

An Overview of Governance Structure

This chapter provides an overview of the governance structure in Cambodia since the promulgation of the 1993 Constitution. The first section discusses the overall framework of political, economic, and social systems under the 1993 Constitution. The second section examines in greater detail the three major branches of power in the public sector: the Legislature, the Executive, and the Judiciary. The role of the military and public security forces are also highlighted, given their size and disproportionate budgetary allocations resulting from decades of civil war. The third section illustrates the governance structure of civil society, while the last section discusses the governance structure of media.

Overall Structure of Governance Under 1993 Constitution

The Constituent Assembly, now called the National Assembly, promulgated Cambodia's sixth Constitution on 24 September 1993. The 1993 Constitution was amended in March 1999 to establish the Senate, a new legislative body. The following discussion is based on the Constitution as recently amended.²²

The Constitution is defined as the supreme law of the Kingdom of Cambodia. All laws and decisions by public institutions must strictly conform to its provisions. The Preamble succinctly presents Cambodia's vision of itself as a sovereign nation:

"We, the people of Cambodia,, stood up with a resolute determination,, to restore Cambodia into an "Island of Peace" based on a multi-party liberal democratic regime guaranteeing human rights and the respect of law, and responsible for the destiny of the nation always evolving toward progress, development, prosperity, and glory."

Political System

The Constitution declares liberal democracy and a multiparty system as the foundations of the political regime of the Kingdom of Cambodia. Under the Constitution, the Cambodian people are masters of their own country, possess all powers, and exercise their powers through the National Assembly, Senate, Royal Government, and Judiciary.²³ It also stipulates that the Legislative, Executive, and Judicial branches of government shall be separate. Furthermore, all Khmer citizens possess the right to establish associations and political parties.²⁴

²² Royal Kram (Law) No. NS/Roy-Kr/0399/01, dated on 8 March 1999.

²³ Constitution, Art. 51.

²⁴ Constitution, Art. 42.

The Constitution provides for the role of the monarchy under a liberal, democratic, political regime. The King, as Head of State for life, reigns as a symbol of unity and the eternity of Cambodia, and yet does not govern the nation.²⁵ Under the Constitution, future kings are appointed by a Royal Council of the Throne that consists of: (1) the president of the Senate; (2) the president of the National Assembly; (3) the prime minister; (4) chiefs of the buddhist Orders of Mohanikay and Thammayut; (5) the first and second vice-presidents of the Senate; and (6) the first and second vice-presidents of the National Assembly.²⁶

Human Rights, Rule of Law, and Freedom of Press

The Constitution recognizes and respects the Rule of Law and human rights as enshrined in the United Nations Charter, Universal Declaration of Human Rights, and covenants and conventions related to human rights, women's and children's rights.²⁷ Every Khmer citizen is equal before the law, enjoying the same rights and freedoms and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth, or other status. The freedoms of expression, press, publication, and assembly are also guaranteed by the Constitution.²⁸

Economic System

The Constitution declares a market economy as the foundation of Cambodia's economic system.²⁹ It guarantees the economic rights of Khmer citizens to, among other things, sell their products and own private property.³⁰ The right to own private land is granted only to Khmer legal entities and citizens of

Khmer nationality.³¹ The State may confiscate properties from any person only in the public interest as provided for under the law and upon payment of fair and just compensation in advance.

The Constitution describes the State's role under the market economy system. First, the State retains the right to collect taxes, determine the national budget, and manage the monetary and financial system in accordance with the laws.³² Second, the State controls, uses, and manages state properties as determined by law.³³ Third, it promotes economic development in all sectors, especially in agriculture, handicrafts, and industry, with attention to policies of water, electricity, roads, means of transport, modern technology, and systems of credit.³⁴ Fourth, the State protects the environment, maintains a balance in Cambodia's abundant natural resources, and establishes a precise plan for their management.³⁵ Finally, the State protects consumers from the import, manufacture, or sale of illicit drugs and counterfeit or expired goods which affect the health and life of consumers.³⁶

Education, Health, and Social Welfare

The Constitution defines a role for the State in education, health, and social welfare. The State shall protect citizens' rights to quality education at all levels and take steps to ensure that quality education reaches all citizens.³⁷ To achieve this goal, it will establish a comprehensive, standardized educational system throughout the country, adopt an educational program according to the principles of modern pedagogy incorporating technology and foreign languages, and control public and private schools at all levels.³⁸ Every Khmer citizen is obliged to

25 Constitution, Art. 7.

26 Constitution, Art. 13.

27 Constitution, Art. 31.

28 Constitution, Art. 41. In addition to the Constitution, the Law on Press Regime was adopted by the National Assembly on 18 July 1995, which governs activities of the print press.

29 Constitution, Art. 56.

30 Constitution, Art. 56 and 44, respectively.

31 Constitution, Art. 44.

32 Constitution, Art. 57.

33 Constitution, Art. 58. The state properties referred in this Article are land, mineral resources, mountains, sea, underwater, continental shelf, coastline, airspace, islands, rivers, canals, streams, lakes, forests, natural resources, economic and cultural centers, bases for national defense, and other facilities.

34 Constitution, Art. 61.

35 Constitution, Art. 59.

36 Constitution, Art. 64.

37 Constitution, Art. 65.

38 Constitution, Art. 66 and 67.

receive education for at least nine years, and the State has a duty to provide free primary and secondary education to all citizens in public schools.³⁹

The provision of health services and support for the socially vulnerable are also the State's constitutional duties. The Constitution specifically refers to disease prevention, medical treatment, and free medical consultations and maternity services for poor citizens in public hospitals and infirmaries, especially in rural areas.⁴⁰ The State is obligated to support children, mothers, the disabled, and the families of combatants who sacrificed their lives for the nation.⁴¹ The establishment of a social security system for workers and employees is also envisaged as one of the roles of the State.⁴²

External Relations

The Constitution enshrines Cambodia's policies of permanent neutrality, nonalignment, and peaceful co-existence with all countries in the world.⁴³ It prohibits the invasion of any country and interference in any other country's internal affairs, directly or indirectly, endorsing the resolution of problems peacefully with due respect for mutual interests.

The Constitution prohibits engagement in any military alliance or military pact that is incompatible with its policy of neutrality. It permits neither foreign military bases on Cambodian territory, nor Cambodian military bases abroad, except within the framework of a UN request. The State does reserve the right to receive foreign assistance in military equipment, armaments, ammunition, training of its armed forces, and other assistance for self-defense and the maintenance of public order and security. The Constitution prohibits the manufacture, use or storage of nuclear, chemical, or biological weapons in Cambodia.⁴⁴

39 Constitution, Art. 68.

40 Constitution, Art. 72.

41 Constitution, Art. 73 and 74.

42 Constitution, Art. 75.

43 Constitution, Art. 53.

44 Constitution, Art. 54.

Public Sector

Cambodian citizens exercise their powers through a public sector that consists of three separate branches: the Legislature, the Executive, and the Judiciary.⁴⁵ This section discusses the structure of each branch of government.

The Legislature

National Assembly

The Constitution stipulates that the National Assembly holds primary legislative power.⁴⁶ The National Assembly possesses the right to approve laws, in particular with regard to the national budget, state planning, loans and lending, the creation, change or annulment of taxes, administrative accounts, amnesties, treaties or international conventions, and declarations of war. Decisions on draft laws are made by a simple majority of the entire Assembly membership. The National Assembly may also discuss any urgent issues or any issue submitted to the Assembly by the Government.⁴⁷

Organization

In 1993, UN-organized elections resulted in a coalition government between two main political parties. They formed a Constituent Assembly, today known as the National Assembly, which approved a new Constitution. Today, the National Assembly consists of at least 120 members (currently 122) elected through national elections to serve five-year terms. The first national election under the Constitution was held in July 1998. The National Assembly holds ordinary sessions twice a year, and each session lasts for at least three months. An extraordinary session can be called by the Permanent Committee of the National Assembly following a proposal from the King, the prime minister, or at least one-third of the Assembly members.

