

Implications for Assistance to Promote Governance Reforms

It is imperative that reforms in Cambodia proceed as rapidly as possible. Good governance is not merely essential for the welfare and productivity of a country's people, it is also an increasingly important factor used by businesses, international organizations, and aid agencies in deciding where to put their money. Given its small market and history of instability, Cambodia cannot be content with simply matching its neighbors in reforms. It must be more successful, more progressive, and more demanding in reforms to overcome its poor international image and compete for investment.

Replacing Cambodia's image as a nation torn by war with an image of a country riddled with corruption will do nothing to promote its development and alleviation of poverty. Cambodia must make good governance one of its "competitive advantages" in order to succeed in the long-term competition for investment and assistance.

Key Issues for Assistance in Governance

In this light, there is a set of issues for aid agencies to consider in improving the prospects of reforms for good governance in Cambodia.

A New Dynamic in Interactions Between the Government and Aid Agencies on Promoting Reform

There needs to be a new synergy in the interactions between the Government and aid agencies in promoting reform in Cambodia. In many sectors re-

lated to governance, there tends to be too much attention on money at too early a stage of discussions and planning. This is understandable. Cambodia genuinely needs substantial international assistance. Aid agencies need to program funds for each fiscal year. Too often, however, these mutual interests lead to incomplete policy making, overly ambitious timetables of activity, hasty design of projects, a lack of full ownership by the Government, and insufficient mechanisms for monitoring implementation, particularly for the crucial, initial phases of reforms. Each of the case studies presented in Chapter V illustrates this point.

Some observers expressed the view that the government sequences reforms based on their potential for drawing money from aid agencies. Hence, emphasis has been put on reforms in public finance and forestry (to ensure resumption of IMF funds) as well as demobilization and administrative reform (to secure richly-funded projects from aid agencies).

While such views may be overly cynical, under the present circumstances it is difficult to make large strides in improving good governance. This requires sustained political will, policy making that is transparent and inclusive, detailed planning, proper sequencing of actions, long-term capacity building, substantial dissemination of information and firm commitments of financial and political support. These steps are hard to achieve when so much attention is placed on acquiring funds from aid agencies.

In the absence of clear, methodical steps, speeches often replace policy making; completion of project activities often replaces implementation of measures to improve governance. One observer remarked that

the gap between the rhetoric of reform and implementation of reforms is wide enough to drive a logging truck through. Actions rather than words will demonstrate true political will for reform.

Reforms are likely to be more successful when the government demonstrates its political will at the outset and aid agencies offer appropriate support. It is essential that both elements exist. A government must move beyond plans and stated intentions to tangible measures of reform. Aid agencies should then respond with appropriate assistance based upon mutually-agreed benchmarks. This would ensure that the government is driving the process by setting its own priorities for reform, building political support for policies, and demonstrating political will by taking initial, tangible steps of reform. Applying resources from aid agencies under such circumstances would be more effective and reforms would be more sustainable.

Too often, aid agencies assume a government's commitment to reform exists based on a few meetings with its senior officials. Such meetings or public statements by Cambodian leaders in support of initiatives are important, but should not be confused with the existence of broad-based support within the Government. Genuine ownership of reforms and a solid political consensus for policy initiatives take time to build. Both the Government and aid agencies need to focus more on building broader ownership, both within the Government and with nongovernment sectors, of reforms. Aid agencies can play a meaningful role in this process by making greater efforts to nurture the development of coalitions (with both public and nongovernmental institutions) for reforms before programs are designed and financed. This requires hard work and a willingness to be directly involved in the formal and informal dialogues and exchanges needed to create momentum for major reforms.

The following recommendation is offered: prior, concrete reforms that improve governance should be a pre-condition to assistance for a given sector or institution. In other words, assistance should be directed to sectors and institutions that have demonstrated through concrete reforms their commitment and preparedness to improve good governance and proceed with major reforms. Indeed, the level of assistance offered could be linked to the level of pre-assistance reform attained and ongoing benchmarks

for reform. This would reward initiative and results as well as provide incentives for further governance reforms. It might also encourage aid agencies to be more realistic regarding the pace of reform.

Multi-Institutional Policy Making and Assistance

Both the policy-making process and assistance should be inclusive, meaning that they ensure the participation of all institutions concerned needed to implement reforms from the outset of the program. A multi-institutional approach is an essential factor common among successful reforms.

As discussed above, one of the key weaknesses in governance in Cambodia is the lack of implementation or enforcement of reforms. Many of the reasons are understandable. Clearly, major reforms in governance are long-term efforts that require not only clear policies, sustained political will, and time but also human and financial resources.

Assistance in these efforts is essential. However, assistance should be applied under two important conditions, in addition to the Government's prior, concrete reforms that improve governance as recommended above. First, there should be an open and inclusive policy-making process. This means that all stakeholders within the public and nongovernment sectors should be appropriately involved from the beginning of the policy-making process. Aid agencies should direct their support and resources to sectors and institutions that follow such a model of policy making. In particular, aid agencies should promote partnerships for reform between government and nongovernment sectors.

Second, the assistance itself must be inclusive; it must ensure the participation of all institutions concerned. Policy making must be transparent, open, and multi-institutional. Similarly, assistance must be comprehensive, multi-institutional, and implementation-oriented.

Multi-institutional assistance does not mean that support should target new, centralized, ministerial-level committees or councils. In many ways, they represent parallel government structures intended either to circumvent existing, ineffective institutions or concentrate power in the hands of a few, key individuals. Such bodies have been proliferating in recent times, and their value remains unproved. Rather, the focus should be on strengthening existing institu-

tions—ministries, independent agencies, departments, provincial and local governments—that are directly responsible for implementing reforms.

