

Case Studies in Reform: Lessons in Governance

This chapter will examine five key sectors of reform identified by the Government as priority sectors for good governance in Cambodia. The chapter begins with a brief introduction to the Government's current reform platform and institutional structure for reform. The sections that follow address each priority sector of reform:

- Public Finance;
- Public Administrative Reform for Civilian Government and the Armed Forces;
- Decentralization;
- Judicial/Legal System: Strengthening Accountability institutions and the Legal Framework for the Private Sector; and
- Regional Integration.

For each sector, this chapter will provide a general introduction assessing sector structure, current reform initiatives, key issues, and ongoing challenges for reform.

The Reform Platform

Following Cambodia's second national elections in 1998, the coalition Royal Government of Cambodia was formed in late 1998. In an effort to revive Cambodia's economy and reinvigorate its engagement with the aid community, the Government committed itself to reforms in a number of key sectors. While pledges of reform have been made since the first government began in 1993, the new Government set out to demonstrate its renewed political will to pursue difficult reforms. Cambodia's most senior

leaders continue to speak about the necessity of reforms to ensure Cambodia's future. As the Prime Minister said recently, "Reforms are a life-and-death issue for Cambodia."¹⁴⁹

The Government presented reform programs for a variety of priority areas at the Consultative Group Meeting with aid in February 1999. The key areas of reform highlighted by the Government were: demobilization of the military, fiscal/financial reforms, administrative reforms, and forestry management. The Government also offered more general pledges of judicial reform and the strengthening of good governance. As a consequence of the Consultative Group Meeting, aid agencies pledged some \$470 million in assistance. In addition, the Government and its development partners agreed to set up quarterly donor monitoring meetings to assess the progress of reforms in selected sectors. To coordinate the monitoring process, aid agencies have organized themselves into subgroups to review progress in key sectors such as forestry, fiscal/financial reform, demobilization, and administrative reform.

Institutional Structure for Reform

To coordinate and manage the government reform program, the Government established a Supreme Council of State Reform. The Supreme Council, chaired by the Prime Minister, holds overall responsibility for policy making, coordination, and supervision of reforms. It also oversees the work of five

¹⁴⁹ Closing Speech of Samdech Hun Sen, Prime Minister of the Royal Government of Cambodia, Donor Monitoring Meeting, 14 June 1999, at 1.

sector-specific reform councils: (i) Council of Armed Forces Demobilization, (ii) Council of Armed Forces Reform, (iii) Council for Administrative Reform, (iv) Council of Economic and Financial Reform, and (v) Council of Judicial Reform. Each council is tasked to set policies, and to coordinate and monitor implementation of reforms within its mandate. The councils covering demobilization, armed forces reform, and administrative reform have been established. The latter two councils are in the process of drafting organic subdecrees for submission to the Council of Ministers.

Public Finance Reforms

The Government's efforts to reform public finance have been a policy focus throughout the economic transition of the last decade. The agenda and priorities for reform have changed from time to time. Yet their importance for governance in Cambodia remains unchanged. To better understand the context of ongoing public finance reforms, it might be useful to briefly review public finance reforms since the transition to a market economy began 10 years ago.

Background

The transition began in earnest in 1989-1991 when the State of Cambodia faced a sudden drop in foreign assistance from the former Eastern Bloc, mainly Russia. This led the Government to run large budget deficits. Lacking alternative sources of finance, it financed the deficits through monetary financing, and ignited inflation. In 1990, the rate of inflation was around 150 percent. The UNTAC operations in 1992-1993 also entailed a huge injection of money into the economy, and heightened already existing inflationary pressures. Inflation rates persisted at high levels of more than 100 percent until 1992.

In 1993, the newly established Government faced a major economic challenge: containing inflation. The Government launched a major public finance reform through the Organic Budget Law adopted by the National Assembly in 1993. The Law tightened control over public revenues and expenditures by reforming institutional arrangements. The Law unified all flows of public finance in the hands of

the central Government by repealing the power of provincial governments to raise and spend public funds autonomously. Provincial governments were transformed into administrative units to implement national budgets determined by the central Government. The passage of the 1993 Organic Budget Law was followed by a series of administrative orders to enforce its implementation and to undertake further reforms.

Public finance reforms under the 1993 Organic Budget Law proved effective in fighting inflation. Inflation rates started declining in 1994 and were contained below an annual 10 percent rate from 1994 to 1997. Its effectiveness was also proved after mid-1997 when twin shocks hit Cambodia's economy: domestic conflict in July 1997 and the Asian financial crisis. Foreseeing an increase in budget deficits and subsequent inflation, the Government responded quickly to control public expenditures by adopting austerity measures. In the face of the twin crises, the Government contained inflation to about 9 percent and 13 percent in 1997 and 1998, respectively. In retrospect, Cambodia outperformed neighboring countries such as the Lao PDR and Indonesia in containing inflation after the Asian crisis.

Although effective in maintaining fiscal discipline, the 1993 Organic Budget Law and its institutional arrangements posed major challenges. One of the fundamental problems, as described by the World Bank, is that "the Cambodian budgetary process has sacrificed too much in terms of allocative and technical efficiency to maintain aggregate fiscal discipline."¹⁵⁰ To put it bluntly, current institutional arrangements for public expenditures are not conducive to disbursing planned amounts of budget to the right places at the right times, although the purse can be closed quickly.

The Government also faces a challenge on the revenue side of public finance. Despite its ongoing efforts, Cambodia's revenue-raising capacity has been very weak, ranked one of the lowest in the region. Public revenues remained around only 9 percent relative to GDP between 1995 and 1997, and even declined in 1998. Although Cambodia has the

¹⁵⁰ In the literature, "allocative efficiency" means the efficiency of resource use based on strategic priorities, and "technical efficiency" means the efficiency and effectiveness of programs and service delivery.

potential to raise public revenues significantly, several deficiencies in institutional arrangements have hindered the effective capture of potential revenues.

Public finance reforms regained momentum after the formation of a new Government in November 1998. The remaining sections discuss recent public finance reforms from the point of view of governance, and draw some lessons for the future.

Institutional Framework for Public Finance Reform

The Government identified public finance as one of the four key areas of reform at the 1999 Consultative Group Meeting. It planned to establish a Council of Economic and Financial Reform under the Supreme Council of State Reform. As of now, the Government is still drafting the organic subdecree for its establishment. Despite delays in the establishment of the Council, public finance reform appears to have been already undertaken vigorously under the initiative of the Ministry of Economy and Finance (MEF). Results of the reform program have been reported twice at the quarterly donor monitoring meetings in June and October 1999.

Public Finance Reform Program

The public finance reform program proposed by MEF targets three areas of reforms: (1) revenue-enhancing measures,¹⁵¹ (2) measures to improve expenditure management, and (3) establishment of accountability institutions and mechanisms to improve governance. Since this third area, establishment of accountability institutions and mechanisms, has broad implications beyond public finance, it will be discussed in the last section of this chapter in the context of judicial and legal reforms. This section examines the first two areas.

Revenue-enhancing measures

Tax revenues

As part of the implementation on the Law on Taxation, the Government introduced value-added taxes (VAT) in January 1999. The VAT replaced an earlier turnover tax and consumption tax, and its rate was set at ten percent.¹⁵² The VAT was initially applied to around 1,500 large firms with variable taxable income. The list of taxpayers subject to VAT was expanded towards the end of 1999 to broaden the tax base.¹⁵³ According to a senior official at MEF, some 2,000 companies ("real regime" companies with proper accounting standards) will be covered, and geographical coverage will expand to include five provinces: Sihanoukville, Koh Kong, Siem Reap, Kampong Cham, and Battambang.

Despite a one-year delay in its introduction, the VAT quickly proved to be the most effective instrument in raising public revenues. Benefiting largely from the expansion of VAT, domestic tax revenues increased by 93, 73, and 108 percent respectively during the first three quarters of 1999 relative to the previous year (Table 9). This was the first time since the Government was formed in 1993 that domestic tax revenues surpassed customs revenues.

In addition to the VAT, MEF took several measures to strengthen tax collection. For instance, MEF added some 50 tax officials at the Department of Taxation to meet increasing needs for tax experts. They were transferred from other departments within MEF. It also carried out on-the-job training in auditing at the Audit Office of the Department of Taxation. Furthermore, a network to exchange taxpayer information was established among the Department of Taxation, the Customs and Excise Department, and the Council for Development of Cambodia. This information network will be upgraded into a nationwide system of taxation identification numbers.

151 Some commentators question whether improving the revenue-to-GDP ratio should be a priority for least developed countries with low revenue-raising capacities. They point to Hong Kong, China as an example of an economic territory with a relatively low ratio of revenues-to-GDP that still provides public services efficiently and has demonstrated its ability to follow good governance practices. This issue merits further study in the Cambodian context to assess the appropriate balance to best promote economic growth and efficient public services.

152 RGC (1999), Report on Fiscal Reforms, prepared by MEF for the Quarterly Monitoring Meeting, 14 June 1999 [hereinafter Fiscal Reform Report, June 1999].

153 RGC (1999), Report on Fiscal Reforms, prepared by MEF for the Quarterly Monitoring Meeting, 27 October 1999 [hereinafter Fiscal Reform Report, October 1999].

Table 9: Trend of Public Revenues and Expenditures in Cambodia, 1996-1999

	1996				1997				1998				1999		
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3
I. Amount (billion riels)															
Revenue	181	181	195	192	193	204	177	307	216	237	188	277	301	373	343
Tax Revenue	127	127	135	145	141	150	131	176	157	176	135	210	239	260	244
Domestic taxes	43	48	48	51	51	66	56	77	70	79	61	93	135	135	128
Customs Duties	84	79	87	94	90	84	75	99	88	98	74	117	105	125	116
Nontax Revenue	41	45	46	44	47	53	41	131	51	52	47	55	60	102	99
Forest Exploitation	4	8	5	10	6	14	6	11	6	5	5	9	3	6	15
Post and Telecommunications	12	18	21	13	17	18	18	31	20	19	24	24	27	19	26
Royalties	0	0	0	0	1	1	1	31	1	0	2	0	1	0	0
Others	25	18	20	21	12	20	17	58	27	27	16	22	30	76	58
Capital Revenue	13	9	14	3	5	1	5	1	8	9	6	11	1	11	0
Expenditure	330	296	316	343	268	302	302	449	298	362	302	335	394	378	413
Capital Expenditure	141	113	117	105	103	109	126	175	98	96	80	94	132	130	151
Current Expenditure	189	185	199	239	165	193	176	274	200	267	222	241	262	248	262
Defense/Security	100	106	101	92	96	85	97	162	92	149	82	118	100	127	124
Civil Administration	89	80	98	147	69	108	79	112	105	118	140	123	163	122	35
Overall Deficit	-149	-117	-121	-151	-75	-97	-125	-141	-82	-125	-114	-58	-94	-5	-70
II. Percentage Change from Previous Year															
Revenue					6.4	12.8	-9.3	60.0	12.3	16.3	5.9	-9.9	39.0	57.1	82.8
Tax Revenue					10.8	18.1	-3.0	21.0	11.3	17.5	3.6	19.8	52.0	47.5	80.2
Domestic Taxes					18.8	37.1	16.7	50.6	36.6	18.7	9.6	22.1	92.4	71.8	107.9
Customs Duties					6.8	6.5	-14.0	5.1	-2.6	16.5	-0.9	18	19.4	28.0	57.2
NonTax Revenue					14.7	18.2	10.2	195.0	9.4	-0.7	13.1	-57.7	17.8	95.1	112.0
Forest Exploitation					27.9	67.9	33.3	9.9	-47.3	-62.0	-20.3	-15.3	-6.9	20.7	195.0
Post and Telecommunications					44.0	-2.2	-14.9	136.6	22.2	9.4	35.0	-23.5	33.8	-1.4	8.6
Royalties					..	..	..	..	-46.2	-43.8	250.0	99.7	-28.6	-75.1	-95.6
Others					-6.5	11.0	-18.6	173.0	16.8	35.1	-6.0	-61.6	9.6	181.0	271.1
Capital Revenue					-63.4	-85.9	-63.7	-68.0	60.4	574.6	5.7	1287.5	-84.4	22.0	-99.1
Expenditure					-19.0	1.2	-4.4	30.6	11.4	20.2	0.0	-25.4	32.3	4.4	36.7
Capital Expenditure					-27.3	-3.6	7.9	67.1	-4.3	-12.1	-36.4	-46.2	34.5	36.3	88.3
Current Expenditure					-12.8	4.1	-11.6	14.7	21.1	38.4	26.0	-12.2	31.2	-7.0	18.0
Defense/Security					-3.9	-19.3	-3.6	75.6	-4.5	74.5	-15.7	-27.4	8.5	-14.6	51.3
Civil Administration					-22.7	35.2	-19.9	-23.7	56.6	9.8	77.5	9.9	50.6	3.5	-3.4

Source: Ministry of Economy and Finance.

Other measures were reported at the recent Consultative Group Meeting and donor monitoring meetings without assessing their progress, including: strengthening the discipline of tax officials; cleaning up the Department of Taxation; avoiding ad hoc tax exemptions outside the Law on Investment; and applying strict measures to recover arrears from taxpayers or withholding agents. It might be suggested that developing indicators on some, if not all, of those measures would be useful for monitoring the progress of the Government's work.

Customs revenues

Customs duties (foreign trade taxes) have been a major source of public revenue for Cambodia. Before introduction of the VAT in 1999, customs duties accounted for more than 50 percent of all tax revenue. The Government launched pre-shipment inspection (PSI) services to enhance the capture of customs duties and facilitate foreign trade in 1995. PSI services were provided by a Swiss-based private company, SGS, under direct contract with the Government.

Despite its revenue potential, the capture of customs revenue has not shown significant progress in recent years. Customs revenues remained within the range of Riels 75 - 100 billion during 1996-1998, without showing any signs of increase (Table 9). This contrasts sharply with a steady upward trend of domestic tax revenue. An abrupt suspension of PSI by SGS in July 1999 reportedly caused considerable disruption to customs operations. With the SGS dispute unresolved, the Government launched an open tendering process to resume PSI in the near term. In sum, there is a wide scope for improvements in customs revenue, although the 1999 budgetary target for customs revenue appears to be achievable. In addition to resuming PSI in 2000, the Government has identified a variety of measures to strengthen customs administration, including:

- widely disseminating the customs code and relevant regulations;
- streamlining and simplifying clearance procedures;
- computerizing customs operations;
- implementing a staff roster system; and
- upgrading human resources through promotions, discipline, motivation, and training.

Recognizing the problem of widespread smuggling, the Government also declared that it would strictly implement measures to crack down on contraband, while taking stringent disciplinary actions against customs officials involved in illegal activities.¹⁵⁴

Nontax revenues

The Government completed a full transfer of garment quota management fees and all revenues from quota auctions to the Treasury by October 1999. Revenues from this transfer by the Ministry of Commerce are used to reduce the Government's net debt to the National Bank of Cambodia (NBC) as a result of monetary financing of budget deficits in 1998. This measure contributed significantly to the increase in nontax revenues in 1999. Perhaps more importantly, the full transfer from the Ministry presents an excellent model that other ministries should replicate. Indeed, diversion of revenues by line ministries has been a well-known problem for years.

The Government is also implementing measures to increase other nontax revenues—timber royalties, lease of enterprises, and post and telecommunications fees. However, performance in these areas was generally unsatisfactory in 1999. For instance, timber royalties showed no substantial expansion in the first three quarters of 1999, and the trend over the last three years has been flat (Table 9). It may take time for a new forestry policy to bear fruit, and revenue expansion of the Treasury to reflect its impact.

The Government is also taking measures to improve poor management of state-owned assets, particularly enforcing a direct transfer of rental income to the Treasury. Despite occasional warnings by MEF, line ministries sold or rented state-owned assets to the private sector without transferring the proceeds to the Treasury. In April 1999, MEF issued an interministerial circular to improve implementation of the Prime Ministerial Order on the Management of State Assets (Property) issued in December 1997. This Circular requires all contracts related to the lease or sale of state-owned assets to include a clause, "direct transfer of rental income to the Treasury." After this measure was introduced in April 1999, rental income reportedly increased sharply. The

154 Fiscal Reform Report, October 1999.

Government is also strengthening the recovery of arrears that are estimated to total Riels 6.2 billion for the lease of state-owned assets, and Riels 50 billion for telecommunication companies.

Measures to Improve Expenditure Management

Improving efficiency in the budgetary process
One of the urgent issues of public finance reform is to improve efficiency in the budget process. Disbursements to priority sectors—education, health, agriculture, and rural development—have been extremely slow and unreliable. These sectors under-spend their allotted budgets each year. Unless this issue is addressed, the impact of public expenditures on poverty alleviation and human resource development will remain poor. At the quarterly Donor Monitoring Meeting in October 1999, the Minister of Economy and Finance summarized the situation saying, “while the fiscal reforms have yielded some positive results on the revenue side, the public expenditure management has been less encouraging.” A Nobel Peace Prize laureate NGO working in the health sector, *Medicins Sans Frontieres*, recently informed the Government that it would withdraw from Cambodia unless expenditure management issues were addressed urgently.¹⁵⁵

To address the issue of the budgetary process, the Government has undertaken reforms primarily through three policy instruments: an Accelerated District Development (ADD) system, Priority Action Program (PAP), and Law on Financial Procedures and Provincial-Municipal Properties.

Health is one sector in which the Government, supported by aid agencies and NGOs concerned, is trying to decentralize fiscal/finance responsibilities. The MOH and its network of provincial and district health officials have little authority over budget and spending decisions related to the provision of health services in the provinces. MEF (as well as the provincial governor) must approve any use of public funds by MOH’s provincial health departments. Most funds are channeled through provincial treasuries, not through MOH which in effect has no control over its budget. The current system is

basically a reimbursement system, which forces provincial health departments to await disbursement from the provincial governor.

This process hinders both the planning and implementation of health care policies, leaving actual spending on health programs outside the control of MOH and its provincial officials. Such overly centralized financial systems result in delays and the underutilization of funds for health programs in Cambodia. During the first nine months of 1999, for example, only 28 percent of the budget allocated for public health was disbursed.¹⁵⁶ Spending in 1999 in agriculture, rural development, and social affairs was similarly behind budget. Among other things, this situation shows the costs of overly centralized governance to the delivery of public services to the people.

The ADD system was introduced in 1996 for the health sector.¹⁵⁷ It gives program managers at rural public hospitals and health centers greater certainty in the availability of funds and greater flexibility in the use of funds. Program managers receive a fixed cash advance from MEF via MOH for operational costs (called “Chapter 13”), from which they have discretion to allocate funds for predetermined, specific purposes such as patient food, emergency patient transport, and building maintenance. The ADD system operates in 22 districts covering 3 million people in rural areas. The disbursement record of the ADD system, however, has been unimpressive. For example, only 12 percent of Chapter 13 appropriations were reportedly disbursed in 1998.¹⁵⁸ In response, the Government doubled the ADD budget to Riels 6 billion (\$1.6 million) in 1999.

The PAP is an instrument to ensure the disbursement of budget to priority sectors in the face of revenue shortfalls. The PAP is assigned a special budget chapter in the annual Finance Act so that it will not be affected by any across-the-board budget cuts for line ministries. In the PAP, program inputs and outputs are made clear by identifying various indicators at the programming stage. Upon agreement with MEF, operational units at each ministry concerned receive a lump-sum resource envelope with which to

155 Calvert, Brian, Nobel Prize Winning MSF Mulls Leaving the Country, *CAMBODIA DAILY*, 29 October 1999.

156 Fiscal Reform Report, October 1999, at 6.

157 For more detailed descriptions of the ADD system, see Box 4.4, World Bank (1999).

158 p.8, Fiscal Reform Report, October 1999.

execute programs. Indicators are used to monitor the execution of programs. In the year 2000 budget, implementation of the PAP is planned on an experimental basis in five line ministries covering health, education, agriculture, rural development, and public works.¹⁵⁹

Since the 1999 Consultative Group Meeting, the Government has repeatedly expressed its willingness to embark on gradual decentralization of the budget system. This is intended to rationalize the roles of the central and provincial administration, and also to improve technical and allocative efficiency of the budgetary process. One key reform measure is the enactment of the Law on Financial Procedures and Provincial-Municipal Properties promulgated in February 1998. This Law gives provincial and municipal authorities limited autonomy to collect revenues and disburse expenditures of their own budgets. In the 1999 national budget, Riels 35 billion were earmarked for spending by provincial and municipal administrations. Of this amount, Riels 20 billion were expected to be financed by their own revenue collection.¹⁶⁰

In conjunction with decentralization, the Government will promote de-concentration to streamline authority for budget control at the provincial and municipal levels. This also aims to improve efficiency in the budgetary process. Under the current system, budget disbursements by provincial departments of line ministries requires the approval of provincial governors, and must go through the provincial treasury. The Government intends to transfer approval authority from provincial governors to directors of provincial departments of line ministries. However, no law or administrative order has yet to be enacted, though the current initiative was noted at the Donor Monitoring Meeting in October 1999.

Rationalizing public expenditures
Cambodia, like any other developing country, has very limited financial resources for public expenditures. It cannot afford to waste such scarce financial resources. This highlights the importance of establishing a close linkage between planning medium- to long-term development strategies and public

expenditure programs under the national budget. The national budget should be coherent and complement long-term development objectives such as poverty alleviation and sustained economic growth.

