CCHR Briefing Note – August 2014

Freedom of information and legislative transparency in Cambodia

Executive summary

This Briefing Note focuses on the current lack of legislative transparency in the Kingdom of Cambodia ("Cambodia"). Laws are almost always drafted in secrecy, without the inclusion of relevant stakeholders. This results in frustration on the part of civil society organizations ("CSOs"), non-governmental organizations ("NGOs"), and regular citizens, who want – and are rightfully entitled to –meaningful consultation on the legal documents by which they will be forced to abide. The lack of transparency, combined with the absence of a comprehensive law governing freedom of information, means that Cambodians are unable to fully participate in the political life of their country, and legislators are free to pass laws that are unfavorable to the general public with only weak resistance. This also brings into question the underlying purpose of the laws that are created, if they are intended to protect citizens' rights and freedoms, they should be drafted with the participation of citizens.

The first section of this Briefing Note offers a clear definition of legislative transparency and provides a background on the concerns expressed by civil society members regarding the way in which legislation is drafted in Cambodia. The second section discusses the freedom of information legal framework by examining current domestic and international laws; it notes positive developments on the part of the Royal Government of Cambodia ("the RGC") as well as what needs to be improved in existing legislation. The third section discusses access to information in practice and offers three case studies to demonstrate related problems. Finally, the last section offers CCHR's conclusions and recommendations to the RGC for improving legislative transparency in Cambodia:

- Publically and widely release draft laws and organize genuine and meaningful consultation in order to allow civil society organizations, lawyers and other legal professionals, technical experts, and the general public to comment, with ample time for analysis of and feedback on draft legislation;
- Address and incorporate feedback given by CSOs and others on draft laws, and provide a rationale when certain feedback cannot be incorporated into laws; and
- Enact a freedom of information law in a timely manner, in accordance with international treaties to which Cambodia is a signatory, and also in line with internationally accepted standards.

This Briefing Note is written by the Cambodian Center for Human Rights ("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

Transparency, as defined by the Transparency and Accountability Initiative, is when information is *"presented in plain and readily comprehensible language and formats appropriate for different stakeholders"* and *"made available in sufficient time to permit analysis, evaluation and engagement by relevant stakeholders."*[1] As defined, Cambodia currently does not have transparency in relation to its legislative processes. Access to draft laws is extremely limited, and if the law in question is politically sensitive, the draft may only be available days before it is to be debated, if it is available at all. Similarly, the RGC has shown reluctance to engage with civil society actors and the general public. If a public consultation is even scheduled, attendees are often not given sufficient time to read through and thoroughly analyze the draft law in question. Moreover, NGO representatives who have attended past consultations have complained that they are essentially meaningless, as the draft laws under discussion have sometimes already been passed to the Council of Ministers for debate, or are passed without taking into account the majority of changes suggested by those supposedly being consulted.[2]

Underpinning the secrecy in the drafting process is the lack of adequate legislation governing freedom of information in Cambodia, which enables an environment of opacity where local civilians have little to no knowledge of the laws by which they are bound. Indeed, the RGC has been criticized by several international organizations for its lack of transparency. Transparency International, in a study measuring corruption levels and governmental transparency, ranked Cambodia 160 out of 177 countries in 2013, a three-point drop from its previous assessment.[3] Moreover, a 2009 World Bank report noted that 94% of Cambodians felt it was important to be informed about domestic laws, although 72% knew little or nothing about these laws.[4]

In 2004, the RGC was strongly encouraged and supported by donor countries to create a freedom of information ("FOI") law.[5] The aim of this law was to reduce corruption, promote open governance, and create transparency. The RGC agreed, and for three years, workshops and consultations were held between government officials and NGOs, CSOs, and members of the public. The Ministry of National Assembly-Senate Relations and Inspection ("MoNASRI") was charged with writing a policy paper, which would ultimately be used to draft a law on freedom of information. The Ministry completed the Draft Policy Paper on Freedom of Information in August 2007; however, it still has not been reviewed by the Council of Ministers.[6]