Building Financial Integrity and Autonomy
Good governance requires the essential institutions of government—especially all accountability institutions—to have independent, adequate budgets and sound financial management systems, including transparent budgets and expenditure records. This should be both a key objective of the Government’s reforms and a key criteria for assistance from aid agencies.

On the government side, it is essential that the accountability institutions necessary for good governance—the courts, Supreme Council of Magistracy, legislative commissions, Ministry of Parliamentary Affairs and Inspection, Ministry of Justice, and new institutions such as a National Audit Authority (NAA)—have financial autonomy and sufficient funds to carry out their responsibilities. Increasing the budgets of these institutions will be an ongoing process as national revenues increase and the military budget is cut. However, some important initial steps could be taken immediately to establish financial autonomy. For instance, separate budget lines in the national budget can be created; procedures can be established; staff can be reassigned within the civil service; and provision can be made for basic equipment. If presented with a clear plan, such reforms should receive a favorable response from aid agencies, provided the Government creates genuinely independent accountability institutions.

Cambodia needs to build an image of financial integrity. This is a major challenge requiring time and resources. The starting points, however, require only political will. The promulgation and enforcement of the Audit Law together with the transparent appointment of a qualified, neutral Auditor General are crucial. In general, appointment of all heads of accountability institutions including judges, prosecutors, SCM members, and staff of anticorruption agencies must be based on open and transparent processes. This is the only way to establish integrity, professionalism, and accountability from the start. Establishing accountability after the fact is much harder to accomplish. Information on the experience and education of candidates for positions should be made

public prior to appointment. Again, such reforms require no money, only a firm decision to be transparent and accountable.

Action by the Government showing intent to respect and cooperate with NAA as well as punish wrongdoers is key to building a new image of financial integrity for Cambodia’s public sector. Greater transparency in public expenditures and prosecutions for mismanagement, embezzlement of public funds, or other corruption are equally important.

Fulfilling Legal Requirements for Loan Approvals

As major lenders, ADB and its development partners have a large financial stake in Cambodia. As is often the case, the need for resources, tight deadlines, and the desire to act rapidly create pressure to circumvent legal requirements. This occurs not only in the practice of governance as it applies to domestic reforms and policy making. It also impacts the process of finalizing loans to Cambodia.

Article 90 of Cambodia’s Constitution requires that all loans by the Government must be approved by the National Assembly. The Constitution does not authorize the Assembly to delegate this power to the Government or any individual ministry.

In practice, not all loans signed by the Government, for example with international financial institutions, have been approved by the National Assembly. The absence of Assembly approval for a loan necessarily creates a serious liability risk for a lender, particularly if there was a change of government. The express failure to comply with constitutional requirements might allow a subsequent government to disavow a financial obligation. Put another way, the Government may not have a legal obligation under its laws if constitutional requirements on loans have not be satisfied. Contracts require acceptance, and the Constitution says that in Cambodia the National Assembly must “accept” (i.e., approve) all loans.

While this may be a politically and practically remote possibility, the risk exists so long as constitutional procedures are ignored. Clearly, the Government bears primary responsibility for satisfying domestic legal requirements. However, it is incumbent upon a lender to both understand the legal requirements in effect and insist on the borrower’s

compliance with them. This is the essence of due diligence. Should a dispute arise regarding the validity or default of a loan never approved by the National Assembly once disbursement has been made, it may be difficult for the lender/creditor to claim that it was unaware of a requirement explicitly stated in Cambodia's Constitution.

The Need for Greater Coordination

Among Aid Agencies

Both officials within the Government and aid agencies recognize the need for greater coordination among aid agencies. While coordination among aid agencies and between them and the Government has increased since the February 1999 Consultative Group Meeting, much remains to be done. Policy inconsistencies and miscommunications among aid agencies persist. The demobilization efforts are a good example. They also do not always exhibit the same level of transparency and efficiency that they demand of the Government.

One strategy may be for aid agencies present in Cambodia to jointly develop a set of specific governance-related criteria and performance indicators for program planning and monitoring. Multilateral institutions such as ADB and the World Bank have been developing such assessment tools. If they shared the results with aid agencies in Cambodia, it might expedite coordination among aid agencies and the mainstreaming of governance into programs of assistance.

Recommended Actions by the Government of Cambodia

The Government must take further, bold initiatives in governance reforms. Most importantly, it needs to produce concrete results that demonstrate its willingness to hold itself accountable for actions and inaction. Support and occasional pressure by aid agencies are important. However, a re-balancing is required between accountability in response to pressure from aid agencies and accountability arising from the Government's commitment to hold its own officials accountable and ensure transparent decision-making. To date, there has been too little of the latter.

Without question, major structural reforms in governance are long-term efforts requiring substantial resources and political will. There should be sensitivity among aid agencies and the Government with regard to the resource requirements and current availability in order to proceed effectively. This does not mean, however, that all important, high-impact reforms in governance require more money. However, all important governance reforms do require clear, sustained political will. It is vital to recognize those reforms for which greater human and financial resources are required (and prioritize and plan accordingly) and those reforms that only await the application of the Government's political will.

In addition to highlighting the current status of governance reforms in Cambodia and issues associated with those reforms, this report seeks to offer the Government a set of specific reforms to strengthen good governance that do not require a commitment of money. All of these reforms do require real political will. A list of actions is provided in Table 13. The list of reforms is not exhaustive. It only notes some of the reforms the Government could initiate with its current financial and human resources. Many other reforms could be identified and pursued.

As Table 13 shows, there are reforms suggested in each sector examined by this report that follow the above model, meaning few if any additional financial or human resources are required. Implementation of these reforms would improve governance in Cambodia, set important precedents in transparency, accountability and public participation, increase public revenues, and increase the confidence of aid agencies, investors, and the Cambodian public in the Government's reform efforts.

