

# Civil Society Law in Theory and Practice

Teaching Handbook  
March 2020

Center for the Study of  
Humanitarian Law

---

With the generous support by the Government of  
Sweden through the International Center for Not-  
for-Profit-Law

**RAOUL  
WALLENBERG  
INSTITUTE**  
OF HUMAN RIGHTS AND HUMANITARIAN LAW



**Sverige**

**ICNL**  
INTERNATIONAL CENTER  
FOR NOT-FOR-PROFIT LAW

## Table of Contents

<b>Acknowledgements.....</b>	<b>3</b>
<b>List of Acronyms.....</b>	<b>4</b>
<b>Suggested Civil Society Law Course Syllabus.....</b>	<b>5</b>
<b>Module 1: Civil Society in Contemporary Context .....</b>	<b>9</b>
<b>Section 1.1 – Introduction to Civil Society.....</b>	<b>9</b>
1.1.1. Introduction to Civil Society.....	9
1.1.2. The Rise to Present Civil Society .....	12
<b>Section 1.2 – Functions of Civil Society.....</b>	<b>13</b>
1.2.1. Civil Society Actors.....	13
1.2.2. Market Support of CSOs.....	15
1.2.3. The Facilitation of Political Action.....	16
<b>Module 2: Introduction to Civil Society Law.....</b>	<b>17</b>
<b>Section 2.1 – Legal Frameworks for Protecting Civil Society Actors.....</b>	<b>18</b>
2.1.1. International and Domestic Legal Protection of Civil Society.....	18
<b>Section 2-2 – The Impact of Civil Society Law in the Country.....</b>	<b>22</b>
2.2.1 The Role of CSL in Promoting Enabling Environment for Civil Space .....	22
2.2.2. The Impact of Civil Society Law: Positive and Negative Impacts .....	24
<b>Module 3: Fundamental Rights of CSOs.....</b>	<b>27</b>
<b>Section 3.1 – The Rights of CSOs .....</b>	<b>27</b>
3.1.1 The Right to Access Funding.....	27
3.1.2 The Right to Privacy .....	29
3.1.3 The Right to Freedom of Peaceful Assembly and Association.....	29
3.1.4 The Right to Freedom of Opinion and Expression.....	31
3.1.5. The Right to Participate in Public Affairs.....	32
3.1.6. The Right to Self Determination .....	33
<b>Section 3.2 – Duty-Bearers .....</b>	<b>34</b>
3.2.1 The Duties of CSOs .....	34
3.2.2 The Duties Owed to CSOs .....	35
<b>Section 3.3 – Application of Rights.....</b>	<b>37</b>
3.3.1 When the Rights of CSOs Can Be Restricted or Suspended .....	38
3.3.2 The Impact of Jurisdictional Differences on the Rights of CSOs.....	40
<b>Modules 4: Civil Society Actors, Roles and Related Human Rights.....</b>	<b>41</b>
<b>Section 4.1 – Civil Society Actors and Their Roles .....</b>	<b>41</b>
4.1.1. What Is Its Role and Who Are the Actors? .....	42
4.1.2 Civil Society in Cambodia.....	43
<b>Section 4.2 – Related Human Rights .....</b>	<b>44</b>
4.2.1. Freedom of Opinion and Expression .....	46
4.2.2. Freedom of Assembly .....	48
4.2.3. Freedom of Association .....	49
<b>Module 5: Challenges Faced by CSOs in Complying with Domestic Legislation .....</b>	<b>51</b>

<b>Section 5.1. – Relevant Cambodian Legislation.....</b>	<b>52</b>
5.1.1. The Effect of These Laws.....	52
5.1.2. Benefits of Domestic Legislation .....	53
5.1.3. Challenges in Compliance.....	55
<b>Section 5.2 – Comparative Analysis – Sweden .....</b>	<b>63</b>
<b><i>Module 6: Protection Mechanisms: Treaty-based Bodies.....</i></b>	<b>65</b>
<b>Section 6.1 – Human Rights Treaty Bodies .....</b>	<b>65</b>
6.1.1. What Are the Human Rights Treaty Bodies?.....	66
6.1.2. How Do the Human Rights Treaty Bodies Work?.....	67
<b>Section 6.2. – Charter-Based Human Rights Bodies and Treaty-Based Human Rights Bodies.....</b>	<b>70</b>
<b><i>Module 7: Protection Mechanisms: Charter-Based Body .....</i></b>	<b>71</b>
<b>Section 7.1 – What Are Charter Based Bodies and How Do They Functions? .....</b>	<b>72</b>
7.1.1. The Human Rights Council .....	72
7.1.2. Universal Periodic Review (UPR).....	72
7.1.3. Special Procedure – Special Rapporteur .....	73
<b><i>Module 8: The Government, International Donors, and CSOs.....</i></b>	<b>76</b>
<b>Section 8.1 – Introduction .....</b>	<b>76</b>
<b>Section 8.2 – State and Government Policy Reform.....</b>	<b>78</b>
8.2.1 The Impact of CSOs.....	78
8.2.2 The Impact of the State.....	81
<b>Section 8.3 – Challenges to the Compatibility of Public Institutions and CSOs.....</b>	<b>82</b>
<b>Section 8.4 – How the State and CSOs Can Influence Each Other .....</b>	<b>84</b>
8.4.1. Formal Engagement.....	85
8.4.2. Informal Engagement.....	86
<b>Section 8.5 – Links to Good Governance.....</b>	<b>88</b>
<b>Section 8.6 – Cambodian Case Study .....</b>	<b>89</b>

## Acknowledgements

The Centre for the Study of Humanitarian Law, would like to acknowledge the tremendous contribution of the working group who have dedicated their time and effort to assist the Center to complete this handbook and all the Center's staff and individual participants in the consultative workshops on the Teaching Handbook.

Working Group:

Ms. Anmol Singh, Student Intern from Macquarie University, Australia

Ms. Seangly Linna, Clinic Student at English Language Based Bachelor of Law (ELBBL)

Ms. Chhoun Menggech, Clinic Student at ELBBL

Mr. Chhuon Watanak, Clinic Student at ELBBL

Mr. Nguon Chhunsong, Clinic Student at ELBBL

Ms. Andrea Pratap, Student Intern from Macquarie University, Australia

We would like to thank our research interns Ms. Tann Marina and Ms. Chor Sivhour for providing research assistance and documentation.

We would also like to thank all participants and lecturers who provide valuable feedbacks, teaching insights and wide-ranging reviews of the handbook at the consultative workshops.

The Teaching Handbook would not be possible without the support and contribution of all the Center's staff. Special thanks to Ms. Hing Vandanet for taking a leading role in collecting data, developing, coordinating, supervising, and reviewing the handbook and Mrs. Tuy Sophorn for her work on the data collection and codification with regard to the need and significance of this handbook.

Finally, this publication is wholly financed by the Government of Sweden through the International Center for Not-for-profit Law (ICNL). Our work under this project is also not possible without the institutional support of the Raoul Wallenberg Institute for Human Rights and Humanitarian Law (RWI) in Cambodia. The Government of Sweden, ICNL and RWI do not necessarily share the opinions here within. The authors bear the sole responsibility for the content.

Sincerely Yours,

Kimsan Soy

Director, Center for the Study of Humanitarian Law

## List of Acronyms

CCC	Cooperation Committee for Cambodia
CDC	Council for the Development of Cambodia
CSL	Civil Society Law
CSOs	Civil Society Organizations
ECHR	The European Court of Human Rights
ELBBL	The English Language Based Bachelor of Law
ICCPR	The International Covenant on Civil and Political Rights 1966
ICESCR	The International Covenant on Economics, Social, and Cultural Rights 1996
ICNL	The International Center for Not-for-Profits Law
LANGO	The Law on Associations and Non-Governmental Organizations 2015
LTU	The Law on Trade Union
NGO	Non-Governmental Organization
OHCHR	The United Nations Office of the High Commissioner for Human Rights
UDHR	The United Nations Universal Declaration of Human Rights 1948
UN	The United Nations
UPR	Universal Periodic Review

## Suggested Civil Society Law Course Syllabus

### 1. Course Description

This is an introductory course on civil society law (CSL). CSL contributes to the promotion, protection and advancement of human rights. CSL provides significant legal framework to support civil society organizations (CSOs), to facilitate effective and collective action, to provide proper accountability of CSOs without infringing its freedom, and to acknowledge the works of CSOs serving the interest of the public. Recognizing the crucial contribution of CSOs to the development of a better society, it is imperative that legal environment for civil space must be improved not only in Cambodia but across the globe. Since these laws are newly emerged and introduced, therefore, quality legal education and training on Cambodia civil society law for students, future legal professionals, judicial officers, practitioners, could alleviate the institutional risks of civil society through better understanding and more accurate interpretation and application of the law.

This CSL course will begin with the historical development of civil society and its legal framework and guidelines to govern the relationship between the Royal Government of Cambodia (the government) and the civil society. The course will explore the discussion concerning core operations of the civil society such as conceptual and legal framework on the roles and function of civil society as well as the challenges the civil society face in implementing their works properly. The course will then look at the international and national mechanism and policy in place, designed to provide better protection of the civil society. The dichotomy of the relationship between the government, the civil society, and the public will be explored through class discussion based on various interactive learning approaches.

This course will also include the comparative case studies and scenario in Cambodia and other countries as lesson learnt and best practices.

This study can be applied in both public and private sectors, particular in the context of Cambodia, such as government, ministries, companies, enterprises, academics, and NGOs etc.

### 2. Course Objectives

The objectives of this course are:

- To enhance the understanding of CSOs and CSL
- To understand how CSL can be applied in both local and international context
- To understand the functions and challenges of CSOs in complying with domestic legislation and works
- To identify fundamental rights of CSOs and examine its protection mechanisms.

### 3. Expected Learning Outcomes

At the end of the course, students should be able to:

- Understand the historical development of civil society and its legal frameworks;
- Understand the relationship between the government, civil society and public;
- Conduct legal research on civil society relevant topics; and
- Analyse the content and scope, and interpret potential issues of CSL.

#### 4. Mode of Delivery

This course will be taught in weekly seminars. Each session will be conducted for 3 hours. Students are expected to prepare for these seminars by reading the materials that will be uploaded in Google classroom sharing with the students. During class students are encouraged to discuss their ideas actively in class to generate meaningful discussion around the topics. Students are required to submit their assignments on time. Students will have the opportunity to apply the theory in a practical way by engaging in role play and group exercises during classes.

#### 5. Course Assessment

The assessment of this course will include:

Quiz: (bonus)

Attendance and class participation (15%)

Assignments: Research paper and presentation (25%)

Mid-Term: (30%)

Final Examination: (30%)

#### 6. Research Assignment

In group of three, students are required to write a short research paper on a topic relevant to CSL. The paper **shall not exceed 2000 words**, including footnotes. **Plagiarism is strictly prohibited**. A list of topics will be provided, or students may select their own topic with consultation of lecturer. All students must advise the lecturer of their selected topic. The paper must be due in soft copy (in document file, .doc or .docx) via email.

Marking criteria for research paper:

Criteria	%
Understanding of the topic	20
Relevance of content	20
Demonstrated research (sources, footnotes, bibliography)	20
Structure	20
Presentation	20
<b>Total</b>	<b>100%</b>

#### 7. Primary Resources

Law on Associations and Non-Governmental Organizations (LANGO), 2015



Asian Development Bank, “Civil Society Briefs: Cambodia, Civil Society Briefs”

Office of the High Commissioner for Human Rights, Working with the United Nations Human Rights Programme: A Handbook for Civil Society, UN Doc HR/PUB/06/10/Rev.1 (2008)

## 8. Course Schedule\*

Class	Topic	Activities
<b>Class 1</b> Module 1	<b>Course Introduction</b> <ul style="list-style-type: none"> <li>Overview of CSL course</li> <li>Analytical framework and structural overview of the course</li> <li>Introduction to research, assignments and research paper</li> <li>Origin and Historical Development of civil society</li> </ul>	<ul style="list-style-type: none"> <li>- Pre-test</li> <li>- Ice-breaker</li> <li>- Lecture</li> <li>- Q&amp;A</li> </ul>
<b>Class 2</b> Module 1	<b>Civil Society in Contemporary Context</b> <ul style="list-style-type: none"> <li>Current overview of CSOs</li> <li>Defining CSL and types of CSOs</li> <li>Civil society actors and their roles in society</li> </ul>	<ul style="list-style-type: none"> <li>-Lecture</li> <li>-Group discussion on given topics</li> </ul>
<b>Class 3</b> Module 2	<b>Introduction to Civil Society Law</b> <ul style="list-style-type: none"> <li>International Legal Framework on the concept and purpose of Civil Society Law</li> <li>Institutional framework of ASEAN and other regional frameworks related to civil society</li> <li>Cambodian Legal Framework on Civil Society</li> <li>Types of CSOs that fall under Civil Society Law</li> <li>Management and governance of civil society under the law               <ul style="list-style-type: none"> <li>- Code of conduct</li> <li>- Notions of civil society law</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Lecture</li> <li>- Information card</li> <li>- Group discussion</li> </ul>
<b>Class 4</b> Module 3	<b>Fundamental Rights of CSOs</b> <ul style="list-style-type: none"> <li>Right-holders and duty-bearers</li> <li>Application of rights</li> <li>Inter-relation between CSL and Human Rights Law (freedom of opinion and expression and freedoms of peaceful assembly and association)</li> </ul>	<ul style="list-style-type: none"> <li>- Lecture</li> <li>- Identifying research topics</li> </ul>
<b>Class 5</b>	<b>Mid-Term Exam</b>	
<b>Class 6</b> Modules 4 &	<b>Legal Challenges</b> <ul style="list-style-type: none"> <li>Civil society actors and their role in society</li> </ul>	<ul style="list-style-type: none"> <li>- Lecture</li> </ul>



5	<ul style="list-style-type: none"> <li>Challenges and benefits in complying with domestic legislation</li> <li>Human rights related to civil society – the freedom of opinion and expression and the freedoms of peaceful assembly and association.</li> </ul>	<ul style="list-style-type: none"> <li>Guest lecture</li> <li>Case study</li> <li>Group discussion (highlight the role and challenges faces by CSOs based on provided scenarios)</li> </ul>
<b>Class 7</b> Modules 4 & 5	<b>Practical and Institutional Challenges</b> <ul style="list-style-type: none"> <li>Funding and donor-driven NGOs</li> <li>Contribution to the society (developing countries)</li> <li>Code of conduct and accountability of CSOs</li> <li>Capacity and leadership of CSOs</li> </ul>	<ul style="list-style-type: none"> <li>Lecture</li> <li>Class discussion</li> <li>Group discussion (identify any associations or civil society organizations and briefly discuss about them)</li> </ul>
<b>Class 8</b> Modules 6 & 7	<b>Protection Mechanisms:</b> <ul style="list-style-type: none"> <li>Treaty based bodies</li> <li>Charter based bodies</li> <li>Universal Periodic Review (UPR)</li> </ul>	<ul style="list-style-type: none"> <li>Lecture</li> <li>Group discussion</li> </ul>
<b>Class 9</b> Modules 6 & 7	<b>Protection Mechanisms (con't):</b> <ul style="list-style-type: none"> <li>Practical experience to achieve realization of existing protection mechanisms.</li> </ul>	<ul style="list-style-type: none"> <li>Lecture</li> <li>Role Play</li> </ul>
<b>Class 10</b> Module 8	<b>Relationship between the government and CSOs</b> <ul style="list-style-type: none"> <li>State/government policy reform</li> <li>Mutual support and accountability</li> <li>The dichotomy between the government and CSOs/international community</li> </ul>	<ul style="list-style-type: none"> <li>Lecture</li> <li>Role Play</li> <li>Debate</li> </ul>
<b>Class 11</b>	<b>Presentation on research topics</b>	<ul style="list-style-type: none"> <li>Class discussion</li> <li>Ways forward</li> </ul>
<b>Class 12</b>	<b>Wrap up &amp; Review</b>	
<b>Class 13</b>	<b>Final Exam</b>	

*\* Note: this course syllabus is subject to change if deemed necessary.*

## Module 1: Civil Society in Contemporary Context

### Section 1.1 – Introduction to Civil Society

#### Learning outcomes:

This module aims to:

- Identify what civil society is; who civil society actors are, and what role they play in society;
- Provide knowledge of the etymology of civil society with the sense of history and the establishment of the term civil society; and
- Analyse the problem arising from the civil society from the early past to present

#### 1.1.1. Introduction to Civil Society

#### Learning outcomes:

At the end of this part student will be able to point out the scope of what civil society is, as well as understand the etymology of civil society.

#### Background reading for lecturer:

- OHCHR. *Working with the United Nations Human Rights Programme: A Handbook for Civil Society.* UN Doc HR/PUB/06/10/Rev.1, 2008.
- Boris DeWiel. *A Conceptual History of Civil Society: From Greek Beginnings to the End of Marx.* Vol.6, 1997, pp.3-42.
- Ernest Barker, translate and edit. *Aristotle 'The Politics of Aristotle.'* Oxford, Clarendon Press, 1946.
- Adalbert Evers, *The Concept of 'Civil Society' – Different understandings and their implications for third-sector policies*, Voluntary Sector Review Vol 4 No. 2, 2013, pp. 149 – 164).

This section of Module will provide general knowledge of the basics of civil society, and how the term 'civil society' was derived. It will demonstrate the problems which lead to the creation of civil society, and how civil society has evolved to become effective in present society.

### *Module 1. Activity 1: Student's Capacity Measurement*

In this activity the lecturer should begin by asking students for their perspective about Cambodia's stability and what happens when there is a violation of human rights over the citizen.

#### **Questions:**

- What do you know about the stability of Cambodia and other countries?
- What problems do you see in Cambodia?
- When there is a situation of violation of human rights over the citizen, who do you think will resolve the problem?

The lecturer should ask students what they first think of when they hear the term "civil society". The lecturer should instruct students to form groups and allow 10-15 minutes for them to discuss the questions below.

**Question 1: What comes to your mind when you hear the term 'civil society'?**

**Question 2: Why do you think civil society exists when the state already has a government?**

## **LECTURE CONTENT**

### *What is Civil Society in Contemporary World?*

There is no exact definition of the term 'civil society', and defining civil society is not a simple task as it encompasses various actors across many countries. Therefore, it may be more useful to look at the concepts which are involved in civil society, rather than trying to develop a universal definition. In recent years, civil society has become internationally studied by scholars, which has led to civil society being thought of as not-for-profit and voluntary formed by the citizen. It has also been characterised as the 'third sector'.<sup>1</sup> The concepts of civil society has been elaborated on by many international organizations, which mostly refer to those organizations that share the same interests, purposes or values distinctively from government,<sup>2</sup> and which are not in conflict to the UN, especially in promoting universal human rights.<sup>3</sup>

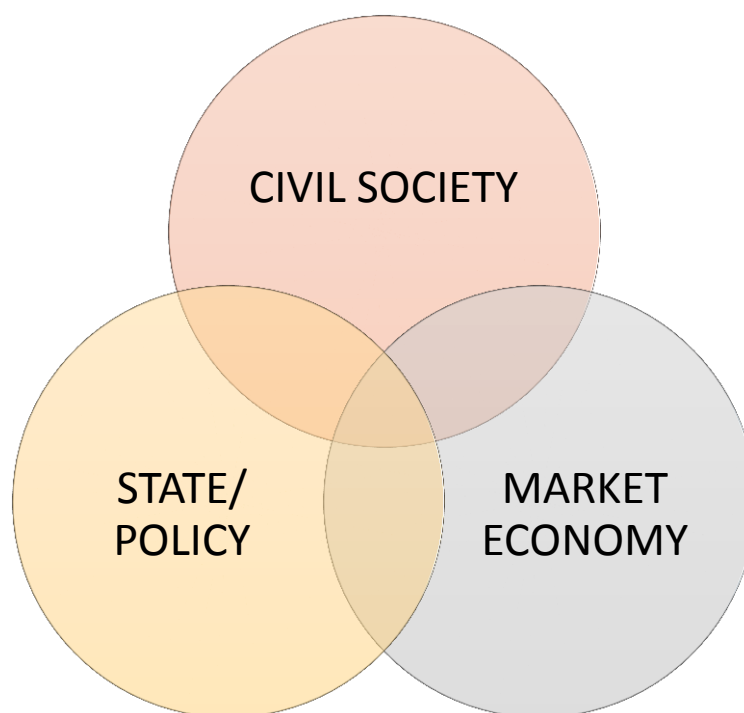
---

<sup>1</sup> Jocelyn Viterna, Emily Clough and Killian Clarke from Sociology of Development. 'Reclaiming the "Third Sector" from "Civil Society": A New Agenda for Development Studies.', Vol. 1, No. 1 (Spring 2015), pp. 173-207.

