



National Integrity Systems

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Cambodia 2006

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Currency

The currency in Cambodia is the Cambodian riel (KHR) and the rate of the riel to the US dollar in September 2006 was approximately KHR 10,000 to US\$2.5126.

Abbreviations

ADB	Asian Development Bank
ADHOC	Cambodian Human Rights Association
CAR	Council for Administrative Reform
CCSP	Commune Council Support Project
CG	Consultative Group
CHRAC	Cambodian Human Rights Action Committee
CoM	Council of Ministers
COMFREL	Committee for Free and Fair Elections
CPP	Cambodian People’s Party
CSD	Center for Social Development
CSO	Civil Society Organisation
CSR	Corporate Social Responsibility
DPP	Department of Public Procurement
FUNCINPEC	National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia
GDP	Gross Domestic Product
GTZ	German Development Cooperation
JMI	Joint Monitoring Indicators
MoC	Ministry of Commerce
MoEF	Ministry of Economy and Finance
MoFAIC	Ministry of Foreign Affairs and International Cooperation
MoI	Ministry of Interior
MoIn	Ministry of Information
MoJ	Ministry of Justice
MoLMUPC	Ministry of Land Management, Urban Planning and Construction
MoNASRI	Ministry of National Assembly–Senate Relations and Inspection
MPDF	Mekong Private Sector Development Facility
NA	National Assembly
NAA	National Audit Authority
NEC	National Election Committee
NGO	Non-Governmental Organisation
NICFEC	Neutral, Impartial Committee for Free and Fair Elections in Cambodia
NIS	National Integrity System
OSWS	One Stop Window Service
PEAC	Prequalification Evaluation and Award Committee
PR	People’s Representative
PU	Procurement Unit
RCAF	Royal Cambodian Armed Forces
RGC	Royal Government of Cambodia
SCM	Supreme Council of Magistracy
SNCAC	Supreme National Council Against Corruption
SRP	Sam Rainsy Party

UNDP United Nations Development Programme
UNTAC United Nations Transitional Authority in Cambodia
WB World Bank

About the NIS Country Studies

What Is the NIS?

The National Integrity System encompasses the key institutions, sectors or specific activities (the 'pillars') that contribute to integrity, transparency and accountability in a society. When it functions properly, the NIS combats corruption as part of the larger struggle against abuse of power, malfeasance and misappropriation in all its forms. Strengthening the NIS is about promoting better governance across all aspects of society.

The concept of the NIS has been developed and promoted by Transparency International as part of TI's holistic approach to combating corruption.¹ While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity. The country studies are based on an assessment of the quality of institutions relevant to the overall anti-corruption system.

Why Conduct NIS Country Studies?

The purpose of each country study is to assess the National Integrity System, in theory (law and regulatory provisions) and practice (how well it works). The studies provide both benchmarks for measuring further developments and a basis for comparison among a range of countries.

The studies provide a starting point for signalling areas requiring priority action. They also form the basis from which stakeholders may assess existing anti-corruption initiatives. NIS country studies help explain, for example, which pillars have been more successful and why, whether they are mutually supportive and what factors support or inhibit their effectiveness. Country studies also assess where the emphasis should be placed on improving the system and what factors are required to support the overall development of the NIS.

The country studies create a sound empirical basis that adds to our understanding of strong or weak performers. Within a region, in which several countries may function with similar economic, political or social frameworks, the results of the study can create a sense of peer pressure for reform as well as an opportunity for learning from those countries that are in similar stages of development.

For Transparency International, country studies are an important measurement tool. They complement TI's global indices and surveys, such as the Corruption Perceptions Index, Bribe Payers Index and Global Corruption Barometer, as well as national surveys, by exploring the specific practices and constraints within countries and providing qualitative empirical results about the rules and practices that govern integrity systems. More than 55 such country studies have been completed as of August 2006.

TI believes that it is necessary to understand the provision for and capacity of the NIS pillars, as well as their interaction and practices, to be able to diagnose corruption risks and develop strategies to counter those risks. NIS Country Studies are a unique product of Transparency International, as they reflect the systemic approach TI takes to curbing corruption and the independence of analysis that can be offered by the world's leading anti-corruption NGO.

Methodology of the NIS Country Studies

The NIS country studies offer a qualitative assessment of the integrity system in a country. The studies are based on both objective and subjective sources of data, which differ in quantity in each country evaluated. The studies therefore require both desk research and field research.

At least one focus group is convened as part of the country study. Focus group participants include anti-corruption and governance experts drawn from government (including donors, where relevant), the private sector, the professions (e.g. lawyers, accountants and engineers), media and civil society. The aim of the focus groups is for a broad base of stakeholders to evaluate the NIS and to comment on the draft NIS country study. The results of the meeting then inform further revision of the country study.

Each country study is reviewed by an external expert referee.

Executive Summary

Prolonged civil conflict, American bombing during the war with Vietnam and four years under the infamous Khmer Rouge followed by Vietnamese occupation virtually destroyed Cambodia's economic, social and physical infrastructures. A decade of cautious political peace and billions of U.S. dollars in aid money later, these systems are still weak and many lack the capacity to carry out their functions properly.

Corruption is not an unfamiliar term in Cambodia and has pervaded almost every sector of the country. The payment of unofficial fees is necessary to secure any range of services, including medical care, education credentials and even birth certificates. While these everyday forms of corruption have become so prevalent that households acknowledge them as routine, no Cambodian regards them as fair or acceptable. Challenging these demands is seen by most as pointless, as the average citizen does not feel powerful enough to confront or change the system.

The majority of public servants earn their living by collecting bribes for basic services, portions of which are then passed up the chain of command to ensure job security. This system of patronage is well ingrained into the fabric of society, and those who don't like it are essentially forced to participate or suffer. Influential political positions are acquired at sizeable financial cost through the right connections, with the expectation that expenses will be recovered through the collection of bribes.

No fully autonomous anti-corruption body exists in Cambodia. The Ministry of National Assembly-Senate Relations and Inspection was created in 1999 to investigate allegations of corruption. The Anti-Corruption Unit in the Council of Ministers was also established that year with the goal of conducting research and submitting corruption elimination proposals to the Royal Government of Cambodia, as well as monitoring and following up on corrupt activities. Neither of these bodies is independent, and both lack the resources and capacity to perform their designated activities.

Although in draft format for more than a decade, an Anti-Corruption Law that meets international standards has yet to be adopted and implemented. Many use this as an explanation for the widespread corruption in Cambodia and the culture of impunity that exists, but a law is only the first stage of reform. Non-governmental organisations continue to advocate on draft legislation and lobby the government for improved governance and transparency practices.

The country's National Audit Authority is empowered to oversee and audit the activities of all government bodies. This large institution is independent by law but in practice is financially tied to the Ministry of Economy and Finance. Although it has produced several reports in more than five years of operation, not one of these has been made publicly available as stipulated by law.

Despite its being constitutionally guaranteed, there is a distinct lack of separation of powers between the executive, legislative and judicial branches of government. The judiciary is currently under the control of the Ministry of Justice, while parliament's legislative power is undermined by the government's continued practice of issuing sub-decrees that are subsequently applied as law.

Law enforcement agencies inspire little trust in the country. Police officers lack the capacity to perform designated tasks properly and routinely demand payment for basic services. Foreign media regularly report on crimes involving military officers, who despite public exposure continue to evade any form of legal consequences. Detailed reports have also drawn attention to the intimate involvement of high-level members of the military in the illegal and highly destructive logging trade.

Part of the government's reform goal is to decentralise power and tasks down to the local level of administration. The establishment of commune councils through elections held in 2002 has created an organisational structure, but the councils themselves are still weak in terms of being able to manage finances and carry out development plans.

Government priorities should be to adopt a long-awaited Anti-Corruption Law that meets international standards, a Freedom of Information Law and an Organic Law on the governance of sub-national administration. Existing anti-corruption bodies must either be reformed and strengthened or dissolved into the Supreme National Council Against Corruption, the proposed national-level anti-corruption body to be established through the Anti-Corruption Law.

Judicial reform is vital to improving the country's current integrity system. Without the guarantee and protection of fair and impartial judgement, no citizens or government officials will be willing to speak out against fraudulent behaviour.

Finally, the government, international donors and civil society must work together and continue to demand greater transparency across all sectors of the country. Unified support and a genuine will are essential elements to improving governance. A degree of political will for reform exists within the government, but the reality is that those in power have little reason to change a system that has secured them much power and personal wealth. Stricter costs imposed by the donor community would serve to pressure the government and effect real change.

Priorities and Recommendations

To combat corruption that is so widespread and deep-rooted will take years of reform and restructuring of existing systems. It also requires a political will, which does to some degree appear to exist within Cambodia's government. Monitoring indicators agreed to at the last annual Consultative Group (CG) meeting among international development partners, non-governmental organisations (NGOs) and the Royal Government of Cambodia (RGC) highlight the government's awareness and understanding of key reform needs. Despite this apparent determination, several indicators from past meetings have not been met as promised, and yet contributions of foreign aid continue to rise. Thus, current leadership has seemingly little to gain from anti-corruption measures given their existing power and position. International donors and NGOs must continue to put pressure on the RGC and demand performance for its contributions.

Anti-Corruption Law. First and foremost, the government must follow through on its commitment to enact and implement their Anti-Corruption Law and ensure that this law complies with internationally accepted standards. This law provides for the creation of a much-needed autonomous SNCAC equipped to investigate allegations of corruption and receive complaints. It also includes essential disclosure rules and whistleblower protection.

Anti-corruption bodies. Existing anti-corruption bodies such as the Ministry of National Assembly–Senate Relations and Inspection (MoNASRI) and the Anti-Corruption Unit in the Council of Ministers (CoM) should be reviewed in terms of their capacity to handle complaints. Given their level of financial and operational dependence on the executive branch of government, activities related to education and dissemination of information might be more useful than conducting investigations. They should also be examined for overlap of roles and responsibilities. Given clear and functional roles, these bodies should be strengthened to carry out their mandates.

National Audit Authority. Likewise, laws related to the National Audit Authority (NAA) should be clarified and adhered to in practice. An agency as large as this, which in more than five years of operation has failed to produce one publicly available report, clearly does not have the capacity to perform its required functions properly. Laws requiring public accessibility to these reports must be complied with and the autonomy of the NAA protected.

Freedom of Information Law. A Freedom of Information Law and legislation guaranteeing access to information are desperately needed and would, at the very least, enhance the legal framework necessary for increased transparency within government agencies. At present, lawyers cannot properly prepare cases to defend their clients, and journalists are severely limited in terms of their reporting capacity. Transparency would serve to create greater trust in public departments and reduce the opportunity for corrupt practices.