Given demands for reforms on many fronts and Cambodia's limited human resources, it is incumbent upon the Government to carefully consider how to prioritize and sequence reforms. Sequencing these "demonstration" reforms should account for priority areas of the Government's reform program such as public finance and legal/judicial reform. Proceeding with an initial set of reforms in key sectors to enhance transparency, accountability, and participation would signal the Government's readiness to implement challenging reforms.

Indeed, developing a coherent, yearly plan of priority reforms—a sort of annual “short list” of upcoming reforms in key sectors—would allow the Government, aid agencies, the private sector, and the public to focus their attention, energies, and resources more effectively. It might also encourage the Government to be more realistic and selective in deciding how many areas in which to push for major structural reforms. In the long run, successfully implementing reforms in fewer areas may instill greater confidence and trust in the public sector.

Without reviewing each suggested action in Table 13, the following are offered as three initial actions that would tangibly improve governance in Cambodia and demonstrate the Government’s resolve to reform the public sector.

State Asset Management

Publishing a list of state assets as of 1993—in particular real estate held by each ministry and government agency—would be an excellent starting point for reforms in the public sector. The nontransparent, illegal sale, and leasing of public property has been a serious problem since the formation of the Government in 1993 (indeed since 1992). On several occasions Cambodia’s leaders have issued declarations to halt such practices. While the problem has decreased, it is not clear to what extent actions are being taken to correct illegal transactions already completed. The Ministry of Economy and Finance (MEF) says that it is in the process of collecting amounts owed under all contracts involving public property since 1993. It is unclear, however, whether the contracts themselves reflect in any way the market value of the properties involved, or the entire transaction. In addition, it leaves unanswered who signed these contracts and under what authority. Without greater transparency in these matters, there is no way to ensure that the apparently widespread sale or theft of public property is corrected. In effect, there has been a massive, unregulated, corrupted privatization of public property.

Compiling and publishing a list of state properties as of 1993 is not difficult. It does require substantial political will. Records already exist in the Domain Department of MEF and the accounting departments of each ministry. Indeed, it is common knowledge which buildings belong to each ministry. Treating such information as a state secret and mak-

ing no effort to undo such large-scale, public wrongdoing not only sacrifices essential public revenues but reinforces the idea that officials are immune to laws and entitled to profit from their positions. In addition, if an illegal practice is later halted nothing is done to undo the wrongs committed. This creates the perverse incentive for officials to maximize their corruption now before accountability is introduced.

More importantly, a substantive review of major contracts involving the sale/lease of state property is needed. This would require both financial resources and expertise with the support of funding agencies to accomplish. Such a review of concession contracts is currently being done with ADB support in the forestry sector. A similar review of contracts involving state property should be undertaken with support from aid agencies.

While it is difficult to document the payment of bribes connected with sales of state property, examining the terms of the deal may allow identification of transactions that occurred at well below-market values. Such actions have been taken in other countries. One remedy in such cases may be to require an open tender of state property. The amount of money at stake is substantial, reportedly millions of dollars. Given the vested interests involved, such a review is unlikely to occur without concerted external pressure. This may be true of most major reforms related to corruption.

In the meantime, given the weak governance associated with the sale/lease of state properties, the Government should consider a freeze on such sales/leases pending a thorough review of contracts since 1993. Such action would send a strong message both to officials considering corrupt deals in state property and to aid agencies that the Government is serious in its intentions to deal with this issue. From this point forward, all sales or leases of state property should only be done through public tender or auction.

As a related reform, there should be no government contracts in any sector without public tendering of contracts and a transparent selection process. This is an issue that costs Cambodia huge amounts of money each year. And there has been no perceivable effort by the Government or aid agencies to ensure more transparent, more accountable government contracting.

Table 13: Low Cost Reforms for Good Governance

Sector	Transparency	Accountability
Policy making on Governance	Issue yearly list of priority reforms	
Public Finance	Publish list of garment companies with COs, their local address and place of business Public notice of commercial banks in technical insolvency Public release of monthly prakas on budget allocations No sale/lease of state property or any government contract without public tender	Publish list of taxpayers in arrears more than \$5,000 Enact and strictly enforce the Law on Budget Discipline with prosecutions in court Freeze on all sales/leases of state property
Decentralization	Public release of monthly expenditures by each provincial government	
Civil Administration Reform		Revise Law on Civil Servants; abolish Article 51
Military/Security Reform:		
Judiciary	Release info on legal education, experience of all judicial appointments prior to nomination Require courts to provide copies of all court decisions to parties	Establish separate budget lines in national budget for SCM and the courts Revise SCM Law to remove the Executive and Legislative branch officials Require accused to have lawyer when cases before investigating judge
Legal System	Law requiring ministries to send copies of all regulations to National Assembly and Senate	Enact subdecree requiring draft regulations accompany laws sent to National Assembly Allow cases by private persons/companies against ministries that violate or do not properly apply laws
Accountability Institutions	Appoint Auditor General using open nomination and selection process	Enact law on declaration of assets by public officials Start prosecuting officials for criminal violations
Private Sector Framework	Require official translations into English of all laws/regulations	
Regional Integration		Abolish ICN and clarify duties of ASEAN-related institutions

ASEAN- Association of Southeast Asian Nations; CO -Certificate of Origin; ICN - Internal Coordination Network; RCAF - Royal Cambodian Armed Forces;

High profile deals involving the ticket concession to Angkor Wat, allowing only selected international carriers to operate flights between Bangkok and Siem Reap, and forestry concessions are notable examples of this problem. Nonpublic tendering of government contracts is costing Cambodia perhaps millions of dollars. Reforming this practice will not cost the Government anything, though it may reduce opportunities for some individuals to get rich quickly. It will also generate badly needed revenues for the national treasury.