<sup>2</sup> WHO. 'Social Determinations of Health, Civil society'.

<sup>3</sup> OHCHR. 'Working with the United Nations Human Rights Programme: A Handbook for Civil Society.' UN Doc HR/PUB/06/10/Rev.1, 2008.

In another words, civil society forms a 'third sector' of society, as it is distinct from the government and the economy. It is the combination of multiple groups and organisations that aim to advance collective action based on shared values, purposes and interests.<sup>4</sup> These objectives can be based on multiple considerations related to politics, culture, ethics, religion and more. However, it is not that straightforward to capture the complex nature of civil society. It can be said that civil society operates in a complex space. Although it has been established that civil society operates outside state and commercial interests, these spaces can often overlap. A multitude of actors make up civil society, including: non-government organisations (NGOs), trade unions, charitable organisations, foundations, professional associations and many more.



### *Etymology of Civil Society*

If we look back over the history of civil society, it is unclear where or by whom the term was first adopted.

The first known use of the term of civil society goes back to its roots in ancient Greece, when the Sophists brought up the discussion of civil society in the fifth century B.C.E, under the belief of democratic theory.<sup>5</sup> Critics, who was a Sophist and Socrates' student, believed that

<sup>4</sup> Office of the High Commissioner for Human Rights, Working with the United Nations Human Rights Programme: A Handbook for Civil Society, UN Doc HR/PUB/06/10/Rev.1 (2008).

<sup>5</sup> Boris DeWiel. 'A Conceptual History of Civil Society: From Greek Beginnings to the End of Marx.' Vol.6, 1997, pp.3-42.

only civil state and the legal sanctions could make mankind emerge from its savagery.<sup>6</sup> However, the dialectic technique of Sophists was to balance between natural and conventional of right and wrong, which had become the debate between theorists of natural and positive law.<sup>7</sup>

Although Sophists constituted the beginning of civil society, it was Aristotle who was credited with the first usage term of civil society, translating its meaning from Greek to Latin and then to English.<sup>8</sup> The Greek phrase used was 'koinonia politikē',<sup>9</sup> with koinonia translated as communion, association, partnership, union, or alternatively, as nothing more than association. In Latin, the term used was societal or *communitas*.<sup>10</sup> Politikē is an adjective derived from polis, meaning the city as a political community, but in Latin means civilis, citizen.<sup>11</sup> To put it in words, koinonia politikē in Latin is *societas civilis*, meaning 'civil society' in English.

### 1.1.2. The Rise to Present Civil Society

#### Learning outcomes:

At the end of this part, students will be able to identify how civil society has evolved from the early centuries, and how civil society was brought back after it had fallen. Students will have a broader perspective on civil society and of how civil society has been elaborated on by the man kind to present day.

#### Background readings for lecturers:

- Michael Edwards. The oxford Handbook of Civil Society 'Introduction: Civil Society and the Geometry of Human Relations', August 2011.
- Richard A. Couto. 'The Third Sector and Civil Society: The Case of the "YES" Campaign in Northern Ireland.' Volume 12, Issue 3, pp. 221-238, September 2001.

This section of the Module was created to let students use their critical thinking ability to consider the evolution of civil society from the past to present. In this way, students can gain a better understanding and greater curiosity as to the progression of civil society, by including examples of the rise of civil society after its fall.

---

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ernest Barker, translate and edit. Aristotle 'The Politics of Aristotle.' Oxford, Clarendon Press, 1946.

<sup>10</sup> Boris DeWiel. 'A Conceptual History of Civil Society: From Greek Beginnings to the End of Marx.' Vol.6, 1997, pp.3-42.

<sup>11</sup> Ibid.

## LECTURE CONTENT

Although the concept of civil society was brought into the world in the fifth century B.C.E and had left a strong impression on politicians and policy makers in the late 1980s, support from scholars has fallen away with suspicious confusion.<sup>12</sup> The fall of the Berlin wall in 1989, with the following world-wide democratic openings, revived the idea of civil society and it continued to rise rapidly throughout the 1990s.<sup>13</sup> Civil society now plays a key role in the democratic process, and in achieving social and economic goals.<sup>14</sup> For instance, in the UK the issues of civil society have achieved prominence. The conservative and Liberal Democratic parties in 2010 established the slogan of “big society” and “building civil society” in an attempt to rebalance social responsibly between public authorities and citizens and assumed as a pivotal role at the heart of its politics.<sup>15</sup> To the present day, the categories of CSOs are still doubtful and not all CSOs are for non-profit. For example, there are some CSOs which stand as for-profit organizations in the USA.<sup>16</sup>

On the other hand, the rise of civil society has brought up problems to the countries and especially in the scope of degree. The CSOs, third sectors, are not equal in almost every aspect mainly in degree of democratic and the practice.<sup>17</sup> Then how do countries manage to strengthen the situations of CSOs in the country as well as the future challenges?<sup>18</sup>

### Section 1.2 – Functions of Civil Society

This section aims to:

- Analyse the function of civil society in Cambodia;
- Understand the role of civil society in other countries, including both developed and developing countries; and
- Distinguish the different types of civil societies.

#### 1.2.1. Civil Society Actors

**Learning outcomes:** After this module students will be able to understand how civil society works globally and how many sectors are involved in the functioning of civil society.

---

<sup>12</sup> Michael Edwards. The oxford Handbook of Civil Society ‘Introduction: Civil Society and the Geometry of Human Relations’, August 2011.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Adalbert Evers, The Concept of ‘Civil Society’ – Different understandings and their implications for third-sector policies, Voluntary Sector Review Vol 4 No. 2, 2013, pp. 149 – 164).

<sup>16</sup> UNDP-CH03. ‘NGOs and CSOs: A Note on Terminology.’ Annex 1.

<sup>17</sup> Richard A. Couto. ‘The Third Sector and Civil Society: The Case of the “YES” Campaign in Northern Ireland.’ Volume 12, Issue 3, pp. 221-238, September 2001.

<sup>18</sup> See ‘Module 2: Civil Society – International and Domestic Legal Frameworks-Principle for protecting Civil Society Actor &The Impact of Civil Society Law in the Country’.

*Module 1. Activity 2: Group Discussion*

The lecturer should ask students to form groups of three, in which they will share their opinions on each of the CSO functions below, and whether they are effective.

The lecturer should allow 10-15 minutes.

At the end of the session the instructor should hand the students a quiz to evaluate how much they have gained from the class.

**LECTURE CONTENT***Civil Society Actors*

Civil society actors can be divided into 5 categories:<sup>19</sup>

<b>NGO</b>	NGOs are distinct from the government and are not-for-profit. They are established for specific purposes, such as to protect the rights of women and children.
<b>CBO</b>	Community-based organisations are established for particular groups or communities to advance shared interests. For example, they can be established to improve access to education for a particular community.
<b>FBO</b>	Faith-based organisation are groups or organisations that form for the purposes of forwarding religious concerns. They often emerge from places of practice such as temples, mosques and churches. They can fall under the category of NGOs and CBOs.
<b>Foundations</b>	These organisations often arise from charitable and philanthropic values. They are set up by wealthy individuals or families, and often advance causes that are supported by their benefactors. For example, these can often include charitable trusts.
<b>Professional Associations</b>	These organisations often come together in order to promote professional, vocational or occupational interests. Their purposes often vary from better regulation of minimum standards, protecting the rights of employees and etc. An example of professional associations includes trade unions. These are legal units which act as bargaining agents and representatives for a particular group of employees, such as teachers.

There are different type of CSOs which can also be categorized as for-profit and not-for-profit CSOs. This session, the students shall now consider the social functions that are performed by these organizations. Organised civil societies have no single function or purpose, and different scholars give different meaning of the functions and purposes of civil

<sup>19</sup> Terence Chong, 'Civil Society Organisations: Definitions and Concepts', in Terence Chong and Stefanie Elise (eds), *An ASEAN Community for All: Exploring the Scope for Civil Society Engagement* (International Press Softcom Limited, 2011).



society. CSO functions can be categorized as follows: (a) market support and (b) the facilitation of political action.

### 1.2.2. Market Support of CSOs

#### *Redistribution of Property Rights*

The distribution of property rights is typically organized by the market or the state. The market can achieve redistribution through individual bargaining. For example, by reaching an agreement as to whether x has the right to carry on an activity which interferes with y or whether y has the right to be free from interference by x's activity. The state can do this by passing laws which allocate rights. For example, by passing a law stating that y has the right to be free from interference and x must pay y compensation if he breaks this rule. Alternatively, the market and the state can operate in tandem, with the state passing laws which facilitate bargaining between the parties by reducing the costs of that bargaining, such as by developing an enforceable law of contract. Organized civil society can assist this process by informing state activity.

#### *Reduction of Transaction Costs*

Markets are able to operate more efficiently when transactions costs are minimized. The state's introduction of standard legal mechanisms such as the contract can go some way towards minimizing these costs. For example, every time x and y decide to deal with each other, they do not have to start from first principles and draw up a new vehicle to carry out their endeavour. Instead, they follow the rules of contract law.<sup>20</sup> The costs of individual transactions will rise if it is necessary to invoke the authority of the courts as a matter of course in order to resolve disputes. Gasser suggests that some CSOs can help to minimize this problem by encouraging members of society to follow the law,<sup>21</sup> by means of appropriate moral education or religious instruction.

#### *Resolution of Information Deficits*

We will see below that one of the most important functions carried out by organized civil society is the provision of goods and services which the market fails to provide. One of the traditional reasons for market failure is that consumers are unable to make informed choices about competing products or suppliers because of a lack of available information on which to

---

<sup>20</sup> But see H Beale and A Dugdale, 'Contracts Between Businessmen: Planning and the Use of Contractual Remedies' (1975) 2 British Journal of Law and Society 45, on the role of non-contractual business practices.

<sup>21</sup> Gassler (1986), above n 5, at 24–5.

base their decision.<sup>22</sup> The state could increase the data that must be made available to consumers,<sup>23</sup> thus enabling the public to make more informed choices.

### *Provision of Resources*

The most prevalent extra-market activity carried out by organized civil society is the provision of resources—raw materials which the market can utilize for its own ends. This activity is typically undertaken by educational CSOs. We can categorize provision according to the type of resources provided. First, CSOs provide technological resources, such as the ‘basic research’ which is undertaken by universities and which the market can develop and exploit.<sup>24</sup> Secondly, CSOs supply the human resources necessary for industries to operate, providing education and training which produces future workers.

### *Shaping of Consumer Preferences*

The moulding of consumer preferences and attitudes towards product utility may result from the instruction provided by educational and religious institutions.<sup>25</sup> As with CSOs, which reduce transaction costs by encouraging citizens to follow the law, it is unlikely that this is anything more than an incidental result of other civil society activities.

### **1.2.3. The Facilitation of Political Action**

It would be inappropriate at this juncture to consider the many abstract arguments for and against freedom of political speech and association generally.<sup>26</sup> Rather, we shall consider the specific roles played by organized civil society in this arena. CSO political activity can be split broadly into three overlapping functions: (a) the advocacy of minority interests, (b) the accountability of government, and (c) pluralism and citizen involvement.

### *The Advocacy of Minority Interests*

One of the key functions of organized civil society is the so-called ‘pressure group function’,<sup>27</sup> whereby CSOs act as platforms to advocate for the interests of minority groups. These minority groups will typically represent the socially disadvantaged. However, CSOs also enable other minority interests to be voiced—for example, think tanks allow for the advancement of political ideologies other than those of the current government. Additionally, the dissemination of minority viewpoints is not only of benefit to members of the minority in

---

<sup>22</sup> See generally A Ogus, *Regulation: Legal Form and Economic Theory* (Oxford, Clarendon Press, 1994) 38–41.

<sup>23</sup> See Ogus, *ibid* at 121–49.

<sup>24</sup> Gassler (1986), *above n 5*, at 20.

<sup>25</sup> *Ibid*.

<sup>26</sup> For a detailed analysis see E Barendt, *Freedom of Speech* (Oxford, Clarendon Press, 1987) especially chapters 1 (on free speech generally), 5 (on political speech) and 10 (on freedom of association).

<sup>27</sup> J Kendall and M Knapp, ‘A Loose and Baggy Monster: Boundaries, Definitions and Typologies’ in J Davis Smith, C Rochester and R Hedley (eds), *An Introduction to the Voluntary Sector* (London and New York, Routledge, 1995) 67.

question, but also to the wider public. First, it encourages the tolerance of minority ideas by the majority. Secondly, it facilitates specialist involvement in ‘problem identification and agenda-setting’ to assist policymakers. For example, let us imagine that advocacy group *x* wants the government to implement policy *y*. If *x* lobbies the government but the government implements policy *z* instead, this will not necessarily be a reflection of the quality of *x*’s campaign (although it might be), as behind every policy decision lies any number of factors which need to be taken into account when arriving at a decision. Conversely, if the government does implement *y*, it does not necessarily follow that *x*’s campaign was a contributory factor (although it may have been).

### *The Accountability of Government*

One of the important effects of organized civil society’s pressure group function is that it contributes towards the accountability of government.<sup>28</sup> Because CSOs have the potential to develop expertise in their chosen field, they are well positioned to evaluate government policies and act as a ‘watchdog’, providing a valuable check and balance on the actions of the state. This can take effect in two ways. First, CSO feedback may be requested and recognized by the state, for example through formal mechanisms such as consultation processes. Secondly, CSOs are able to disseminate their feedback to the general public and thereby publicly ‘prod’ the government into rethinking or justifying a particular policy decision.

### *Pluralism and Citizen Involvement*

Organized civil society’s participation in the political arena facilitates pluralism and citizen involvement in society. This function has been officially recognized and has been described as the ‘most attractive’ justification for freedom of political expression generally. By providing minority groups with the opportunity to represent their interests, organized civil society enables ‘previously marginalized’ groups to mobilize and play an active role in civic affairs. It has been suggested that, by facilitating the creation of many assorted interest groups with diverse but overlapping interests, organized civil society encourages citizens to affiliate themselves with many different groups simultaneously.

## **Module 2: Introduction to Civil Society Law**

---

<sup>28</sup> R v Home Secretary, ex parte Urmaza [1996] COD 479. See H Wade and C Forsyth, Administrative Law (Oxford, Oxford University Press, 2000) 517–18.

## Section 2.1 – Legal Frameworks for Protecting Civil Society Actors

### Learning outcomes:

This section aims to:

- Provide a deeper understanding of the international and domestic instrument protecting civil society; and
- Identify the basic concept of human rights law and Cambodian Law

### 2.1.1. International and Domestic Legal Protection of Civil Society

### Learning outcomes:

At the end of this module students will be able to understand both International Law (human rights law) and Cambodian Law in regards to the concept of protecting CSO.

### Background readings for lecturers:

- International Centre for Not-for-Profit Law (ICNL) & World Movement for Democracy Secretariat at the National Endowment for Democracy “Defending Civil Society Report” (Second Edition June 2012).
- Universal Declaration on Human Rights (UDHR).
- International Covenant on Civil and political Rights (ICCPR).
- Cambodia Constitution, 1993.
- Cambodia Trade Union Law (TUL), 2017.
- Law on Associations and Non-Governmental Organizations (LANGO), 2015.

This section of Module 2 will help students gain knowledge and understanding on the basic concept of human rights law and Cambodian Law regarding CSOs. The lecturer will also highlight the hierarchy of law and legal processes in Cambodia as well.

### Module 2. Activity 1: Warm-up

In this activity the instructor will ask the students about their knowledge regarding the fundamentals of human rights. The students will need to make a list of human rights that they have heard of or learned about.

Alternatively, the lecturer should ask students to list the international human rights conventions that they think Cambodia recognizes.

The lecturer should allow 15 -20 minutes for this activity.

The lecturer can use a PowerPoint or whiteboard to briefly explain the Cambodia law making process and hierarchy of law.

## LECTURE CONTENT

### *Constitution*

In the Article 31 of the Constitution of Kingdom of Cambodia state that “The Kingdom of Cambodia recognizes and respects 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 rights and children’s rights...”<sup>29</sup>

### *Freedom of Expression and Freedom of Access to Information*

Civil society representatives enjoy the right to freedom of expression, both individually and through their organizations. This right is recognized in Article 19 of UDHR<sup>30</sup>. Additionally, Cambodia is also a member of International Covenant on Civil and Political Rights. In Article 19 of that convention, it is also states that “everyone shall have the right to freedom of expression...”.<sup>31</sup> A key principle of fundamental freedoms, the right to freedom of expression, plays an important role in a democratic country. It provides that everyone shall have the right to freely express their concern and opinions without interference from the government. Article 41 of the Constitution of the Kingdom of Cambodia explicitly guarantees this right for all Khmer citizens, stating that “Khmer citizens shall have freedom of expression, press, publication and assembly. No one shall exercise this right to infringe upon the rights of others, to effect the good traditions of the society, to violate public law and order and national security.”<sup>32</sup>

The UN Human Rights Council has expressly stated that restrictions should never be applied to “discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns,

<sup>29</sup> Constitution of Kingdom of Cambodia, Art 31.

<sup>30</sup> Universal Declaration on Human Rights, Art 19.

<sup>31</sup> International Covenant on Civil and Political Rights, Art 19.

<sup>32</sup> Constitution of Kingdom of Cambodia, Art 41.

peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.”<sup>33</sup> As mentioned above, civil society organisations represent both individual and collective beliefs, and shall thus have the right to speak out critically against government on issues relating to human rights and fundamental freedoms. Moreover, any legislation restricting the right to freedom of expression must be applied by a body which is independent of any particular political party.<sup>34</sup>

### *Freedom of Assembly*

Additionally, Article 20 of the UDHR and Article 21 of the ICCPR both discuss the right to freedom of assembly. Moreover, Article 41 of the Constitution of the Kingdom of Cambodia also states that “Khmer citizens shall have freedom of expression of their ideas, freedom of information, freedom of publication and freedom of assembly...”<sup>35</sup>

However, while the freedom of assembly has recognized by Cambodia’s constitution, the same Article also mentions that “no one shall exercise these rights to infringe upon the honour of others, or to affect the good customs of society, public order and national security”.<sup>36</sup> Peaceful assembly is a broad term encompassing all types of assembly, including peaceful demonstrations. Under the Article 21 of the ICCPR, any restriction placed on such freedom shall be prohibited, unless it is:

- Provided by law;
- Subjected to a strict test of necessity in a democratic society; and
- Imposed only in the interests of national security or public safety, public order, the protection of health and public morals, or of the rights and freedoms of others<sup>37</sup>.

