

SUMMARY OF CAMBODIA GOVERNANCE ASSESSMENT

Basic Parameters of Governance

Historical Background

Since independence in 1953, Cambodia has experienced frequent, and unusually drastic, changes in its political and economic regimes (Table 3). This chapter begins with a brief history of

these regimes. The chapter is based on ADB and Cambodia Development Resources Institute (2000) and Kato and others (2000).

Before 1953, Cambodia had been a French colony for almost a century (Chandler 1993). Under the first constitution, promulgated in 1947 under the French, Cambodia was governed by a monarchy with two parliaments elected by general elections: the National Assembly and the Popular Assembly (Jennar 1995). All powers emanated from the king.

Table 3. Transition of Political, Legal, and Economic Systems in Cambodia

Years	Legal system	Political system	Political power	Economic system
Before 1953	French-based civil code and judiciary	Under the French protectorate	Held by the French	Colonial
1953-1970 (The Kingdom of Cambodia)	French-based civil code and judiciary	Constitutional monarchy	Held by Prince Norodom Sihanouk as prime minister	Market and then nationalization
1970-1975 (The Khmer Republic)	French-based civil code and judiciary	Republic	Held by Lon Nol	Market, war economy
1975-1979 (Democratic Kampuchea)	Legal system destroyed	All previous systems abolished, extreme Maoist agrcommunism	Khmer Rouge	Agrarian, centrally planned
1979-1989 (The People's Republic of Kampuchea)	Vietnamese communist model	Communist party, central committee, and local committees	Cambodian People's Party (Vietnamese backed)	Soviet-style central planning
1989-1993 (The State of Cambodia)	Greater economic rights rights	Communist party, central committee, and local committees	Cambodian People's Party (Vietnamese backed)	Liberalized central planning
1993-present (The Kingdom of Cambodia)	French-based civil code combined with common law in certain sectors	Constitutional monarchy	Shared between FUNCINPEC* and the Cambodian People's Party	Transition to a market economy

Source: Chandler (1991); Mekong Law Group et al, 1999

* National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia.

The 1947 constitution was amended in 1957 and became the second constitution. It guaranteed Cambodians a number of basic rights, such as freedom of speech and the right to stand for election to parliament (Jennar 1995). Under the leadership of Head of State Prince Norodom Sihanouk, Cambodia enjoyed economic prosperity and security comparable to its neighbors. Much basic physical infrastructure was constructed (Lay 1996), some of which is still in use today, although much of it is dilapidated or obsolete.

In the late 1960s Prince Sihanouk became less influential and social cohesion began to erode (Chandler 1991). To expand the role of the state in the economy, he implemented a nationalization policy, which forced many foreign companies out of Cambodia, and seriously disrupted the development of a market economy (see Sok forthcoming for a macroeconomic database of Cambodia since 1960).

A coup d'état by Sirik Matak and General Lon Nol ousted Prince Sihanouk in March 1970. In October 1970 the Khmer Republic came into being with General Lon Nol as president (Chandler 1991). The Lon Nol regime promulgated a new constitution that stipulated a multiparty political system and democratic principles. The president held all executive power and commanded the armed forces. The parliament included the National Assembly and Senate, with members elected by general elections. The courts were independent and monitored by a supreme court.

Meanwhile Prince Sihanouk went to Beijing and mobilized forces to fight against the new republican government, which was supported by the US. Communist forces in Cambodia, which had existed since 1968, joined Prince Sihanouk to form the National United Front of Kampuchea with the support of North Viet Nam. Initially, the tough, rigidly indoctrinated peasant army of the Cambodian People's National Liberation Armed Forces led by Pol Pot and the Khmer Rouge were allies, but they soon split off on their own. As the civil war spread, the economy began to deteriorate and the regime became increasingly unstable.

In April 1975 the Khmer Rouge captured Phnom Penh and established a new regime, Democratic Kampuchea, under the leadership of Pol Pot. This regime implemented a Maoist communist system entailing an extreme form of collectivism. The three

branches of government were unified under a single institution, the Central Committee (Chandler 1991).

The market economy and business activities were completely abolished, and there was no money or trade. No private ownership of any kind was allowed. Cambodia was cut off from the rest of the world except the PRC, the regime's main supporter. The entire urban population was forcibly relocated to rural areas to perform agricultural work. Many educated civil servants, professionals, and military officers were executed. People wearing glasses, seen as a symbol of higher education, were killed. Estimates indicate that more than 1 million people were killed or starved to death during this time (Chandler 1991).

The Pol Pot regime ended when Vietnamese troops and Cambodian resistance forces crossed into Cambodia and drove the Khmer Rouge from power in January 1979. Khmer Rouge forces withdrew from Phnom Penh, but continued to occupy areas along the Thai-Cambodian border. They also continued to hold Cambodia's seat at the United Nations (UN). A new government, the People's Republic of Kampuchea (PRK), was established backed by Vietnamese troops and civil administration and receiving major assistance from the former Soviet Union. The PRK regime was allied with the socialist bloc. The West, key Association of Southeast Asian Nations (ASEAN) countries, and the PRC supported resistance forces fighting the PRK. An international embargo stunted the country's development and ability to recover from the mass destruction wrought by the Khmer Rouge.