At the moment, aid agencies in effect finance some portion of the costs of corruption in Cambo-

dia. Money diverted for private gain, for example through the nonpublic tender of government contracts and concessions, is unavailable for public investment which is entirely covered by support from aid agencies. Therefore, corruption not only costs Cambodia dearly but also the aid agencies.

Notice-and-Comment Periods for All Draft Laws and Regulations

Another example of a low-cost reform is related to an advance notice-and-comment period for draft laws and regulations. As discussed above, the absence of a defined period of time for interested parties to

Greater Participation	More Informed Policy Making	Predictability
Ensure annual budget laws reach Assembly for review by start of October		
Public release of draft Commune Administration Law when send to National Assembly		
Develop policy and projected timetable for increase in civil service salaries		
Establish forum for input from civil society on reintegration program	Issue official policy on military reform issue official policy on reform of security agencies	Automatic dismissal of criminal cases if no charge within 24 hours of arrest Military courts only hear cases of soldiers violating military law/regulations Immediate transfer of cases involving non-RCAF persons to civilian court
Require by law 60-day advance notice and comment period for all laws, anu-kret, prakas	At start of each year, gov. issues list of priority laws and regulations to be drafted each year	
Establish regular forum for private sector-to-Government contacts		
Establish National Committee on ASEAN Economic Cooperation		

SCM - Supreme Council of Magistracy

submit comments on draft laws and regulations was pointed out as a key issue by the private sector. This could be accomplished by enacting a law requiring a fixed time period for the submission of comments prior to final approval of draft laws and regulations. At the start of the notice-and-comment period, the Government or an individual ministry would announce the completion of a draft law or regulation, make copies available to the public, and invite comments before a final draft is approved. Requiring a notice-and-comment period prior to approval by the National Assembly

(for draft laws), the Council of Ministers (for draft subdecrees), or an individual ministry (for draft prakas or other regulations) would ensure that interested parties or the public have an opportunity to provide input into proposed legislation before it is approved.

In addition to a notice-and-comment period, consultations with nongovernment sectors prior to approval by the Council of Ministers (for draft laws and subdecrees) or an individual ministry (for prakas or other regulations) should be increased and strengthened.

Notice-and-comment periods are common in many countries. They ensure transparency, predictability, and greater public participation. The private sector has specifically endorsed this idea for Cambodia. Adding 60 days, for instance, to the legislative process creates no undue delay. In fact, it would significantly enhance the effectiveness of legislation by promoting both transparency and greater participation in policy making.

Public Notice of Laws and Regulations
Prior to their Coming into Effect

In addition to a comment period for draft legislation, the private sector strongly suggests that the Government issue an official public notification before all laws and regulations come into effect. Notice to the public that a new law or regulation will come into effect on a given date would provide information to both institutions concerned and the public that will allow them to better prepare for implementation of new legislation. This is especially critical for the private sector which must adjust its business planning and operations to new rules and requirements.

Amend Law on the Organization and
Functioning of the Supreme Council of
Magistracy

At present, there is little effective separation between the Executive, Legislative, and Judicial branches of government in Cambodia. This is due, in part, to the prevalence of party politics which touches everything connected with government or public policy. The result is the absence of genuine checks and balances within Cambodia's system of governance and the concentration of power in the hands of a few individuals. This does not bolster confidence among investors, aid agencies, or the Cambodian public.

However, the Government could begin the process of creating greater separation among the branches of government. Obviously, such reforms are highly sensitive. Most are not politically feasible at this point. All such reforms would encounter political resistance from certain sides. Yet, a small start is possible if a consensus develops that economic growth and investment require serious action.

For example, the Government could address judicial reform. It is important to begin building a court system that is professional, nonpolitical, and independent. This is a long-term process. One pow-

erful reform that would signal the Government's commitment to judicial reform would be the amendment of the Law on the Organization and Functioning of the Supreme Council of Magistracy. The SCM needs to be de-politicized and, as the guarantor of the Judiciary's independence, completely separate from the Executive and Legislative branches.

The SCM Law could be amended to remove any members who currently hold posts in either the Executive or Legislative branches. To prevent conflicts of interest, members of the SCM should not be sitting judges on any courts. This issue is not merely a potential problem; clear conflicts of interest have already arisen for the SCM. The decision to suspend the Chief Judge of the Phnom Penh Court, a member of the SCM, demonstrates the problem of having sitting judges also serve on the body which is charged with monitoring and disciplining judges. This may be one of the reasons why the Minister of Justice suspended the Chief Judge under his own authority without seeking approval from the SCM.

In short, members of the SCM should only have one job, to be members of the SCM. Holding any other position in or outside government will only violate the Constitution's separation of powers requirements or create potential conflicts of interest. In either case, the independence and integrity of the SCM and the Judiciary as a whole are compromised.

These reforms cost no money, only political will. The drafting of such an amendment is not difficult. It would only require minor revisions to the SCM Law. Yet it would represent a major signal in the way governance is conducted in Cambodia.

At the same time, the annual national budget should include a separate budget line for the SCM and courts distinct from MOJ's budget. Financial autonomy of the Judiciary is essential for the independence of the courts. Administering a separate budget for the courts would require the reallocation of some personnel and perhaps a certain amount of additional office equipment and supplies.

The benefits of such a reform, however, would far outweigh the relatively modest level of any new resources needed. Since the Government has recently made judicial reform a high-profile issue, ADB or its development partners are recommended to consider promoting such reforms and the possibility

of support. The timing seems right to put these vital issues on the table, especially with upcoming preparations for a tribunal to try former Khmer Rouge leaders.

Recommendations for Aid Programming on Governance

ADB has already contributed important technical assistance for governance-related activities, most notably in drafting the land law, law on audit, forestry law, statistics laws and banking law. As discussed above, there are vital areas in which weak governance is costing Cambodia dearly.