In 2009, Cambodia adopted Law on Peaceful Demonstrations, that provides a clear definition of what is to be considered a peaceful demonstration. This legislation also establishes a set of procedures for notifying the authorities. Under Article 4 of the Law, a peaceful demonstration is recognized as:

1. A peaceful assembly or march conducted by a group of people;
2. To publicly demand, protest or express their sentiments, opinions or will; and
3. By using various forms or means peacefully

---

<sup>33</sup> UN Human Rights Council, Resolution 12/16, Freedom of opinion and expression, 12 October 2009, para. 5(p).

<sup>34</sup> Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

<sup>35</sup> Cambodia Constitution, Art 41.

<sup>36</sup> Ibid.

<sup>37</sup> ICCPR, Art 21.

### *Freedom of Association*

Article 23(4) of the Universal Declaration of Human Rights states that “everyone has the right to form and to join trade unions for the protection of his interests.” Article 22 of the ICCPR, in defining the right to freedom of association, specifically mentions trade unions, as does Article 8 of the ICESCR. The International Labour Organization’s 1998 Declaration on Fundamental Principles and Rights at Work is particularly significant because it grounds trade union rights in the basic, democratic, political right of freedom of association.

Under Article 22(2) of the ICCPR, “no restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right”.

#### Two Cases from Kosovo and Afghanistan

Civil society is particularly important for countries under pressure, whether it be through oppression or corruption and absence of an efficient government. Recognizing this, and creating an environment in which civil society can contribute to the rebuilding of an open society, is an important part of post-conflict reconstruction. This is clearly highlighted by the examples of Kosovo and Afghanistan.

Albanian civil society played an important role in Kosovo, but prior to the establishment of the UNMIK provisional governing authority, CSOs operated in a legal vacuum, without clear legal rights. This posed the sort of practical problems referred to in the previous section. UNMIK regulations – among the most progressive established anywhere – instituted a simple registration process which strictly limited the authority of registration officials to deny registration. Consequently, there has been an upsurge in Kosovan NGOs, with over 1,700 currently registered.

The position of civil society in Afghanistan was at least as difficult as that in Kosovo, due to the disabling Taliban-era NGO laws. Registration criteria were unclear and open to inappropriate discretion without redress. The need for reform to enable Afghan civil society to play an effective part in reconstruction was recognized and the registration process handled with remarkable speed and professionalism.



## Section 2-2 – The Impact of Civil Society Law in the Country

This module aims to:

- Demonstrate the importance of civil society law for the country and the promotion of an enabling environment, within which civil society actors can advocate on behalf of citizen;
- Identify the legitimate and helpful civil society actors to which citizens can turn to for help;
- Explain how to avoid getting deceived by illegitimate and unlawful of civil society actors;
- Provide an understanding of what of the needs of communities, and how civil society actors can help fulfil such need; and
- Demonstrate how students can cooperate and work effectively with these actors in order to better advocate for their community

### 2.2.1 The Role of CSL in Promoting Enabling Environment for Civil Space

#### **Background readings for lecturers:**

- Law on Association and Non-Governmental Organization 2015.
- Law on Anti-Money Laundering and Combating the Financing of Terrorism 2007.
- Parkas 464 on Taxation for Associations and NGOS 2018.
- Office of the High Commissioner for Human Rights in Cambodia, “A Human Rights Analysis of the Associations and Non-Governmental Organization”, 4 August 2015.
- Cristian Salazar and Volkmann, “Civil Society, Poverty Reduction and the Promotion of Children’s Rights in Iran”.
- Wiley, “From Civil Society to the Social” the London School of Economics and Political Science, The British Journal of Sociology 1995, Vol. 46, No. 3, page 395-408.

This section will assist students in gaining an understanding of the role of civil society law in helping governments to distinguish between unlawful individuals or organizations (i.e. those with ties to terrorist activity or illicit financial crime) from the legitimate civil society actors who should be protected due to their significant contribution to the community and nation.

Secondly, it will demonstrate the advantage of such laws for legitimate civil society, such as through tax benefits and the promotion of public trust.

### *Module 2. Activity 2: Warm-up*

The lecturer should ask the students to name any institutions or organizations they know of which have been legitimately registered with the state and in which they believed playing a significant role in their school or community.

The students will also need use their critical thinking skills to analyse what makes Cambodia a democratic society. Is it enough that the government uses policy making to bring more investors to the country? If not, what else could these legitimate groups or organisations do to help fill such gap, and help to improve and develop this country?

First, the students will need to make a list of organization in which they know which have played a fundamental role in helping to advocate for and provide assistance to their community. Students then need to point out one organization which they are interested in, and present it to the class about: (a) what the organization does, (b) what contribution the group or organization made in their community and (c) what they find significant about this organisation.

The lecturer should allow approximately 5-10 minutes for this activity.

## **LECTURE CONTENT**

### *What is Civil Society Law?*

In Cambodia, there is no specific definition of Civil Society Law. However, the Law on Associations and Non-Governmental Organizations did provide their proposal for what the vision, objective and application of civil society law should be.

For civil society to fully function, it is necessary to promote an enabling legal environment. Therefore, civil society is only able to be fully effective where the law is used to support civil society actors, rather than impede, control or suppress them.<sup>38</sup>

### *The Objective of Civil Society Law*

The objective of civil society law in Cambodia is that of “safeguarding the right to freedom of establishing associations and non-governmental organization in the Kingdom of Cambodia

---

<sup>38</sup> Richard Fries, “Civil society and the law”, Alliance, Oxford Social Impact Programmes, 1 March 2004 available at <https://www.alliancemagazine.org/feature/civil-society-and-the-law/>.

in order to protect their legitimate interests and to protect the public interest, as well as to promote partnership cooperation between associations and non-governmental organization and the public authorities”.<sup>39</sup>

### *The Role of Civil Society Law in Cambodia*

In Cambodia, the LANGO was use “to determine the formalities to legally recognized associations or non-governmental organizations as well as to establish the relationship between the association and/or non-governmental organizations and the public authorities for the development of Cambodian society”<sup>40</sup> by establishing registration procedures and requirements for associations or non-governmental organization who wish to conduct their activities within the Kingdom of Cambodia.<sup>41</sup> Thus, the law constrains and controls the activities of civil society, particularly when setting a framework regarding how and to what extent civil society actors can operate.<sup>42</sup>

### 2.2.2. The Impact of Civil Society Law: Positive and Negative Impacts

#### *Promote Public Benefit and Privileged Status for Civil Society Actors through Tax Exemption*

Most countries provide an enabling environment for civil society actors, supporting and encouraging them by offering financial privileges to not-for-profit civil society organisations. For example, such privileges are offered to CSOs which seek to assist in poverty reduction, support in education, health and social care, and environmental issues. For instance, in Cambodia, the law provides tax incentives to associations and NGOs, as provided in detail below. The legal registration process is therefore significant in order for the state to be able to provide such privileges to not-for-profit CSOs.<sup>43</sup>

In Cambodia, Article 6 of Prakas 464 on instruction in Tax Compliance of Associations and Non-Government Organizations provides the following conditions for exemptions on income tax:

1. “(1) any NGO organized and functioned purely for religious, charity, scientific, or education purposes, and no asset or income of which is sued for the private interest;
2. any association, provided that no income of which is used for private interest of the shareholders of physical persons”.

---

<sup>39</sup> Law on Associations and Non-Governmental Organizations, Article 1.

<sup>40</sup> Law on Associations and Non-Governmental Organizations, Article 2.

<sup>41</sup> Law on Associations and Non-Governmental Organizations, Article 3.

<sup>42</sup> Richard Fries, “ Civil society and the law”, Alliance, Oxford Social Impact Programmes, 1 March 2004 available at <https://www.alliancemagazine.org/feature/civil-society-and-the-law/>.

<sup>43</sup> Richard Fries, “ Civil society and the law”, Alliance, Oxford Social Impact Programmes, 1 March 2004 available at <https://www.alliancemagazine.org/feature/civil-society-and-the-law/>

The income which is subject to tax exemption under this Prakas include legal funds or donations from individual or entities, resource or assets of the association or NGO, contribution of its members, and other resources of income, except the income from business activities as stated in Article 8 of this Prakas.”<sup>44</sup>

The European Union (the “EU”) has been particularly cooperative with civil society organisations to tackle the problems of terrorism and illicit financial crime. Pursuant to the Report, NGOs were considered as ‘subjected to risk’ in the ML framework either to raise and transfer funds or to function as a legitimate enterprise to provide indirect funding in support of terrorist organizations.<sup>45</sup> Similarly, Article 4(m) of Law on Anti-Money Laundering and Combating the Financing of Terrorism (“the AML”) provides that NGOs and foundations engaging in business activities and fundraising should be bound by the obligation imposed by AML law.<sup>46</sup>

### *Creating Difficulties for Civil Society Actors to Operate*

Civil Society is definitely significant, especially in those countries where corruption and an absence of good governance remain unresolved.<sup>47</sup>

### *Establishing a Safe and Free Environment Necessary for Civil Society to Be Fully Effective*

In this sense, the law aims to provide safeguard measures for the establishment and functioning of civil society by avoiding wilfully or unconsciously, lead to inhabitation, distortion or suppression of Civil Society by Law or state, in another word, to provide legal right to Civil Society.

### *Ensure the Accuracy and Accountability Not to Exploit the Role of Civil Society in Advocating on Behalf of Citizen*

Here the law is beneficial in providing proper accountability of civil society without undermining or infringing on its freedom and privilege in serving the public interest.

### *Strengthen the State’s Management Over Civil Society Actors*

The law aims to provide precautionary mechanisms for the government to more effectively and efficiently identify and combat unlawful or illicit financial acts which are conducted using CSOs as a shield.

### *Module 2. Activity 3: Class Discussion*

---

<sup>44</sup> Prakas No. 464 SHV. Brk on Instruction in Tax Compliance of Associations and Non-Government Organizations, Article 6. 12 April 2018.

<sup>45</sup> Gianluca Sgueo, “NGOs and money laundering Adapting EU rules to engage NGOs better” European Parliament, March 2015.

<sup>46</sup> Law on Anti-Money Laundering and Combating the Financing of Terrorism, Article 4(m).

<sup>47</sup> Richard Fries, “ Civil society and the law”, Alliance, Oxford Social Impact Programmes, 1 March 2004 available at <https://www.alliancemagazine.org/feature/civil-society-and-the-law/>.

The lecturer will need to divide the class into two sides and assign one to argue the affirmative and the other to argue the negative. Each side will then be given time to collaborate and discuss their points for the debate, with students only arguing the side that they have been allocated.

The lecturer should allow 20-25 minutes for this activity. Approximately 5-10 minutes for the students to discuss and form their arguments and 15 minutes for the actual debate where students will present their arguments and counter-arguments.

Topic: Should domestic legislation be imposed for the regulation of civil society organisations?

The purpose of this activity is to assist the students in enhancing their ability to form arguments on particular topics and raise points for either side of an argument. This activity will further assist the students in gaining a better understanding of the pros and cons involved in legislating on regulating civil society organisations.

## Module 3: Fundamental Rights of CSOs

### Learning outcomes:

This module aims to:

- Identify the rights and duties of CSOs;
- Identify state's obligations owed to CSOs;
- Provide an understanding of when and for what reasons the rights of CSOs can be restricted;
- Provide an understanding of the impacts which jurisdictional differences can have on the rights of CSOs; and
- Analyse the inter-relation between CSL and human rights law.

### Section 3.1 – The Rights of CSOs

#### Learning Outcomes:

This section aims to:

- Identify the rights which are enjoyed by CSOs;
- Analyse the areas in which CSL and human rights law intersect; and
- Provide a deeper understanding of how these rights serve to benefit the functions of CSOs.

#### 3.1.1 The Right to Access Funding

#### Learning outcomes:

At the end of this section, students will have a greater understanding of the right of CSOs to access funding, and will be able to analyse how domestic legislations can complicate the use of international funding.

#### Background reading for lecturer:

- Asian Development Bank, 'Civil Society Briefs: Cambodia', November, 2011.
- Human Rights House Foundation, 'Funding Civil Society'.

### *Module 3 Activity 1 – Brainstorming*

In this activity, the lecturer should begin by allocating students into groups of 3 or 4, allowing them 15 minutes to answer the following brainstorming questions.

At the end of these 15 minutes, the groups will come together in a larger discussion, to discuss their answers.

**Question 1:** Do CSOs have rights and obligations?

**Question 2:** What do you think are the main rights which CSOs possess?

## LECTURE CONTENT

Both registered and unregistered CSOs are entitled to seek, obtain and utilise funding and resources from a variety of legal sources, whether these resources be in the form of monetary funding, the provision of material supplies, or the allocation of human labour. Additionally, such sources may include individuals, private corporations, non-governmental organisations, and international or inter-governmental organizations. They can also include assistance from local, national and foreign governments. Cambodia has varying requirements for reporting and registration depending on a CSO's classification as either local or international. However, both classes of organization can be permitted by the Council for the Development of Cambodia (CDC) to import resources and materials from foreign donors.<sup>48</sup> This right is especially vital for those CSOs which operate in communities which are disadvantaged or unable to generate sufficient funding themselves, as it enables these CSOs to acquire funding from external, or even foreign sources. Where states are seeking to restrict international funding in favour of domestic input, it is therefore extremely cumbersome for CSOs to have to navigate the complex fiscal regulations which are being increasingly adopted. This is particularly true in regards to the restrictions enforced in nations such as Russia and India, where foreign funding for CSOs has been criminalized.<sup>49</sup> In such cases, CSOs are forced to either generate greater funding from domestic sources, or to find ways to circumvent these restrictions without partaking in illegal activity which puts the organization and its members at risk.

<sup>48</sup> Asian Development Bank, 'Civil Society Briefs: Cambodia', November, 2011.

<sup>49</sup> Ibid.



### 3.1.2 The Right to Privacy

**Learning outcomes:**

At the end of this section, students will have a deeper understanding of the right to privacy which CSOs possess.

**Background reading for lecturer:**

- Antoine Buyse, 'Squeezing Civic Space: Restrictions on Civil Society Organizations and the Linkages with Human Rights', Vol. 22, No. 8, The International Journal of Human Rights.
- Carly Nyst, 'Data Protection Standards for Civil Society Organisations' (European Center for Not-for-Profit Law, 2018).

## LECTURE CONTENT

Moreover, CSOs also have the right to keep their activities private, while adhering to the principles and requirements of accountability and transparency under the law. This means that, so long as they adhere to the legal regulations surrounding mandatory reporting, and provide the necessary documents to be independently reviewed in a timely manner, CSOs have the right not maintain a certain level of privacy as to their operations. This encompasses protection from undue intrusions such as inappropriate inspection of CSO finances and documents and the requirement of confidential CSO accounts. This right is discussed further in section 3.2.1, when examining the duties of governments to respect this right to privacy.

### 3.1.3 The Right to Freedom of Peaceful Assembly and Association

**Learning Outcomes:**

At the end of this section, students will be able to engage with the concept of freedom of peaceful assembly and association, and analyse how it is relevant to the areas of CSL and human rights law.

**Background reading for lecturer:**

- Universal Declaration on Human Rights.
- Constitution of Kingdom of Cambodia.
- European Convention on Human Rights.

- United Nations Human Rights Office of the High Commissioner of Cambodia, ‘Freedom of Peaceful Assembly and Association’.

### Module 3. Activity 2 – Quiz

This activity, will test the students’ initial understanding of what the right to freedom of peaceful assembly and association is, and what general limitations are in place. For this activity, the lecturer will write several options on the board, which students will have to classify as either “protected” or “not protected” by this right. Students will have 5 minutes to complete this exercise, after which the correct answers will be provided so that they can calculate their grades.

## LECTURE CONTENT

Article 20 of the UDHR states that “everyone has the right to freedom of peaceful assembly and association”.<sup>50</sup> This right has been provided for on both the international and national level, as states choose to strengthen their obligations in the UDHR through domestic legal mechanisms. Specifically, this concept has been codified in Article 31 of the Cambodian Constitution, wherein the Kingdom of Cambodia has committed to “recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights...”.<sup>51</sup> Furthermore, Article 41 of Cambodia Constitution also states that “Khmer citizens shall have...freedom of assembly”.<sup>52</sup>

However, the right to freedom of peaceful assembly and association is not an absolute right, as will be expanded on later in Module 7. Therefore, states are able to impose restrictions on this right, so as to prevent CSOs from abusing their powers and posing a threat to wider society. For example, Article 11 of the European Convention on Human Rights provides for the exercise of the freedom of assembly and association, except where restrictions “are prescribed by law and are necessary...in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others”.<sup>53</sup> Here, CSO with a genuine interest in furthering human rights and political and social progression are protected by international law, insofar as their association does not threaten the state’s security or stability.

<sup>50</sup> Universal Declaration on Human Rights, Art 20.

<sup>51</sup> Constitution of Kingdom of Cambodia, Art 31.

<sup>52</sup> Ibid, Art 41.

<sup>53</sup> European Convention on Human Rights, Art 11.

Where CSOs adhere to the requirements of peaceful assembly and refrain from infringing upon the nation's established moral structures, they are therefore able to use these areas of international and domestic law to seek protection from interference or persecution. Additionally, as the right to freedom of peaceful assembly and association is a recognised human right, CSOs do not need to be registered in order to be protected by this right. Unregistered CSOs and those individuals taking part in them are therefore equally protected from interference and punishment as those CSOs which are formally registered.

### 3.1.4 The Right to Freedom of Opinion and Expression

#### Learning Outcomes:

At the end of this section, students will be able to engage with the concept of freedom of opinion and expression, and analyse how it is relevant to the areas of CSL and human rights law.

#### Background reading for lecturer:

- Universal Declaration on Human Rights.
- Constitution of Kingdom of Cambodia.
- Emily Howle, 'Protecting the Human Right to Freedom of Expression in International Law', Vol. 20, No. 1, International Journal of Speech-Language Pathology.

## LECTURE CONTENT

Additionally, CSOs also possess the right to freedom of opinion and expression, as is enshrined in article 19 of the Universal Declaration of Human Rights (UDHR).<sup>54</sup> Specifically, the UDHR provides that "this rights includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of any frontiers".<sup>55</sup> Similarly, Article 41 of the Constitution of Cambodia also states that "Khmer citizens shall have freedom of expression, press, publication...", so long as they do not use this right to "infringe upon the rights of others, to effect the good traditions of society, to violate public law and order and national security".<sup>56</sup> The right to freedom of opinion and expression therefore functions to protect CSOs from undue governmental interference, and allows them to direct their resources to advocacy and promoting greater public awareness.

<sup>54</sup> Universal Declaration on Human Rights, Art 19.

<sup>55</sup> Ibid.

<sup>56</sup> Constitution of Kingdom of Cambodia, Art 41.

As CSOs are often working against the established customs or social norms, this human right can therefore be extremely important in the area of CSL, helping to safeguard them from coming under attack from conservative parties or government agencies.

### *Module 3 Activity 3 – Comparative Study*

For this activity, students will form groups of 3-4 and be given 15 minutes to compare the laws of three different states whose laws deal with the right to freedom of opinion and expression. During this time, they will have to identify what the laws of these three states says, as well as how they differ practically.

