about the impact IFACs Cambodian representative answered: “an NGOs potential requirement is to submit to relevant authorities the audited financial statements of the whole organisations”.⁶

Costly retroactive tax payments: Another area of insecurity following increased control over civil society is the Government’s attitude towards tax debts. Due to a history of lax tax collection it is very common that Cambodian NGOs/NGO staff have avoided paying income tax. Tax officials have in the past asked for small, unofficial fees to distribute the paperwork necessary for NGOs to pay their tax. However, the government has increased tax collection efforts substantially over the past two years and there are signs that this will also lead to increased pressure on NGOs to start paying their taxes in line with other sectors. In early June the Gen-

eral Department of Taxation issued a notice (No. 3435) demanding that all enterprises settle tax debts prior to the end of June 2015 or their bank accounts would be frozen⁷. With such an aggressive pursuit of back taxes towards enterprises, it is extremely unlikely that NGOs would receive different treatment, especially in situations where authorities have full access to the financial reports of NGOs/associations. The broad powers LANGO gives authorities to request financial reports and to conduct audits of NGOs/associations will make it very easy to hit down on current and past tax evasion. With donor budgets shrinking at the same time as NGO staffing costs increase through taxation, it is likely that this will have an impact on salary levels in NGOs.

Several respondents expressed concern about the risk of retroactive tax payments being enforced on NGOs. Although no respondents had yet experienced requests for back-payments stretching back to when the organisation was first registered, interviews confirm arbitrariness in demands made by tax officials when NGOs try to start paying their taxes: sometimes authorities do not require any retroactive tax payment at all while others have demanded a years’ worth of back-payments. A rigorous implementation of back-dated debt settlement could threaten the existence of many, especially older, NGOs if debts have to be settled from the time of first registration.

The Law on Taxation provides for cases of non-payment of taxes and punishments thereof (Articles 108–116 & 125–137). With the access to information given to authorities by LANGO, consequences for NGOs could be very harsh if the Law on Taxation is enforced with regards to historical tax debt:

- Article 108 makes directors liable for intentional withholding of taxes;
- Article 111 provides for confiscation of property;
- Article 113 provides for freezing of bank accounts
- Article 116 (3) provides for procedure where tax assessment is withheld and government independently assesses tax liabilities based on information available.

7 KPMG, *Technical update, Notification on calling for enterprises with tax debts to settle (No 3435 GDT)*, https://www.kpmg.com/KH/en/IssuesAndInsights/ArticlesPublications/Documents/Technical%20update_June%202015_Cam.pdf, (accessed October 2015)

4 Another challenge with increased pressure to carry out financial audits is the lack of professionalism found in many audit firms. No Cambodian audit firms are full members of the International Federation of Accountants (IFAC), the international body for maintaining and controlling standards of auditing (www.ifac.org). As an illustration of malpractice involving auditors, one respondent reported about how her brother, who is working for a ministry as an officer in a project funded by outside donors, had been blackmailed by an auditor who was threatening to accuse and frame him for fraud that he had not committed unless he bribed the auditor. Another respondent had experience of auditors even trying to demand sexual services from a staff member of his organisation in a blackmailing situation.

5 file:///C:/Users/M/Documents/BfWD/drafts/Kap%205%20recommendations/2015_09_IFAC%20letter%20audit%20law_Cambodian-National-Assembly-Letter-15-Sept-Final-Draft.pdf Accessed March 2016; See also Kang Sothear, National Assembly Passes Accounting and Auditing Law. The Cambodia Daily, January 16, 2016 <https://www.cambodiadaily.com/news/national-assembly-passes-accounting-and-auditing-law-105501/>

6 E-mail correspondence with Benilda C. Fernando.

LANGO is deliberately made difficult to comply with

The Government has spent years developing LANGO and has had plenty of time to address technical weaknesses, but still many areas of the law have been left vague and incomprehensive. The reason for this is hardly that the government lacks access to the technical skills needed to produce a comprehensive legislation and after several campaigns against LANGO they should be well aware about objections from civil society. More likely, it is *a deliberate strategy from the side of authorities to make it difficult to comply with LANGO*. The heavy administrative requirements and the many vague areas of the law make it easy for authorities to find grounds to fine, extract bribes and close down NGOs – also from those trying to comply – in a very arbitrary way.

As an illustration, one respondent reported how his NGO has repeatedly been refused to make their tax payments: they are told that they need a letter from MoI acknowledging that the organisation has changed office before they are allowed to pay their tax, and as MoI refuses to issue such a letter they are now vulnerable to punishment. In a situation where authorities want to close down or pressure CSOs, tax and red-tape is an easy avenue, compared to more overt pressure, such as violence and arrests. It is difficult for outside stakeholders – development partners, Embassies etc. – to criticise a government for exercising its legitimate right to raise taxes.

Moreover, as the amount of activities that the LANGO criminalizes is so vast⁸, the Government cannot practically enforce LANGO more than very selectively, as expressed by ICNL: *“Moreover, as a policy matter enforcement of mandatory registration requirements, and the corresponding prohibition of activities carried out by unregistered groups or organisations, may be difficult to implement and unworkable in practice. No regulatory body responsible for gathering such information has the means to pursue every group (two or more) of individuals who gather together with a dif-*

*fering level of frequency and may be performing the broadest variety of imaginable activities, from harvesting crops, to playing chess or Pétanque, to producing handicrafts. Furthermore, there is no need for the government to waste its resources in seeking to limit the activities of such groups.”*⁹

In other words, the rationale behind a law that is “impossible” to implement and difficult to comply with, must simply be to spread fear. By making it difficult to comply, and with harsh punishments for non-compliance, the Government signals that CSOs should be careful: “your operations depend on the good will of authorities”.