The Government developed a medium-term plan and strategies under its National Program to Rehabilitate and Develop Cambodia (NPRDC), the Socio-Economic Development Plan (SEDP) 1996-2000, and its 3rd Public Investment Program (PIP) 1998-2000. To link these plans to the annual budget, MEF introduced the Public Expenditure Program (PEP) in the year 2000 budget. The requirements for investment and recurrent costs set out by those plans are incorporated into the annual budget. The year 2000 budget is prepared within this framework and provides estimates of annual budgets for at least three consecutive years as annexes to the budget.

Another coordination mechanism to rationalize public expenditures is the Public Investment Management System (PIMS) introduced by CDC in 1998. This was intended to establish the coherence and complementarity of separate capital budgeting activities among government agencies such as CDC, Ministry of Planning, MEF, and other line ministries. Since the capital budgeting process involves planning, programming, budgeting, and monitoring by several agencies, it is important for these agencies to coordinate. The Government also recognizes the need to further strengthen the capacity of line ministries to implement the PIP.

Finally, coordination among aid agencies is a key element to rationalizing public expenditures, particularly through technical assistance to develop the capacity of ministries. A Sector-wide Approach Program (SWAP) was proposed by some international lending institutions, such as the World Bank. According to the World Bank (1999), "while SWAPs give donors less freedom in selecting the individual projects they [donors] wish to fund, it gives greater involvement in developing [along with the Cambodian government] the overall priorities and strategy for each of the key sectors." A SWAP is being discussed at the MOH.

159 p.2, Sr. Minister Keat Chhon's Address to Donor Monitoring Meeting, 27 October 1999.

160 Fiscal Reform Report, June 1999.

Key Issues in Public Finance Reform

A brief overview of reform programs shows that the Government is making enormous efforts to tackle a broad set of public finance problems with truly innovative approaches. Some reform measures have already made positive changes, such as a significant expansion in domestic tax revenue. The full transfer of garment quota-related revenue to the National Treasury by the Ministry of Commerce offers an excellent model that other ministries should replicate. Although the impact of expenditure reforms is not yet noticeable, measures such as the upgraded ADD and the new PAP in the year 2000 budget have the potential to make positive changes soon. It should be emphasized that most reforms were undertaken during a difficult period when twin shocks hit Cambodia's economy and support from international donors had not fully resumed. The authorities who took initiatives to reform public finance deserve credit for their leadership and determined efforts. The overview of reform programs raises issues that merit attention if Cambodia is to sustain the current momentum for public finance reform. Those key issues are:

- building human resources to carry out financial devolution;
- need for political commitment to boost public revenues; and
- need for initiatives by the Government to coordinate external assistance.

Building human resources to carry out financial devolution

Experiences with reforms suggest that a devolution of financial authority is key to modernizing public finance management in Cambodia. The excessively centralized public finance system under the Organic Budget Law of 1993 achieved fiscal discipline by sacrificing allocative and technical efficiency in the budgetary process. The Government recognizes the problem and has already taken important steps toward financial devolution. A major challenge facing the Government is to enhance efficiency of the budgetary process without compromising fiscal discipline. Overall, the public expenditure system ought to shift from a preaudit to a postaudit system. More

responsibilities will need to devolve to spending units to give autonomy and flexibility for their spending allocation. Auditing will then have to be undertaken after budgets have been spent. This will significantly improve the efficiency of the budgetary process without compromising fiscal discipline.

An important precondition for the success of a postaudit system is the capability of spending units to carry out financial and accounting management. Also, a sound auditing system, both internal and external, must be in place. In short, the development of human resources is the key for the success of a postaudit system. It must also keep up with the pace of financial devolution if fiscal discipline is to be maintained.

In addition to increased salaries to retain competent people full-time, the need to train finance officers at all levels of the Government is clear. It is important to ask what would be the most desirable approach to sustain training activities to meet the Government's long-term needs. Answering this question is beyond the scope of this paper. However, it seems apparent that public institutions such as a national training center of finance and accounting need to make training activities systematic and sustainable. Perhaps the training center can train trainers who help build capacity at the local level. This will also contribute to the standardization of accounting practices and procedures at all levels of government bureaucracy.

The need for political commitment to boost customs and nontax revenues

The success of the recently introduced VAT is encouraging. The Government's efforts to further expand the domestic tax base for the VAT are highly relevant to maximizing the VAT's contribution to enhancing domestic tax revenues. Despite serious efforts by MEF, however, revenue-enhancing measures in other areas—customs revenues and nontax revenues such as forestry, rental, and sales income from public property, revenues from post and telecommunications—have not produced much improvement.

One common institutional feature of all nontax revenue collection is that MEF needs cooperation from other ministries to collect these revenues. Whenever certain activities involve multiple ministries, a coordination mechanism is needed to reconcile the

different interests concerned. There is often a limit, however, to what line ministries can do by themselves because coordination is beyond their jurisdiction. Strong political commitment at higher levels within line ministries is needed for a coordination mechanism to perform its expected role. Thus, the presence of a strong political commitment at the highest level to tackle powerful vested interests is the critical precondition if the Government is serious about boosting nontax revenues.

Need for the initiative of the Government to coordinate external assistance

As discussed in the previous section, the Government is gradually building institutional and human resource capacities to link medium-term development plans and objectives to annual budgets. The case in point is the development of systems such as the PIMS and PEP. This will greatly help the Government plan annual budgets that are directly and rationally linked to achieve medium to long-term development goals. This will provide the Government with useful information to identify and prioritize aid-funded projects in the future. Furthermore, this will help rationalize annual public expenditures, particularly capital expenditures that have been driven primarily by suggestions and requests of aid agencies.

The recent initiative by aid agencies to coordinate projects funded by them at the sectoral level, using tools such as a SWAP, is highly relevant to rationalizing public expenditures. While the importance of aid coordination cannot be overemphasized, it might be also important to recognize its inherent limitations. It is natural that each aid agency wants to maintain the freedom to select projects. As the World Bank (1999) points out, "the effective subordination of donor activities to mutually negotiated sector-wide strategies would be not easy and there would be problems of agreements among individual donors regarding responsibility for specific inputs and outcomes."

Ultimately, it is Cambodia that owns all aid-funded projects. Thus the Government, as the executive body, should play the key role in identifying and prioritizing aid-funded projects in collaboration with aid agencies. The Government is already taking important steps to develop mechanisms to do so. It is suggested that these mechanisms be further developed and external assistance be gradually shifted

from aid-driven toward a Cambodian-driven basis. However, a word of caution is necessary—a Government-driven process of reform will only be effective to the extent that the Government is able to improve its governance practices to be more transparent, accountable and open to participation from nongovernment sectors.

Public Administrative Reform

Efforts to reform Cambodia's government structure and administration are not new. The first government made highly publicized statements about administrative reform between 1993 and 1997. These stated intentions were supported by substantial aid funds, primarily from United Nations Development Programme (UNDP) and the European Union (EU), channeled into public administrative reform projects. However, political rivalries, distrust, and tension within the coalition Government and unrealistic plans tabled by aid agencies that failed to appreciate their political implications dampened the prospects for reforms. The lack of results sapped aid support, and the outbreak of conflict in mid-1997 put reforms on hold pending organization of national elections in 1998.

With the launch of a new administration in November 1998, the Government prepared a revised plan for public administrative reform. In addition, reform of the military administration, including demobilization, was tabled. Renewed pressure from funding agencies for such reforms, based on the belief that a new opportunity existed with a more stable coalition government in place, played a role in this.

This section will address two elements of public administrative reform: reform of the civil administration and reform of the military.

Civil Administrative Reform

The Government presented a five-year (1999-2003) national program for administrative reform to aid agencies at the February 1999 Consultative Group Meeting. The primary objective of its civil administrative reform plan is to "establish a State administration that is neutral, responsible, transparent, closer to its citizens, and responsive to the needs of the

people.”¹⁶¹ In many respects, the Government’s aim for administrative reform is the establishment of good governance in Cambodia. Good governance is listed as one of the four “reform axes” or components of the Government’s plan, along with strengthening the Rule of Law, human resource development, and creation of a core group of civil servants to handle priority missions of the Government. The Government’s plan for civilian administrative reform includes four key strategies:

- rationalize the size of the civil service;
- create a more professional, effective, and responsible administration with adequate remuneration for civil servants;
- implement a modern management system to improve human resources within the administration; and
- implement de-concentration and decentralization of the government.

Institutional Framework for Administrative Reform

The Government’s administrative reform efforts are coordinated by the Council Administrative Reform (CAR), an interministerial body established by a subdecree in June 1999.¹⁶² The CAR is chaired by the Senior Minister in charge of the Office of the Council of Ministers and assisted by a secretariat. The CAR meets monthly and has organized three meetings with aid agencies in April, May, and October 1999. The Donor Sub-Group on Administrative Reform has indicated that the capacity of the CAR is inadequate to carry out the administrative reform program.

Operational since March 1999, the Secretariat General of the CAR (SGCAR) is led by a Secretary General and has 11 full-time staff. In addition, according to the Government, 24 ministries and state secretariats have established administrative reform working groups to coordinate reforms within their respective ministries/agencies. These ministry working groups meet with the SGCAR to disseminate information and consider policy initiatives.

¹⁶¹ Statement of H.E. Sok An, Senior Minister in charge of the Presidency of the Council of Ministers, Donor Monitoring Meeting, 14 June 1999, at 1.

¹⁶² Sub-Decree No. 51, 10 June 1999.

On 27 October 1999, the Government signed a subdecree creating an “anticorruption” council associated with the SGCAR. The council includes representatives from ministries concerned and other authorities. It is not clear what authority the unit will exercise, or how its role relates to the respective jurisdictions of the Ministry of Parliamentary Affairs and Inspection (which is drafting anticorruption legislation), the National Audit Authority (NAA) to be created by the Law on Audit recently adopted by the National Assembly, the inspection departments located within each ministry, or the Judiciary. The possibility of overlapping functions, competition for authority and budgetary resources, or inconsistent actions is very real. Given the pervasiveness of corruption in Cambodia and the fact that all members of this new body hold other government positions, the questions arises what such a body will contribute to the anticorruption effort in ways that other existing institutions are unable to.

The Civil Administrative Reform Program

Two components serve as the foundation for the Government’s administrative reform plan: a civil service census and a functional analysis of the public sector. Preparation for the civil service census began in August 1999 with the development of the initial work plan. The census questionnaire was distributed to central and provincial representatives in October 1999. The questionnaires collect personal data on each civil servant and immediate family as well as information on education, language skills and job experience. One hundred staff drawn from all ministries, with support from the World Bank, are conducting the census. The process includes several layers of validation and control prior to issuance of an identification card. The card will include a photo, fingerprint, and bar code recorded in a central computer system to prevent double entries and allow for cross-checking information.

There is a specific schedule for implementation of the census by ministry and province. The Government expects to complete the census by March 2000 for the central administration and by June 2000 for the provinces. Among other things, the Government will use the census for its payroll and human

resource management systems. The International Monetary Fund (IMF) had made completion of a civil service census one of the structural performance criteria for its new, three-year Enhanced Structural Adjustment Facility (ESAF) arrangement with Cambodia.¹⁶³

The second key activity of the administrative reform program is a functional analysis of each ministry. This activity is expected to begin with an analysis of the Council of Ministers, State Secretariat of Civil Service, and Ministry of Rural Development and gradually expand to cover all ministries. The Government intends the functional analysis to be completed by June 2000, when the census is scheduled to conclude nationwide.

The Government must be commended for pushing forward with these two fundamental tasks in the administrative reform program despite the current scarcity of resources. It demonstrates a renewed sense of purpose for this critical reform effort.

Together, the civil service census and functional analysis are intended to form the basis for the reorganization of ministries and professionalization of administration in Cambodia. Improvements in the level of professionalism of Cambodia's civil service will in part rest upon the development of job descriptions and career paths for civil servants as well as a new remuneration system that the Government plans to implement in November 2000.

Progress had been made in the establishment of a computerized human resource management information system that includes a payroll system and personnel database. Five ministries are using the system to date for their payroll. In order to ensure the validity of ministry payrolls, instituting the computerized payroll system will now be synchronized with completion of the civil service census. This will prevent the system from simply computerizing the existing, unreliable, and perhaps "ghost-ridden" payroll records used by ministries. At the moment, individual ministries maintain their own payroll systems. Many ministries do not know the exact number of civil servants in their pay since personnel departments have weak control over the rosters and no knowledge of number of personnel being paid in the provinces. UNDP has been a key agency providing support for these administrative reform initiatives.

163 IMF Mission Aide Memoire, 1 September 1999, Phnom Penh, at Table 1.

The Government is also beginning to downsize, though on a modest scale to date. It issued a subdecree to enforce the mandatory retirement age of 55 for civil servants. At the most recent Donor Monitoring Meeting in October 1999, the Government reported reducing the civil service by over 2,000 personnel since July 1999; half were retirees and half were "irregular cases."¹⁶⁴ Downsizing is one element of the Government's administrative reform program. Aid agencies have long called for cuts in the size of Cambodia's civil service. Indeed, formulation of a medium-term, administrative reform strategy and program that includes annual downsizing is one of the structural benchmarks included in IMF's ESAF arrangement. Removal of redundant civil servants from the public payroll was a required prior action for approval of the ESAF by IMF's Executive Board.¹⁶⁵ To emphasize the point, IMF urges deferring any general increase in civil service wages until a concrete plan for downsizing is adopted.¹⁶⁶

When asked for their opinions on staffing at the provincial level, governors were evenly divided between those who thought there are too many civil servants and those who believed that present levels are enough.¹⁶⁷

Future components of the administrative reform program include the creation of a "core group" of civil servants working in priority sectors of government who can lead in the implementation of reform measures, or change management as it has been termed. In preparation for this action, CAR is planning a study to identify priority government missions and mechanisms to identify the core group. The plan also calls for the reclassification of civil servants and development of socioeconomic measures (i.e., safety nets) to help integrate "excess" civil servants into the private sector.

164 The Implementation of the Administrative Reform Program, Statement of H.E. Sok An, Senior Minister in charge of the Presidency of the Council of Ministers, 27 October 1999, at 2.

165 IMF Mission Aide Memoire, at Table 1.

166 IMF Mission Aide Memoire, at 2.

167 Questionnaire. When asked to complete the following statement, "There are [too many, enough, not enough] government staff in my province," 45 percent of the governors answered "Too Many", 40 percent replied "Enough" and 15 percent said "Not Enough."

The Government also intends to revise the legal framework for administration in Cambodia. This includes subdecrees on the organization and functions of all ministries and state secretariats. Legal training of civil servants and standardization of administrative documents are also planned.

Strengthening the legal framework for public administration could also include a new law governing the civil service in Cambodia to replace the outdated Law on Civil Servants which will not be suitable for the redesigned administration that the Government is planning. Basic responsibilities and internal procedures for managing the civil service, including promotions, suspensions, and termination, should be defined in a law enacted by the National Assembly.

The Government has mentioned the drafting of a document that will be officially adopted (presumably as a subdecree by the Council of Ministers) describing the “obligations” of all civil servants. This may be akin to a code of conduct for civil servants. Adoption of a manual to promote common administrative practices among public institutions was expected in November 1999. However, the basic legal obligations and rights of civil servants, including proscribed activities and due process requirements for administrative practices, should be the subject of a law, not merely a governmental regulation. They involve important public policies that should be discussed publicly and debated by the legislature.

There has been relatively modest progress with administrative reform thus far. However, the renewed initiative only began recently, and the Government is proceeding at the moment with little financial support from aid agencies. It has suggested that its “major achievement” in administrative reform to date is the establishment of the CAR, its Secretariat General, and other institutional structures within ministries.¹⁶⁸ This seems to be true. As a result, the most difficult and potentially unpopular work lies ahead.

Issues in Civil Administrative Reform

Broadening Ownership of the Administrative Reform Effort

As with many of the reform efforts in Cambodia, a crucial question is to what extent the Government

has developed broad “ownership” of the reform initiatives. This issue involves the extent to which the planning of reforms reflects a consensus within the Government concerning major policies and elements of reform programs as well as the depth of political will, understanding, policy ideas, and commitment to implementing plans. Often these are difficult matters to assess.

Administrative reform represents a good example of this issue. There was a large, heavily funded project on national administrative reform which continued from 1994 to 1997. This project, for a variety of reasons including unrealistic plans by aid agencies, an underestimation of the political obstacles, and thin government ownership produced relatively meager results, especially given the amount of money it consumed. Now, there is a renewed effort to pursue administrative reform. No one disputes the necessity of public sector reforms; they are critical to progress in most sectors. The Government has presented a comprehensive and operationally challenging plan for administrative reform to aid agencies at the recent Consultative Group Meeting. This plan was drafted in French and English and elaborated by Cambodians themselves with very little technical and financial support from aid agencies.

The plan tabled by the Government at the Consultative Group Meeting resembles the original program for public administrative reform (PAR) pursued unsuccessfully in 1995-1997. UNDP is developing project documents for a second major administrative reform project which are expected to be finalized shortly. Discussions did not reveal any appreciable differences between the original PAR and the new PAR. However, the small group of senior officials responsible for overseeing the administrative reform program expresses strong feelings of ownership for the program and underscores the multiminsty composition of the CAR. These are important factors that were not present during the first administrative reform program from 1995-1997. There remains a heavy reliance on the idea that the political environment is now more conducive to administrative reform.

Conceptually and logistically, the plan is challenging. For example, good governance has been described at the same time as one of the four

168 Quarterly Progress Report of the Administration Reform Program 1999-2003, 27 October 1999 [hereinafter Quarterly Administration Reform Report], at 1.

components of the administrative reform plan as well as one of the three cross-cutting themes for activities in all the components during the different phases of the plan.¹⁶⁹ The use of good governance in such a manner might be confusing, even for someone who understands the nature of the plan.

There is a question whether the plan's implications for government decision making and operations are broadly understood. Dissemination of the plan to ministries and the civil service has only recently begun. Without a much broader understanding of the plan, the political will that appears to exist today may weaken once implementation begins and consequences become more visible.

According to some, past discussions of administrative reform, as with other reforms, illustrate a worrying tendency to focus on funding. This has been mentioned as a cause of concern. In particular, it was noted that discussions of reforms, particularly in presentations by the Government, seem to focus more on the need for funds from aid agencies and less on basic policy questions, developing mechanisms to ensure accountability and transparency, and the sequencing of actions to provide confidence that actions in fact match commitments.

Difference in Priority Between the Government and Some Aid Agencies Concerning the Downsizing of Civil Service

Downsizing of the civil service appears to be uppermost in the minds of aid agencies. Some of them seem to give little attention to other key issues in the administrative reform program. This may be true because downsizing produces measurable results. Reforms aimed at restructuring administration or changing government processes and practices, which are more important in the long term, are more difficult to quantify. However, some government officials do not view downsizing as a top priority in the civil service reform.

Our study, in Chapter III, suggests that civil servant density in Cambodia is low compared to those in neighboring countries. It is not entirely clear whether administrative reform should result in a significantly reduced number of civil servants. While budget constraints must be considered, the total number of civil servants may not necessarily exceed the

needs of the public sector in Cambodia. Rather, certain ministries may have a large surplus of unqualified staff relative to their functions, while other institutions—existing ones like the courts, new ones like the Supreme Council of Magistracy, or institutions not yet established such as NAA—require increased staffs with more specialized skills. In other words, Cambodia's public administration may not be bloated; instead it may be more a problem of having the wrong people doing the wrong things.

It may also be a problem of having too many ministries as opposed to too many officials. The current mandates and workloads of certain ministries may not justify their existence as full ministries. The merger of ministries and elimination of others might increase public sector efficiency as well as reduce opportunities for corruption. Hopefully, the planned functional analysis will examine these issues.

Moreover, the ineffectiveness of the civil service is connected to the continued presence of long-entrenched officials who either cannot or will not change their work practices. Many officials who were trained to meet the expectations of a centralized, hierarchical, communist system set up in the aftermath of civil war and social breakdown now occupy important, mid-level positions in the bureaucracy. It is unclear whether the professionalization of the civil service, a major objective of the current reform program, will have any impact on such officials or the patronage system in which they rose.

Some maintain that downsizing must occur first before salary increases and professionalization efforts proceed. However, plans for civil service cuts are not overly ambitious. It is not clear, for example, if attrition due to retirement could have an immediate and significant impact on downsizing. It is also not clear that reducing the civil service by 15-20 percent would enable the Government to increase salaries to a living wage within the current budget or significantly enhance its ability to retrain the remaining officials. Downsizing may represent the path of least commitment for aid agencies unwilling to support a long-term program of administrative reform.

Proliferation of Committees

During the initial stages of the reform process, the Government has shown its ability to establish a wide variety of new, interministerial bodies to manage

169 Quarterly Administration Reform Report, at 1, 2.

various aspects of reform. On the one hand, this has the benefit of creating a body responsible for reform that has sufficient representation of all government institutions concerned. This promotes the participation and ownership of ministries concerned in decision making. Interministerial bodies may also possess greater authority to coordinate cross-sectoral interests and strategies, which may increase effectiveness of reforms and accountability.