At the end of these 15 minutes, the groups will come together in a larger discussion, to analyse how effective this freedom is in the various countries selected, in light of the legal restrictions which are in place.

### 3.1.5. The Right to Participate in Public Affairs

#### **Learning Outcomes:**

By the end of this section, students will develop a more thorough understanding of the right to participate in public affairs. They will also be equipped to analyse how this right is relevant to the areas of CSL and human rights law.

#### **Background reading for lecturer:**

- International Covenant on Civil and Political Rights.
- Human Rights Committee, General Comment No. 25: Participation in Public Affairs and the Right to Vote, CCPR/C/21/Rev.1/Add.7.

## **LECTURE CONTENT**

Article 25 of the ICCPR provides for the right of all citizens to take part in public affairs, whether this be directly or by way of a chosen representative.<sup>57</sup> The Human Rights Committee further clarified the meaning of this article in General Comment 25, whereby it interpreted Article 25 to encompass the right to vote in referendums and other means of direct democracy, elect their own freely chosen government representatives and take part in

<sup>57</sup> International Covenant on Civil and Political Rights, Art 25.

debate and dialogue.<sup>58</sup> Significantly, the Human Rights Committee also included the right to both establish and join political parties and organisations, as well as to partake in peaceful demonstrations, and promote political ideas and materials.<sup>59</sup> This right therefore also includes the right of all citizens to join in CSOs and their activities, as a means of advocating for their own political interests and partake in public forums and discussions.

### 3.1.6. The Right to Self Determination

#### Learning Outcomes:

By the end of this section, students will develop a more thorough understanding of the right to participate in public affairs. They will also be equipped to analyse how it is relevant to the areas of CSL and human rights law.

#### Background reading for lecturer:

- International Covenant on Civil and Political Rights.
- Hurst Hannum, 'The Right of Self-Determination in the Twenty-First Century', Vol. 55, No. 3, Washington and Lee Law Review.

## LECTURE CONTENT

The International Covenant on Economic, Social and Cultural Rights (ICESR) also serves as a legal document binding its signatories to its terms.<sup>60</sup> Article 1 of the ICESR states that “all peoples have the right of self-determination”, and are able to “freely determine their political status and freely pursue their economic, social and cultural development.”<sup>61</sup> While the terms of this article clearly do not apply to CSOs as a whole, it does afford particular rights to those individuals who comprise the CSOs. So long as the means of doing so do are not infringing on democratic society, the ICESR therefore leaves people free to partake in CSOs where doing so furthers their pursuit of social and cultural development.<sup>62</sup> This would therefore serve to encompass membership in CSOs working in fields such as humanitarian work, environmental activism and political advocacy, among others. Thus, even where the objectives of a CSO are controversial or work against the will of the

<sup>58</sup> Human Rights Committee, General Comment No. 25: Participation in Public Affairs and the Right to Vote, CCPR/C/21/Rev.1/Add.7.

<sup>59</sup> Ibid.

<sup>60</sup> International Covenant on Civil and Political Rights.

<sup>61</sup> International Covenant on Civil and Political Rights, Art 1.

<sup>62</sup> Ibid.

presiding government, CSO members are able to rely on this right, pursuing their own development in whatever way they deem appropriate.

## Section 3.2 – Duty-Bearers

Learning outcomes:

This section aims to:

- Identify the key duties which are owed by CSOs;
- Identify the key duties owed to CSOs; and
- Provide a deeper understanding of how parties are kept accountable in regards to these duties.

### 3.2.1 The Duties of CSOs

#### Learning Outcomes:

At the end of this section, students will be able to identify the principal parties to which CSOs have an obligation, as well as the different types of duties which are owed.

#### Background reading for lecturer:

- Carly Nyst, 'Data Protection Standards for Civil Society Organisations' (European Center for Not-for-Profit Law, 2018).
- Routledge Handbook of International Human Rights Law.

#### Module 3 Activity 4 – Brainstorming

In this activity, the lecturer should begin by allocating students into groups of 3 or 4, allowing them 15 minutes to answer the following brainstorming questions.

At the end of these 15 minutes, the groups will come together in a larger discussion, to discuss their answers.

**Question 1:** What do you think are the main duties which CSOs owe?

**Question 2:** To who do you think CSOs owe these duties?

## LECTURE CONTENT

There are certain requirements by which CSOs must abide in order to legitimately function and be legally recognized by the state. Principal among these requirements are those of a domestic nature, such as adhering to national and regional reporting requirements, avoiding any interference with national security and stability, and adhering to any mandatory registration procedures. Additionally, CSOs are also bound to take due care when dealing with the data of third parties and beneficiaries. Here CSOs are responsible for ensuring that such data is kept confidential and used solely for the purposes to which the party consented. This maintenance of privacy is especially critical in the case of projects dealing with sensitive issues such as refugees and asylum seekers, where the leaking of private information could have severe consequences for those involved. CSOs must therefore strictly adhere to any relevant data protection regulations which are in place, whether they be domestic or international.<sup>63</sup> Such international regulations include the ICCPR and the Guidelines for the Regulation of Computerised Personal Data, as created by the UN General Assembly.<sup>64</sup>

Similarly, CSOs must also do their utmost to simultaneously obey both national and international law, which can become practically impossible when the two contradict. This in the case in many countries, where a CSOs adherence to international laws on matters such as privacy and human rights violations would put it in direct violation of more stringent domestic legislation.<sup>65</sup> Moreover, CSOs also have a duty of transparency, in order to ensure their accountability. As the majority of their funding is donated from third parties or acquired through fundraising, CSOs are also obliged to use these resources appropriately and only for those purposes for which the donations were intended to avoid any misappropriation. As prominent CSOs often operate internationally and in numerous foreign offices, it is critical that these organisations not only comply with reporting standards, but that they are also vigilant in ensuring that their operations are consistently in accordance with national and international policies.

### 3.2.2 The Duties Owed to CSOs

#### Learning Outcomes:

At the end of this section, students will be able to identify the principal duties which are owed to CSOs.

---

<sup>63</sup> Carly Nyst, 'Data Protection Standards for Civil Society Organisations' (European Center for Not-for-Profit Law, 2018), p. 16.

<sup>64</sup> Ibid.

<sup>65</sup> Routledge Handbook of International Human Rights Law, p. 159.

**Background reading for lecturer:**

- The Carter Center, 'The Right to Participate in Public Affairs: Submission on the Draft Guidelines', May 2017.
- Asian Development Bank, 'Civil Society Briefs: Cambodia', November, 2011
- Antoine Buyse, 'Squeezing Civic Space: Restrictions on Civil Society Organizations and the Linkages with Human Rights', Vol. 22, No. 8, The International Journal of Human Rights.

**LECTURE CONTENT**

Furthermore, there are also a number of duties which governments owe to CSOs. Primarily, governments have a general duty to promote the right of citizens to participate in public affairs, and to avoid arbitrary restrictions on their ability to participate in political and social forums.<sup>66</sup> They are therefore obliged to encourage and facilitate the accountability and transparency of CSOs, in order that their operations and procedures can be appropriately observed.<sup>67</sup> This type of monitoring is generally executed by regulatory bodies which are instituted independently, and which are designed to ensure that CSOs are kept accountable, and are not straying from their prescribed functions. Such inspections must be carried out lawfully and in accordance with the relevant governmental regulations, so as not to unnecessarily interfere with CSO affairs. In the case of Cambodia, the Cooperation Committee for Cambodia has been directing an NGO Good Practice Project, through which non-government organisations can choose to undertake voluntary registration after three or more years of operation, thereby agreeing to be held to account in regards to the Code of Ethical Principles and Minimum Standards for NGOs.<sup>68</sup>

Furthermore, governments should take care not to place undue pressure or inconvenience on CSOs, allowing them to conduct themselves according to their own codes of conduct rather than forcing them to comply with governmental agendas. Additionally, federal or state authorities should also abstain from placing unfair requirements on CSOs, such as demanding reports outside of established deadlines, or procuring documents that are not generally required by the law.

<sup>66</sup> The Carter Center, 'The Right to Participate in Public Affairs: Submission on the Draft Guidelines', May 2017.

<sup>67</sup> Ibid.

<sup>68</sup> Asian Development Bank, 'Civil Society Briefs: Cambodia', November, 2011.



Moreover, governments also have a duty not to prevent CSOs from expressing themselves, so long as they have not infringed on those restrictions placed on their freedom of opinion and expression.<sup>69</sup> Such is in the case of countries including Uzbekistan, where the Code of Administrative Liability prohibits citizens from partaking in any activities involving unregistered organisations.<sup>70</sup> Therefore, governments are bound not to hinder a CSO's attempt to express themselves through means of publication, advocacy or educational direction. This duty also extends to partaking in peaceful assembly, picketing and the presentation of public petitions, which are protected by the right to freedom of peaceful assembly and association, as well as the right to participation in public affairs.

#### *Module 4.2.2 Activity – Group Discussion*

Now that the students possess a better understanding of the types of duties owed to CSOs, and by whom they are owed, the lecturer will now open a class discussion on the topic. This will allow for students to collaborate and develop a deeper understanding of how these duties operate in a practical context. The students should be put into groups and allowed 10-15 minutes to discuss before the groups must then present their ideas to the classroom.

**Question:** In your opinion, are the duties owed to CSOs adequate for them to function effectively? If not, how should further duties should be implemented or enforced?

### Section 3.3 – Application of Rights

#### **Learning outcomes:**

This section aims to:

- Provide a better understanding of how the rights of CSOs are applied in a practical context;
- Highlight the circumstances in which the rights of CSOs may be restricted or suspended; and
- Explain the ways in which the rights of CSOs can be interfered with due to differences between jurisdictions

<sup>69</sup> The Carter Center, 'The Right to Participate in Public Affairs: Submission on the Draft Guidelines', May 2017.

<sup>70</sup> Antoine Buyse, 'Squeezing Civic Space: Restrictions on Civil Society Organizations and the Linkages with Human Rights', Vol. 22, No. 8, The International Journal of Human Rights, pp. 966-967.

### 3.3.1 When the Rights of CSOs Can Be Restricted or Suspended

#### Learning Outcomes:

At the end of this section, students will have a deeper understanding of the circumstances in which the state can restrict or suspend the ability of CSOs to exercise their rights. Additionally, students will also be able to identify the reasons which state governments can use to justify their actions in doing so, as well as the legal bases which support them.

#### Background reading for lecturer:

- The Carter Center, 'The Right to Participate in Public Affairs: Submission on the Draft Guidelines', May 2017.
- Antoine Buyse, 'Squeezing Civic Space: Restrictions on Civil Society Organizations and the Linkages with Human Rights', Vol. 22, No. 8, The International Journal of Human Rights.

#### Module 4.3.1 Activity 1 – Brainstorming

In this activity, the lecturer should begin by allocating students into groups of 3 or 4, allowing them 15 minutes to answer the following brainstorming questions.

At the end of these 15 minutes, the groups will come together in a larger discussion, to discuss their answers.

**Question 1:** Do you think that the suspension or restriction of a CSO can be legally justified?

**Question 2:** If so, what justifications do you think can be provided?

## LECTURE CONTENT

Although CSOs should theoretically be able to fully exercise their rights to the extent provided for by political and legal mechanisms, there are a number of circumstances in which the state and its agents are able to lawfully intervene. This is particularly true in regards to the right to participate in public affairs. While this right is specifically provided for in the ICCPR, its enforcement in individual nations largely relies on the legislative

frameworks of that particular state.<sup>71</sup> Despite the Human Rights Committee's belief that the right to participate in public affairs should only be restricted on the basis of "objective, reasonable and non-discriminatory criteria", states are largely able to dictate their own procedures on the matter.<sup>72</sup> Therefore, whilst the Committee only intends that states interfere with CSOs in the presence of exceptional circumstances, states are able to implement their own criteria through domestic legislation. Where public forums are promoting principles which oppose those of the presiding regimes, states can thus use the legal restrictions in place to block the efforts of CSOs, and to limit their ability to exercise their rights<sup>73</sup>. However, these provisions do not typically directly preclude the ability of citizens to oppose the ruling government. Rather, it is most likely that they phrase the restrictions in terms of national security or as being intended to prevent the intrusion of foreign powers in domestic affairs.<sup>74</sup>

Furthermore, the rights to freedom of assembly and association are frequently encroached upon by governments who perceive CSOs to be a threat to their administration. There are various ways in which a state parties can justify doing so, such as through the imposition of mandatory registration for political parties and organisations.<sup>75</sup> Whilst voluntary registration can be a useful tool with which to regulate and oversee the activities of such organisations, its imposition can just as easily be employed as a means by which to limit the rights of CSOs and their members, by creating administrative obstacles which inhibit their ability to promote collective action. Whether through the imposition of additional fees, onerous pre-registration requirements or through the criminalization of unregistered CSOs, mandatory registration can therefore greatly infringe on the freedoms of CSOs.

Additionally, states are able to greatly impact the operation of CSOs by influencing the information which is made available by the media, using their influence to selectively censor information which would serve to undermine their control. This was the case in Sudan in 2019, where the government strategically cut off the nation's internet access in order to prevent the public from mobilizing, effectively cutting off their primary means of communication and public outreach. As protestors had been rallying to oppose the reigning autocratic government, Sudan used a tactic which has become popular among authoritarian governments experiencing political unrest. Large scale political protests are therefore quickly frustrated, as citizens are unable to access up to date information, or to effectively communicate with the masses. This therefore displays the ways in which governments can

---

<sup>71</sup> The Carter Center, 'The Right to Participate in Public Affairs: Submission on the Draft Guidelines', May 2017.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid, p. 4.

inhibit the rights of CSOs to freedom of association and expression, without directly confronting them.

### 3.3.2 The Impact of Jurisdictional Differences on the Rights of CSOs

#### **Learning Outcomes:**

By the end of this section, students will have developed a greater understanding of how the rights of CSOs, and the employment of these rights, can be affected by the cultural and political differences between various jurisdictions.

#### **Background reading for lecturer:**

- Istanbul Principles for CSO Development Effectiveness.
- UNDP 'Working with Civil Society in Foreign Aid: Possibilities for South-South Cooperation?'

### **LECTURE CONTENT**

As discussed above, it is up to states to implement their own domestic laws providing for the rights of CSOs to be observed. However, as states can vary greatly in regards to the level of opposition which they allow, and the criteria by which they can interfere in CSO activities, it can become extremely difficult for CSOs to navigate international spheres. This is particularly relevant in the case of those CSOs which operate internationally, such as Amnesty International and Greenpeace. Here CSOs must be vigilant in simultaneously observing the differing regulations of each nation within which they are operating, so as to avoid restrictions or disciplinary action.

The Istanbul Principles for CSO Development Effectiveness attempt to counteract these difficulties, by aiming to create a set of universal principles to be adopted as the minimum standards to be expected and applied. Having been created in 2010 in consultation with representatives from 82 countries, the Istanbul Principles have lead the way for the creation for similar commitments to the development of greater cohesion and CSO effectiveness, such as the Busan Global Partnership for Effective Development Cooperation and the International Framework for CSO Development Effectiveness. Such international agreements can therefore be beneficial in lessening the impacts which jurisdictional differences can present to CSOs, as they create a collective understanding of the standards to be maintained.

## Modules 4: Civil Society Actors, Roles and Related Human Rights

### Learning outcomes of Modules 4 & 5:

These modules aim to:

- Identify the human rights related to civil society – the right to freedom of opinion and expression, the right to freedom of peaceful assembly and association;
- Analyse the challenges faced by organisations in complying with domestic civil society law and its practice; and
- Distinguish between the benefits and challenges that come with such legislation in practice.

### Section 4.1 – Civil Society Actors and Their Roles

#### Learning outcomes:

At the end of this module, students will be able to identify what civil society actors are, as well as demonstrate their understanding of the role these actors play within society.

#### Background readings for lecturers:

- Terence Chong, 'Civil Society Organisations: Definitions and Concepts', in Terence Chong and Stefanie Elise (eds), *An ASEAN Community for All: Exploring the Scope for Civil Society Engagement* (International Press Softcom Limited, 2011).
- Asian Development Bank, 'Civil Society Briefs: Cambodia', *Civil Society Briefs* (November 2011).
- Office of the High Commissioner for Human Rights, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*, UN Doc HR/PUB/06/10/Rev.1 (2008).

This section of the Module will assist the students in gaining an understanding of the role civil society plays in advancing human rights, as well as the different actors that represent

civil society. The lecturer should highlight the different types of civil society organisations currently present in our society and how they collaborate in order to promote and advance the human rights of certain groups and individuals.

#### *Module 4 Activity 1: Warm-Up*

In this activity the lecturer will ask students about their intuitions regarding what they consider civil society to be.

The students will need to consider what makes Cambodia run smoothly as a nation – the government is responsible for policy and legislation, and business is at the core of the market economy. What other groups or organisations play a key role in the advancement of Cambodian society?

First, the students will need to make a list of groups or organisations they believe play a role in the advancement of society other than the government and businesses. They should then find classmates who have listed similar groups to theirs. The groups of students will then present to the class what roles they believe their chosen groups or organisations play in society.

The lecturer should allow approximately 10 minutes for this activity.

## LECTURE CONTENT

### 4.1.1. What Is Its Role and Who Are the Actors?

#### *The Role of Civil Society*

The government's role is to promote general welfare through policy and legislation. The role of the market is to promote commercial interests. The role of civil society is to promote the rights of the members of society. Civil society's role is varying and expansive. It creates a critical space for holding governments accountable for their governance. It promotes all the human rights that are mentioned above in this handbook, including political, economic, social and cultural rights. Furthermore, there are multiple organisations that work towards protecting the environment, endangered species and animals in general. It is evident that civil society plays a key role in the positive advancement of society at large. This makes it clear that the voice of civil society is of utmost significance.

As mentioned above, there are multiple actors that make up civil society, including NGOs and trade unions. These will be discussed in further details below.

### *The Civil Society Actors*

Civil Society actors can be divided into 5 categories: NGO, community-based organization (CBO), faith-based organization (FBO), foundations and professional associations.<sup>76</sup> (Refer to Module 1.)

#### 4.1.2 Civil Society in Cambodia

Traditionally in Cambodia, civil society organisations were Pagoda-based associations with a goal to facilitate and encourage volunteer work and civil service in the country.<sup>77</sup> These associations still exist today, and have survived the country's turbulences. There are also many CBOs in existence which are often linked to development projects based in rural areas for sanitation, water, farming, etc.<sup>78</sup> These organisations can also be seen working towards protecting women and the elderly in certain communities. The NGO sector of Cambodia is vast and operates across a large spectrum of organisations established for the protection of human rights, as well as humanitarian organisations and other organisations operating on a variety of interests concerning members of the society.<sup>79</sup> Below are examples of two large NGOs currently operating in Cambodia.

#### *Module 4. Activity 2: Flip Chart*

In this activity the lecturer will ask students to work in five groups, and each group represents one type of CSOs. Each group is tasked with identifying five real-life CSOs based on the assigned type in Cambodia and provide general information as follows:

- Name of the institution:
- Mission and vision:
- Activities:

Then, each group is asked to present them to the rest of the class for discussion.

<sup>76</sup> Terence Chong, 'Civil Society Organisations: Definitions and Concepts', in Terence Chong and Stefanie Elies (eds), *An ASEAN Community for All: Exploring the Scope for Civil Society Engagement* (International Press Softcom Limited, 2011).

