

**Fact Sheet:** Case Study Series: Buying Senate election votes

**Timeline:** January 2012

**Snapshot:** A recent attempt to buy a Battambang commune councillor's vote in the Senate election highlights corruption in Cambodia's political spheres and inadequacies in the anti-corruption laws.



### Introduction

A recent attempt by two men to buy the vote of a commune councillor in the Senate election has highlighted the endemic nature of corruption in the political spheres of the Kingdom of Cambodia ("Cambodia") and the failure of government institutions to address the situation. This fact sheet outlines the incident, before summarizing the domestic and international laws relevant to vote buying and the failure of existing domestic laws to offer protections to those who report incidences of corruption. This fact sheet is written by the Cambodian Center for Human Rights ("CCHR"), 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 Cambodia.

### The attempted vote-buying incident

On 29 January 2012 commune councillors across Cambodia cast their votes to elect the members of Cambodia's Senate. A week prior to the election *The Phnom Penh Post* reported that two men from the Cambodian People's Party ("CPP") had approached a Sam Rainsy Party ("SRP") commune councillor in Battambang town and attempted to buy the councillor's vote ('SRP claims ruling party busted for vote-buying', 24 January 2012). The article states that the councillor taped the two men offering USD\$700 for the councillor's vote, including an upfront payment of US\$200. Subsequently *The Phnom Penh Post* reported that the SRP councillor had been summonsed on charges of illegally recording a private conversation under the Penal Code ('Alleged vote-rigger files suit over taping', 27 January 2012). One of the two CPP men caught on the tape was fined USD\$1,230 by the Battambang Provincial Election Commission (*The Phnom Penh Post*, 'SRP says vote-buying fine not nearly enough', 31 January 2012). It was further reported that the same individual found guilty of vote buying was seeking USD\$2,475 in compensation from the SRP councillor in the illegal recording proceedings ('Thwarted vote buyer wants compensation', 3 February 2012). The reports did not indicate whether the Anti-Corruption Unit was involved in the matter.

### Corruption in Cambodia

Corruption permeates all aspects of public life in Cambodia. Transparency International's Corruption Perception Index ranked Cambodia 154 out of 178 countries in 2010, but by 2011, it had slipped to 164 out of 183 (although the score (2.1) was the same). In the same organization's 2010 Global Corruption Barometer the judiciary, public officials and political parties were ranked (respectively) as the first, third and fourth most corrupt sectors in Cambodia. Vote buying is acutely concerning as it threatens the integrity of the democratic system more so than other instances of corruption.

### Relevant domestic law

It is an offense under Article 605 of the Penal Code to bribe a commune councillor (or other civil servant or elected official) to perform or refrain from performing the councillor's functions in a particular way. It is also an offense for such an official to accept a bribe (Article 594 of the Penal Code). Both offenses are punishable by imprisonment. In addition to the usual law enforcement channels, the Anti-Corruption Unit ("ACU") is empowered by the Anti-Corruption Law to investigate complaints of corruption and take action accordingly.

It is also an offense under the Law on the Election of Members of the National Assembly to offer material or monetary incentives in exchange for votes in an election. This prohibition applies also to Senate Elections (as per Article 33 of the Law on the Election of Senators) and is in addition to any criminal proceedings that may be brought under the Penal Code. The National Election Committee (“NEC”) can fine a guilty party from 5,000,000 to 25,000,000 riels, cancel their candidacy and/or delete the guilty party from the voter list and the list of running candidates.

### **Relevant international law**

Cambodia is a signatory to the International Covenant on Civil and Political Rights, which emphasizes that the democratic right to vote must be capable of being exercised freely and in secret. Further, Cambodia has ratified the United Nations Convention Against Corruption (“UNCAC”). UNCAC outlines provisions to battle corruption including Article 8, which recommends that State Parties establish measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities.

### **Inadequacies in domestic law revealed**

Although Article 13 of the Anti-Corruption Law states that the ACU must “take necessary measures to keep the corruption whistle blowers secure”, reflecting (in part) Article 8 of UNCAC, these measures are not described and no protections or immunities are offered to those who report incidences of corruption. To the contrary, Article 41 makes it an offense to provide “disinformation ...[leading to] useless inquiry”. It is unclear whether a complainant will be guilty of this offense simply by providing incorrect information, irrespective of his/her belief in its veracity. Further, attempts at bribery will inevitably be made in private and secretive contexts, with little evidence available other than the complainant’s testimony. However, as the Battambang case example shows, a person who attempts to collect evidence to substantiate their claim is likely to fall foul of privacy laws. The lack of express protections against such prosecution and uncertainty regarding the treatment of complainants whose claims are considered unfounded are likely to act as deterrents, discouraging persons who have genuine complaints from reporting corruption. It also provides opportunities for the ruling party to exert influence over the relevant government institutions so that the whistle blower is targeted for prosecution, while the act of bribery is overlooked.

### **Conclusion**

It is concerning that the SRP whistle blower faces investigation and serious penalties for collecting evidence of corruption, while the ACU has not become involved and the NEC meted out a nominal fine to one of the two CPP men caught on tape. The eradication of corruption, particularly in the context of elections, is essential to the establishment of a proper functioning democracy. Given the endemic nature of corruption in Cambodia’s political sphere and in order to maintain the integrity of elections and Cambodia’s democratic system it is crucial that the actors like ACU, the courts and NEC who are responsible for implementing the anti-corruption laws act effectively, convincingly and without partiality in response to proven cases of vote buying. The Anti-Corruption Law should also be amended to adhere to UNCAC and ensure that suitable protections and immunities against prosecution are available to those who, in good faith, report and provide evidence of corruption.

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