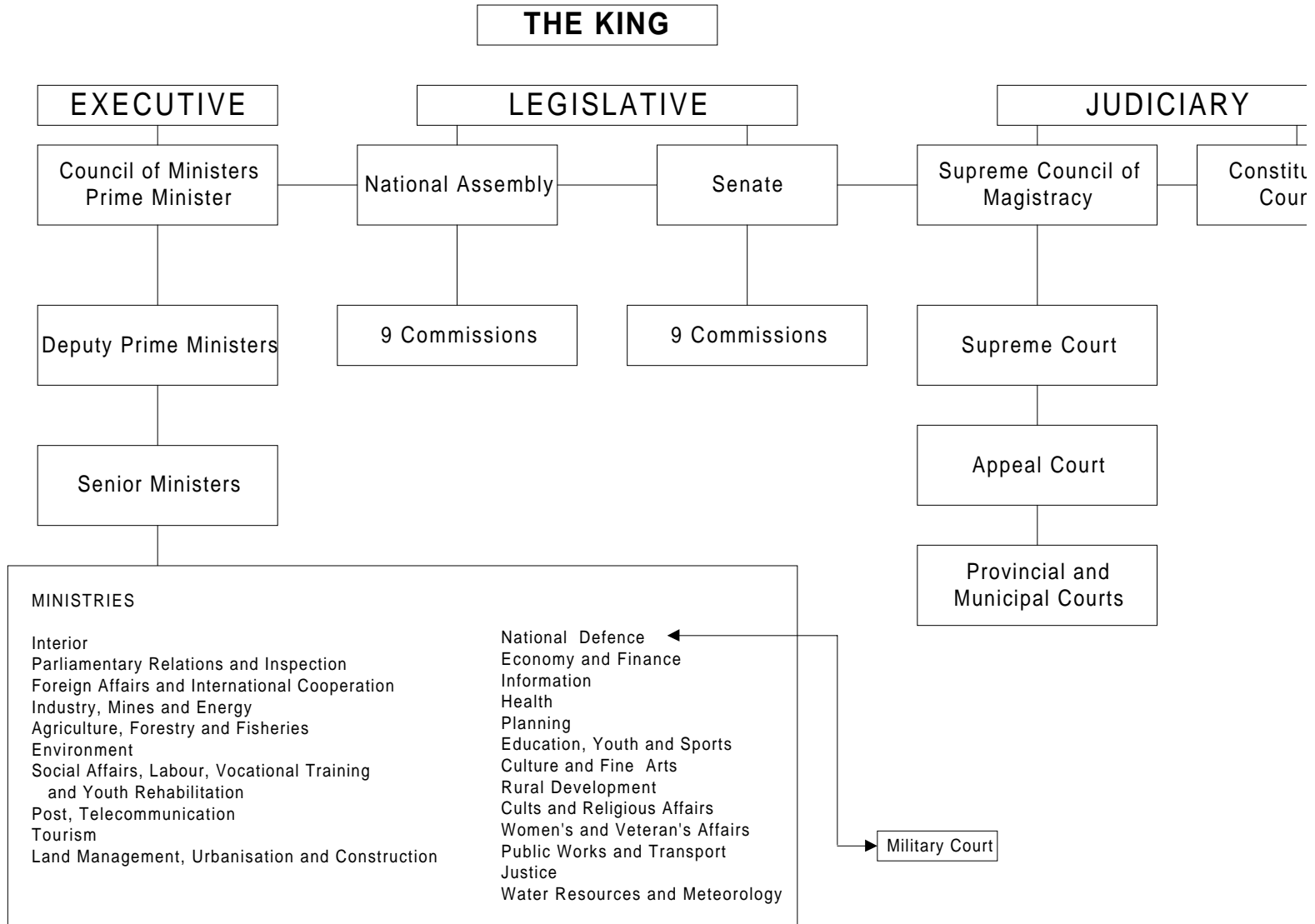
The Constitution also establishes standing commissions. Their organization and functioning are determined by the Internal Rules of Procedure of the National Assembly. Currently, there is a

45 See Figure 1 for an overall governance structure of the public sector.

46 Constitution, Art. 90.

47 The Internal Regulations of the National Assembly of the Kingdom of Cambodia.

Figure 1: Governance Structure of the Public Sector in Cambodia, 1999



Permanent Committee of the National Assembly and nine standing commissions. The Permanent Committee—consisting of the President of the National Assembly, two vice-presidents of the National Assembly, and the chairpersons of the nine commissions—manages the work of the Assembly and calls extraordinary sessions, when necessary.

The nine commissions examine draft laws submitted by the Government and submit their views to plenary sessions of the full Assembly. A commission consists of at least seven members (currently nine). Each has a chairperson, a vice-chairperson, and a secretary elected by members of the commission. However, in practice, the main political parties negotiate the allocation of commission chairs and vice-chairs based on party affiliation. The nine commissions currently in operation are:

- (1) Commission on Protection of Human Rights and Reception of Complaints;
- (2) Commission on Finance and Banking;
- (3) Commission on Economy, Planning, Investment, Agriculture, Rural Development, and Environment;
- (4) Commission on Foreign Affairs, International Cooperation, Information, and Media;
- (5) Commission on Legislation;
- (6) Commission on Education, Religion, Culture, and Tourism;
- (7) Commission on Health, Social, and Women's Affairs;
- (8) Commission on Interior, National Defense, Investigation, and Anticorruption; and
- (9) Commission on Public Works, Transport, Telecommunications, Post Office, Industry, Energy, Mines, and Commerce.

A Secretariat of the National Assembly is also established under the Assembly's Internal Rules of Procedure. The Secretariat prepares minutes of plenary sessions and meetings of the Permanent Committee and commissions, establishes communication between the Assembly and external institutions and organizations, and oversees general administration of the Assembly. The Secretariat had 234 staff in 1999 (Table 2). The National Assembly received around Riels 11 billion (\$3 million), or 1.2 percent of the government-funded national budget in 1997 (Table 3, column 1). Nearly 80 percent of the Assembly's budget was spent on wages in 1997.

Legislative Process

Members of the National Assembly, the Senate and prime minister can initiate legislation.⁴⁸ National Assembly members also have the right to propose amendments to laws.⁴⁹

Limits to the Power of the National Assembly
Proposals to amend laws, which aim to reduce public income or increase the burden on the people, are constitutionally unacceptable.⁵⁰ Laws adopted by the National Assembly will be annulled if they run counter to the principles of preserving national independence, sovereignty, territorial integrity or affect the political unity or administration of the nation.⁵¹ Initiatives to review or amend the Constitution are the prerogative of the King, prime minister and president of the National Assembly at the suggestion of one-quarter of all assembly members.⁵² The Constitution prohibits any revision or amendment affecting the system of liberal and pluralistic democracy and the regime of constitutional monarchy.⁵³

The Constitution establishes a Constitutional Council to safeguard the respect for the Constitution and determine the constitutionality of laws passed by the National Assembly. It also has the right to examine and decide on contested cases involving the election of Assembly members.⁵⁴ The Constitution prohibits the promulgation of any provision of a law ruled by the Constitutional Council as unconstitutional.⁵⁵ Decisions of the Constitutional Council are final. Only the Constitutional Council can annul a law adopted by the National Assembly.⁵⁶

Role as Check to the Executive Branch

The Government may be formed by a vote of confidence by a two-thirds majority of the National Assembly.⁵⁷ Assembly members have the right to raise a motion against the Government. Motions must be

48 Constitution, Art. 91.

49 Constitution, Art. 91.

50 Constitution, Art. 91.

51 Constitution, Art. 92.

52 Constitution, Art. 151 (former Art. 132).

53 Constitution, Art. 153 (former Art. 134).

54 Constitution, Art. 136 (former Art. 117).

55 Constitution, Art. 142 (former Art. 123).

56 Constitution, Art. 92.

57 Constitution, Art. 90.

Table 2: Number of Central and Provincial Civil Servants by Ministry
(August 1999)

	Total Civil Servants		Central Administration		Municipal and Provincial Administration		Percent of Administration in Total Civil Servants
	Number	Percent	Number	Percent	Number	Percent	
1. General Administration							
Royal Palace	268	0.2	268	0.8	-	-	100.0
National Assembly (Gen. Secretariat,	234	0.1	234	0.7	-	-	100.0
Senate (General Secretariat)	187	0.1	187	0.6	-	-	100.0
Council of Ministers	931	0.6	931	2.8	-	-	100.0
State Secretariat of Public Function	112	0.1	112	0.3	-	-	100.0
M. of Foreign Affairs	749	0.5	749	2.2	-	-	100.0
M. of Interior	9,514	5.8	492	1.5	9,022	6.9	5.2
M. of Economy and Finance	5,389	3.3	4,313	12.8	1,076	0.8	80.0
M. of Justice	1,225	0.7	476	1.4	749	0.6	38.9
Supreme Court	87	0.1	87	0.3	-	-	100.0
M. of Planning	1,682	1.0	642	1.9	1,040	0.8	38.2
M. of Parliamentary Affairs and Inspection	117	0.1	117	0.3	-	-	100.0
2. Social Sector							
M. of Education	80,816	49.4	3,057	9.1	77,759	59.8	3.8
M. of Health	18,853	11.5	4,104	12.2	14,749	11.4	21.8
M. of Culture and Fine Arts	3,655	2.2	1,731	5.2	1,924	1.5	47.4
M. of Religious Affairs	714	0.4	182	0.5	532	0.4	25.5
M. of Information	2,614	1.6	1,374	4.1	1,240	1.0	52.6
M. of Social Affairs	1,822	1.1	668	2.0	1,154	0.9	36.7
M. of Environment	1,227	0.8	412	1.2	815	0.6	33.6
M. of Women's Affairs	1,324	0.8	211	0.6	1,113	0.9	15.9
3. Economic Sector							
M. of Agriculture	10,995	6.7	4,273	12.7	6,722	5.2	38.9
M. of Rural Development	2,311	1.4	608	1.8	1,703	1.3	26.3
M. of Public Works	5,784	3.5	2,050	6.0	3,734	2.9	35.4
State Secretariat of Civil Aviation	636	0.4	636	1.9	-	-	100.0
M. of Industry, Energy and Mine	2,699	1.7	943	2.8	1,756	1.4	34.9
M. of Post and Telecommunication	2,114	1.3	1,391	4.1	723	0.6	65.8
M. of Commerce	2,297	1.4	1,355	4.0	942	0.7	59.0
M. of Tourism	1,025	0.6	534	1.6	491	0.4	52.1
M. of Urbanisation	2,466	1.5	655	1.9	1,811	1.4	26.6
M. of Water Resources	1,682	1.0	801	2.4	881	0.7	47.6
Total	163,529	100.0	33,593	100.0	129,936	100.0	20.5
Total (excl. MOEYS)	82,713		30,536		52,177		36.9
Total (excl. MOEYS and MOI)	73,199		30,044		43,155		41.0
Reference:							
Total population	11,437,656		11,437,656		11,437,656		
Civil servants per hundred population	1		0		1		

MOEYS - Ministry of Education, Youth and Sports; MOI- Ministry of Interior
Source: Council of Ministers.