On the other hand, however, there are several downsides to this practice if such bodies are created excessively. The proliferation of committees increases the likelihood of overlapping authority with ministries already tasked with implementing reforms in a given sector. It tends to re-concentrate power to a small group of senior officials.

In addition, it taxes human resources that are already thinly stretched. Such high-level committees hold official responsibility for reforms and serve as focal contact points with aid agencies contact. Yet, members are unable to focus their time and attention on the work of these committees due to preexisting demands of their permanent government positions. Also, they do not have the mandate, resources or ability to implement reforms. Therefore, they tend to increase the gap between those supposedly responsible for reform and those who implement reform. Individual ministries have less authority but retain all the responsibility for implementation.

Furthermore, new committees draw scarce financial resources (usually provided by aid agencies) away from existing institutions responsible for implementing reforms. Creating secretariats, training new staff, equipping offices, and supporting recurrent expenses require large amounts of money. The danger is that the establishment and strengthening of these new committees become the focus of the reform effort. Attention is diverted away from implementing institutions and accountability institutions—line ministries, sectoral agencies, local government, the courts—that remain underfunded and undertrained. There needs to be a rethinking of reform when the establishment of a new interministerial body is touted as a major achievement in governance reform. Dissolving committees, once they have achieved their mandate or proven themselves to be ineffective, would

partially help to contain the excessive proliferation of committees.

The Need for Complementarity between

Administrative Reform and Decentralization

There is currently no clear consensus within the Government over the degree to which administrative reform complements decentralization efforts. Some in government favor moving ahead with “de-concentration”—meaning the devolution of power to lower levels within the national Government’s line of authority. Others who favor decentralization have put great energy into developing and empowering institutions at the local level (i.e., commune and village levels) that are not national government institutions.

This is not merely a theoretical issue. It has significant impact on the design of reforms in public administration and local government. For example, the amount of financial power to be held by newly elected commune councils in large part rests on whether revenues will derive from grants from the national treasury or their own power to levy taxes and collect fees locally. The current draft of the Law on Commune Administrative Management mentions both options. Thus, it is unclear precisely how much financial decentralization or centralized control will exist.

The question of civil service downsizing is similarly affected by this issue. To the extent that the national program for administrative reform is not focused on decentralization, it becomes unclear whether civil service reductions apply to the commune level of government. And if it applies, how does this apply if commune councils are given broad responsibilities that require them to create administrative and technical staff? It is not clear to what extent the public administration reform program is accounting for decentralization reforms being planned at local levels.

Decentralization and de-concentration are not necessarily contradictory. In many ways, the main issue being debated is the best sequencing of reforms. However, there should be a debate and consensus with the Government over the specific structure, functions, lines of authority and responsibility, budgets, and staffs that different levels of government and different institutions should have. This should be a key aspect of any functional review of the public sector.

Reform of the Military

Reform of Cambodia's armed services has been a major discussion point between the Government and the aid community since 1995-1996. With the end to Cambodia's internal armed conflicts, the military needs to adjust to a new role and the Government's need to increase public investment in social sectors has placed this issue at the top of the reform agenda. Although the progress of these reforms has slowed, there is a consensus on the need to both reorganize the military and reduce its size. The demobilization program seems to be moving forward, despite the enormous challenges that exist.

Institutional Structure

There are two high-level institutions recently created to plan, coordinate, and oversee reform of the military: the Council of Armed Forces Demobilization and Council of Reform of the Royal Armed Forces. The Council of Armed Forces Demobilization is chaired by the Senior Minister in charge of the Office of the Council of Ministers and comprised of senior officials from eight ministries and the armed forces. The Council, which reports to the Supreme Council of State Reform, is charged with initiating and overseeing the demobilization process. Its jurisdiction with regard to the military and its relationship to the Council of Reform of the Royal Armed Forces are not defined by its organic subdecree.¹⁷⁰ Contact between the two Councils appears inconsistent and dependent upon one official.

The Council of Reform of the Royal Armed Forces is chaired by the co-Ministers of Defense and primarily consists of senior military officers.¹⁷¹ Its mission is to reform the military consistent with objectives set by the Supreme Council of State Reform. The Council reports to the co-Ministers of Defense (its chairmen) and is assisted by several commissions and subcommissions, including a commission and subcommission on demobilization to be created by a prakas of the Ministry of Defense.¹⁷² The relation-

ship and divisions of authority between these military bodies on demobilization are unclear. It appears that the Council and a Secretariat General, comprised entirely of military personnel, are responsible for implementation of the registration process and delivery of identification cards.¹⁷³

The Program for Military Reform

At the February 1999 Consultative Group Meeting, the Government presented aid agencies with a revised plan for demobilization of the armed forces entitled the Cambodia Veterans Assistance Program (CVAP). The original CVAP had been prepared by the Government, with technical support from the World Bank during the 1995-1996 period, but factional conflict in 1997 delayed preparations. The program contains four phases: registration, demobilization, reinsertion, and reintegration.

The first phase, registration, involves identification and data collection of all soldiers, issuance of identification cards, and creation of a personnel database. The demobilization phase involves the disarmament, health screening, discharge, and assisted dispersal of demobilized soldiers to host communities. Phase three, reinsertion, focuses on the provision of a safety net of basic goods—food, shelter, clothing, education, household items, local transportation—to demobilized soldiers. In connection with the plan presented in early 1999, a lump sum payment of \$1,200 per veteran was vetted by the World Bank as the safety net. The reinsertion phase was intended to last between six and eight months. The final phase, reintegration, includes counseling, facilitation of access to land and/or credit, vocational training and other educational opportunities, support to special target groups such as disabled veterans and war widows, community services, and the development of veterans associations. Reintegration assistance would be provided during the first 12 months after discharge. Information, counseling, and referral services, however, would be available throughout the five-year CVAP period.

Provincial committees would monitor implementation of the demobilization program in their respective provinces. In addition, the national Executive

170 Sub-Decree on the Creation of the Council for Demobilization of Armed Forces, No. 41, 12 May 1999.

171 Sub-Decree Creating the Council of Reform of the Royal Armed Forces, No. 44, 2 February, 1999. Of the seven members of this Council, the only civilian member is a Secretary of State from the MEF.

172 Sub-Decree Creating the Council of Reform of the Royal Armed Forces, Art. 2.

173 Sub-Decree Creating the Council of Reform of the Royal Armed Forces, Art. 2, 4.

Secretariat would establish provincial veterans offices (PVOs), comprised of staff from the Ministry of Social Affairs and Labor and Ministry of Women's and Veteran Affairs, to execute the CVAP. Specifically, these PVOs would be in charge of finance, administration, monitoring, and community outreach activities. The relationship between PVOs—comprised of ministry staff and which receive funds from and report to the Executive Secretariat—and provincial committees is not clear.

According to the original CVAP, demobilization would be a five-year process of staggered tranches of demobilization.

The Government reports that the registration of 140,693 military personnel was completed in December 1999. The Government has reported identifying a large number of “ghost” soldiers and “ghost” dependents, some 15,551 and 163,346 respectively, during the registration process. Detailed information on the registration process, which was not widely observed by aid agencies, has not been disseminated.

The second step in the demobilization process is the development of a Pilot Demobilization Program (PDP) to test mechanisms, assess program needs, or allow for redesign based on a smaller scale demobilization of 1,500–2,000 soldiers in several provinces. A draft project document for the demobilization program has been completed by the Government. It identifies four provinces for implementation: Kampot, Kampong Tom, Battambang, and Banteay Meanchey. Inclusion of these provinces, among other things, is meant to take advantage of human resources, infrastructure, and mechanisms developed in the context of existing programs such as the SEILA program, the Government's model initiative for decentralized rural development.

One key goal of the PDP will be to help structure an effective resettlement process that will meet the actual needs of demobilized soldiers and their families. As the World Bank has said, “Drawing lessons from experiences under the pilot demobilization, the transitional safety net, its level and composition, may need to be reformulated prior to general demobilization.”¹⁷⁴ In truth, the safety net

was not “formulated” based on any specific socioeconomic data for Cambodian soldiers to be demobilized; rather it seems to have been simply “imported” from demobilization efforts in other countries without any reference to the situation in Cambodia.

Due to differences over the composition of the safety net for the reinsertion phase of demobilization, the actual safety net will be determined after gathering more information on the needs of demobilized soldiers and experiences in implementing the PDP. At present, there is inadequate information on the needs of soldiers to be discharged, including needs of special target groups such as widows and child soldiers. Aid agencies have said that compiling a basic socioeconomic profile of households for both soldiers to be demobilized and host communities is a priority. One element of the PDP might be an individualized needs assessment for major support, for example, for provision of land or farm animals before a final determination is made. This would seem to be a sound approach since there is evidence that many soldiers are already in effect demobilized and living in civilian communities.

Among the aid agencies, the tabling of a dollar amount for the transitional safety net caused much disagreement. A number of aid agencies opposed this approach because it creates unrealistic expectations based on incomplete information and uncertain funding levels. There was inadequate consultation by both the World Bank and the Government regarding the design of the plan.

Perhaps drawing on past experiences with the return of refugees to Cambodia in the early 1990s, most aid agencies as well as the Prime Minister have placed greater importance on the reintegration assistance (e.g., for productive employment generation and training) than the transitional safety net provided during the reinsertion phase of demobilization.¹⁷⁵ This seems wise, especially because support to host communities involved in reintegration, most of which are likely to be poor, may be critical to the ultimate success of the reintegration phase. Linking reintegration to existing (or new) rural development

174 Comments on CVAP Annual Work Plan (June 1999–May 2000) by the Post Conflict Unit of the World Bank, Report of Working Group Meeting on Demobilization Program, 22 July 1999, Annex 2, At 1.

175 Issues Paper, Workshop on the Cambodia Veterans Assistance Program, 26 May 1999 [hereinafter Issues Paper], at paras. 13–16. Aid agencies presented this Issues Paper to the Council of Armed Forces Demobilization.

programs and activities before the general demobilization begins is vital. It is important for aid agencies and the Government to take account of experiences with reintegration and lessons learned during the early 1990s. Literature exists on these issues.¹⁷⁶

For these and other reasons, the aid agencies place great emphasis on the PDP. In particular, they express the strong desire to see a concrete project laying out the objectives, components, costs and assumptions, financial management mechanisms, risk factors, and geographic targets. However, the need to do more substantial preplanning and information gathering in order to prepare the demobilization effort is a key issue. While completion of the pilot program design has been slightly delayed (from the aid agencies' point of view at least), the Government and key aid agencies have pledged to move forward with planning and implementation in 2000.

Issues Raised by Military Reform

The Sequencing of Policy Planning

Initial implementation of the Government's military reform program illustrates another governance issue involving the speed of reform. The Government clearly wants to demonstrate its political will, capacity, and results in the implementation of the military reform. However, the Government often takes crucial first steps too quickly without first establishing the overall policy framework and mechanisms needed to ensure transparency and maintain the confidence of its aid partners.

Experience with the first phase of the demobilization program, the registration process, is a good example of this issue. Questions about insufficient mechanisms for aid monitoring and inadequate information sharing surfaced as the registration process proceeded. In April 1999, aid agencies stressed the urgency and "current vacuum" with regard to the monitoring of the registration process given the short time available. At the same time, they recognized the need for highly qualified expertise that aid agencies lacked. The Donor Sub-Group on Demobilization later noted the lack of response to requests

for information on the registration process.¹⁷⁷ This left the impression among aid agencies that the Government was seeking to lock in the transitional safety net—a \$1,200 per soldier amount vetted, imprudently and prematurely, by the World Bank—previously tabled.

More importantly, despite a recognized need for experts to monitor registration, the most critical element of the demobilization process, it appears that monitoring by both civilian officials and aid agencies was insufficient. When specifically asked to what extent the registration was monitored, senior military officials were unable to provide any information.

The actions of aid agencies contributed to this situation. In their haste to reduce the size of Cambodia's military and reapportion the military's share of the national budget, they focused too much on demobilization and not enough on helping the government, particularly the armed forces, establish an overall vision of a new structure and functions. Aid agencies erred by pushing demobilization without the policy framework for military reform in place. Certain aid agencies have raised this point at meetings of the Donor Sub-Group on Demobilization and with the Government directly,¹⁷⁸ apparently with little impact on the current process that continues to move ahead without a policy on military reform.

Putting the issue bluntly: How can there be an informed, rational discussion of troop and budget reductions without first determining the structure of the reformed military and the optimum force size needed to perform its duties?

The demobilization process began before any coherent vision for the military's future structure and responsibilities was developed. In short, the policy framework was lacking, and still is. MND, with assistance from the Government of Australia, is preparing a Defense White Paper, expected to be completed in the first half of 2000. One of chapters in the Paper will reportedly address issues of good governance. It remains to be seen whether the White Paper will have any impact on the size or substance of the demobilization program that predates it.

Ironically, the actions of aid agencies had the perverse effect of cutting off serious discussion within

176 See, e.g., Prum Sam Ol, Peng Chiew Meng, Elisabeth Uphoff Kato, *Cambodian Veterans Assistance Program Background Study - Starting Over: The Reintegration Experiences of Returnees, Internally Displaced, and Demobilized Soldiers in Cambodia*, 14 February 1996 (with bibliography of other sources of information).

177 Report of Donor Working Group on Demobilization, 12 October 1999.

178 Issues Paper, at para. 4.

the Council of Armed Forces on Demobilization about alternatives to the very cash payment transitional safety net that they later withdrew. By prematurely tabling a specific amount before any assessment of needs and existing resources of individual soldiers, they caused certain members of the Council to reject outright consideration of noncash alternatives. Certain members maintained that aid commitments to cash payments meant that consideration of alternative safety net systems was unnecessary. Thus, discussions were effectively cut off, even though many aid agencies were in fact uncomfortable with a cash payment system based on past experiences in providing such lump sum payments to returning refugees in the post-Paris Peace Accords period. Similarly, some senior military officers oppose entirely the idea of cash payments to demobilized soldiers, expecting widespread squandering of money by individuals inexperienced in managing money.

There is a second, unintended result of discussions of troop reductions without a policy framework for reform. The number of soldiers remaining after demobilization, based on current negotiations, may far exceed the ultimate needs of the Cambodian military. Some senior military officials have privately expressed the opinion that troop reductions should be 50 percent larger than the range currently being discussed.

The precipitous discussion of an actual dollar amount, coming prior to the completion of the registration process, may have also created a strong financial incentive for individuals within the military to seek ways to pad their official troop numbers with nonmilitary personnel (for later "demobilization" and payment during the reinsertion phase).

There would be greater credibility, aid agency support, and likelihood of success if there was a consensus both within the armed services and between the Government and aid agencies on a concrete vision and overall policies before implementation began. With the larger reform context in place, implementation could then proceed in a fully informed, transparent, and accountable manner. Instead, there is an obvious lack of vision of the military reform among the key reform councils, the military, and aid agencies. Some military officials describe demobilization as the first stage and development of

the plan for restructuring the armed forces as the second stage. Others expressed complete ignorance about what the military's future role might be. Either way, the sequencing of basic policy planning, coming after implementation of demobilization, seems less than optimal.

The mis-sequencing is also evidenced by the fact that aid agencies primarily communicate with the Executive Secretariat of the Council of Armed Forces Demobilization, and not the Council of Reform of the Royal Armed Forces. If establishing an overall policy and plan for military reform, of which demobilization would be a very important element, had been the first objective, the main point of contact would have been the Council of Reform of the Royal Armed Forces. This would have also required substantial input from the civilian side through the Government, the Council of Armed Forces Demobilization, and perhaps the legislature and other stakeholders.

The lack of an overall reform policy for the armed forces has in turn impacted planning for demobilization. Military officials raise the possibility of a 20-30 percent reduction of troops in each province. An across-the-board reduction, though easiest to plan, may not serve the long-term interests of military reform. For example, it might be that greater cuts should be made among certain, overmanned divisions and fewer cuts among others followed by redeployments based on clearly defined functional needs and geographic demands.

In the absence of a clear policy framework, it has been easy for both the Government and the aid agencies to gravitate toward paths of least resistance.

Transparency of the Military's Role in Demobilization

The institutional structure for the Government's demobilization program does not clearly define the division of labor and authority between the various institutions involved in the demobilization process. Coordination between the two Councils concerned is obviously essential. Yet, there are no identifiable mechanisms to ensure transparency of the activities of the Council of Reform of the Royal Armed Forces and various sub-bodies such as the Demobilization Commission. It is unclear how these military bodies are accountable to the civilian authorities of the

Government. For example, according to its subdecree, the Council of Reform of the Royal Armed Forces appears to report only to the co-Ministers of Defense, who are also its co-chairpersons. In other words, these military bodies in charge of reform are not explicitly accountable to anyone outside the armed services. And yet, they seem to play a critical role as the institutions with the most direct control over registration and the issuance of military identification cards.

Notably, none of these military bodies communicate directly to aid agencies through the quarterly donor monitoring meetings of aid agency working subgroups. Aid agencies have mentioned the lack of commitment and participation of “stakeholders” such as the armed forces in the planning process or “stakeholders” such as aid agencies in the implementation process (e.g., registration) for demobilization. As an example, no representatives from RCAF or MND attended the meeting between the Council of Armed Forces Demobilization and the Donors’ Demobilization Working Group in October 1999. Indeed, only one member of the Council itself, the Minister of Women’s and Veterans Affairs, was present at the meeting.

This might pose substantial difficulties for aid agencies not to mention the public in assessing the progress of demobilization and accessing information generally about specific activities to implement military reform program including demobilization. Such issues have already arisen. Information on the registration process has not been made readily available to the Donors’ Demobilization Working Group. Registration is the foundation upon which the entire demobilization process rests. Any loss of confidence in the registration process and results due to inadequate transparency would jeopardize the integrity of the demobilization process and possibly cost the Government financial and technical support.

In general, the military seems strangely absent from the discussions on demobilization. Certain senior military officials seemed uninformed about the demobilization plans and process. Instead, they suggested contacting one civilian official on the Council of Armed Forces Demobilization. It appears that important information and communication gaps exist. It also appears that “ownership” of the demobilization effort may not be broad-based within the Government.

Preparedness in the Provinces for

Demobilization

According to senior military officers, provincial governments know little or nothing about plans for demobilization, despite the fact that demobilization will occur almost entirely in the provinces. This was confirmed by the provincial governors and deputy governors. Moreover, current plans for demobilization stress the role of provincial veterans offices in the reintegration of demobilized soldiers and their families. These plans also call for provincial rural development committees to help supervise the reintegration process. Thus, implementation of the demobilization program will rely to a large degree upon the capacity of provincial governments to manage major elements of the program.

In many respects, demobilization is a major exercise in decentralization. It will require provincial governments to shoulder new responsibilities involving thousands of people in a potentially long, complex program of resettlement, vocational training, land distribution, community relations, infrastructure development, conflict resolution, education, and financial management. Preparing for the implementation by provincial veterans offices and supervision by provincial rural development committees of the demobilization program will be no easy task. At the moment, provincial authorities are uninformed of their future role and lack the human resources to handle it.

It will be essential for the demobilization pilot program to concentrate heavily during the preparatory stages on strengthening the preparedness and human resources of provincial officials for their duties. In particular, there is an acute need to include broader participation—for example, of local government and NGOs—in the demobilization planning and project design processes. This will not only increase transparency but also allow the Government to tap the expertise, experience, and information gained by officials and others working in the provinces. It might also provide critical information on the economic realities that thousands of demobilized soldiers will soon face. At the moment, it is not clear that actual economic and agricultural conditions or prospects have been adequately considered in the reintegration planning. Nor is it clear to what extent

soldiers are already reintegrated into local communities. These issues are relevant not only to the composition of the safety net but also directly link to the design of training programs associated with demobilization as well as community-oriented support and programs for employment creation. These issues require more attention and planning. Aid agencies have recognized this crucial issue. The Donor Sub-Group on Demobilization highlighted the need for the Government to conduct major preparatory work in each province included in the pilot program. This included suggestions to:

- inventory all government, aid agencies, and NGO activities and service delivery mechanisms existing at the provincial and district levels and how they might assist the reintegration phase of the pilot program;
- assess capacity of local communities to absorb soldiers and assistance that might facilitate this;
- gather current information on land and labor markets for each province in the pilot program; and
- discuss with provincial and local project officials modalities for reintegration of demobilized soldiers, including addressing the issue of land availability.

Reintegration Using Existing Mechanisms at the Local Level

Completing an inventory of existing government, aid agency, and NGO service delivery mechanisms at the local level, as suggested above, is necessary but not sufficient. It is not enough to merely be aware of local mechanisms and activities for development when designing the reintegration phase of the demobilization program. Reintegration should be explicitly designed to work in conjunction with these local development structures. The draft PDP plan seems to operate from this perspective.

The operating bias should be against creating any new institutions for demobilization and in favor of using and expanding where necessary existing service delivery mechanisms and local institutions. Resources are scarce for the demobilization effort and additional cost burdens associated with building new institutions, new organizations, and mechanisms should be avoided.

Reintegration programs should be tailored to fit existing service delivery institutions and mechanisms, not the reverse. It is demobilization that is the untested variable. Established local mechanisms should not be reengineered to fit the perceived needs of such a program. Rather, it is the reintegration program that should be adjusted and refined to take advantage of local initiatives already in operation, and demobilization resources should be committed to such initiatives as needed.