To summarize

- It remains unclear who will be required to register. The extensive registration and reporting requirements of LANGO will pose financially and practically impossible to comply with for associations/CBOs but also for many NGOs.
- The number of bureaucratic barriers will make it very easy to prevent well-resourced NGOs from being able to comply fully, even if they have the ambition to do so. It will open up many new possibilities for civil servants to drain NGOs on money.
- The government is already able to arbitrarily clamp-down on NGOs and use the judicial system to intimidate NGOs. Cambodia is not characterised by rule of law and there is no need for the government to have LANGO to assert its powers. Instead the most likely reason for its enactment is to install fear with CSOs to make them self-censor and self-regulate. Many terms and definitions in LANGO, the Trade Union Law and the Telecommunications law – such as “neutrality”, “if necessary”, violations of “national culture” etc. – are intentionally kept vague to give authorities broad powers to control and intimidate CSOs
- If LANGO is successfully rolled out, it will help CPP to extract resources from Civil Society Organisations (CSOs) by extorting considerable fees. It will align CSO projects even closer with CPPs objectives.

8 Any domestic association and non-governmental organisations that is not registered shall not be allowed to carry out any activity within the Kingdom of Cambodia (Article 9).

9 International Center for Not-for-Profit Law, *Comments on the Fifth Draft Law on Associations and Non-Governmental Organizations of the Kingdom of Cambodia*, June 11, 2015, p. 7.

- It is likely that many of the costs for registration and reporting of community based groups & associations founded and supported by NGOs will be passed on to NGOs. With the financial and administrative resources needed to register, it is difficult to see that CBOs could be registered in broad numbers without the active “support” from NGOs.

4. Ways forward: From fear to pride

This chapter presents respondents' strategies for meeting the shrinking space for civil society.

CBO positions on registration: Only two out of 35 interviewed community activists considered registration. The vast majority of CBO¹ respondents expressed that as the sole purpose of the legislation is to limit their space they saw it as necessary to actively avoid complying. They expressed that even if they did comply, this would not prevent them from being targeted – not the least since key parts of the legislation are open to arbitrary interpretation. Registration would instead make it easier for authorities to single out and target representatives of the CBOs:

“Why should we register, they are only trying to control us?” (CBO member).

“We cannot register. They want us to register to make us stop protesting for our land. If we stop protesting there is only one outcome: we will starve. If we continue to protest there are at least two possible outcomes: we might get the land back or we might starve.” (CBO member)

One CBO respondent, involved in farmers' self-help organising, had registered his group – a local branch of a bigger organisation – as an agricultural cooperative with the help of an NGO and under a legal framework other than LANGO. Their rationale for registering was to obtain access to funding in a government-controlled aid program. The majority of other members of the same organisation were not registered. Another respondent was undecided. All others rejected the idea of registering.

1 In the following CBO refers to groupings of voluntarily cooperating citizens as opposed to NGOs with employed staff members (hence CBOs here include associations unlike in the vocabulary of the LANGO).

NGO/INGO positions on registration: The strong rejection of registration among CBO representatives was in stark contrast to the positions of Cambodia's two leading NGO umbrella organisations, which have both expressed that compliance with LANGO is unavoidable. The NGO members of the umbrella organisations are already registered, but their target groups include unregistered self-help groups of various kinds. The director of one of the two NGOs expressed the following position:

“Whatever human rights and advocacy associations say, a law is a law and you need to comply. So, first civil society needs to understand what is in the law, the implications but also the opportunities. Second, it is important to work with the government to make them understand our reservations and concerns about the law. We need to send them a message saying, well, the law has passed but here are our remaining concerns. So we have to work with the government to look at the guidelines for implementation. Thereby we can reduce a lot of difficulties with the implementation.”

When asked what would happen if the dialogue process fails and everyone still have a requirement to register, and why the government would listen to them now but not during the stop and consult campaign, he answered: *“Then people on the ground will ring the bell [and say] we will not tolerate what you have done.”* He also stated that his organisation would limit their own advocacy but intended to train communities to engage in advocacy. The other NGOs in the survey were aligned to the position of the CBOs.

An INGO director strongly rejected the idea of complying with CBO registration requirements but mentioned how registration could, eventually, also be used to the advantage of communities:

“There is no reason for associations to rush to register. If they do it will be easier for the authorities to control them, and they will stop them from being empowered to change their situation. Only if communities are strong enough to negotiate from a position of power, with enough, well-organised members, can they use the registration as a way to gain recognition.”

A similar perspective was shared by three other INGO representatives. Contrary to limiting support to community groups, they were looking for ways to expand support to community activists and to groups with movement building aspirations.

CBO strategies for how to meet the increased oppression

Creating strength by numbers: A respondent from a member-based organisation, which currently holds a NGO registration, said they would use the registration pressure on communities as an opportunity to **increase membership numbers** and become a fully member-based organisation:

“When community activists are asked to register we tell them to become members of our organisation instead. It is safer for them and it is safer for us. It is more difficult to target an organisation if there are many members and when there is always someone to replace the leaders [if they are arrested]. They cannot arrest everyone in an organisation with many members and many leaders. It is much easier to target an NGO with a few easily recognised leaders who cannot as easily be replaced. If the NGO leaders are arrested their organisations stop functioning. But in a strong association with a lot of members no one is irreplaceable.”

Several respondents expressed the need to use creative approaches in trying to avoid control efforts:

- More effective **risk-sharing**: “We never tell them who is the leader. We try to lead together. Then they do not know whom to arrest. We also build **solidarity with other groups** who assist us and we assist them. Together we become too many for them to arrest.”