<sup>77</sup> Asian Development Bank, 'Civil Society Briefs: Cambodia', Civil Society Briefs (November 2011).

<sup>78</sup> Asian Development Bank, 'Civil Society Briefs: Cambodia', Civil Society Briefs (November 2011).

<sup>79</sup> Asian Development Bank, 'Civil Society Briefs: Cambodia', Civil Society Briefs (November 2011).

### *The NGO Forum in Cambodia*

This organisation works to improve the quality of life of impoverished communities in Cambodia. Their main goal is to protect the rights of the poor and vulnerable, and have these rights recognised through the policies and governance of Cambodia. The NGO Forum works with a network of other NGOs and civil society organisations, as well as the government itself, in order to promote its goals.

### *KHANA*

KHANA is an organisation that pursues the goal of better access to quality HIV and health services in Cambodia. It is the largest organisation providing a variety of health programs for the support of HIV/AIDS prevention and care, TB, maternal child health, sexual and reproductive health and livelihood programming. This organisation's projects are often funded by multiple foreign aid programs including USAID, Australian Aid, European Commission and many more.

## Section 4.2 – Related Human Rights

### **Learning Outcomes:**

At the end of this module, students will be able to identify the human rights that apply to the formation and operation of civil society, and the effect that these rights have. The most relevant and substantive human rights being the freedom of opinion and expression, and the freedom of peaceful assembly and association. Students will be able to understand the effect which these rights have, and identify which rights apply to certain situations, and when. The lecturer should point out that the rights mentioned above are the main relevant ones and that many more human rights can apply to civil society.

### **Background readings for lecturers:**

- Kevin Boyle and Sangeeta Shah, 'Thought, Expression, Association and Assembly', in D Moeckli, S Shah and S Sivakumaran (eds), *International Human Rights Law* (Oxford University Press, 2<sup>nd</sup> ed, 2014) 217.
- Alex Conte, 'Democratic and Civil Rights', in Alex Conte and Richard Burchill, *Defining Civil and Political Rights – The Jurisprudence of the United Nations Human Rights Committee* (Ashgate Publishing Company, 2<sup>nd</sup> ed, 2004) 65.



- Andrew Clapham, 'The use of International Human Rights Law by Civil Society Organisations', in Scott Sheeran and Sir Nigel Rodley (eds), *Routledge Handbook of International Human Rights Law* (Routledge, 2013).

This section of the module focuses on the human rights which arise from the freedom of opinion and expression, and the freedoms of assembly and association. It outlines and explains the human rights associated with, and important to, civil society. This module closely follows Chapter 11 of the textbook: D Moeckli, S Shah and S Sivakumaran (eds), *International Human Rights Law* (Oxford University Press, 2<sup>nd</sup> ed, 2014) pp. 225-236.

### *Module 4 Activity 3: Warm-up – Intuitions*

In this activity the lecturer will ask the students about their intuitions on what human rights they believe are attached to the formation of civil society. The students should be put into groups in order to discuss and then the groups should present their ideas to the class.

Question: What human rights might be attached to the formation and operations of a civil society organisations? For example: the rights present in the ICCPR and ICESCR.

The lecturer should allow approximately 5-10 minutes for this activity.

## LECTURE CONTENT

As per Article 19 of the ICCPR, humans have the right to the freedom of opinion and expression.<sup>80</sup> This allows individuals and communities to form and express opinions without interference or fear of retaliation. This freedom is inseparable from the freedom of assembly and association. Under Articles 21 and 22 of the ICCPR, humans have the right to peaceful assembly and the right to freedom of association respectively.<sup>81</sup> These rights afford humans with the freedom to peacefully protest, assemble for certain causes, and create or join civil society organisations such as NGOs and trade unions. The Human Rights Committee has commented that these rights are essential to human dignity and democratic participation.<sup>82</sup>

### **International Covenant on Civil and Political Rights 1966**

#### **Article 19.**

1. Everyone shall have the right to hold opinions without interference.

<sup>80</sup> International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 172 (entered into force 23 March 1976) Art 19.

<sup>81</sup> International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 172 (entered into force 23 March 1976) Art 21-22.

<sup>82</sup> General Comment 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art 25), UN Doc CCPR General Comment 25 (1996), para 26.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

#### **Article 21.**

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

#### **Article 22.**

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning freedom of association and protection of the right to organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

#### **4.2.1. Freedom of Opinion and Expression**

##### *Sources*

As displayed above, the right to the freedom of opinion and expression can be found under Article 19 of the ICCPR, which is a legally binding treaty.<sup>83</sup> The obligations owed by states under these provisions can be found in the Human Rights Committee General Comment 34.<sup>84</sup>

### *Scope*

The freedom of opinion and expression is vital to the development of society and democracy. It is an essential freedom in the enjoyment of all rights, including the freedom of assembly and association, and also economic, social and cultural rights. It is the freedom to form an opinion, seek information and speak one's mind. The freedom of opinion and expression is associated with the rights of humans to communicate, and is therefore crucially important to all means of communication.

Article 19(1) of the ICCPR provides that everyone has the right to form opinions without interference. It is an unrestricted freedom, providing that no one can be forced to alter their opinions or think a certain way.

Article 19(2) provides for the right to freedom of expression, and its scope is extensive. It includes the right to seek, receive and impart information and ideas of all kinds. The freedom to seek comes with the right to actively participate in investigative journalism for public interest. The freedom to receive is the public's right to receive impartial information from the media and other modes of communication. The freedom to impart is the freedom to relay information or ideas to the public regardless of their nature.

### *Limitations*

Unlike the freedom of opinion, the freedom of expression is not an absolute right and comes with responsibilities and restrictions. Article 19(3) of the ICCPR attaches special duties and responsibilities in exercising this freedom. This section acknowledges the power of communication, and the need for restrictions where the rights and reputations of others are at stake, and where it is necessary for the protection of public order and peace. However, the manner and grounds upon which restrictions are applied need to be done in good faith and without wrongful interference. It is quite often the case that the grounds of 'national security' are utilised to suppress the freedom of expression. Some reasonable grounds under which the freedom of expression can be limited include defamation, hate speech and the right to privacy.

---

<sup>83</sup> International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 172 (entered into force 23 March 1976) Art 19.

<sup>84</sup> Human Rights Committee, General Comment No. 34: Freedoms of Opinion and Expression (Art. 19 of the ICCPR), CCPR/C/GC/34 (12 September 2011).

Case law: two cases relevant to defamation and the right to privacy are provided below.

### Defamation

Lingens v Austria (1986) 8 EHRR 407

In this case, a journalist (Peter Michael Lingens) was convicted of criminal libel for publishing comments which accused the retiring Austrian Chancellor of political opportunism and 'immoral' and 'undignified' behaviour. The journalist accused the Chancellor of being indifferent towards the plights of the victims of the Nazis. As per the Austrian criminal code, he would have to prove the truth of the statements in order to successfully defend himself.

The European Court of Human Rights held that the law requiring him to prove the truth of his statements constituted an excessive interference with his right to freedom of expression. It is becoming more common to decriminalise libel and introduce the making of payments in damages as an alternative to criminalisation, so as to avoid interfering with the right to freedom of expression. This approach is supported by General Comment 34 of the Human Rights Committee.<sup>85</sup>

### Right to Privacy

Von Hannover v Germany (2005) 40 EHRR 1

Princess Caroline of Monaco complained to the European Court of Human Rights (ECHR) that her right to privacy was being infringed upon by paparazzi, as they were taking and publishing photos of her and her children. The domestic court in Germany had held that the Princess was a public figure and therefore would have to tolerate the publicity.

The issue for ECHR to consider was whether the German court infringed her right to privacy by failing to afford protection from the unwanted publicity. ECHR found that her right to privacy had been violated, as the published photos were more for public curiosity rather than for contribution to public debate. Therefore, it is evident that the right to freedom comes with responsibilities. One cannot invade another's right to privacy in pursuing their right to freedom of expression.

## 4.2.2. Freedom of Assembly

### Sources

<sup>85</sup> Human Rights Committee, General Comment No. 34: Freedoms of Opinion and Expression (Art. 19 of the ICCPR), CCPR/C/GC/34 (12 September 2011).

As a starting point, the right to freedom of assembly can be found under Article 20 of the UDHR<sup>86</sup>, and Article 11 of the ECHR<sup>87</sup>. There is a single procedure in place for the mandating of these rights created by the Human Rights Council. As displayed above, the right to peaceful assembly can be found under Article 21 of the ICCPR.<sup>88</sup>

### Scope

The right to freedom of peaceful assembly applies to and protects non-violent assemblies and organised gatherings in public or in private. States must not intervene with these rights and should adopt further measures protecting peaceful assemblies. This right can also protect protests that aren't temporary and last for extended periods of times.

### Limitations

Peaceful assemblies can be restricted under Article 21 of the ICCPR. Any restrictions imposed on peaceful assembly need to be 'in conformity with the law' and necessary for democratic purposes and the advancement of national security and public safety.<sup>89</sup>

Case law: Ollinger v Austria is a case relevant to the freedom of peaceful assembly.

#### Ollinger v Austria (2008) 46 EHRR 38

This case involved two groups wishing to hold ceremonies in the same Slazburg cemetery. One would be for SS soldiers killed in World War II and the other would be for the Jewish individuals killed by the SS soldiers during the Holocaust. The Jewish ceremony was a planned counter-protest against the ceremony held for the SS soldiers. The Austrian government banned the Jewish ceremony in order to protect the rights of the attendees of the SS soldiers' ceremony and on grounds of preventing a clash between the two parties for the purposes of protecting peace.

The ECHR found that in the absence of possible violence or harm, a total ban was unnecessary and disproportionate. The state should have considered alternative methods if it believed the peace of society was at stake. The Court held that it was the duty of the state to protect the right of peaceful assembly as far as possible.

### 4.2.3. Freedom of Association

<sup>86</sup> Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3<sup>rd</sup> sess, 183<sup>rd</sup> plen mtg, UN Doc A/810 (10 December 1948) Art 20.

<sup>87</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953) Art 11.

<sup>88</sup> International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 172 (entered into force 23 March 1976) Art 21.

<sup>89</sup> International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 172 (entered into force 23 March 1976) Art 21.

### Sources

Similarly to the right of assembly, the right to freedom of association can be found under Article 20 of the UDHR<sup>90</sup> and Article 11 of the ECHR<sup>91</sup>. There is a single procedure in place for the mandating of these rights created by the Human Rights Council. As displayed above the right to peaceful association can be found under Article 22 of the ICCPR.<sup>92</sup>

### Scope

The right to freedom of association is one that protects the right to pursue collective action without government interference. This freedom extends to a variety of rights. These include: the right to form or become a member of an association, the right to form or belong to political parties (which is essential to democracy), and the right to establish or be part of civil society organisations such as NGOs and trade unions.

### Limitations

The grounds for limiting the right of association can be found under Article 22(2) of the ICCPR.<sup>93</sup> Restrictions on the right to association may only be imposed if prescribed by the law, for the protection of the general safety and order of the public, or for the protection of the rights and freedom of others.

Case law: *Korneenko et al. v Belarus* is a Human Rights Committee case relevant to the freedom of association.

**Viktor Korneenko et al. v. Belarus, Communication No. 1274/2004, U.N. Doc. CCPR/C/88/D/1274/2004 (2006)**

This case involved a human rights organisation, 'Civil Initiatives'. The recognition of this organisation was removed by authorities as it had violated domestic laws which were in place for the regulation of organisations. On the grounds of 'deficiencies' within the official documentation of the organisation and receiving foreign grants for propaganda purposes, a dissolution of Civil Initiatives was ordered by the domestic court.

The main issue for the Human Rights Committee to consider was whether the dissolution infringed upon or interfered with the organisation's freedom of association, as per Article 22(1) of the ICCPR. It also had to consider whether the restrictions imposed were justified as per the grounds of limitation set out in Article 22(2) of the ICCPR.

<sup>90</sup> Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3<sup>rd</sup> sess, 183<sup>rd</sup> plen mtg, UN Doc A/810 (10 December 1948) Art 20.

<sup>91</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953) Art 11.

<sup>92</sup> International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 172 (entered into force 23 March 1976) Art 22.

<sup>93</sup> International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 172 (entered into force 23 March 1976) Art 22 (2).

The Committee found that the government failed to justify the dissolution in accordance with the grounds for limitation. Even if the documentation of the organisation was found to be defective, a dissolution order was too severe and disproportionate. The Committee held that the dissolution order was a violation of the organisation's right to freedom of association.

## Module 5: Challenges Faced by CSOs in Complying with Domestic Legislation

### Learning Outcomes:

At the end of this section, students will be able to understand the challenges inherent in complying with domestic legislation for the regulation of civil society organisations. Students will also be able to analyse how such laws can be of benefit to society, as well as the areas where it can be challenging and of detriment to civil society.

### Background readings for lecturers:

- Andrew Clapham, 'The use of International Human Rights Law by Civil Society Organisations', in Scott Sheeran and Sir Nigel Rodley (eds), *Routledge Handbook of International Human Rights Law* (Routledge, 2013).

### Background readings for lecturers and optional readings for students:

- Amnesty International, 'Laws Designed to Silence: The Global Crackdown on Civil Society Organisations', Report No. ACT 30/9647/2019 (February 2019).
- Law on Associations and Non-Government Organisations 2015 (Cambodia).
- Law on Trade Unions 2016 (Cambodia).

This part of the module ties in the content learnt in the previous sections, and highlights the challenges that exist in complying with regulatory legislation on civil society organisations. It will introduce and elaborate on the ongoing debate of whether regulatory domestic legislation on civil society organisations is beneficial to society. It will also highlight the benefits and the disadvantages of imposing such legislation. The above will be done in light of the Cambodian context.

### LECTURE CONTENT

As with any other aspect of society, it is the government's responsibility to legislate for the benefit of society and to maintain order. Legislating on civil society is an important part of

the government's role. However, it often comes with several challenges. It is important for governments to legislate in good faith and for the betterment of society, rather than to facilitate greater control over civil society organisations. Where laws are used to control civil society rather than to regulate and monitor, it is often the case that the government will be in breach of its human rights obligations. It is important for governments to develop laws that enable the progress and efficacy of civil society and to refrain from enacting legislation that impedes, controls or suppresses such organisations. The two major legislative materials governing civil society in Cambodia are the LANGO and the Law on Trade Unions (LTU).<sup>94</sup> The advantages and disadvantages of such legislation are discussed below.

## Section 5.1. – Relevant Cambodian Legislation

### *Law on Associations and Non-Government Organisations (2015)*

These laws were adopted to govern civil society organisations in Cambodia. Their introduction was said to be for the purposes of safeguarding the right to freedom of association of civil society organisations and NGOs, and to protect the legitimate interests of such organisations and the public. The purposes also include the formalities which organisations require to gain legal identity. Additionally, it was introduced for the promotion of partnership and cooperation amongst organisations and authorities.

### *Law on Trade Unions (2016)*

These laws were adopted to govern trade unions in Cambodia. The purpose and objectives of this legislation were said to be to provide for and protect the legitimate rights and freedoms of enterprises or establishments, and all persons who fall within the provisions of the labour law.

#### 5.1.1. The Effect of These Laws

There have been many protests against these laws since their introduction. These have been led by a variety of civil society organisation actors, including NGOs and members of unions. Both legislations have been labelled as controversial and have been faced with a wide variety of discontent and criticism. The ambiguity present within these laws has put organisations under the fear of arbitrary shutdown or punishments. The effect of these laws, their benefits and the challenges they impose on civil society organisations are discussed in further detail below.

---

<sup>94</sup> Law on Associations and Non-Government Organisations 2015, Law on Trade Unions 2016.



### 5.1.2. Benefits of Domestic Legislation

Where laws are put in place for the purposes of supporting civil society, they can prove to be highly beneficial. The roles of law in facilitating civil society can be split into the four categories highlighted below.<sup>95</sup>

#### *Framing the Rights of Civil Society*

It is important for laws to uphold and protect the rights of civil society. At their core these laws should resonate with the human rights devised in the UDHR and the ICCPR. As mentioned above, no restrictions should be put in place other than those prescribed by law and for the purposes of protecting public order and peace.

#### **Law on Associations and Non-Government Organisations (2015)**

##### **Article 1:**

This law aims at safeguarding the right to freedom of establishing associations and non-governmental organizations in the Kingdom of Cambodia in order to protect their legitimate interests and to protect the public interest, as well as to promote partnership cooperation between associations and non-governmental organizations and the public authorities.

#### **Law on Trade Unions (2016)**

##### **Article 1:**

This law has a purpose to: Provide for the rights and freedoms of enterprises or establishments, and all persons who fall within the provisions of the labor law as well as personnel serving in the air and maritime transportation.

##### **Article 2:**

This law has an objective to: protect the legitimate rights and interests of all persons who fall within the provisions of the labor law and personnel serving in the air and maritime transportation.

Article 1 of LANGO and Articles 1-2 of LTU both suggest an aim to protect the rights of civil society organisations, which is an essential role of the law. The advancement and codification of human rights in legislation promotes and benefits civil society and the public at large.

<sup>95</sup> Richard Fries, 'Civil Society and the Law', Alliance (March 2004).

### *Facilitating Effective Collective Action*

Civil society organisations can often function without formal legal recognition, especially CBOs providing social services. Although a lack of formality allows them to remain fluid, a lack of organisation can often lead to instability. The ability to function as a legal entity through recognition allows organisations to take part in legal and contractual relationships. This enhances and furthers their collective action. Registration has many advantages, as it allows actors to operate with security and a formal identity.

#### **Law on Associations and Non-Government Organisations (2015)**

##### **Article 2:**

The purposes of this law are to determine the formalities to legally recognize associations or non-governmental organizations as well as to establish the relationship between the associations and/or non-governmental organizations and the public authorities for the development of Cambodian society.

The purpose of this article is to provide civil society organisations with legal recognition and identity which will allow them to partake in legal contracts. This legal identity is key for civil society organisations in pursuing their right to freedom of association.

### *Providing for the Accountability of Civil Society*

The legitimacy of civil society is at stake if actors are not held accountable for their actions.<sup>96</sup> It is argued that some civil society actors only represent the views of themselves and no one else, with accountability only seen at the funding level rather than for the purposes the organisation claims to serve.<sup>97</sup> Therefore, it is important that civil society actors be held responsible for their actions and operation by regulatory laws.

### *Awarding Privileges to Civil Society Organisations*

Civil society organisations often act to serve the interests of the public, such as organisations seeking to relieve poverty, provide quality healthcare and tackle environmental issues such as water shortages. It is beneficial to assist these organisations through benefits such as fiscal privileges. Privileges afforded to civil society organisations working for public benefit supports and encourages them, and in turn is beneficial for society as a whole.

<sup>96</sup> Andrew Clapham, 'The use of International Human Rights Law by Civil Society Organisations', in Scott Sheeran and Sir Nigel Rodley (eds), *Routledge Handbook of International Human Rights Law* (Routledge, 2013) p. 166.

<sup>97</sup> Andrew Clapham, 'The use of International Human Rights Law by Civil Society Organisations', in Scott Sheeran and Sir Nigel Rodley (eds), *Routledge Handbook of International Human Rights Law* (Routledge, 2013) p. 166.

**Law on Associations and Non-Government Organisations (2015)****Article 20:**

An association or non-governmental organization, which has registered or signed a Memorandum of Understanding, shall be subjected to the existing taxation regime law, and receive incentives and enjoy exemptions in accordance with the existing laws and provisions.