Given the range of local development programs supported by the Government, aid agencies, and NGOs, there should be numerous opportunities to reintegrate demobilized soldiers using such programs. Where insufficient mechanisms exist at the local level, some thought should be given to sequencing demobilization with the expansion of existing institutions.

Decentralization

Decentralization is an issue that touches many of the reform initiatives being pursued by the Government. Most priority sectors of reform—public finance, public administration, and demobilization—include plans to devolve some measure of authority to provincial governments. However, many if not most of these decentralization efforts are rooted in the Government's experiences with new modes of development planning at the local level. These experiences may influence reforms in other sectors. This section will focus on the Government's experiment in decentralized development planning in order to assess the lessons learned with respect to decentralized governance and how they relate to other key reforms intended by the Government.

The Social Economic Improvement Agency (SEILA) Program

To date, the Government's most significant initiative to decentralize governance in Cambodia has been the SEILA program. SEILA, which began officially in 1996, is a program designed to "contribute to poverty alleviation in rural areas through implementa-

tion of a decentralization policy." SEILA aims to build the capacity of local government structures capable of planning, financing, and implementing decentralized development in selected provinces. SEILA is primarily an experiment in rural development in five Cambodian provinces supported largely by Ump's Cambodia Area Rehabilitation and Regeneration (CAREERE) Project.

Cambodia is comprised of 20 provinces and four municipalities.¹⁷⁹ For purposes of political administration, each province is subdivided into districts and communes (administrative groups of villages) which include some 13,000 villages. More than one third of the Cambodian population, about 36 percent, live below the poverty line,¹⁸⁰ and approximately 84 percent of the country's poor live in rural areas. The legal framework for local governance is fragmented and incomplete. There is no law establishing the legal identity of provinces, municipalities, or other local government structures. Selected subdecrees on municipalities and the duties of provincial governments have been issued over the years. As discussed further below, in February 1998, the National Assembly passed a law on provincial finance. The law gives provincial governors authority over provincial budgets and the collection of revenues in the province.

SEILA's organizing principle is the concept of development committees carrying out an integrated provincial planning process. These committees are intended to be the vehicle through which villagers and provincial officials directly participate in the planning, implementation, and monitoring of development plans and projects for their communities. On the village level, there are village development committees (VDCs). The first VDCs were formed in 1995 in the context of the CAREERE Project.¹⁸¹ Commune development committees (CDCs) operate at the commune level. The committees are managed at the provincial level by provincial rural development committees (PRDCs) that channel funds to the

commune and village levels.¹⁸² To date, there are over 1,000 locally elected VDCs, 112 CDCs, and 5 PRDCs. Committees at each local level—village, commune, and province—prepare development plans. In 1998, local development planning occurred in 800 villages and 100 communes within the five SEILA provinces.¹⁸³ At the national level, an interministerial SEILA Task Force, formally created by a subdecree in August 1999, establishes and assesses policies for decentralization.¹⁸⁴

In Cambodia, officials speak of two concepts: decentralization and deconcentration. Differences between these two ideas are sometimes hard to discern from their use. Typically, the term "decentralization" is used when referring to devolution of power including the capacity to tax to communes, while "deconcentration" refers to moving authority down various government power pyramids (e.g., at the national level from the Council of Ministers and Prime Minister down to individual ministries, at the ministry level from the minister down to department heads). Use of these terms, however, is confusing at times. Moving power from the central government to the provinces and districts has both been called "deconcentration" and "decentralization."

The Government's experiences with SEILA represent an important basis for development of a national policy on decentralization. Indeed, SEILA represents the Government's only concrete initiative for decentralization for which implementation has begun. Despite its obvious political implications, SEILA remains primarily a scheme for rural development. The Government aims to expand SEILA to every province. As Cambodia's most ambitious initiative for decentralization implemented thus far—and it is still a work in progress—SEILA represents both the promise and problems of decentralization in Cambodia.

179 Four municipalities in Cambodia are accorded the same status as provinces: Phnom Penh, Sihanoukville, Kep, and Pailin.

180 CAMBODIA HUMAN DEVELOPMENT REPORT 1999, Ministry of Planning, August 1999 at 12 [hereinafter REPORT 1999].

181 Village-level development planning is also used in eight provinces by the Community Action for Social Development (CASD) program supported by UNICEF and other aid agencies.

182 According to the Sub-Decree on the Establishment of SEILA Task Force, No. 78ANKR.BK, dated 23 August 1999, funds for the SEILA Program are to be maintained in a Decentralized Development Fund managed by MEF. The Government allocated KR800 million (roughly \$210,000) in the 1999 budget to the Fund. Funds for projects implemented under a province's Provincial Development Plan are disbursed to a provincial imprest account on a monthly basis based upon financial reporting of the province to the SEILA Task Force. It should be noted that CAREERE provides its funding directly to the provincial imprest accounts.

183 UNDP/CAREERE, ANNUAL PROJECT REPORT: 1 JANUARY 1998 TO 31 DECEMBER 1998 (April 1999) at 7.

184 The SEILA Task Force, chaired by the Minister of Economy and Finance, is comprised of representatives from seven ministries/agencies.

SEILA's Lessons for Decentralization

SEILA highlights key issues and constraints for decentralization and reform in Cambodia.

Continued Concentration of Decision Making

The absence of legal clarity regarding the status and scope of authority of provinces, municipalities, and districts enables a “top down” mentality of planning and instructions (i.e., governance) to persist. This limits the ability of local communities to direct their own development. For example, provincial development plans are sometimes formulated with insufficient reference to needs expressed at the village level. This occurs in part because: (i) higher-level officials maintain the notion that they direct lower levels (i.e., command decision-making), and (ii) decision-makers tend to allocate scarce resources to activities at their own level. The prevalence of such attitudes is a serious constraint to decentralization.

Even at the village level, decision making is often less than fully participatory with village leaders, or persons linked to them, often dominating the development planning process. Any decentralization policy rests in part on the idea that transferring decision-making powers from centralized institutions and bureaucrats to local communities, households, and individuals improves the quality of decision-making, responsiveness to local needs and accountability by increasing the stake of people in their own development. To the extent that local authorities (or higher provincial or central officials) continue to exercise a heavy hand in the development planning process, especially decisions about allocation of resources, the benefits of decentralization are diluted.

Ensuring that authorities at all levels (province down to village) are representative of and directly accountable to their constituencies—i.e., the local citizenry—would seem crucial to decentralization successfully contributing to economic development and effective good governance at the local level. SEILA, according to CAREERE staff, demonstrates the difficulty in breaking the cycle of decision making by small groups of powerful people and establishing more participatory governance practices. This lesson would seem to apply equally at the village, commune, district, provincial, and national levels of government.

There is recognition among provincial leaders, for example, that public participation in decision making is critical to good governance.¹⁸⁵ This does not mean, however, that officials have developed mechanisms to ensure direct access by citizens to the decision-making process. Much work needs to be done to build more open decision-making systems within government.

Experience with the SEILA Program also highlights a larger governance issue in Cambodia, the unwillingness of lower or mid-level officials to take responsibility. According to CAREERE officials, for example, village, commune, and province finance officers hesitate to sign off on financial reports for fear of making mistakes. Decisions, especially those with financial consequences, tend to be pushed up to higher levels of the Government. This not only slows implementation but also removes decision making from those closest to the issues and reinforces existing tendencies toward the concentration of power.

Focus on Weak Human Resources

Weaknesses in human resources—for financial monitoring, accounting, contracting, regulatory roles, reporting, project appraisal, technical expertise, etc.—also raise questions about the ability to implement bold measures on decentralization in the short to medium term. Within the public sector, human resources at the provincial and local levels are the weakest. Provincial government staff frequently have low levels of formal education and experience in transparent management systems.

There is a risk that the implementation of decentralization initiatives will outpace the implementation of training programs for officials. Thus, the demands placed upon officials may far exceed their current skills. As a recent paper by CAREERE stated, “In short, nothing in the experience of a Cambodian local official prepares him for the organization and management of participatory rural development.”¹⁸⁶ The same can be said for the organization and management of nearly all aspects of decentralization and local governance. This carries enormous implications

¹⁸⁵ Questionnaire. Provincial governors were asked, “How important is public participation in decision-making to having good governance?” On a scale of 1 (Not Important) to 10 (The Most Important), 100 percent of the respondents answered “The Most Important.”

¹⁸⁶ Charny, Joel R., *Issues for Decentralized Planning and Financing of Rural Development in Cambodia*, 1999 at 16.

for the implementation of all local governance reforms, and only highlights the need for massive, long-term training at the local level. In addition, advanced education such as the Royal School of Public Administration needs to be strengthened to nurture future leaders at the central and local administrations.

Matching Financial Resources with Reform Planning

SEILA has also demonstrated problems that arise when planning is not sufficiently linked with financing. The usefulness of decentralized planning and local support for projects tend to diminish when financing later proves unavailable.

The Government currently generates revenue as a percentage of GDP at one of the lowest rates in the world. Of this, allocation of public funds is heavily biased in favor of the military and security sectors and against the provinces. Nearly half of all yearly government-funded public expenditures go to military and security costs. The provinces receive only 14 percent of total public expenditures,¹⁸⁷ though 90 percent of Cambodia's population live outside Phnom Penh. Virtually none of this money from the national treasury directly supports provincial development; most is consumed by expenditures on primary education (i.e., teachers' salaries) and pensions for veterans.¹⁸⁸ Central funds expended in the provinces basically support the costs of provincial administration at best. The vast majority of funding for development activities derives from NGOs and international aid agencies, though approximately half of all international aid is spent in Phnom Penh.¹⁸⁹ NGOs demonstrate the most equitable allocation of resources, directly spending almost two-thirds of their core resources in the provinces.¹⁹⁰

Aid agencies have provided substantial support to social sector programs and reforms, including the SEILA Program. However, the long-term success of local governance reforms and poverty alleviation will rest on the Government's ability to generate

revenues and internally finance local development initiatives. Thus, the link between reforms in public finance—to substantially increase public revenues and the proportion of public expenditures directed toward social sectors and rural development—and reforms promoting decentralization and local governance, is clear.

Reforms in Local Governance

The Government is in the process of planning potentially major reforms in decentralization in connection with the upcoming election to select members of commune councils for all communes in Cambodia. While no date has been set, it is expected that commune elections will be organized in late 2000 or 2001. In addition to being a driving force behind the SEILA Program, decentralization is the policy foundation for the new Law on Commune Administrative Management. Indeed, the Government has said that the program is the foundation of experience for formulation of this law. A draft of this law has been submitted to the Council of Ministers for review and approval, prior to consideration by the National Assembly.

The SEILA experience plainly informs the current draft of the law. It envisions the creation of commune councils, elected every four to five years, to replace the current system of appointed commune chiefs in Cambodia's 1,600 communes. A Commune Election Law is currently being drafted. Interviews for this report, as well as a recent nationwide survey, showed broad support for commune council candidates to run on an individual, nonparty basis. If the elections for commune councils are not party-affiliated, this would help ensure that political problems at the national level are not automatically transferred to the local level through commune councils. At the moment, governance in Cambodia, is among other things, characterized by the speed at which national political problems are reflected at the local level. A nonparty affiliated commune council election would help negate this problem. Unfortunately, the current draft of the Commune Election Law provides for party-based voting.

Commune councils will have responsibility for promoting social and economic development, facilitating the delivery of certain services, including

187 World Bank, *Cambodia Public Expenditure Review: Enhancing the Effectiveness of Public Expenditures*, East Asia and Pacific Region, Washington, D.C., January 1999 at 30-31.

188 World Bank, *ibid.*, at 31.

189 This figure includes funds for country-wide programs that are administered in Phnom Penh.

190 NGO Statement to the 1999 Consultative Group Meeting on Cambodia, Tokyo, February 25-26, 1999 at 39 (citing DEVELOPMENT COOPERATION REPORT FOR CAMBODIA, Council for Development of Cambodia, Jan. 1999).

social services, promoting a healthy, safe, and peaceful environment for local citizens, protecting natural resources, and drafting and implementing development plans for their respective communes. The councils will also serve as agents of the national Government on certain matters. They will have no authority with respect to the judicial system, national defense, foreign affairs, postal services, national monetary or fiscal policies, and forestry, national parks, or other areas protected by law. The draft Law makes no mention of the existence or status of commune militias that currently receive funds from the central Government. It also remains to be seen to what extent political parties will seek to exercise influence over the councils.

The draft Law also proposes that villages elect a village chief based on procedures determined by MOI. Village chiefs shall give advice and recommendations to the commune council on matters concerning the village, though final authority rests with the commune council over matters within its jurisdiction.

MOI officials have discussed plans to provide funds directly to the commune councils from the national treasury. The Law also stipulates that fees for carrying out duties as agents of the Government may be paid to commune councils. The draft Law does not specify the level of funding support that will be received. The draft Law states that commune councils have the right to collect revenues from fiscal taxes, nonfiscal taxes and service charges, including taxes on land, immovable properties, and rental taxes. However, the rates and procedures for tax collection will only be determined by a later law. The councils will also be required to submit annual budgets. Although finance is a critical issue, the draft Law, however, does not clearly lay out the councils' authority on these matters.

More importantly, it is unclear how much decentralization will actually occur through the commune elections. This issue rests largely on the scope of authority that the Law on Commune Administrative Management will delegate to the newly elected commune councils. The most recent draft of the Law does not signal a broad shift of political powers and autonomy to the communes. MOI retains a large amount of discretion to decide at a later date what authority to give to commune councils. For example,

the draft states that the Government, based on proposals from MOI, will issue a subdecree later "to precisely determine the duties, functions and powers of commune local administration."¹⁹¹ In other words, the Law does not clearly define or even determine what powers commune councils will have. This makes the Law something akin to an empty envelope.

The one exception relates to development planning. The Law does describe in some detail the duties of the commune councils for the preparation, adoption, and implementation of commune development plans. However, MOI is responsible for ensuring that commune development plans meet the Law's requirements and will instruct commune councils on how to implement the plans as well as to monitor, control, and evaluate the use of capital funds for the commune development plan.¹⁹² It is unclear why MOI should play such a prominent role in the development planning process given that other ministries have more direct responsibilities for rural development.

MOI also has the power to instruct the commune chief (leader of the commune council) on the division of duties between the various deputies on the council.¹⁹³ It is unclear why responsibilities associated with these positions are not specified in the Law or left to later determination by each commune council, based on their priorities and needs. In general, MOI's retention of powers may have a major impact on how decentralized the new political structures for communes may be.

Senior officials at MOI focus on the role of commune councils in local rural development. Again, SEILA looms large in MOI's thinking on reforms in commune governance. In some ways, the Law on Commune Administrative Management may simply legalize the CDCs and VDCs developed within the SEILA Program, however under fairly close control and monitoring of MOI. In fact, the Law calls for the creation of a National Committee for Supporting the Commune, headed by MOI, that will make recommendations to both the Ministry and the Government on all issues left undetermined by the Law.

191 Law on Commune Administrative Management (Draft), art. 53.

192 Law on Commune Administrative Management (Draft), art. 74.

193 Law on Commune Administrative Management (Draft), art. 36.

The draft Law does not adequately address political authority and responsibilities at the provincial or district levels. This poses a potentially serious problem for the implementation of decentralization. There remains a risk that provincial and/or district authorities will seek to instruct or exercise control over commune councils. This is more likely to occur if the Law on Commune Administrative Management is left vague, incomplete, and unenforceable under the jurisdiction and powers of commune council.

MOI officials expressed little concern over the possibility of interference by higher officials in the commune councils. In their view, all levels of government must respect the law and the powers it grants the commune councils. However, this begs the question: if the Law is not sufficiently clear on the powers of the councils and their relationship with other levels of government, it will not shield them from improper interference.

For example, the Law states that MOI shall determine the procedures for monitoring and control of the general activities of commune councils. Under the Law, in carrying out “monitoring, control and intervention” with respect to the communes, the MOI may share powers with provincial, municipal, and district officials. Thus, the Law not only leaves the issue of control open but explicitly permits MOI, and if it so decides, provincial governors and district chiefs to exercise direct financial and supervisory control over commune councils. This may encourage overreaching by higher authorities. Again, if the SEILA experience is relevant this risk of undue political interference or control is real.

According to the current draft, each commune council will have one administrative clerk who works for MOI. Only MOI has the power to remove the clerk of the commune from office.¹⁹⁴ It is unclear why staff of directly elected commune councils should be employees of MOI. On its face, requiring administrative positions on commune councils to be staffed by ministry officials seems at odds with the stated objectives of decentralization and the Law on Commune Administrative Management itself.

While the Law once fully implemented may produce a more limited version of local governance reform, it would still be a notable change in Cambodia’s

governance landscape, provided sufficient financing powers are delegated. In the short term, it might be a more manageable reform that could serve as a springboard for later reforms giving broader powers to local government.

It is highly unusual, however, to have a democratically elected commune council reporting to nondemocratically chosen officials such as governors and district chiefs. This may weaken the impact of such political decentralization, or eliminate its value altogether. Political decentralization, through democratic elections, should be extended to districts and provinces in order to ensure that reforms in local governance and decentralized development will be effective over the long term.

The King recently issued a Royal Kret, No. 0399/73, on 22 March 1999 at the behest of the Prime Minister dealing with the mandates of provincial and district governors and deputy governors.¹⁹⁵ The Kret limits the term of these provincial and district officials to a maximum of three years, at least until a law on territorial administration is enacted that specifies another term length.

One senior MOI official expressed support for further local government reforms at some future date (no sooner than five years after the initial commune elections). The idea expressed was to expand the size of communes to approximate the size of districts, thereby enabling the elimination of districts from the system of local government. This official also supported the eventual election of provincial governors. The idea of establishing “provincial assemblies” through general elections was also offered by a senior official at the workshop to review a draft of the current Report at the Council of Ministers on 1 February 2000. It is uncertain, however, whether these views enjoy broad support within the Government. In a recent poll, provincial governors and deputy governors expressed some support for the election of governors.¹⁹⁶

It should be noted that to date there has been little input into the Law on Commune Administrative Management from the public, civil society

195 Royal Kret, No. 0399/73, 22 March 1999.

196 Questionnaire. One third of the governors and deputy governors who answered the question, “Should governors be elected,” responded “Yes.” While a majority opposed such elections, approval from 33 percent of the officials with potentially the most to lose from such a reform and without any public discussion of the issue is notable.

194 Law on Commune Administrative Management (Draft), Art. 30.

groups, or even provincial officials. The NGO Forum recently organized a working group to discuss this issue.

The SEILA experience also offers lessons on how decentralization initiatives are susceptible to confusion or competition over policy-making authority and responsibilities. The subdecree creating the SEILA Task Force defines its objective “to manage the decentralized development program” of SEILA. According to the subdecree, the PRDCs implement policies of the task force to which it reports. However, the Government issued a separate subdecree requiring the committees to report to the Ministry of Rural Development which has authority over the entire rural development structure. This seems consistent with a pro-deconcentration view of reform and at odds with SEILA’s decentralized approach.

To further complicate matters, the PRDCs are chaired by provincial governors who fall under the jurisdiction of the MOI. Such confusion and overlapping authority will only obstruct implementation of SEILA, or any other decentralization effort. The importance of clarifying lines of authority and defining roles of each institution concerned involved in decentralization cannot be overstated. This applies with equal force to the drafting of the Law on Commune Administrative Management.

To the extent that meaningful powers are given to commune councils, they will confront the human resource issues discussed above. New, greater demands will be placed upon local officials unused to managing such a broad scope of issues. The SEILA Program has provided capacity building for local officials in five provinces within the context of SEILA’s local development planning and management.¹⁹⁷ Such training is clearly relevant to the exercise of the commune councils’ mandate. However, the need for training targeting their specific role in local governance will be critical in the medium term to the performance of these new commune councils. Given the number of communes and the Government’s current revenue base, this will require enormous external resources.

Decentralization of political and administrative powers to the commune level is also likely to carry

economic implications. “For a village, proximity to centers of administrative and political power are important factors in garnering additional resources for its economic development.”¹⁹⁸ Thus, successful decentralization of powers to the commune level, through a bold Law on Commune Administrative Management, and an increased administrative role for communes has the potential for promoting the economic development of poor villages previously far from any centers of provincial or national government.

Decentralization of Fiscal/ Financial Power

The issue of decentralization, especially its effectiveness, is directly related to the question of fiscal and financial power. In short, decentralization without a devolution of authority to budget, raise revenues, and manage expenditures is in many ways meaningless. Decentralization of responsibilities without providing the means to carry out those responsibilities is an empty form of decentralization.

The health sector has been a good example of the centralization of financial and fiscal authority in practice. As discussed above, the Government is introducing the ADD system of cash advances to decentralize health disbursements in response to a pattern of under-disbursement in the health sector. The results thus far have been mixed, but the Government, key aid agencies, and civil society organizations concerned have renewed efforts to smooth health disbursements at the local level.

A more significant reform in decentralized finance is the Law on Financial Procedures and Provincial-Municipal Properties. Enacted in February 1998, the Law is intended to clarify the responsibilities of provincial governors for revenue collection and budgeting while also providing limited powers to raise and retain revenues locally.

In particular, the Law confirms that governors are responsible for collecting all fiscal and nonfiscal revenues in their respective provinces. It enables the provinces to collect and keep certain minor taxes such as vehicle taxes, ferry transport fees, taxes on vacant

¹⁹⁷ Training by the SEILA Program focuses on three specific areas: the decentralized finance system, improving the quality of the local planning process, and monitoring and evaluation.

