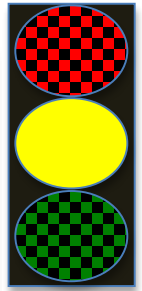


Fact Sheet: Law on Anti-Corruption (the “Law”)**Law’s Current Status:** Promulgated March 2010, all provisions in force August 2011**CCHR Classification:** YELLOW

The Cambodian Center for Human Rights (“CCHR”) has classified the Law as yellow: the premise of the Law is a positive step, but in its current form, the Law contains a number of provisions which seem to go against its aims to prevent corruption, and is insufficient to address the widespread corruption seen throughout the Kingdom of Cambodia (“Cambodia”). The Law should be reviewed and amended, in particular to ensure that the institutions set up are fully independent of the Royal Government of Cambodia (the “RGC”), and that there is greater transparency about corruption within the country.

**Introduction**

This fact sheet provides an overview of the key concerns relating to the Law, particularly in the context of the widespread corruption in Cambodia. This fact sheet is written by CCHR, a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

Background

Corruption permeates all aspects of public life in Cambodia. Transparency International’s Corruption Perception Index ranked Cambodia 154 out of 178 countries in 2010, but by 2011, it had slipped to 164 out of 183 (although the score (2.1) was the same). With such a high prevalence of corruption in the country, the need for legislation to address this culture is clear. In September 2007, Cambodia ratified the United Nations Convention against Corruption, and in March 2010, it promulgated the Law.

The aims and purpose of the Law are clearly defined in Chapter One: “to promote effectiveness of all forms of service and strengthen good governance and rule of law in leadership and state governance as well as to maintain integrity and justice” (Article 1) and “to combat corruption through education, prevention, and law enforcement” (Article 2). The Law creates a number of anti-corruption institutions and describes the powers that these institutions have and the procedures that should be followed when investigating corruption. In addition, the Law refers to offenses detailed in the Penal Code of the Kingdom of Cambodia (which came into force in December 2010), and sets out some additional offenses. Together, the offenses aim to address a number of different forms of corruption that may occur, including money-laundering and giving and receiving bribes, both in the public and private sectors.

Deputy Prime Minister Sok An said that the Law would give Cambodia new tools to remove corruption. Indeed, a law tackling corruption in Cambodia is an important step. However, any anti-corruption law must be robust enough to address corruption at all levels of public life, to act as an effective deterrent, and to provide effective and proportionate sanctions when corruption is found to have taken place. Unfortunately, the Law contains a number of concerning provisions that compromise these objectives.

CCHR’s Concerns about the Law

Independence – The Law does not create an independent, transparent body to oversee enforcement. The Anti-Corruption Institution, comprising the National Council Against Corruption (the “NCAC”) and the Anti-Corruption Unit (the “ACU”), works to develop and implement laws, orders and regulations, investigate corruption, and review complaints received about corruption. However, the Law also specifies the make-up of these bodies (Articles 6 and 11), and most of the members are appointed by the Prime Minister and/or

RGC institutions. The executive branch and governing party therefore have complete control over the composition of these bodies. In addition, the ACU reports to the NCAC, which in turn reports directly to the Prime Minister (Articles 10 and 13). This chain of reporting has led to questions about the independence of these institutions and, although corruption can and does occur in many aspects of public life, questions as to whether bodies so tightly linked to the RGC can truly address corruption within it.

Asset Declarations – Under the Law, certain individuals and bodies must make declarations of assets and liabilities to the ACU in order to help avoid claims of conflicts of interest (Article 17), including declarations by members of the Senate, National Assembly and the RGC, trial judges and leaders of civil society. However, the Law states that documents relating to declarations will remain confidential (Article 20). As noted by Sam Rainsy Party legislator Son Chhay *“if you treat the declaration of the asset as top-secret, particularly the assets of those in government, this kind of declaration will become meaningless.”* Further, the Law fails to subject spouses and children of these people – who have traditionally been used to hold illicit gains – to the financial reporting requirements. Therefore, assets can easily be concealed even if such declarations are made.

Confidentiality/Transparency – Corruption thrives where there is no transparency. The ACU has no ability or obligation to publish information regarding its activities and investigations. Instead, the ACU must *“keep absolute confidentiality of corruption-related information sources”* (Article 13) and *“any person who leaks the confidential information on corruption shall be sentenced from one (1) to five (5) years in prison”* (Article 39). This lack of transparency fuels corruption; it is impossible to hold officials to account if details of assets and investigations are not known.

Whistleblowers – Although Article 13 states that the ACU must *“take necessary measures to keep the corruption whistle blowers secure”*, there are no incentives for whistleblowers under the Law. Furthermore, Article 41 of the Law creates a criminal offense if *“defamation or disinformation complaints ... lead to useless inquiry”*. Such an offense is subject to serious penalties: *“imprisonment from one (1) month to six (6) months and fine from one million Riel (1000,000) to ten million Riel (10,000,000)”*. *“Useless inquiry”* is not defined in the Law, and there is no requirement of intention in relation to the complaint. It is therefore unclear whether an incorrect complaint, rather than a deliberately false one, constitutes an offense under the Law. The lack of certainty as to how this offense will be interpreted is likely to instill fear in people, and thereby limit the number of people who might come forward with information about corruption.

Conclusion

Lack of transparency is a key factor in corruption. While the Law is commendable for its objectives, the secrecy surrounding investigations and the declarations of possible conflicts of interests vastly reduces any benefit that the Law may bring about. Most corruption within Cambodia arises out of necessity because of systemic low wages, and because of fundamental failings in the attitudes of institutions and officials. The Law, in particular the lack of transparency and independence of the enforcement institutions, is inadequate, and is unlikely to stop corruption or to change this prevailing culture. Given the prevalence and seriousness of corruption in Cambodia, the Law should be amended as a priority to be stronger and more robust, and a multi-layered approach to changing attitudes throughout all elements of public life should be instigated and implemented, so that Cambodia can finally begin moving in the right direction.

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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 green are acceptable in the opinion of CCHR; laws classified yellow contain a number of concerns that should be reviewed and amended; and laws classified 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.