Civil society organisations. Unified efforts among civil society organisations (CSOs) have demonstrably had greater impact in terms of influencing the government and should be maintained. Coalitions such as the Cambodian Human Rights Action Committee (CHRAC) need to continue to pressure the government in the areas of reform and good governance. NGOs must devote some resources to further study in this field as a greater body of research related to corruption and governance issues would clarify areas of particular weakness and aid donors in identifying priority needs. They must also work hard to alter the mindset of institutions and the public about corruption, not only by engaging in more research and implementing good governance programmes, but also by improving their own accountability and transparency systems in order to provide a standard for the country.

Decentralisation of public services. Continued efforts must be made to decentralise the delivery of public services through the capacity building of commune- and district-level administration bodies. While an Organic Law on the Governance of Province/Municipality, District/Khan and Commune/Sangkat is constitutionally guaranteed, the drafting and review of this law must be fully transparent and include public participation.

Supreme Council of Magistracy. The Supreme Council of Magistracy (SCM) must be reformed and its independence guaranteed. Members should be non-partisan and properly qualified, with extensive legal experience and training. The SCM's secretariat must be restored and equipped with an autonomous budget. Likewise, all judges, prosecutors and law enforcement agents should be free of political affiliation to ensure their impartiality. Judges should be assured of their independence and protected from politically motivated dismissals.

Public Sector Recruitment. Rules related to the promotion and recruitment of public sector employees must be merit based, unambiguous and fair, and most important, respected. Civil servants should also be required to be non-partisan.

Transparency of political parties. Political parties communicate with the public only in terms of their party platforms and election agendas but divulge little about their internal workings. Legislation is needed to ensure greater financial transparency of political parties, which at present are not required to disclose amounts or sources of party funding.

Enforcement of laws. Most evident is the need for existing laws to be followed. The constitutionally guaranteed separation of power among the different branches of government must be respected. Legislative powers and review processes must be adhered to, and information should legally be more accessible.

In sum, the RGC, international donors and civil society need to ensure that:

- An Anti-Corruption Law that meets international standards is adopted in 2006 as promised;
- Existing oversight bodies (MoNASRI, Anti-Corruption Unit and the NAA) are strengthened and given true autonomy to carry out their mandates, reformed in order to complete more relevant tasks or dissolved into the SNCAC;
- A Freedom of Information Law is enacted and implemented;
- The SCM is restructured and given complete operational and financial autonomy as guaranteed in the constitution;
- Legislation is passed clarifying rules and regulations for the disclosure of political party funding and sources of this funding;
- An Organic Law on the governance of sub-national administration is publicly debated and reviewed before being adopted and implemented;
- An annual National Congress is implemented as specified in the constitution;
- Stronger conditions are imposed on loans to the government; and
- NGOs increase their focus on the issues of transparency and good governance, not only within the government but also within their own sector.

Country Profile

Almost a decade after the end of civil war, Cambodia is a country still very much in the process of rebuilding. Its population of 13.9 million,² predominantly rural, is composed of 90 per cent Khmer, with the remaining 10 per cent a combination of Chinese, Vietnamese and a small number of Cham, Burmese and Hill Tribes.³ Latest figures put GDP at approximately US\$6.1 billion, translating into a per capita income of US\$441 per year.⁴ Poverty rates have dropped over the past 10 years, but a third of Cambodians still live below the poverty line.⁵

Despite concerns that the end of the Multi-Fibre Agreement, which was intended to allow developed countries to adjust to imports from the developing world,⁶ would hurt the country's revenues, recent figures indicate the economy expanded by approximately 13 per cent in 2005.⁷ While tourism continues to grow, for the moment, textiles, garments and footwear remain the largest and most rapidly expanding sectors. Cambodia continues to rely quite heavily on financial aid, with pledges at the recent CG Meeting amounting to US\$601 million.⁸

Civil War

After years of colonial rule, Cambodia gained independence from France in 1953 but continued to function under the French civil law system until civil war and unrest brought the communist Khmer Rouge to power. The country's economic, social and political infrastructures were devastated during Cambodia's four years under this regime, which systematically collectivised everything, eliminated currency and abolished private property. Even after the Khmer Rouge were driven out by Vietnamese troops and the communist People's Republic of Kampuchea was established, fighting continued in various areas throughout the country. A constitution was adopted in 1982 but was replaced in 1989, when the People's Republic became the State of Cambodia and the concept of a market economy was introduced.

Fighting was temporarily brought to an end in 1991 with the signing of the Paris Peace Agreements, under which the Supreme National Council of Cambodia was formed, bringing together all four political parties of the day. The accord also provided for a UN peacekeeping force, the United Nations Transitional Authority in Cambodia (UNTAC), to organise a general election while maintaining peace throughout the country. In order to do so, it enacted the Criminal Law and Procedure Applicable in Cambodia during the Transitional Period, known to this day as UNTAC Law and still applied as a legal tool along with the State of Cambodia's Law on Criminal Procedure, which was enacted the following year. The Khmer Rouge boycotted the election, and pockets of fighting resumed throughout the country, which continued until the last of the Khmer Rouge strongholds were defeated in 1998.

Elections for a constituent assembly were held in May 1993, and the current constitution was adopted later that year. All three national elections since the Paris Agreements have ended in political negotiations and the eventual formation of coalition governments. Following a year-long deadlock after the general election of 2003 failed to give any party a two-thirds majority, a somewhat controversial law was adopted through an agreement between the National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia (FUNCINPEC) and the victorious Cambodian People's Party (CPP), effectively allowing the former prime minister and president of the National Assembly to keep their positions. The constitutionality of this new law has been subject to debate.

Cambodia Today

Article 51 of the 1993 constitution and its amendments in 1999 ensure that the citizens of Cambodia hold all powers, to be exercised through the National Assembly, the Senate, the Royal Government and the judiciary. It also guarantees the separation of these bodies. By law, all legislative power is vested in the parliament.

According to the constitution, Cambodia is a constitutional monarchy adhering to the principles of liberal democracy and pluralism. Three parties currently dominate the political landscape: the CPP and FUNCINPEC, which make up the current coalition government, and the opposition Sam Rainsy Party (SRP). The head of government is the prime minister and deputy chief of the CPP, Samdech Hun Sen.

Although his position is treated chiefly as symbolic, the king formally holds a degree of authority through the Supreme Council of Magistracy, with the power to 'appoint, replace and disqualify all judges and prosecutors due to a conflict of interest or incapacity'⁹ and under the 1993 constitution

is given the 'role of arbitrator to ensure the faithful execution of public powers' (Article 9). The king is also the final signatory on all laws adopted by the legislature and has the right to grant partial or complete amnesty (Article 27). Although his role is designed to guarantee checks and balances on government control, in practice the king has chosen not to exercise these rights.

Current Political Climate

Cambodia's democracy was questioned in 2005 when parliament stripped the immunity of three opposition members, two of whom subsequently fled the country. Political reconciliation has since been reached and all charges temporarily dropped at the request of the prime minister.

Criminal defamation laws continue to be used as a tool to silence any form of government opposition, as five prominent individuals were charged with defamation in late 2005 and early 2006.¹⁰ All five were held in prison until international pressure and letters to the prime minister from four of the detainees¹¹ contributed to their release.

Recent political decisions made by Samdech Hun Sen have sparked tension between coalition government parties as a significant number of FUNCINPEC members have been removed from key ministerial and parliamentary positions in the name of eliminating corruption from government ranks. The majority of these posts have seen CPP replacements. Rumours of the collapse of FUNCINPEC and the defection of party members to the CPP and SRP have already begun.

Corruption Profile

The practice of corruption appears to have permeated almost every aspect of Cambodian life, so much so that it would be difficult to find a citizen who had not experienced some form of corrupt behaviour. Very little research has been carried out on this topic to date, but a recent study on household perceptions noted that although everyday forms of bribery for basic services have become very much habitual to the average Cambodian and are generally considered a fact of life, these corrupt practices are far from being considered acceptable.¹²

According to Transparency International's Corruption Perceptions Index, Cambodia scored 2.3 on a scale of 0 (highly corrupt) to 10 (highly clean) in 2005.¹³ Most citizens view government bodies as having very little integrity,¹⁴ thus encouraging the use of informal systems that personalise rather than institutionalise transactions.¹⁵ These findings are supported by further results, which place Cambodia in the top percentile of countries where bribes of some form are the common practice, with 31 per cent to 35 per cent of respondents stating that either they or someone in their household had paid a bribe in the past year.¹⁶

The average Cambodian views most sectors of the economy as corrupt – at least to some degree. Public institutions are not seen as transparent,¹⁷ and without a law explicitly guaranteeing access to information, it is particularly difficult to obtain important material without resorting to some unofficial, backhanded method.¹⁸

Teachers demand small payments from students for more favourable exam results,¹⁹ businesses pay bribes to avoid official taxes²⁰ and traffic police regularly collect fines from motorists for concocted infractions.²¹

Khmer media of all kinds are politically controlled.²² Freedom of expression and freedom of the press are guaranteed under the constitution yet are confused by the ambiguity of Article 12 of the 1995 Press Law, which states that 'the press shall not publish or reproduce any information that may cause harm to National Security and Political Stability'. As no definition of 'political stability' is provided, the law is left open to subjective interpretation.

Political parties are also seen to operate according to their own agenda, while procurement laws and regulations are often ignored. One recent qualitative study makes reference to an allegation that the 'CPP controls 20 companies that are the "financial pillars of the system" and that the Prime Minister writes regularly to ministers, ordering that contracts be given to favoured firms'.²³

District and provincial leaders are appointed by the government, and the heavily CPP-dominated commune councils were recently given the mandate of electing village chiefs²⁴ – further strengthening the governing party's control at the local level. Parliamentarians have very little genuine legislative power, and the executive branch of government maintains effective influence over the judiciary.²⁵

Types of Corruption

Corrupt practices in Cambodia appear to take on many forms, evidenced by the scope of vocabulary used to describe various situations. These range from extortion to nepotism, to bribery, to tips and gifts.²⁶

The most visible and accepted types of corruption are those that the average Cambodian household encounters on an everyday basis. Bribes and informal payments for standard public services such as medical care, school grades, court verdicts, alleged traffic violations and marriage and birth certificates are not only expected but are also carried out quite openly.²⁷ Most distressing are unofficial but required payments for services, particularly those that are medical in nature and meant to be free.²⁸

Nepotism thrives, informal networks and political affiliations are used to their full extent and bribes are a common and necessary tool used to secure job offers and promotions. In some cases, citizens are 'forced to join ruling political parties in order to access services in the local bureaucracy and institutions'.²⁹

Harder to quantify are the high-level, big-ticket cases of corruption that take the form of financial aid diversion through various ministries and levels of government. Of late, big donors have started to address this issue and are pressing for more transparent procedures and making concerted efforts to identify areas of leakage.³⁰ Also difficult to gauge is the impact of privatisation, which has led to the control of many state-owned enterprises and land concessions being granted to prominent politicians and foreign-owned companies, many of whom are given falsified Khmer

citizenship. According to a recent study, 'since the 1980s, 20–30 percent of the country's land, the main source of wealth, has passed into the hands of less than one percent of the population'.³¹

Household surveys have highlighted the public perception that customs authorities are highly corrupt,³² corroborated by other reports that suggest officials regularly accept bribes from smugglers to turn a blind eye.³³

Causes of Corruption

Low-level and high-level corruption practices are not unconnected, with money flowing upward through the system. The patronage structure on which Cambodia has developed feeds the process of government employees' collecting informal fees from the public to subsidize their salaries and pay off senior officials.³⁴ Despite recent government efforts and some small improvements, civil servant salaries remain low and are often late. Job offers and career advancement are rarely based on merit, and those without the right connections must pay if they want to advance.³⁵

Of significance are the opportunities that exist for corruption. A lack of transparent bureaucratic procedures, a lack of capacity among civil servants and a general lack of awareness of human rights feed an environment ripe for corrupt behaviour. Cash payments create opportunities for money to 'disappear', and the lack of an independent ombudsman's office means citizens have no place to direct complaints.