Table 3: Public Expenditure by Sector, 1997
(billion riels)

	1		2	3	4		5
	Government- Funded Budget		Official Development Assistance	Nongovernment Organizations*	All Sources		Percent of External Assistance in all Sources (2+3)-4
	Amount	Percent in Total	Amount	Amount	Amount	Percent	Percent
					(1+2+3)		
Civil Administration							
1. General Administration	147,603	15.9	111,053	2,302	260,974	12.9	43.4
Royal Palace	16,640	1.8	..	..	16,642	0.8	..
National Assembly	10,818	1.2	..	..	10,819	0.5	..
Council of Ministers (PM Office)	36,831	4.0	..	..	36,835	1.8	..
M. of Foreign Affairs	20,563	2.2	..	..	20,565	1.0	..
M. of Interior (general administration)	27,392	3.0	..	..	27,395	1.4	..
M. of Economy and Finance	31,214	3.4	..	..	31,217	1.5	..
M. of Justice	2,507	0.3	..	2,302	4,809	0.2	47.9
M. of Planning	1,638	0.2	..	..	1,638	0.1	..
2. Social Sector	204,237	22.1	343,367	101,029	648,655	32.1	68.5
M. of Education	86,261	9.3	166,475	47,095	299,840	14.8	71.2
M. of Health	54,689	5.9	95,729	31,498	181,922	9.0	69.9
M. of Culture and Fine Arts	4,046	0.4	..	..	4,046	0.2	..
M. of Cults and Religion	1,316	0.1	..	..	1,316	0.1	..
M. of Information	4,821	0.5	..	..	4,822	0.2	..
M. of Social Affairs	50,525	5.5	81,163	15,979	147,972	7.3	65.8
M. of Environment	1,551	0.2	..	3,931	5,482	0.3	71.7
M. of Women's Affairs	1,028	0.1	..	2,526	3,554	0.2	71.1
3. Economic Sector	133,583	14.4	493,219	45,753	672,569	33.3	80.1
M. of Agriculture, Forestry, and Fisheries	24,105	2.6	53,838	14,727	92,673	4.6	74.0
M. of Rural Development	3,686	0.4	203,007	31,026	237,719	11.8	98.4
M. of Public Works and Transportation	24,134	2.6	108,552	..	132,689	6.6	81.8
State Secretariat of Water Supply		-	741	..	741	0.0	100.0
State Secretariat of Civil Aviation	13,985	1.5	2,750	..	16,737	0.8	16.4
M. of Industry, Mine, and Energy	6,850	0.7	51,817	..	58,668	2.9	88.3
M. of Post and Telecommunication	53,431	5.8	50,102	..	103,539	5.1	48.4
M. of Commerce	5,641	0.6	22,412	..	28,054	1.4	79.9
M. of Tourism	1,751	0.2	..	..	1,751	0.1	..
Sub-total Civil Administration (1+2+3)	485,423	52.4	947,639	149,084	1,582,198	78.2	69.3
Defense and Security	440,477	47.6	-	-	440,525	21.8	0.0
1. M. of National Defense	304,744	32.9	-	-	304,744	15.1	..
2. Public Security	135,733	14.7	-	-	135,733	6.7	..
Grand Total	925,900.0	100.0	947,639.0	149,084.0	2,022,723.0	100.0	54.2
Percentage in all sources	45.8		46.8	7.4	100.0		

*NGO's own budget. Assistance provided by bilateral and multilateral funding institutions through NGO is included in ODA.
Source: World Bank (1999), Cambodia: Public Expenditure Review (Washington D.C.: World Bank), January.

submitted in writing through the president of the National Assembly.⁵⁸ Replies by the Government are provided by one or several ministers depending on the matter and ministries concerned. If the case concerns the overall policy of the Government, the prime minister replies, in person or in writing. Responses should be provided within seven days of receipt of the question. In the case of a verbal reply, the President of the National Assembly decides whether to hold an open debate. If there is no debate, the answer of the minister or prime minister concerned is final. If there is a debate, the questioner, other speakers, ministers, and/or the prime minister may exchange views within the allotted time, not exceeding one session. The National Assembly sets aside one day a week for question period.

National Assembly commissions may invite ministers to clarify certain issues under their responsibility.⁵⁹ The televising of National Assembly debates and increased willingness of the Government to respond to Assembly members' questions are important reforms that both increase transparency and promote accountability. The National Assembly retains the right to dismiss a member or members of the Government or the whole government by adoption of a motion of censure by a two-thirds majority of the entire Assembly.⁶⁰ A motion of censure must be supported by at least 30 Assembly members in order to put the motion to a vote.

Senate

In March 1999, the Constitution was amended in order to satisfy a political compromise between Cambodia's two main political parties—CPP and FUNCINPEC—after the July 1998 national elections. This amendment led to the creation of a second legislative body, the Senate.

The number of Senators can equal no more than half the number of members of the National Assembly.⁶¹ The Senate currently consists of 61 members, half of the National Assembly's membership of 122. The term of service of the Senate is six years, and

members are either appointed or elected in a "non-universal election."⁶²

As part of the political deal that formed the new Government, the main political parties determined the initial composition of the Senate. Senators were appointed by the political parties represented at the National Assembly and by the King. The President of the Senate belongs to CPP; the first and second vice-presidents are from FUNCINPEC. The remaining 58 members are also appointees: 2 by the King, 30 by CPP, 19 by FUNCINPEC, and 7 by the Sam Rainsy Party. The number of senators appointed by each political party is directly proportional to the number of National Assembly members from each party.

The next Senate election will be held in 2005. The Constitution stipulates that members of the Senate are either appointed or elected. The election of the Senate takes a different form from that of the National Assembly. First, two Senate members are appointed by the King. Second, two other members are elected by a comparative majority of votes. Third, the rest of the members are elected by a nonuniversal election. The key terms such as "comparative majority of votes" and "nonuniversal election" are not defined in the Constitution. According to Article 101, the organization and procedures for the election of members of the Senate, including the determination of voters and constituencies, shall be provided for in a law. To date, no such law exists.

The Constitution defines the role and responsibilities of the Senate. In Cambodia's legislative process, the Senate's role is to review draft laws approved by the National Assembly or other issues submitted by the Assembly for examination.⁶³ Senate review of a law can take no longer than one month, and only five days for urgent matters. Laws may be promulgated if the Senate either approves them or offers no opinion. The Senate may also return a law to the Assembly for reconsideration in its entirety or with regard to particular provisions, or it may reject a law. The National Assembly retains the ultimate power

58 Constitution, Art. 96.

59 Constitution, Art. 97.

60 Constitution, Art. 98.

61 Constitution, Art. 99.

62 Constitution, Art. 100. Royal Kram No. NS/Roy-Kr/0399/01, dated 8 March 1999, amended the Constitution of the Kingdom of Cambodia to, among other things, establish the Senate.

63 Constitution, Art. 113.

to enact laws during a second consideration if approved by a simple majority in an open vote.⁶⁴ No further Senate review is required. The Senate, in effect, acts as a filter, with the power to review legislation and compel reconsideration by the Assembly before its promulgation.

The Senate, like the National Assembly and the prime minister, may initiate legislation.⁶⁵ It also has the undefined duty to coordinate work between the National Assembly and the Government.⁶⁶ The National Assembly and the Senate may hold a congress (joint meeting of the National Assembly and Senate) to solve major problems of the country.⁶⁷ However, what “major problems” mean and how the congress is organized remain to be determined by law.

The organization of the Senate parallels that of the National Assembly. The Senate holds ordinary sessions twice a year, and each session lasts for at least three months.⁶⁸ The Permanent Committee of the Senate consists of the president, two vice-presidents, and presidents of all commissions. The Committee is responsible for organizing the Senate’s business between sessions. Nine commissions were established under the Internal Rules of Procedures of the Senate. The Senate commissions have parallel responsibilities to their counterparts of the National Assembly. Each commission consists of five members, including a chairperson, a vice-chairperson, and a secretary elected by the members. A Secretariat was also established to support the activities of the Senate. Some 187 staff were appointed for the Secretariat as of July 1999 (Table 2).⁶⁹ Around 50 out of 150 administrative staff hold university degrees.

While some maintain that the Senate was more a creation of political expediency than legislative necessity, others focusing on the actions of the young institution have remarked on its responsible role to date. It has not acted merely as a “rubber stamp” for laws already approved by the Council of Ministers

and National Assembly. Indeed, certain decisions have demonstrated a sensitivity to constitutional considerations. In May 1999, for example, the Senate rejected a law requiring the Minister of Women’s Affairs to be a woman as a violation of the Constitution’s provision on equal rights.⁷⁰

In addition to its commissions investigating complaints from citizens about illegal confiscation of land, the Senate has also shown a willingness to defend its role in the legislative process. For example, it rejected the draft law on financial institutions complaining that the five days allotted for review of “urgent” legislation were not enough to meaningfully consider such complex and important legislation.⁷¹ Instead, the Senate recommended amending the Constitution to ensure adequate time for its review.

The Centre for Democratic Institutions (CDI), attached to the Australian National University, conducted a preliminary needs assessment of the National Assembly and Senate in July 1999. Since then, training in English language, law, and computing has been provided by various donors. Others are helping to renovate Senate buildings.

The Executive

Overall Structure

The Executive branch of the Government is in charge of overall execution of national policies and programs, and is accountable to the National Assembly. Its mandate is to protect the independence, sovereignty, territorial integrity of Cambodia, adopt the policy of national reconciliation to ensure national unity, and preserve the good national traditions of the country.⁷² It also preserves and protects the law and ensures public order and security.

Organization

The Council of Ministers is the Royal Government of Cambodia.⁷³ It is led by one prime minister, assisted by two deputy prime ministers with senior

64 Constitution, Art. 113.

65 Constitution, Art. 91.

66 Constitution, Art. 112.

67 Constitution, Art. 116 and 117.

68 Constitution, Art. 107.

69 Rich, Roland (1999), Needs Assessment Preliminary Report on the Senate of the Kingdom of Cambodia.

70 Lor Chandara, Senate, Assembly Clash on Law, *CAMBODIA DAILY*, 20 May 1999, at 13.

71 Van Roeun and Debra Boyce, Bank Law Back to Assembly, *CAMBODIA DAILY*, 28 October 1999, at 11.

72 Constitution, Art. 52.

73 Constitution, Art. 118 (former Art. 99).

(or state) ministers, ministers, and secretaries of state as its members. The Government consists of both civil administration and the armed forces.