Heng Samrin led the PRK as head of state and president. The Council of Ministers was the government. The Heng Samrin regime was effectively controlled by the communist party, the People's Revolutionary Party of Cambodia, which evolved into the Cambodian People's Party (CPP). Cambodian People's Revolutionary Committees at the provincial, district, and communal levels were the local governing bodies responsible for implementing the Central Committee's decisions and directives. The Central Committee also set up a court system, and most current judges and prosecutors were appointed under the PRK regime (Fernando 1998).

The Government depended heavily on external assistance from the socialist bloc. Following a socialist economic model, the government adopted

solidarity and collectivism policies, but soon relaxed their implementation because they were not succeeding. Individuals were not allowed to own land, though occupancy rights were recognized in some places, sometimes at the expense of prior owners who had returned to reclaim their property (Mysliwiec 1988). The state performed all foreign trade and owned and ran all enterprises (Lay 1996). Domestic trade was severely restricted. With the civil war continuing, most people lived near or below subsistence levels.

Reconciliation between Prince Norodom Sihanouk and Prime Minister Hun Sen began in 1987. The final contingent of some 50,000 Vietnamese troops withdrew from Cambodia in 1989, the constitution was amended in 1989 (Donovan and others 1993), and the State of Cambodia emerged. On 23 October 1991 the four main political factions signed the Peace Accords in Paris. This laid the groundwork for general elections in 1993 and the development of a liberal, multiparty system and a market economy.

Cambodia embarked on the transition to a market economy in 1989, seeking external assistance from the West after the former Soviet Union collapsed. The new regime permitted limited private ownership of property and private enterprises. The private sector developed slowly, and the country opened up to international trade. The privatization of state-owned enterprises (SOEs) also began (Lay 1996), but the sales of state assets took place on a large and unregulated scale.

The United Nations Transitional Authority in Cambodia (UNTAC) officially arrived in March 1992 to help govern the country until a new, legitimate government was established after general elections. The UNTAC operation was undertaken under extremely difficult and complex conditions: 360,000 returning refugees had to be repatriated, and the Khmer Rouge pulled out of the election process and resumed the civil war in the jungle.

General elections under UNTAC took place in May 1993. Following postelection turmoil and intensive negotiations, the three major political parties—the National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia (FUNCINPEC), the CPP, and the Buddhist Liberal Democratic Party—formed a coalition

government. This political compromise resulted in an uneasy arrangement of two co-prime ministers as well as co-ministers of the interior and defense.

Another new constitution was promulgated in 1993 that envisaged the establishment of liberal democracy and a market economy. King Sihanouk reigns, but does not govern the nation. Political powers are shared by the CPP and FUNCINPEC. Cambodia's transition to a market economy has accelerated since 1993. From 1993 through 1996 the economy grew at around 6 percent per year, led primarily by the service and industry sectors, and the inflow of foreign private investment and development assistance expanded rapidly. Fighting between the Khmer Rouge and the Royal Cambodian Armed Forces continued sporadically.

Serious political tension emerged within the CPP-FUNCINPEC coalition government in 1997 leading to fighting among the armed forces in Phnom Penh. The prime minister fled the country, foreign donors suspended or terminated a number of assistance programs, and many foreign private investors lost confidence and left Cambodia. In 1997 and 1998, Cambodia's growth rates were virtually zero.

In late 1997 agreement was reached to hold Cambodia's second national election in 1998. Forty political parties ran, and three parties—the CPP, FUNCINPEC, and the Sam Rainsy Party—gained seats in the National Assembly. A new CPP-FUNCINPEC coalition government was formed in November 1998. Mass defections by Khmer Rouge soldiers and the death of Pol Pot in early 1998 ended the three decades of civil war.

The 1993 Constitution

The National Assembly promulgated Cambodia's sixth constitution in 1993. It amended it in March 1999 to establish the Senate, a new legislative body, to affect a political compromise between Cambodia's two main political parties.

The Constitution provides that Cambodia is a multiparty, liberal democracy in which the Cambodian people are masters of their country and exercise their powers through the National Assembly, the Senate, the royal government, and the judiciary. The legislative, executive, and judicial branches of

government are separate and all citizens have the right to establish associations and political parties.

As head of state for life, the king reigns as a symbol of unity, but does not govern the nation. Future kings will be appointed by the Royal Council of the Throne, which consists of various political and religious leaders.

The constitution recognizes the rule of law and human rights as enshrined in the Universal Declaration of Human Rights. Every citizen is equal before the law, with the same rights, freedoms, and obligations regardless of race, color, sex, language, religion, political affiliation, or social status. The constitution also guarantees freedoms of expression, the press (along with the 1995 Law on Press Regime), publication, and assembly.