¹⁹⁸ REPORT 1999 at 19.

land, and fees for the sale of power and water. Since the scope for raising revenues at the provincial level is very limited under the Law, revenues from such taxes are unlikely to be large, or directed toward financing local development. One should expect revenues to be spent at the provincial level for administrative functions, and not in support of development projects at the commune or village level. The Law, once implemented, will be an important first step in the decentralization of fiscal authority and financial power to provinces.

More substantial fiscal and financial decentralization remains to be formulated. In particular, decentralization at the commune level does not presently include financial decentralization. While commune councils will be popularly elected, the draft law does not define powers to raise revenues locally or receive national funds directly under some form of revenue-sharing formula. The absence of compatible financial decentralization will seriously undermine the effectiveness of political reforms undertaken at the commune level.

Judicial and Legal Reforms

Judicial Reform

Current Reforms

There are a number of important judicial reforms being pursued to varying degrees by the Government. These primarily include the drafting of key laws defining the courts but also include plans to expand or rehabilitate selected court facilities.

Council on Judicial Reform

As part of its effort to coordinate reform in critical areas, the Government plans to establish, by subdecree, an interministerial Council on Judicial Reform. The Ministry of Justice (MOJ) is currently drafting the Subdecree on Establishment of Council of Judicial Reform. The Council's general mission is to promote, provide suggestions, and control the policies and programs for judicial reform.¹⁹⁹ Its duties include: (i) implementing policies of the Supreme

State Council on Reform; (ii) disseminating directions to courts on judicial reform programs and the courts' role in them; (iii) proposing drafts of legal documents and measures on judicial reform to the Supreme State Council on Reform; (iv) controlling implementation of judicial reform programs by each court; (v) reporting to the Supreme State Council on Reform on results of implementation; and (vi) coordinating to find funds for reforms.²⁰⁰

In the initial draft, the Council will be comprised of the Minister of Justice (chairperson) and the 14 most senior officials of the ministry. The draft also states that staff recruited for the Council must be either MOJ officials or judges. The Council of Ministers, however, returned this draft to MOJ for revision because it included no representatives from other ministries.

As an interministerial, coordinating body, the primary duty of a Council on Judicial Reform should be to formulate policy options and measures for reforming the Judiciary. This does not mean that it should implement judicial reforms. That should be left to the relevant, existing institutions. Rather, the Council should make policy recommendations, assist with the design and drafting of reform measures, and monitor implementation by the relevant institutions. The original draft, in addition to developing policies on judicial reform and monitoring implementation for the Government, reserves for the Council the power to issue directions to the courts and "control implementation of judicial reform programs of each court." Such direct control over court activities would not be a proper function of a body that includes Executive branch officials. Policy making and monitoring, however, would not be inconsistent with the Constitution's separation of powers provisions.

The initial draft did not pay sufficient attention to the constitutional implications of these different duties. Indeed, there appears to be no meaningful difference between the Council on Judicial Reform and MOJ under the draft subdecree offered by the ministry. By blurring the line between policy formulation and implementation of judicial reforms, the draft subdecree will only permit further undermining of the independence of the Judiciary.

¹⁹⁹ Sub-Decree on Establishment of Council of Judicial Reform (draft provided by MOJ), 1999, Art. 1.

²⁰⁰ Judicial Reform Council Sub-Decree, Art. 2.

To be an informed source of policy ideas and legal experience, the Council on Judicial Reform would be well-served by having members representing a cross-section of the public and private sectors and civil society institutions concerned. This could serve as a model of transparency that would greatly increase confidence in the Judiciary and the reform process. Including lawyers and other nongovernment legal institutions as partners need not infringe upon government authority. Government institutions—the courts, prosecutors, and MOJ—will be responsible for implementing the reforms. The Council can simply monitor their performance and report to the Supreme Council on Reform on their progress. Thus, the Council could greatly benefit from a broad-based membership drawn from, for example, MOJ, Office of the Council of Ministers, judges, prosecutors, the Cambodian Bar Association, the Faculty of Law, government lawyers from other ministries, and the Council of Jurists. In many ways, the broader the representation, the more policy initiatives can be generated, and the easier it will be to monitor the effectiveness of reforms. This would have a potentially big, positive impact on both the perception of the Judiciary and the quality of reforms.

Drafting of Laws

MOJ has taken the lead in drafting a number of key laws related to judicial reform. One important example, mentioned above, is the drafting of a Law on Magistrates. The present draft, approved by the Supreme Council of Magistracy (SCM), while including provisions on qualifications for judges, focuses heavily on the different ranks of judges. More importantly, it reserves powers for MOJ that fall within the SCM's jurisdiction under the Constitution. In the draft, the Ministry retains power in the disciplinary process, assignments, determination of rank, and administration of the courts. The draft also fails to distinguish between judges and prosecutors.

MOJ is also drafting a Law on Court Clerks to clarify their role in the judicial process.

In addition, MOJ is drafting a law to establish specialized courts such as commercial or administrative courts. Lawyers and observers voice support for this reform. Creating specialized courts would allow intensive training to target small groups of judges in defined topic, enabling capacity building within the Judiciary to move more quickly and efficiently.

MOJ has also completed drafts of a new Penal Code, and drafting continues on new laws on criminal and civil procedures. They represent an essential reform for the court system which currently operates without well-defined or well-respected pretrial, trial, and sentencing rules and procedures, most of which derive from Cambodia's previous socialist legal system. Finalizing these drafts and shepherding them through the legislative process will be a major achievement of MOJ and institutions concerned. To date, little progress has been made in the drafting of a law on evidence.

Internal Reforms at the Ministry of Justice
MOJ also plans internal reforms to strengthen its role in the legal system. It recently issued a prakas outlining the responsibilities of its senior officials. The Secretaries of State at MOJ are expressly charged with preparing laws related to the Judiciary as well as "inspection of the work of courts."²⁰¹ They are responsible for "managing the staff" though it is not clear whether the term refers only to ministry personnel or includes court clerks and judges. The prakas also says that they "examine/control work of the prosecutors."²⁰²

More critically, the Secretaries of State are empowered to "give recommendations to the files of cases," including criminal, civil, labor, administrative, and commercial cases.²⁰³ The propriety of this role seems questionable. The Constitution only gives judges the power to adjudicate cases; the Executive branch is denied any "judicial power." It is thus unclear how this power to provide input into the files of active court cases squares with the Constitution. Case files contain a record of all the evidence, pretrial rulings, and other documents for a court case. The only person who should have any contact with case files are the judge handling the case and his staff. Recommendations by MOJ officials, or even other judges, would be constitutionally inappropriate.

Much of the intended legal reforms related to the Judiciary are described in MOJ's Workplan for the Activities of the Ministry of Justice submitted to the Senior Minister in charge of the Council of Ministers. The first primary objective is to

201 Prakas No. 36/99, Ministry of Justice, 22 March 1999 [hereinafter MoJ Prakas], Art. 1(2).

202 MOJ Prakas, Art. 1(3).

203 MOJ Prakas, Art. 1(2) and 1(3).

“reform the judicial system and the courts in order to strengthen independence [and] justice.”²⁰⁴ Other objectives include creating new laws, training ministry officials and judicial personnel, and strengthening the morality and conscience of the entire system.

Specific missions identified in the Workplan include work on drafting of key laws and improvements in dissemination of laws, recording and execution of judgments, infrastructure, and human resources. These are important tasks—described in detail in Workplan’s list of short, medium, and long-term activities—requiring attention and resources.

The list of missions also includes, however, developing human resources through the “quality and moral conduct of judges, prosecutors and court clerks.”²⁰⁵ MOJ gives itself the duty to speed up judicial reform as well as “to protect and uphold the independence of judges in the implementation of their roles” and manage “the administration of judges at the adjudicate courts to be better functioning.”²⁰⁶ It also lists its duty to “propose to the Supreme Council of Magistracy to take disciplinary actions against delinquent judges or to transfer them upon retirement.”²⁰⁷ Among the list of principal measures to be taken by MOJ is “to strictly follow up and urge the work of the courts in order to cleanse of immorality.”²⁰⁸

Viewed individually, these missions and measures related to the Judiciary appear either as ambiguous, overreaching or unconstitutional. Taken together, they suggest an intention to maintain a direct role in the organization, functioning, substantive supervision, and discipline of the courts. Provisions in the Workplan expressly or implicitly related to the conduct of judges and disciplinary actions are particularly troubling, especially when viewed in connection with the current SCM Law. More importantly, for purposes of governance, no institution yet serves as an effective check to such overreaching of Executive authority.

Crackdown on Corruption in the Judiciary

The Government recently initiated a highly publicized and controversial effort against corruption by court officials. In response to allegations by the Governor of Phnom Penh and to “contribute to reforming the Judiciary,” the Prime Minister ordered the re-arrest of 66 persons previously released by the courts for lack of evidence, released on bail, or released before completion of their prison terms. In carrying out the order for re-arrests, the Minister of Justice in his letter to prison officials cited the Prime Minister’s directive as the only legal basis for the detentions.

At the same time, the Prime Minister directed relevant ministries—MOJ and MOI—to set up task forces to investigate early release of criminals and withdrawal of charges by the courts.²⁰⁹ The scope of the investigation continues to expand. Reportedly, a total of 195 cases since 1998 are being examined for possible corruption by court officials.²¹⁰ MOJ suspended both the Chief Judge and Chief Prosecutor of the Phnom Penh Municipal Court pending completion of the MOJ’s investigation.²¹¹ He also instructed the Chief Judge to forward the files of cases of suspected corruption to the Ministry. The Senate’s Commission on Legislation has called the Chief Judge and Chief Prosecutor for questioning over judicial corruption. Most recently, the SCM authorized the permanent removal of the Chief Judge and Chief Prosecutor, ostensibly to permit court functions to resume at the Phnom Penh Municipal Court and not as a result of any finding of wrongdoing against them. It might be noted that the now former Chief Judge and Chief Prosecutor have been assigned posts at the SCM and MOJ, respectively.²¹²

Separately, the SCM has received complaints directly from parties in cases of alleged judicial misconduct by 28 judges and prosecutors in 12 different provinces. MOJ, however, receives most complaints. It has been suggested that complaints about judicial corruption could be used by officials to extract payments from those named court officials.

204 Workplan for the Activities of the Ministry of Justice (draft), Ministry of Justice, 1999, at para. 2.

205 MOJ Workplan, para. 3.

206 MOJ Workplan, para. 3.

207 MOJ Workplan, para. 3.

208 MOJ Workplan, para. 4.

209 Pin Sisovann and Kevin Doyle, PM Orders Rearrest of Freed Criminals, CAMBODIA DAILY, 4-5 December 1999, at 3.

210 Kevin Doyle and Phann Ana, Money Makes Courts Better, Official Says, CAMBODIA DAILY, 7 December 1999, at 1.

211 Decision of Minister of Justice, No. 02/RB/99, dated 7 December 1999.

212 Phann Ana and Kevin Doyle, Suspended Court Officials Are Removed, CAMBODIA DAILY, 25 January 2000, at 1.

Issues in Judicial Reform

Impunity of Officials

One critical element—the most serious weakness according to many—in the operation of Cambodia’s judicial system today is the issue of impunity. Until this year, government officials, including all civil servants, police, and the military, enjoyed an effective immunity from criminal prosecution. This immunity was enshrined in Article 51 of the Law on Civil Servants. Article 51 required that permission to arrest a civil servant be obtained from supervisors (sometimes Minister depending on level of official) prior to arrest. Some have described Article 51 as a virtual license to commit crimes. Regardless, the provision in effect gave officials, soldiers, and the police impunity from prosecution for any wrongdoing committed. Permission to arrest and prosecute was rarely given, and only in exceptional cases that had already received substantial public attention.

Recently, on 18 September 1999, the King promulgated an amendment to Article 51 of the Law on Civil Servants. Instead of requiring prior approval for the arrest of an official, the amendment requires department heads to be notified within three days of charges being filed against an employee in their department. If a civil servant is arrested or detained, the judge or prosecutor must immediately notify the head of the institution concerned.

Notice of charges being filed, if no prior arrest has been made, allows an official to flee or go into hiding. And given the lack of resources of the police, prosecutors, and the court system generally, it is unlikely that an official who has fled will be caught. Flight of suspected criminals is common in Cambodia. Thus, Article 51 as amended may continue to obstruct law enforcement.

In constitutional terms, the Amendment still gives special treatment to civil servants, which violates the basic concept of equality under the law. Article 31 of the Constitution states: “Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status.” It seems clear that the Constitution does not permit a person’s “status” as a civil servant to enjoy special treatment—in this case, formal

notice of charges (even prior to arrest) and immediate notice of arrest—in the judicial process. The families or lawyers of arrested persons do not receive any formal notice of charges brought or any notice of arrest. Indeed, there have been cases of persons arrested, detained at secret, unofficial locations outside of contact with families or attorneys for notable lengths of time.

Special treatment for civil servants may reflect an unwritten belief and practice that all people in Cambodia are not in practical terms equal under the law. People of higher rank (politically or socially) expect to receive special treatment, and in fact often do. This may be linked to the highly hierarchical nature of Cambodian society historically.

Article 51 has in practice represented the public sector’s lack of accountability. It ensured that non-state parties had little or no legal recourse against the State for any violations of law or breaches in commercial dealings. Crimes went unpunished; injuries went uncompensated.

The amendment to Article 51 facilitates, in principle, prosecution of officials for wrongdoing. It should therefore be regarded as a small but positive step in reform. Yet, worries over Cambodia’s “culture of impunity” continue. Several Cambodian leaders have recently voiced their public concern over the problem of official impunity. The Deputy Prime Minister and Co-Minister of Interior stated that the lack of a proper legal system to prosecute police and soldiers for crimes committed risks plunging Cambodia into “anarchy.”²¹³ Provincial governors expressed agreement with the principle that government should be held accountable in court when it injures individuals.²¹⁴

Only the enforcement of laws against officials (or their family members) will change the pattern of impunity. Reforms on paper are necessary but not sufficient to effect genuine changes in governance. Rather than rewriting Article 51, it should be eliminated entirely. The criminal process should

213 Ham Samnang and Kelly McEvers, *Sar Kheng Says Officials Often Ignore Law*, CAMBODIA DAILY, 25 October 1999, at 13.

214 Questionnaire. In response to the statement, “A private citizen should be able to bring a case to court if the government breaks the law and causes injury (physical or financial) to a person,” 70 percent of the governors and deputy governors “strongly agreed”, 20 percent “agreed,” and 10 percent “disagreed.” Agreeing with the principle of the Government’s liability for injury to individuals does not mean, however, that the respondents would support a private citizen’s ability to bring such cases against individual officials.

apply equally to civil servants. If the Government requires procedures to deal with officials arrested or charged with crimes, it could issue regulations for procedures to temporarily suspend officials charged with crimes pending the conclusion of the court case. This might be part of a broader effort to develop a system of administrative law in Cambodia. There is no need to create special procedures in the criminal process for civil servants.

This issue of impunity relates to the larger issue of the State's inability or unwillingness to hold itself and its officials accountable for wrongdoing, or even satisfactory performance of duties. Cambodia's culture of impunity stems not only from provisions like Article 51 but from a larger inability to prosecute individuals with power, position, or status. Typically, accountability in governance results from exposure of issues by the media or external pressure from aid agencies. This is neither an optimal nor sustainable dynamic for improving governance. Major advances in governance in Cambodia will occur only when the Government and key "accountability institutions" such as the courts begin seriously to hold public sector accountable for performance and problems.

Lack of Judicial Independence

The Constitution, as the supreme law of the land, requires that all laws and decisions by public institutions strictly conform to its provisions.²¹⁵ This includes provisions ensuring the independence of the courts.

However, direct government interference in the Judiciary persists.²¹⁶ This point was raised during numerous interviews. Indeed, it was commonly cited as the most serious problem plaguing the Judiciary in Cambodia. A recent joint statement by Cambodian lawyers stated, "Political interference in judicial functions is standard practice in Cambodia."²¹⁷ This is not surprising given that one guiding principle of the system out of which Cambodia's Judiciary developed was that the courts were instruments of the party. Political interference basically defined the judicial system until 1993.

Such interference has at times occurred quite publicly. For example, the former Minister of Justice sacked three judges on the Appeal Court in 1998 after they overturned a verdict and freed a defendant in a politicized drug case. They were later reinstated by a new Minister of Justice.

Prosecutors also interfere with the independence of judges. In particular, the closeness of prosecutors to judges during both the investigation and trial is a serious issue. Judicial reforms will need to create greater separation between prosecutors and judges by limiting communications and contact. Specifically, prosecutors should be prohibited from communicating with a judge about a case without the lawyer for the accused being present. Any deviation from this rule should be grounds for the prosecutor's dismissal.

Another recent example of blatant Executive interference in the court and overstepping constitutional lines of authority is the granting of amnesties by provincial authorities to criminals under arrest in return for promises to refrain from future wrongdoing. The Constitution gives only the King the power to issue amnesties. Provincial officials went so far as to say that the actions of the court in prosecuting criminals were interfering with provincial policy.²¹⁸ Provincial governors identified clashes with the courts as a major source of conflict in the provinces.

Most recently, the Minister of Justice ordered the suspension of the Chief Judge and Chief Prosecutor of the Phnom Penh Municipal Court. While MOJ arguably has the power to investigate judicial misconduct, Article 11 of the SCM Law clearly states that only the King, based on recommendations of the SCM, has the power to decide "disruptions of actual service [and] suspensions of job" for judges and prosecutors. Indeed, under Article 12 of the Law, the Minister of Justice is not permitted to even attend SCM meetings involving disciplinary actions against judges or prosecutors. In defending his actions, the Minister of Justice cited "administrative rules" that allow him to suspend officials.²¹⁹

Similarly, the Prime Minister's directive to rearrest persons previously released by courts for lack of evidence or released on bail is a direct interference

215 Constitution, Art. 150.

216 Report of the Secretary-General, at para. 64.

217 Statement by the Cambodian Bar Association, Cambodian Defenders Project, and Legal Aid of Cambodia, reprinted in *Cambodian Lawyers United for UN Trial*, PHNOM PENH POST, 29 October 29-11 November 1999, at 8.

218 Sarah Stephens, *Amnesties Galore: Prey Veng Boss Scorns Courts*, PHNOM PENH POST, 29 October-11 November 1999, at 1.

219 Agence France-Presse and *CAMBODIA DAILY*, PM, Justice Chief Defend Court Moves, *CAMBODIA DAILY*, 10 December 1999, at 1.

with judicial independence, even if the motives of fighting court corruption are laudable. Only the police, prosecutors, and courts (which can issue arrest warrants) have the power to order arrests provided sufficient evidence exists. Moreover, serious questions have been raised whether retrials for the same crime based on new evidence, as planned by the Government,²²⁰ are permissible under Cambodian law or international law already ratified by Cambodia.

Senior government officials can use their authority effectively to pressure these institutions to aggressively pursue corruption without usurping their jurisdiction. In some instances, officials citing their Executive branch authority, have ordered prosecutors to investigate cases outside of the usual procedures. There is no need to use such practices when laws and procedures already exist to investigate corruption and appeal decisions in criminal cases that are consistent with the Constitution and respect the jurisdictions of all institutions concerned.

A proper investigation, for example, might include interviewing persons released in suspect cases (as opposed to rearrests) and offering immunity from prosecution in return for testimony against corrupt court officials. The police might also organize a “sting” operation to catch court officials soliciting bribes. Once sufficient evidence has been collected against individual judges or other officials, cases could be referred to the SCM for disciplinary hearings. MOJ recently referred some cases of possible judicial misconduct to the SCM for review. The Government must be commended for such actions.

Likewise, the Legislature seems unable to avoid interference with the Judiciary’s independence. The Senate, for example, should not call judges (or prosecutors under Cambodian law) in for questioning. The Judiciary should not answer to either the Executive or Legislative branches of government for its actions. The SCM was formed to serve that exact purpose.

In general, the Government involves itself in the Judiciary in more and less direct ways. Interference with the Judiciary has also been explicitly incorporated into the organic laws of key institutions in

Cambodia. The SCM Law, draft Law on Judges, and draft Subdecree on Establishment of the Council on Judicial Reform are examples.

It should not necessarily be concluded, however, that the current reality of regular interventions into court affairs and cases means that such practices are acceptable. Provincial governors, for example, generally agreed that government officials should not involve themselves in court cases.²²¹

Moreover, developing an independent Judiciary in the context of three separate branches of government is in its early stages. Some confusion and reliance on past practices is to be expected. This is particularly true when new laws and procedures consistent with the Constitution have not yet been adopted. This further underscores the need for new laws on criminal and civil procedures, evidence, court jurisdiction, functions of judges and prosecutor, and enforcement of judgments.

Whether concrete measures are taken and enforced will be important to producing a more professional and independent Judiciary that functions within a system of governance that is more transparent and accountable. Judicial reforms and the development of an independent Judiciary are not events, but rather long-term processes. A critical issue is whether progress will be made that produces tangible results and not simply statements about reforms that are being planned.