It is essential that ADB build on its initial efforts by targeting additional assistance to ensure “follow through” on these issues. Drafting laws is a key step. However, laws have little meaning without implementation and enforcement.

An earlier comment by the private sector bears repeating: “Donors often place too much emphasis on passing new legislation, which is rarely implemented.”²⁵² Assistance targeting critical points of the implementation process should be part of any governance-enhancing assistance. This must include comprehensive training for core officials working at critical points in the implementation process. As discussed above, for most governance-related reforms, this often means that training of officials must be multi-institutional to ensure all key implementation points are included in an assistance program.

Aid agencies need to focus on structuring assistance that promotes continuity between the policy making, legal drafting, and implementation stages of reform. This may mean providing support in fewer sectors in order to ensure continuity of support from policy making through implementation. However, targeting fewer sectors with more comprehensive programs will likely have a higher, positive impact on governance.

Promoting accountability and transparency at every phase of an assistance program is equally important. Aid agencies share responsibility with the Government (and civil society when assistance is directed to it) for this. While targeting assistance to critical implementation points, it is essential that assistance

be linked to clear requirements for transparency and accountability for each sector and institution receiving assistance. Aid agencies should set such requirements both as preconditions to assistance and benchmarks for performance of a program or project.

Governance touches every sector and activity in Cambodia. Thus, it is not overly difficult to mainstream governance into nearly all programs and projects carried out in Cambodia, whether financed by the Government or with aid agency support. The Government and aid agencies should consider requiring every project or program to have explicit performance criteria and concrete outputs that promote greater accountability, transparency, predictability, and public participation in governance.

Based on the issues assessed in this report, in particular feedback from the focus groups interviewed, this report recommends ADB to consider the following areas and institutions as possible entry points to promote good governance in Cambodia: (i) land reform, (ii) NAA, (iii) development of a commercial court, (iv) commune councils, (v) SCM and courts, (vi) National Assembly and Senate Commissions on Finance and Banking, (vii) provincial finance administration, and (viii) public-private sector forums (including publication of laws/regulations affecting private sector). A chart listing possible entry points, recommended prior government actions, areas of improved governance, and objectives is contained in Table 14.

The design of a specific program of support for each area or institution requires a more detailed evaluation of needs and current capacity. In most cases, as noted below, this should await concrete actions or reforms by the Government before proceeding with programming.

Land Reform

Land is arguably the most critical issue in Cambodia. It has direct links to Cambodia’s most pressing issues such as poverty alleviation, rural development, corruption, private sector growth, and an ineffective court system. Land reform must be considered a top priority of both the Government and Cambodia’s aid community. Success in moving forward with land mapping and implementation of a land law (together with basic infrastructure development) is probably the single most important long-term reform for alleviating poverty in Cambodia.

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Table 14: Matrix of Entry Points for Assistance

Sector	Institutional Entry Point	Recommended Prior Government Reform
Public Finance	Provincial Finance Officials	Enact regulations for Provincial Budget Law; public release of monthly prakas on budget allocations; monthly release of expenditures expenditures by each province
Decentralization	Commune Councils	Enact Commune Administration Law that gives gives councils clear powers and adequate budgets and strictly defines relationship with higher government
Public Admin. Reform	Council on Demobilization Ministry of Defense	Develop reintegration program for implementation by existing institutions in provinces issue written policy on military reform
Judiciary	Supreme Council of Magistracy Ministry of Justice, Courts	Amend SCM Law to remove Executive and Legislative branch officials from SCM; Establish separate budget line for SCM/courts Publish list of all judges and prosecutors (and all judicial appointments prior to nomination) with with basic info on education, legal experience
Accountability Institutions	National Audit Authority	Establish NAA; appoint Auditor General by a transparent, open selection process among qualified, neutral candidates; adequate, independent budget
Private Sector Framework	Ministry of Land Management, Urbanization and Construction Council of Ministers Ministry of Justice; Ministry of Commerce	Enact Land Law that enables poor families and communities to gain secure title to land through transparent process Establish regular forum for private sector to directly meet senior government officials Establish commercial court; enact commercial arbitration law
Regional Integration	National Committee on ASEAN Economic Cooperation	Establish National Committee on ASEAN Economic Cooperation led by chair/vice-chair from economic ministries

As discussed, the process for drafting the land law has developed into an unusually open process. Civil society groups have provided substantial input to the policy discussions and drafting effort. It must be noted that this opening only occurred once the ADB held up disbursement of a loan in the agricultur sector in response to strong objections by civil society groups that the original draft lacked any input from groups with large stakes in a new land system. ADB's leverage, applied just in time, was instrumental and served as a catalyst for the opening that has occurred. The Government's willingness to open up the process must also be commended.

The challenges of implementing a new land law will be enormous. The vested interests that might

seek to frustrate or influence implementation are equally significant. Given its leading role in the land reform process thus far, it is essential that ADB be a partner in the implementation process. Indeed, implementation is the key issue in land reform. Ultimately, it is the only issue. The new land law will likely establish some form of cadastral-based titling system. Significant support in the form of loans and technical assistance will be needed to establish the system and strengthen the institutions that will administer it.