[1] Transparency and Accountability Initiative, 'What is transparency?' http://bit.ly/1jpjzrO
[2] For more information, see CCHR, 'Freedom of information: a right to know or a culture of secrecy?' (Report) (May 2012) http://bit.ly/1oDU6jC
[3] Transparency International, 'Corruption perceptions index 2013' http://bit.ly/1rchnxB
[4] World Bank, 'Cambodia – linking citizens and the state: an assessment of civil society contribution to good governance' (Report) (February 2009), p. 21 http://bit.ly/1gwTqMQ
[5] Ministry of National Assembly-Senate Relations and Inspection (MoNASRI), 'Access to information: a clear policy framework for Cambodia' (22 July 2007), p. 4
[6] Raymond Leos, 'Access to information in Southeast Asia and Cambodia,' p. 11 http://bit.ly/1rcdY1J

The National Assembly (the "NA") had an important opportunity to pass vital freedom of information legislation in December 2010. The opposition party at the time, the Sam Rainsy Party (the "SRP"), wrote the draft Law on Access to Information[7] and sent it to the NA for review. If passed, it would have entrenched into law several important provisions, including proactive disclosure,[8] the protection of whistleblowers,[9] and the creation of an independent oversight body.[10] However, it was rejected without debate. In March 2012, an SRP lawmaker sent a newly amended draft of the law to the NA, beseeching the parliament to debate the legislation meaningfully, rather than simply rejecting it.[11] His calls went unheeded, however, and this amended draft was also rejected by the NA. More recently, in June 2014, the RGC and UNESCO signed a US$1,000,000 memorandum of understanding to enact an FOI law within three years.[12]

Freedom of information legal framework

As outlined above, Cambodia has no legislation dedicated solely to upholding the right to freedom of information. The aforementioned draft policy paper is currently sitting at MoNASRI waiting for review,[13] and the opposition's attempts to push through freedom of information legislation have failed. Furthermore, as of now, no work has yet been done on the UNESCO-supported legislation. However, there are some provisions for freedom of information in existing laws.

The Constitution of the Kingdom of Cambodia (the "Constitution") in Article 31 states that *"Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights."*[14] As well, Article 35 of the Constitution notes that *"Khmer citizens of either sex shall have the right to participate actively in the political, economic, social and cultural life of the nation."*[15] This Article entrenches Cambodians' right to meaningful consultation in law,[16] with the stipulation that *"suggestions from the people shall be given full consideration by the organs of the State."*[17]

The International Covenant on Civil and Political Rights (the "ICCPR"), which Cambodia ratified in 1992,[18] contains substantive provisions for the right to freedom of information. These include the rights set out in Article 19, which states: *"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."*[19] The United Nations Human Rights Committee (the "HRC") has reiterated, in its revised General Comment No. 34, that Article

[7] To read a copy of this law, see ARTICLE 19, 'Cambodia: Draft Law on Access to Information' (September 2011), Appendix: Draft Law on Access to Information of Cambodia (December 2010) http://bit.ly/1pxn8S1
[8] Ibid., Articles 6 to 16
[9] Ibid., Articles 68 to 69
[10] Ibid., Chapters 6 and 7
[11] Tep Nimol, 'At least debate FOI draft: SRP lawmaker,' *The Phnom Penh Post* (2 March 2012) http://bit.ly/1lQCJIx
[12] Vong Sokheng, 'Information law 'on way in 3 years,'' *The Phnom Penh Post* (2 June 2014) http://bit.ly/1o3iYif
[13] Raymond Leos, supra note 6, p. 11
[14] Constitution of the Kingdom of Cambodia (21 September 1993) Article 31 http://bit.ly/19Ey1Ms
[15] Ibid., Article 35
[16] CCHR, Factsheet, 'The right to participate actively in the life of the nation' (May 2014), p. 1 http://bit.ly/1qD0NVj
[17] Supra note 15, Article 35
[18] Office of the High Commissioner for Human Rights Cambodia, 'Treaty reporting' http://bit.ly/1mnS7O9
[19] International Covenant on Civil and Political Rights (16 December 1966), Article 19 http://bit.ly/1jZpYQs

19 "*embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production."*[20] The HRC has also specified that "*all branches of the State (executive, legislative and judicial) and other public and governmental authorities, at whatever level – national, regional or local – are in a position to engage the responsibility of the State party,"*[21] placing a clear responsibility on the legislative branch to ensure freedom of information.

