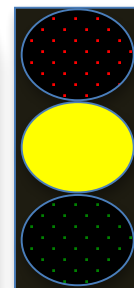


Fact Sheet: Law on the Organization and Functioning of the Supreme Council of Magistracy (“Law on the SCM”)

Law’s Current Status: This law was promulgated in December 1994. There are related laws and amendments planned that affect the Law on the SCM, however the progress of these laws has been slow.

CCHR Classification: The Cambodian Center for Human Rights (“CCHR”) has classified the Law on the SCM as yellow: the premise of the law – to establish an independent body which oversees the judiciary – is a positive step, but in its current form the law contains provisions which contradict its stated aim. The law should be reviewed and amended to strengthen the independence and the capacity of the Supreme Council of Magistracy (“SCM”), in particular, to remove the influence of the executive.

**Introduction**

The SCM is intended to be an independent body that oversees the judiciary. It has the power to appoint, promote, discipline and dismiss judges. This factsheet provides an overview of CCHR’s key concerns and recommendations relating the Law on the SCM. CCHR is 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 the Kingdom of Cambodia (“Cambodia”).

The Law on the SCM

The Law on the SCM was passed under Article 134 of the Constitution of Cambodia (the “Constitution”). It was promulgated in 1994, however the SCM was not formed until 1998. The aim of the law is to establish the SCM whose role is to “*guarantee the independence of the judiciary, maintain discipline of judges, and to assure the good functioning of the courts of the Kingdom of Cambodia*” (Article 1). The law echoes the Constitution in providing that the SCM shall be chaired by the King of Cambodia, and the members shall be the Minister of Justice, the Chief of Supreme Court, the General Prosecutor of Supreme Court, the Chief of Appeal Court, the General Prosecutor of Appeal Court and three judges, to be elected by judges (Article 2). The term of the elected members of the SCM is five years (Article 4). Decisions of the council are made with a majority of the members (excluding the Chairman) through a secret vote. Where the council is in deadlock, the Chairman shall have the casting vote (Article 9). The SCM is empowered to make recommendations to the King regarding the appointment, transfer, suspension and removal of judges and prosecutors, as well as recommending promotions (Article 11). The law also provides that the SCM meets as a Disciplinary Council, chaired by either the Chief of the Supreme Court or the General Prosecutor of the Supreme Court, to deal with disciplinary actions against judges and prosecutors (Article 12).

Separation of Powers

Article 51 of the Constitution provides that the “*legislative, executive and judicial powers shall be separate.*” This is echoed in Article 1 of the Law on the SCM, as set out above. The SCM, then, should be completely free from any influence of the executive. However, the Minister of Justice, a member of the executive, sits on the SCM, compromising that separation of power. Furthermore, the three judges that sit on the SCM are not elected as prescribed by the Law on the SCM; Articles 20 and 21, which are deemed transitional provisions, provide that elections of the judges will not be implemented until a Law on the Statute of Judges and Prosecutors is passed, and since such a law has yet to be passed, the Minister of Justice requests their appointment by the King. Thus four members of the SCM are either part of the executive, or chosen by it, giving the executive a significant voice in the management of the judiciary. The executive has further

potential for influence through the SCM's administrative and budgetary processes. The Law on the SCM provides that the SCM's budget shall be included in that of the Ministry of Justice, which gives the executive further opportunity for influence.

Transparency

The Law on the SCM codifies a lack of transparency. The law places a duty on members of the SCM and other attendees to maintain the secrecy of SCM meetings and for all decisions to be made by secret vote. There are no clear criteria or processes for the appointment, promotion and suspension of judges, making the process susceptible to political and economic influence.

Capacity

The law provides that five members of the SCM hold their positions on the basis of other public appointments that they hold. This has been criticized on the basis that, due to time constraints, members are unable to fully commit to their role on the SCM. As a result, the SCM meets infrequently and lacks the capacity to conduct investigations effectively. In addition, the fact that acting judges are involved in the SCM has the potential to lead to conflicts of interest. Junior judges, for example, could be involved in the appointment or discipline of senior judges.

Conclusions and Recommendations

The recent controversy regarding the SCM's refusal to confirm the appointment of reserve International Co-Investigating Judge at the Extraordinary Chambers of the Courts of Cambodia (the "ECCC"), Judge Kasper-Ansermet, brings to light the flaws in the current Law on the SCM in providing for an independent body capable of overseeing the judiciary; in particular there have been allegations of executive influence, lack of transparency in the decision-making process, and a situation whereby the National co-Investigating judge and prosecutor at the ECCC were both involved in the SCM's decision. In the *'Plan of Action for Implementing the Legal and Judicial Reform Strategy'*, adopted by the Royal Government of Cambodia in 2005, it was highlighted that the Law on the Statute of Judges and Prosecutors, the Law on the Organization and Functioning of the Courts and the Law on the Amendment to the Law on the Organization and Functions of the SCM should be passed to strengthen the SCM's capacity to conduct investigations; increase transparency in appointments, promotion and discipline; and increase its independence. In addition to passing these three pieces of legislation, drafts of which should be subject to public consultation, CCHR recommends the following amendments to the Law on the Amendment to the Law on the Organization and Functions of the SCM:

- The law should be amended to exclude ex-Officio members and the Minister of Justice. Apart from the King, the SCM should be composed entirely of elected members of the legal profession, including retired judges and professors of law. The positions should be full-time, and remuneration should reflect this.
- The law should be amended to provide for a budget that is independent of the Ministry of Justice.
- The law should specifically provide that members cease to be active judges or members of any political party whilst they hold a seat on the council.

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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 that are 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.