- Several communities **train dual layers of leaders** in order to become less vulnerable: “In case one leader is arrested there is someone to take over.”/.../”The more people they need to arrest to stop us, the more unlikely it is that they will arrest us.”
- **Circumvent restrictions**: “We were told that we were not allowed to organise a public meeting outside the governor’s office. Then we asked for an appointment with the governors’ office instead. They only allowed two of us to come for the meeting, so then the other 500 of us accompanied the two to the governor’s office and were waiting outside during the appointment. Officially we were not having a public meeting but that in practice that is what we did.”
- **Meet and communicate in less obvious ways** to avoid suspicion – “We meet outside the village and pretend to be drinking beer together.”
- **Social media and communication technology** can sometimes offer alternatives to physical meetings. Several respondents mentioned that SMS communication is helpful for avoiding attention when planning activities, if it is difficult to meet in person without raising attention.

Despite the threats from the pending telecommunications/cyber law, there was, however, not much readiness to deal with surveillance or online censorship. While there was a high awareness among the NGO respondents, very few CBO respondents had any kind of **awareness of safety measures for phone or online communication**. A high proportion of the interviewed community activists owned smartphones and accessed information relevant to their activism online but very few used their smartphones for documentation or advocacy purposes.

From the interviews it was clear that also illiterate activists use social media and are active online. One of the interviewed unions had developed a specific smartphone application that enables illiterate members to communicate with each other and their leaders.

Some respondents also mentioned how they tried to **“humanize” relationships with authorities** by developing personal relationships with individual policemen. They mentioned that this reduces tension and enables negotiation, while not allowing themselves to be intimidated into stopping their activities through maintaining relationships:

“They send spies to our meetings. So what we do is not to mobilise all of us, but heads of smaller groups meet in a coffee shop. Or we meet 10–20 people under the trees where the motodops do not go, and with some beer. If authorities come we invite them for beer.” – community activist.

“Even if we only meet to play music authorities come to monitor us. But this started already before LANGO. The police spy at me all the time. We know the police commissioner and everyone and can have some understanding, we know them since long, the newer ones can be more problematic. We try to negotiate with them.” – community activist.

However, another representative also mentioned how a strategy of **developing relationships can be a double-edged sword** as the police also has an interest in developing relationships in order to extract information:

“The problem now is that they try to pay our members to spy on us. The police never used to be friendly with us [before]. Because we work for the community and are protesters, they used to beat us. However, nowadays they come and try to speak friendly to us and ask us to please let us know if we plan to do any activities and claim that ‘we are all working for the people’. This is a new strategy they have in order to make us share information with them.” – community activist.

“Their strategy is to appear soft to people while using a hard strategy and threats towards the community leaders. They take all the names and want to know who are the leaders of the community.” – community activist.

CBO approaches to fear

As mentioned, there are strong indications that peoples’ attitudes towards authorities are changing. However, while the government cannot be everywhere all the time, fear levels are still high and are effectively doing the job for the government in constraining active citizenship. As expressed by one respondent:

- *“The problem is that people respect the authorities as their father and mother, they have to agree and cannot question the decision of the govern-*

ment. However, this is changing. We try to tell the community that you are the owner of the country and you have power and have the right to request the government to serve you because you elected them.” – member-based NGO.

Several CBO respondents expressed the need to use **defiance** as a tool to counteract fear:

- *“The authorities are nowadays more careful not to threaten us in public, they are more concerned about their image after the election, but the threats against our leaders are instead getting worse... After the CNRP’s success in the election, CPP is anxious to become popular and get votes. We use that and continue to ask questions about their broken promises in public. That will break the respect and fear that people still have for authorities.” – community activist.*

- *“CPP tries to divide us by giving promises about benefits to some if they are loyal and abstain from protesting and do not vote CNRP. But we share stories about how they have taken back promises before.” – community activist.*

Another story illustrated how open defiance had even resulted in stolen land being handed back:

“One man said in front of local authorities: ‘In the last election I stopped voting CPP because you treated us badly, you kicked us out from our land.’ Then he got his land back. We need to tell them that if you do not serve me I will not vote for you.” – Community activist.

The interviews also indicated how increased **access to information** through the internet helps to increase awareness: *“People will not allow themselves to be cheated anymore about the quality of the government. They know that the people who steal and later give back part of the land are the same. A problem is that media is controlled. But now people get information through Facebook.”*

Counteract attempts to divide and rule: Respondents also shared how attempts to divide and rule by handing out benefits to some of the affected community members had seriously split communities:

“[We have] two market areas divided along political affiliation. It appears people are divided because of political affiliation. If any coffee shop supports CPP, only CPP supporters will go to drink coffee there and vice versa. Even for funerals only CPP members go if it is a CPP supporter. People are divided.”

All the interviewed community activists expressed that they intended to continue their activities despite increasing risks. Several mentioned that they struggled with fear but with their own and their communities' livelihood at stake they faced no other choice but to continue to protest. Several community leaders shared stories about **the importance of building solidarity** and how their communities had come out to show support and give them strength when they were struggling to continue:

- *“We share the importance of community organising and building solidarity as a way to fight fear.”* – representative of a member-based NGO.
- *“Actually the people are very courageous and the leaders are afraid. This is something new. I fear getting arrested. They [community members] tell me you should not go alone and if you get arrested we find a way to support you. Because of the fear I once told them that I will stop leading the community. But they told me then we will lose our land. And once when I had a problem and called them 1AM in the night they all came to my house, in the middle of the night, to support me. Before only I was strong but now 42 people are strong.”* – community leader.