Several domestic laws also incorporate provisions related to freedom of information. The 1995 Law on the Press provides provisions for members of the press to obtain information held by the RGC, specifying procedures in which this information can be accessed and noting that officials are to respond to written requests for information within 30 days.[22] Moreover, the RGC created the Press and Quick Reaction Unit (the "PQRU") in 2011 to expedite the time in which information was relayed to the press.[23] Nevertheless, the Law on the Press should not be considered a replacement for genuine freedom of information legislation, as it only applies to members of the press, thereby excluding the majority of the public from accessing government-held information. Moreover, provisions in the Law on the Press allow for access to be denied on several grounds, some of which are overly broad and vague, without providing procedures for appealing requests for information which have been denied. As a result, requests for information are regularly denied, especially when concerning political matters.

In addition to the Law on the Press, the 2005 Archive Law, in Article 13, states that *"public archives […] are permitted to be used by the public for research and consultations as unrestricted information."* Seemingly, this would allow the general public access to archived information, including government-held information such as pieces of legislation. However, the Archive Law is flawed for several reasons. Many of the terms used are not defined and are overly vague. For example, Article 1 refers to *"historical documents"* and Article 13 refers to *"publicized documents,"* neither of which is defined. This is problematic because any documents which are not "publicized" cannot be accessed until *"20 years thereafter the date of the documents or thereafter the end of proceeding."*[24] Moreover, there is a comprehensive list of the types of documents which have longer waiting periods until they can be accessed by the public.[25] Due to its confusing language and excessive waiting periods to access information, the Archive Law fails to substantially increase freedom of information.

Finally, the 2010 Anti-Corruption Law, which was lauded by some as a positive step in the RGC's efforts to tackle corruption and create a more transparent atmosphere in Cambodia, requires public officials

[20] UN Human Rights Committee, 'General comment no. 34 – Article 19: Freedoms of opinion and expression,' CCPR/C/GC/34 (September 2011), par. 18 http://bit.ly/1oJr8m8
[21] Ibid., par. 7
[22] Law on the Press (1 September 1995), Article 5 http://bit.ly/1iqqeCr
[23] Journalists who were interviewed by CCHR generally praised this development, although they noted that not every ministry had press spokespersons in place and sometimes information provided was not specific enough or entirely correct. Nonetheless, they were able to access information more speedily and efficiently than before, especially if it was regarding a non-political issue.
[24] The Archive Law (August 2005), Article 13
[25] Ibid., Article 14

and government bodies to declare assets and liabilities[26] in order for the Anti-Corruption Unit (the "ACU") to better determine conflicts of interest. It also strengthens the powers of the ACU[27] to more effectively combat and prevent corruption. Nevertheless, this legislation is also not without flaws. Although public officials are required to declare all assets to the ACU, the Anti-Corruption Law orders these declarations to be kept *"highly confidential."*[28] Furthermore, ACU operations reports are sent to the Prime Minister,[29] thus compromising the ACU's political independence and undermining the very process of corruption investigations. The public, then, will not be able to access information on any corruption investigations of the very officials who they have elected and who they expect to practice good governance and full transparency.

These three laws – the Press Law, the Archive Law, and the Anti-Corruption Law – are important advances in improving the current lack of transparency in Cambodia, at least on paper. Facilitating access to information for the press allows them to more easily report on draft laws and new laws that are passed, providing the general public with more information on current legislative developments. In addition, offering access to government-held information allows for legislative documents to be readily available to relevant stakeholders, and will therefore force lawmakers to be more accountable to the public. Finally, regular corruption investigations and mandatory declarations of assets by public officials and bodies create a more transparent environment and force government officials to be liable under the laws they pass.

However, these laws can by no means take the place of genuine freedom of information legislation. As covered in this section, the three laws are deeply flawed in several ways. As well, in practice, these laws do not provide for free or easy access to most pieces of government-held information. All three laws contain vague language, certain restrictive provisions, and they allow government officials to play a powerful role in determining whether requests for information or publication of documents are legitimate. Therefore, legislation that deals solely with freedom of and access to information is necessary in order to create a more transparent legislative landscape and a more informed and participatory citizenry.