The Office of the Council of Ministers, led by a Senior Minister, is the highest administrative unit that guides and controls the agenda of the government for purposes of political coordination and administrative monitoring. For instance, all draft laws, decrees and subdecrees prepared by line ministries must be submitted to the Office of the Council of Ministers for review before discussion at a plenary session of the Council of Ministers. The Council of Jurists, a consultative organ under the Office of the Council of Ministers, reviews draft laws submitted by ministries. The number of the staff at the Office of the Council of Ministers, including one minister, two secretaries of state, and eight under-secretaries of State, stood at around 931 in 1999 (Table 2). The State Secretariat for Civil Aviation and State Secretariat for Public Functions are also directly attached to the Council of Ministers. A State Secretariat for Parliamentary Relations was upgraded to the Ministry of Parliamentary Relations and Inspection after the second government was formed in late 1998.

There are 24 line ministries under the Council of Ministers. A ministry is usually led by one minister, supported by two secretaries of state and five under-secretaries of State. All of these officials are political appointees. Two ministries—Interior and National Defense—have different structures with two co-ministers, six under-secretaries of State at the Ministry of National Defense (MND), and four secretaries of state at the Ministry of Interior (MOI).

Subnational Government

The Constitution divides the territory of the Kingdom of Cambodia into provinces and municipalities.⁷⁴ Currently, there are 20 provinces and four municipalities (Phnom Penh, Sihanoukville, Kep, and Pailin). Each province is divided into districts (srok), and each district into communes (khum). In addition, there are a group of villages (phum), although they are not considered formal administrative units. Each municipality is divided into sections (khan), each section into quarters (sangkat).

Article 127 of the Constitution stipulates that provinces, districts, sections, communes, and quarters are governed according to an organic law. However, no such organic law has been adopted by the National Assembly. Currently, subnational governments are governed by a series of *anu-kret* (subdecrees) issued by the Council of Ministers and *prakas* (ministerial implementing regulations) issued by MOI.

By subdecree, the MOI is in charge of administering provinces and municipalities. Provincial and municipal governors are appointed by the prime minister. At the moment, governorships are allocated among three political parties: 11 provinces and 1 municipality for CPP, 9 provinces and 2 municipalities for FUNCINPEC, and 1 municipality (Pailin) for the Democratic National Movement (former Khmer Rouge). First, second, and third deputy governors are also appointed for each province and municipality.

Civil Service

Size and Cost of the Civil Service

The number of Cambodia's civil servants appears to have increased in recent years. According to the Ministry of Economy and Finance (MEF), the number of regular staff increased from 144,000 in 1995 to around 152,000 employees in 1998 (Table 4), an increase of approximately 8,000 staff in three years, mainly due to increases of nonteacher civil servants. According to the Council of Ministers, the total number of civil servants stood at around 163,000 as of August 1999 (Table 2), a substantial difference from the 152,000 cited by MEF for 1998. In addition, there are some 21,000 civil servants classified as "special status"—such as commune personnel and village chiefs—over and above the regular staff (central, provincial, and district staff).

Allocation of Human Resources

The allocation of civil servants gives some insight into the structure of governance in Cambodia. Table 2 summarizes the allocation of civil servants by ministry in 1999.

The Ministry of Education, Youth and Sports (MOEYS) is the largest ministry in terms of staff, accounting for nearly 50 percent of total civil servants: the vast majority of MOEYS staff is made up of some 63,000 primary and secondary school

74 Constitution, art. 145 (former art. 126).

Table 4: Recent Trend of Civil Service: Numbers and Wages, 1995-1998

	1995	1996	1997	1998	Per Hundred Population, 1998
Number ('000 persons)					
I. Regular Staff	143.9	147.1	153.4	151.6	1.3
Civil Servants (nonteacher)	88.9	91.1	97.4	94.6	0.8
Teacher	55.0	56.0	56.0	57.0	0.5
II. Special Status	21.0	21.0	21.0	21.0	0.2
Communal personnel	7.9	7.9	7.9	7.9	0.1
Village chief	13.1	13.1	13.1	13.1	0.1
III. Total (I+II)	164.9	168.1	174.4	172.6	1.5
Wage (US\$million)					
I. Regular Staff	47.3	46.0	44.5	40.3	1.3
Civil Servants (nonteacher)	29.4	29.6	28.6	26.0	0.9
Teacher	17.9	164.0	15.9	14.3	0.5
II. Special Status	2.4	2.3	2.1	1.9	0.1
Communal personnel	1.0	1.0	0.9	0.8	0.0
Village chief	1.4	1.3	1.2	1.1	0.0
III. Total (I+II)	49.7	48.3	46.6	42.2	1.4
Average wage per month (US\$)					
I. Regular Staff	27.4	26.1	24.2	22.2	
Civil Servants (nonteacher)	27.6	27.1	24.5	22.9	
Teacher	27.1	24.4	23.7	20.9	
II. Special Status	9.5	9.1	8.3	7.5	
Communal personnel	10.5	10.5	9.5	8.4	
Village chief	8.9	8.3	7.6	7.0	
III. Average wage (I+II)	25.1	23.9	22.3	20.4	

Source: Ministry of Economy and Finance.

teachers employed across the country. This is followed by 12 percent at the Ministry of Health (MOH), 7 percent at the Ministry of Agriculture, Forestry, and Fisheries (MAFF), and 6 percent at the MOI excluding security forces under MOI control. MOEYS' share is more significant in provincial and municipal administration, representing around 60 percent. The largest four ministries—MOEYS, Ministry of Health (MOH), MOI, and MAFF—account for more than 80 percent of civil administration at the provincial and municipal levels.

The allocation of civil servants between central and provincial administration offers insight into the extent of concentration of civil servants in central administration. According to data from the Council

of Ministers, 20 percent of total civil servants work at central administration (Table 2). The same figure increases significantly, however, if large ministries such as MOEYS and MOI are excluded from the total number of civil servants. For example, if MOEYS is excluded, 37 percent of civil servants work at central administration. Excluding MOEYS and MOI, central administration represents 41 percent of all civil servants. A large proportion of civil servants posted in the provinces stay in the provincial capitals. In fact, the statistics highlight two issues: one, the concentration of decision-making power in Phnom Penh; two, how mega-ministries such as MOEYS and MOI currently draw on the largest proportion of government resources.

Table 5: Number of Civil Servants by Municipality and Province (August 1999)

	Number of Civil Servants	Total Population	Civil Servants per hundred Population
Total municipalities and provinces	129,936	11,437,656	1.1
Kampong Cham	14,188	1,608,914	0.9
Kandal	11,876	1,075,125	1.1
Phnom Penh (municipality)	12,226	999,804	1.2
Prey Vent	10,782	946,042	1.1
Battambang	10,231	793,129	1.3
Takeo	9,188	790,168	1.2
Siem Reap	6,876	696,164	1.0
Kampong Spoeu	6,602	598,882	1.1
Banteay Meanchey	6,212	577,772	1.1
Kampong Thom	6,317	569,060	1.1
Kampot	6,696	528,504	1.3
Svey Rieng	5,629	478,252	1.2
Kampong Chnang	4,955	417,693	1.2
Pursat	4,647	360,445	1.3
Kratie	3,273	263,175	1.2
Sihanoukville (municipality)	2,391	155,690	1.5
Koh Kong	1,467	132,106	1.1
Preah Vihear	1,479	119,261	1.2
Rattanakiri	1,299	94,243	1.4
Stung Treng	1,391	81,074	1.7
Oddar Meanchey	21	68,279	0.0
Mondolkiri	809	32,407	2.5
Kep (municipality)	525	28,660	1.8
Pailin (municipality)	856	22,906	3.7

*Total population is based on the results of the 1998 National Population Census.
Source: Council of Ministers.

Another interesting point is the distribution of civil servants among provinces and municipalities. Table 5 presents the number of civil servants by province and municipality. A few points may be worth noting. Cambodia's civil servant density at provincial and municipal administration is 1.1 civil servants per hundred population in August 1999. Second, the civil servant density appears to be spread evenly between 1.0 and 1.5 among provinces and municipalities. Third, there are a few irregular cases such as Pailin, Kep, Mondolkiri (very high density), and Oddar Meanchey (very low density). All are very small provinces or municipalities with special characteristics. Pailin and Kep are recently created municipalities. Mondolkiri is a remote, sparsely

populated, northern province bordering Viet Nam, and Oddar Meanchey is a province created in early 1999.

Allocation of Financial Resources

The World Bank in its Public Expenditure Review tallied expenditures into four main sectors: social, economic, general administration, and defense/security. The social sector receives 22 percent of the government-funded budget, general administration receives 16 percent, and the economic sector 14 percent (Table 3, column 1). Defense and security officially received 48 percent of the total government-funded budget in 1997.

Budget allocations for the social sector do not match the extremely high proportion of human resources employed in the sector. For instance, MOEYS and MOH employ more than 60 percent of the civil servants, and yet receive only 15 percent of the government-funded national budget (Table 3, column 1). Official development assistance (ODA) and NGOs contribute 69 percent of total social sector expenditures (Table 3, column 5).

Public expenditures have been heavily dependent on external assistance in recent years. Nearly 70 percent of all public expenditures (excluding defense and security) were funded by ODA and NGOs in 1997 (Table 3, column 4). Dependency on external assistance is highest in the economic sector (80 percent) among the three sectors.