It is also clear that in some cases an **experience** of intimidation can serve to reduce fear and spur defiance:

- *“I will continue, even until the end, even if I am arrested. My members say the same. We have been in prison already so we are not afraid.”* – community leader
- A person who had been briefly imprisoned almost ten years ago showed the author a newspaper clip from that time that he always carried with him as a source of inspiration. The clip quoted him defiantly saying that he refused to accept to be released from prison unless his fellow activist inmates were also released.

- *“The development of CSOs in Cambodia was very superficial. The decrease in democratic space and increase of oppression has forced a number of groups, whether they are NGOs or grass roots, to be more creative and to go beyond the working hours and bureaucratic approach to their work. It means there is a new kind of commitment to mobilising and engaging in advocacy. There is a new breed of activists, the growth of which is accelerated by the increased oppression, who are engaging in social media activism and more activist are also engaging in international advocacy. The repression accelerates the learning and the growth of more organising. A new breed that looks less at working days and salaries. This activism is different to the previous attitude of NGO workers. I hear them saying when working late hours, this is for our children's future, we cannot just think about investing in their education and health care while leaving a disaster behind, with eroded nature and no jobs.”* – NGO leader

NGO strategies for how to meet the increased oppression – keep the crocodile's mouth open vs. accept what space is offered

Asked about future scenarios, views varied greatly about the long-term intentions of the government. While a majority saw a need to stay defiant there were also voices advocating the need to meet the new regulatory framework with compliance.

Compliance, *“The government has democratic intentions”*: A director of an umbrella organisation for NGOs expressed optimism about the democratic credentials of the government and a need to abstain from criticising the government or working outside the space offered by the government:

“We need to be optimistic about individuals within the government. We need to work with the like-minded within the government. It would be a mistake to not understand what the government is doing and cry out loud that this and that is wrong... The new laws reduce democracy, but Hun Sen still wants democracy. If we only work constructively together according to the above, then there can

still be democratic development... Otherwise you risk a situation where the civil society rises up, and repression from government increases, and there is no one to replace the government... Leaders want a good legacy. Even Hun Sen wants the young generation to say good things about him. When he steps down he wants to see that the country is still progressing, without any war...I appreciate the attempts to raise voice in the past, but now is the time to express solutions as well."

Asked about why the government introduces LANGO the respondent stated:

"The government does not want NGOs to work closely with CBOs. Why? Because CBOs are well connected with people on the ground who are brave and walk on the street and stand in front of the National Assembly. The NGOs do not."

Asked about what strategies he saw appropriate after the "Stop and Consult" campaign (a campaign for a modified LANGO as opposed to the parallel "Say No to LANGO" campaign), the same respondent expressed: "*[My organisation] can consolidate feedback from all NGOs and talk to the Ministry of Interior. I can focus their attention on the challenges."*

Asked whether NGOs should engage in advocacy or not the respondent said "*In a transitional period you identify who should do advocacy and eventually communities can do advocacy by themselves."* He saw a need for a division of labour between different parts of civil society:

"You need to identify key actors and expert organisations [among NGOs] and identify connectors between those who work in the invited space, in dialogue, and those who work to empower on the ground. In that way the gap will be reduced... In that way the government will see you are all friends and then you can reform."

When asked whether additional dialogue initiatives will prevent human rights abuses directly linked to people running the regime, the respondent answered: "*The government is helping the private sector to be more human rights oriented, so they are moving step by step."*

When asked how the organisation chooses its advocacy strategies, another representative of the same organisation answered: "*We did not receive any acknowledgement from Mol after we changed Executive Director two years ago so we need to be careful with advocacy nowadays."*

Defiance, "You have to push the boundaries and defend democratic space.": Other NGO respondents offered a different perspective:

"Things are going to get worse before they get better. They cannot arrest and intimidate everyone, but they will pick out a few to try to scare the rest of us. So some of us will be arrested. But look at the election, everyone spoke about land grabbing. So the more they beat and steal, the more people know it could happen to them as well. Long-term they can never win through that strategy." – NGO director

Several NGO directors shared how they are mentally and practically starting to prepare for increased oppression:

"We are preparing. We have to make sure that no one is irreplaceable. We have to make sure that we take care of each other's families when someone is arrested. I am preparing my family and telling my children that I do this for them, Cambodia today does not offer them any future. We have done this before and we can do it again. Someone has to push the boundaries and show others that it is possible [to challenge power]." – NGO director.

When asked about how to approach the risks associated with human rights advocacy, an NGO worker replied:

"We need to be more strategic in how we chose what risks to take, but we need to continue to take risks. By encouraging networking and by acting together we do not have to stick our necks out on our own and can reduce the risk of being targeted... If we do the job for the government and censor ourselves or distance ourselves from activist communities, then they have won and democracy has suffered. There has to be someone pushing back in order to defend democratic space. Exercising oppression comes at a cost for the government, in form of lost popularity and lost legitimacy. It is very clear that the gov-

ernment wants foreign legitimacy. It also risks aid and trade deals. No matter how much the Chinese [government] offers, the government still wants the European aid², especially since this money greases the ministries and keeps the civil servants happy in very different way than the Chinese money, which can only be skimmed off by the top brass.”

He continued: “If we **make noise and spread awareness** every time they arrest or beat anyone than they will think an extra time before they arrest someone the next time. As soon as anyone is arrested we need to have prepared so we can quickly gather outside the prison in big numbers... We need to **name-and-shame the thugs**, policemen and military who are involved in beatings. If their communities know they will feel ashamed in front of their families after their photos circulate on social media... After military families lost their homes at the lake and other military keep hearing about it, that increased the cost of oppression – therefore **we need to spread more information about human rights abuse, not step back** and decrease information and advocacy.”...“When the government wants to ensure loyalty during time of pressure they give extra handouts to the military and the police. It costs them to buy loyalty and they will have to share more of what they steal. Therefore, we need to spread more information and **create more pressure on the police and on the military from their communities.**”

Asked about what could happen if the donor community abstained from supporting Cambodia’s handful of outspoken human rights groups to the benefit of “non-controversial” amelioration projects, the NGO worker answered:

“It is a very dangerous strategy if donors comply and stop funding groups considered too outspoken and think that they might change things long-term if they take a step back now. Someone has to keep the crocodile’s mouth open, also to enable the non-outspoken community organisers some space. The community organisers need the protection of the outspoken human rights organisations.”