The issue of judicial independence also relates to a lack of clarity and consistency in applying the jurisdiction of the military court and prisons. Often high profile or politically sensitive cases are tried before the military court. In addition, a number of nonmilitary persons are detained in military prisons pending trial. This highlights the fact that judicial independence rests in part on respect for the boundaries, not only between the Judiciary and other branches of government but among different courts. In most countries, the jurisdiction of military courts is clearly defined and strictly limited to official military personnel acting in the course of official duties. The 1993 law on courts leaves the jurisdiction of the military court vague. Arbitrary (in the sense that rules

220 Phann Ana and Kevin Doyle, *Suspects Go Back to Trial, Criminals Go Back to Jail*, CAMBODIA DAILY, 8 December 1999, at 1.

221 Questionnaire. In response to the statement, “Provincial officials should have no involvement in cases in the courts,” 50 percent of the provincial governors and deputy governors “strongly agreed,” 20 percent “agreed”, and 30 percent “disagreed.”

are vague and seem to be applied inconsistently) use of the military court for cases in which neither military law nor official armed forces personnel are involved is a cause of concern. The Rule of Law requires clear jurisdictions and standards for all courts. This issue needs to be addressed.

Lack of Transparency in the Criminal Process

As discussed above, certain governance issues related to the Judiciary, and the criminal process in particular, revolve around the absence of transparency at critical points in the process. For example, the investigating judges play a central role in Cambodia's criminal process at this point. There are no effective mechanisms or guarantees of transparency in their collection and weighing of evidence.

Furthermore, given the low education levels of the average Cambodian and the ease with which a weak judicial system can be manipulated to the advantage of officials or others with power, there should be an explicit presumption against allowing a criminal defendant to proceed without a lawyer once charges have been filed. The person should be required to make a specific showing, in court on the record with a lawyer present, that he/she possesses sufficient knowledge of the legal process and legal rights to continue without representation.

The lateness of the presence of lawyers in the criminal process highlights a larger problem of governance in Cambodia. The timing of actions is a critical issue in all processes of governance. The timing of public participation, information sharing, or the presence of a lawyer are often the most crucial factors for ensuring genuine accountability, transparency, or checks and balances. Governance in Cambodia follows a pattern. Participation of people or institutions essential to a process of good governance frequently comes too late to be meaningful or not at all. Late participation in Government decision making, both by the Government's accountability institutions and nongovernment groups, often prejudices the value of such participation.

There are exceptions to this pattern (e.g., the drafting of the land law), but the pattern remains. This represents a serious weakness in Governance in Cambodia. Its connection to implicit assumptions about the nature of government decision making as a controlled, centralized process managed by elites

makes it a major challenge for governance reform. Attitudes, reinforced by long-entrenched practices, are difficult to change.

With respect to the criminal process, it is important to increase the transparency of the process, particularly when a case is before an investigating judge. The mandatory presence of a lawyer for the accused and proceedings open to the public would be two very important reforms that could have immediate, positive impact.

A third measure to increase transparency in the criminal process is to stop trial judges from reviewing evidence prior to trial. Under the current system, the investigating judge serves as the main decision-maker on whether there is sufficient evidence to merit a trial. Review by an investigating judge, however, does not mean that the evidence reviewed as part of this decision must be shared with the trial judge. Case files forwarded to trial judges by investigating judges should only contain the criminal charges filed and administrative documents, such as the appointment of an attorney for the accused. Evidence should not be included. The present system allows, even encourages, trial judges to review evidence (sometimes with the prosecutor) prior to trial, outside the view of the defense attorney. It is essential that all decision making by judges be made more transparent, especially to the accused and his/her lawyer.

Deficiencies in the Judiciary's Financial Resources

In general, legal institutions such as the Judiciary evolve at a slower pace than substantive law. Given the starting point of the Cambodian legal system after 30 years of war and unrest, Cambodia cannot afford not to put more resources into the judicial system to get it up to a functioning, competent level needed for private sector growth.

In financial terms, success in this effort is directly linked to success in dramatically increasing public revenues. The continued allocation of roughly 50 percent of annual national budgets to military/security costs represents an enormous cost to Cambodia's development. It denies resources to sectors critical to poverty alleviation and governance reforms.

In truth, incremental reductions in military/security spending, while useful, will not be sufficient to meaningfully address present public investment deficiencies in infrastructure, social sectors, and the

Table 10: Education of the Judiciary, 1999

Level of Education	Provincial/Municipal Judges**	Appeal Court Judges	Supreme Court Judges	Prosecutors	Total	Percent
Bachelor's Degree in Law (4 years)	11	6	1	5	23	13
Bachelor's Degree in Law (incomplete—3 years)	1				1	1
Diploma in law (2 years)	11			6	17	10
1998 Appointee (Bachelor's Degree or Diploma in law)	11			4	15	9
Diploma in Law (incomplete—1 year)	3		2	1	6	4
Bachelor's Degree (non-law)	3	1	1	1	6	4
High School	36	1	2	14	53	31
Secondary School	7		1	10	18	11
Primary School	7	1		6	14	8
Teacher's Certificate			1	1	2	1
Bachelor's Degree (incomplete)	2			4	6	4
Buddhist Education	5			2	7	4
Ecole Royal d'Administration (ERA)			1		1	1
Education Unknown	2				2	1
Total Number:	99	9	9	54	171	102

** Includes 8 judges in Ministry of Justice.
Source: MOJ.

legal system. Rapid, major reallocations of public resources are needed. At present, for example, MOJ receives 0.5 percent of the annual budget, of which the courts receive a small fraction.

Equally important is the separation of the Judiciary's budget from the budget of MOJ. Presently, the entire budget for the courts forms part of MOJ's annual budget. It is difficult to truly develop independent courts without empowering the Judiciary with full financial independence from the Executive branch. This would represent a genuine separation of powers. This could be accomplished by the use of a separate budget line within the national budget for the courts, the SCM, and the Constitutional Council.

It is impossible to imagine Cambodia's private sector development without the existence of a professional, transparent, nonpoliticized, accessible judiciary. This will require a massive increase in support to the Judiciary for training, infrastructure, information technology systems, document production, and public education. Reliance on aid agencies to fully

fund such investment is a misplaced and unsustainable policy, though important in the short-term. Increased budgetary resources must be directed to both the Judiciary and MOJ.

Deficiencies in the Judiciary's Human Resources
Deficiencies in the Judiciary's human resources are equally serious. Cambodia's recent history has taken its toll on the courts. The shortage of lawyers meant that most judges appointed in the immediate aftermath of the Khmer Rouge regime were former teachers. Judges with a formal legal education remain in short supply. Table 10 provides a breakdown of the legal education of judges and prosecutors. Only 30 percent of the lower court judges hold either a bachelor's degree in law or a two-year "diploma in law" (granted before a bachelor of law program existed in Cambodia). Another 4 percent of the lower court judges began but did not complete their legal education. While 67 percent of the judges on the Appeal Court have degrees in law, only one Supreme Court judge has a bachelor's degree in law.

Forty percent of all judges only reached (though did not necessarily complete) lower secondary or high school, and 7 percent did not study beyond primary school. Among the rest, there is a wide array of education including Buddhist training (which likely means education no further than primary school level), teacher certification, and the Ecole Royal d'Administration. Strengthening legal education at the Faculty of Law and other institutions is crucial to increasing the future supply of well-trained lawyers.

Prosecutors on balance possess even less legal education. Only 22 percent of the prosecutors have had some formal legal education, with only 9 percent holding a full law degree.²²²

Given the current levels of education among judges and prosecutors, major, long-term legal training is needed in order to improve the performance of the Judiciary. Recruitment of new judges, with formal legal education, must be part of the solution. New judges will not only upgrade the Judiciary by increasing the number of judges nationwide but also by raising the overall level of legal education. It should be noted, however, that not everyone agrees on the need for judges with formal legal training.²²³

The Judiciary's weak human resources are especially striking with regard to commercial cases. The level of experience among judges with commercial and financial law education is lower compared to criminal and other civil cases. Judges commonly find themselves unable to resolve legal issues that arise. As one observer put it, even if judges have the relevant laws they often do not understand them. Judges regularly ask MOJ for opinions, suggestions, or legal interpretations regarding cases.

Without the benefit of targeted, intensive training in commercial and business-related law, this major weakness will become more critical as legal reform modernizes Cambodia's legal framework and more

complex commercial laws on bankruptcy, secured transactions, tax, mortgages, and commercial banking are enacted.

With the absence of a market economy in Cambodia for the past 30 years, few if any of Cambodia's judges have had experience—as judges or otherwise—with these areas of law. Yet, these laws will be critical to the development of the private sector and expansion of the Cambodian economy. A Judiciary ill-equipped to handle commercial cases will be considered an additional risk factor for the private sector. It also contributes to the credibility gap that exists between what the private sector expects of the courts and what the courts are able to deliver. Lack of confidence in the Judiciary translates into a lack of investor confidence. Though perhaps impossible to quantify, there is no doubt that investment suffers as a result of this governance problem.

To date, training of judges has been largely small, infrequent, and unsystematic. The U.N. High Commissioner for Human Rights office in Cambodia manages a judicial mentor initiative that places international advisers in a handful of courts. USAID supported a court training project from 1994-1997 that provided training and mentors to selected courts. Other ad hoc training for judges has also been organized. The effort to train judges remains sparse compared to both the needs and the necessity of increasing the capacity of judges.

At least one leader within the Cambodian Bar also supports the establishment of a judicial training center. While this would require substantial resources, a center with proper facilities, staffing, and a comprehensive program of training could be the vehicle for the long-term strengthening of the Judiciary's human resources. Organizing a judicial training center for judges, prosecutors, and court administrative staff might be an important responsibility for MOJ.

Raising the level of human resources in any sector is a long-term process. For the Judiciary, the problem poses even greater challenges. Many areas of law are highly technical and difficult to master, even for trained lawyers. There is no shortcut to legal training of judges, or anyone else. Cambodian judges will require intensive, comprehensive training to not only strengthen their basic legal skills in legal reasoning, drafting, and research but also to address key areas of law, for example, related to contracts or secured transactions.

222 Information on judges and prosecutors was provided by the MOJ. The documents included information on educational backgrounds for all but 11 judges and 4 prosecutors who were appointed in 1998 (with the exception of one judge for whom no information was provided). The 1998 appointees (a total of 36 in number), all of whom either hold a law degree or at least a two-year "diploma in law" combined with a specific number of years of "legal" experience, were nominated following completion of a MOJ course for judges.

223 There is a Khmer proverb that has been cited during discussions with certain Cambodian judges about a Judiciary that lacks judges formally trained in law. The proverb notes that the rabbit was made the judge of all the animals because of its cleverness. Reference to the proverb by these people was meant to indicate that it is intelligence and not legal education that is the important qualification for persons appointed as judges.

A New Vision for the Ministry of Justice
MOJ needs a new vision of its mission that removes it from the business of managing the Judiciary. Such work should be left to the SCM exclusively. There are several straightforward, concrete steps that could be taken to strengthen separation of powers and the independence of the Judiciary while defining MOJ's important role in the justice system.

First, the Constitutional Council and the SCM must have their own separate budgets and administrative staff. They should not be, as they are now, budget lines within MOJ's annual budget, nor should they be reliant upon the ministry for administrative backstopping. Courts need their own administrative offices to handle case management, the appeal process, and expenditures. Budgets for all courts should be separate budget lines within the SCM budget.

Second, the SCM Law should be amended to remove all Executive and Legislative branch officials from the SCM. Membership on the SCM should be limited to individuals from the Judiciary, preferably persons no longer employed as active judges, prosecutors or officials.

Third, MOJ should have a new mandate that might include the following key areas of responsibility:

- drafting of laws;
- developing and maintaining data/information on the criminal justice system;
- organizing a judicial training center;
- enforcing judgments, in collaboration with prosecutors;
- planning, building, and maintaining court facilities; and
- supervising court administrative personnel.

This last point would help ensure proper reporting of statistical information which would enable the MOJ to collect and collate data on the criminal and civil justice system. As already noted, there should be a substantial increase in the Ministry's budget to enable it to fulfill these vital functions.

Failure to take tangible steps to instill real separation between the Judiciary and the Executive would have a detrimental impact on the development of a truly independent judiciary and a negative perception of governance in Cambodia. The costs of such

actions will be measured in the continued lack of confidence in Cambodia's Judiciary among the public, the private sector in particular, and the continued use of extrajudicial (and frequently violent) actions to resolve disputes. Businesses will certainly factor such negative risks into their decision making on investments and operations.

Legal Reform

The Cambodian legal system today is a "melting pot" of legal influences resulting from the country's tumultuous modern history. While some vestiges of the French legal system remain as a result of Cambodia's colonial past, the basic structure, laws, processes, and attitudes that define Cambodia's legal system are primarily products of its socialist/communist government of the 1980s. Aspects of the legal system such as the role of prosecutors, the powers of MOJ and the use of evidence have more in common with the old Soviet legal system than the modern French system or common law system. However, the shift toward a market economy that began in earnest in 1989 and the creation of the Royal Government in 1993 have brought notable changes to Cambodia's legal system. This is particularly true with respect to laws related to the economy and commerce.

Cambodia's legal system labors under severe shortages in both "hard" and "soft" infrastructure. There are too few laws and lawyers, as well as too few facilities and financial resources.

Current Reforms

The Government is drafting a significant number of new laws covering such areas as the penal code, civil code, criminal and civil procedures, evidence, land law, forestry law, law on audit, anticorruption legislation, and the commercial code. Progress in the legal drafting is not surprisingly mixed. These law reforms represent both an enormously important effort by the Government and an equally enormous challenge, especially in terms of human resources and implementation/enforcement.

Though legal reforms in Cambodia cover a broad range of important sectors, this section will focus on three areas of legal reform of particular importance to the strengthening of good governance in

Cambodia: (i) land reform, (ii) the creation of accountability institutions and mechanisms, and (iii) the legal framework for the private sector.

Land reform

Recognizing the overwhelming volume and volatility of land disputes, the Government created a National Land Dispute Committee. The Committee began meeting in June 1999. Provincial land dispute committees had already been created in several provinces by order of the Prime Minister in May 1999. MOI in July 1999 directed provincial governors in the remaining provinces to establish committees in their respective provinces. During the initial four months of operations, the National Committee received over 100 complaints, some by referral from commissions at the National Assembly and Senate. In general, the National Land Dispute Committee forwards all complaints to the provincial committee of the province in which the disputed land is located.

Opinions differ over the effectiveness or usefulness of the National Land Dispute Committee. Some say that it is powerless to resolve disputes fairly in cases involving landgrabs by powerful individuals or the military. The provincial land dispute committees may be equally ineffective in such cases, able only to help dispossessed poor people gain small amounts of compensation—often as little as \$50—for lost land now worth large sums.

Similarly, governors rated the relative success of these provincial land dispute committees in resolving disputes on a scale of 1 (Not Successful) to 10 (Very Successful). The average response was 6.5, corresponding to the moderate success of these committees.²²⁴

While the Government endeavors to use dispute resolution mechanisms to alleviate the problem in the short term, a new land law is being drafted. Land-ownership is associated with poverty alleviation. Thus, enactment of a land law that enables the poor to secure good title is an issue of the first magnitude. This is particularly important for the poor who have occupied identifiable plots of land for many years. Provincial governors confirm the importance of a new land law. In rating the usefulness of a land law in resolving land disputes in their province on a scale of

1 (Not Helpful) to 10 (Most Helpful), the average response was 9.3. Fifteen governors considered a new land law to be the most helpful reform in dealing with land disputes.²²⁵ If nothing else, this signals that expectations are running high with regard to the land law.

A revised draft of the land law had been expected to be forwarded to the Council of Ministers before the end of 1999. Significantly, the drafting process represents a milestone in cooperation between the government and civil society groups who actively participated in the process. The Government deserves great credit for its willingness not only to allow a working group of nongovernment and international organizations (NGOs/IOs) to directly contribute, but also its willingness to reconsider a draft of the law previously sent to the National Assembly without any opportunity for public comment.

After expressions of concern from aid agencies and civil society groups—organized into a NGO/IO Land Law Working Group to facilitate more focused input into the drafting process—over the failure to seek views and expertise from civil society organizations and the public, the Government opened up the drafting process to a degree not seen before in Cambodia. While the Government has for the most part welcomed the Working Group's inputs, the drafting remains in the hands of relatively few people given the issue's importance to Cambodia. There also remains no specific plans to seek broader input from the public before the law is sent to the National Assembly for consideration. Once drafting is completed and the law approved, the more important issues of implementation arise.

A second milestone with regard to the drafting of the land law is the development, jointly by the Government's drafter and the Working Group, of a Policy Framework for the Revised Cambodian Property Law²²⁶ that provides a detailed explanation of the basic objectives, principles, and requirements of a sound land law. While many reforms proceed without a clear policy framework in place, adoption of this document by the Government would represent a notable precedent in the law reform process.

²²⁵ Questionnaire.

²²⁶ Policy Framework for the Revised Cambodian Property Law, 2 September 1999.

²²⁴ Questionnaire.

What is missing, however, is interministerial coordination in the drafting of three key laws affecting land: the land law, forestry law, and fisheries law. Each law will significantly impact the other laws. At the moment, the drafts contain serious problems in overlapping authority and conflicting rules. To date, the individual ministries associated with each law have made no effort to coordinate work, set common policies, or ensure consistency among the laws. This is one of the most serious issues in governance facing Cambodia. These laws will touch the lives of every Cambodian and every development project in Cambodia. There needs to be an open discussion of these laws together to ensure they promote consistent policies, use consistent rules, and are implemented in a consistent manner.

The existence of productive partnerships between government and nongovernmental groups in the drafting of major legislation is a significant achievement, especially if similar partnerships are used in drafting other important laws. Yet, the value of the new land law must be measured by the ability to implement the law, enforce it in the face of people with power who violate the law, and corrupt officials who do not apply the law. Given the challenges of implementing the land law, there is obvious value in continuing this government-NGO partnership into the implementation phase of the land reform process.

Creation of Accountability Institutions and Mechanisms

In countries that practice good governance and respect the Rule of Law, the most important accountability institutions are the courts. The state of the Cambodian Judiciary is discussed in detail above. It should suffice to say that the courts require dramatic strengthening, despite some initial efforts, in order to serve as the backbone of a system of “checks and balances” that can ensure good governance in Cambodia. In addition to the courts—which usually serve as the accountability institutions of last resort—the Government is taking steps to establish specialized accountability institutions. These are critical reforms, the success of which would contribute to improved governance and Cambodia’s long-term economic development.

Corruption is acknowledged by the Government, the aid community, civil society, and the private sector, to be a major obstacle to the promotion of good governance in Cambodia. Discussions about corruption in Cambodia often stress that the official salary levels of civil servants—averaging \$20-30 per month—are not a livable wage for Cambodia. This is undoubtedly true. Hence, the need for civil servants to supplement their official salaries with other income, by working other jobs or by rent-seeking in their official duties. This justification was recently offered by court officials who admitted accepting payments related to criminal cases.²²⁷ Some refer to this as “survival corruption,” and maintain that increasing civil servant salaries is the only way to combat this issue.

Serious questions exist regarding the link between raising salaries and eliminating corruption. It is not clear to what degree salaries must be raised to eliminate the so-called “survival corruption.” Additionally, how much will the national budget need to expand in order to support increasing civil service salaries to a reasonable living wage? This issue has yet to be addressed in light of the overall reforms in the civil service that may include reducing number of personnel. If projected increases in revenues over the next several years allow, for example, salaries to be increased 100 percent or even 500 percent, will this reduce corruption? Will increasing current monthly salary levels of \$20-30 to \$100-150 per month make small-scale corruption that adds an extra \$15 per month disappear, or would \$15 still represent an amount worth taking in percentage terms?

In other words: Is there any reasonable hope, based on projected increases in revenues and demands for greater social spending, that civil servant salaries can be increased in the next five years to levels that will make it likely that civil servants will not seek to supplement salaries through corruption? Likewise, has there been any thought to how future budgets will allocate increases in revenues and how much might go to salary increases? One thing that seems clear, however, is that revenues will need to rise significantly if there is to be any hope of increasing civil servant salaries to a livable wage. It is unlikely that

²²⁷ Kevin Doyle and Phann Ana, Money Makes Courts Better, Official Says, CAMBODIA DAILY, 7 December 1999, at 1.

simply improving the allocative efficiency of current revenues will suffice. The impact of increasing civil servant salaries on reducing corruption in Cambodia merits more study.

The other side of the corruption issue is the high level, “big money” corruption that is widespread in Cambodia. This is less an issue of basic survival than an issue of greed, as well as the need for money to support systems of political patronage and influence. There must be effective, active, and professional “accountability institutions” to fight this type of corruption.

At the moment, corruption in all its forms is a zero-risk, high-reward activity. This balance must change.

Within the public sector, there already exist several accountability institutions that in theory have responsibility to fight corruption. In addition to the Ministry on Parliamentary Affairs and Inspection, (MPAI) each ministry has a department of inspection. These departments, however, are ill-equipped to tackle corruption. Financial and human resources are weak.

More significantly, there are no incentives to identify and report corruption. In fact, all the incentives—financial, political, career, and personal security—favor inaction, or even complicity. Indeed there are substantial political benefits to keeping civil servant salaries low while using corruption to finance payments that keep officials beholden to those who manage the system and make the payments. The threat of criminal prosecution is, in effect, nonexistent. And it is likely that most officials have been to varying degrees co-opted by the system. It is difficult for people with unclean hands to point a finger at others.

