

Joint Statement
Civil society condemns the passing of three flawed judicial reform bills and reiterates call
for public consultation
26 May 2014

The undersigned national and international civil society groups call on the Cambodian Senate to delay its review of three bills passed by the National Assembly (NA) on 'reforming' the judiciary that, if passed, could seriously undermine the rule of law in the Kingdom of Cambodia (Cambodia).

The groups reiterate their call for broad public consultation to revise these bills so they are consistent with international standards.

If these bills in their current form are passed into law, the Royal Government of Cambodia (RGC) will cement its existing control over the country's Judges and Prosecutors, posing a serious threat to the rule of law in Cambodia.

On 22 and 23 May, the NA passed, in quick succession, the Law on the Organization of the Courts, the Law on the Statute of Judges and Prosecutors, and the Law on the Organization and Functioning of the Supreme Council of the Magistracy. The bills will then be sent to the Senate for review, to be followed by scrutiny by the country's Constitutional Council.

Currently, the NA is comprised only of the Cambodian People Party's (CPP) lawmakers, as the opposition, the Cambodian National Rescue Party (CNRP) has boycotted their seats since September last year over allegations of election fraud, with the result that the CPP was able to pass the bills unopposed.

Originally conceived as part of a national action plan to bring Cambodia's domestic laws into line with its international treaty obligations, these proposed 'reforms' were supposed to strengthen the rule of law by reinforcing judicial independence in Cambodia.

Instead, the bills, as passed, give the Supreme Council of Magistracy and the Minister of Justice sweeping powers over the country's Judges and Prosecutors, thereby undermining their independence and formalizing the RGC's control over them.

The bills' passage followed a secretive drafting process. From the beginning, the RGC refused to consult with the public, civil society and other concerned stakeholders, declined to release early drafts, and rejected offers of input and assistance.

Earlier this month, civil society called on the NA to delay debate on these bills, and urged for broad and public consultation. These calls went unheeded.

The bills as drafted violate the separation of power and judicial independence provided by Articles 51, 128 and 132 of the Constitution of Cambodia and international law and standards in a number of important respects. In particular, they contravene Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) that guarantees an independent and impartial tribunal, the United Nations Basic Principles on Independence of Judiciary, the Singhvi Declaration and the Beijing Statement of Principles.

Of greatest concern is that the bills confer excessive powers to the Minister of Justice, a member of the Executive of the RGC, over the country's Judges and Prosecutors.

The Singhvi Declaration on the independence of justice states that the judiciary must be independent of the executive and legislature, and only the head of the court may exercise supervisory powers over judges in administrative matters. While Paragraph 35 of the Beijing Statement of Principles, a document adopted by judges in the Asia and Pacific, more specifically states that only the chief judicial officer of any court may assign cases to judges.

In contravention of the Singhvi Declaration and the Beijing Statement of Principles, the current bills give the Minister of Justice power to: control and manage the administrative affairs of the courts and prosecutors including regarding the budget and promotion or reassignment; act as the chief of the prosecution and to issue orders to the prosecutions of all level of courts; determine the number of judicial students; participate in recommending judicial promotions; decide upon requests of government officials not trained as prosecutors to become prosecutors; rule on requests by judges or prosecutors on leave to undertake private transactions; appoint an inspection team to investigate alleged judicial breaches of discipline; and oversee the establishment of disciplinary case files.

The subordination of the judiciary to the Executive appears to be deliberate. An earlier draft of the Law on the Statute of Judges and Prosecutors contained a provision stating that the judiciary "shall not be under the direction of the legislative or executive branch or any political party." However, this provision was removed before the National Assembly passed the current bills.

Further, according to Principle 8 of the United Nations Basic Principles on the Independence of the Judiciary, judges are entitled to freedom of expression so long as they conduct themselves in a manner that preserves the dignity of their office and the independence of the judiciary.

In contravention of this basic principle, Article 53 of the Law on the Statute of Judges and Prosecutors states that judges must first seek permission from the Supreme Council of the Magistracy before publishing or broadcasting work.

We therefore call upon the Senate to delay its review of these bills and to seek consultation with the public and civil society to ensure they comply with international standards.

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This Joint-Statement is supported and undersigned by the local and international civil society organizations as follows:

1. Cambodian Human Rights Action Committee (CHRAC)
2. Cooperation Committee for Cambodia (CCC)
3. Cambodian Center for Human Rights (CCHR)
4. International Commission of Jurists (ICJ)
5. Human Rights Watch (HRW)
6. Amnesty International (AI)
7. Cambodian Human Rights and Development Association (ADHOC)
8. The NGO Forum on Cambodia
9. Indigenous Community Support Organisation (ICSO)