2 In 2012 aid composed 42 percent of the government’s budget, the World Bank quoted in *Seeding the Ground*. <http://data.worldbank.org/country/cambodia>.

Reflecting on the same question an INGO director answered:

“How much do you want to compromise, how much self-censorship do you want to get into before it defies your purpose? For example, if we would leave all work that could be considered sensitive in the eyes in the Government, then the only rationale for staying [in Cambodia] would be for self-preservation and in my opinion we would do more harm, because we would only serve the interests of the duty bearers. But certainly risk assessment and risk management has much more priority now.”

Parallel to strategies expressed by NGOs and CBOs, the INGOs also mentioned the need for developing **cooperation** and **risk sharing**.

“At the INGO level we are trying hard to develop a joint effort and a joint analysis about how we should go about fighting for space, realising that **we are only reactive and three steps behind the government** if we continue to work from our individual perspectives. So in order to be more effective in protecting our space we need to have a more united approach.”

Views also differed between NGOs on how to engage with the government:

■ “We want to have a dialogue with the government about the technical aspects of the implementation. There is no use telling them that we do not want it [the LANGO], what use it is to demonstrate and shout on the street, they will implement the law anyway. But we can have a dialogue about the guidelines for the implementation, and perhaps they will listen to our advice. We need to build trust so they listen to us. If we criticise them they won’t listen... If that does not work we can train communities to advocate themselves” – Director of an NGO umbrella organisation.

■ “They say the government does not listen to us because we are too critical. But last year we had thousands of exchanges with authorities, letters, e-mails and meetings with officials at all levels. If we were not loud they would only meet us in technical working groups every three months and there they anyway ignore NGOs... The organisations that

abstain from speaking out in order not to risk their dialogue with the government in fact keep asking for our help to organise meetings with local government officials.” – INGO director.

Motivation for joining CSOs & the willingness to defend democratic space

Several respondents reflected on the motivations of people to “organize and to advocate for democracy, human rights and social change”. Different CSO actors perceive that they have different things at stake if advocating for democracy, human rights and social change. While community activists may only be able to improve their situation by protesting and challenging power – “if we don’t protest there is one option, we will starve, if we protest there are at least two options, we might starve or we might win our land back” – NGO/INGO workers may instead perceive that they risk the opposite. As expressed by one NGO worker:

“NGO workers live a very comfortable life in comparison to the community activists. They live in their own houses, drive cars and work in air con offices. They can afford to give their children education. Why would they risk all that if they think that challenging the government might make them loose this? The community members, however, often have nothing more to lose.”

If NGO/INGO workers with this perception serve communities at risk there is an obvious **conflict of interest**. With democratic space shrinking it is increasingly evident whether those meant to defend this space – according to the first model of civil society, i.e. acting as guardian of democracy – are willing to take on this role or not.

As with NGO/INGO workers anywhere in the world, there are different motivating factors at play when people seek employment with human rights NGOs. A willingness to promote human rights – especially if this implies risks – might be second ranking to other factors, such as pay levels. Even though the private sector increasingly offers alternative job opportunities, the Cambodian NGO sector still constitutes a key sector of the labour market available to Cambodian university graduates. In the experience of the author, after

screening close to 1,000 CVs of applicants for positions at a human rights organisation, it is very common that NGO workers move between sectors – government, NGO, and private sector – in a way that indicates that a strong commitment to human rights is not necessarily the first reason for their choice of career path.

Another problem is that although there are isolated examples of university teachers and students attempting to carve out civic space, critical thinking is not encouraged within a university system that is under close watch by authorities. The NGO/INGO sector has a bias for recruiting university graduates and people with formal education. However, education is much easier to obtain for the privileged sections of society – which tend to be directly or indirectly interlinked with power – than for the underprivileged at odds with power.³

To remedy this, one INGO respondent discussed plans to **develop alternative education opportunities and education methodologies**. Based on deliberative pedagogics⁴ this would encourage both NGO workers as well as community activists to develop their *critical thinking skills*. A training program would stretch over an extended period of time – possibly seven months’ full time training – and would reduce dependence on staff with formal education.

Another problem that emerged is how NGOs approach citizens to involve in their projects. NGOs *create artificial groupings of people* by using per diems and other handouts as the prime driving force for engagement. However, once the per diems and other benefits dry up the groups tend to fall apart and civil society remains weak.⁵ It is possible that a per diem culture “crowds out” genuinely voluntary engagement.