Military and Security Forces

The military and security services have been, and still are, a dominant power in Cambodia. This reflects the reality of three decades of Cambodian civil war. Efforts for reconciliation after the Paris Peace Accords in 1991 significantly improved the security situation in Cambodia, and yet the civil war against the Khmer Rouge continued in some border areas until 1998. With the end of civil war after the collapse of the Khmer Rouge, it is time to reexamine the role and responsibilities of Cambodia's military and security forces.

Statistics reveal clearly that the dominance of military force in the public sector remains largely unchanged. The national budget for the MND alone accounted for 48 percent of total government-funded national budget in 1997 (Table 3, column 1). The large proportion of military expenditures crowds out public

Table 6: Recent Trend of Armed Forces: Numbers and Wages, 1995-1998

	1995	1996	1997	1998	Per Hundred Population 1998
Number ('000 persons)					
I. Regular Staff	206.7	191.1	190.9	209.0	1.8
National Defense Force	138.7	122.8	123.1	143.3	1.3
Public Security Force	68.0	68.3	67.8	65.7	0.6
II. Special Status Staff	57.8	57.8	59.4	39.6	0.3
Military Militia	23.0	23.0	27.9	7.5	0.1
Commune Militia	34.8	34.8	31.5	32.1	0.3
Total (I+II)	264.5	248.9	250.3	248.6	2.2
Wage (million US\$)					
I. Regular Staff	86.0	77.5	77.5	74.7	1.3
National Defense Force	70.4	62.1	60.0	54.7	0.9
Public Security Force	15.6	15.4	17.5	20.0	0.5
II. Special Status Staff	7.2	6.7	6.5	2.8	0.1
Military Militia	4.9	4.5	4.8	1.2	0
Commune Militia	2.3	2.2	1.7	1.6	0
Total (I+II)	93.2	84.2	84.0	77.5	1.4
Average wage per month (US\$)					
I. Regular Staff	34.7	33.8	33.8	29.8	
National Defense Force	42.3	42.1	40.6	31.8	
Public Security Force	19.1	18.8	21.5	25.4	
II. Special Status Staff	10.4	9.7	9.1	5.9	
Military Militia	17.8	16.3	14.3	13.3	
Commune Militia	5.5	5.3	4.5	4.2	
Total (I+II)	29.4	28.2	28.0	26.0	

Source: Ministry of Economy and Finance.

expenditures on social and economic sectors that are vital for sustainable development. The large presence of the military is also seen in the number of military personnel. Military personnel totaled 143,000 in 1998 (Table 6). In fact, military personnel increased in 1998 due to re-integration of defected soldiers of the Khmer Rouge into the RCAF. An international comparison also highlights the large presence of military forces in Cambodia. Armed forces personnel in Cambodia represent 12.5 per thousand population in 1998. This figure is much higher than those of ASEAN and neighboring countries such as Viet Nam (7.5) and Lao People's Democratic Republic (Lao PDR) (10.2), which also experienced long periods of armed conflict (Table 7).

In addition to military forces, Cambodia still maintains large well-armed forces for maintaining public security, including regular police. They are

officially controlled by MOI. About 15 percent of the government-funded national budget was allocated for public security in 1997 (Table 3, column 1). The number of regular staff for public security was 66,000 in 1998 (Table 6). In addition, special status staff—military and commune militia—stood at 40,000 in 1998. Both regular and special status staff for public security totaled 106,000 in that same year. The recently approved budget for 2000 includes a 15 percent increase in security expenditures from 1999 levels.

The Government recognizes the need to re-examine the role of armed forces in Cambodia. Some work has begun on redefining the mission and mandate of the armed forces. One major initiative is a national program to demobilize soldiers and assist with their integration into the civilian community. This issue is discussed in more detail in Chapter V.

The Judiciary

The Judiciary in Cambodia has experienced both massive setbacks and promising changes over the past 25 years. As a whole, the legal sector was decimated by the Khmer Rouge regime. Most judges and lawyers were killed; the few fortunate ones were able to flee the country. The rebuilding of Cambodia in the 1980s included efforts to restore the court system. Given the absence of persons with legal education, the government filled most judicial posts (judges and prosecutors) with former teachers, who represented the largest group of educated people surviving the Khmer Rouge genocide.

The Judiciary, and Cambodia's legal system generally, followed a socialist structure. Socialist legal principles and processes defined both the institutions and substantive laws of Cambodia's legal system in the 1980s. Much of this system remains operational today. The lack of people with legal training combined with centralized, communist policies gave the Ministry of Justice (MOJ) a dominant hand in judicial affairs. This legacy of MOJ control over the Judiciary persists today, despite progress in reforming the structure of the Judiciary.

The Constitution

The Constitution of Cambodia defines a system of governance based upon the separation of powers of the Legislative, Executive, and the Judicial branches.⁷⁵ The Judiciary is explicitly established as an independent branch of government. Article 128 states, "the Judicial power shall be an independent power."⁷⁶ The Constitution reiterates this idea by reaffirming that Judicial power, defined broadly to cover all lawsuits including administrative cases,⁷⁷ "shall not be granted to the legislative or executive branches."⁷⁸ The authority of the Judiciary rests exclusively with the Supreme Court and lower courts.⁷⁹ To be precise, only judges have the right to

75 Constitution of the Kingdom of Cambodia, as amended on 4 March 1999 and promulgated on 8 March 1999 by Royal Kram No. NS/Roy-Kr/0399/01, Art. 51.

76 Constitution, Art. 128.

77 Ibid.

78 Constitution, Art. 130.

79 Constitution, Art. 128.

Table 7: Military Force in ASEAN and Other Countries, 1995

	Military Expenditure		Armed Forces Personnel	
	% of GNP	% of Central Government	Total (thousands)	per thousand population
ASEAN				
Cambodia	3.1	..	143	12.5
Indonesia	1.8	8.9	280	1.4
Lao PDR	4.2	22.3	50	10.2
Malaysia	3.0	12.4	122	6.1
Philippines	9.5	8.5	110	1.6
Singapore	4.7	24.0	60	20.1
Thailand	2.5	15.2	288	4.9
Viet Nam	2.6	10.9	550	7.5
East Asia				
China, People's Republic of	2.3	18.5	2,930	2.4
Korea, Democratic People's Rep. of	28.6	..	1,040	43.6
Mongolia	2.4	7.0	21	8.5
Korea, Rep. of	3.4	13.6	655	14.6
Japan	1.0	4.2	240	1.9
Pacific				
Australia	2.5	8.8	58	3.2
New Zealand	1.3	3.3	10	2.8
North America				
Canada	1.7	7.1	70	2.4
United States	3.8	17.4	1,620	6.2

^a Cambodia: 1998 data for armed force personnel provided from Ministry of Economy and Finance. Total population data was used from NIS (1999), General Population of Cambodia 1998.

Source: World Bank, World Development Indicators, 1997 and 1998.

adjudicate.⁸⁰ The Constitution also protects the Judiciary from interference by other branches of government by expressly prohibiting the dismissal of judges.⁸¹

The Constitution mandates that the King is the guarantor of the independence of the Judiciary with the assistance of the Supreme Council of Magistracy (SCM).⁸²

The Constitution identifies four distinct components of the Judiciary: (1) the Constitutional Council, (2) the SCM, (3) the courts, and (4) the prosecutors.

80 Constitution, Art. 129.

81 Constitution, Art. 133. This conflicts with Article 21 which provides for dismissal of judges by the King based on proposals from the Supreme Council of Magistracy.

82 Constitution, Art. 132.

The Constitutional Council

The Constitutional Council holds the constitutional duty to safeguard respect for the Constitution by interpreting the Constitution and all laws passed by the National Assembly and reviewed by the Senate. The Council, which consists of nine members holding staggered, nine-year terms, is also empowered to decide cases involving the election of Assembly and Senate members.⁸³

Under the Constitution, all draft laws approved by the National Assembly (including internal rules of both legislative bodies and all “organic laws”) must be forwarded to the Council for review prior to their promulgation.⁸⁴ The Council must rule on the constitutionality of a law within 30 days of its submission. Laws already promulgated may also be sent to the Constitutional Council for a ruling on their constitutionality.⁸⁵ Decisions of the Constitutional Council are final and not subject to appeal. Provisions ruled unconstitutional are void and may not be implemented.⁸⁶ The Council has also a consultative role with respect to any proposals to amend the Constitution.

The Council was formed in 1998 during the run-up to national elections for the National Assembly. According to its organic law, the Council both determines whether laws conform to the Constitution and decides on disputes related to the election of members of the National Assembly. At present, the Law on Organization and Functioning of the Constitutional Council does not give the Council power to decide disputes related to membership in the newly formed Senate.

More importantly, there does not appear to be a consistently applied procedure for forwarding draft laws to the Constitutional Council. It appears that only “organic” laws are consistently sent to the Council for review. Other “nonorganic” laws approved by the National Assembly are still sometimes forwarded to the

King for promulgation without prior Council review, despite the clear constitutional requirement to the contrary.

Supreme Council of Magistracy

Under the Constitution, the Supreme Council of Magistracy (SCM) is the prime guardian of the independence of the Judiciary.⁸⁷ Only the SCM is empowered to discipline judges and forward proposals to the King on appointment of all judges and prosecutors.⁸⁸ The organic law creating the SCM, the Law on the Organization and Functioning of the Supreme Council of Magistracy (the “SCM Law”), more specifically defines its powers. The SCM must be consulted on any draft laws concerning the functions and organization of the Judiciary.⁸⁹ In addition, only the SCM is empowered to make recommendations to the King for the appointment, transfer, promotion, suspension, and removal of all judges and prosecutors.⁹⁰ It might be noted that under a law enacted prior to the Constitution, MOJ held the power to recommend appointments, transfers, and suspensions of all judges and prosecutors, except for the President of the Supreme Court and General Prosecutor of the Supreme Court whom the National Assembly selected.⁹¹

The SCM comprises the King, who acts as chairperson, and eight members, including the Minister of Justice.⁹² Three members are judges elected by the Judiciary and serve renewable, five-year terms. In the King’s absence, the President of the Senate, as acting head of state, chairs the SCM. In other words, in the absence of the King, the SCM not only includes officials from both the Executive and Legislative branches, but a legislator actually chairs the body charged with protecting the independence of the Judiciary. The first meeting of the SCM at which substantive matters involving the Judiciary were discussed only took place in late 1999.