Access to information in practice

In a country where the literacy rate is around 73.9% (65.9% for women),[30] many Cambodians do not rely on print or online sources for information. Indeed, Cambodians who were interviewed for a study by the Cambodian Center for Independent Media ("CCIM") reported that their main source for accessing information was radio (79%), television (78%), and word of mouth (50%).[31] This proves problematic, as the RGC is not forthcoming with disclosing information as it is, and it certainly does not attempt to find diverse means of providing information so that it is available to all citizens. Furthermore, many of those

[26] Anti-Corruption Law (19 March 2010), Article 17 http://bit.ly/1kK3qSt
[27] Ibid., Article 13
[28] Ibid., Article 20
[29] Ibid., Article 10
[30] CIA World Factbook, 'Cambodia' (2009) http://1.usa.gov/1woSi2A
[31] CCIM, 'Freedom of information: advancing research and actions' (Report) (April 2012), p. 12 http://bit.ly/1nX61rD

interviewed had difficulties differentiating between general news and public information: 98% of respondents stated that they were already able to access public information, by which they meant that they were easily able to access information regarding the weather, traffic conditions, and public holidays.[32] This indicates the need for information to not only be disclosed, but for it to also be made available in various mediums, imparted transparently, and presented in clear language that allows for it to be comprehensible to the general public.

Moreover, CCIM found that *"more than 83% of participants agreed that everyone has the right to seek, receive, and disseminate information freely."*[33] Although not necessarily aware of the legal provisions in place or the means by which they were able to access information, the majority of respondents in the study appeared to be very aware of their right to obtain information. In spite of this, *"more than 16% of respondents felt afraid of being threatened in the future for seeking information."*[34] Moreover, culture and traditions play a strong role in stopping people from questioning government officials, even at the local level. In the words of a female participant at a forum organized by CCHR: *"The CPP is our parent, how is the child supposed to change its parent?"*[35] Unwillingness and fear on the part of the population to ask for information perpetuates the culture of secrecy in Cambodia, where the RGC does not freely disclose information and the people do not seek it out.

Due to the aforementioned ambivalence on the part of most Cambodians toward requesting government-held information and questioning authorities, it is apparent that there is a need for more transparency in governance. This is most obvious in relation to the RGC's legislative processes, as will be seen in the following case studies. A more transparent legislative environment can be attained if the RGC makes it a policy to proactively disclose information regarding new laws and makes this information readily available through various mediums and in clear language. In this way, citizens can better understand their rights, become more informed about the laws by which they are governed, and participate more actively in Cambodia's political life.

Case Studies

The following cases are recent examples of legislation-drafting that involved worryingly non-transparent processes: opacity in the drafting stage, a lack of meaningful consultation with civil society, the inclusion of ambiguous language, and a refusal to publicly release drafts. The first case study discusses the process involved in drafting the Law on Associations and Non-Governmental Organizations.

[32] Ibid., p. 5
[33] Ibid., p. 18
[34] Ibid.
[35] CCHR, 'Strengthening electoral process and democratic practices in Cambodia: report on forums on elections and democratic space' (July 2011), p. 38 http://bit.ly/1tpeXaJ

LANGO[36]

The draft Law on Associations and Non-Governmental Organizations (the "LANGO") was first released to the public on 15 December 2010. Drafted entirely in secrecy, the LANGO's stated aims were to prevent crime, combat terrorism, and ensure transparency within NGOs.[37] However, it is thought by critics that LANGO's true motivations were to silence the political opposition, curb dissent, and maintain the RGC's control.[38] Throughout the drafting process, NGOs and civil society actors were not given an opportunity to engage with lawmakers in any kind of meaningful consultation.

The first draft was released and NGOs were allowed to offer their input on one day only, 21 January 2011.[39] The second draft was released on 25 March 2011, four days (two of which were not working days) before a consultation meeting scheduled with the Ministry of Interior (the "MOI") and the Ministry of Foreign Affairs and International Cooperation (the "MOFAIC").[40] Those planning to attend the meeting had little time to read the legislation, analyze the changes, and formulate appropriate feedback. Moreover, no English translation was provided, leaving international NGOs who were also affected by the proposed legislation without the opportunity to give their input on the new draft.[41]

Upon hearing of the impending release of a third draft, CCHR wrote to the MOI requesting a copy of the new draft along with the opportunity for consultation. A meeting was scheduled with the MOI for 29 July 2011 and both domestic and foreign NGO representatives were invited.[42] The MOI also provided a copy of the new draft, but it was only handed out to attendees directly at the meeting.[43] The attendees requested a week to review and provide their comments on the third draft, but they were told that it had already been passed on to the Council of Ministers *prior to the MOI meeting*,[44] thus rendering the consultation completely pointless.

