

KID Legal Advisors Comment
on the
Draft Law on the Management of Arms, Explosives and Munitions

Introductory Remarks:

1. The rule of law-principle, the separation of power-principle and the underlying democratic-principle are enshrined in the Cambodian Constitution (article 1,34, 35,51,76,90,91).

- a) According to the democratic principle all power stems from the Cambodian People.
- b) According to the rule of law principle the will of the Cambodian people is expressed in form of a law. The law is made by the majority of the members of the National Assembly who represents the Cambodian People and articulates its will.
- c) According to the separation of power principle the government has to execute the law. It can propose new laws but has not the power to make the final decision about a law.

2. a) The basic decisions about how to solve public problems of society have to be made by the lawmakers of the Assembly in form of a law. These basic decisions can not be left to the government, because it only has to execute the law. It therefore violates the separation of power principle, if a law that does not regulate the essential problem itself but transfers the power to do this to the executive branch.

Such a law also violates the democratic principle, because it circumvents the parliamentary process of making new laws. This parliamentary process is characterized by a broad, open and public discussion of the different solutions of the problem by all elected lawmakers (including the opposition members) in the Assembly. This necessary public discussion and comparison of different solutions would not take place, if the main regulations were just passed in form of a Prakas by the executive (ministry).

- b) A law must be clear and precise, because
- it is an order of the parliament to the executive what exactly it has to do
 - it has to be clear for the judiciary, if there is a violation of law or not
 - and it has to be clear for all Cambodians, who have to obey to the law, what is allowed and what is prohibited.

If the lawmakers express their will unclear and unprecise they give the government and the judiciary to much room for own interpretation of the legislative will. Thus the lawmakers would shift or delegate their own power to these two other powers, who fill the legislative gap. This would violate the separation of power principle.

The following text gives a comment on the question if the articles of the draft law on weapons are in compliance with the abovementioned principles, that means, if they are precise enough and leave the main decision to the Assembly or not:

Article Nr.

1. -what means "managing" (controlling, suppressing, ?)

- why only "public" security ? (private security, domestic violence are also concerned)

3. -all types of guns (not only firearms, but also airpressure guns etc.)

- why not all other devices built explicitly to cause and inflict physical or psychological harm (by simple threat), such as long knives, bows, arrows, swords, clubs, nun-chuko, strangling devices ?

4. -what means "supreme institutions" (supreme to what)?

shall all officials of the supreme institutions shall be allowed to carry guns?
If not, there should be a clearly defined restriction on the number of officials.

- what is "judicial official" (only the members of the "judiciary police" according to article 35 of the law on the criminal procedure or all appointed judges, or court clerks as well or officials from the ministry of justice ?)

5. -why is it only prohibited to civilians to sell, loan, transfer and so on arms ?
(shall officials in Cambodia be allowed to do this? [presumably not])

6. - these exception clause should be legally defined more precisely, otherwise it is up to the executive, to define the rules of exception [blanquet authorization].

- it should be added to article 6, that only in proved cases of need, exceptions can be granted to registered, reliable, adult persons, with a blank criminal record or to members of sports clubs [sailors, other type of sports] or to professional, licensed firework providers or during festival days [just a certain period of two days before for example Khmer New Year]

7. - why having a club ? (shooting training at official rifle ranges of the military or police is a normal activity; there is no need of having extra clubs).

- it should be clear that only members of the officially armed forces, policemen soldiers can conduct training (not civilians under their supervision or for private enterprise pursuits, like in Thailand or close to Phnom Penh).