Higher levels of corruption arise due to a lack of separation of powers, evidenced by the dissolution of the secretariat for the Supreme Council of Magistracy in 2005, which has left the council under the control of the Ministry of Justice. More than one study has identified the judiciary and overall legal system as being the most corrupt and least trustworthy institution in the country.³⁶ Court verdicts are often determined by money, political connections or position rather than law.³⁷

Existing oversight bodies rely on the executive for budget approval and lack the capacity and means to carry out their intended functions.

Costs of Corruption

The financial costs of corruption are well documented and potentially quite substantial in value. A Cambodia Competitiveness Report released by the Economic Institute of Cambodia in 2005 describes corruption as the number one deterrent for foreign companies considering investing in the country, while the World Economic Forum's Growth Competitiveness Index ranked Cambodia 112 out of 117 countries. With central strategies aimed at alleviating poverty, the government must make every effort to stimulate the country's economy and eliminate barriers to investment.

Poor governance costs the government direct revenue through tax evasion and bribe-taking among customs officials, in addition to the diversion of donor funds within the system, a practice that results in estimated annual losses of US\$300–\$500 million according to one recent study.³⁸

The costs of corruption are not only financial in nature but social as well. Systems may start to break down. Lack of trust in public institutions diminishes their usefulness, and people will seek alternative (and generally illegal) ways of procuring services, including justice.³⁹ One has only to pick up a daily newspaper to get an idea of the violent ways in which some Cambodians are choosing to take the law into their own hands. Vicious attacks resulting from disputes among neighbours, public mob beatings of suspected or known thieves and brutal retribution for spousal infidelity are fairly regular occurrences.

Inadequate tax revenue translates into a weak education system, poor medical care and substandard infrastructure, and although studies indicate that wealthier Cambodians tend to pay more in bribes, the poor risk being disproportionately burdened or unable to access government services at all.⁴⁰

The Will to Change

Most governance reform strategies list political will as an essential component to fighting corruption. While the RGC has placed good governance at the core of its Rectangular Strategy⁴¹ and maintains its desire to eliminate corrupt officials within all sectors of government, a 2004 survey of Cambodian households suggests the overall general population does not feel the government is sincere in its efforts to combat corruption.⁴² Sadly, the prevailing view among the Cambodian public is that corruption levels are going to continue to rise over the next few years. Most others expect they will remain the same or simply do not know what to anticipate.⁴³

Anti-Corruption Activities

Draft Anti-Corruption Law

At the forefront of many reform talks in Cambodia is the long-awaited Anti-Corruption Law, in the works now for more than 10 years. The draft law is currently with the Council of Ministers and, according to the Joint Monitoring Indicators (JMIs) laid out during the 2006 CG Meeting, was supposed to be made official by the end of June 2006 – a deadline the government has once again failed to meet.

Moreover, concerns have been voiced by a number of international and local experts as to the actual amount of power the proposed anti-corruption commission would hold. Many feel that the law does not meet international standards and that 'provisions relating to transparency of the financial management of political parties and the declaration of assets must be strengthened'⁴⁴ before the law is enacted. An informal working group composed of various multilateral and bilateral donors is advocating on this draft law, as is a coalition of CSOs against corruption.

Existing Anti-Corruption Bodies

Although no formal anti-corruption body exists at the national level, the government structure nevertheless has a number of mechanisms in place designed to ensure checks and balances within and between the government, parliament and judiciary.

The MoNASRI was created in 1999 in order to inspect all fields in the Kingdom of Cambodia for the purpose of fighting corruption. Later in the same year the Anti-Corruption Unit under the CoM was established.

The National Assembly Commission for the Protection of Human Rights and Reception of Complaints exists as a mechanism for the public to voice concerns and have human rights violation complaints investigated directly at the source. The commission is further meant to advise the National Assembly on relevant laws and promote education and dissemination of information about human rights. A similar commission exists within the Senate.

Finally, the NAA was established in 2000 with the mandate of conducting annual audits of all parts of government. Although formally independent, the NAA relies on the government to approve its budget, which is disbursed monthly by the Ministry of Economy and Finance (MoEF), and thus is also kept in check by the executive.

As mentioned above, the RGC has placed the need for good governance at the heart of its Rectangular Strategy, a sentiment reiterated by the prime minister at the recent CG Meeting when he stated that 'priorities are to reinforce and fast track a multi-pronged attack on corruption; carry out specific legal and judicial reforms; speed up implementation of public financial management reform and pursue public administration reform'.⁴⁵ In this spirit, 2005 saw the establishment of 18 Technical Working Groups at the sector level governed by a national-level Government Donor Coordination Committee, all designed to increase aid effectiveness and build stronger partnerships with donor partners and civil society.

The government launched a One Stop Window Service (OSWS) pilot project in Siem Reap and Battambang provinces in January 2005. This project aims to improve the delivery of standard public services by making procedures more transparent. It also includes the establishment of a People's Representative (PR) Office to carry out the work of an ombudsman, who is elected by a group of politicians, businessmen and NGO members within a particular district and is authorised to receive complaints, conduct impartial investigations and resolve problems. Cases that require legal action are passed on to the district governor and the appropriate authorities. Preliminary reviews indicate success in terms of eliminating unofficial fees for the services offered.

International Institutions

Increasing reports of aid diversion and mismanagement of funds have in recent years induced multilateral and bilateral institutions to create stronger checks and balances and demand greater transparency and accountability as conditions on loans and grants. A number of institutions have also funded their own investigations in an attempt to find and eliminate areas of weakness.

In an effort to strengthen existing government structures, the World Bank (WB) Cambodia initiated a fiduciary review of several of its projects and produced an initial report highlighting areas of fund leakage. A more recent report based on investigations initiated by the Bank's Institutional Integrity Department identified US\$11.9 million in misused and misprocured funds within 43 contracts

across 7 WB projects.⁴⁶ With 3 of these projects already completed, funds in another 3 of the ongoing 4 projects have temporarily been suspended pending an action plan approved by both the government and the Bank. No repayment figure has yet been announced.⁴⁷ The government's reaction to these allegations has generally been one of scepticism, with the prime minister demanding the WB reveal its sources, emphasising that it will be difficult for the government to repay misused funds to the bank without more information,⁴⁸ and the Finance Minister Keat Chhon claiming that the bank has not provided sufficient evidence of corruption.⁴⁹

The United Nations Development Programme (UNDP) in Cambodia is in the final planning stages of a multi-donor anti-corruption project, which aims to strengthen the capacities of existing institutions, including, among others, the MoNASRI, the Anti-Corruption Unit in the Council of Ministers, the National Audit Authority and parliament. It further endeavours to support CSOs in their efforts to educate the public on the benefits of good governance, strengthen the judiciary and assist the new anti-corruption body to be established through the proposed Anti-Corruption Law, should it be passed.

Most international institutions also seek to promote good governance indirectly through each of their programmes.

Civil Society

The Cambodian Human Rights Action Committee (CHRAC), a coalition of 21 CSOs fighting against corruption, has been heavily involved in making recommendations to the government on the draft Anti-Corruption Law. This alliance is primarily concerned with the independence of the proposed Supreme National Council Against Corruption (SNCAC) and has thus expressed the need for 'an independent Secretary General with autonomous power to manage investigations, prevention, and education against corruption'.⁵⁰

Considerable effort has been made by a small number of CSOs devoted to promoting good governance. The Centre for Social Development (CSD) has taken an active approach to monitoring government activities, disseminating information and encouraging public participation in the democratic process. Its main activities include the Parliamentary Watch, which monitors all National Assembly and Senate sessions and circulates information through monthly reports; the Court Watch Project, a group responsible for monitoring 926 cases in 2005 and providing quarterly reports and an annual report to relevant bodies; and its national issues forums, which bring together citizens from all over Cambodia and are broadcast over the radio and television and published in CSD's Bulletin. From 1999 to 2003 the organisation facilitated training for 6,000 teachers across 19 provinces on transparency, good governance and tools to curb corruption. CSD is also responsible for a small but growing body of research in the field of corruption and government transparency.

PACT Cambodia's Anti-Corruption Coordinated Action Plan is dedicated to promoting the enactment of the RGC's draft Anti-Corruption Law as well as a Freedom of Information Law and is committed to building the media's capacity to report on corruption. Intensive media training in the fundamentals of investigative reporting and a more rigorous understanding of laws applicable to journalists has already been provided to a number of Khmer journalists, who have carried on working at their respective newspapers but maintain access to regular support and assistance.

Two election watchdog organisations also exist: the Committee for Free and Fair Elections (COMFREL) and the Neutral, Impartial Committee for Free and Fair Elections in Cambodia (NICFEC). Both endeavour to monitor election processes at all levels within the country and ensure that the National Election Committee (NEC) is acting appropriately. These organisations produce regular activity, monitoring and observation reports that are available in Khmer and English.

The National Integrity System

Executive

Led by the prime minister and several deputy prime ministers, the CoM, 26 ministries and 2 secretariats constitute the executive branch of government. By law, the executive is accountable to the people of Cambodia, whose powers are meant to be exercised through the National Assembly (NA).

The executive branch of government clearly holds a great deal of power. It has operational control over the judiciary and through the MoEF has financial control over existing oversight bodies such as the NAA and MoNASRI. This view was recently confirmed by the UN Special Representative for Human Rights in Cambodia, who was 'struck by the enormous centralisation of power in the government'.⁵¹

Until recently, the formation of a government had to be approved by a two-thirds majority in parliament, but an amendment to the constitution has reduced this proportion to 50 per cent plus one. The CoM is empowered to determine policy to be reviewed by the NA as well as administer general matters of state and must report its activities and policies indirectly to the public through specialised commissions of the NA. Individual ministries report directly to six deputy prime ministers, each of whom is responsible for overseeing three to five ministries. These deputy prime ministers then report directly to the prime minister. Reporting mechanisms are established on an individual basis for each ministry.