Taxation laws often provide for tax and other benefits to civil society organisations working for the benefit of the public and their interests. As per this article, organisations will receive incentives and enjoy exemptions in accordance with these laws. Where such benefits are applied in order to incentivise and encourage civil society participation, the benefits are felt by society and represent good governance.

**5.1.3. Challenges in Compliance**

The above analysis makes it evident that civil society laws can be of great benefit to both civil society and the public. However, when these laws are put in place as mechanisms of control and suppression, it can often be detrimental to society and democracy. An alarming report by Amnesty International indicates that civil society organisations are increasingly being targeted.<sup>98</sup> A trend shows that states are introducing and utilising laws that interfere with civil society's human rights. Implementing laws that use registration as a tool for control and interference with the rights of actors are disadvantageous and often harmful to democracy and civil society.

***Infringing Upon Human Rights***

Introducing laws that restrict and burden civil society organisations without substantial grounds for implementation are often accompanied by interference with the right to freedom of association. These laws are often used to suppress government criticism and organisations involved in human rights advocacy which promote government accountability.

**Law on Associations and Non-Government Organisations (2015)****Article 24:**

Domestic non-governmental organisations, foreign non-governmental organisations, or foreign associations shall maintain their neutrality towards political parties of the Kingdom of Cambodia.

<sup>98</sup> Amnesty International, 'Laws Designed to Silence: The Global Crackdown on Civil Society Organisations', Report No. ACT 30/9647/2019 (February 2019).

This article is one of the most controversial articles found in the legislation. It requires civil society organisations to maintain ‘neutrality’ towards political parties, which is a breach of their right to freedom of expression. Using this condition as grounds for denying registration or dissolving organisations is a form of suppressing government criticism and accountability. This undefined and ambiguous condition of maintaining neutrality has been used as justification for preventing registrations or ordering the closure of civil society organisations.<sup>99</sup>

### *Effecting Control Through Registration*

There are two sides to laws regarding registration. On one hand, they allow organisations to have a formal identity and the ability to partake in legal and contractual relationships. On the other hand, registration can be used as a mechanism of control. The ability to obtain legal personality plays a significant role within the right to freedom of association. However, the process also exposes civil society actors to the discretion of authorities. Introducing a process of judgment to what is meant to be a basic right can be seen as interference with this right and the freedom associated with it.<sup>100</sup> Several countries are adopting laws which make the process of registering as a CSO burdensome and difficult.<sup>101</sup> In some cases, authorities can even deny registration on unexplained grounds. Exercising control and suppression through the process of registration is a misuse of the power to legislate.

## **Law on Associations and Non-Government Organisations (2015)**

### **Chapter 2 – Registrations of Domestic Associations**

#### **Article 6:**

Domestic associations or non-governmental organizations shall be required to register with the Ministry of Interior by completing the following documents:

- 1- Application forms for registration, 02 (two) copies;
- 2- A letter stating the address of the central office of the domestic association or non-governmental organization issued by the commune or Sangkat chief, 01 (one) copy;
- 3- Profiles of each founding members with a recent 4x6 size photograph, 02 (two) copies;

<sup>99</sup> Amnesty International, ‘Laws Designed to Silence: The Global Crackdown on Civil Society Organisations’, Report No. ACT 30/9647/2019 (February 2019) p. 9.

<sup>100</sup> Richard Fries, ‘Civil Society and the Law’, Alliance (March 2004).

<sup>101</sup> Amnesty International, ‘Laws Designed to Silence: The Global Crackdown on Civil Society Organisations’, Report No. ACT 30/9647/2019 (February 2019) p. 1.

4- Statutes signed by the president of the domestic association or non-governmental organization, 02 (two) copies.

**Article 8:**

The Ministry of Interior shall examine the application documents of a domestic association or non-governmental organization, and shall decide whether or not to accept the registration within 45 (forty-five) working days at the latest.

Chapter 3 – Registrations of Foreign Associations

**Article 12:**

Any foreign association or non-governmental organization wishing to conduct activities in the Kingdom of Cambodia shall register with the Ministry of Foreign Affairs and International Cooperation by signing a Memorandum of Understanding.

**Article 14:**

The Ministry of Foreign Affairs and International Cooperation shall examine the contents of the application and decide whether or not to sign a memorandum with a foreign association or non-governmental organization within 45 (forty-five) working days at the latest.

As per Article 8 and 14, the Ministry of Interior and the Ministry of Foreign Affairs and International Cooperation respectively have the discretion to accept or reject registration applications. It is possible for these provisions to be misused in targeting certain organisations and rejecting organisations based on ambiguous grounds.

For example, in September 2017, the family advocacy NGO 'Equitable Cambodia' was alleged to have violated the laws by failing to submit finance documentation and banking statements and activity.<sup>102</sup> The NGO was ordered to suspend operations for a lengthy period of time.<sup>103</sup>

<sup>102</sup> Amnesty International, 'Laws Designed to Silence: The Global Crackdown on Civil Society Organisations', Report No. ACT 30/9647/2019 (February 2019) p. 9.

<sup>103</sup> Amnesty International, 'Laws Designed to Silence: The Global Crackdown on Civil Society Organisations', Report No. ACT 30/9647/2019 (February 2019) p. 9.

**Law on Trade Unions (2016)****Chapter 3 – Registrations of Unions or Employer Associations****Article 12: Requirements for Application for Registration**

An application for registration shall be approved and provided with a certification, if it adequately meets all requirements, pursuant to the pertaining provisions of this law. The application shall be accompanied by the following:

- (a) An original copy of the union's or employer association's statutes, including a statement of its intents;
- (b) An original copy of its administrative regulations which govern leadership and administration;
- (c) A name list of leaders, managers, and those responsible for the administration of the union or employer association;
- (d) An address where financial books and records are to be kept;
- (e) An affidavit guaranteeing that its bank account details will be provided within 45 (forty-five) days following receipt of registration;
- (f) An attachment of original copy of the official minutes of elections for establishment of a professional organization;
- (g) As for unions:
  - A local union shall have a name list of all workers as its members made up of at least 10 (ten) workers at a given enterprise or establishment;
  - A union federation shall have a name list of at least 7 (seven) registered local unions as its affiliated members;
  - A union confederation or a coalition of union federations shall have a name list of at least 5 (five) registered union federations as its affiliated members.
- (h) As for employer associations:
  - An employer association shall have a name list of at least 9 (nine) employers as its members;
  - An employer federation shall have a name list of at least 6 (six) registered

employer associations as its affiliated members.

### **Article 17: Maintenance of Registration**

In order to maintain the approved registration to be valid, each union or employer association must:

(a) Submit their annual financial statements and annual activity reports, based on the financial books and records they keep, to their members for information, and a copy of which shall be furnished for the Ministry in charge of Labor at the latest by the end of March of the following year. They should show:

- Total income during the reporting period, shown by amounts from all the sources of income;
- Expenditure of the union or the employer association;
- Activities of the union or the employer association; and
- Number of members.

(b) Provide details of its bank accounts within 45 (forty-five) days following receipt of registration.

(c) Update the information as required by this law and whenever changes are made thereto, with exception of any change in the membership, within 15 (fifteen) working days.

### **Article 18: Notification for Correction**

In the event where the union or the employer association has not fulfilled the obligations as stipulated in Article 17 (Maintenance of Registration) of this law, the Ministry in charge of Labor shall give the first notification to the union or the employer association for correction within 45 (forty-five) days following receipt of the notification.

In case of failure in the first notification, the Ministry in charge of Labor shall give the second notification to the union or the employer association for correction within 30 (thirty) days following receipt of the notification.

In the event where the union or the employer association fails to comply with the second notification, the Ministry in charge of Labor can file a lawsuit to the Labor Court for revocation of registration of the union or the employer association.

**Article 19: Revocation of Registration**

The Labor Court has the authority to revoke the registration. The Ministry in charge of Labor can file a lawsuit to the Labor Court for revocation of the registration.

Articles 12 and 17 provide requirements for obtaining and maintaining registration. These lengthy requirements are burdensome and onerous. If not complied with, trade unions and other associations face the risk of their registration being revoked, possible legal action and/or the imposition of penalties. The OHCHR has indicated that the grounds for revocation as per Article 17 of the LTU may be in excess of those that are permissible under Article 22 of ICCPR and Article 8 of ICESCR.<sup>104</sup>

*Arbitrary Interference*

Requiring organisations to regularly report activities and finances is often used as a tool to control and monitor them. The vague wording of such requirements leaves room for discretion, allowing authorities to target specific organisations. These requirements are often invasive and jeopardise an organisation's right to privacy. The process makes the organisations susceptible to a high level of scrutiny and discretion, making registration or renewal of registration a process that is heavily interfered with and burdensome.

**Law on Associations and Non-Government Organisations (2015)****Article 25:**

A non-governmental organization shall submit a copy of its activity report and of its annual financial report by not later than the end of February of the following year. Domestic non-governmental organizations that receive financial support from donors shall submit the report by copying the original documents sent to the donors within 30 (thirty) days from the date on which they are sent to the donors, as well as 1 (one) copy of project documents and financial agreement with donors by copying from the original documents within 30 (thirty) days from the date of the agreement. This report shall be kept at its office for at least 5 (five) years.

<sup>104</sup> Office of the United Nations High Commissioner of Human Rights in Cambodia, A Human Rights Analysis of the Draft Law of Trade Unions (30 March 2019) p. 15.



The Ministry of Interior may, if necessary, request the activity report and annual financial report of an association.

A foreign non-governmental organization shall submit a copy of its annual activity reports and financial status of the original documents sent to the donors to the Ministry of Foreign Affairs and International Cooperation and Ministry of Economy and Finance within 30 (thirty) days from the date on which they were sent to the donors, as well as 1 (one) copy of the project documents and financial agreement with donors by copying from original documents within 30 (thirty) days from the date of the agreement.

The Ministry of Economy and Finance or the National Audit Authority may, if necessary, check and audit an association and a non-governmental organization.

Article 25 requires organisations to submit copies of their activities and financial reports. These requirements are intrusive and interfere with the operations of CSOs. They make organisations highly susceptible to the scrutiny of authorities. Such arbitrary interference with the regular operations of CSOs is an interference with their freedom of association.

#### Law on Trade Unions (2016)

##### **Article 17: Maintenance of Registration**

In order to maintain the approved registration to be valid, each union or employer association must: (as displayed above).

Similarly, to Article 25 of LANGO, Article 17 of LTU requires unions or associations to submit their annual financial statements and activity reports in order to maintain registration. These reporting obligations are onerous, as are those mentioned above. The OHCHR has indicated that these provisions are too extensive and invasive. Requiring such lengthy reporting obligations places heavy burdens on organisations and can be seen as interfering with their right to freely associate.

#### *Restricting Access to Funding*

It is the right of civil society organisations to seek and receive funding for their operations. It is unjust to interfere with this right. The UN Special Rapporteur has indicated that the right to freedom of assembly and association attach with them the 'right to seek and secure funding and resources from domestic, foreign and international entities, including individuals,

businesses, CSOs, governments and international organizations'.<sup>105</sup> It is often the case in many countries that domestic funding is limited or unavailable. Therefore, CSOs often rely on foreign funding to support their operations and activities. Implementing laws that restrict or limit foreign funding can have detrimental impacts on organisations that rely on such financing. Interfering with an organisation's right to seek funding is therefore an interference with their right to freedom of association.

### *Power to Dissolve*

Failure to comply with the above regulations can often lead to penalties, de-registration, prosecution and suspension of activities.<sup>106</sup> Authorities have the power to dissolve organisations they believe to be in breach of their regulation requirements. When this power is used based on unexplained grounds, it is an interference with the human rights of civil society organisations. As discussed above with the examples of domestic legislation, utilising the power to penalise or shutdown organisations based on ambiguous grounds is a breach of the organisations' right to freedom of expression and freedom of association.

### *Module 5 Activity 1: Hypothetical Problem*

The following hypothetical problem and associated questions are intended to improve the students' ability to apply their understanding of the content.

#### **Facts:**

Red Apple NGO is a non-government organisation which was operating in Phnom Penh. Its activities included human rights advocacy and seeking government accountability. Last month, the NGO's activities were suspended by authorities due to an accused breach of the laws in Law on Associations and Non-Government Organisations. It was recently shut down and its registration revoked by the authorities. The grounds for revocation were relatively ambiguous, the NGO accused of breaching Article 24 of LANGO which requires organisations to maintain 'neutrality' towards political parties. However, the exact details of the breach and how the NGO's activities threatened national security or public peace were not mentioned.

**Question 1:** What options does the NGO have if they wish to challenge the decision of the authorities?

<sup>105</sup> Maina Kiai, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN Doc A/HRC/20/27 (21 May 2012) para 68.

<sup>106</sup> Amnesty International, 'Laws Designed to Silence: The Global Crackdown on Civil Society Organisations', Report No. ACT 30/9647/2019 (February 2019) p. 12.

**Question 2:** Are the grounds of revocation in accordance with those provided by Article 22 of the ICCPR?

## Section 5.2 – Comparative Analysis – Sweden

In Sweden, ‘voluntary associations’ do not need official registration in order to have a legal personality. These types of civil society organisations are classified as membership-based organisations. ‘Foundations’ are non-membership organisations operating for the purposes of public benefit through the collection of financial assets. These organisations are regulated by the Foundations Act 1994.<sup>107</sup>

The restrictions imposed on these organisations are limited. The documentation required of these organisations is also limited, with only basic information needed. There are no invasive activity and finance reporting requirements in place. Furthermore, there are no legal grounds for denial of registration for voluntary associations, and those applying to foundations are based on legal and/or moral standards. No restrictions are placed on sources of funding as long as they are legally obtained. Multiple tax benefits are also awarded to organisations in order to encourage and incentivise membership. Therefore, it is evident that the regulation of civil society organisations in Sweden does not interfere with the freedoms of expression and association of CSOs.<sup>108</sup>

The methods used by the Swedish government can be implemented within the Cambodian system in order to better fulfil the nation’s human rights obligations. It would be beneficial to amend the laws in order to improve consistency with human rights treaties. One possible method of doing so would be to abolish the sections that can result in a breach of the rights to freedom of expression, freedom of association and other relevant human rights.

### *Module 5. Activity 2: Class Debate*

The lecturer will need to divide the class into two sides and assign one to argue the affirmative side and the other to argue the negative. Each side will then be given time to collaborate and discuss points for the debate, with students only arguing the side which they have been allocated.

<sup>107</sup> Foundations Act 1994 (Sweden).

<sup>108</sup> European Center for Not-for-Profit Law, ‘Handbook on Civil Society Organisations Registration and Operation: Comparative Aspects’ (2015).

The lecturer should allow 20-25 minutes for this activity, approximately 5-10 minutes for the students to discuss and form their arguments and 15 minutes for the actual debate where students will present their arguments and counter-arguments.

**Topic: Should domestic legislation be imposed for the regulation of civil society organisations?**

The purpose of this activity is to assist the students in enhancing their ability to form arguments on particular topics and to raise points for either side of an argument. This activity will further assist the students in gaining a better understanding of the pros and cons involved in legislating on regulating civil society organisations.

#### *Module 5 Activity 3: List of Terms*

**\*E-Learning.** The lecturer can create a Wiki page to list the glossary words. The lecturer should ask students to add a key term to the glossary that they have come across along, including its definition or examples of it in practice. Definitions and examples can be visual and can include links to videos or websites.

This will allow the students to have access to this resource throughout the course. It will also introduce them to a new learning format which they may like to incorporate into their study practices.

The lecturer should allow 20 minutes for this activity.

## Module 6: Protection Mechanisms: Treaty-based Bodies

### Learning Objectives of Modules 6 & 7:

These modules aim to:

- Identify all protection mechanisms available at the international, regional, and national level, including human rights treaty bodies, the Human Rights Council, special procedures and universal periodic review;
- Demonstrate how protection mechanisms work and how to submit a complaint regarding an alleged human rights violation; and
- Educate students on how to access information on human rights.

### Section 6.1 – Human Rights Treaty Bodies

#### Learning outcome:

At the end of this section, students will be able to understand how treaty bodies work, and how to access and work with human rights treaty bodies.

#### Background reading for lecturer:

- OHCHR. 'Working with the United Nations Human Rights Programme: A Handbook for Civil Society.' UN Doc HR/PUB/06/10/Rev.1, 2008.
- Vienna Convention of the Law of Treaties, 1969,
- International Convention on the Elimination of All Forms of Racial Discrimination, ICERD, 1965,
- International Covenant on Civil and Political Rights, ICCPR, 1966.
- International Covenant on Economics, Social and Cultural Rights, ICESCR, 1966.

- Convention on the Elimination of All Forms of Discrimination against Women, CEDAW, 1979.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT, 1989.
- Convention on the Rights of the Child, CRC, 1989.
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ICMW, 1990.
- International Convention for the Protection of All Persons from Enforced Disappearance, CPED, 2006.
- Convention on the Rights of Persons with Disabilities, CRPD, 2006.

## LECTURE CONTENT

### 6.1.1. What Are the Human Rights Treaty Bodies?<sup>109</sup>

The nine international human rights treaties which are monitored by the human rights treaty bodies create legal obligations for states to promote and protect human rights. When a state accepts a human rights treaty through ratification or accession, it becomes a party to that treaty and assumes the legal obligation to implement the rights set out in it. The treaties provide for the creation of international committees of independent experts, known as human rights treaty bodies, to monitor the implementation of the provisions in those countries that have ratified or acceded to them.

The United Nations treaty body system plays a pivotal role in strengthening the protection of human rights internationally. The primary mandate, common to all human rights treaty bodies, is to monitor the implementation of the relevant treaty by reviewing the reports submitted periodically by states.

The nine human rights treaty bodies are:

- The Human Rights Committee, ICCPR
- The Committee on Economic, Social and Cultural Rights, ICESCR
- The Committee on the Elimination of Racial Discrimination, ICRD
- The Committee on the Elimination of Discrimination against Women, CEDAW
- The Committee against Torture, CAT

---

<sup>109</sup> OHCHR, Working with the UN Human Rights Programme: A Handbook for Civil Society, UN Doc HR/PUB/06/10/Rev.1 (2008).

- The Subcommittee on Prevention of Torture, CAT-OP
- The Committee on the Rights of the Child, CRC
- The Committee on Migrant Workers, ICPRMW
- The Committee on the Rights of Persons with Disabilities, CRPD
- The Committee on Enforced Disappearances, ICPED

### *Module 6. Activity 1: Braining Storming*

The lecturer should ask the students to name the core human rights treaties or committees that they know. The lecturer should write down all answers on the board.

The lecturer should then ask the students to use their critical thinking skills to analyse how to strengthen the enforcement of those treaties.

**Question 1:** When there is allegation of human rights violations against an individual/CSOs, what can be done?

**Question 2:** Are there any protection mechanisms in place?

**Question 3:** Who is responsible?

**Question 4:** Who has the authority to tackle these problems?

**Question 5:** How can parties seek justice for human rights violations?

The lecturer should allow 15-20 minutes for this activity. The purpose of this activity is to help students to enhance their critical thinking abilities. This activity will also further assist the students in gaining a better understanding of the role of human rights treaty bodies.