Implementation of a new land law will likely involve action by land titling offices at the national, provincial, and local levels. In particular, provincial and municipal offices of the Ministry of Land Management, Urbanization and Construction

Governance Element Promoted	Objective of Assistance	Activity Supported
Transparency	More open expenditure process	Train provincial officials in financial management
Accountability Better policy making	Ensure commissions are able to more actively participate in law making and monitoring	Train staff in financial management
Greater participation	Build links between demobilization and local rural development development Better policy making	Support design and implementation of reintegration, including pilot demobilizations Better sequencing of reforms
Independence of Judiciary	Promote judicial independence	Capacity building of SCM
Independence of Judiciary Transparency	Promote judicial independence Provide more info to public on courts and more open judicial appointment process	Training program for judges
Transparency Accountability	Ensure open process for appointments for accountability institutions	Capacity building of NAA
Transparency Accountability	Create land titling system that is transparent, and efficient and ensures poor title to their land	Capacity building for institutions that implement Land Law; support mapping and training for mapping
Greater participation	Increase participation of private sector in policy making	Support for public-private sector forums
Accountability	Improve effectiveness of Judiciary; increase private sector confidence	Capacity building and infrastructure for new commercial court
Predictability Better policy making	Improve policy making by ensuring technical bodies are led by proper institutions	Capacity building for policy-making body

(MLMUC) will require increased capacity to handle the regulatory, administrative, and registry demands associated with implementing a new land law. Their work will be guided by a set of implementing regulations. As a first step, ADB should provide assistance in the drafting of these regulations. They will be the key to implementation. Clear requirements for transparency and accountability in the work of the provincial and municipal offices of MLMUC must be set. Penalties for improper actions must be severe. Public access to all information must be guaranteed at every stage of the process. Substantial institutional strengthening, including adequate hardware, must be provided to land title departments before implementation begins.

ADB might consider support for designing a program for such assistance in cooperation with its development partners, provided the regulatory framework established meets minimum requirements for transparency, accountability and enforceability. Some countries, including Germany, Finland, and Australia are already supporting land reform efforts. With German and Finnish support, MLMUC is undertaking some pilot projects in land titling in Takeo, Kandal, and Sihanoukville. Aerial photographs are being used to adjudicate landownership disputes in selected villages. The need for further support, especially once a new land law is approved, is clear. Land titling work for the whole of Cambodia will cost an estimated \$100 million over a 10-15 year

time period. ADB, in cooperation with the Government and aid agencies and key civil society groups, is strongly recommended to establish these minimum requirements as soon as possible, before the drafting of regulations begins. The policy paper developed by the NGO/IO Land Law Working Group is a starting point. Assistance from ADB in implementing the land law should be conditioned on a regulatory framework that meets these standards. It should also be designed with maximum input from civil society groups with direct experience in land issues at the grassroots level.

It also might be useful to plan pilot implementations in selected provinces to “test” the system, gauge the readiness of key institutions and, if necessary, revise the regulatory framework prior to general implementation of the land law. This is an issue for which ADB might consult its development partners, the Government, and civil society. Coordinating with civil society on developing key regulations and planning for implementation will be essential.

ADB and its development partners should offer support in the mapping and classification of Cambodia’s land stock. This is a critical step toward the implementation of a land law and to ensuring a just distribution of land and legal land titles. The millions of poor people who currently hold no proper land title, but have occupied land for years, will stand to gain the most from this reform. The process of mapping and classification will not occur overnight. In the meantime, ADB and its development partners, the Government, and civil society groups should begin discussions in order to draft an appropriate assistance package, which includes the training of surveyors in the both the public and private sectors.

Surveying and mapping assistance to MLMUC should be an important component of this effort. Significant pressure will be needed in order to get this process moving on both the Government and aid agency sides.

National Audit Authority
Accountability within the public sector has been poor in Cambodia. As discussed, the most important accountability institutions, the courts, are ineffective. However, recent efforts to establish a new accountability institution—NAA—through approval of an audit law are an important step. ADB has been instrumental in the drafting of the Audit Law.

Implementing regulations have been drafted with ADB assistance. This is promising since crucial regulations are too often drafted long after technical assistance has ended or not drafted at all. ADB and its development partners should monitor the process of approving regulations for the Audit Law in order to ensure that the audit system and NAA are established in a way that will promote accountability.

The critical precondition to any assistance to the NAA must be the appointment of an Auditor General who is neutral, politically unconnected, experienced and committed to enforcing the Audit Law fairly, transparently, and aggressively. It is no exaggeration to say that effective enforcement of the Audit Law hinges on the appointment of such a person.

The relevant provision in the audit law is Article 19. In the law approved by the Assembly a two-thirds majority of the Assembly must approve the Prime Minister’s nomination for Auditor General.

Incorporating an open process in which the nominated candidate(s) could be examined (even brought in for a hearing) and voted upon by the National Assembly would be an important precedent in government appointments, which have been a weak point in governance. It is an opportunity for the Government to build confidence among aid agencies, investors, and the public in its commitment to reform and improved governance.

Provided the Auditor General’s appointment results in the appointment of a neutral, apolitical person, ADB should be ready to assist in the establishment of NAA. This will require substantial institution building including training, providing equipment, and creating internal procedures, accountability rules, and reporting mechanisms. It will be extremely important for NAA to establish its ability and readiness to conduct its own thorough, independent audits of public institutions. The initial phase of NAA’s operations is critical; it sets the precedent for all future activities and will send a message regarding how serious Cambodia is about improving the accountability of the public sector.

Should the selection process result in the nontransparent appointment of an unsuitable Auditor General, ADB should avoid support for NAA which would likely promote little genuine accountability under those circumstances.

Commercial Court

Cambodia's Judiciary suffers from a poor reputation. It is not regarded as either an independent or a competent institution. While the Judiciary needs a major overhaul, this is a long-term commitment. Basic laws such as a penal code, criminal and civil procedures, and a law on evidence need to be enacted. Few, if any, judges have had an appropriate legal education. Unless a dramatic change in personnel occurs, upgrading the legal qualifications of Cambodian judges may take at least a generation to accomplish. Moreover, despite the enormous need for reform and assistance, aid agencies have directed very few resources to Cambodia's Judiciary. The same is true of the Government, based on its budget allocations in past years. The lack of attention paid to reforms in the Judiciary does not bolster confidence in the private sector. The private sector cites two major problems related to the Judiciary; these problems impact on their abilities to conduct business in Cambodia: an inadequate legal framework and corruption.