Members of the executive are constitutionally barred from engaging in professional activities in trade or industry while serving their country. They are not, however, subject to post-ministerial employment restrictions. Only those members who are also parliamentarians benefit from immunity.

No ministry within the executive body has rules on conflict of interest or on gifts and hospitality. Ministers are not required to disclose their assets, and lifestyle monitoring is not covered by any explicit rules. Provisions for the disclosure of assets are, however, included in the impending Anti-Corruption Law. No provisions for whistleblowing currently exist within the executive branch of government.

According to the revised constitution of 1999, the RGC must consult with the public once every year through a national congress. To date, however, no national congress or implementation legislation on the subject has been established.

Upon request of the MoEF, the CoM issues a sub-decree to authorise all ministries' expenditures. The government's budget is published annually in the official gazette (the government's publication tool), as must be all new laws that have been approved by the NA and signed by the king. Indeed, laws do not technically become official until they have been published in this gazette. Any extra-budgetary funding requires authorisation from the NA and consequently should also be made public.

Courts can legally act on charges filed by any individual by investigating the activities of government ministries; however, for fear of retribution judges fall back on the fact that there are no specific administrative laws giving the judiciary authority to examine government conduct.⁵² In practice, courts review decisions made at the provincial level of governance but never those made by the prime minister or ministries. As one Supreme Court judge pointed out, any ruling can be overturned with a certain amount of pressure from the executive.⁵³

The NAA can also legally oversee government decisions related to the state budget and general operations. Yet despite having legal access to all government financial statements, it has not actually released any reports to the public.

Under Article 39 of the Cambodian constitution, citizens are legally able to sue the RGC for infringement of their civil rights, but according to the Head Office of the Secretariat of Public Function, they would be too afraid to do so in practice.⁵⁴ It is also possible that citizens are not aware of their right to do so or may be concerned that their complaints would not be taken seriously in a court of law. A member of the Council for Administrative Reform (CAR) suggested that citizens cannot be bothered with lawsuits and choose to make complaints directly in person.⁵⁵

The government has taken steps toward increasing transparency through the creation of various reform councils. In particular, the CAR was established in order to initiate and coordinate administrative reform strategies. Its current aims are to improve delivery of basic public services,

enhance civil servants' pay, strengthen institutional capacity, promote and ameliorate the dissemination of information and implement the RGC's Priority Mission Groups, tools that are available to ministries to design and implement policy plans. Funding for this council is drawn from the national budget as well as from donor countries and international organisations.

The Council for Judicial Reform was established in April 2000 and given the authority to 'initiate, promote, enforce, and follow up the implementation of judicial system reform programmes and policies in compliance with objectives of the Council for State Reform, in particular, to strengthen the national judicial system'.⁵⁶ This council has since been reorganised into the Council for Legal and Judicial Reform⁵⁷ and is working in accordance with seven strategic objectives, including improving the protection of the fundamental rights of the Cambodian people, improving the legislative framework, providing better access to legal and judicial information, enhancing the quality of legal services available, strengthening judicial services, introducing alternate dispute resolution methods and strengthening legal sector institutions.⁵⁸

The RGC has attempted to improve its aid coordination and communication with donors through the creation of a national-level Government Donor Coordination Committee and 18 Technical Working Groups at the sector level. These groups meet regularly to review and monitor progress of the Joint Monitoring Indicators decided on during previous CG meetings. The continued willingness of the government to discuss and act on governance issues is key to strengthening the country's national integrity system.

Legislature

Two bodies make up Cambodia's parliament: the Senate, or the upper house, and the National Assembly, or the lower house. The Senate is composed of 61 senators, 2 of whom are appointed by the king, another 2 of whom are elected by the NA and the remaining 57 of whom are voted in for a six-year mandate by members of the NA and commune council members.

Formed in 1999 after an amendment to the constitution, the Senate is still a relatively new body that in practice appears to wield very little legitimate power. In spite of creating a clear conflict of interest, recent elections saw a number of wealthy CPP-affiliated Khmer businessmen elected to the Senate.⁵⁹ By law, the Senate must review all new bills, including the budget. However, it was recently faced with the possibility of being unable to assess a proposed formula for the formation of government because newly elected senators had not yet been sworn in and incumbent senators were no longer attending meetings. The NA's acting president indirectly suggested that whether or not the Senate managed to approve the bill in its allotted time limit was irrelevant by reassuring the public that the bill would nevertheless be forwarded to Prime Minister Hun Sen, who would in turn send it directly to the king for approval as law.⁶⁰ One senator expressed the view that there is not enough time allotted for the review of draft legislation.⁶¹

NA members are responsible for representing the Cambodian people, drafting and approving laws and overseeing activities of the RGC. The public chooses 123 members through direct election to form the NA; each member holds a term of five years. Parliamentarians are not required to disclose their assets, and their lifestyles are not officially monitored. All benefit from parliamentary immunity, although the arrests of three opposition parliamentarians in 2005 showed how easily this privilege can be revoked. Both Senate and NA sessions are open to the public by law and aired on television and national radio; however, there have been cases in which sessions were closed, a prime example being the session during which the opposition leader Sam Rainsy's immunity was stripped.

By law, the legislative branch is guaranteed operational independence and is accountable to the citizens of Cambodia. According to internal rules of the NA and Senate, reports must be kept within their respective general secretariats and are available to the public after approval from the president of a given house.

Only members of the NA and Senate and the prime minister have the right to initiate legislation, which by law must subsequently be approved by the NA and reviewed by the Senate. With some frequency, however, parliament's legislative power has been undermined as the government delivers sub-decrees without the approval of the NA, which are subsequently applied as law.

The NA is responsible for approving the state budget. According to representatives from the NA and the Senate, there is no legislative oversight of off-budget expenditures. NA members and senators are not officially required to record or disclose contact with lobbyists.

Powers of sanction against parliamentarians are multi-level and include verbal warnings, written warnings with pay reduction, an escalated warning and finally dismissal from the hall. All degrees of penalties have been used in practice.

There exist internal rules for both houses in parliament but no rules on conflict of interest or gifts and hospitality. Similarly, there are no post-employment restrictions for parliamentarians.

By law, NA members can veto senior appointments. To date, this has been done only at the request of the prime minister, as was seen recently with the dismissal of Prince Norodom Sirivudh from his position as deputy prime minister. Legislators cannot switch party lines mid-term or they will lose their seat in their respective house. Seats in the assembly and in the Senate are won and assigned to parties, not individuals.

There is no judicial oversight of parliament, and no official provisions for whistleblowing exist within the legislative branch. The true power of the parliamentary houses is questionable, particularly in the case of the Senate. Constitutional provisions must be respected in order to strengthen the legislature's ability to carry out its mandate.

Political Parties

Three main parties shape the political landscape in Cambodia: the CPP, FUNCINPEC and the opposition SRP, although 2003 elections involved a total of 23 official parties.⁶² The CPP is by far the dominant party, holding 73 seats in the NA, 45 in the Senate, 1,598 of the 1,621 commune council chief positions and the overwhelming majority of village chief positions.⁶³ Recent political moves to eliminate government officials with improper civil servant status and insufficient government experience have seen the demotion or removal of more than 40 coalition FUNCINPEC members from high positions,⁶⁴ many of whom have been replaced by CPP counterparts. Most have been sent for further training, although 10 were promptly reappointed to different positions within the government,⁶⁵ inciting suspicion that the removals were in fact a show of political power rather than a genuine desire to promote efficiency and reform.

Based on Article 9 of the Law on Political Parties, a party is established through written notification to the Ministry of Interior (MoI), identifying 80 permanent residents of Cambodia who are 18 years of age or older and wish to form a party. In order to obtain legal recognition, a party must provide proof of at least 4,000 members from several provinces and municipalities. In the event that the MoI denies a party this recognition, the party in question can appeal its case to the Constitutional Council.

By law, all parties must submit an annual report to the MoI and to the MoEF covering the party's main activities, income and expenditure balance sheet, bank account statements and a balance sheet of the party's assets (properties, trade income and liabilities).

Operational independence of political parties is debatable. The secretariat of the opposition SRP suggested that their party is not able to operate independently, as they have received threats, experienced violent acts against party members and had law suits ignored by the courts, while the party member from FUNCINPEC expressed a contrary view, namely that they are able to operate with full autonomy. Despite persistent effort, this research team was unable to gain permission for an interview from the ruling CPP, and thus their views are not represented here.

Both SRP and FUNCINPEC say there are no rules governing party funding, and yet the law clearly states that party funds can only include "member" contributions or levies, miscellaneous incomes deriving from lawful business activities of the party, state budget funds as provided, donations from Khmer private enterprises or individual Khmer donors, or from a party's own assets'.⁶⁶ Despite this, there appear to be no limits set on donation amounts, and sources of donations – no matter what the size – are not required to be revealed. No rules limit the amount of expenditures allowed during election periods.

Likewise, no rules appear to exist concerning political party expenditure, and financial accounts, budgets and party assets are not required to be made public. It seems that only internal audits are conducted by each party's secretariat.

Although party activities can be monitored by the MoI, the MoNASRI and the NAA, no official oversight of political parties actually seems to take place. The law dictates that accounting records of political parties must be kept for a minimum of seven years and may be subject to audit at the request of the courts or a competent institution. The NEC is legally entitled to audit party accounts containing all incoming funds, sources of funds, and expenses related to electoral campaigns but has never exercised this right in practice.

Political parties do not have rules on conflict of interest, gifts and hospitality or on post-employment restrictions. No provisions for whistleblowing are in place. Individual parties are governed by their own set of varying internal rules but are not required to have ethics committees.

National Election Committee

The National Election Committee's independence and neutrality is technically guaranteed under the 1997 Law on Election of Members of the National Assembly. According to the Chief of Legal Services in the NEC, Keo Phalla, the NEC is able to operate independently in practice.⁶⁷ While this may be true, both of the country's independent watchdog agencies, COMFREL and NICFEC, challenge the NEC's neutrality in light of the fact that the majority of NEC members at all levels had strong political affiliations to the ruling CPP prior to joining the committee.⁶⁸ The NA recently endorsed an increase in the number of NEC members to 9, 5 of whom will be CPP officials, with the other 4 split evenly between SRP and FUNCINPEC representatives.⁶⁹ Although most NEC funding comes from international donors, these and some government funds are collected, held in the National Treasury and then disbursed to the NEC, which is responsible for using these funds to manage electoral operations.