83 Constitution, Art. 136.

84 Constitution, Art. 140. Under this article, the King, Prime Minister, Presidents of the National Assembly and Senate, one tenth of the Assembly’s members or one fourth of the Senate’s members have the power to forward draft laws to the Constitutional Council. It is unclear, however, at what point in the legislative process this is supposed to occur and who among those with this power is supposed to forward draft laws to the Constitutional Council.

85 Constitution, Art. 141.

86 Constitution, Art. 142.

87 Constitution, Art. 132.

88 Constitution, Art. 133, 134.

89 Law on the Organization and Functioning of the Supreme Council of Magistracy, adopted by the National Assembly on 22 December 1994 and promulgated by Royal Kram No. 09/NS 94 [hereinafter SCM Law], Art. 10.

90 SCM Law, Art. 11.

91 Law on Definition and Activities of Courts in the State of Cambodia (1993), Art. 17, 19, 21.

92 SCM Law, Art. 2. In addition to the Minister of Justice, the other members include the Chiefs of the Supreme Court and Appeal Court, the General Prosecutors to the Supreme Court and Appeal Court, and three judges elected by all Cambodian judges.

Table 8: Judges, Prosecutors, and Officials at the Ministry of Justice and Courts (January 1999)

Municipal/ Provincial Court	Judges			Prosecutors			Clerks	Officials	Total
	Male	Female	Total	Male	Female	Total			
I. Ministry of Justice	6	2	8	0	0	0	45	262	315
II. Court System	96	11	107	55	0	55	472	247	881
1. High Courts	17	1	18	8	0	8	104	24	154
Supreme Court	9	0	9	4	0	4	62	14	89
Court of Appeal	8	1	9	4	0	4	42	10	65
2. Municipal Courts	13	1	14	6	0	6	97	21	138
Phnom Penh	10	1	11	4	0	4	84	5	104
Sihanoukville	3	0	3	2	0	2	13	16	34
Kep	..	..	..	..	..	..	..	..	..
Pailin	..	..	..	..	..	..	..	..	..
3. Provincial Courts	66	9	75	41	0	41	271	202	589
Baneay Meanchey	3	0	3	2	0	2	10	13	28
Battambang	4	1	5	2	0	2	21	16	44
Kampong Cham	5	1	6	4	0	4	26	14	50
Kampong Chhnang	4	0	4	2	0	2	12	12	30
Kampong Speu	3	0	3	3	0	3	12	13	31
Kampong Thom	4	1	5	2	0	2	12	13	32
Kampot	4	1	5	2	0	2	16	15	38
Kandal	4	1	5	3	0	3	49	8	65
Koh Kong	3	0	3	2	0	2	5	7	17
Kratie	3	1	4	2	0	2	9	7	22
Mondokiri	2	1	3	2	0	2	4	3	12
Oddar Meanchey	..	..	..	..	..	..	..	..	..
Pursat	4	0	4	2	0	2	12	9	27
Preah Vihear	2	0	2	1	0	1	4	0	7
Prey Veng	4	1	5	2	0	2	18	17	42
Rattanakiri	2	0	2	2	0	2	6	1	11
Siem Reap	4	0	4	1	0	1	17	16	38
Stung Treng	3	1	4	2	0	2	3	4	13
Svay Rieng	4	0	4	2	0	2	14	11	31
Takeo	4	0	4	3	0	3	21	23	51
Grand Total (I+II)	102	13	115	55	0	55	517	509	1,196

Source: Ministry of Justice.

The Court System

Although the Constitution says that rules governing judges, prosecutors, and the functioning of the Judiciary shall be defined in specific laws, no such laws have been enacted in the six years since establishment of the Constitution. In 1993, prior to the UN-organized elections, the State of Cambodia passed a Law on Definition and Activities of Courts in the State of Cambodia, re-defining the court system. This law left many issues of jurisdiction among courts unsettled and provides no standards for resolving jurisdictional disputes.

At present, the Cambodian Judiciary consists of 117 judges, of which approximately 11percent are

women (Table 8).⁹³ A Supreme Court, with nine judges and four prosecutors, sits atop the court system. There is one Appeal Court, located in Phnom Penh, also consisting of nine judges and four prosecutors. The Appeal Court was established in 1993 during the period of the UNTAC. Lower courts are located in each province and municipality. A court will be officially established in the municipality of Pailin in the year 2000, according to MOJ.⁹⁴ The

93 Information provided by MOJ.

94 The reintegration of Pailin, a former Khmer Rouge stronghold near the Thai border, into government-controlled Cambodia began in 1996 with the defection of a large contingent of soldiers and their families led by Ieng Sary, the former Foreign Minister of the Khmer Rouge regime. The defection deal made Pailin a municipality within Cambodia's administrative system but provided its leaders significant autonomy in running the region's affairs.

SCM must approve its establishment. The Government does not recognize the current Pailin court. Cambodia's newest province, Odday Meanchay, presently has no court.

There is also a military court that falls under the jurisdiction of MND. The Law on Definition and Activities of Courts in the State of Cambodia says military courts have jurisdiction over cases related to "military offenses," defined as offenses committed by soldiers against "military discipline" or that affect "military property." What constitutes "military discipline" or "military property" or who in fact are considered "soldiers" are not defined. This allows the military court to interpret its jurisdiction in ways that sometimes strain legal logic. The Law states that offenses by military personnel under the criminal law must be handled by provincial/municipal courts.⁹⁵

In addition to hearing cases involving soldiers, military courts have inexplicably handled cases involving persons who are not soldiers or ministry personnel. In addition, military prisons are sometimes used to detain nonmilitary persons. The legal basis for these actions is unclear, nor do any apparent standards exist for determining which cases or persons end up before the military court.

Oddly, most of Cambodia's current judges and prosecutors were reappointed in May 1993, the day before the UN-sponsored elections that led to the formation of the first government.⁹⁶ A second set of judges and prosecutors, holders of either a law degree or two-year certificate, was appointed in January 1998. In general, the appointment of judges has not been a model of transparent governance thus far in Cambodia.

Eight active judges work within MOJ. One observer suggests that these judges were, in fact, removed from their posts due to complaints of serious misconduct. True or not, their presence within an Executive branch institution seems incompatible with a separation of powers, and represents an example of the blurring of roles in Cambodia's system of governance.

⁹⁵ Law on Definition and Activities of Courts in the State of Cambodia, Art. 9.

⁹⁶ According to documents provided by the MOJ, most judges and prosecutors were "appointed" in May 1993. In fact, this would have been a reappointment of officials already serving in those posts in advance of the UN-sponsored elections in July 1993.

It is widely held that the court system is riddled with corruption. One senior government official bluntly said, "Cambodian courts are so corrupted they're beyond help." Recently, the Governor of Phnom Penh publicly accused the courts of widespread corruption and delivered to the King, the Prime Minister, and the Minister of Justice a list of municipal court officials allegedly receiving large sums of money.⁹⁷ This led to an investigation of possible corruption by court officials. The Governor also cited the need to change court personnel, most of whom have held their posts since the 1980s.

According to many lawyers, corruption exists at every step of the legal process from the police to the courts. In case work, clerks and judges are most susceptible. Corruption in the courts is said to quickly co-opt new lawyers and court personnel. Private, *ex parte* contacts with a judge are easy to arrange; money is often expected. Judges, like all civil servants, receive a salary that falls below a reasonable living wage. Often corrupt practices are seen as a means to augment an inadequate income. The SCM recently considered a draft Statute of Magistrates that includes a provision increasing judicial salaries.

The Prosecutors

Cambodia's Judiciary includes 54 prosecutors (Table 8). In the present legal system, prosecutors charge people with crimes. However, the prosecutor's power is often limited by the role of the investigating judge. Once criminal charges are filed, the case is managed by an investigating judge who conducts an investigation. He/she reviews evidence, examines witnesses, and compiles a case file. The investigating judge decides whether enough evidence exists to send the case to trial.

When a case reaches trial, the role of prosecutors also appears limited. Criminal trials do not usually include witnesses other than the defendant. Prosecutors try cases by presenting statements and reports from the existing case file. Police rarely testify at trial, instead police reports are provided as evidence. Often, corrupt judges and prosecutors discourage

⁹⁷ Saing Soenthrith and Kevin Doyle, Governor Wants Court Probe, *CAMBODIA DAILY*, 1 December 1999 at 1.

police from testifying; they are concerned the police may oppose a decision to acquit. Trial judges have full access to the case file and frequently decide the outcome of the cases prior to the trial. Thus, the prosecutor's presentation at trial is more form than substance. The prosecutor's most important work is before the investigating judge.

Despite the present patterns, prosecutors do have a meaningful role at trial. In fact, prosecutors wield great influence, especially over judicial decision making. Prior to 1993, prosecutors acted like an assistant magistrate and were also the communist party's representative in court. The basic principle of judicial independence was anathema to the entire system of governance in Cambodia. Judges often feared prosecutors; a prosecutor's appeal meant in effect that the prosecutor was serving notice to both the Appeal Court and the Party that a judge had erred in his decision making. Thus, judges rarely made decisions without the prior agreement of the prosecutors. Some observers say that the judicial process in many courts still operates in this manner.