Economic System

Cambodia's economic system is based on a market economy. Citizens may sell their products and they and Khmer legal entities can own private property. The state may only confiscate property when in the public interest and upon payment of fair compensation.

The state has five main roles in the economy. First, it has the right to collect taxes, determine the national budget, and manage the monetary and financial system. Second, it controls, uses, and manages state properties (mineral and natural resources, bodies of water, bases for national defense, and so on). Third, it promotes economic development, especially in agriculture, handicrafts, and industry. Fourth, it protects the environment and oversees the management of natural resources. Finally, it protects consumers from illegal, counterfeit, or expired goods that could affect their health.

The state is obligated to protect citizens' rights to obtain a quality education for at least nine years, with free provision of both primary and secondary education. To this end it must establish a comprehensive, standardized educational system throughout the country; adopt curricula based on modern pedagogical principles; and oversee public and private schools.

The state is also responsible for providing health services and support for the socially vulnerable, specifically, disease prevention, medical treatment, and free medical consultations and maternity services for

poor citizens, especially in rural areas. The state must support children, mothers, the disabled, and the families of combatants who gave their lives for the nation. A social security system is being planned.

Cambodia has adopted a policy of permanent neutrality, nonalignment, and peaceful co-existence with all other countries. The constitution prohibits the invasion of any country and interference in any other country's internal affairs. Cambodia may not enter into any military alliance that is incompatible with its policy of neutrality. Except within the framework of a UN request, foreign military bases are not allowed on Cambodian territory and Cambodia may not station troops abroad. The state does reserve the right to receive foreign assistance in military equipment and training of its armed forces for self-defense and the maintenance of public order. The manufacture, use, or storage of nuclear, chemical, or biological weapons in Cambodia is prohibited.

The Public Sector

The Legislature

The National Assembly holds primary legislative power, and the Senate's main role is to review draft laws the National Assembly has approved. The National Assembly has become more active since the formation of a new coalition government in late 1998. It has enacted several new laws critical for the improvement of governance, such as the Financial Institutions Law and the Audit Law. In addition, television broadcasts of debates have increased the transparency of the legislative process. Meanwhile, the Senate is investigating complaints about illegal confiscation of land and has recommended amending the constitution to ensure that it has adequate time to review proposed laws.

The power to initiate legislation rests jointly with the prime minister and members of the National Assembly and Senate. To date these two bodies have played a limited role in drafting legislation. Most draft legislation originates with the Royal Government of Cambodia (RGC), which is the Council of Ministers. The Assembly has simply tended to review and enact bills drafted by the RGC, often without being given sufficient time and lacking the requisite expertise. Also the legislature rarely receives copies of regulations or decisions by the RGC or ministries related to laws enacted. This contributes to imbalance in the system of checks and balances.

This imbalance is partly associated with a shortage of financial and human resources available for the National Assembly and Senate compared with the RGC. Such shortages are particularly noticeable with respect to technical and financial expertise. Currently, the National Assembly and Senate receive little technical assistance from donors compared with the RGC. Ultimately, this will adversely affect the quality of good governance.

As is noted below, Cambodia is about to embark on a process of local democratization through the forthcoming election of councilors to over 1,600 commune/sangkat councils. While present indications are that this will herald only a mild form of decentralization, some observers within and outside government remark that the creation of local governments at commune level will prove only the first in a series of events that may dramatically change the way localized, regional, or special interest constituencies are reflected in national politics.

The Executive

Executive power rests with the RGC, which directs the civil administration and armed forces. In 1999 Cambodia had 163,000 civil servants, or 1.4 per 100 citizens. Some 21,000 people classified as “special status,” such as commune personnel and village chiefs, are also on the RGC’s payroll. In addition, the RGC also employs 143,000 (in 1998) military personnel, or 12.5 per 1,000 citizens, a figure much higher than that in ASEAN and neighboring countries. Public security forces stand at 66,000 (in 1998), plus another 40,000 special status staff (military and commune militia). In recent years nearly half the government budget has gone for military and security expenses, although the Government is currently pursuing demobilization.

The RGC has undertaken several key reforms of public finance and administration since 1993. For example, the 1993 Organic Budget Law has helped fight inflation and bring about macroeconomic stability, and the 1997 Law on Taxation has improved the Government’s revenue-raising capacity. The RGC has also attempted to carry out administrative reform with the support of UNDP and the European Union (EU) and to address some of the following issues to improve governance.

Low salaries in the public sector are perhaps the most fundamental structural problem, with direct

implications for the sector’s accountability and transparency (or lack thereof). If this issue is not addressed, it is likely to remain as a major obstacle to all governance reforms.

Between 1994 and 1998 total public revenues were between 8.5 and 9.5 percent of gross domestic product (GDP), one of the lowest proportions among countries. Until 1992, when the government introduced the value-added tax (VAT), the main source of public revenues, 6.3-6.5 percent of GDP, had been customs duties. The Ministry of Economy and Finance (MEF) is currently undertaking several measures to improve revenue-enhancing capacity, and during 1988/89 public revenue increased to approximately 11 percent of GDP.