### 6.1.2. How Do the Human Rights Treaty Bodies Work?

#### *Report from State Parties*

State parties are obliged to implement and comply with the treaty provisions. There are two types of reports – initial reports and periodic reports. Initial reports are usually required one to two years after the treaty has entered into force in the state concerned. Regular periodic reports form part of a constructive dialogue between the treaty monitoring body and the state. The report must set out the legal, administrative, judicial and other measures that the state has adopted to implement the treaty provisions, as well as provide information on the difficulties it has encountered. These reports are ultimately examined by the appropriate committee in the presence of the state delegation.

### *Treaty Bodies' Consideration on State Parties' Report*<sup>110</sup>

The committee will prepare a list of issues and questions to be transmitted to state parties, in expectation of a written response from the respective state. In addition to the state's report, human right treaty bodies also receive information on the implementation of treaty provisions from United Nations agencies, funds and programmes and other intergovernmental organization, national human rights institutions (NHRIs), as well as from civil society, particularly NGOs, professional associations and academic institutions. After reviewing the state's report, the Committee will provide concluding observations and recommendations, to which the state may formally respond.

### *Individual Communications/Complaints*

Individuals may file complaints or communications against state parties alleging a violation of their rights. A treaty body cannot consider complaints relating to a state party if the state has not expressed recognition of its competence to do so. The state might classify the complaint as inadmissible by making a declaration under relevant treaty, or simply because the state is not party to the relevant optional protocol. After the case is accepted by the treaty body, the state is offered an opportunity to respond to the complaint. The Committee then considers complaint in private. The Committee issues observations or opinions, including dissenting opinions. All opinions shall be published online. The succeeding party may receive remedies, which will vary depending on the particular treaty.

### *General Comments*

"Each of the human rights treaty bodies publishes its interpretation of the provisions of the human rights treaty it monitors in the form of general comments. General comments provide guidance on the implementation of a convention. They cover a variety of subjects ranging from comprehensive interpretation of substantive provisions to general guidance on the information on specific articles of the treaty that States should submit in their reports."

### *Module 6. Activity 2: Case Study*

Lovelace v. Canada, UN Doc CCPR/C13/D/24/1977 (1981)

"Sandra Lovelace was born and registered as a Maliseet Indian but lost her rights and status as such in accordance with section 12(1)(b) of Canada's Indian Act after she married a non-Indian in 1970. Lovelace noted that the law did not equally adversely impact Canadian

<sup>110</sup> OHCHR, Working with the UN Human Rights Programme: A Handbook for Civil Society, UN Doc HR/PUB/06/10/Rev.1 (2008).



Indian men who marry non-Indian women, and therefore alleged that the law is gender discriminatory in violation of articles 2, 3, 23, 26, and 27 of the Covenant on Civil and Political Rights. Supreme Court of Canada rulings in the Attorney-General of Canada V. Jeanette Lavelle and Richard Isaac v. Yvonne Bedard held that section 12(1)(b) of Indian Act is fully operative irrespective of any inconsistency with the Canadian Bill of Rights on account of sex discrimination.

Although the Committee noted that the relevant provision of the Indian Act does not legally restrict the right to marry as guaranteed in article 23 of the Covenant, the Act does seriously disadvantage Canadian Indian women who want to marry a non-Indian man by limiting their family options to a domestic partnership. Lovelace raised specific issues in her complaint pertaining to her inability to continue living on the Tobique Reserve as a result of her marriage, which, according to the Committee, suggests a violation of article 27 of the Covenant which guarantees that ethnic, religious, or linguistic minorities shall not be denied the right to enjoy their own culture, to profess or practice their own religion, or to use their own language. The Committee considered that merits of the Indian Act in preserving the identity of the Maliseet tribe, but ultimately concluded that in light of the dissolution of Lovelace's marriage to a non-Indian, there was no reasonable or necessary justification to deny Lovelace the right to return to the Tobique Reserve where she was born and raised. Canada's refusal to allow Lovelace to do so was tantamount to a violation of her rights under article 27 of the Covenant".<sup>111</sup>

The lecturer should instruct students homework to complete a summary on the case. The full case shall be provided, or students should be asked to do the research themselves. The case summary should cover the name and date of the case, the procedures of the court, a summary of the facts and findings, and the significance of the case.

First, the lecturer should ask for a student to share their summary with the class. The lecturer should then open a discussion, prompting students to share their different opinions. Students should be encouraged to explain why and how this case is important to study and to promote social change.

The lecturer should allow 15-20 minutes for this activity.

---

<sup>111</sup> Cornell Law School, Legal Information Institutes (open access to law since 1992), [https://www.law.cornell.edu/women-and-justice/resource/lovelace\\_v\\_canada](https://www.law.cornell.edu/women-and-justice/resource/lovelace_v_canada).

## Section 6.2. – Charter-Based Human Rights Bodies and Treaty-Based Human Rights Bodies

Charter-based Human Rights Bodies	Treaty-based Human Rights Bodies
<ul style="list-style-type: none"> <li>Established from provisions contained in the UN Charter</li> <li>Hold broad human rights mandates</li> <li>Address an unlimited audience</li> <li>Take action based on majority voting</li> <li>Example: The Human Rights Council and its predecessor, the Commission on Human Rights <ul style="list-style-type: none"> <li>- Charter-based bodies</li> <li>- Created by resolutions of the organs of the UN</li> <li>- Based on the UN Charter</li> </ul> </li> <li>The current charter-based bodies are the Human Rights Council and its subsidiaries, including the Universal Periodic Review Working Group and the Advisory Committee</li> </ul>	<ul style="list-style-type: none"> <li>Established from provisions contained in a specific legal instrument</li> <li>Hold more narrow mandates: the issues codified in the legal instrument</li> <li>Address a limited audience: only those countries that have ratified the legal instrument</li> <li>Base their decision-making on consensus</li> <li>Nine UN human rights conventions have monitoring bodies to oversee the implementation of the treaty provisions (refer back to the section 1 lecture content)</li> </ul>

## Module 7: Protection Mechanisms: Charter-Based Body

### Learning outcomes:

At the end of this session, students will be able to recognise which bodies are charter-based and understand how these charter-based bodies work.

### Background reading for lecturer:

- United Nations Charter.
- OHCHR. 'Working with the United Nations Human Rights Programme: A Handbook for Civil Society.' UN Doc HR/PUB/06/10/Rev.1, 2008.
- Vienna Convention of the Law of Treaties, 1969.
- Universal Declaration of Human Rights (UDHR), 1948.
- Rhone K.M. Smith, 'International Human Rights Law', 8<sup>th</sup> Edition, Oxford University Press.
- Rhona K.M. Smith, 'An Introduction to the UN Human Rights Council' the Raoul Wallenberg Institute (2014).
- UPR Info, 'What is the UPR?' <https://www.upr-info.org/en/upr-process/what-is-it>.
- OHCHR, 'Special Rapporteur on the situation of human rights in Cambodia', <https://www.ohchr.org/EN/HRBodies/SP/CountriesMandates/KH/Pages/SRCambodia.aspx>.
- OHCHR, 'Special Procedures of the Human Rights Council', <https://www.ohchr.org/en/hrbodies/sp/pages/welcomepage.aspx>.
- OHCHR, 'United Nations Human Rights Council', <https://www.ohchr.org/en/hrbodies/hrc/pages/home.aspx>.

## Section 7.1 – What Are Charter Based Bodies and How Do They Functions?

### LECTURE CONTENT

#### 7.1.1. The Human Rights Council

The Human Rights Council was created in 2006 to succeed the Commission on Human Rights created in 1946. The Council has 47 member states. According to General Assembly Resolution 60/251, the highest responsibility of the Council is “promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner.”

The Council is tasked to report to the UN General Assembly. The Council holds regular and special sessions to consider human rights. There are many commissions of inquiry established, such in Gaza, DPR, Korea, Syria, Eritrea.

The three mains powers for monitoring human rights are:

- Universal Periodic Review (UPR),
- Special Procedures, and
- Complaints

#### 7.1.2. Universal Periodic Review (UPR)

UPR Working Group carries out the review of the entire membership of the 47 members of HRC. It reviews a country every 4.5 years and convenes for three session annually. There are 42 States a year or 14 states are reviewed in each session.

The objectives of the UPR are to:

- Improve the human rights situation internationally;

- Ensure that states fulfil their human rights obligations;
- Assess the positive development and challenges faced by states;
- Enhance the state's capacity and offer technical assistance;
- Share best practices internationally; and
- Promote state cooperation with the Human Rights Council and OHCHR

The UPR Working Group will refer to the UN Charter, UDHR, and other human rights instruments to which the state is a party, as well as any voluntary pledges made by the state.

The review is based on reports submitted by the state under review, “credible and reliable” information from relevant stakeholders, and existing UN documents. The second and subsequent follow-up cycles focus on the implementation of the “accepted recommendations” and the developments of the human rights situation, among others. Reports of the UPR Working Group provide summaries of the meetings, as well as conclusion, and recommendations. The final outcome of the review will be adopted by the plenary of the Council. The OHCHR is responsible for documentation of UPR .

### 7.1.3. Special Procedure – Special Rapporteur

Comprised of independent human rights experts appointed by the Human Rights Council, the Special Rapporteur is tasked with reporting and advising on human rights based on a “thematic or country-specific perspective”. Thematic perspective covers certain human rights issues in all UN countries. For instance, the Special Rapporteur on the right to freedom of peaceful assembly and of association. Country-specific perspective covers all human rights issues in a specific country. For instance, the Special Rapporteur on the state of human rights in Cambodia.

The Special Rapporteur is allowed to visit states so long as they receive prior consent. Their tasks are to assess the human rights situation, report publicly about it, and work with the government, civil society and other parties to foster international cooperation. Finally, they must report back to the Human Rights Council.

The Special Rapporteur works voluntarily without any payment or compensation. They are assisted by technical and logistical support from the OHCHR, which is part of the UN

Secretariat to assist the government and individuals in the promotion and protection of human rights.

### *Module 7. Activity 1: Role Play*

The lecturer should provide the following role play instructions in advance.

#### **Key actor in the role play – Troika**

Troika consists of 3 countries' delegates assisting the review. Troika members are selected by the drawing of lots among members of the Human Rights Council and from different regional groups.

#### **Role of Troika**

- Before the review: receive written questions by states and pass questions to the state under review.
- During the interactive dialogue: Troika members can take the floors as any delegation and make questions and recommendations
- Preparing the report of the Working Group: the report contains a full account of the proceedings, with the involvement of the state under review and with the assistance of the Secretariat.

#### **Role play – Recommendation**

- Recommendation are suggestions made to the state under review to improve the human rights situation in their country
- The state can accept or note the recommendations, but they cannot reject them.

#### **Role Play Instruction:**

##### Part I: Interactive Dialogue (40mins)

1. President of the Human Rights Council
  - Call to order the session
  - Facilitate the interactive dialogue
2. Country X's government state delegation (10 mins)
  - Give its statement and presentation
3. Troika, member states and observer states (15mins)
  - Questions and comments, including recommendations

**4. Country X's government delegations (5-10 mins)****Break (10mins)****1. Media**

- Prepare a short presentation of 5-10 minutes to be presented after the break

**2. Troika**

- Draft a report of the Working Group which includes a summary of the interactive dialogue and lists the recommendations made during the course of the discussion

**Part II: Media and Working Group Reports (20 mins)**

1. Media: prepare a short presentation of 5-10 minutes to be presented after the break

2. Troika: draft a report of the Working Group which includes a summary of the interactive dialogue and lists the recommendations made in the course of the discussion

**Part III: UN Human Rights Council Plenary Session (20mins)****1. President of the Human Rights Council**

- Call to order the session
- Facilitate the interactive dialogue

**2. Country X's government delegation State (5 mins)**

- Give its statement, including its views on the recommendations

**3. Member states and observer states (5 mins)**

- Express views on the outcome

**4. Stakeholders and NGOs (10 mins)**

- Make general comments on the outcome

**End of Role Play****1. Troika (optional, if times allows)**

- Produce an outcome (shall include 1. summary of the proceedings of the review process; 2. conclusions and recommendations and 3. voluntary commitments and pledges of country X)

**Q&A Sessions (15 mins)**

The rest of the class/audience: ask question and give comments on the role play

**Background information and documentation (Annex)**

- A. National report submitted by the fictitious Country X
- B. Compilation of fictitious UN information based on Country X's report
- C. Summary of fictitious stakeholders' information based on Country X's report

*Source\* This role play activity is developed by the Raoul Wallenberg Institute of Human Rights*

## **Module 8: The Government, International Donors, and CSOs**

### **Learning outcomes of Module 8:**

This module aims to:

- Provide an understanding of the ways in which governments and CSOs influence each other;
- Explore the dichotomy between governments and international donors;
- Examine the issue of donor-driven NGOs;
- Identify the challenges involved in these partnerships;
- Identify how these challenges can be overcome;
- Equip students to understand the relationship between governments, CSOs and donor countries;
- Provide an understanding of how CSO-state relations relate to good governance;
- Analyse both positive and negative examples of these partnerships; and
- Analyse how Cambodia can improve in this regard.

### **Section 8.1 – Introduction**

#### **Learning outcomes:**

This section aims to:

- Provide an introduction to the importance of the relationship between governments and CSOs;
- Familiarise students with the basic history involved; and
- Identify the main themes which will be outlined in the following sections



**Background reading for lecturer:**

- Pearce (2000): Development, NGOs, and Civil Society: The Debate and its Future.
- The Pompidou Group (2015): Government Interaction with Civil Society.
- Brandsen, Trommel and Verschuere (2017): The State and the Reconstruction of Civil Society.

**Module 8 Activity 1 – Group Discussion**

In this activity, the lecturer should begin a group discussion, prompting students to share their initial thoughts and understandings in regards to the partnership between governments and civil society. Students should discuss how they think these partnerships are structured, how the power is shared between the two parties, and whether they believe these partnerships are generally successful.

The lecturer should allow approximately 15 minutes for this activity.

**LECTURE CONTENT**

Over the last 15 years or so, NGOs and other civil society organisations have become increasingly courted by governments and multilateral institutions, as civil society has gained considerable traction when campaigning for legislative, social and policy reform.<sup>112</sup> In the 1990s, the first three international conferences on NGOs and Development were organised, taking place in 1992, 1994 and 1999.<sup>113</sup> The first of these conferences, held in 1992, reflected the early tension regarding the development of the NGO community, as it found itself gaining unexpected responsibility and potential funding from official donors and sponsors.<sup>114</sup> Since this time, there have been numerous partnerships between civil society actors and governmental agencies, aiming to combine their resources and knowledge base in order to enact change.

Gaining support and funding from the public as well as more wealthy benefactors, CSOs have been gaining momentum and prominence over recent decades, as more and more civil society actors have begun to push for political, social and legal reform. However, as detailed below, the partnership of states and CSOs is no simple procedure, and there are a

<sup>112</sup> Pearce (2000): Development, NGOs, and Civil Society: The Debate and Its Future.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

number of challenges which frequently present themselves. This has therefore resulted in the need to analyse how best to approach CSO-governmental projects, in order to maximise the benefits offered by both parties and minimise the inherent risks. In the sections below, this module will consider the international context, as well as the domestic situation in Cambodia, in order to demonstrate the environments in which these partnerships can be effective, as well as the circumstances which can inhibit their success.

## Section 8.2 – State and Government Policy Reform

### Learning outcomes:

This section aims to:

- Analyse the impact of CSOs on joint efforts at policy reform;
- Analyse the impact of the state on joint efforts at policy reform; and
- Provide an understanding of how these parties interact

### *Module 8. Activity 2 – Brainstorming*

In this activity, the lecturer should begin by allocating students into groups of 3 or 4, allowing them 15 minutes to answer the following brainstorming questions.

At the end of these 15 minutes, the groups will come together in a larger discussion to discuss their answers.

**Question 1:** What role do you think CSOs play when partnering with governments?

**Question 2:** What role do you think governments play when partnering with CSOs?

**Question 3:** In your opinion, are the impacts of both parties on policy change equal? If not, which party do you believe plays a more significant role in this process?

### 8.2.1 The Impact of CSOs

### Learning outcomes:

At the end of this section, students will have a deeper understanding of the impact which CSOs have on policy reform, when partnering with governments. By considering their ability to effectively campaign for the interests of minorities, network across various groups, as well

as access specialists and up to date research, this section will demonstrate the substantial benefits which CSO involvement can offer to governments.

**Background reading for lecturer:**

- The Pompidou Group (2015): Government Interaction with Civil Society.
- Good Practice Collection (2018): Civil Society Involvement in Drug Policy.

**LECTURE CONTENT**

Civil society involvement in policy planning plays a key role in the maintenance and progression of democratic society.<sup>115</sup> CSOs and civil society actors have a number of critical functions in this area, making significant contributions to policy planning and reform, as well as offering governments information, consultation and partnership.<sup>116</sup> Firstly, CSOs are responsible for extensive campaigning and advocacy, through which they can raise pertinent issues and concerns which they have in regards to current or proposed policy. Campaigning also allows civil society actors to represent minorities by highlighting specific needs and issues which are not being addressed. Here CSOs are also able to provide these minorities with a platform through which they can voice their opinions to the government and general public, in an effort to trigger policy and legislative change.<sup>117</sup>

Additionally, CSOs can also be highly useful due to their ability to build awareness and spread information across a large audience. This creates a channel for new ideas and findings to reach the public, such as trends in drug use and human rights statistics, as well as other up to date research. With their large reach, CSOs also promote reciprocal discourse, able to hear back from these communities, and provide their findings to state authorities or whichever party would be most appropriate to enact the relevant changes.<sup>118</sup> Having extensive contacts locally, nationally and internationally, CSOs are thus in a prime position to network and promote these issues and raise awareness among the public and potential benefactors.

Furthermore, as they generally have access to up to date research and the input of experts in various field, CSOs are uniquely valuable in the area of policy reform, as they are able to provide quality insights and nuanced understandings. Such insights are also informed by

---

<sup>115</sup> The Pompidou Group (2015): Government Interaction with Civil Society.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

the variety of demographics which are involved in CSOs, providing the viewpoints of various age groups, gender identities, races and socio-economic groups. This therefore enables CSOs to adopt a more well-rounded and holistic approach to contemporary issues, which is often distinct from the more conservative stances generally taken by the state.

Similarly, the input of such a vast variety of collaborators and experts can also lead to a great deal of innovation by CSOs, as they develop new approaches to state problems. As they are generally dedicated to a particular field, such as environmental or human rights advocacy, CSOs are therefore able to direct their efforts and extensive data pools into creating novel yet functional solutions, which governments may not have been able to devise otherwise.<sup>119</sup> Additionally, CSOs are also able to provide resources and specialised services, which can be greatly beneficial when collaborating with public authorities. CSOs are then also able to monitor and evaluate the progress that has been made, documenting policy implementation, and specifically, the quality standards and best practices which are in place, as well as the areas still in need of improvement.<sup>120</sup>

### Civil Society and the Dutch State

A prime example of this has been the partnership between civil society actors and governmental agencies towards drug policy and reform in the Netherlands, where the expertise of the harm reduction organisation Mainline was invaluable.<sup>121</sup> Having partnered with the Ministry of Health, Welfare and Sport to address needed drug reform measures, Mainline provided critical assistance not only in providing knowledge on successful harm reduction strategies, but also in making these health care services more accessible to those who are unable or unwilling to access institutionalised health services<sup>122</sup>.

By collaborating with civil society on equal terms and with recognition of the value of CSOs, the Dutch government was therefore able to make significant strides towards resolving one of its most pertinent social issues. Following from this success, it is evident that where governments empower CSOs with the necessary resources and opportunities, as well as enter into partnerships on an equal footing, these partnerships can be extremely effective.