A chairperson must be selected at least seven months prior to an election and retains his/her position until the next chairperson is appointed. By law, candidates for the chairperson of the NEC are put forth by the CoM and selected by an absolute majority of NA members. Despite this, open guidelines were not followed during the selection process of the five NEC members prior to the 2003 election when the MoI, largely 'under the control of the RGC and regarded as being led by the ruling (CPP) party',⁷⁰ was given the responsibility of selecting candidates. Final selections were then made by the two co-ministers of the MoI, later approved by the CoM and then sent to the NA for a final vote.

The NEC is not only responsible for managing NA, Senate and local-level Commune Council elections but also for arbitrating complaints related to election results. This process is in itself unconstitutional, as the executive and legislative branches of government are not permitted to have judicial powers. Yet even vested with this authority, the NEC appears weak in terms of being able to diminish election abuses as evidenced during the 2003 election when 'a large number of cases, in particular at the (commune) level were dealt with through procedures of conciliation rather than a hearing. This conciliation procedure did not deter electoral violations; rather it seemed to encourage perpetrators to continue to act and increased the culture of impunity'.⁷¹ In the event that the NEC is unable to resolve NA or Senate election conflicts, the Constitutional Council has the mandate to intervene and make a final judgement.

The issue of vote-buying is technically confused by the fact that no official definition of the act exists. According to both of the country's election watchdogs, gift giving is a form of vote buying and is a widespread problem during elections in Cambodia. This issue appears to be largely unaddressed by the NEC, whose Chief of Legal Services insisted that vote buying – in the sense of actual money being used to buy votes – is non-existent.⁷²

The NEC is required to disclose the registration of political parties and their candidates, election platforms, the amount of money used for election campaigns and the number and types of complaints made by individual parties.

All NEC reports are made available to the public. Annual financial reports must be submitted to the MoEF and are subsequently directed to the NA, the Senate and the CoM for review. The NEC does not have to consult with the public but interacts very well with NGOs in terms of technical cooperation. The NEC is open and willing to provide the public with all of its documents, evidence that it is committed to transparency.

Although citizens can lodge formal complaints through the NEC, in practice this rarely happens. According to Phalla, there is absolutely no corruption in the NEC, although he also mentioned that some officers had to be dismissed during the 2003 national elections.⁷³ Only a few minor sanctions in the form of reprimands have been imposed by the NEC to date, putting into question the committee's ability to act on cases of corruption.

No provisions for whistleblowing exist within the NEC. There are rules on conflict of interest within the committee insofar as members are required to relinquish any prior party membership, but there are no rules on gifts and hospitality and no post-employment restrictions.

Although they experienced some government interference when first establishing their organisations, both COMFREL and NICFEC now feel they are able to operate independently. While these agencies provide regular reports to the NEC, only some complaints are directly addressed.

Supreme Audit Institution

The National Audit Authority is Cambodia's supreme audit institution, employing roughly 200 officers. Established through primary legislation in 2000 as an independent public institution, the NAA is responsible for conducting annual audits of all government bodies. The auditor general is appointed for a five-year term and can subsequently be reappointed for one additional term. The auditor general and two deputies are appointed by recommendation of the government and, as of recently, approved by a vote of absolute majority of all NA members. While this suggests neutrality, one study pointed to the lack of independence of CPP assembly members, each of whom is 'required to sign an undated resignation letter before being added to the party list'.⁷⁴

By law, the NAA is assured a separate budget, but the MoEF still controls the disbursement of these funds, resulting in a clear impediment to their autonomy. The NA is responsible for approving the entire national budget. All public expenditures must be declared in this national budget and audited annually by the NAA. According to the deputy auditor general, this does occur in practice.⁷⁵

All NAA reports must be submitted to the NA, the Senate, the CoM, the MoEF and relevant ministries. In practice, however, these reports have only been sent to the Second Committee of the NA on Finance and Banking. After a report has been debated in the assembly it should be made available to the public, and yet to date not one report has been released.

If suspicions of corruption within the NAA arise, the activities and operations of the institution can be reviewed by a special commission created by the Permanent Committee of the NA. No provisions for whistleblowing are currently in place. Similarly, no rules on conflict of interest or on gifts and hospitality exist within the NAA, and there are no post-employment conditions for officers of the authority.

By law, citizens are able to address grievances regarding budget irregularities with the NAA, but they have yet to do so in practice.

Despite relatively coherent legal backing and a large staff, the NAA has not been able to function effectively, due in part to a lack of capacity and a lack of financial independence. Even the deputy auditor general admits that the institution is not able to operate fully independently.⁷⁶

Although the NAA is not currently equipped with the capacity or the autonomy to carry out its mandate properly, small improvements in the area of auditing are notable. A sub-decree issued early in 2005 called for the implementation of internal audit units within ministries, institutions and public enterprises, and units have been established within some ministries. The German Development Cooperation (GTZ), in collaboration with the RGC, is working on audit standards and a code of ethics for NAA members and continues to provide them with various types of training.

Judiciary

Cambodia has two levels of courts: the first comprises Municipal and Provincial Courts and the second includes an Appellate Court and a Supreme Court. Military courts also exist as a mechanism to deal with military offences committed by military personnel. As specified in the constitution of 1993, the Constitutional Council exists to interpret and uphold the constitution, as well as any laws adopted by the NA and fully reviewed by the Senate. The Council, functioning since June 1998, has nine members, six of whom have nine-year mandates and the remaining members three, reviewed every three years.

Led by the king, the Supreme Council of Magistracy (SCM) is responsible for judicial oversight and the handling of complaints. This council technically has the power to appoint, replace and dismiss judges and prosecutors. However, the Secretariat of the SCM was dissolved early in 2005, impeding their ability to function autonomously and leaving them entirely under the control of the Ministry of Justice (MoJ) – a clear violation of separation of powers.

Judicial independence is legally secured under UNTAC Law and yet practically this is not the case. According to a member of the SCM, laws are not clear and as a result, the Ministry of Justice (MoJ) regularly provides judges with instructions on how to interpret various laws, despite the fact that this role is reserved strictly for the Constitutional Council.⁷⁷ Court rulings are often not upheld due to government interference.

Court records are not publicly accessible, but Article 78 of UNTAC Law guarantees that lawyers and defendants can have access to relevant files at any time in the clerk's or investigating judge's office, as well as make copies as necessary. In practice, however, only lawyers are allowed to view case files, and copies can be obtained only if the lawyer has a good relationship with the court

clerk. Some Supreme Court records are also published in a court bulletin sent to courts across the country, although this publication is allegedly limited due to lack of available funds.

Hun Sen's 'iron fist' policy has promised to eliminate corruption within the justice system. In a recent speech, he explained how during the past year 'disciplinary actions were taken against some judges and legal clerks involved in irregular cases' and further how 'a rotation system was introduced for judges across the country'.⁷⁸ There is no clear evidence as to how this system actually works. Results thus far are mixed, as although judges are less inclined to accept bribes, they are now equally afraid of releasing suspects at all for fear they will be accused of being bought off. Additionally, eight judges who had been removed from their positions under this reform policy and sent to work in various positions in the MoJ were recently reinstated by the SCM and transferred to new courts after only a few months,⁷⁹ calling into question the legitimacy of this reform.

By law, the recruitment of judges is determined by academic standing and a year of practical training. A judge on the Supreme Court explained that career development is also merit-based in practice, with judges being evaluated by a special court commission. The same individual did suggest, however, that although judges are in theory protected from removal without justification, there is sometimes 'intervention of the powerful'.⁸⁰

Courts must report monthly to the SCM, the MoJ and the CoM regarding cases that have been resolved. All hearings are public, unless special requests have been made for sensitive cases. Military personnel can be tried in regular courts, provided they have committed ordinary offences, while military courts are reserved for those who commit military offences.

Judges are required to provide reasons for their judgements and seem to do so in practice, even though there is no body of case law available for judges, prosecutors or lawyers. Judges do not receive any special training for prosecuting corruption cases.

There are no rules related to conflict of interest for members of the judiciary, regardless of rank. Equally, there are no rules on gifts and hospitality, but according to a member of the SCM, judges can be charged if they accept an unreasonably generous gift for delivering a certain verdict.⁸¹ To date, no senior member of the judiciary has been disciplined for this reason.

Judges and other senior members of the judiciary are not required to disclose their assets; rules on this matter have been outlined in the proposed Anti-Corruption Law. There are no post-employment restrictions for members of the judiciary.

No provisions for whistleblowing currently exist within the judiciary, but apparently they, along with codes of conduct for judges and prosecutors, have also been included in the draft Anti-Corruption Law.

It speaks volumes about the independence and transparency of the judiciary that only one judge and one member of the SCM were willing to speak to this research team, and even then only under the assurance of anonymity. The government has recognised a need for judicial reform and has pledged to adopt new legislation during 2006, including a Penal Procedure Code, a Penal Code, a Civil Code, a Law on the Status of Judges and a Law on Court Organisation and Functioning. While this is positive, as long as the executive retains control over the judiciary, no real reform can take place.

Civil Service/Public Sector

The public sector in Cambodia is characterised by low salaries and a culture of impunity. Underpaid civil servants enhance their salaries by collecting unofficial fees, a portion of which are passed along to superiors to create a system of protection.

Many of the laws governing the public sector appear to be ineffective. Article 20 of the Common Statute of Civil Servants guarantees that 'a promotion in grade and class of civil servants shall be effected solely through selection or seniority', although in practice this is often ignored and posts are awarded at the discretion of the chief of a given institution. The prime minister has also expressed concerns related to party appointments in the civil service, suggesting that they must end to ensure 'neutrality in the armed forces and public administration'.⁸² Many public servants tend to ignore the fact that they are supposed to submit notification of retirement before the end of their final working year, so that they can extend their working period and continue to collect a full salary.

CAR is currently working to make the system more transparent by strengthening institutional capacity and increasing civil servants' pay. A new government Merit Based Pay Initiative funded by

a number of donor countries and the WB rewards civil servants with increased salaries under a merit-based management and performance system. A competitive process governs the selection of public servants, and those who do not perform well are removed from the programme.

The Secretariat of Public Function monitors public sector agencies in terms of appointments, dismissals and sanctions against civil servants but does not monitor decisions made by individual agencies or public employees. This secretariat reports directly to the CoM and is not required to consult with the public. Civil service agencies are also monitored biannually by the NAA, and any specific complaints are investigated by MoNASRI. Governed by criminal law, the bribery of civil servants is considered an offence.⁸³

Civil servants are not required to disclose their assets. According a member of the Civil Service Inspection, there are no specific rules designed to prevent nepotism or the practice of cronyism in the public sector.