Despite substantial increases in planned budgetary allocations in the 1999 budget to shift expenditures away from the military and security toward social and economic development, funds reaching public hospitals, health centers, and rural development projects are still insufficient. The RGC aims to address the issue of inefficient management of public expenditure through three policy instruments: the Accelerated District Development System, the Priority Action Program, and the Law on the Financial Regime and Provincial and Municipal Property. In addition, the leakage of public funds indicates that the system does not meet acceptable standards of fiscal accountability and transparency.

The RGC has two accountability institutions for audits: the newly established Ministry of Parliamentary Relations and Inspection and inspection departments within each ministry. However, these institutions have no real independence from the executive branch. There is, for instance, no internal audit function within the public service and there is little connection between political commitments to plans or priority actions and how resources are subsequently allocated or utilized. The National Assembly recently passed the Audit Law to establish an independent audit authority with the power to carry out external audits.

The Council of Administrative Reforms has initiated some important steps to address the lack of organizational structures conducive to effective and efficient service delivery, and a civil service census and functional analysis are already under

way. The reform also envisages establishing a human resource management information system, creating core groups, and reintegrating “excess” civil servants into the private sector.

The administrative structure is highly centralized and local authorities have little autonomy. While provinces were recently made responsible to prepare integrated multi-year plans, at present few functions have been assigned to them beyond the delivery of centrally planned and financed public services. Given this situation, local administrators and people have insufficient opportunities to participate in policy formulation or decisions about how public resources will be allocated or services delivered in their administrative area. In the past two years, however, the Government has declared its commitment to devolve selected powers and functions, and corresponding resources, to elected Commune Councils. Two laws, the Law on Commune Administrative Management and the Commune Election Law, will soon be promulgated to make communes the “primary agents of local development.”² To complement this, the government has also indicated that it will simultaneously deconcentrate key line ministry functions to province level authorities. His Excellency Sok An announced, “the decentralization of the Government towards the communes will only work if supporting functions are also deconcentrated to the Provinces and Districts” (RGC 2000). Legislation empowering province governors to function as “main coordinators and promoters of provincial development” is expected during 2001.

Downsizing the huge defense and security forces is an urgent issue that requires a new vision for the armed forces and police. However, their ideal size is difficult to assess without determining their new roles in postconflict Cambodia. Military and security agencies need to promote professionalism, train their staff to observe new codes of conduct, and develop relevant skills. A reassessment of the roles of the military and police is under way.

The Judiciary

The judiciary has four distinct components: the Constitutional Council, formed in 1998; the Supreme Council of Magistracy, established in 1994; the courts; and the prosecutors. The Constitutional Council safeguards the constitution and decides

cases involving the election of National Assembly and Senate members. The Supreme Council is the prime guardian of the judiciary’s independence and is the only body empowered to discipline and appoint judges and prosecutors. The Supreme Court and Appeals Court are located in Phnom Penh, and each province and municipality has lower courts. There is also a military court. As of 1999 Cambodia had 117 judges and 54 prosecutors.

The RGC is currently pursuing a number of judicial reforms, including drafting key laws defining courts, drawing up plans to expand or rehabilitate selected court facilities, and establishing an interministerial Council on Judicial Reform.

An independent, capable, and uncorrupted judiciary is the foundation of the rule of law and underpins the development of a market economy. Unfortunately, Cambodia’s judiciary does not yet meet acceptable standards in this regard. The decimation of the legal sector in the 1970s and the socialist legal principles and processes instituted in 1980s still have a strong influence on the legal system.

Even though the constitution establishes an independent judiciary, the gap between this vision and reality remains large. From a governance point of view, an independent judiciary is vital to a working system of checks and balances among government branches and to overall accountability.

Only 33 percent of judges and prosecutors have any formal legal education, and like other civil servants receive a salary that is less than a living wage. Regarding financial resources, only a tiny fraction of the government budget was allocated for the judiciary. Thus the general perception that the court system is riddled with corruption is hardly surprising.

The procedures for forwarding draft laws to the Constitutional Council are applied inconsistently. Only organic laws are consistently sent to the council for review.² Contrary to the constitution, other laws are sometimes forwarded directly to the king for promulgation without prior council review.

Even though the constitution requires rules governing how judges, prosecutors, and the judiciary in general function, none currently exist except an old law that leaves many issues of jurisdiction among

² Organic laws are basic laws that define the overall legal framework.

courts unsettled, and provides no standard for resolving jurisdictional disputes.

Civil Society

The concept of ‘civil society’ is not automatically applicable to Cambodia, given efforts described above to annihilate non-state power and legitimate authority. NGOs and ‘private sector’ have only just begun to be constructed.

The Private Sector

Since 1993 the Government has vigorously promoted the transition to a market economy and the development of a private sector framework. Laws regulating the private sector include the 1994 Law on Investment, the 1995 Law on Organization and Functioning of a Council for Development in Cambodia and the Cambodia Investment Board, and the 1997 Law on Taxation. New institutions were created to enforce these laws. The economy has started to recover since the downturn of 1997–1998, and its growth rate was around 4 percent in 1999. While the RGC’s efforts thus far deserve credit, challenges remain.

