Fact Sheet: Draft Acid Law (the “Draft Acid Law”)

Law’s Current Status: Draft

CCHR Classification: YELLOW

The Cambodian Center for Human Rights (“CCHR”) has classified the Draft Acid Law yellow on the basis that it contains a number of positive provisions which are needed to address acid violence in relation to criminalization of acid violence, appropriate sentencing for perpetrators, regulation of the sale, purchase, distribution and transportation of acid and victim support, yet some of its provisions are vague, incomplete or require the issuing of further sub-decrees.

Introduction

This factsheet provides an overview of CCHR’s key concerns and recommendations relating to the Draft Acid Law as per the latest draft made available to CCHR on 26 August 2011. A copy of the draft, upon which this factsheet is based, is available on www.siti.org in Khmer and English. CCHR is a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia (“Cambodia”).

Background

According to data gathered by the Cambodian Acid Survivors Charity on people treated in hospital for acid attacks, there have been 271 acid violence victims between 1985 and June 2010. The Royal Government of Cambodia (the “RGC”) has taken the important step for combating this horrific phenomenon through the creation of a law. It is understood that the law has been through the Council of Ministers and will be discussed at the National Assembly in due course.

CCHR’s key concerns and recommendations relating to the Law

Criminalization of Acid Violence - The Draft Acid Law includes strong provisions that criminalize acid violence. Importantly, the Draft Acid Law specifically provides that legal entities can be declared to have criminal responsibility in relation to unintentional death or injury caused by negligence or carelessness, or as a result of the violation of its obligations of security. The Draft Acid Law however is silent with regards to the penalties to be imposed on any co-perpetrator, instigator and/or accomplice. Quite often the person who commits the act of throwing acid, is not the person instigating the crime. To not expressly include these persons within the scope of the Draft Acid Law is to fail to provide appropriate justice to the victims of acid violence.

Prosecution and Punishment - The law differentiates between intentional killing, unintentional killing, torture and cruel acts, intentional injury and unintentional injury providing for a maximum of life in prison for the intentional killing of a victim using acid or where acid had been used for torture before or at the time of the killing. Prison sentences for intentional violence range from 2 to 5 years, 5 to 10 years if it leads to permanent disability and 10 to 20 years if it results in the unintentional death of the victim. This is terribly low considering the severity of the act. With regards to physical persons and legal entities, with or without licenses or permission, who are careless or not careful enough in controlling their operations which results in injury, disability or death of another, the penalties fail to mention anything with regards to cancellation or suspension of a licence as part of the penalty. Such provisions are necessary so that offenders are not simply able to resume their activities having paid their fine or served their prison term, and are required to go through appropriate examination by the relevant authority.

Regulation - Proper regulation and strict management regarding the use of acid, which covers all areas of the acid economy, is fundamental to reducing the number of acid attacks. The Draft Acid Law includes an

CCHR classifies each law according to how acceptable it is in terms of its consistency with the Constitution and Cambodia’s obligations under domestic and international law, and the clarity of its provisions. Laws that are classified as green are acceptable in the opinion of CCHR; laws classified as yellow contain a number of concerns that should be reviewed and amended; and laws classified as red are draconian and/or in violation of the Constitution and/or the country’s obligations under domestic and international law, and should therefore be rejected, annulled or re-drafted, as appropriate.
outline of a regulatory process which provides that a person or legal entity involved in the importing, producing, transporting, distributing, buying, selling, storing and using of acid must have a licence or letter issued by the concerned ministry or responsible authority of the RGC. The Draft Acid Law is silent on acid waste disposal, which can equally be used for the purposes of acid violence, and does not include any provisions on labelling. Considering reports in May of this year of two men in Kampot Province mistakenly drinking acid, the inclusion of such a provision is an important aspect of preventing acid related injuries.

The Draft Acid Law makes reference to a sub-decree which will be used to further legislate for the regulatory regime outlined in the law. There is no further information with regards to this sub-decree and as such it is unknown what sort of eligibility requirements will be in place for those seeking to obtain a licence and what the conditions for licence are. The Draft Acid Law is silent as to how long a licence will be granted for and what the conditions of holding and maintaining a license are. It is vital that the regulatory regime includes conditions of licence related to technical standards, health and safety, and provides that licences are for a fixed term, subject to renewal, and will only be renewed following a review process which determines that the licence holder continues to meet the relevant criteria for a licence. In the absence of a provision for a specific monitoring team to check licences and permissions in the Draft Acid Law, it is also unclear how compliance with licence conditions will be monitored.

**Victim Support** - The Draft Acid Law includes provisions with regards to medical and legal support. Whilst the law discusses free medical support and treatment, given the nature of acid related injuries, it is fundamental that any referral to a health department facility is to a facility where the doctors are trained to deal with acid-related injuries. Pursuant to the Draft Acid Law, the identification of the level of disability of the victim of a concentrated acid attack will be undertaken by a specialized committee established by the Ministry of Health. It is unclear however how this committee will be constituted and to what extent this specialized committee will include experts. Whilst the establishment of such a committee will help in the necessary determinations regarding medical care, it is unclear if this committee will only be based in Phnom Penh with members travelling around the country or whether there will be provincial offices. It is important that these aspects are taken into consideration as time is critical when dealing with acid related injuries. The Draft Acid Law provides that the RGC shall provide legal support to victims of acid attacks, but it is unclear what is meant by “provide legal support”. The Draft Acid Law is silent with regards to other forms of legal support victims of acid violence may need, such as victim and witness protection.

**Conclusion**

The law in its current form addresses many of the acid violence issues that plague Cambodian society. However, further revisions and amendments are needed to sufficiently counter issues pertaining to controlling and regulating access to acid, deterrence in the form of ensuring perpetrators – as well as co-perpetrators, instigators and accomplices – are brought to justice and the provision of post-emergency facilities. The effectiveness of any acid legislation that is enacted will come down to proper enactment and effective implementation. The Draft Acid Law must form part of a holistic, multi-disciplinary approach toward the problem of acid violence. To reach these ends, collaborative efforts from various government institutions, the police authorities and civil society organizations is needed to support the implementation of the law.

For more details please contact Ou Virak (tel: +855 (0) 1240 4051 or e-mail: ouvirak@cchrcambodia.org) or Sana Ghouse (tel: +855 (0) 8961 4334 or e-mail: sana.ghouse@cchrcambodia.org).