---

<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

<sup>121</sup> Good Practice Collection (2018): Civil Society Involvement in Drug Policy.

<sup>122</sup> Ibid.

### 8.2.2. The Impact of the State

#### Learning outcomes:

At the end of this section, students will be able to analyse the role of the state when collaborating with CSOs, and the impact it has in regards to policy reform. They will also understand the potential conflicts which can arise in this relationship, particularly where the governments and CSOs have diverging interests.

#### Background reading for lecturer:

- James Manor (2002): Partnerships Between Governments and Civil Society for Service Delivery in Less Developed Countries: Cause for Concern.
- CSIDP (2018): Good

### LECTURE CONTENT

As international governments become increasingly aware of the benefits of collaborating with CSOs, they have begun encouraging this form of civic engagement by voluntarily partnering with civil society actors. Having outlined the contributions of CSOs to this partnership, we must now turn to the input of the state. Utilising the data garnered by CSOs, public institutions are able to pave the way for policy reform by putting forward proposals for new laws and policies, as well as canvassing the general opinion of other politicians and party members in order to direct their efforts more effectively.<sup>123</sup>

Although CSOs are known for their work in advocacy and campaigning, governments and public institutions must be willing to enact such change in order for there to be any real progress. Here, governments fulfil a role that civil society is unable to take on by themselves, by turning the amassed research, knowledge and experience into active change. Aided by public support for such change, governments are able to push for reform through the various internal procedures and parties whose approval is required for any permanent change to be made, a step which can only be achieved by those already possessing a role within state administration.<sup>124</sup>

<sup>123</sup> James Manor (2002): Partnerships Between Governments and Civil Society for Service Delivery in Less Developed Countries: Cause for Concern

<sup>124</sup> Ibid.

However, the success of these CSO-state partnerships can be interfered with, where the goals of civil society do not align with other, more powerful, government agendas. Although democratic governments are largely accountable to the will of the public, they often bend to the most powerful and/or conservative portion of the society, regardless of whether this serves the needs of minorities and those most in need of reform. Such is the case in countries such as the USA, where gun reform lobbyists and CSOs have encountered continual obstacles when campaigning for stricter gun laws, as politicians are wary of losing the support and funding of conservative parties such as the NRA. Unlike CSOs, which can form around a central goal and lobby towards that effect, local and national governments are comprised of various parties with differing agendas, which makes decision making a controversial and at times arduous process. Therefore, it is imperative that the state not overextend themselves in regards to their commitments to CSOs, and that they be realistic in which goals they can achieve and which would be better suited to CSOs, in order to foster trust and partnership between themselves and civil society.

## Section 8.3 – Challenges to the Compatibility of Public Institutions and CSOs

Learning Outcomes:

This section aims to:

- Identify the key challenges affecting the compatibility of public institutions and CSOs;
- Analyse how these challenges can manifest in a practical context; and
- Identify what governments and CSOs can do to overcome these challenges.

### Background reading for lecturer:

- The Pompidou Group (2015): Government Interaction with Civil Society.
- Vasconcellos and A. Vasconcellos (2011): State-Civil Society Partnership: Issues for Debate and New Research.
- James Manor (2002): Partnerships Between Governments and Civil Society for Service Delivery in Less Developed Countries: Cause for Concern.

## LECTURE CONTENT

Although the mutual cooperation of CSOs and public institutions can result in significant reform and be greatly beneficial to the progression of democratic society, there are also a

number of challenges inherent to their partnering. A significant challenge which is often presented by such partnerships derives from their transient nature. Although these joint projects have the potential to effect immense change, they are often fragmented and transitory when considering the gravity of the issues attempting to be dealt with. For this reason, the efforts made can be quite ineffective in the long term, rarely allowed to develop fully enough to have their intended impact<sup>125</sup>

Furthermore, there are also a number of difficulties posed by the structural incompatibilities and legal barriers in place. Regulations, infrastructure and training are frequently not flexible enough to provide for smooth functioning co-operation between the different institutional regulations and cultures of CSOs and public institutions.<sup>126</sup> Where CSOs are equipped with very limited discretion over the execution of these collaborations, they can also become disinclined to devote their already strained resources and time into projects in which they ultimately have little control over the outcome. With the added tension imposed by the presence of diverging professional interests and expectations, it is not surprising that CSOs and public institutions struggle to find a common methodology by which to work. This is especially true where there is a lack of accountability and transparency on the part of governments, leaving CSOs with little recourse other than to trust in the sincerity of their commitments. For these reasons, CSO-governmental projects are often unsuccessful from their commencement or else fail to live up to their desired effect.

In order to combat these significant challenges, every partnership and co-operation will require a unique inception and planning effort that takes into account the specific local situation, the political support, the capacities and the limitations of partners involved.<sup>127</sup> Depending on the public perception of CSOs in that region, and whether they are considered as being beneficial or intrusive, governments will need to adjust the way in which they handle the power imbalance. Where the operations of CSOs are traditionally interfered with in a certain nation, it is also important that the state address this when entering into the partnership, and promote a healthy working relationship by making an effort to diminish any undue constraints which may be in place. Additionally, establishing co-operation between a CSO and a public institution can be a very lengthy process, and its difficulty is often underestimated. It is likely to require a change of attitude and perception on the part of the agencies concerned, a process which is often insufficiently supported, or supported only in the early stages.<sup>128</sup> Rather than emphasising those areas in which the interests of the two parties diverge, they must endeavour to find a mutually agreed upon course of action which

---

<sup>125</sup> The Pompidou Group (2015): Government Interaction with Civil Society.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid.

<sup>128</sup> Ibid.

takes advantage of the respective strengths of each, allowing for a high degree of transparency and accountability throughout this process. Therefore, it is important that both CSOs and public institutions adopt a high level of mutual understanding and trust, as well as steadfast administrative support, in order for their partnership to succeed.

## Section 8.4 – How the State and CSOs Can Influence Each Other

### Learning outcomes:

This section aims to:

- Demonstrate how both the state and CSOs influence each other through their partnership;
- Identify how both these parties engage with each other;
- Analyse the methods of formal engagement; and
- Analyse the methods of informal engagement.

### Background reading for lecturer:

- Vasconcellos and A. Vasconcellos (2011): State-Civil Society Partnership: Issues for Debate and New Research.

### Module 8. Activity 3– Quiz

This activity, will test the students' initial understanding of the methods of engagement between states and CSOs, and the ways in which they both use these connections to influence each other. For this activity, the lecturer will write several elements on the board which relate to methods of state-CSO partnership. Students will then need to classify these options as falling under either "formal" or "informal" modes of engagement. Students will have 5-10 minutes to complete this exercise, after which the correct answers will be provided so that they can calculate their grades.

## LECTURE CONTENT

There are several ways in which the state and civil society can engage with each other, varying from official meetings and specifically designed platforms to more casual instances



of resource or knowledge sharing. Below, we will look at both formal and informal modes of CSO-state engagement, in order to better understand the ways in which states and CSOs can use these modes of partnership to influence each other and better advocate for their interests and those of the demographics which they are representing.

#### 8.4.1. Formal Engagement

##### **Learning outcomes:**

At the end of this section, students will be equipped to analyse the methods of formal engagement employed by public institutions and CSOs. They will also have an understanding of the potential problems which have been raised in regards to this method of partnership.

##### **Background reading for lecturer:**

- Fioramonti and Heinrich (2007): How Civil Society Influences Policy: A Comparative Analysis of the CIVICUS Civil Society Index in Post-Communist Europe.

#### **LECTURE CONTENT**

Although informal modes of engagement are arguably more effective at times, formal methods of engagement are also often employed where governments wish to collaborate with CSOs on specific projects. Such formal engagement often involves institutionalised dialogue supported by established forums of communication. This is very common in post-communist countries, where tripartite negotiations will take place in order for government representatives to come together with trade unions and policy makers in order to discuss pertinent issues and come to an arrangement on matters such as socio-economic policies, salaries, worker's rights. Formal engagements can include institutionalised dialogues such as official forums or meetings, as well as the introduction of joint bodies and special committees dedicated to the resolution of specific social issues.

However, Fioramonti and Heinrich argue that institutionalised forums for state-civil society engagement do not necessarily provide CSOs with concrete opportunities to influence public

policy.<sup>129</sup> This is largely because the role that CSOs play in such formal partnerships tend to be merely advisory in nature, rarely providing them with the opportunity to enact substantial change. Rather, they are often restricted to simply providing proposals to policy makers on what reforms ought to be made, based on the data they have collected and the collective opinions of their consulting experts. The government representatives are then free to essentially disregard such advice, or to adopt as much of it as they see fit so as to align with state agendas. Therefore, while formal engagement between governments and CSOs can be effective in creating policy reform, whether they are successful fundamentally depends on the degree of input which governments allow CSOs to have, and on whether they are given the opportunity to appropriately present their proposals.

### Formal Engagement in Croatia

In order to combat the extreme levels of conflict and separation between CSOs and the state during the 1990s, the Croatian government undertook efforts to open the lines of communication between the two parties and increase the potential for their partnering. In order to do so, joint institutions were created, wherein both civil society and the state could work together to tackle specific issues such as gender equality, the rights of children and environmental activism.

Taking the initiative to put in place these formal modes of CSO-state engagement allowed for a steady increase in partnerships during the early 2000s, as CSOs were increasingly offered representative positions at both the local and regional level in order to foster further collaboration. Although efforts at partnership were complicated by the introduction of a new government in 2004, the changes implemented when creating these joint institutions and body demonstrate the impact which can be achieved through formal methods of engagement, provided that the state is committed to their success.<sup>130</sup>

#### 8.4.2. Informal Engagement

##### Learning outcomes:

<sup>129</sup> Fioramonti and Heinrich (2007): How Civil Society Influences Policy: A Comparative Analysis of the CIVICUS Civil Society Index in Post-Communist Europe.

<sup>130</sup> Fioramonti and Heinrich (2007): How Civil Society Influences Policy: A Comparative Analysis of the CIVICUS Civil Society Index in Post-Communist Europe.

At the end of this section, students will be able to identify and understand the processes of informal engagement between CSOs and public institutions, as well as the benefits which such partnerships can yield.

**Background reading for lecturer:**

- Fioramonti and Heinrich (2007): How Civil Society Influences Policy: A Comparative Analysis of the CIVICUS Civil Society Index in Post-Communist Europe.

**LECTURE CONTENT**

Contrastingly, there are also many cases in which states and CSOs have decided to collaborate on more informal terms. Legal methods of informal partnership usually comprise of CSO support for state actors who have commenced their political career within civil society structures, as is the case with many former trade unionists that have moved to government positions. In other cases, these methods can take the form of assistance to likeminded politicians whose efforts may be emboldened by CSO support. This can allow more progressive politicians to better oppose other political groups on specific controversial policies, or to use this support in order to help them pave their way to higher ranks within the government structure, from which they can enact greater change.<sup>131</sup> According to the CSI findings, informal contacts play a prominent role, and provide CSOs with more concrete avenues to influence public policy than traditional institutionalized channels.

Here, the ties between individual public officials or policy-makers and members of CSOs can go a long way in creating an effective partnership between the state and civil society. Opening the lines of communication by creating an informal partnership allows for a CSOs' influence to reach the levels of government, and for their lobbying to receive support within state ranks. Furthermore, as informal engagements are generally more intimate than those of a formal nature, such partnerships go some way towards lessening the power imbalance that frequently complicates CSO-state partnerships. For a compelling and exhaustive discussion of how CSOs can exploit the so-called 'structural holes' within public administration and turn political competition in their favour, students should read Fioramonti and Heinrich (2007): How Civil Society Influences Policy: A Comparative Analysis of the CIVICUS Civil Society Index in Post-Communist Europe.

---

<sup>131</sup> Ibid.

## Section 8.5 – Links to Good Governance

### Learning outcomes:

This section aims to:

- Demonstrate how good governance is linked to the partnerships of governments and CSOs; and
- Identify the ways in which these partnerships promote practices of good governance.

### Background reading for lecturer:

- Vasconcellos (2011): State-Civil Society Partnerships: Issue for Debate and New Researches.

## LECTURE CONTENT

CSO-state partnerships are not only significant in their role in respect to their impact on policy reform, they also allow for a shift in political power which is critical for the maintenance of democratic society. Collaboration between civil society actors and the state strengthens the ties between local citizens and governments, by opening the lines for bilateral communication. Additionally, it also increases the opportunities for powerless and underprivileged minorities and social group to participate in their local government as well as in public forums.<sup>132</sup> The involvement of CSOs in governmental procedures also promotes social and political participation among the public, having emerged in response to an earlier normative understanding of partnership for inclusion and power.<sup>133</sup> With their extensive connections and ties to local communities, CSO partnerships are therefore frequently used as a tool to involve sectors of society which might not otherwise have been reached by state efforts alone.

Partnerships between governments and civil society actors therefore form a critical instrument of popular participation in public actions, providing a valuable method with which to combine public and private resources in order to effectively and efficiently carry out specific public programs.<sup>134</sup> However, despite this potential for greater cohesion and public participation, there are those who adopt a relatively sceptical view as to the effectiveness of partnerships between governments and CSOs. Such arguments largely revolve around the

---

<sup>132</sup> Vasconcellos and A. Vasconcellos (2011): State-Civil Society Partnerships: Issue for Debate and New Researches.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

inherent power imbalance which is present in these partnerships, as governments always retain the final decision where state and CSO agendas no longer align.<sup>135</sup> For this reason, some propose that, while limited progress can arise due to the CSO-state collaboration, it can never result in a true mutual partnership between the two parties.

Furthermore, there are key ties between good governance and civil society-government partnerships. Disrupting the traditional balance of power, these partnerships allow local organisations to influence local planning and policy in a way that is of benefit to the entire community, rather than simply those elite groups which dominate the political scene. Although this in no way guarantees an equal distribution of power, it does go a significant way to providing a platform to those social groups which are often voiceless. Brazil offers a prime example of this, as the movement toward greater electoral accountability at the local level has seen the growth and continuing strength of civil society.<sup>136</sup> Additionally, CSO-state relations can also promote good governance, as public institutions become more inclined to entrust CSOs with aspects of public affairs. This can be seen through the legislation enacted in Mali, where legal organisations independent from the government are now empowered with authority over forest management.<sup>137</sup> Thus, where states approach CSOs as equal partners, rather than as the beneficiaries of their joint efforts, there is significant potential for these partnerships to promote good governance and increased public participation in political forums.

#### *Module 8. Activity 4 – Comparative Study*

For this activity, students will form groups of 3-4 and be given 20 minutes to compare the practices of three different states in regards to partnering with CSOs. During this time, students should find one positive example of state-CSO partnership, one negative example, and one which they think has significant potential for improvement. They should pay particular attention to the links between these partnerships and the presence of good governance practices within the state.

At the end of these 20 minutes, the groups will come together in a larger discussion, to analyse what elements they believe are critical to an effective partnership between the two parties, as well as how the negative examples of partnerships impacted on good governance in those nations.

### Section 8.6 – Cambodian Case Study

---

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

<sup>137</sup> Ibid.

**Learning outcomes:**

This section aims to:

- Study Cambodia's weaknesses when dealing with CSOs;
- Identify the weaknesses and the strength of the relationship;
- Analyse how the weaknesses affect the partnership between CSOs and Cambodia's public institutions ;and
- Advise students on how Cambodia can improve in this regard.

**Background reading for lecturer:**

- Cooperation Committee of Cambodia (2016): Government Engagement.
- The Phnom Penh Post (29 January 2019): Ministry to Conduct CSO Census.
- The Phnom Penh Post (29 August 2019): Ministry Urged to Allow CSOs to Work Without Restriction.

**LECTURE CONTENT**

In 2016, the Cooperation Committee for Cambodia (CCC) released a statement regarding the nation's cooperation with civil society, and reported that CSO engagement levels remained non-inclusive, unstable and unpredictable.<sup>138</sup> However, the CCC did also note that levels of cooperation were not even across the various fields, with the areas of "human rights, environment, natural resource management, and advocacy organisation" suffering the most.<sup>139</sup> Despite its efforts at promoting the voices of CSOs in Cambodia, the CCC states that the efforts of these organisation often remain unmet and unable to effectively reach the appropriate government channels. The Development Cooperation and Partnership Strategy (DCPS 2014-2018) was designed to promote CSO-state partnership and operate in conjunction with other similar mechanisms designed to improve policy development (such as the Cambodia Development Forum (CDF) and Government Development Cooperation Committee (GDCC)).<sup>140</sup> However, despite these efforts the CCC maintains that Cambodia still needs to undergo significant change in regards to its treatment of and attitude towards civil society, if it is to successfully partner with CSOs.

Furthermore, in 2019 the Ministry of Interior (Mol), in partnership with the CCC, conducted a census to garner the number of CSOs registered in Cambodia, with over 5,320 CSOs thus

<sup>138</sup> Cooperation Committee of Cambodia (2016): Government Engagement.

<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

registered in 2018.<sup>141</sup> In response to these results, the Director-General of the International Relations Institute at the Royal Academy of Cambodia stated that Cambodia functions as an effective haven for civil society organisations, the abundance of CSOs being a result of the nation giving them a wide breadth with which to operate.<sup>142</sup> Despite such claims, August 2019 saw over 400 CSO representatives gathering to implore the Mol to dedicate greater resources to ensuring that local authorities do not needlessly interfere with CSO activities.<sup>143</sup> In response to these appeals, the Minister of the Mol expressed his disagreement with the claims that Cambodian authorities were placing undue restrictions on CSOs, citing the growing number of domestically registered CSOs as evidence supporting him.<sup>144</sup>

From such disjointed accounts, it is evident that Cambodia needs to adjust its treatment of CSOs in order for this relationship to be more effective. It is necessary that public institutions promote a healthy discourse through which civil society can voice their concerns and be heard, rather than dismissing their complaints as unfounded or refusing to act. If not, where mutual distrust is already present between civil society and governments, such a lack of transparency and cooperation can become detrimental to any hope of progress. Therefore, it would be highly beneficial for Cambodia and its public institutions to approach their relationship with CSOs as being one of a collaborative and mutually beneficial partnership. Furthermore, it is critical that Cambodia be more responsive to the concerns of civil society, such as those voiced by representatives in 2019, in order to foster trust and confidence in the government's ability to meet the needs of civil society. Although there would still be further room for improvement, it is highly likely that the nation would see greater success in its partnerships with CSOs, were Cambodia to implement these principal changes.

### *Module 8. Activity 5 – Group Discussion*

Now that students possess a better understanding of the complexities which are inherent to the effective partnership of government and CSOs, the lecturer will open a class discussion on the topic. This will allow students to collaborate and develop a deeper understanding of how these understandings can be beneficial to Cambodia's own practices in regards to collaborating with civil society. Students should join into groups of 3-4 and be allowed 15 minutes to discuss, after which the groups must present their ideas to the classroom.

<sup>141</sup> The Phnom Penh Post (29 January 2019): Ministry to Conduct CSO Census.

<sup>142</sup> Ibid.

<sup>143</sup> The Phnom Penh Post (29 August 2019): Ministry Urged to Allow CSOs to Work Without Restriction.

<sup>144</sup> Ibid.

**Question 1:** In your opinion, what steps could Cambodia take in order to more effectively partner with CSOs to achieve policy change?

**Question 2:** Explain how improving its relationship with civil society could also result in the promotion of good governance in Cambodia.