Article 40 of the Kram on the Common Statute of Civil Servants categorises sanctions against civil servants charged with misconduct into first- and second-degree punishments. First-degree sanctions include verbal reprimands, written reprimands on record, change in position or removal from the promotions list. Second-degree penalties consist of severe written reprimands on file and automatic removal from the promotions list or postponement of promotion, leave without pay, demotions, forced retirement and dismissal. By law, however, all civil servants accused of wrongdoings are given an opportunity to view their personal file and defend themselves. Provisions for whistleblowing within the public sector do not exist.

Although there are some statements about solidarity and professional ethics within the 1994 Statute of Civil Servants, no specific codes of conduct exist. There are no rules on gifts and hospitality or on conflicts of interest, and no post-employment restrictions are in place for civil servants.

Public sector agencies are not required by law to consult the public in regard to their work, but all administrative procedures and criteria for administrative decisions must be published in the government's gazette at the national level. In practice, however, decisions have not been published in a number of cases, notably in the area of concessions given around the Olympic Stadium in Phnom Penh and various other land concessions. No government agencies currently offer their services electronically.

One of the JMIs agreed on at the 2006 CG Meeting involves improving salaries and employment conditions of public servants; this takes the form of an action plan that the government has pledged to implement by the end of the year. Public sector reform continues to be a top priority for the RGC.

Law Enforcement Agencies

Law enforcement in Cambodia consists essentially of the National Police, prosecutors and the Military Police. None of these bodies is independent, as prosecutors fall under the jurisdiction of the MoJ, the Military Police are under the authority of the Ministry of Defence (MoD) and the National Police follow directives from the General Commissioner, who works under the MoI. Appointments to this position must be based on merit, and technically this individual is protected from removal without relevant justification. Non-partisanship is not a prerequisite for employment in the National Police or in the Military Police.

Reporting lines follow the same pattern, with the National Police reporting to the MoI, the Military Police to the MoD and prosecutors to the MoJ. There is no independent mechanism to handle complaints of corruption against the police, leaving citizens little recourse for challenging the numerous bribes demanded to procure services or clear false minor charges such as bogus traffic violations. On paper, the Department of Designation and Inspection in the MoI is mandated to deal with such situations, although in practice no complaints are issued. This department is additionally required to probe any serious infractions committed by police officers. The Military Police also has the authority to investigate and arrest National Police officers.

No special bodies for investigation and prosecution of corruption-related crimes exist under the National Police, and therefore the duty falls once again to the Department of Designation and Inspection. Under the Military Police, the body responsible for this task is known as the Inspection Unit.

Police officers and prosecutors are not subject to rules on conflict of interest or on gifts and hospitality, nor are they required to disclose their assets. There is no lifestyle monitoring of any police officers or prosecutors, regardless of rank. No post-employment restrictions exist for law

enforcement agents. The Police Act does not outline provisions for the disclosure of any specific law enforcement work.

There are no provisions for whistleblowing, although the Deputy Commissioner of the Central Department of Penal Police claims that no police officers have been suspected of corruption in recent years. One study on corruption, however, points to a high level of dishonest practices within police agencies, with households frequently paying bribes to lower-ranking policemen.⁸⁴ Recent newspaper articles have also highlighted the impunity of military police officers who commit crimes and yet escape legal repercussions.⁸⁵ This issue was addressed in a thorough report produced by Global Witness⁸⁶ in which various areas of law enforcement, including the Military Police, the Royal Cambodian Armed Forces (RCAF) and the prime minister's bodyguard unit, were directly linked to cases of illegal logging.⁸⁷

No law exists providing for anti-corruption measures. Most sectors do not have disclosure rules of any kind, and there are no strong mechanisms through which to monitor senior level officials. This lack of anti-corruption legislation gives little power to law-enforcement officers in terms of prosecuting corruption-related crimes. However, even with the passing of such a law, law-enforcement agencies are generally quite weak in terms of operational capacity and rife with corruption themselves and would thus require significant restructuring and training in order to become legitimate players in the country's integrity system.

Public Contracting System

No prevailing law governs procurement procedures in Cambodia. The main bodies responsible for controlling public procurement fall under the MoEF and include the Department of Public Procurement (DPP), the Procurement Unit (PU) and the Pre-qualification, Evaluation and Awards Committee (PEAC). Procurement officials are not required to disclose their personal assets.

The DPP is responsible for helping the PU to prepare and review bidding documents. These documents are stored electronically by the DPP, which reports directly to the MoEF on procurement administered by individual ministries, institutions and provincial and municipal governments. The DPP also controls the public procurement activities of ministries, institutions, municipalities and autonomous entities. The department is headed by one director assisted by a number of deputies.

Individual ministries are authorised to make their own decisions on procurements under 50 million Riels. For any amount greater than this, a public competitive bidding process must be implemented and channelled through the MoEF for a final decision.

The PU is responsible for the preparation of all bidding documents. Invitations for bidding are made by this unit, which also evaluates the bids and makes recommendations to the PEAC. This committee conducts open bidding, reviews relevant procurement documents and decides who should be awarded a particular contract.

By law, the government's gazette should make procurement award decisions public as they are classed as administrative decisions, but in practice, only the MoEF and the successful company are informed. This is also true of changes and adjustments made to contracts in execution. The law does not require contract implementation monitoring results to be published. A periodical contracting plan is made publicly available, and public hearings are mandatory.

Claiming massive internal restructuring, the DPP has unfortunately refused to grant this research team an interview, and as a result, little more can be said regarding actual procurement practices.

Anti-Corruption Agencies

There is currently no neutral, independent anti-corruption agency in Cambodia. However, some governmental structures designed to address issues of corruption are in place.

The Ministry of National Assembly–Senate Relations and Inspection (MoNASRI) was created in 1999 and by law is authorised to inspect all fields in Cambodia for the purpose of fighting corruption. Within the ministry are five departments responsible for various tasks. According to Sub-Decree No. 67 on the Organisation and Functioning of the Ministry of National Assembly–Senate Relations and Inspection, the Department of Inspection Relations with Ministries and Institutions is essentially in charge of managing case documents from various ministries and following up on reports, while the Department of Inspection has the authority to examine the financial accounts and state property of ministries, secretariats, provinces and municipalities, public institutions and public enterprises and can also inspect cases of embezzlement and fraud, as well as all institutions receiving and managing national and international aid. The Department of

Monitoring Law Enforcement oversees the enforcement of existing laws across all departments and the National Police. It also monitors the execution of programmes outlined by particular ministries, sub-decrees and decisions made by the RGC. The Complaints and Investigating Department follows up on any corruption-related features in the media, administrative conflicts between government officials and any complaint received by an individual or legal entity. Finally, the Department of Conflict is essentially in charge of compiling and preparing cases for conflict resolution within the relevant ministry/unit or to be sent to court.

Like those of all other government ministries, MoNASRI's budget is controlled by the MoEF and thus cannot be considered free of government influence. Given the widespread discussion of corruption at all levels in the country, it is significant that this ministry has yet to produce documents publicly revealing any evidence of corruption – a fact due either to a lack of autonomy to investigate allegations of corruption or a lack of internal capacity.

The MoNASRI is supposed to produce quarterly, bi-annual and annual reports on inspection activities for the RGC and can lawfully publish all inspection results that have been approved by the government. A distinct lack of information being disseminated to the public, however, has rendered an internal assessment of this ministry's functions virtually impossible. Furthermore, no officers within this ministry were willing or able to speak with this research team, indicating a wilful lack of transparency within an institution designed to promote that very issue. It is unclear whether MoNASRI would remain unchanged, be dissolved or merge with a new anti-corruption body, should one be created.

According to Sub-Decree No. 96 on the Creation of the Anti-Corruption Unit (ACU), this body has license to conduct research and submit corruption-elimination proposals to the RGC as well as to monitor and act on allegations of corruption. It is also mandated to disseminate information to the public. The unit does not operate independently, as it is directly accountable to the prime minister, and its funding is channelled through the MoEF. Since its formation in October 1999, its primary function of investigating alleged cases of corruption within all government ministries has gradually been made redundant as MoNASRI's role has grown. The ACU is composed of 15 members, all of whom were selected by the prime minister. There are no rules on conflict of interest or gifts and hospitality, nor any restrictions on post-employment. Provisions for whistleblowing are not included in the unit's mandate, and there is no established mechanism for internal complaints. The ACU was created as a temporary body and is expected to be dissolved pending the establishment of the SNCAC under the draft anti-corruption legislation.

Despite the existence of a department within MoNASRI designed to receive and follow up on complaints from individuals and a mandate within the ACU to increase Cambodian citizens' knowledge on corruption, the general public is largely unaware of the existence of either of these bodies. Neither has been subject to examination by the NAA, the media or civil society.

Media

While foreign media are generally able to operate freely, Khmer media are almost entirely politically controlled. A recent study alleges that 'the two most popular TV stations, most radio stations and the largest-circulation Khmer newspapers are owned or controlled by the CPP'.⁸⁸ One foreign journalist operating in Cambodia suggested that many Khmer news reporters tailor their coverage according to whomever they are being paid by, be it their employer or powerful individuals, not on principles of exposing and disseminating the truth. While a number of journalists are interested in investigative reporting, corporate scandals tend to be restricted to land-grabbing issues and are difficult to investigate as there is often no paper trail to follow. Foreign media are free to report on corruption but are extremely cautious about printing only statements that are well researched and can be backed by sources.

The Ministry of Information licenses media organisations, but reporting procedures appear to vary according to different media establishments. Some are required to submit two copies of each newspaper published, while others had only to submit their first-ever published paper and others allegedly do not have to submit anything. This ambiguity is supported by two media administrators working for Khmer newspapers, who both said that administrative procedures and criteria within the MoI for media outlets are not clear, possibly due to the ministry's varying interests in individual news agencies.⁸⁹

Foreign language newspapers tend to have their own codes of conduct, as well as strict rules on conflict of interest, gifts and hospitality, while local media function under no such restrictions.

By law, media establishments have the right to protect their sources, but as one foreign journalist explained, although they have not received threats to reveal sources, officials have still attempted

to obtain the information directly. A local newspaper administrator at *Samleng Yuvakchun Khmer (The Voice of Khmer Youth)* and an individual at *Kampuchea Thmey* newspaper both explained that they have been pressured to reveal sources of politically charged stories by a variety of political parties.⁹⁰ More recently, the editor of a pro-SRP newspaper was summoned to court for questioning and challenged to reveal his source on an article accusing a prominent cabinet minister of corruption.⁹¹ Some reporters have also been the recipients of phone threats, usually while reporting on cases of land grabbing.

While Article 41 of the 1993 constitution guarantees that 'Khmer citizens shall have freedom of expression, press, publication and assembly', Article 12 of the 1995 Press Law negates the rights of the press to some degree, stating that 'the press shall not publish or reproduce any information that may cause harm to National Security and Political Stability'. No definitions are provided for 'national security' or 'political stability', thus making freedom of the press subjective and ambiguous. Under pressure from civil society groups maintaining that continued use of the criminal defamation law⁹² and 'arbitrary denials of requests to peacefully demonstrate and protest' were jeopardizing these rights,⁹³ the NA recently moved to decriminalise this law.

