Fact Sheet: Law on Administrative Management of Communes/Sangkats (the “Law”)
Current Status: Enacted on 19 March 2001
CCHR Classification: RED (laws classified red should be rejected, annulled or re-drafted)

The Cambodian Center for Human Rights ("CCHR") has classified the Law as red. The dominant role that the Law grants the Ministry of Interior (the “MOI”) undermines some positive provisions, while the role of the commune/sangkat councils (the “Councils”) as representatives of the people is difficult to reconcile with their role as agent of the State, given that the former represents the interests of the people and the latter the interests of the State and the ruling party. Decentralization is an admirable objective, but only if it transfers power to the people at the grassroots level. The Law fails as regards this overriding objective.

Introduction
This fact sheet summarizes the Law in light of the recent Commune/Sangkat Council elections on 3 June 2012, particularly in relation to the wider decentralization policy of the Royal Government of Cambodia (the “RGC”), raising some key concerns and recommendations. 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 the Kingdom of Cambodia (“Cambodia”).

Background: “Decentralization and De-concentration Policy”
The Law was adopted as part of the RGC’s comprehensive “Decentralization and De-concentration Policy” (the “Policy”), whose stated goal is to strengthen local governance and promote democracy in Cambodia (Arts. 1 and 3). Cambodia is organized as a unitary state of three sub-national administrative tiers, with the communes or “sangkats” (as they are known in the capital and other municipalities) comprising the lowest administrative level. The Policy aims for more accountable and transparent management systems and more efficiency as regards public administration and the delivery of services, so as to reduce poverty and stimulate local development. The Policy delegates powers and responsibilities from State ministries and institutions to sub-national units which then fulfill the role of State agents.

Summary of the Law
The Law was promulgated on 19 March 2001 and given further specificity by the Sub-Decree on Decentralization of Powers, Roles and Duties to Commune/Sangkat Councils (the “Sub-Decree”), enacted on 25 March 2002. The Law stipulates how the communes/sangkats in Cambodia are to be managed. A commune/sangkat council (a “Council”) is elected directly under a system of proportional representation for a five-year period by the commune/sangkat residents. Its duty is to represent its citizens and serve the interests of the commune/sangkat. A Council comprises between five and eleven members, depending on the demographic and geographic size of the commune/sangkat (Arts. 9-12 and 15). The Presiding Councilor — also the Commune Chief — is the highest-ranked candidate from the party with the most election votes in that commune. He is in charge of conducting Council meetings, implementing Council decisions, presenting a monthly performance report, and making suggestions to the Council. In order to assist the Commune Chief, two Deputy Chiefs are chosen — the highest-ranked candidates from the parties with the second and third highest number of election votes in that commune (Arts. 13, 32-35 and 39). Every commune/sangkat has a clerk who is appointed and employed by the MOI to assist and advise the Council (Art. 28). Furthermore, the Council selects a Village Chief for each of the villages in the commune/sangkat (Art. 30).

So that the Council can discharge its functions, the Law equips it with certain legislative and executive authorities (Arts. 5 and 48-49). There are two kinds of duties that a Council has to fulfill: first, to run local...
affairs by serving the interest of its people; and, second, to perform agency functions delegated by the State. The former role involves maintaining security and public order, providing public services, promoting social and economic development, and protecting the environment and natural resources. As regards the latter role, the Council is endowed with power and responsibility from a State ministry or institution to perform certain tasks and deliver certain services delegated from central government. Every agreement between a Council and a ministerial, government or international institution has to be approved by the National Committee for Support to Commune/Sangkat Councils and the MOI (Arts. 42-44; Sub-Decree Arts. 55 and 58). A Council’s performance is monitored by the MOI, which has the right to intervene if the Council does not fulfill its duties as required by the Law (Arts. 53-57).

Concerns and recommendations
The Law contains some positive provisions that aim to increase transparency and the flow of information as regards the Council’s work, for example through the obligatory use of public notice boards and by citizens’ rights to access documents (Sub-Decree Arts. 7 and 10). Furthermore, there is evidence that the Law provides for more accountability and supports further democratic and participatory governance, such as by residents’ rights to attend monthly Council meetings, give suggestions, or file complaints with the Council (Arts. 21 and 23; Sub-Decree Arts. 30-31). Nevertheless, CCHR still has some significant concerns.

The Law grants the MOI an influential role with wide powers of discretion, rendering futile this attempt to increase decentralization and de-concentrate democratic governance. In fact, the Council’s legislative authority is severely limited, since the MOI can veto any resolution that “runs counter to the spirit of" existing international or national legislation (Art. 49). A Council has to obtain approval from the MOI for all official relations that it intends to conduct with the RGC, its ministries, or any other national and international organizations. Any delegations of power to a Council have to be authorized by the National Committee for Support to Commune/Sangkat Councils, which is headed by the MOI (Art. 87; Sub-Decree Arts. 42 and 55-58). A Council’s performance of state-transferred functions is monitored and examined by the MOI, which can intervene in cases of failure by withdrawing and taking over duties assigned to the Council, or even dissolving the Council altogether (Arts. 53-58). For every attempt to decentralize responsibility, a clear effort is made to ensure stringent oversight by the RGC. CCHR proposes to limit the powers given to the MOI, so as to strengthen decentralized governance and local administration so that legislative measures such as the Law do more than just give the appearance of promoting democracy.

The dual role of the Councils undermines the objectives of the Policy. On the one hand, decision-makers are made more accountable to the people, but, on the other hand, Councils act as agents of State ministries and institutions. As the latter are almost completely controlled by the ruling party, the Council’s representative function is undermined by this State agency function. Unless and until the Councils are empowered to be genuine representatives of the people, with only marginal and high level supervision from the State and its ministries, the Policy’s objectives cannot be achieved. As it stands, the Law operates to extend the reach of central government rather than decentralizing it, thereby undermining democracy rather than de-concentrating it. The Law should be amended so that it actually promotes democratic decentralization.

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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 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.