Prosecutors also have a role to play in the enforcement of court decisions. There is no law on the enforcement of judgments issued by the courts. This complicates enforcement and has at times led to violence. Recognizing this problem, in 1997 MOJ issued an order in which the ministry "decides to give prosecutors the competence/right to lead in the implementation of court decisions for all levels of courts" on the request of a party.⁹⁸ The order remains in force until a follow-up law is enacted or a subdecree is issued.

Accounts of prosecutor misconduct continue to emerge. These include directing arrests without evidence, threatening parties, and even ordering the arrest of a lawyer in the course of representation.⁹⁹ Corruption, rather than confusion over proper functions, is reportedly behind these alleged actions.

The Criminal Process

The criminal process in Cambodia faces enormous challenges, both in its legal framework and practice.

⁹⁸ Order on Implementation of Court Decisions, No. 117 SR RV97, 31 January 1997.

⁹⁹ Situation of Human Rights in Cambodia—Report of the Secretary-General, A/54/353, 20 September 1999 [hereinafter Report of the Secretary-General], at para. 66.

There are currently two criminal laws enforced in Cambodia: the 1993 Law on Criminal Procedure, enacted by the State of Cambodia, and a provisional criminal law created by the UNTAC, also in 1993. Both laws are ambiguous and inconsistent with each other, for example with regard to criminal procedures and certain penalties. This compounds the difficulty of judges in deciding criminal cases. It also highlights the urgent need for the enactment of a new, modern Penal Code, Law on Criminal Procedures, and Law of Evidence. In addition, there are no laws to specifically regulate and clarify the duties and powers of prosecutors, the national police, or judges. These basic laws are the foundation of a well-functioning criminal justice system.

Criminal prosecutions in Cambodia take place within a multi-tiered system of police, prosecutors and judges.

For the most part, criminal prosecutions rely upon confessions of the accused. According to 1996-1999 statistics collected and maintained by a local legal aid organization, of the 1,337 criminal cases 16 percent involved forced confessions, 44 percent involved voluntary confessions, and 2.5 percent involved torture but resulted in no confession. The data, drawn from a statistically significant number of cases, confirms the widely held belief among lawyers and other legal practitioners that confessions are a cornerstone of criminal cases. This raises some troubling issues for the Cambodian legal system: forensic and other physical evidence are rarely collected, defendants are detained without immediate access to counsel or family, and trials are frequently conducted without witnesses. In effect, most defendants, willingly or unwillingly, end up being their own accusers at trial. Self-incrimination is not the exception but a well-established rule in Cambodia.

Moreover, the limited capacity of the police—whether due to a lack of financial resources, expertise, or tools—to gather physical evidence places enormous pressure on them to gain (or extract) a confession within the first 48 hours after arrest. The law requires a person to appear in court to be formally charged within 48 hours of their arrest. It is easy to understand why confessions are so prevalent in criminal cases, and one might reasonably conclude that the actual number of forced confessions is much

higher than the above figures indicate. MOJ and MOI have acknowledged the problem of torture and coerced confessions in Cambodia, issues that have been documented by UN.¹⁰⁰ The high incidence of deaths in police custody and during arrest has also been noted.¹⁰¹ There are also documented cases of extrajudicial killings by police as recent as October 1999.¹⁰²

Reforms among the various security institutions—the National Police, gendarmerie, municipal police, and other security units—are critical. They were the subject of a recent report titled “Report of the Office of the High Commissioner for Human Rights Mission to Assess the Current Situation of Criminal Justice in the Kingdom of Cambodia.” Reforms in security institutions are arguably even more important for Cambodia than demobilization of the military. The police have a more entrenched, more pervasive role in the everyday lives of most Cambodians. They are also directly related to the functioning of the judicial process.

Unfortunately, there has been little attention or effort by the Government or aid agencies to reform Cambodia’s security institutions, and there is no clear plan for reform. Reforms among the various branches of police are fundamental to improving governance in Cambodia. They need to be made a priority.

As mentioned, little evidence is presented during a trial. Witnesses (including the police) rarely testify; the accused is often the only person to appear. With the exception of the examination of the defendant, trials generally consist of the presentation of information from the case file. Police reports and witness statements form the basis for questioning. This process, in addition to excluding the possibility of cross-examination of witnesses against the accused, bears little consequence on the trial outcome. Decisions are often written prior to trial, and sometimes refer to “evidence” not presented at trial. A lawyer’s presentation and legal arguments carry little weight. In part, this situation persists because no law on evidence exists. Meanwhile, the problem is aggravated

because the evidence in case files is compiled by an investigating judge who decides whether or not to forward the case to trial.

As a result, many trials in Cambodia appear more for show as evidence in the case file is already fixed, and trial judges frequently reach decisions before the trial begins. It appears that the most important stage of the criminal process is when a case is before the investigating judge; witnesses, if any, are examined and evidence is collected and assessed. As one experienced Cambodian lawyer said, the system expects that lawyers will not wait until the trial begins to be actively involved. However, in practice, lawyers are not brought into the criminal process until the investigating judge has finished the investigation. This is not accidental given the crucial role confessions play in the process.

Judges continue to be part of the transparency problem plaguing Cambodia’s legal system. Some try to persuade defendants to proceed without a lawyer and specifically warn against their representation by a legal aid organization. Serious gaps in the legal framework—for example, the lack of modern rules of criminal and civil procedure—allow this situation to continue. The result is a system in which individuals are highly vulnerable to manipulation, misinformation, and procedural (and sometimes physical) abuse.

The appeal process is more streamlined, though still problematic. The Appeal Court in Phnom Penh handles all appeals nationwide. This is a significant barrier to appeal for cases tried in distant provincial courts. The problem is then compounded by the practice of the Appeal Court to, in effect, retry all cases. Evidence is presented and witnesses, often only the accused, are questioned. In a Judiciary that lacks sufficient human resources, conducting a second full trial at the Appeal Court places a large burden on the court system.

Moreover, the Appeal Court is located far away from many provinces. There is limited road access linking Phnom Penh with the outlying regions. It is a tremendous expense for the Government and parties concerned to transport themselves, witnesses, the accused (for criminal cases), and other evidence to Phnom Penh for the appeal. Often the only “evidence,” other than the accused in criminal cases, that

100 Report of the Secretary-General, at para. 70-71.

101 Report of the Office of the High Commissioner for Human Rights Mission to Assess the Current Situation of Criminal Justice in the Kingdom of Cambodia (10-22 May 1999) at 12.

102 Why is this Man Dead?, PHNOM PENH POST, October 29 - November 11, 1999, at 3.

makes it to Phnom Penh is the case file. The Court must rely even more heavily on the file as the basis for decisions. Parties, especially criminal defendants, have even less opportunity to challenge evidence against them or offer proof to the contrary. The high costs involved further limit the ability of parties to make their case in a meaningful way. Commonly, appeals simply result in slight reductions in the penalties levied against the accused. Some observers describe the appeal process for criminal cases as meaningless given these constraints.

Civil Society

This section examines specific segments of civil society—the private sector, NGOs, and the Cambodian Bar Association. Although Cambodia’s civil society includes a wide range of individuals and institutions, attention is focused on these sectors because they are the most active on governance issues and are participating directly in sustainable social and economic development in Cambodia. This is meant in no way to minimize the role or importance of other members of Cambodia’s civil society such as trade unions and religious organizations, or to downplay the need for other sectors of civil society to actively contribute to a public dialogue on important issues.

Private Sector

In 1989, private sector development and transition to a market economy began in earnest in Cambodia. The Government launched a liberalization program that permitted greater economic rights and freedom. These measures included, among other things, liberalization in private ownership of land, price controls, commercial transactions, and privatization of state-owned enterprises. The political regime, however, remained in the hands of the ruling party, the CPP. Some important laws related to economic rights and activities were adopted before the promulgation of the 1993 Constitution, and are currently applicable. These laws include a Contract Law (1989) and Land Law (1992).

The emerging private sector gathered momentum between 1993 and mid-1997. During this period, Cambodia’s gross GDP grew by 4-8 percent annually in real terms. Development of

services and industry sectors was particularly dynamic, and led the moderately high growth. Seen as one of the emerging transitional markets in South-east Asia, an increasing number of foreign companies invested in Cambodia.

Some important laws regulating the private sector were enacted between 1993 and mid-1997. Among those were a Civil Aviation Law (1994), Land Management, Urbanization, and Construction Law (1994), Law on Investment (1994), Chamber of Commerce Law (1995), Commercial Register Law (1995), Law on Organization and Functioning of Council for Development in Cambodia (CDC), and Cambodia Investment Board (CIB) (1995) and Law on Taxation (1997).

New government institutions were also created to enforce these laws. Among these, the CIB under the CDC is perhaps one of the most important institutions related to the private sector. CIB has authority to grant tax incentives contained in the Law on Investment to investment projects. Any investment project, Cambodian-owned, foreign-owned, or joint venture between Cambodian and foreign companies, may seek tax incentives. The tax incentives are seen as among the most generous in the region. These incentives include inter alia: (a) corporate profit tax rates of 9 percent, as opposed to 20 percent without CIB approval; (b) duty-free import of raw and other materials used for investment projects; and (c) tax holidays of up to eight years if certain conditions are met.¹⁰³

Political turmoil after the July events in 1997, coupled with the Asian financial crisis, had severe adverse impacts on the development of the private sector. Businesses lost confidence in Cambodia’s political stability and security, and gave up or postponed new investments. The tourism industry suffered from the drop in tourist arrivals. Consumers cut spending due to the loss of income-generating opportunities and political uncertainty. Aggregate private expenditures declined sharply, and real GDP grew only an average of 2 percent per annum over the period 1997-1998.¹⁰⁴ Adverse impacts of the Asian

103 Mekong Law Group (1999), *MEKONG LAW REPORT: CAMBODIA INVESTMENT GUIDE* (Phnom Penh: Dirksen Flipse Doran & Le), p.13.