The Disinformation Law⁹⁴ is also used, possibly to suppress the reporting of corruption, and refers to cases of minor errors such as the mistitling of an official. The fear among certain groups is that the decriminalisation of the defamation law will simply generate increased use of the one related to disinformation.⁹⁵ As such, no direct censorship of the media exists – although the use of these laws may deter journalists from reporting on sensitive cases. To date, most of these cases have been against foreign and SRP-affiliated journalists, presumably because those associated with the ruling party are less likely to publish articles offensive to powerful officials.

Freedom of information and access to information laws do not exist, although a Freedom of Information law is in the early stages of drafting. By law, the press has access to government records, but only if they do not contain information that could cause 'harm to national security'. Again, this term remains undefined and therefore open to bias. Information, even harmless statistical data, can be very difficult to obtain from certain ministries – as discovered by researchers in this particular study. A collective NGO statement made at the most recent CG Meeting reiterated the need for a law guaranteeing access to public information, not only for the promotion of good governance and transparency but also to aid lawyers in properly defending their clients.

Civil Society

UNTAC's presence in Cambodia during the early 1990s gave birth to a nation of NGOs. Many saw the development sector as an opportunity to embrace democracy and respect for human rights, but some also saw it as a means of employment and a way out of poverty. As a result, the number of local NGOs has flourished in just over a decade, with a reported 790 local NGOs operating in the country today. This number is even higher with the inclusion of associations, although a large number of these are actually inactive. According to available data, an additional 339 international NGOs exist, working across a variety of sectors in an effort to aid in Cambodia's development.⁹⁶

Local organisations must register through the MoI, while international NGOs do so through the Ministry of Foreign Affairs and International Cooperation (MoFAIC), but neither appears to have strict reporting obligations. International NGOs are required to re-register every three years and must submit quarterly and annual reports to the Council for the Development of Cambodia, although in practice this does not always occur. Some organisations have direct cooperation agreements with various line ministries. The Cambodia Rehabilitation and Development Board within the Council is the main government coordinating body linking NGO activities to various ministries.

Despite stated commitments by the RGC to develop and adopt a law on NGOs, no such law exists to date. A draft law was prepared in 1996 but was heavily criticised by civil society and has technically been under review since that time. The Cooperation Committee for Cambodia has been working on developing a set of self-regulation, minimum standards for NGOs in Cambodia. The project is leading towards a system of certification, where all involved NGOs would be subject to regular assessments. So far, a working group of NGO representatives has developed 25 new standards.

No CSOs have been prosecuted on corruption charges, and members of organisations involved in anti-corruption efforts have rarely been threatened or harmed.

NGO projects specifically related to human rights and democracy represent approximately 13 per cent of all activities. Although many organisations address issues of good governance indirectly

through the implementation of various plans, very few organisations in Cambodia are specifically focussed on this issue.

CSD has held two public forums to monitor the government's OSWS pilot projects in Battambang and Siem Reap provinces, both of which were broadcast on radio stations in Phnom Penh as well as corresponding provincial stations. Siem Reap and Battambang television stations also aired the discussions. A division of the organisation also monitors court hearings, while another attends and reports on all NA and Senate sessions.

PACT Cambodia has been actively involved in training Cambodian journalists with the goal of promoting more transparent and enlightened reporting. One success story involved an article related to contract teachers in Battambang province who had paid substantial sums in exchange for promised promotion into the civil service as full-time teachers, but received nothing. The news story resulted in a public statement from the prime minister that the situation would be investigated. Although it was a positive step, programme implementers acknowledge that this is nevertheless an example of low-level corruption, and progress is slow.

Coalition efforts appear to be more effective for lobbying the government, as they present a stronger, united front and allow organisations to share information. This was recently demonstrated with the release of five outspoken activists jailed on defamation charges.⁹⁷ Movement in this direction will serve to strengthen the voice of the Cambodian people and help to shape structural reform.

Business Sector

Largely agricultural and supplying mostly the domestic market, the informal business sector represents more than 80 per cent of GDP and nearly 90 per cent of employment in Cambodia.⁹⁸ Exports are generally controlled by the formal sector, which is fuelled by foreign direct investment. Textiles, garments and tourism continue to dominate business. Given the fact that surveyed companies identified corruption as the main impediment to investing in Cambodia, growth in the formal sector has likely been hampered by weak governance and limited access to information. Privately owned enterprises far outnumber state-owned enterprises in the country.

Private businesses are generally able to operate independently in Cambodia, with fairly clear reporting requirements, although while the market is 'partially free and accessible to anybody',⁹⁹ strictly adhering to legal procedures and refusing to partake in any informal systems of payment makes negotiating the system more difficult.

Companies must register through the Ministry of Commerce (MoC) and report annually to the Department of Legal Affairs in the same ministry, to the Tax Office under the MoEF with the submission of financial statements and to the Labour Department with reports of incoming and outgoing personnel. Despite these regulations, some companies nevertheless submit false financial statements to the government, and an even greater number remain unregistered, although these generally are small, family-run businesses that do hold some form of operating license.

Cambodia does not have a stock exchange and has very few regulations for businesses and corporate boards. Representatives from the MoC and the Chamber of Commerce both indicated that businesses operating in Cambodia are required to consult with the public,¹⁰⁰ although the businesses interviewed reported that they are not required to do so in any way.¹⁰¹ Companies do not release reports of any kind to the public; the only reporting done is carried out directly through government departments.

The will to operate with transparency and integrity exists within the business sector, although predominantly in international companies and some large Khmer businesses. As long as there remain groups who stand to benefit from corrupt activities, these activities will almost certainly continue. Large, international companies are able to avoid 'unofficial taxes' but often receive 'suggestions' in the form of reductions in their official taxes and diversion of a portion to the ministry in question.

Most large foreign-run businesses have informal anti-corruption and anti-bribery rules, and violation of these is dealt with internally. Companies are not eager to disclose any reports related to in-house corruption, and yet it is not uncommon to hear about firings due to corrupt behaviour and bribery within the business sector. No official whistleblower protection exists within the business sector.

Most multinational businesses have their own codes of conduct, while local companies tend to operate on informal codes, if any. No disclosure rules apply to corporate boards. Most international companies are not exposed to cronyism, but many local companies are, and 'a lot of internal deals

take place'.¹⁰² This impression was reiterated by a local businessman who stated that the majority of companies in Cambodia are susceptible to cronyism but only because there is greater trust and credibility among relatives.¹⁰³

Corporate social responsibility (CSR) is left entirely to the discretion of individual companies. Most international companies participate in some form of CSR, such as charitable donations, but the demands that exist in industrialised countries do not appear to be present in Cambodia and thus have yet to develop in any concrete manner.

A Commercial Register of all companies exists and is monitored by the Department of Legal Affairs in the MoC. It is available to anyone who makes a request at the MoC. The only business to have joined the United Nations Global Compact¹⁰⁴ in Cambodia is the Himawari Hotel Apartments in 2005.

Business sector corruption does not seem to be a significant part of public debate at the moment, although dialogue between the sector and the government has seen significant progress. The International Finance Corporation facilitates two public forums each year between the private sector and the government, at which time priority issues are raised and discussed. They also support seven working groups from various business sectors and develop progress matrices outlining issues, related recommendations, progress made on each issue, the current status of each issue and movement towards implementation. This information is shared among all relevant stakeholders, including government ministries. As more businesses are becoming aware of these forums, both government ministries and the private sector are observing the benefits of greater communication. Despite an absence of formal sectoral anti-corruption strategies, it is generally believed that changes will occur from within, particularly as Cambodia becomes more exposed to international business standards.

Regional and Local Government

Administrative structures exist at the provincial/municipal and commune levels, although power has traditionally been concentrated at the national level. Effectively, extensions of ministries in the executive, provincial and municipal governments have a mandate to promote and carry out the political agenda of the RGC, as well as to disseminate, apply and control all legislation approved by the legislature and signed by the king. Each provincial and municipal government is managed by a governor and a number of deputy governors who report directly to the MoI.

These officials have direct control over their respective provincial prisons and provincial police commissioner and are responsible for a variety of tasks including the management of identity cards for all citizens, a voter registry and the collection of taxes. Provincial and municipal governments are also charged with overseeing district-level administration and commune councils. Despite its relatively clear roles, this level of government does not operate with much autonomy.

Another central theme of the RGC's Rectangular Strategy is their policy on decentralisation and de-concentration, which aims to empower the general population through their local level of governance, the commune councils. In accordance with this plan, the first local-level elections were held in February 2002. Commune councillors were elected by their respective constituents and all 1,621 councils were supplied with a commune clerk through the MoI. Despite some violence leading up to the elections, the process was generally regarded by all as being fair, as well as stimulating interest among the larger population.

This initiative is still very much in early development, with not even a full five-year term yet complete. According to Leng Vy from the National Committee for Support to the Commune Councils, progress is slow and many commune councils still require technical assistance from national-level agencies.¹⁰⁵

Operational funds are transferred annually from the national government, and councils are legally authorised to govern in accordance with the constitution and other applicable legal instruments. Commune councils must report directly to their district chief, who in turn reports to the governor of the province/municipality and finally to the MoI. They are responsible for producing development reports, income and expenditure statements and public security reports. Financial reporting must also be done through the provincial department of economy and finance.

Council members and chiefs are not required to disclose their personal assets, and no rules related to nepotism, conflict of interest, gifts and hospitality or post-public office employment exist for commune councillors.

Budgets are made available to the public. Commune council meetings are technically open to the public although in practice most citizens do not attend. By law, councils can also hold closed

meetings, although no specifications are provided as to when or under what circumstances this might occur.

The public can have access to commune council reports, minutes of meetings and budgets directly from the council's local office. By law, public hearings and consultations are to be held during the budget planning process; however, one commune councillor interviewed admitted that this does not actually occur in practice.¹⁰⁶

No specific anti-corruption activities have been delegated to commune councils, and no specific anti-corruption bodies exist at the local level. Both the NAA and the MoNASRI have the authority to audit and investigate commune councils. Investigations of corruption at the local level would therefore theoretically be carried out by national-level institutions, although no cases exist to date.

Article 24 of the Law on Khum/Sangkat [Commune] Administrative Management clearly states, 'a Khum/Sangkat Councillor shall have freedom of expression at the meetings of Khum/Sangkat Council as long as he/she complies with the provisions of the internal rules and regulations of the Khum/Sangkat Council and the provisions of this Law. No Khum/Sangkat Councillor shall be arrested, detained, or liable for civil or criminal proceedings because of expression of opinion as long as such expression is exercised in compliance with the provisions of this Law'. Commune councillors can be punished if they fail to comply with the regulations governing councils. Disciplinary actions include simple warnings, deductions of pay and termination of employment. There is no evidence that these powers of sanction have ever been invoked, although the commune councillors interviewed indicated that there has been no cause to do so.¹⁰⁷

There are no provisions for whistleblowing at the local level, and the only procedure in place for citizens who wish to lodge formal complaints exists in the form of a complaint box at the entrance to individual commune council offices. Although citizens are legally able to sue commune councils, this has not yet occurred.