There is no doubt that existing accountability institutions such as the various ministry inspection departments need professional training, greater resources, improved working conditions, and clearer authority. Their internal auditing and monitoring functions are an important part of any anticorruption framework. Yet, because they answer to the same institutions they inspect, these inspection departments lack independence and transparency of action.

The various commissions of the National Assembly also represent in theory an important set of accountability institutions. However, as discussed above, the Assembly’s lack of resources and expertise leave it unable to perform its crucial oversight function. Strengthening both the Assembly’s and Senate’s thematic commissions is an important element of improved accountability.

At the moment, the most active accountability institution in Cambodia is the media. Despite lapses in journalistic standards, the media has proven itself able to expose serious cases of misconduct and abuse within the public sector. Though vital for good governance, the media is not a substitute for effective accountability institutions. Its power to expose is important for good governance, but only the Government holds the enforcement powers needed to ensure accountability, transparency, consistency, and the Rule of Law.

Given the inherent limitations in internal inspection and current weaknesses in legislative oversight as well as the need for apolitical, technical expertise, there is a demonstrable need for new, independent accountability institutions. These bodies must operate with clear mandates, defined powers and procedures that ensure transparency of action and accountability in the public sector.

A Law on Audit has been approved by the National Assembly and will be forwarded to the Senate for consideration. The Law would empower a National Audit Authority (NAA) to inspect any and all public institutions and entities receiving public funds, including tax exemptions.

Implementation of an audit law would represent an important step in increasing accountability in government. Legal experts note that the most important issue as yet unresolved with this critical law is the process of nominating an Auditor General. The only major change to the draft submitted to the Council of Ministers was to Article 19 on appointment of the Auditor General. The original draft required appointment by the National Assembly after open debate on a short-list of candidate. The Council of Ministers altered Article 19 to empower the Government to appoint the Auditor General. This is a key issue since

experts consider the Auditor General crucial to the success of the NAA and the implementation of the audit law.

The desire to control the Auditor General's appointment illustrates long-standing, deep suspicions of neutral, independent authority and institutions. To the extent that this is true, such suspicions stand as a major obstacle to good governance in Cambodia. The existence, functioning, and credibility of independent, nonpolitical institutions is a basic requirement for the Rule of Law, sound financial systems, anti-corruption efforts, investment, and private sector development. In short, good governance is unlikely without credible "accountability institutions" which are allowed to work in a professional, informed, neutral, and independent manner.

MEF is also drafting a Law on Budget Discipline that will level court-determined penalties against public officials or their agents found guilty of embezzling public funds or committing other offenses.

MPAI is drafting anticorruption legislation that includes provisions requiring public officials to declare assets and the creation of a national anticorruption commission.²²⁸ An initial draft was completed in May 1999. A revised draft is expected to go to the Council of Ministers by the end of 1999. Senior officials have expressed concern that the provisions on declaration of assets will be weakened before passage of the law by the National Assembly.

The declaration of asset provisions are the most important element of the law. If these provisions are weak or poorly drafted, the entire anticorruption law is compromised. Implementation of this law would be powerful proof of the Government's commitment to fight corruption, but will require a level of political will as yet unseen in Cambodia.

MPAI has drafted a National Anticorruption Action Plan outlining objectives, prerequisites, and activities for six areas of anticorruption actions: investigations, auditing of public institutions, public education, strengthening existing anticorruption mechanisms, operating procedures/codes of conduct, and conflicts of interest.²²⁹ It will be important for the jurisdictions and duties of the MPAI and the

soon-to-be-formed NAA to be clearly defined to prevent overlap and ensure compatible functions.

The Government has also established new accountability institutions on an ad hoc basis. Recently, for example, MOJ in response to allegations of corruption within the Judiciary announced the formation of a committee to investigate possible corruption in certain municipal court cases in Phnom Penh.²³⁰ The proper procedures for investigating judicial misconduct are unclear. The Supreme Council of Magistracy (SCM) holds sole jurisdiction over the disciplining of judges. It might have requested MOJ to form a committee and report back with recommendations on possible disciplinary actions. Instead, the Ministry acted under its own authority. Prior action by the SCM might have better underlined its constitutional authority on judicial discipline and demonstrated an appropriate separation of powers between MOJ and SCM.

As one of its measures to combat corruption, the Government has pledged that senior officials, civil servants, government agents, and public institutions "shall be held responsible for any offenses related to the implementation of revenue and expenditures."²³¹ Such public statements of commitment to fight corruption and enforce financial accountability within the public sector are important. So is the promulgation of anticorruption legislation. Even more crucial, however, are actions to hold public officials legally accountable for the mismanagement and embezzlement of public funds or other abuses of public office.

For countries caught in the high corruption trap—when existing corruption leads to further corruption because officials and private persons see no alternatives and law enforcement resources are spread too thinly to be effective—marginal or incremental reforms will not reduce corruption. This does not mean all anticorruption efforts will fail. However, a credible, long-term commitment to fighting corruption is essential. Action must be swift, public, and provide due process. Action must also be sustainable. Good governance requires that the Government be accountable, and seen to be accountable.

228 Kevin Doyle and Lor Chandara, *Law Would Make Officials Disclose Assets*, *CAMBODIA DAILY*, 7 April 1999, at 10.

229 National Anti-Corruption Action Plan (Draft), 17 September 1999.

230 Phann Ana and Kevin Doyle, *Ministry Will Probe Court Corruption*, *CAMBODIA DAILY*, 3 December 1999, at 1.

231 Circular (Sarachor) on the Measures to Enhance the Efficiency in Managing and Implementing Economic and Public Finance Reform, No. 06 SR, 11 June 1999, para. II(2.1).

Accountability, transparency, and establishment of the Rule of Law increases confidence in government. As noted by the Asian Development Bank during the Consultative Group Meeting in February 1999, "Good governance, increased transparency, and the establishment of rule of law are critical for the enhancement of trust in the government by donors and investors as well as the common citizenry."²³² Distrust and a lack of confidence in government carry a heavy price in terms of lost investment and assistance.

Studies show that high levels of corruption correspond with low levels of investment. Countries with high levels of corruption also tend to under-invest in human resource development, meaning they spend too little on education.²³³ In effect, "corruption acts like a tax on foreign investment."²³⁴ In the long run, the poor are especially hard hit by corruption. When corruption is pervasive, it means the public sector functions poorly. This results in fewer social services; a high burden caused by corrupt practices or "informal" taxes; infrastructure development that does not favor the poor; disadvantaged conditions for selling agricultural products; and limited ability for small and medium-size businesses to grow.²³⁵ These are extremely relevant points for Cambodia.

Notably, studies also found that satisfaction ratings for development projects strongly correlate to the host country's indicators for political instability and corruption.²³⁶ Higher levels of political instability and corruption are associated with lower ratings for project performance and lower ratings by international rating agencies when countries seek to raise money through capital markets.

Legal Framework for the Private Sector
Overall, the Government has demonstrated a strong pro-business attitude. This is one major competitive advantage that Cambodia enjoys over certain of its neighbors. The key is using this positive perspective on the private sector as the foundation for stronger

public-private sector dialogue and a more conducive environment for private sector growth.

Still, Cambodia's legal framework for the private sector is incomplete. Given the huge task of transition from a command to a market economy, this should not be surprising. There has been notable progress in developing a market-oriented legal framework since 1993. The Government enacted a liberal investment law in 1994 that not only provided generous incentives for investment but more importantly did not discriminate between foreign and local investors. A Law on Commercial Registration was passed in 1995 allowing for the formal registration of companies. A Labor Law and Law on Taxation were promulgated in 1997. There are problems in the enforcement of both laws.²³⁷

The Ministry of Commerce (MOC) has completed drafts of a new law on business organizations (to serve as a new company law), contract law, law on commercial arbitration, patent and trademark law, copyright law, bankruptcy law, and law on product liability. While drafts of most of these laws have circulated for several years, action is anticipated shortly. IMF has listed the submission of two commercial laws to the National Assembly as one of its structural benchmarks for the new Enhanced Structural Adjustment Facility (ESAF) loan to Cambodia. Currently, MOC is revising the draft laws on commercial arbitration, business enterprises, and trademark. These will be submitted to the Council of Ministers as part of Cambodia's efforts to satisfy the ESAF condition, by the end of 2000.

Recently, in July 1999, MOC issued a prakas on labeling meant to set some basic standards for information required on labels for food.²³⁸ In addition, the National Assembly has amended the Law on Commercial Registration, transferring power to solve minor commercial disputes from the yet-to-be-formed Commercial Court to MOC. It is unclear whether this change alters the jurisdiction of the courts which currently handle disputes between businesses. The Assembly is debating further amendments to the Law to formalize current practice by placing MOC in

232 Statement by the Asian Development Bank on Financial Requirements, Consultative Group Meeting, Tokyo, Japan, 25-26 February 1999.

233 United Nations Development Programme, *Corruption and Good Governance: Discussion Paper 3*, New York: UNDP, July 1997 [hereinafter UNDP Governance Paper], at 37-38.

234 UNDP Governance Paper, at 39.

235 UNDP Governance Paper, at 45-46.

236 UNDP Governance Paper, at 38.

237 See, e.g., Dr. John A. Hall, *Human Rights and the Garment Industry in Contemporary Cambodia*, March 1999.

238 Prakas on Measures Against Food Products Devoid of Appropriate Packaging Labels, Ministry of Commerce, No. 329 MOC / M99.

charge of company registration (as it has been) instead of the unformed commercial court as required in the original law. The Assembly is expected to approve the amendments shortly.

The Assembly also approved a new Law on Quality of Goods and Services. Among other things, the Law will allow the import of humanitarian, non-commercial goods into Cambodia provided a special permit is issued by the relevant ministry. During the debates, some Assembly members expressed concern that allowing ministries to issue special permits for the import of noncommercial goods, including weapons and waste materials, would simply facilitate further corruption. Without strict monitoring of the issuance of such permits, there is a strong possibility that corrupt practices will occur in connection with noncommercial imports. One provision that might help check such practices is requiring public disclosure of all special permits issued under the Law.

A Financial Institutions Law to regulate the commercial banking and finance sector was approved recently by the Assembly. The Senate, however, returned the draft law to the Assembly complaining that the five days allowed for review due to the bill being marked as "urgent" did not provide adequate time to review the lengthy, complex legislation. IMF had made approval of this law before the end of 1999 a policy action required under the ESAF arrangement recently approved by the Fund.

The Financial Institutions Law will be implemented primarily by the National Bank of Cambodia.

A Law on Insurance has been before the National Assembly for more than a year. The Law, approved by the Assembly's Commission on Finance and Banking, awaits debate by the full Assembly.

As mentioned above, the drafting of the new land law represents in many ways a break with past precedent in law reform. Without question, a workable land law is critical for growth of the private sector as well as poverty alleviation in Cambodia. The drafting process for the land law has allowed an unprecedented amount of constructive input and useful feedback from nongovernmental voices. By encouraging consultations, the Government is increasing the chances for successful implementation of this complex and crucial law. Continuing to work with the

NGO/IO Land Law Working Group during the implementation phase will no doubt improve the effectiveness of the law.

There remains significant opportunities to open up the legislative drafting process in similar ways for most other laws and regulations. Input from the private sector on legislation related to business is only one example among many.

There is no doubt that Cambodia's legal framework is extremely important to the private sector. The absence of a legal framework was repeatedly cited by international companies as one of the most serious problems encountered in Cambodia. When asked to rate the importance of a legal framework for conducting business in Cambodia on a scale of 1 (Not Important) to 10 (Most Important Factor), the average response of international companies operating in Cambodia was 7.3.

Related to weaknesses in the legal system, the private sector almost without exception named corruption as a problem of the highest magnitude in Cambodia. Of the 10 multinational companies interviewed by the Project, nine rated corruption and/or smuggling as one of the three most serious problems in conducting business in Cambodia. Even more importantly, there was unanimity among businesses interviewed that corruption has become more severe during 1999, especially when dealing with government institutions concerned with private investment. According to the businesses interviewed, cracking down on corruption is the most needed reform in order to promote private sector growth in Cambodia.

Some Cambodian officials believe that corruption targeting the private sector is perfectly acceptable, as opposed to corruption involving the courts. As one government official eloquently put it, "There is corruption, corruption and corruption . . . Everyone receives money . . . Money from businessmen is not important, but if you take money from criminals . . . this is dangerous for the people."²³⁹

This skewed perception of what is acceptable government practice is a major problem for private sector development. During interviews for this study, many private sector managers expressed their belief

²³⁹ Kevin Doyle and Phann Ana, Two Court Officials Suspended, *CAMBODIA DAILY*, 8 December 1999, at 13.

that businesses are simply seen as a source of money for officials. The view that the private sector is a legitimate target for corruption damages both Cambodia's prospects for investment and its long-term growth. The Government should not expect significant, productive, long-term investment in Cambodia until such attitudes change. And such attitudes will remain unchanged until the Government ends its tolerance for corruption.

Issues in Legal Reform

Absence of a Notice-and-Comment Period for Draft Legislation

The private sector has raised two critical issues regarding the process of adopting laws in Cambodia.²⁴⁰ The first is the lack of a formal period for offering comments on draft laws and regulations. Specifically, the Government or individual ministries should publicly announce the completion of a draft law or regulation. The draft should be then made available for public comments during a defined period of time before it is finalized and approved. This would permit public review and comments before new laws are implemented. Senior government officials and members of the National Assembly have endorsed the idea of a 60-day notice and comment period.

The absence of a formal mechanism informing the private sector and general public about proposed legislation severely reduces the transparency of the legislative process. At the moment, the drafting of law and regulations is confined to a very small group of officials, international advisers, and occasionally representatives of selected civil society organizations. The participation of any nongovernmental groups, including the private sector, is at best inconsistent. In particular, the absence of consultations between the Government and private sector may result in less effective laws or laws that actually inhibit rather than support private sector growth in Cambodia. The result is that most laws reach the National Assembly (the Council of Minister or individual ministers for subdecrees and prakas) with little if any input from nongovernment persons or their advisers.

In order to ensure transparency and accountability in the policy making and drafting process for laws

240 The International Business Club, which represents 30 international companies with US\$400 million of investment in Cambodia, recently sent a letter, dated 21 October, 1999 [hereinafter IBC Letter, October 1999], to the Council of Ministers requesting the creation of a mechanism that offers an advance notice and public comment period for new legislation.

and regulations, there must be formal procedures that allow for public comment on proposed legal reforms, including prakas and other regulations by individual ministries. The private sector has proposed making available, in Khmer and English, all draft legislation and having a 60-day comment period prior to approval of all laws and regulations.²⁴¹ To be most effective, the 60-day notice-and-comment period is recommended to start when the Council of Ministers officially forwards draft laws to the National Assembly or upon an announcement by a ministry of its intention to issue any prakas or decision.

Absence of Public Notice Before Legislation Comes Into Effect

The second critical issue raised by the private sector is the failure of Government to provide advance notice of new laws or regulations, many of which significantly impact business operations. This lack of warning of new laws often leaves businesses unprepared for internalizing new legal requirements. Most regulations issued by ministries are not only drafted without outside input or consultations but often issued without any advance notification to the public, in particular the private sector. This creates big headaches for businesses because they are unable to plan for changes that may have a major impact on their operations. Final versions of laws and regulations should be available to the public before they come into force.

The recent publication in local newspapers of a new prakas by MOC is an excellent example of one ministry's attempt to provide public notice on new rules that will affect the private sector as well as the general public. MOC has also informally circulated drafts of commercial laws to selected persons in the private sector. These are excellent though limited examples of efforts by an individual ministry to improve transparency and public participation. Building on informal practices, the Government should officially require a notice-and-comment period before approval of all laws and regulations as well as their publication prior to their coming into force.

The private sector proposed the publication of all laws and regulations in one official publication on a monthly basis so that the public will know in advance about the implementation of new legisla-

241 IBC Letter, October 1999.

tion and regulations. These are sound suggestions and would be an important contribution to the establishment of good governance in Cambodia.

Greater nongovernmental and private sector input into the legislative drafting process raises another issue. While recognizing the need for a more robust legal framework, the private sector has expressed frustration with their lack of input. There have been isolated examples of ministries approaching the private sector on drafting laws. However, according to the private sector, they are usually asked to write the laws for the Government. In other words, they were not being asked to consult with the Government on legislation but rather to substitute for the Government in the drafting process.

The reasons for this are understandable. The levels of skills and expertise within the public sector are low compared to those in the private sector. Private sector interviews, conducted for this report, made this abundantly clear as a major problem in dealing with government. Officials are aware of their inability to draft often technical regulations and laws. Hence, they approach businesses in the sector concerned for assistance.

The private sector has expressed an unwillingness to play this role, complaining that their input is too often not implemented, or worse proves irrelevant because ministries later issue prakas or decisions that are completely inconsistent or directly conflict with the law.

The private sector has expressed a similarly high level of frustration over the failure of aid-supported experts to consult with them during the legal drafting process as well as the inability of aid agencies to coordinate among themselves on legal reforms. If the private sector believed that their input would have impact, businesses expressed support for a mechanism that would allow regular contact with aid groups. Serious doubts, however, were voiced about the ability of aid agencies to follow through on such measures.

In general, private sector concerns must be heard more clearly and consistently. The private sector is in many ways the measuring stick for reforms in Cambodia. If reforms are pursued seriously and the results improve good governance, private sector confidence will rise and investment flows will increase. If reforms are perceived to be empty promises with few results, private sector confidence will drop and

investment will decline. Falling investment is an important signal that reforms are not proceeding as quickly, as aggressively, or as successfully as they should be.

Improvement in the Implementation and Enforcement of Laws

Despite significant changes over the past 10 years, the continuing gaps and inconsistencies in the legal framework (i.e., the body of laws that makes up the legal system) present serious challenges to governance in Cambodia. It is not only the absence of laws, but also the lack of respect for laws and the lack of consistent, transparent, and even-handed enforcement of laws that plague Cambodia's legal system.

Difficulties in dealing with security and public safety continue to impede governance reforms. The Government must be given due credit for ending the civil war in Cambodia. Its intention to reduce the possession of illegal weapons is also laudable given the huge number of guns in the country. Yet, despite the cessation of military hostilities and the anti-gun policy, the incidence of crime, especially violent crime, increased during 1999.²⁴² For the most serious offenses—armed robberies, killings, and homicide—the police investigated and made arrests in 34 percent of the cases.²⁴³ MOI has noted the relationship between rising crime, low enforcement, an inadequate legal system, insufficient collaboration between courts and police, low levels of police training, and lack of equipment.²⁴⁴

The lack of public confidence in the legal system encourages people to take the law into their own hands. It is not uncommon for suspected robbers, for example, to be attacked and sometimes beaten to death by crowds of people. The Deputy Prime

242 Commentary on Security Situation and Social Order Between 1 June to 30 September 1999, H.E. Sar Kheng, Deputy Prime Minister and Co-Minister of Interior, 2nd Meeting of the Royal Government of Cambodia and Donor Countries, 27 October 1999 [hereinafter Commentary on Security Situation], at 1.

243 Commentary on Security Situation, at 1, 2, 4.

244 Commentary on Security Situation, at 2. One reform pushed by the Ministry of Interior to deal with security issues is the formation of "people's militias" to improve security at the local level. Given the weaknesses in command and control that exist, especially in the provinces, there is a serious question whether empowering untrained, unsupervised local militias is an advisable policy. The accountability of such groups for their actions (e.g., extra-judicial enforcement of laws) is likely to be weak. It might be wiser to formally incorporate the thousands of commune-level militia that are currently on the government payrolls into the National Police. In the context of the police's reform efforts they could be provided with basic training in police functions and responsibilities.

Minister recently acknowledged this situation caused by Cambodia's "inadequate legal system."²⁴⁵

As the Government has acknowledged, there is a law enforcement problem in Cambodia. This leaves the issue of security risks uppermost in the minds of not only Cambodia's citizens, but in particular the local business community and foreign businesses considering investments in Cambodia. Similarly, Cambodian judges do not feel secure, particularly when the police or soldiers are directly involved in cases before them.

Lack of respect for laws and difficulties in enforcement are not simply matters of ill-motivation, bad practices, or political infighting. Most importantly, weak legal implementation/enforcement is largely connected to the lack of human and financial resources of the people who must manage and work within the legal system. The absence of well-trained lawyers and judges, the public's low level of legal literacy, lack of technical experience, inadequate training of the police, and lack of experience by officials with a transparent, accountable government of checks and balances cannot be separated from the difficulties in Cambodia's legal system. Human resources and legal reform must go hand in hand. The latter without the former is unsustainable.

This largely explains the current state of legal reform in Cambodia. A sizable number of laws have been drafted and passed by the National Assembly over the past six years. An even larger number of subdecrees and other regulations have been issued (itself a signal of the incomplete nature of the legal framework). However, implementation of these new laws and regulations has been uneven. Often, expediency, secrecy and sometimes the politics of power, rather than the laws, dictate the course of events.