After the meeting, the RGC and government representatives issued a number of contradictory statements. MOI Secretary of State, Nouth Sa An, stated that *"civil society organizations [sic] no longer have to worry about the law,"*[45] as the time to submit input on it had passed. He later stated that NGOs could submit recommendations directly to the Council of Ministers.[46] The spokesperson for the Council of Ministers, however, denied this, noting that those who sought further changes to the draft would have to speak directly to the MOI and the MOFAIC.[47]

---

[36] For more information on the drafting of the LANGO, see CCHR, supra note 2, p. 28-29; and CCHR, 'Policy paper by the Cambodian Center for Human Rights on the current status of the Law on Associations and Non-Governmental Organizations' (4 August 2011) http://bit.ly/1kpXuyr

[37] CCHR, 'Policy paper by the Cambodian Center for Human Rights on the current status of the Law on Associations and Non-Governmental Organizations' (4 August 2011), p. 1 http://bit.ly/1kpXuyr

[38] Ibid., p. 1-2

[39] Ibid., p. 3

[40] Ibid.

[41] Ibid.

[42] Ibid., p. 2

[43] Ibid.

[44] Ibid.

[45] Thomas Miller, 'NGO law draft gathers pace,' *The Phnom Penh Post* (4 August 2011) http://bit.ly/1hgaFm8

[46] Ibid.

[47] Ibid.

Following announcements of an impending fourth draft,[48] which was released on 12 December 2011, civil society organizations again requested meaningful consultation with lawmakers. Their request was denied, and the RGC announced that all discussions and consultations with civil society on LANGO would be postponed until 2013.[49]

More recently, in late January 2014, the RGC announced that the fourth draft of the LANGO had already been approved by the Council of Ministers.[50] On 5 March 2014, Meas Sarim, deputy director-general of the General Department of Local Administration at the MOI, stated that the RGC would not be consulting civil society groups on the current draft of the LANGO.[51] Later, a Cambodian People's Party ("CPP") lawmaker, Cheam Yeap, announced that the latest draft could be sent to the NA by the end of April.[52] Contrasting these statements, though, on 23 April 2014, CCHR spoke with the MOI, who said that the law was still sitting with them. As of July 2014, the status of LANGO is unclear; nevertheless, it is likely that the latest draft, which remains unchanged from the released fourth draft, will be adopted without any further consultation from NGO representatives, CSOs, or the general public.

This case indicates the unwillingness of the RGC to engage with relevant stakeholders over laws that directly affect them. Moreover, the dissemination of often contradictory information by various RGC spokespeople demonstrates that the RGC is not only indifferent to the requests of civil society actors, but rather that they are purposefully preventing the public from having any real say in the law-making process. This next case study discusses the lack of transparency involved in drafting the Cybercrime Law.

Cybercrime law[53]

In May 2012, the RGC officially announced its new Cybercrime Law. This legislation was said to be necessary in order to prevent online terrorism, hacking, theft of private information, and other cybercrimes that were increasing in Cambodia.[54] The RGC assured critics, who believed the Law would essentially allow for government censorship of the Internet, that the law was solely to protect Internet users from these cybercrimes, and that the law was being drafted according to European Union ("EU") guidelines.[55]

[48] For more information on the fourth draft of the LANGO, see CCHR, 'CCHR LANGO 4th draft analysis' (18 December 2011) http://bit.ly/1mWHdm7
[49] CCHR, supra note 2, p. 29
[50] CCHR, 'Cambodian Center for Human Rights submissions to the Human Rights Committee' (April 2014), p.4 http://bit.ly/1fLtaIU
[51] CCHR, supra note 17, p. 2
[52] Stuart White, 'Old problems persist in new NGO draft law,' *The Phnom Penh Post* (22 April 2014) http://bit.ly/1mb0eQr
[53] To read a copy of the draft Cybercrime Law, see Cybercrime Law (8 April 2014) http://bit.ly/1oqYHpH. For an analysis and more information on the draft Cybercrime Law, see CCHR, 'Cyber laws: tools for protecting or restricting freedom of expression?' (Briefing Note) (February 2014) http://bit.ly/RJpXDI; and Sopheap Chak, 'Open letter from CCHR concerning draft Cybercrime Law' (28 April 2014) http://bit.ly/1kwOr9S
[54] Bridget Di Certo and Kim Yuthana, 'The 'ill-willed' spark cyber law: officials,' *The Phnom Penh Post* (24 May 2012) http://bit.ly/1sW3Mvb
[55] Faine Greenwood, 'As the Internet raises civic voices in Cambodia, a struggle brews over Net control,' *Personal Democracy Media* (27 March 2013) http://bit.ly/1mZhucl