One of the most pressing governance issues is resolving dispute concerning access and tenure to land, forest, and fisheries resources. The lack of a clear legal framework and weak institutional capability to enforce existing laws are major obstacles to private sector development and contribute to increasing landlessness by the poor. In this regard, research supported by NGOs has demonstrated the link between unchecked abuse of state power, rising landlessness and the incidence of poverty, particularly in the northwestern region

Another issue is provision of a more complete legal framework for the private sector. Businesses need clear rules that, for instance, guarantee their property rights, resolve commercial disputes, regulate anticompetitive conduct, and limit state interference. Promoting fair and consistent enforcement of laws is also important. Laws help private sector development only if they are applied and enforced. Setting up monitoring systems to enforce newly enacted laws and to strengthen the enforcement capacities of relevant agencies may be useful.

A related issue is improving transparency in laws and regulations. Increased transparency would greatly reduce transaction costs for business, provide a level

playing field for all players, and facilitate private sector development.

Nongovernment Organizations

According to a recent study, NGOs account for between 30% and 50% of the technical assistance expenditure in Cambodia, the bulk of which is delivered to and through local institutions. The significance of the NGO sector (for both technical assistance and service delivery) has been rapidly increasing: “The greatest increase in disbursements has been through NGOs where there has been an annual average increase in disbursements of over 100%, with total disbursements in core resources of NGOs in 1999 of US\$55 million.” (CDRI 2000) NGOs in Cambodia are also distinguished in that many have long standing working relations with the various line Ministries at Province and District level and, arguably, the greatest skill base for participatory planning, community facilitation and local level training which is relied upon by government is to be found in the NGO sector. The number of NGOs increased dramatically after the 1991 Peace Accords, with around 300 international and Cambodian NGOs involved in more than 500 projects officially reported in 1998. Total disbursements by NGOs accounted for \$83 million in 1998, of which \$10.6 million were distributed by Cambodian NGOs. The Government’s attitude toward NGOs is liberal and no specific laws regulate them.

Other civil society organizations have also emerged since 1991. Establishment of the Cambodian Bar Association in 1995 was a notable development. Among civil society organizations, the financial position of Cambodian NGOs is generally weak and highly dependent on foreign sources of funding. Some NGOs appear to be under the strong influence of political parties, while others reportedly abuse their NGO status. However, many are providing much needed development services.

Participation by civil society promotes public sector accountability and transparency and gives people opportunities to influence policy making. The emergence of civil society appears to be gradually influencing decision making in the public sector, although more needs to be done.

The lack of a legal framework for NGOs may allow some NGOs to abuse their status or give

government officials the discretion to issue arbitrary decisions on the status of NGOs. Some contend that the public sector currently has more pressing issues to worry about than regulating NGOs.

The Media

In the 1980s media organizations were used for political party propaganda, and no privately-owned media existed. Currently Cambodia has more than 200 newspapers and magazines, including several foreign language newspapers, and a number of television and radio stations. The constitution guarantees the freedom of expression, press, and publication. The Press Law creates a legal framework.

While the Press Law guarantees more freedom than equivalent laws in other countries in Southeast Asia, journalists worry that vague definitions of terms present a risk that could be used as excuses to suppress the freedom of the press. Television and radio stations are unregulated, but the need for such regulations will increase as more organizations enter the media market. Good broadcast law helps to promote free and balanced broadcast media and to curb the influence of political parties during events such as elections. However, most journalists reportedly lack professional skills and do not appear to follow any code of ethics set by the journalists' associations. Accepting bribes appears to be a common practice. Nevertheless, some positive changes have been observed, including the provision of similar news coverage by media regardless of their political background and a broadening of coverage toward more social and development issues.

Present Reform Context

In an effort to revive Cambodia's economy and reinvigorate its engagement with the donor community, the coalition RGC formed in 1998 committed to reforms in a number of sectors that relate directly to governance.

Public Finance Reform

Achievements

Since 1993 the RGC has made serious efforts to tackle public finance problems. The VAT, implemented in

1999, has generated significant revenues and reduced reliance on trade tariffs; additional tax officials are helping to strengthen collection efforts; efforts are under way to reduce the granting of ad hoc tax exemptions and to recover arrears from taxpayers; and tariff reductions are being implemented in the context of the ASEAN Free Trade Area. Regarding nontax revenues, the RGC has ensured the full transfer of fees from garment quota auctions, raised timber royalties, and taken steps to collect monies owed for the lease of state assets and telecommunications fees.

These reforms, together with efforts to maintain fiscal and monetary discipline, have enabled the RGC to keep the exchange and inflation rates stable and to enhance macroeconomic stability.

Issues

Public finance ought to shift from a pre-audit to a postaudit system with more responsibilities devolving to spending units. An important precondition for success is the capability to carry out sound financial management in spending units and audit authorities. Human resource development must keep pace with financial devolution.

