

# RULE OF LAW IN CAMBODIA

Briefing Paper by

**THE CAMBODIAN HUMAN RIGHTS ACTION COMMITTEE (CHRAC)**

A coalition of 18 local NGOs working on human rights issues in Cambodia

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**CAMBODIAN HUMAN RIGHTS ACTION COMMITTEE**

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# Introduction

Following a deadlock lasting nearly a year, two Cambodian political parties finally reached an agreement to form a new coalition government, which was approved by a vote in the National Assembly on July 15<sup>th</sup> 2004. Yet once again the government formation was controversial, with the vote of Additional Constitutional Act that allows the package vote, this Act was not ratified by the King but by the 2<sup>nd</sup> Deputy Chairman of the Senate.

Despite these setbacks, NGOs call upon the new government and National Assembly to strengthen the following institutions that are meant to uphold the rule of law and protect human rights in Cambodia, and to encourage respect for the Cambodian Constitution.

## Key Issues

NGOs would like to remind politicians of their duty to the Cambodian people to respect the promises they made during the 2003 national election campaign and *the points of conditions set in the agreement before the formation of the new government*, and call upon them to take strong action to tackle endemic problems of poverty and corruption, and create a healthy legal system promoting liberal democracy and human rights.

### Institutional reform

The NGO sector recognizes the development and publication of the Legal and Judicial Reform Strategy published by the RGC in 2003. It looks forward to the effective and efficient implementation of reforms within this sector.

A large number of key existing institutions should be subject to fundamental reform including the National Election Commission (NEC), the Supreme Council of the Magistracy (SCM), the Constitutional Council (CC), the Cadastral Commission and *the National Audit Authorities*. Their position within the overall system needs to be written into the constitution in order that they are protected and provided with legal force and stability. Fundamentally they need to be independent and non-partisan in nature and membership, which requires the creation of a selection committee to nominate the members of these institutions. They need to act in a competent and credible manner, which requires the strengthening of quality human resources, skilled staff, and sufficient financial resources. These bodies need to be monitored by mechanisms within the National Assembly and Senate in a way similar to the nine commissions of the National Assembly and the Senate.

### Non-Existing Institutions and Law

New commissions, including at the very least an Anti-Corruption Commission and a National Human Rights Commission, should be established as soon as possible with the international standard ; that is, they should be independent, non-partisan, competent and credible.

The new government will need to address the need for the creation of new laws to ensure that the legal system is able to deal with ongoing critical problems. These new laws need to include, as a matter of priority, a new Penal Code, Civil Code and a law on criminal procedures, a law on access to information, framework Civil legislation, and a system of administrative complains. . Laws also need to be developed to regulate key institutions and provide a framework for good governance and accountability in the public sector. The current law on *demonstration law should be replaced by the new one*. There should be also a statute of Magistrates, at the very least safeguarding the integrity of the appointments processes and ensuring that judges and prosecutors are non-partisan and enjoy personal and

judicial independence, unaffected by personal influence or private interest. Further, the new government needs to develop a statute of armed forces and a Statute of Civil Servants.

The Statute on Civil Servants should be amended to ensure the political impartiality of Civil Servants and to safeguard their integrity and accountability as well as just rules of recruitment and promotion on merit. The Statute on the Armed Forces and the Police Act should be amended to mandate that the armed forces and police be depoliticized and non-partisan.

Laws also need to be passed to deal with specific critical problems which continue to plague Cambodia. High priority should be given to the adoption of Anti-Corruption *legislation which needs to be addressed by a legislative package ( statutes, amendments in existing laws, by-laws and so on)*, and legislation to combat Trafficking in Human beings and Domestic Violence. In order to ensure a more transparent political situation, laws need to be developed on financial management of political parties, and on the declaration of assets, *a chapter under Anti-corruption law* , which should ensure that *all the members of the government* declare their assets before and after taking office.

Finally a National Congress Law must be created soon to fulfill the promise laid out in Chapter XII of the Constitution. By enabling “the people to be directly informed on various matters of national interests and to raise issues and requests for the State authority to solve” an effective National Congress will support the strengthening of politics at all level of society and improve public participation within the political life of the country and transparency in public processes.

### **Amendments to the Constitution**

Events in 2004 have further demonstrated a worrying lack of respect for the Constitution amongst Cambodian politicians and legislators like the package vote.

The apparent disregard of the Constitution – the highest law in the country – is indicative of the extent to which Cambodia functions under the Rule of Law. NGOs have previously recommended amendments such as requiring a simple majority to form a government, thereby averting the political crises that have developed following every national election since the Paris Peace Accords. But major constitutional amendments such as these should not be made for political expediency, but following sustained, consultative deliberation and only during the course of a genuine governmental mandate. Much greater attention should also be given to fulfilling existing constitutional requirements, such as the creation of the National Congress described above.

### **Code of Conduct**

There are at least three points to be considered:

First code of conducts for magistrates (which is developed by their professional association on basic principles enshrined in the law).

Secondly code of conduct for civil servants ( which should be all adopted in the form of a law) and

Thirdly a code of conduct for public officers (members of the government and elected representatives) the principles of which should be adopted by constitutional norm ( especially when it comes to incompatibilities).

Codes of conducts are essential to good governance and necessary in developing accountabilities and responsibility in the government. These codes of conducts must be actually enforced/implemented.

If the code of conduct is to be effective it is necessary for a mechanism to be created in the National Assembly and the Senate whereby members of the government, National Assembly and Senators can be sanctioned if they violate the code of conducts.

## Recommendations

The civil society is optimistic that the three parties will accept the following recommendations for the benefits for the whole nation:

- Undertake reform of existing institutions such as the NEC, SCM, CC and National Audit Authorities to ensure their independence, transparency, capacity as well as reinforcing their legal positions in the Constitution and developing effective monitoring systems.
- Establish commissions such as an Anti-corruption Commission and National Human Rights Commission which are independent, non-partisan, competent and credible.
- Develop and support the passage through the National Assembly and Senate of new legislative packages, including a Penal Code, Civil code and Criminal Procedures, Civil framework legislation, Anti- Corruption Law on access to information, Demonstration law, Domestic Violence, and trafficking in human beings.
- Develop laws to ensure that key institutions such as the judiciary are non-partisan.
- Develop new laws on financial management of political parties and on the declaration of assets which will ensure that all members of government must declare their assets before taking office.
- Amend the Constitution to support and strengthen the process of establishing a democratically elected government, including allowing only a simple majority in a national election to allow a government to be established, and limiting the number of terms a prime minister can serve to two.
- Establish a mechanism in the National Assembly and the Senate which will sanction members of the government, the National Assembly and Senators if they violate the code of conducts.

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