Creating specialized courts may be an immediate strategy to address these problems. Sweeping judicial reform is a lengthy task, but in the meantime, the Government could proceed with an alternative method of reform such as creating a commercial court. The Government should move ahead to draft a law permitting a commercial court. This would coincide with its enactment of a commercial arbitration law. This reform has been in the pipeline for some time already. Specialized courts are common in countries following civil law and common law traditions.

Establishing a commercial court would enable the Government to develop an institution with clear jurisdictions, set procedures, adequate resources, and better-trained judges with less patience for a corrupt court system. The commercial court model could provide momentum for judicial reform.

ADB or its development partners should consider providing assistance to move this reform forward if they see tangible signs: the establishment of a commercial court and the appointment of experienced commercial lawyers as judges. Intensive training to a relatively small number of judges in advance of the court's opening is both feasible and efficient. A short-term expert could also help to finalize a draft law to establish a commercial court, if requested by the Government.

The private sector may see these reforms—a new law on commercial arbitration and alternative dispute settlement mechanisms—as confidence-building measures. A legal/judicial system that offers the private sector both alternative dispute settlement and a specialized court to enforce arbitration decisions and hear unresolved commercial disputes may offer greater legal certainty to the private sector. Obviously, such reforms will need to be matched by continued enactment of key commercial laws.

Further discussions should take place with ADB, MOC, MOJ, civil society groups concerned such as the Cambodian Bar Association, and the private sector on this matter.

Commune Councils

Commune council elections, expected to occur sometime in 2000 or 2001, will represent potentially one of the most significant political reforms in Cambodia. While the exact nature of their authority and extent of their powers remains undetermined, there is little doubt that the newly elected members of the commune councils will require capacity building. With adequate skills in management, planning, and finance, these councils might truly bring major changes in governance to Cambodia and represent the most responsive, representative, and effective vehicle for rural development planning and poverty alleviation. Positive impacts on the agriculture sector, for example, might stem from improved delivery of public services, provision of infrastructure, and protection of natural resources. Commune councils could also provide a focal point for the promotion of the local private sector and of investment linked to the development plans produced by communities within a commune. The councils' proximity to stakeholders—local communities and hopefully, in the future, investors—should increase the relevance and ownership of rural development initiatives.

The task of strengthening the commune councils will be a monumental undertaking. There will be 1,600 commune councils elected, each with between five and 11 members. Thousands of people, many of them first-time officeholders, will require training and information. Clearly, many aid agencies will need to be involved over a period of years if these councils are to be strengthened. Coordination among aid agencies is critical. Initial dialogues and planning should begin immediately. Indeed, aid agencies and civil society groups should be more

active in examining the proposed Law on Commune Administrative Management and subdecrees to ensure that the commune councils are not subject to undue control that will inhibit their ability to facilitate local development.

The Government, aid agencies, and civil society groups must evaluate the potential needs of the commune councils once the Law is enacted. The experiences of SEILA provinces and other local community development programs may be instructive. A framework of assistance should be designed to build the capacities of commune councils in advance of more detailed program. ADB and its development partners may pursue a needs assessment as an initial activity. More detailed information on training programs used by SEILA/CARERE, ACLEDA and other rural development and microfinance projects would help identify “best practices” in use for financial management training in Cambodia.

ADB and its development partners might also evaluate the possibility of (co)financing a rural credit program and commercial cofinancing of private sector projects that are specifically linked to development plans created by commune councils. Identifying or building such connections is vital. Promoting linkages between local government, rural development, and private sector growth represents a potential source of tremendous growth and empowerment that would bolster good governance and contribute tangibly to poverty alleviation.

Given the potential impact of commune level reforms on development and governance in Cambodia, the informal contact group on governance of aid agencies should begin discussions and monitoring of the commune election laws immediately.

Supreme Council of Magistracy and Courts Reforming Cambodia’s Judiciary is no small task. It requires addressing a host of systemic problems including low human resources, endemic corruption, persistent political interference, and the absence of basic laws. It is also difficult to imagine major progress in judicial reform without major reforms in the structure and working of the SCM. As the one institution empowered by the Constitution to ensure the Judiciary’s independence, it serves a vital role in supervising the courts and promoting professionalism among judges. Unfortunately, the SCM has not

yet proven its effectiveness. As one person put it, “the Supreme Council of Magistracy was designed not to work.” The SCM’s unworkable structure needs to be revamped, and the Government must respect the letter of the SCM Law and the Constitution with regard to its role.

If the Government exercised the political will and sound judgment to reform the SCM’s structure—by eliminating all Executive and Legislative branch officials, disqualifying active judges as eligible for membership, and providing a truly independent, autonomous budget—ADB and its development partners should consider providing assistance to strengthen the institution. Although criticism of the SCM’s current makeup has been fairly widespread, there has been little discussion of its reform. The Government and aid agencies must encourage this. As a first step, ADB and its development partners may wish to raise this issue both with the Government and civil society groups concerned such as the Cambodian Bar Association. This would help to develop a consensus on what structure and role the SCM should have and what assistance might be available if reforms were undertaken. As earlier mentioned, the timing may be right for these issues to be pressed.

The capacity of Cambodian judges to handle commercial cases must be developed. ADB may consider developing a training program with resources from the Cambodian Bar Association and other appropriate legal training program. The Community Legal Education Centre, based at Regent College and staffed by resident lawyers associated with the University of San Francisco Law School in the United States, may be another option.