3 See also Hughes, C. & Conway, T., 2003, Understanding pro-poor political change. London, ODI, p. 33

4 Longo, Nicholas V. (2013) “Deliberative Pedagogy in the Community: Connecting Deliberative Dialogue, Community Engagement, and Democratic Education,” *Journal of Public Deliberation*: Vol. 9: Iss. 2, Article 16. Available at: <http://www.publicdeliberation.net/jpd/vol9/iss2/art16>

5 Compare Lowrie, John, 2009, *The Name of the Game is “Sustainability” but does the last player count*, Published on fundsforngos.org; “The reports and websites of NGOs paint a picture of onward progress, with inspiring PR copy framing slideshows of Cambodian schoolchildren and “empowered” rice farmers. On the whole, however, it’s hard to pinpoint many successes that would survive and overnight cut in aid, anything that is truly – to use another buzz term worn almost meaningless from overuse – “sustainable”.” Strangio, S., 2014, *Hun Sen’s Cambodia*, Yale University Press, U.S. p. 225

Several INGO respondents expressed a wish to see a **stronger rights-based approach** taking root, with an understanding of community organising that allows target groups to indeed organise and empower themselves. While many service delivery projects today lack such a foundation, they could potentially be replaced by initiatives for addressing every-day problems through collective action, where citizens work together based on **more organic, common denominators**/shared interests – as opposed to top-down initiatives and being arbitrarily bundled together by authorities or because of the prospects of per diems.

Cambodia has a short history of civil society organising and several scholars have mentioned that low levels of social capital, after decades of war and turmoil, make voluntary cooperation difficult to achieve⁶. If NGOs were to facilitate genuinely **democratic practices for organising and learning**, amelioration projects could grow into a foundation for critical thinking, increase social capital and become a backbone for grassroots driven democratic change. Transforming NGO projects into a seeding ground for collective action would, however, require a very radical shift from the “pacifying and de-politicizing” modalities at use today (see chapter 1).⁷ Furthermore, while authorities are not able to have eyes and ears everywhere all the time, they are unlikely to be naïve about possibilities to use amelioration projects for empowerment purposes. One representative from a land community shared the following story:

“If we ask for permission to discuss farming or fishing techniques, they would not allow us to meet because we have a tradition of protest. I also tried to make other community members [who are not know to protest] organise such trainings but they were still not allowed. We are told to seek permission from the governor.”

This illustrates the immense importance of allowing NGO target groups to obtain a **power analysis** to identify and analyse attempts to control them.

A common theme raised by respondents was also the importance of moving away from the dominating, one-issue focused way of NGO work and articulate a clear and holistic theory of change. Or, as expressed by a representative of a member-based NGO, there is a need for **“a bigger story”** about the need to work together for *the common good* and social change, beyond narrow, short-term, individual benefits:

- *“This is the mindset we need to have: We need to tell people when they join our organisations, do not expect to get any personal benefits from promoting social justice.”*
- *“We tell our members to think about the positive things associated with the sacrifices, we spread the message that those who are arrested and intimidated are heroes, they contribute to change and to improve the country. It is important to spread the message that people have rights. That they have the right to protest and to make demands. We inform them that no one will fight for us until we are ready to fight ourselves.”*
- *“When we were fighting for Prey Long we said this: ‘It is an honour to be the ones defending this nature. For many generations to come, we will be the one who saved it.’ So we are trying to go from fear to pride. It is not about us, it is a struggle for something bigger. That is why they cannot win, because they only think of themselves. We are devoted, they are not devoted to anything. Also, where are the risks: how many were killed in motor bike accidents and how many were killed by activism?”*
- *“We have to connect the dots. There has to be a bigger story that keeps us together. Different communities increasingly see how their issues are linked and they see the need to offer support to each other.”*

6 See for example Trankell, Ovesen & Öjendal, 1996, *When every household is an island. Social organizing and power structures in rural Cambodia*. Stockholm, SIDA.

7 Brown, Graeme, 2015, *Language, Management, Culture and Community Development*. Unpublished paper; Brown, Graeme, 2009, *Community and Community Development*. Unpublished paper.

5. Recommendations

Do not encourage self-censorship: NGO actors with an interest in supporting democracy, human rights and social change need to assess their programs not just in the light of the new, oppressive laws but also in consideration of how to best make the current movement towards active citizenship gain momentum. This is a unique moment in Cambodia's political history in which people have empowered themselves to speak out at a frequency and magnitude never experienced before. International NGO and their partners need to consider both how their programs can support this development and to what extent their programs risk counteracting newfound willingness to speak out. *Self-censorship, fear and compliance exercised by NGOs risk spreading to the communities they work with and would help the government to stop this movement towards active citizenship.* If impossible to articulate problems and their underlying causes it is also impossible to have a dialogue about how to solve them.

Address the RBA deficit: The greatest threat to “NGOs’ and people’s ability and willingness to organize and to advocate for democracy, human rights and social change” is not posed by LANGO but by practices inside the NGO community itself. As observed by Öjendal, increasingly few NGOs are willing to challenge power and act as a force for democracy. At the same time, the established practices of community organising tend to more resemble committee organising and programmes are not designed in a way that spurs the growth of a democratic civic culture. All-too-willing cooperation with authorities in planning and implementing aid programs has enabled CPP to use NGOs to cement their power.

There is a need to step up efforts to root programmes in a rights based approach, and to assess the substance behind claimed adherence to “empowerment”, “community organising” and “RBA”. Most crucially, there

is a need to critically *assess who plans, implements and benefits from NGO projects*. It is important to assess to what extent project activities encourage voluntary collective action beyond per diems; help develop critical thinking; and empower target groups to become active citizens rather than passive recipients of service delivery. NGO projects involving extensive *interaction with the government require a power analysis* to identify and address attempts to control CSOs, as well as attempts to extract resources from CSOs. A practical step to encourage reflection could be to *draw up a power map of the communities in which international NGO’s partners work*, including the extent to which village development committees, village chiefs and their families as well as other representatives of authorities are involved in planning, implementing and benefiting from donor funds. Donors and their partners should assess to what extent target groups challenge power and demand accountability – and to what extent they merely legitimise and reinforce practices designed by ruling party to strengthen its control. Interaction with authorities should be avoided if this does not happen from a position of strength that enables negotiation. Frequently NGOs serve as intermediaries between communities and authorities where NGOs try to negotiate on behalf of communities (Ou 15). An empowerment approach would instead see communities organise collectively and negotiate on their own.