Nonetheless, the Cybercrime Law has thus been drafted entirely in secrecy. Requests to see the draft by CCHR and other NGOs and civil society actors have been repeatedly denied. CCHR only obtained a copy when it was leaked to the public in April 2014. When contacted for comments by *The Phnom Penh Post*, Council of Ministers spokesman Phay Siphan "*said he would not comment on an 'unofficial document' in order to avoid 'manipulating anything,'*"[56] and, by *The Cambodia Daily*, he "*declined to comment because the law is not yet public.*"[57]

Upon reading the leaked draft, many CSOs raised concerns about various provisions within the Law which are problematic due to overly vague language, severe restrictions, or a lack of alignment with international standards set out under the Universal Declaration of Human Rights (the "UDHR") and the ICCPR. For Instance, content is prohibited if it *"generate[s] insecurity, instability, and political incohesiveness,"*[58] if it is deemed to *"be non-factual [and] slanders or undermines the integrity of any governmental agencies,"*[59] or is *"damaging to the moral and cultural values of the society."*[60] These terms are unclear and ambiguous, providing for too much to be left up to the interpretation of the authorities, such as what content would be designated as "morally damaging."

The RGC has, however, refused to organize a consultation or meet with any of the concerned parties over the Law, which is likely to pass sometime in 2014.

As with the LANGO, the Cybercrime Law has been drafted under a veil of secrecy, and civil society was excluded from both reading the draft and from providing feedback on it. Also worrying is the ambiguousness of the language used, which would allow for arbitrary application and broad judicial interpretation of the Law. This final case study concerns the drafting and recent passing of three new laws reforming the judiciary.

Three laws on judicial reform[61]

On 22 and 23 May 2014, the NA approved three laws on judicial reform. They passed despite the absence of all the members of the Cambodian National Rescue Party (the "CNRP"), the opposition party who is boycotting the Assembly. The trio of laws includes the Law on the Organization of the Courts,[62] the Law on the Status of Judges and Prosecutors,[63] and the Law on the Organization and Functioning of the Supreme Council of the Magistracy[64] (the "Laws"). While welcomed in spirit as part of the necessary legislation Cambodia has agreed to adopt under its commitments to the ICCPR, the three Laws actually

[56] Kevin Ponniah, 'Cyber bill raises concerns,' *The Phnom Penh Post* (9 April 2014) http://bit.ly/1isfOSh
[57] Joshua Wilwohl and Hul Reaksmey, 'Cybercrime Law may silence critics, NGOs say,' *The Cambodia Daily* (10 April 2014) http://bit.ly/UP0Ku3
[58] Cybercrime Law (8 April 2014), Article 28(3) http://bit.ly/1keWVbA
[59] Ibid., Article 28(4)
[60] Ibid., Article 28(5)
[61] For more information on the three laws on judicial reform, see CCHR, Legal Analysis 'Three Draft Laws on the Judiciary' http://bit.ly/1jcQk1Y ; and CHRAC, CCHR, ICJ et al., 'Civil society condemns the passing of three flawed judicial reform bills and reiterates call for public consultation' (Joint Statement) (26 May 2014) http://bit.ly/1oXUUQx
[62] Law on the Organization of the Courts (16 May 2014) http://bit.ly/1xqwraE
[63] Law on the Status of Judges and Prosecutors of the Kingdom of Cambodia (16 May 2014) http://bit.ly/VK5TnD
[64] Law on the Organization and Functioning of the Supreme Council of Magistracy (16 May 2014) http://bit.ly/1xqxfwc

consolidate more power under the Minister of Justice and thus deprive judges and prosecutors of the independence that is mandatory under Cambodia's international treaty obligations.[65]