Revenue-enhancing measures for customs and nontax revenues have not produced major results. Political commitment at the highest levels is a critical precondition to tackle powerful vested interests.

To help rationalize public expenditures, the RGC is building institutional and human resources to link medium-term development plans to annual budgets. This should enable it to prioritize donor-funded projects within national budgets. Coordinating external assistance is critical to shifting from donor-driven to Cambodian-driven development activities; however, government-driven reform will only be effective to the extent that the RGC becomes more transparent, accountable, and open to participation by nongovernment sectors.

Public Administration Reform

Civil Administrative Reform

Achievements

The RGC has expressed its firm commitment to public administration reform (PAR). In addition to

drafting a comprehensive PAR program, it set up the Council of Administrative Reforms and a Secretariat General, and is currently attempting to strengthen their institutional capacities. The RGC has also begun work on the key activities of its PAR program and a civil service census and functional analysis. The RGC must be credited with pushing ahead with the civil service census and other technical activities without substantial financial support from donors. In addition, it has made progress in civil service downsizing by enforcing the mandatory retirement age, and reduced the civil service by some 2,000 staff in 1999.

Issues

The current program, elaborated by Cambodians with limited financial support from the international community, includes a large array of activities and may be difficult for many officials in the public sector to grasp fully both conceptually and operationally. To build ownership of the reforms outside the small group of experienced, senior officials managing the program, greater awareness within the public sector and among the public of the program and its implications is needed. Progress to date has been limited and difficult and potentially unpopular actions lie ahead. If the plan is not adequately understood, current political support may weaken once implementation begins.

While some donors see downsizing of the civil service as urgent, some government officials do not consider it a top priority. Our study suggests that civil servant density in Cambodia is low compared with neighboring countries and may not exceed the public sector's needs. Rather, certain ministries may have surplus staff relative to their functions, while other institutions, both existing and to be created, require increased staff with more specialized skills. The inefficiency of the civil service may have more to do with such factors as the distribution of staff among ministries, the lack of meritocracy, low salaries, entrenched attitudes, and unqualified staff.

As part of the reform process, the RGC has established a wide variety of interministerial bodies to manage various aspects of reform. While they have some advantages, excessive proliferation of committees may undermine reforms by increasing the likeli-

hood of overlapping authority among ministries, taxing already thinly stretched human resources, and diverting scarce financial resources from existing institutions.

The Government also needs to ensure complementarity between administrative reforms and decentralization efforts. Clear consensus is needed on the specific structure, functions, lines of authority and responsibility, budgets, and staff that different levels of the government and different institutions should have. It is unclear what Government intends regarding deconcentration to province authorities. The 1998 Provincial Finance Law turns some modest power back to the provinces and a few of the cities that essentially function as provinces, such as Phnom Penh, and Sihanoukville. This law gives responsibility for basic public goods to the provinces, but only a few minimal taxes and non-tax sources of revenue have been turned over to them. Most of these are fairly minor, and the provinces have not been given any real autonomy over the definition of the tax base, the setting of rates, or even revenue collection. Some progress is reported within the CAR and Ministry of Interior, jointly responsible for subnational administrative reforms, on preparation of an "organic" law for province deconcentration, which is expected to be introduced to the Council of Ministers before the 2002 Commune elections.

Reform of the Military

Achievements

The RGC, in partnership with key donors, is pursuing demobilization of its armed forces. Two high-level councils have been established to coordinate demobilization and military reform efforts. The first phase of demobilization involves data collection on all military personnel and creation of a computerized personnel database. A pilot demobilization and reintegration for 1,500 soldiers is currently under way. A defense white paper to consider the military's future functions is also in preparation.

Issues

Demobilization began before the development of a coherent vision for the military's future structure and

responsibilities, but without such a vision, an informed and rational discussion of troop (and budget) reductions cannot occur.

Transparency of the military's role in demobilization must be ensured. Information on the registration process has not been made readily available to the donor working group on demobilization and none of the relevant military bodies communicate directly with donors. The large information gap has affected confidence in the integrity of the demobilization process and cost the RGC financial and technical support.

The implementation of mobilization will rely largely on the capacity of provincial governments; however, they are currently not well informed about their future role and lack the human resources to handle it. Redressing these deficiencies and including broader participation by local administrations, donors, and NGOs is highly desirable.

Reintegration should mesh with existing service delivery institutions and mechanisms, not the other way around. Given the range of local development programs supported by the RGC, donors, and NGOs, there should be numerous options for reintegrating demobilized soldiers using such programs.

Decentralization

Achievements

Government policy distinguishes between "deconcentration", the assignment of powers and functions to appointed, provincial authorities, and the "decentralization" of powers, functions and resources to soon-to-be elected Commune local governments. The RGC's Seila³ Program to promote rural development through decentralized planning, financing and management of investments in basic services and infrastructures is the most ambitious decentralization initiative implemented to date, resulting in the creation of commune development committees in six provinces encompassing over 1,000 villages and 100 communes. Over the next five years, the Government has committed to expanding the Seila Program to all provinces and communes. Drawing on its

³ Seila is a Khmer word associating the program with establishing the foundations for change.

experiences with this program, the RGC is about to promulgate two laws providing for commune council elections and devolution of planning, budgeting, and service delivery functions that, for Cambodia, will represent a major decentralization reform.