Increasingly scarce human rights funding should go to human rights defenders: It is necessary to acknowledge that not all actors want to serve as agents for “democracy, human rights and social change” – even if this is part of their rhetoric. At a time when government pressure is increasing on human rights defenders and funding is decreasing, it is *important that scarce resources support those who take on the role to defend “democracy, human rights and social change”*. While a plurality of approaches for how to achieve democratic

change may be healthy, it is important to see if there is any substance and real commitment to democratic change among those “human rights defenders” who comply with government demands that infringe democracy. There is a risk that well-articulated NGOs are agents of change in name only and “crowd out” more genuine human rights defenders. A “strategic retreat” into self-censorship and compliance might very well be motivated by an interest in preserving status quo and not risk a comfortable lifestyle, rather than genuine deliberations for how to best support democratic change.

Support deliberative education & critical thinking: If there is willingness but a lack competence in using a genuine RBA approach this can be addressed by providing substantive training opportunities. International NGO should consider, together with likeminded groups, supporting initiatives such as one discussed earlier which establishes long-term trainings of NGO workers and community activists based on the Earth Rights curriculum. If *deliberative* education is allowed to be the foundation of amelioration projects, they can indeed become a seeding ground for critical thinking and voluntary collective action, i.e. the backbones of democratic transformation. Combining rights activism with organising around amelioration projects might also provide long-term sustainability for activism.

Close the gap between NGOs and CBOs: There is huge gap between the stereotype NGO bureaucrat and a community organiser. On one hand you have white shirted bureaucrat, from a small segment of economically relatively privileged citizens. The stereotype NGO bureaucrats occasionally leave their AC offices, in expensive four wheel drives, to visit “vulnerable beneficiaries”, share “technical expertise” and provide hand-outs with local authorities as key counter parts. On the other hand you have community organising based on strong geographic, socio-economic and value based affinity between those who facilitate the organising process and those organising themselves.

There is a need to develop modalities for channelling funds and reporting procedures that do not exclude key groups from receiving support or taking an active role in program management. The donor community should consider how donor demands for formal education, administrative and language skills have narrowed down who staffs NGOs and their choice of target groups.

In case there is a strong conflict of interest between personal motivation of NGO workers and the groups they are meant to serve, they will not be able to fulfil the official mission of the NGO. Giving a greater role to CSO actors who have closer organic links to the target groups might close this gap – either through changed recruitment practices or by reducing the role of NGOs as intermediaries when supporting communities.

One way of addressing the gap could be to transform NGOs into member-based and democratically structured organisations, as suggested by one of the NGO respondents, or to open up NGO boards to representatives of the groups they claim to serve. International NGO could address such legitimacy deficits by *partnering with membership-based groups to a greater extent*.

Support well-informed risk taking: If everyone abstains from speaking out or taking actions that could trigger oppression, there will be no one fulfilling the safeguarding role of civil society. Only acting within a framework approved by the government inevitably helps an undemocratic government to cement its power. It is crucial *that NGOs do not assist the government in registering CBOs/associations and collectively resist attempts to drain CSO funds through corrupt procedures which entrench CPP's patronage system*. NGOs should not rush to comply with LANGO and other unjust laws, but rather let the government “push first”. While there are limits to how much oppression the government can exert, fear and self-censorship are much more efficient tools for achieving broad obedience and control. This is the very reason for why LANGO requirements are deliberately kept vague, draconian and difficult to fully comply with. If NGOs agree to help implement CBO registration and reporting requirements, they could end up effective tools in the government's exerting of control over CBOs.

It is also important that those who make the choice to challenge power, knowing the risks involved, are morally and financially supported and that efforts are made to share the risk through collective action. There is a need to prepare practical support of those arrested and intimidated, for example establishing a fund to support the education costs of the children of arrested human rights defenders. Plans should be in place for taking over the responsibilities of those arrested so that targeted organisations can continue to function, as well as for activating networks that can

mobilise support and advocate on behalf of targeted human rights defenders. INGOs actively involved in international advocacy have an important role to play in attracting attention to the fate of Cambodian human rights defenders.

Cultivate a new ethos, articulate a clear theory of change and think towards movement building: International NGO and their partners should reflect on the role of awareness-raising, organising and collective action in their strategies and articulate a clear theory of change. There is a need to assess to what extent individual NGOs are seeking to be part of a collective effort and how their strategies and work relates to the bigger picture of democratising society. NGOs should learn from membership-based groups how to build unity and strength based on a shared vision and a shared theory of change. There is a need to create a narrative about the importance to work for the common good and connect the dots between individual struggles. As expressed by one of the respondents: *“We tell our members to think about the positive things associated with the sacrifices, we spread the message that those who are arrested and intimidated are heroes, they contribute to change and to improve the country. It is important to spread the message that people have rights. That they have the right to protest and to make demands. We tell them that no one will fight for us until we are ready to fight ourselves.”*

Bringing people together around a shared vision for how to change society and a feeling of belonging to a movement, on equal terms, is something very different from participating in projects organised around top-down trainings and passively receiving handouts. If there is a powerful narrative, people are more inclined to join CSO initiatives. NGOs could play a much more active role in amplifying such narratives, but instead, as noted by Öjendal, the number of NGOs engaging in government critical advocacy has reduced.

Build strength through numbers, reducing individual risks by acting collectively: While membership-based groups such as trade unions have largely been outside the focus of NGOs, a common practice has been to create artificial groupings of people with the help of per diems and other benefits. INGOs/NGOs need to consider how they can support the growth of more organic groupings that share strong enough common

denominators to be willing to act together even if they lose NGO support.