Similar to previous legislation-drafting processes, this one occurred in opacity. In March 2014, the Ministry of Justice confirmed that the three Laws were in the final stages of drafting.[66] At this time, the Cambodian Human Rights Action Committee ("CHRAC"), CCHR, and other NGOs requested copies of the draft legislation.[67] Their requests were denied on the grounds that the pieces of legislation in question were drafts only and were currently under revision. Thus, legal professionals, lawyers, and civil society members were denied the opportunity to review the drafts, analyze them, and give the RGC feedback. In defense of his refusal to make the Laws public, Prime Minister Hun Sen stated that *"[t]he law as set out in our Constitution doesn't allow us to hand over draft laws to anyone besides those who compose the laws, before they are forwarded to the Council of Ministers and the National Assembly."*[68] There is, in fact, no law barring the government from publicizing draft legislation.

Leaked copies of the Laws were finally obtained by rights activists and members of the press in early 2014.[69] As they contained a number of worrying provisions, NGOs and CSOs requested that debate on them in the NA be delayed, as a broad and public consultation was necessary before the drafts were finalized.[70] Responding to complaints of being excluded from the legislative process, both Prime Minister Hun Sen and CPP lawmaker Cheam Yeap lashed out at civil society members. Cheam Yeap insisted that *"nobody can order around the parliament, especially human rights groups"*[71] and Hun Sen warned, *"Don't demand things beyond what's within your rights. You should be ashamed of yourselves, and just enjoy the rights that are given to you as NGOs."*[72]

Drafts of the Laws were passed on to the NA, as the RGC yet again ignored requests for consultation. Although several organizations sent unsolicited recommendations and comments on the Laws to RGC representatives, their feedback was not incorporated before the Laws moved on to the NA. As the CNRP was not present – and CNRP members only constitute a minority in the NA – the trio of Laws was approved less than a month after they were passed by the Council of Ministers and two days after the NA's plenary session opened on 20 May 2014.[73] Shortly after, all three Laws sailed through the Senate and were approved on 12 June 2014, without any consultation and despite the absence of the

[65] CCHR, 'Three draft laws relating to the judiciary,' (Legal Analysis) (May 2014) http://bit.ly/1qEsBKu
[66] Stuart White, 'Judicial draft laws still unseen: rights groups,' *The Phnom Penh Post* (11 March 2014) http://bit.ly/1quqQxO
[67] CCHR and CHRAC, 'Joint open letter from CCHR and CHRAC regarding the publication of draft legislations on the judiciary' (07 March 2014) http://bit.ly/1pNDha3
[68] Rachel Vandenbrink, 'Hun Sen warns NGOs not to interfere with judicial reform legislation,' *Radio Free Asia* (28 April 2014) http://bit.ly/1u5dDvM
[69] Ibid.
[70] CHRAC, CCHR, ICJ et al., 'Civil society groups call on the National Assembly to delay the debate of the three draft laws related to judiciary' (16 May 2014) http://bit.ly/1j3BhYv
[71] Vong Sokheng, 'Judiciary laws moving forward with 'debate,'' *The Phnom Penh Post* (22 May 2014) http://bit.ly/1tzt4du
[72] Supra note 69
[73] CHRAC, CCHR, ICJ et al., 'Civil society condemns the passing of three flawed judicial reform bills and reiterates call for public consultation' (Joint Statement) (26 May 2014) http://bit.ly/1oXUUQx

opposition senators.[74] The Laws remain unchanged from their draft forms in spite of the outspoken condemnation towards them on the part of civil society members.[75]

As with the previous case studies, the drafting process of the three Laws on judicial reform was not open, nor were opportunities for meaningful consultation provided to the public. In addition, the passing of these Laws so quickly and without the presence of the opposition party members indicates the RGC's unwillingness to create a legislative process that is fair and inclusive. Furthermore, RGC representatives and even the Prime Minister wrongfully claimed that the law precluded civil society participation and the sharing of draft legislation with the public. This is a false claim, and it goes against Cambodia's obligations under international law to ensure the right of citizens to access information.

Conclusions and recommendations

As it currently stands, Cambodia's legislative process is far from transparent. From the case studies provided, it can be seen that the drafting of new laws is almost always done in secrecy. Opportunities for consultation are usually not provided, and if meetings are organized, the attendees are not given ample time to read drafts, analyze them, and propose changes. Often, the means through which draft laws are obtained are unofficial channels – when they are leaked to the public. If suggested amendments to drafts are proffered by civil society, they often go ignored; very few are incorporated into the final text of the laws, thus rendering any previous consultations meaningless.