Provincial Finance Administration

Another potentially important reform relates to the decentralization of fiscal/financial powers. As discussed, the two key initiatives are the implementation of the Law on Financial Procedures and Provincial-Municipal Properties and reforms in disbursements in the health sector. Putting more money more efficiently in the hands of both provincial government and provincial departments of line ministries can have a major impact on the delivery of social services and the responsiveness of local government to local needs. However, implementation of such decentralizing measures will depend upon the

financial management capacities of provincial administration. At the moment, such capacities are exceedingly low.

It is vital that a core group of officials at the provincial level gain sufficient skills in financial management, budgeting, and reporting in order to ensure reforms in public finance are successful.

Initial steps may be to conduct an assessment of financial management skills among current provincial officials and to inventory any related training that has already been provided. Such information could then form the basis for a broad training program on financial management skills for core provincial staff. A program with specific reference to the implementation of the decentralized health disbursement system could be designed and should include training that is relevant to implementation of the Law on Financial Procedures and Provincial-Municipal Properties. The Economics and Finance Institute at MEF is one possible venue for such a training program.

Finance and Banking Commissions at the
National Assembly and Senate

To date, the Legislative branch plays a disproportionately small role in Cambodia's system of governance. Both the National Assembly and the newly established Senate are severely under-resourced, both in terms of financial and human resources. Even more discouraging, both the Government and aid agencies reinforce their marginalized roles by continuously failing to consult or even inform them about major policy or legislative initiatives. They rarely if ever receive copies of regulations and decisions by the Government or individual ministries related to laws they have enacted. They are frequently excluded from key consultations, such as a World Bank-initiated meeting on demobilization, and simply expected to consider draft legislation, often without sufficient time (e.g., with regard to the annual budget law) and always without adequate expertise to support their work.

The tendency of aid agencies to focus on the Government is understandable. Senior government officials are the main decision-makers in Cambodia. Ministries and other executive bodies are the main implementers of policy. By focusing almost exclusively on the Executive branch to get results—even the Judiciary is usually avoided—aid agencies contribute to the imbalance of power among the three

branches of Cambodian Government. Ultimately, this tends to undermine the development of good governance in Cambodia. Hence, the recommendation offered above on viewing assistance in a more multi-institutional manner.

The Assembly's and Senate's limited capacities compared to the Government's are particularly striking with respect to finance issues where expertise and experience are key to playing a meaningful, active role in reviewing draft legislation and monitoring government performance. Technical assistance heavily concentrates on ministries and agencies such as MEF, the National Bank, and other institutions. Clearly, these bodies are crucial to the development of financial policies and the banking sector. However, a legislature equipped to play an active monitoring role can add accountability and transparency, particularly when these other institutions prove to be less than transparent and accountable. Experiences with the financial crisis in the region demonstrated this point in recent years.

In order to play such a role more effectively, the key commissions of both the National Assembly and Senate require institutional strengthening and recognition of their role. Among other things, this means training and early participation in the legislative process. Training should focus on the Finance and Banking Commissions as well as selected permanent staff of the two legislative bodies. Technical assistance to these commissions, especially to enhance their monitoring capabilities, should form part of the assistance provided to Cambodia in finance and banking. This might include, among other things, provision of experts in finance, auditing, banking, and economic policy to provide both substantive advice and formal training.

Public Sector–Private Sector Forums

Policy making related to economic development and the creation of a market economy occurs mainly within a very small circle of senior officials and technocrats. Both the Government and aid agencies refer frequently to the private sector as the engine of growth in Cambodia and vital to the elimination of poverty. However, there is little contact with the private sector to seek input on economic reforms, legislative initiatives, or problems with implementation. The consensus among private sector managers interviewed by the Project was that their input into policy making and legal reforms related to business was

virtually zero. The limited interaction between the public sector and private sector that does take place stems from the initiative of a few, isolated officials.

The Government has taken encouraging steps to promote public-to-private sector contacts. A major meeting was held between the Government and the private sector in December 1999. The Government was represented by the Prime Minister and nearly all senior government officials.

Building on this example, the public sector needs to develop more regular, more organized, more systematic contact with the private sector. A variety of forums—large meetings, smaller, sector-specific dialogues, joint promotional events or studies—should be explored. This will increase the effectiveness of reforms by drawing on the considerable experience and skills of the private sector—which are in short supply within the public sector—and gain valuable insight into the impact of reforms on private sector growth. This would allow for more realistic policies, more effective laws, and occasional changes in both to ensure their relevance and usefulness.

For example, it would be extremely useful for ministries considering issuance of any *anu-kret*, *prakas*, or other forms of regulation that are expected to impact the private sector to organize a meeting with the private sector—the Phnom Penh Chamber of Commerce, Cambodian Bar Association, and international business groups in Phnom Penh offer convenient, identifiable contact points—to discuss the proposed regulations. Such public-private sector interactions would ensure that legal

reforms affecting the private sector are pursued in a more transparent and informed manner.

Support from ADB and its development partners can serve as a catalyst for the development of increased contacts between the public and private sectors. When it provides technical assistance for drafting laws or regulations related to economic reform or business activities, it should insist that such meetings with the private sector are organized to discuss drafts.

Another possibility is to organize a set of thematic roundtables between the Government and the private sector on key economic issues and reforms such as banking, land reform, the Judiciary, auditing, corruption, the national budget, customs, and tax reform. It should be noted that countries within the region such as Malaysia and Singapore use such forums regularly to build effective channels for information-sharing and policy dialogue between the public and private sectors.

Aid agencies might also consider incorporating the private sector more explicitly as partners in economic studies and missions organized in Cambodia. This will not only help generate important, practical information but also ensure that the results will be useful both for the government and private sector. It should be remembered that the private sector generally has a greater ability to act on information, for example for business development, than the public sector. Such strengths should be promoted to the maximum extent possible by both the Government and aid agencies.