One significant step toward decentralisation is the establishment of the OSWS offices in Battambang and Siem Reap provinces, which essentially provide citizens with legitimate administration services such as the issuance of business licenses or official motorbike registration. Not only does this project endeavour to improve transparency of public services, but it also aims to create a district level of administration to cover rapidly emerging 'towns' comprising multiple communes. A number of line ministries continue to resist these plans given that functions – and funds – that currently fall under their mandate would be redirected. Other ministries have shown more willingness, and despite the relatively few services currently offered, this pilot serves as a model that can be expanded and replicated. Included in this project are People's Representative offices, which essentially offer neutral ombudsman services to citizens of a given district. After more than a year of operations, however, only two complaints have been made through this office. Results from a citizens' forum hosted by CSD suggest this is probably due to the high number of local residents who remain unaware of the existence of these offices.

Although villages are not administration entities by law, village chiefs are considered to be representatives of their villages. Despite much support for a general election of these chiefs, the MoI has recently revealed that the selection of village chiefs will now be carried out through secret voting among commune councillors rather than by villagers themselves. The directive has been criticised by a number of NGOs on the basis that commune councils are too politically motivated and thus elected chiefs will be unrepresentative of the villagers for whom they are meant to speak. Current councils are heavily CPP dominated, raising concerns that the ruling political party will gain an even stronger hold over the general population.

International Institutions

International institutions in Cambodia operate according to specific memorandums of understanding signed in accordance with the MoFAIC. Big donors, including but not restricted to the Asian Development Bank (ADB), the World Bank Cambodia and UNDP, seem increasingly to be coordinating their efforts, as evidenced through unified advocacy regarding the RGC's draft Anti-Corruption Law and the development of a standard procurement manual by a number of donor agencies, including the WB, the ADB and the International Fund for Agricultural Development. Another multi-donor project is the Public Financial Management Reform Program, which is designed to support and improve existing public expenditure systems and includes more than 10 donors. The ADB and the Organisation for Economic Co-operation and Development (OECD) have also collaborated on an Anti-Corruption Action Plan.

Individual institutions are increasingly committing themselves to an agenda of integrity and good governance, not only by demanding greater transparency from grant recipients but also through reviews of their own systems and practices.

The ADB conducts financial management assessments and project review missions, as well as procurement-related audits and annual project audits. A recent working paper dissected these mechanisms and found deficiencies in each; however, as a sign of commitment to improved integrity, the ADB has already endorsed several of the report's recommendations. With the goal of increasing government incentives to strengthen accountability and transparency practice, the ADB operates on a system of performance-based allocation of funds, in which Country Performance Assessments are conducted using a pre-determined set of criteria that include areas such as governance.

The WB created the Department of Institutional Integrity, which is an independent body designed to investigate allegations of internal corruption that reports directly to the WB's board of directors. A hotline for this department has been promoted and circulated, and ordinary citizens can call and file complaints directly. Between 70 per cent and 80 per cent of the complaints received by the department are from Southeast Asia.¹⁰⁸

The WB country offices in Cambodia, Vietnam and Indonesia have taken an aggressive stance on this subject and through direct and candid meetings agreed to work together to find and stop the leakages that were occurring. The WB brought in a team of investigators to examine a number of their projects and produced a fiduciary review, the first part of which highlighted the areas where leakages were occurring. The recently released second part provided the government with exact figures of missing/misspent funds, a portion of which will have to be paid back to the Bank. It is hoped that this process will strengthen transparency and accountability and serve as an example that WB Cambodia funds must be spent in a transparent manner or not at all. The WB Cambodia is currently working on blocking the leaks that were identified in the review.

The UNDP is equally committed to good governance and has designed a nationally executed anti-corruption project, which may fall under the umbrella of the Supreme Council for State Reform. Nationally executed indicates that the UNDP will play only a supportive role in the initiative, while the government will be responsible for carrying out the plan. The project has three major components, the first being to take preventive measures by building the capacity of the NAA, the MoNASRI, the CoM's Anti-Corruption Unit and both houses of parliament; the second involves the generation of public awareness and the third focuses on the enforcement of existing anti-corruption and transparency laws.

All major donor organisations have whistleblowing protection mechanisms, and some conduct regular anonymous staff surveys to promote openness and integrity. Institutions function according to individual codes of conduct, none of which are determined by the RGC. All have rules on conflict of interest, gifts and hospitality.

Aid agencies produce reports of all kinds, all of which are generally accessible to the public online. Some are conscious of ensuring that reports are also available in Khmer, while others continue to produce only English-language reports.

Established in 1994, the Council for the Development of Cambodia is responsible for approving all foreign direct investment in Cambodia above US\$2 million and coordinating aid with donors. Prime Minister Hun Sen is now the sole chairman of this council, as Prince Norodom Ranariddh was removed from his co-chair position by the prime minister in March 2006. International institutions report to this council.

International donor agencies are progressively trying to work towards strengthening existing government systems and promoting national ownership of projects. These institutions must continue to demand greater transparency and accountability of beneficiaries and take action against those who do not comply.

Evaluation of NIS

The main hindrance in dealing with corruption in Cambodia is the undeniable lack of separation of powers between the executive and other pillars of the NIS. Existing legal mechanisms designed to ensure checks and balances within all sectors of Cambodian society are not being adhered to in practice, due primarily to an apparent lack of regard for the constitution as well as the absence of financial independence within various oversight bodies. The NAA relies on the MoEF to approve and disburse its budget; the judiciary's instrument for ensuring independence was dissolved at the prime minister's request, giving the MoJ complete control; the Senate's actual powers appear to be insignificant; and the executive branch continues to issue decrees that are subsequently applied as law. With so much power concentrated in the country's top leadership, current leaders have very little incentive to break from a system that has allowed them to become extremely wealthy and use their power and wealth to secure political loyalties.

A weak and dependent judiciary is particularly disquieting, for without the guarantee and protection of fair and impartial judgement, no citizens or government officials will be willing to speak out against fraudulent behaviour. With the NAA and the MoNASRI, mechanisms for oversight exist in theory, but these bodies have not been given legitimate autonomy to carry out their mandates.

Police officers are not given special training in terms of investigating and prosecuting cases of corruption, and no specialised body under the department exists to deal with these situations. Similarly, there is no internal mechanism designed specifically to handle complaints of corruption made against police officers. Allegations of widespread corruption throughout the Military Police and other law enforcement agencies provide little confidence in their ability to enforce good governance legislation.

The promised adoption of a long-awaited Anti-Corruption Law and subsequent establishment of a permanent anti-corruption body could be a positive step toward eradicating corrupt practices, but only if it is backed by a genuine will to change. This law has already met with international criticism in terms of its standards, and simply enacting it will not ensure the improvement of transparency and accountability practices.

Ministry officials are for the most part very reluctant to relinquish any type of information, even reports and figures that seem entirely uncontroversial. Commune councils appear to be the exception in this case and seem willing to provide interested parties with any of their reports. While continued efforts of the RGC to decentralise and de-concentrate administrative responsibilities to the commune level are promising, participation of citizens at the local level remains especially weak. Likewise, reliance on national-level support and direction remains significant as many of these administrative bodies still lack the capacity to manage funds and create feasible development plans for their communes. Despite these weaknesses, the physical and social proximity commune councils have with the average Cambodian accords them the potential to become genuine local representatives and advocates of community needs.

Very few restrictions regarding the funding of political parties seem to be adhered to in practice, and while parties frequently interact with the public to secure support, their transparency and accountability to Cambodian citizens seem particularly weak. Also, despite strong platform claims of their commitment to eradicate corruption, little has been done to address potential internal party fraud.

The RGC's pilot OSWS and PR project in the northwest of Cambodia demonstrates a positive sign of change. Although public forum reports indicate that general awareness of these services is still weak, those who have taken advantage of the available services report a greater ease and transparency of procedures. Also, the project provides a model for district-level administration that can be replicated in other parts of the country. Available services can easily be added as and when other line ministries express some commitment to this de-concentration effort.

Although this pilot also offers the services of a PR, the lack of a neutral and empowered national-level ombudsman's office suggests that the public has no anonymous means of making complaints and voicing their concerns.

The civil service continues to be plagued by low pay, cronyism and nepotism. Reform efforts in the form of merit-based pay have shown some positive results, evident in the employees of the OSWS offices who are beneficiaries of this programme and appear to be conducting all business openly.

While individual companies within the private sector may adhere to strict standards and make use of internal anti-corruption polices, more formalised, sectoral initiatives would have a greater

impact. Legal public contracting procedures are readily available, although whether or not these are adhered to in practice is subject to debate. By law, procurement award decisions must be made public through the government's gazette, as they are classed as administrative decisions, but in practice, only the MoEF and the successful company are informed. This is also true of changes and adjustments made to contracts in execution. Contract implementation monitoring results do not have to be published.

Political control of local media reduces its legitimacy. Understandably, Khmer journalists are afraid of potential legal repercussions if they report on corruption among high-level officials, as the government has shown itself willing and capable of using defamation and disinformation laws to suppress unfavourable reporting. Training in the area of investigative journalism and understanding of the laws used against journalists may be having some impact on the integrity of reporters.

The donor community continues to monitor government practices and advocate for improved governance, and international institutions are starting to take a more active role in advocating good governance practices. Although transparency and accountability measures have traditionally been attached to loans, institutions are now taking real steps to monitor progress and ensure that money is being used for legitimate purposes, as well as demanding re-payment of monies not accounted for. They are likewise looking inward and creating stronger internal checks and balances. Movement in this area needs to continue while Cambodia still relies heavily on donor assistance, enabling international aid organisations to exert greater influence on government policy. Recent aid commitments from China, however – which come with little or no good-governance conditions – as well as favourable prospects of oil and gas revenues, may reduce the government's current reliance on donor funds.

Overall, Cambodia's integrity system is quite weak. Corrupt, protectionist structures are well established within government systems, and despite signs of will for reform, dismantling these would be an enormous task. Checks and balances designed to monitor the activities of various sectors are largely ignored, and although there exist some mechanisms for oversight, these tend to be controlled by the executive – at least in financial terms – and generally lack the capacity to perform their intended functions. There is little to motivate a ruling party with a powerful top leadership to reform a system that works largely in their favour, apart from imposing substantive costs. Donors are the only real players with this kind of leverage and need to take a more stringent approach when dealing with the government.

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