As well, often the provisions in laws, particularly laws concerning political issues, tend to be vague, with many terms left undefined. This is problematic, as it ultimately leaves the law up to the wide discretion of the judiciary and government. Furthermore, it creates confusion on the part of citizens, who may not understand the laws to which they will inevitably be held accountable. These rights violations – the lack of transparency in the drafting process, lack of meaningful consultation with civil society and the general public, unavailability of draft legislation in the public domain, and use of ambiguous language – are not in line with Cambodia's international obligations under the ICCPR and UDHR to impart information freely and to allow its citizens full and active participation in political life. In light of these current legislative problems, the CCHR has several recommendations for the RGC.

<u>Freedom of Information legal framework</u>**<u>:</u>**

A freedom of information law must be enacted as soon as possible, in accordance with international treaties to which Cambodia is a signatory, and also in line with internationally accepted standards. ARTICLE 19, a leading NGO defending citizens' rights to freedom of expression and access to information, designed a series of nine principles to incorporate in any freedom of information legislation. The principles are explained below.

[74] Vong Sokheng, 'CPP passes judicial laws in Senate,' *The Phnom Penh Post* (13 June 2014) http://bit.ly/TH7yIz
[75] Supra note 74

ARTICLE 19's freedom of information principles:[76]

1. Maximum disclosure: Freedom of information legislation should be guided by the principle of maximum disclosure.
2. Obligation to publish: Public bodies should be under an obligation to publish key information.
3. Promotion of open government: Public bodies must actively promote open government.
4. Limit scope of exceptions: Exceptions should be clearly and narrowly drawn and subject to strict "harm" and "public interest" tests.
5. Processes to facilitate access: Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available.
6. Cost: Individuals should not be deterred from making requests for information by excessive costs.
7. Open meetings: Meetings of public bodies should be open to the public.
8. Disclosure takes precedence: Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed.
9. Protection for whistleblowers: Individuals who release information of wrongdoing – whistleblowers – must be protected.

As such, CCHR recommends that the RGC:

- Draft a comprehensive FOI Law, using the draft introduced by the SRP in 2012 as a template, which follows international requirements and standards;
- Publically and widely publish the draft of the Law to allow for genuine consultation with sufficient time for analysis and comments on the draft by relevant stakeholders such as CSOs;
- Amend current pieces of domestic legislation – namely the Press Law, the Archive Law, and the Anti-Corruption Law – to ensure that their provisions do not contradict international law regarding freedom of information and that the principle of maximum disclosure is incorporated; and
- Specifically define or remove any vague language or terminology that creates confusion or gives the judiciary sweeping powers over the interpretation of any domestic laws dealing with access to information.

Legislative transparency:

There are several improvements that can be made in relation to transparency in the legislative process. In any democracy, citizens have the right to participate fully in public life and to freely access and share government-held information, and the RGC has a responsibility to ensure that these rights are not infringed upon in any way. As such, CCHR recommends that the RGC:

- Publically and widely release draft laws and organize genuine and meaningful consultation in order to allow civil society organizations, lawyers and other legal professionals, technical experts, and the general public to comment, with ample time for analysis of and feedback on draft legislation;

[76] ARTICLE 19, 'The public's right to know: principles on freedom of information legislation' (June 1999), p. 2-11 http://bit.ly/SnWAHw

- Address and incorporate feedback given by CSOs and others on draft laws, and provide a rationale when certain feedback cannot be incorporated into laws;
- Ensure that when domestic laws are drafted, they do not conflict with international treaties to which Cambodia is a signatory, including the ICCPR and the UDHR; and
- Use clear, explicit language, and narrowly and unambiguously define terms used in the content of the laws so that they are easily understandable to the general public.
- Pro-actively make legislation available through a diver array of media (print, online, community boards etc.)

For more information, please contact CCHR Freedom of Expression Project Coordinator Sorn Ramana via telephone at +855 (0) 1765 5591 or e-mail at ramanasorn@cchrcambodia.org or CCHR Consultant Juliette Rousselot via telephone at +855 (0) 1535 0620 or e-mail at julietterousselot@cchrcambodia.org.

Cambodian Center for Human Rights