Introduction

This fact sheet provides an overview of the Proposed Law, whose aim is support freedom of information in Cambodia, and the independent institution that the Proposed Law envisages will help find solutions for people whose right to freedom of information has been violated. This fact sheet is written by CCHR, 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 Cambodia.

Background

The right to access information is widely recognized as a fundamental human right. It is also a fundamental tenet of democracy. The Royal Government of Cambodia (the “RGC”) has declared its commitment to the right to freedom of information by preparing a draft freedom of information policy. However, the desire for information and the public’s right to access it is far from entrenched in Cambodian society. In December 2010, opposition Sam Rainsy Party (the “SRP”) representatives submitted a law on the right to freedom of information to the National Assembly (the “NA”), but this version – reviewed and analysed by London-based NGO ARTICLE 19 in September 2011 – was reportedly rejected in December 2011 without review or debate. In March 2012, the SRP submitted another version to the NA (also including comments from ARTICLE 19) – please see below.

Analysis of the Proposed Law

The Proposed Law contains some positive provisions: Article 6 provides for an obligation for all public institutions to publish and disseminate – in an accessible form and at least annually – key information and documents pertaining to that institution. Article 6 also indicates the type of documents required to be published. Furthermore, Article 9 states that the RGC shall immediately publish draft laws, regulations, policies and other documents of public interest as soon as such documents reach the Office of the Council of Ministers. In obliging the RGC to publish all laws and policies, Article 9 allows the public the opportunity to understand the activities of the RGC and, most importantly, decisions that will affect their daily lives.

Another positive provision is the requirement to create a guide to using the Proposed Law, which is intended to guard against incorrect implementation or implementation in bad faith. According to Article 12, the Information Commissioner would be required to compile this guide. The Information Commissioner would be an independent institution which would: oversee and report on implementation and compliance by public bodies; make decisions with respect to complaints from people about rejections from public bodies as regards providing information; make recommendations for reform; provide training for public officials on the right to freedom of information; and publicize the Proposed Law’s requirements and individuals’ rights under it.
Chapter 8 of the Proposed Law provides for an Information Disclosure Tribunal (the “Tribunal”) whose role would be to make decisions as regards appeals against decisions of the Information Commissioner. Moreover, in cases when a party is not satisfied with a decision of the Tribunal, the party would have the right to appeal to the Supreme Court within 28 days of the date on which the decision was made. This chapter outlines – for the benefit of the public – the legal procedures that people would have to follow in the event that they were to disagree with decisions of the Information Commissioner and/or the Tribunal.

Article 68 states: "No one may be subject to any legal, administrative or employment-related sanction regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment." This provision aims to encourage contributions from witnesses and/or whistleblowers by providing them with legal protection, thereby ensuring that they would be able to release information that is appropriate for the public sphere.

However, there are a few aspects of the Proposed Law that leave room for improvement. First, the language used is very complicated. The language should not be so complicated as to prevent the local authorities from implementing the Proposed Law or and the people from understanding and making use of it. Furthermore, there are a significant number of vague terms within the Proposed Law. It is important that terminology is defined properly. For example, the Proposed Law does not distinguish between public and private bodies, with the definitions given very broad, which leaves scope for misuse and misunderstanding. Some provisions also seem unnecessary: for example, Article 4 states that the Proposed Law applies to courts and other tribunals; but the courts are just one of the three branches of government, so the Proposed Law should cover all branches of government without on the other hand requiring a separate provision. Last but not least, as highlighted by ARTICLE 19, the Proposed Law does not make clear that the presumption should be in favor of all information held by public bodies being disclosed except in limited circumstances.

**Conclusion and Recommendations**

The Proposed Law contains some positive provisions that will facilitate ordinary people’s right and ability to access information in Cambodia and ensure that they are able to receive the information that they need on time, so that they can make important decisions as regards the issues that affect them and their daily lives. However, in order to address the Law’s shortcomings, CCHR provides the following recommendations:

- The language should be clear and simple so that everyone can read it and understand it fully;
- Vague terms should be defined properly, for example, the definitions of public and private bodies should be separated and defined more precisely;
- The Proposed Law should apply equally to all branches of government, namely the executive, legislative and the judiciary, while also applying to all institutions that carry out public functions and receive public funds; and
- The presumption should be in favor of all information held by public bodies being disclosed except in limited circumstances.

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