104 A more detail analysis can be found in Chan Sophal, Toshiyasu Kato, Long Vou Piseth, So Sovannarith, Tia Savora, Hang Chuon Naron, Kao Kim Hourn, and Chea Vuthna (1999), *IMPACT OF THE ASIAN FINANCIAL CRISIS ON THE SEATEs: THE CAMBODIAN PERSPECTIVE* (Phnom Penh: CDRI/CICP, September), Working Paper No.12.

crisis were not felt immediately after the crisis erupted. However, the decline in investment from the crisis-hit neighboring countries became apparent in late 1998 and 1999.¹⁰⁵

Although the decline of foreign investment remains a concern, Cambodia's economy began to recover in 1999 and is expected to grow by 4 percent in real terms. The development of the regulatory framework for the private sector also appears to be back on track after the formation of a coalition government in November 1998. A series of draft laws related to the private sector were submitted to the National Assembly and the Senate in the second half of 1999.

Although the recent recovery of Cambodia's economy is a blessing, there remains room for major improvements in the regulatory framework for the private sector if Cambodia is to sustain economic growth and development. Chapter V discusses some key governance issues related to the private sector.

NGOs

Prior to the signing of the Paris Peace Accords in December 1991, there were relatively few NGOs operating in Cambodia. Their numbers increased dramatically after the Accords were finalized. According to the CDC database, 296 NGOs, including both international and Cambodian, were involved in more than 500 projects in 1998.¹⁰⁶ Of these NGOs, 133 are international NGOs, 159 are Cambodian NGOs, and 4 are NGO peak bodies (umbrella organizations). The actual number of NGOs may far exceed this number.¹⁰⁷ There are several membership organizations of NGOs, including the Cooperation Committee for Cambodia, NGO Forum Cambodia, Ponlok Khmer, Medicam, and Educam.

The presence of NGOs in Cambodia is also substantial in financial terms. In 1998, total disbursements by NGOs accounted for \$83 million, of which

\$56 million (or 68 percent of total NGO disbursements) came from private donors, religious organizations, philanthropic organizations, and NGO funding agencies. The remaining \$26 million (or 32 percent of total disbursements) was channeled through multilateral and bilateral aid organizations. Of the total \$83 million in NGO disbursements, some \$11 million was spent by Cambodian NGOs.¹⁰⁸ Through their work with the Government, NGOs contributed 7.4 percent of total public expenditures in 1997 (Table 3, column 3).

According to 1998 statistics, a large portion of NGO disbursements was earmarked for the provinces. Sixty-three percent of total disbursements was spent in areas outside the capital of Phnom Penh, 26 percent was spent on projects in the capital, while 11 percent of total disbursements was spent on nation-wide programs.

The activities of NGOs are diverse. Trends in the primary areas of NGO activities can be summarized from disbursement data. According to the CDC database, NGOs spent 38 percent of total disbursements in the health sector. This is followed by area development which includes roads and rural development initiatives (23 percent) and social development (21 percent). Meanwhile, human resource development (10 percent) makes up the remaining bulk of NGO disbursements. In addition, a significant number of local NGOs are active in human rights and provide free legal aid to the poor. There are also a number of NGOs associated with religious organizations.

The Government views NGOs with a liberal attitude. The Government and Cambodia's citizens have seen a major expansion of nongovernmental activities since 1991. Recognizing the lack of sufficient public revenues, NGO activities are regarded as a vehicle for development, particularly in rural areas.

Although several versions of an NGO law have been drafted at the MOI and Office of the Council of Ministers, there is no law that specifically governs the activities of NGOs in Cambodia. NGOs themselves recognize the importance of legally binding guidelines. In a recent statement, NGOs commented,

105 The recent trend of investment can be found in Economy Watch, *CAMBODIA DEVELOPMENT REVIEW* (Phnom Penh: Cambodia Development Resource Institute), Volume 3, Issue 3, 1999.

106 Royal Government of Cambodia (1998), *NON-GOVERNMENT ORGANIZATIONS IN CAMBODIA 1998* (Phnom Penh: Council for Development of Cambodia, June). According to an estimate of CDC, around 110 NGOs did not respond to the questionnaires circulated for the compilation of the database.

107 A recent study by a local NGO reported that 595 Cambodian NGOs were registered at the Ministry of Interior, although it is not clear whether all of them are currently operational. See for more details Khous, Thida (1999), *COUNTRY STUDY: NON-GOVERNMENTAL ORGANIZATIONS IN CAMBODIA* (Phnom Penh: SILAKA).

108 Ponlok (1999), *CAMBODIAN NGOS RESOURCE DIRECTORY* (Phnom Penh: Ponlok).

“without this (clear guidelines for NGO operations), NGOs may make decisions in a vacuum, or government officials may give discretionary interpretations of the status or standing of NGOs.”¹⁰⁹

Other Civil Society Organizations

The Cambodian Bar

The Cambodian Bar Association was established by law in 1995. The Bar currently has 216 lawyer-members. Government lawyers are not permitted to join. The Bar is increasingly involved in law reform. It publicly comments on legal reform issues or current events with legal significance. According to its President, the Bar has provided input into the drafting of the land law, penal code, laws on criminal and civil procedures, and the subdecree for the Law on Press Regime. Of particular note, the Bar took the initiative to convene the first meeting of the NGO/IO Land Law Working Group. It has also commented openly on critical issues related to Cambodia’s Judiciary, for example, the formation of a tribunal to try Khmer Rouge leaders.

The Cambodian Bar’s membership is notable given that the organization is relatively new. The Bar, however, experiences some difficulty regulating the practice of law. Under the Bar Statute, only members of the Bar may practice law in Cambodia. The Bar, however, has only a limited ability to regulate the practice of law. For example, it is unable to prevent various “legal advisers” to the Government—many of whom are not in fact members of the Bar and cannot therefore legally practice law in Cambodia—from representing private clients (individuals and companies) due to the power of the officials they advise.

Meanwhile, the Bar also suffers from a severe lack of resources. It is unable to provide any continuing legal education to its members or to offer legal education to the public. This is an unfortunate circumstance given the apparent willingness and increased capacity of the Bar’s leaders to act independently, actively, and effectively on important legal issues.

109 Medicam, NGO Forum Cambodia, and Cooperation Committee for Cambodia (1999), NGO Statement to the 1999 Consultative Group Meeting on Cambodia, 25-26 February 1999.

Media

Cambodia’s media underwent a dramatic transformation before and after the UNTAC era from 1992 to 1993.

Before UNTAC, media organizations were arms of political parties used primarily for propaganda. Few, if any, media were seen as independent. Media were also divided geographically. In the territory controlled by the State of Cambodia, there were four newspapers, one state-run news agency, one radio station, and one TV station.¹¹⁰ All were under the strict direction and review of the Commission for Propaganda and Education of the Central Committee of People’s Revolutionary Party (predecessor of the CPP). In the Thai border areas, resistance forces (FUNCINPEC, KPRLF, DK) operated their own radio facilities and news bulletin broadcasting from Thai territory or border areas.¹¹¹

The situation changed after the arrival of UNTAC in March 1992. UNTAC drafted a “Media Charter” that aimed to establish a framework for a free press in all areas of the UNTAC operation. The Media Charter, in the absence of a true legal framework, provided an environment in which numerous nonparty, privately owned print media sprang up. In addition to state-run media, two new categories of independent print media emerged: (1) newspapers started and funded by foreign corporations, and (2) small Khmer-owned newspapers and magazines. Independent, privately owned broadcast media, mainly TV and radio stations, emerged. Political parties such as FUNCINPEC created a media network comparable to that of the State of Cambodia. By the national election in May 1993, FUNCINPEC had one newspaper, one FM radio, and one TV station.

Media organizations operating in Cambodia are numerous. Currently, there are more than 200 newspapers and magazines, including foreign language newspapers in English, French, and Chinese. For broadcast media, six TV stations currently operate in Phnom Penh, one of which is owned by the State

110 Chapter 6, in Mehta, Harish, C. (1997) *CAMBODIA SILENCED: THE PRESS UNDER SIX REGIME* (Bangkok: White Lotus Co.)

111 Marston, John (1996), “Cambodian News Media in the UNTAC Period and After,” Chapter 8, in Heder, Steven and Judy Ledgerwood (eds.), *PROPAGANDA, POLITICS, AND VIOLENCE IN CAMBODIA: DEMOCRATIC TRANSITION UNDER UNITED NATIONS PEACE KEEPING* (New York: M.E. Sharpe, Inc.).

(National Television of Kampuchea). Two other TV stations hold licenses, but are not operating at the moment. In addition, there are nine TV stations based in provincial capitals (Kampong Som, Koh Kong, Battambang, Siem Reap, Pursat, Rattanakiri), of which six are owned by the State. Thirteen FM radio stations operate in Phnom Penh; one of them is State owned. There is only one AM radio station in Cambodia (National Radio of Cambodia). The RCAF also operates a radio station. The Government owns some press agencies including Agence Khmère de Presse and the Ministry of Women's and Veterans Affairs-operated Ch'pous Tov Muk magazine. Finally, 12 foreign news agencies and representative correspondents have offices in Cambodia. Political parties in Cambodia continue to maintain significant

influence, some say control, over many if not most of the local media. The story is different in Phnom Penh. A strong media presence has emerged with a liberal license to write and report on the nation's political and social developments.

The Constitution and the Law on Press Regime, adopted in July 1995, provide the legal framework for the print media in Cambodia. Article 41 in the Constitution guarantees the freedoms of expression, press, and publication. The Press Law establishes a legal framework that conforms with the 1993 Constitution. MOI drafted a subdecree on the Implementation of Press Procedures, but it has not yet been submitted to the Council of Ministers. Currently, Cambodia has no law on broadcast media.