By increasing the number of people prepared to speak out against power abuse, the negotiating power of CSOs increases and the costs of exerting oppression increases. As expressed repeatedly by CSO respondents: *if we are many enough, not everyone can be arrested. The more people there are to replace those arrested, the more difficult it is for a government to succeed with its oppression.* Networking between different groupings, practical acts of solidarity with other groups facing oppression and the establishment of alliances is essential for building strength.

Prepare for how to circumvent internet censorship & communication surveillance: The importance of internet in raising awareness and enabling people to express their views cannot be overestimated when explaining the current transformation of Cambodia. At the same time, the government’s intentions – seen starkly in the new Telecommunications Law – are clear, and extensive censorship and surveillance measures are to be expected soon. It should therefore be a top priority to prepare practical measures to improve communication security – for example, by increasing security awareness and using simple tools for encryption – and to circumvent internet censorship. Khmer language instructions for how to use proxies need to be prepared.¹ It is essential that Cambodia’s few remaining independent Khmer language media institutions be supported to continue distributing news over internet, satellite and foreign-based radio broadcasters. Civil society actors need to keep developing their ICT (information and communication technology) skills to stay ahead of attempts to control communication.

Circumvent control efforts by changing funding and reporting modalities: With 60 countries developing NGO-hostile legislation over the last ten years and space shrinking for civil society across continents, donor agencies have to adapt to the changing environment by creatively circumventing attempts to restrict democracy and human rights programs. LANGO requirements on INGOs/NGOs to share all project documentation with

1 These are some easy-to-use tools: “Snowden explains why it is super easy to protect our privacy online” <http://bigthink.com/ideafeed/snowden-explains-why-its-super-easy-to-protect-our-privacy-online> see also <https://guardianproject.info/>

authorities can be handled in a variety of ways: by drowning authorities in reports; through vague reporting; or by actively avoiding reporting on sensitive areas and by channelling funds through unsurveyed channels. When the level of authoritarianism is on the increase, international NGO need to consider using covert methods, such as those that enabled support to dissidents in South Africa or Burma in the recent past. In order to reduce the pressure on partners to share audit reports with authorities, international NGO could also consider hiring their own auditor to carry out audits of unregistered groups or of funds kept outside the books – similar to how certain American funding agencies operate in other repressive environments – thus replacing the need for audits initiated by partners themselves. Costs could be shared with other Cambodia-based INGOs who would therefore be relieved of pressure to share formal/traceable audit reports with authorities.

Current funding requirements among other German government donor agencies include that recipients must be registered organisations. This is a bizarre requirement in light of LANGO and contradictory to stated ambitions to support democracy and human rights defenders. If constrained by back-donor requirements, there should be concerted lobbying efforts by Cambodian CSOs and INGOs to influence back-donors to change reporting, registration and admin requirements to allow for cooperation with illiterate, underprivileged and outlawed groups of human rights defenders. It could also be helpful to pro-actively **create a new reporting “best-practice” through cooperation between likeminded INGOs** through collectively developing new procedures. Village chiefs are often involved in project management for the simple reason that they are literate and can do the required paperwork. Modern technology, however, provides ample opportunities allowing illiterate people to deal with financial reporting. For example, there is available software in which aggregated video recordings can be used to verify receipt of funds, instead of easily forged paper receipts.² Encrypting the

2 In the videos recipients state who they are, how much they have received, from whom and for what purpose. In addition, the video contains digital information about time and GPS position. Paper reports, fingerprinted or signed by (alleged) recipients, could be replaced by finger print scanning, possibly using smartphones, cheap fingerprint scanners or even iris scanners. Based on a sample of 2000 respondents, it was estimated that 94 % of Cambodians between 15 and 65 are estimated to own mobile phones, 99 % reachable by some kind of phone, and 30 % smart phones. Kimchhoy Phong & Javier Solá,

same information and transmitting to encrypted databases improves safety and would allow illiterate people to handle substantial parts of a project’s financial management at the same time as improving accountability. In a conversation, audit firm PwC suggested that if about five INGOs approved of and used this method, PwC would consider it an acceptable best practice to replace parts of the paper-based reporting.

Fight corruption & patronage, strengthen democratic accountability: Increased accountability is strongly dependent on strengthening the internal democratic structures in CSOs, including concerted efforts to address gender equality. Encouraging democratic accountability through deliberative and democratic education, transparent and democratic decision-making and abandoning “one-man/male show” centred, hierarchical leadership ideals will effectively attack the seeding ground for corruption and patronage.

Corruption erodes CSOs and feeds the system by fueling patronage. It also creates potential blackmailing situations in which pending corruption cases can be used to threaten CSO leaders. Donor coordination, training in financial literacy skills, measures to improve financial transparency and other efforts to increase internal accountability and change the ethos in CSOs is crucial. Again, new technology makes it possible to simultaneously increase accountability, avoid surveillance attempts and be less exclusive in the choice of target groups and intermediaries.

LANGO increases pressure on CSOs to bribe authorities. This corruption in turn strengthens CPP’s grip of power. INGOs need to face the obvious inconsistency between zero tolerance to corruption and knowing that their partners fuel government corruption by spending outside the books. One way of pushing back is to *be more transparent and talk about these practices*.

A study of the estimated total costs for civil society for increased administration, registration costs and other bribes induced by LANGO could be used to raise awareness about the financial burden on NGOs resulting from LANGO. This could be a way to find a common ground to engage more groups in resisting LANGO.

2014, *Mobile phones in Cambodia*, Open Institute and Asia Foundation.



Menschengerecht Sozialgerecht Umweltgerecht



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