- 8.** - this is surplus, as this law already applies to all persons , but maybe article 5 should be amended and explicitly mention, that the army/police members are also not entitled to act outside the legal framework of their conduct of duties as long as this requires necessarily the use of weapons.
- 9.-** what means "official proposal" (who can propose to whom)?,
- there isn't a restriction to the number of bodyguards. Without such restriction someone could bring his own little army into the country.
 - what about the weapons, arms of bodyguards of businessmen, of government members [prime minister] ?
 - what means "foreign leader" ? (it is more precise to say diplomatic immune members of foreign states, or by international public law accepted heads of states or envoys in official mission. Without such restriction to political leaders any leader - even a gang leader could enjoy an exception).
- 10.** - it is not clear how to separate the two parallel competencies that are stated in this article; a collision clause or a clear separation of competencies is necessary, otherwise there will be conflict if both ministries act on the same field of registration of handed and seized arms.
- 11. and 12:** -what means "oversight" ?(registration ? , actually a competency and also an obligation to register all the arms of the police and military forces is needed, as it is not yet regulated in Article 10. So "oversight" should be substituted by "duty of registration").
- what again means "officials" and "civil officials" in article 12 ? (see comment to article 4, that does also not provide a sufficient definition)
- 13.-** it is not clear under what conditions licenses can be issued, but this is just left without any conditions to the parkas of the executive MoI and MoD.
- what activities can be licensed (all that are mentioned in article 5 ?)
 - what are legitimate purposes for bearing arms ?
 - for what period a license can be granted ?
- 14.** -how can the ministries take care of safe storage of arms owned by civilians?
- what is a "safe" storage (separation of ammunition,weapons,double key)?

- there shouldn't be any exceptions for the registration of arms, unregistered weapons are ideal means of committing crimes !
 - again it is unclear what the conditions for exceptions are.
- 15-** again it is not clear, how a collision of competencies of both ministries can be avoided.
- again the real regulation is left to Anukret without any guideline provided by the law for the executive branch.
 - an evacuation order should be authorized by the general law of the police to protect the public against harm of life, health and property.
- 16.-** to avoid turning Cambodia into a platform for armsdealers there should be no authorization at all to transport weapons through Cambodia in peace times. Only a state of national defense emergency (see article 53 section 5 of the Cambodian Constitution) weapons out of other countries (for example allied countries) should be allowed to be transferred through Cambodia (maybe to a front in an other country, that attacked Cambodia).
- of course there should be no chance to propose a weapon transport just by one of the two ministries; it is anyway unclear under what circumstances a proposal can be legitimate at all (at the moment any arbitrary proposal will be sufficient; at least there should be guidelines for the exercise of discretion in the law).
- 17. -** does this mean, that civilians are still able to possess arms that can be lost?
- 18. -** what means "leaving out from registry", is this an exception of the registration task ?
- the authorization should only be granted if a safe way of destruction is granted. Of course there should be no other objections, if someone wants to destroy weapons, which makes the country more safe (see the "flame of peace" activities of EU Assac).
- 19. -** does this mean the government is authorized by this section to act as an international arms dealer? If so, this section should be erased without any substitution. There is no good reason, why the government should take part in arms dealing.
- at least there should be an amendment, assuring that import of weapons can only be allowed for limited purposes of national defence (like in the last sentence of the section)

-the mere quotation of "other relevant international rules" does not precisely name them. Which rules does this section mean ?

20. - 22.

- these sections about criminal punishment do not define clear enough the exact form of violation of the law that shall be punished, though the rule of law principle requires a clear definition

-the punishment of a minimum of 5 years imprisonment seems to be excessive. There should be some exception clauses for clearly defined cases of minor guilt and offence.

23. - By this article of the law the lawmakers impose on themselves a duty to make a law, which is absurd because it is up to the lawmakers themselves to make the law. What happens if the lawmakers violate this duty and do not make criminal laws ? Shall they be punished then for this omission?

25. -necessarily this section should include a provision about an amnesty granted to those citizens who hand over their unauthorized weapons within the said period of 3 months. Without such a clause they had to be punished according to article 20 -22 of the law. In this case, no one would give up the arms, because no one can be expected to cooperate if he is punished for this cooperation.

26. -this article is unprecise. It should name exactly which article of which other law shall be abrogated, to make it more clear, what other laws shall not be in effect any more.

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