Issues

The Government has initiated a substantial program of subnational reforms. Provinces will become the main coordinators and supporters of local development, whereas elected commune councils will assume a major responsibility for delivery of basic public services. A legal framework is about to be enacted to govern commune elections and management of local affairs, and the National Committee for Support to Commune Councils will be created with the same status as the reform councils initiated in 1999 for the wider state reform process. An organic law for deconcentration of central ministry functions to province authorities is presently being prepared.

To implement the deconcentration and decentralization reforms presents numerous challenges. First, it will be necessary to establish appropriate national consultative mechanism to debate the host of regulations to implement new laws and to steer the implementation. Second, capacities will need to be built to actually develop the regulations to operationalize these subnational reforms. And third, and perhaps most challenging, it will be necessary to mobilize political, technical, and financial commitments to ensure the new institutions and systems are put in place and new responsibilities are enforced.

The RGC recognizes that the two processes, deconcentration and decentralization are complementary. Coordination of each process will present great challenges. Administrative deconcentration is a precondition of political decentralization: the Seila experience demonstrates the need for a reorientation of province authorities, to ensure they provide the right kinds of technical support and supervision at commune and village levels. It also demonstrates that where local village and commune authorities are appropriately resourced, supported, and supervised, that is, where resources are made available to match newly devolved functions and responsibilities, investments in services and infrastructures are better planned and budgeted, and more effectively implemented.

The RGC therefore faces multiple challenges in implementing subnational reforms. The functions of local authorities, both province/district and commune, need careful definition; major commitments must be made to establish decentralized systems of planning, financing and service delivery; and present weaknesses in monitoring, accounting, contracting, regulating and enforcing accountabilities must be addressed. The Law on Commune Administrative Management leaves these responsibilities unclear. It is however clear that the effectiveness of decentralized planning and management is constrained when the resources made available do not match newly devolved functions. At present, provinces remain heavily dependent on a subsidy from the national budget, which accounts for 45 percent of provincial expenditures in the 2000 budget.

The Government is aware that implementation of policies in support of good local governance will require a major commitment of resources and that donor support will be needed in the medium term, the amount depending on decisions to be made about the precise responsibilities of local governments. Implementation will also need to be gradual, since it will take time to develop the necessary human and institutional capacities needed. From the Seila experience, it is likely that the RGC will need to allocate about 5.4 percent of the total domestic revenue of \$396 million budgeted by MEF for the year 2000. This share of national revenue is reasonable, looking to experience elsewhere in the region. But it is also evident that national dialogue about the new responsibilities of provinces/districts and elected commune councils will be fundamental in ensuring appropriate resources are made available.

Judicial and Legal Reform

Judicial Reform

Achievements

The RGC is currently creating the Council on Judicial Reform to coordinate reform efforts and the Ministry of Justice is drafting a new penal code, laws on criminal and civil procedures, the Law on Court Clerks, and a law to establish specialized courts. The Supreme Council of Magistracy recently reviewed a

draft Statute on Magistrates. Finally, an investigation into corruption in the courts resulted in the rearrests of people previously convicted in criminal cases and released and the replacement of the chief judge and chief prosecutor of Phnom Penh's municipal court.

Issues

The impunity of public officials is the most serious weakness in Cambodia's judicial system. It is also an indication of the public sector's lack of accountability. As an initial step to address this issue, the Law on Civil Servants, which enshrined the impunity of public officials, was amended in 1999 to require that department heads be notified three days prior to the arrest of one of their officers. The RGC intends this to send a signal to government officials, who have enjoyed immunity from criminal prosecution. While this is a step in the right direction, the pattern will change only if the laws are enforced.

Interference in the judiciary by other branches of government needs to be reduced. Given the newness of the separation of powers concept, some confusion is likely, but measures to ensure an independent, accountable, and transparent judiciary must be taken and enforced, including separating the judiciary's budget from that of the Ministry of Justice.

The Government also needs to increase transparency at critical points in the criminal process. Currently the collection and weighing of evidence by investigating judges lacks transparency. Mandating the presence of a lawyer for the accused and opening proceedings to the public would help ameliorate this situation, as would forbidding trial judges from reviewing evidence prior to trial. All decision making by judges must be made more transparent, especially to the accused and their lawyers.

Major, long-term legal training is needed for judges and prosecutors, including intensive training in commercial and business-related law for judges and prosecutors dealing with commercial cases. The Ministry of Justice should consider establishing institutions for judicial training.

A new vision of the Ministry of Justice's mission should be developed. The ministry should no longer manage the judiciary, but have a new

mandate that directs it toward strengthening good governance and the separation of powers.