Moreover, while the volume of new and important laws being drafted is encouraging it also presents certain dangers. First, given Cambodia's weak human resources, prospects for implementation/enforcement of these laws are debatable. The plethora of laws also raises some questions about the Government's ownership of and commitment to this effort. The shortage of highly skilled Cambodian lawyers means that much of this legal drafting is being done by international experts. The level of

understanding, policy planning, political support, and capacity for implementation of any of these laws is unclear. Ownership of these laws is in question. Since consistent and transparent implementation of laws has been a major challenge in Cambodia, these issues are paramount for the establishment of good governance. Failure to see genuine ownership and thus enforcement of laws will cost Cambodia dearly both in terms of international assistance and private investment.

This point was specifically raised by the private sector both with the Government and key international aid agencies. Their comment is worth repeating in full: "Although the weakness of Cambodia's legal system impedes the operation of business, [we] believe that donors often place too much emphasis on passing new legislation, which are rarely implemented."²⁴⁶ Among the firms interviewed for this study, 50 percent cited implementation of laws as one of the three most important reforms needed to help promote business in Cambodia.

In short, both the Government and aid agencies need to place more emphasis on the transparent, consistent, correct implementation/enforcement of laws and regulations in Cambodia. And when implementation is done improperly, there must be an effective mechanism such as the courts to hold the offending institution accountable for such actions and compel proper application of the laws. It is the rule (i.e., the operation and enforcement) of law, not the drafting of laws, that counts most.

The weak legal/judicial system would likely have a major impact on the sovereign rating that an international rating agency might give Cambodia. This is not a merely hypothetical issue. The Government has mentioned its desire to raise capital through the issuance of some form of sovereign debt (e.g., treasury bills or bonds). The functioning of the legal/judicial system is one of many key factors used in determining sovereign ratings for a country.²⁴⁷ The Government could not hope to receive a viable sovereign rating for the issuance of debt as long as

246 Letter from International Business Club to The World Bank, dated 10 July 1999. In addition, IBC identified an under-developed legal system and inefficient Judiciary as one of the most serious issues facing the private sector in Cambodia.

247 See Moody's Investors Service, *Moody's Sovereign Ratings: A Ratings Guide*, March 1999.

Cambodia's courts could not be relied upon to enforce legal or contractual obligations against the Government. In general, the enforcement of contracts, even purely private contracts, through the collection of unpaid debts or seizure of collateral is unreliable in Cambodia. Similarly, the unpredictable, corrupt, and unaccountable nature of the regulatory/legal environment would negatively impact a country risk assessment. Taken together, these issues present enormous risks to any future lenders or creditors.

The Rule of Subdecree

There are a number of critical, ongoing problems in Cambodia regarding the legislative process and attitudes toward governance reforms. There is a continuing disinclination, or outright refusal, to draft laws that are comprehensive and enforceable in their own right. Laws sent to the Assembly for consideration typically contain only general statements of purpose, principles and structure of any new institutions created. They frequently include insufficient provisions on the legal meaning of key concepts, procedures, due process, scope of authority for new and potentially powerful institutions created, legal standards for applying the law, delegations of authority for enacting regulations and, most importantly, enforcement. Such crucial details, which would make the law meaningful and enforceable, are left for later subdecrees which, significantly, are enacted by the Council of Ministers and not the National Assembly.

Examples abound, including the Law on the Press (1995), Law Concerning the Protection of the Environment and Management of Natural Resources (1996), Law on Investment (1994), Law on the General Statute of the Cambodian Armed Forces (1997), and draft Law on Commune Administrative Management.

This practice—its consistency might lead one to call it part of Cambodia's legislative system—severely obstructs the process of law reform in Cambodia and undermines the establishment of the Rule of Law in at least four ways.

First, there is tremendous difficulty in generating the time, resources, expertise, attention, and political will to address an issue. Requiring a later subdecree to make a law genuinely enforceable effectively delays, sometimes indefinitely, implementation of legal reform. Many subdecrees required in laws are never enacted.

Second, the absence of key legal standards, definitions, and processes enables the Government—usually individual ministries—to retain maximum discretion in regulating a given area. In other words, the Government is reluctant to circumscribe its powers and create legal checks to its otherwise undefined authority. According to many businesses, new laws simply create new opportunities for ministries to issue new *prakas* in order to extract more money through corruption. The private sector has described new laws as a license for unchecked regulation and rent-seeking. Most importantly, businesses stress that there are no effective mechanisms or checks against ministries that issue regulations or decisions that directly conflict with, or have no relation to, the laws which they are supposed to implement.

Third, passing vague laws often without clear, enforceable provisions contributes to the perception that there is little progress in building the Rule of Law in Cambodia.

Lastly, rule by subdecree undermines the development of a system of checks and balances. It allows the Government to continue in many ways exercising legislative powers, and it allows ministries to continue issuing regulations unchecked by a clear, comprehensive law or a functioning Judiciary that can strike down improper government actions or regulations.

One reform that would mitigate this problem would be the requirement that all draft laws forwarded to the National Assembly for consideration must be accompanied by drafts of any implementing regulations called for in the law. This would allow the Assembly and Senate to understand more fully how the Government intends to implement a law and ensure regulations reflect the legislatures' intentions. It would also ensure that laws enacted by the Assembly and promulgated by the King will be enforceable immediately upon their enactment. The notice-and-comment period discussed above would similarly help address such problems. Leaders in both the National Assembly and Senate supported the idea of receiving draft regulations together with draft laws.

National Assembly members also complain about rarely receiving copies of implementing regulations. They supported the idea of including a requirement in new laws that copies of all subdecrees, *prakas*, and

other regulations issued by ministries to implement a law must be forwarded to the Assembly.

More importantly, courts must begin exercising their power to void regulations, actions or interpretations of laws that conflict with the Constitution, the laws concerned themselves or the powers of a ministry as defined by its organic subdecree. People must be allowed to bring cases to court challenging improper government actions or regulations.

Allowing such cases would have a huge, positive impact on governance. It would serve as an effective check to abuses of power or arbitrary actions by public institutions. This will facilitate private sector growth and economic activity which is sometimes choked off by arbitrary or corrupt actions by officials. For example, one company interviewed that sought to export dairy products from Cambodia—a new type of export for Cambodia—was informed by the Ministry of Agriculture, Forestry and Fisheries that it had to pay a 10 percent export tax in addition to the official export tariff. With no effective way to challenge such edicts, the company was forced to withdraw its plans to export.

Courts must hear cases involving such arbitrary and illegal actions by the public institutions and judge them according to the laws and Constitution. At the moment, there is no effective check to the power of ministries to act, directly or by subdecree, or interpret laws as they wish. Such unrestrained power is contrary to all notions of good governance.

Paper has no Power

Establishment of the Rule of Law in Cambodia is related to the belief that paper (i.e., laws) has real power. That concept is not widely accepted in Cambodia. Rather, the belief is that paper does not have power, people have power. In other words, power comes from a person, a gun, or a government post, not laws. This idea has been historically reinforced in Cambodia with great clarity and cruelty. Undoing it will require a sustained effort in the context of a relatively stable and peaceful Cambodia. As the Co-Minister of Interior succinctly put it, “The respect and practice of law is not yet implemented here.”²⁴⁸

The public’s perception of the unreliability of laws also tends to bolster the existing tendency of seeking higher officials to intervene and solve disputes

or problems, including legal issues. This occurs either because the relevant legal framework does not exist or is incomplete, or based on a belief that the courts have acted improperly or are unable to act. Land disputes are a prime example.

Since courts and the laws cannot be relied upon, people often petition government leaders such as the Prime Minister, the President of the National Assembly, or selected ministers. Indeed, even senior government officials rely on intervention from Cambodia’s leaders. As one official said in response to a question concerning the difficulty of punishing official wrongdoing, “It is not hard to do because the Prime Minister agrees.”

The actions taken against judicial corruption are a more recent example of direct intervention by political leaders into allegations of corruption by the courts. It is important and good that Cambodia’s political leaders actively support anticorruption efforts. There is a broad consensus that Cambodia’s courts are thoroughly corrupt. However, senior government officials issuing orders for arrests and investigations of the Judiciary not only reinforces the existing over concentration of decision making in Cambodia but further undermines efforts to establish the Rule of Law.

Every time a political leader personally intervenes to solve a dispute or orders the re-arrest of suspected criminals—even if the result is just, fair, and good—it sends the message that laws cannot be relied upon. In their desire to resolve disputes or break deadlocks, Cambodia’s leaders implicitly concede the inability of the courts to effectively and properly enforce the law. They reinforce the idea that laws count for little and the word of powerful figures counts for everything. Even assuming the best of intentions, it is impossible to break this cycle and promote good governance without the development of credible, independent “accountability institutions.”

Governance is weak if government accountability is so dependent on the blessings of individual leaders, no matter how sincere their intentions. Indeed, the strength of governance in a country might be best measured by the ability of accountability institutions to operate effectively in the face of nonsupport by political leaders.

248 CAMBODIA DAILY, 25 October 1999, at 13

Similarly, procedures set out on paper—in laws or regulations—are often ignored or avoided in favor of more informal, less transparent decision making. Decisions and policies are frequently made without formal meetings. This leaves many officials and institutions concerned as well as the public outside the decision-making process. Use of such informal decision making by powerful individuals must be curtailed; standard operating procedures and formal meetings should be used more consistently. The Rule of Law means among other things that procedures required by laws are respected and followed.

In Cambodia, a new perspective on the power of laws will only emerge over time as people begin to see a reliable, transparent, effective legal system operating. Corruption in the judicial process and public sector must end. Professionalism of public officials needs to improve. In short, the Government and Judiciary will need to implement and enforce laws, and be publicly accountable for their failures to do so. If the Government is neither respectful of nor accountable to the laws, the public will not be either.

Regional Integration

ASEAN

A key aspect of Cambodia's policy for economic development has been re-establishing the country's links with both the regional and world economies. Integration into the Association of Southeast Asian Nations (ASEAN) is a major element of Cambodia's regional integration strategy.²⁴⁹ After three years of technical preparations and diplomatic challenges, Cambodia joined ASEAN in April 1999.

The Government continues to place a high priority on ASEAN integration. Despite Cambodia's often difficult political landscape, the importance of ASEAN remains an issue over which there is complete consensus among senior officials and implicated economic ministries. Officials involved in ASEAN preparations have long recognized that ASEAN integration will have major impacts on governance and reform in Cambodia. They will challenge

Cambodia to “further liberalize the economy, strengthen human resources, establish more effective, consistent mechanisms to debate and create policy, and increase transparency and integrity of public institutions.”²⁵⁰

Institutional Framework for ASEAN

Three ministries led the ASEAN preparatory process: for overall coordination, the Ministry of Foreign Affairs and International Cooperation (MFAIC), the Ministry of Economy and Finance (MEF), and the Ministry of Commerce (MOC). Each ministry has dedicated ASEAN departments to oversee the preparatory process. Other ministries and agencies either have ASEAN units or focal points that have participated to varying degrees in ASEAN preparations.

The multisectoral nature of ASEAN cooperation, especially its economic initiatives, requires Cambodia, like all ASEAN members, to develop interministerial mechanisms to coordinate policy making, implementation, and monitoring for ASEAN activities.

The development of these needed interministerial mechanisms and bodies is still in its early stages. At the ministerial level, the Government established an Internal Coordination Network (ICN) to coordinate ASEAN preparations and policy making. The ICN, however, has met only twice since its formation in 1996. For economic matters, a National AFTA Unit—which includes representatives from nine ministries and agencies, including the Customs Department—was formed in 1996. The unit coordinates preparations for the ASEAN Free Trade Area (AFTA).

Preparations for ASEAN entry included Cambodia's accession to 26 key ASEAN economic agreements. ASEAN identified these agreements as priority agreements for Cambodia and ASEAN's other new members Laos and Myanmar to implement. The National Assembly has not yet approved accession to these ASEAN agreements.

Most of the immediate economic preparations for ASEAN entry related to AFTA. Key AFTA preparations involved developing a new customs code,

249 Another important regional cooperation for Cambodia is the Greater Mekong Sub-region (GMS) initiative supported by ADB, although this is not discussed in this report.

250 Keat Chhon, Forward, ASEAN DOCUMENTS: VOLUME 1, Phnom Penh: UNDP Cambodia's ASEAN Project, 1998.

an ASEAN Harmonized Tariff Nomenclature, product lists, and schedules of tariff reductions for all imports/exports, and assessment of nontariff barriers.

Largely due to the tremendous efforts of a small group of dedicated, skilled technocrats, the Government successfully completed these complex AFTA preparations. As a full member, Cambodia is now expected to implement and engage in the full spectrum of ASEAN economic cooperation. The results of this initial period of membership will have far-reaching consequences for Cambodia's larger economic reforms and may positively impact the pace of those reforms.

Responsibilities for policy making and coordination on ASEAN economic matters are handled by an ASEAN Economic Minister (AEM), a Senior Economic Official (SEOM Leader), an ASEAN Finance Minister, and a ASEAN Senior Finance Official. Initially, MEF handled these responsibilities. In July 1999, the AEM and SEOM Leader positions shifted to MOC.

The creation of other key institutional mechanisms for ASEAN economic integration is ongoing. The Minister of Economy and Finance, as Cambodia's first AEM, issued prakas for the formation of four, technical, interministerial working groups on customs/tariffs, services, the ASEAN Investment Area, and electronic commerce.

Prakas for the creation of working groups on the legal implications of ASEAN integration, standards and quality, and transport and infrastructure development have been drafted, but no action has yet been taken.

After lengthy consultations with 14 ministries and agencies related to ASEAN economic, functional, and security cooperation, the Government developed a comprehensive matrix of short, medium, and long-term technical assistance needs related to ASEAN integration. A copy of the Matrix is attached as Annex A. This represents a major effort and achievement in interministerial coordination. The Matrix was approved by the National AFTA Unit, officially transmitted to the National ASEAN Secretariat, and is being used to mobilize resources and assistance from ASEAN and key aid agencies to support Cambodia's efforts to integrate into ASEAN and carry out key economic, legal and institutional reforms.

UNDP, the World Bank, and ADB provided various assistance to help Cambodia prepare to join ASEAN during the pre-entry period. There is a

general training program on ASEAN supported by the European Commission. For the past several years, UNDP has provided large amounts of assistance directly to the ASEAN Secretariat in Jakarta. However, only a very small amount of this assistance focused on new members such as Cambodia. Indeed, in the past there was resistance at the ASEAN Secretariat to including Cambodia in ongoing activities under the previous regional program.

The track record of ASEAN assistance at the regional level has been mixed. Assistance has primarily benefited old members and staff of the ASEAN Secretariat itself. Members with the greatest need should receive the highest priority in in-country, ongoing assistance program for ASEAN integration.

ASEAN integration represents a prime example of a genuine and consistent demand for assistance by Cambodia. Often, the aid agencies ignore these demands or prefer to decide for themselves where assistance should be directed.

In Cambodia, and for that matter within ASEAN itself, strategic planning on ASEAN integration has largely been absent. Cambodian officials with the skills and understanding to carry out such policy making have been busy with the more immediate demands of preparations and non-ASEAN work. Without functioning, interministerial bodies to coordinate such planning, the broader policy making remains missing. This is seen in numerous ways.

For example, implementation of AFTA will impact public finance because of its tariff reductions. It is vital to have a plan for tax reform to ensure that revenue losses that eventually occur as a result of AFTA are counterbalanced by the expansion of Cambodia's tax base and stronger enforcement of tax laws, especially with regard to tax collection and penalties for noncompliance.

Given Cambodia's limited human and financial resources, broader strategic planning to develop a list of priority areas of ASEAN cooperation would be invaluable for guiding the use of scarce resources for ASEAN-related activities.

ASEAN's Lessons for Governance
Cambodia's experiences preparing for ASEAN membership and integration offer at least four specific lessons in reform and governance.

Limited Technical Expertise

Given Cambodia's generally weak human resources, there are very few officials with the expertise, language skills and experience to manage the intensive, technical preparations for ASEAN economic initiatives. This group has carried the bulk of the workload on their shoulders. They are severely overworked. Cambodia's available human resources for handling ASEAN work will remain severely limited for the medium term. The shift in responsibilities from MEF to MOC only exacerbates this problem.

This will prove to be a major challenge for MOC, which receives no direct assistance on ASEAN. The insufficient number of officials, at the ministry level and elsewhere, with ASEAN training will be problematic for Cambodia, especially since no technical assistance related to ASEAN currently exists. While the European Community offers a general training program, no aid agency is providing in-country, on-going assistance on more technical matters of ASEAN. This leaves Cambodia in a precarious position during its initial membership period when most ASEAN economic agreements must be implemented. Cambodian officials require training on trade issues, investment regulations, and cross-border issues relating to the transport of goods and services, and a host of other technical issues related to implementation of ASEAN economic agreements.

Moreover, line ministries must become more actively involved in ASEAN economic cooperation. Thus far, MEF and MOC have shouldered the burden. However, implementing the full measure of ASEAN economic initiatives, as all members must do, will require more input from more ministries. Most of Cambodia's economic ministries are not ready to manage this work or even participate in a fully informed manner.

During the preparation period for ASEAN entry, for example, most line ministries proved unable to contribute to policy discussions by the National AFTA Unit. More generally, there exist only a handful of officials who actually understand the commitments and requirements of the ASEAN economic agreements that Cambodia is required to implement. These issues are directly linked to the weakness of human resources in the public sector, and the limited opportunities for training.

Weak Interministerial Coordination

Implementation of ASEAN economic agreements and related domestic reforms is not only a matter of strengthening human resources. It entails the exercise of both greater responsibility by individual ministries and greater policy coordination among ministries.

Crucial interministerial mechanisms for handling ASEAN economic cooperation are still being established and will require significant assistance in institutional capacity building. Their functioning in a professional, sustained, coordinated, and transparent manner could have major, positive, long-term impact not only on Cambodia's ASEAN integration but also policy making with regard to economic affairs and governance.

Assistance related to ASEAN economic cooperation for ministries such as MOC, Ministry of Industry, Mines and Energy, Ministry of Agriculture, Ministry of Public Works and Transportation, and the Customs Department at the Ministry of Economy and Finance as well as the newly formed working groups is clearly needed. These are the institutions that will plan and implement the key ASEAN economic agreements. They work at the technical rather than the political level. For the most part, they are currently ill-equipped to develop policies, prepare the necessary legal instruments, and monitor implementation. Development of core groups of officials to both work as centers of productivity and lead ASEAN-related reforms would fit well into the scheme of public administration reform.

Ineffective Institutions and Unclear

Delegations of Authority for Policy making Authority with respect to policy making and implementation of ASEAN economic cooperation in Cambodia is not sufficiently clear. The problem of unclear or ill-defined jurisdictions and authority is a cross-cutting governance issue in Cambodia with direct bearing on broader plans for public administrative reform.

There have been differences over the role of the MFAIC concerning direct communications with ASEAN counterparts by economic ministries for ASEAN economic cooperation. This confusion is caused by the absence of a clear legal framework governing the responsibilities of the various key ministries for ASEAN integration and the National ASEAN Secretariat within MFAIC. The Ministry

has also attempted to control ASEAN matters, including highly technical economic matters for which it holds little expertise.

In addition, the continued official existence of the Internal Coordination Network, the ministerial level body responsible for ASEAN policy making, has only confused procedures and re-opened inter-ministry competition over ASEAN responsibilities. ICN has met only twice, in November 1996 and July 1999, in three years. Preparations for ASEAN integration were completed without its involvement. The Council of Ministers exercised, or at least approved, all government policy making with respect to ASEAN. Given this fact, the ICN's continued existence is highly questionable. The coordinating function for ASEAN matters could be adequately carried out by the National ASEAN Secretariat and the ASEAN Department at the Council of Ministers, as is done in Viet Nam.

There have been isolated attempts to address the problem of undefined authority and ineffective institutions. MEF drafted a Subdecree on ASEAN Responsibilities to clarify the roles and responsibilities of the key ASEAN-related institutions and lead ministries. To provide structure to economic policy making related to ASEAN, MEF also drafted a Subdecree Creating a National Committee on ASEAN Economic Cooperation. Unfortunately, action on both subdecrees has stalled, in part due to MFAIC's unwillingness to agree to reforms that establish more autonomous ASEAN-related institutions for economic matters that would stand outside its influence.

The Politicization of Technical Policy Making

The continued politicization of ASEAN matters within Cambodia represents a notable governance issue. It is particularly serious with regard to economic policy making. There was a plan to establish a National Committee on ASEAN Economic Cooperation to act as a technical group of officials from all economic-related ministries responsible for the actual implementation of ASEAN economic initiatives. The existing National AFTA Unit has formal responsibility for AFTA and not other key ASEAN economic initiatives. The subdecree creating this National Committee, however, has not been signed due to a political battle over appointments of senior positions such as the Permanent Vice-Chair which has stalled the creation of this needed interministerial body.

The fact that a ministry with no economic expertise or jurisdiction may serve as this technical committee's permanent vice-chair does not bode well for its effectiveness. Such institutional deficiencies may have long-term negative consequences for Cambodia's ability to coordinate, generate, and implement policies for ASEAN economic cooperation.

This issue relates to Cambodia's larger administrative reforms. Effective governance requires that technical bodies are competent, able to carry out their work without political interference and comprised of officials with appropriate expertise, experience, and mandates. Mandates must be defined clearly. Institutions with the necessary technical expertise must have authority over those areas of expertise. Cambodia does not have the luxury of an oversupply of human resources that allow it to mismatch responsibilities and expertise.