Legal Reform

Achievements

The RGC is currently drafting a new land law (in partnership with civil society organization, and donors), a forestry law, a law on evidence, and civil and commercial codes. The Labor Law and Law on Taxation have already been enacted and the Law on Quality of Goods and Services and amendments to the Law on Commercial Registration have been approved. As regards the creation of accountability institutions, the Law on Audit creates an independent National Audit Authority. In addition, the Ministry of Parliamentary Affairs and Inspection is drafting anticorruption legislation.

Issues

The absence of a notice and comment period prior to the approval of a law or regulation has significantly reduced the public's ability to provide input into the legislative process and reduced its transparency. The lack of consultation between the Government and the private sector results in less effective laws or laws that inhibit rather than support private sector growth, and the lack of formal notification of new laws leaves businesses unprepared to implement new requirements.

Private sector development not only requires the presence of laws, but also respect for and enforcement of such laws. Enforcement difficulties are largely due to a lack of human and financial resources. As more new laws are enacted, the need for qualified and competent judges and lawyers increases.

In Cambodia implementing a law often requires subsequent enactment of subdecrees that define key terms and powers. This risks leaving ministries too much discretion. One solution is requiring that draft laws must be accompanied by drafts of any implementing regulations called for in the law.

The public's perception of the unreliability of laws and the courts bolsters the tendency to seek high officials to intervene in disputes, thereby ignoring the law in favor of more informal, less transparent options. A new perspective will only emerge as people

see a reliable, transparent, effective legal system in operation.

Regional Integration

Achievements

Cambodia was admitted into ASEAN in 1999. As part of the preparation process, the RGC organized training, disseminated pertinent information, and prepared an ASEAN-consistent tariff nomenclature and draft customs code, and reduced tariffs. These actions also serve as steps toward eventual admission to the World Trade Organization.

Issues

Too few officials possess the expertise, language skills, and experience necessary to handle the technical preparations for ASEAN economic initiatives. This will be a major constraint to implementing ASEAN economic agreements. In addition, while essential for implementing ASEAN economic agreements, interministerial mechanisms remain weak and significant external assistance in institutional capacity building is needed.

The absence of a clear legal framework creates confusion among the key ministries responsible for ASEAN-related policymaking. The Internal Coordination Committee is nonfunctional and should probably be abolished. Meanwhile, the establishment of a National Committee on ASEAN Economic Cooperation, a technical body responsible for ASEAN economic initiatives, was stalled by a dispute over the appointments of senior officials. Effective governance requires that technical bodies carry out their work without political interference. Cambodia cannot afford to mismatch responsibilities and expertise given its lack of human resources with the requisite expertise.

Economic Implications of Reform

A recent study (carried out as part of ADB and Cambodia Development Resources Institute 2000), modeled Cambodia's economy to 2020 under two scenarios: reform and no reform. The former assumed that the RGC would vigorously implement its reform programs during the next five to seven years

and considered certain aspects of these reforms, many of which would increase government revenues and send positive signals to external donors and aid agencies. The no reform scenario assumed that the RGC would be unable to translate reform programs into actions, and the structural problems of governance would continue to prevail.

A comparison of the two scenarios reveals the impact of reforms and indicates that if fully implemented, the reforms will have a major positive influence on the economy. By contrast, in the absence of the reforms the economy would stagnate. Increased incomes as a result of high economic growth stimulated by reforms would have a dramatic effect on poverty reduction, assuming that the RGC implemented income equity measures such as social welfare programs. Without the reforms, progress in poverty alleviation would be minimal.

External Assistance for Governance Reforms

Key Issues

Reform would be spurred if the Government demonstrated the first element of reform through concrete actions and donors responded with the second element, financial and technical support. This would ensure that the Government would drive the process by setting its own reform priorities, building political support, and demonstrating political will. This dynamic has yet to develop. Concrete reforms that improve governance should be a precondition for assistance to a given sector or institution.

Both policy making and assistance should ensure the participation of all institutions concerned needed to implement reforms. A multi-institutional approach is essential for successful reform, yet some reforms have not adopted this approach.

Building financial integrity should be a key reform objective and a criterion for donor assistance. Accountability institutions necessary for good governance—such as the Ministry of Justice, a National Audit Authority, and the Ministry of Parliamentary Affairs and Inspection—need financial autonomy and sufficient funds to carry out their mandates. The RGC should take initial, concrete reforms prior to seeking donor assistance.

The constitution requires that all loans entered into by the Government be approved by the National Assembly, but in practice, the National Assembly has not approved all loans signed by the RGC. While the RGC is primarily responsible for ensuring that domestic legal procedures are followed, lenders must understand the legal requirements in effect and insist on the borrower's compliance with them.

In the area of governance, one useful strategy may be for donors to jointly develop a set of specific governance-related criteria and performance indicators for program planning and monitoring. This would help expedite donor coordination and the mainstreaming of governance into assistance programs. The Governance Action Plan (RGC 2001) is a useful step in this direction.

Recommendations for the RGC

Major structural reforms in governance require long-term efforts, substantial resources, and political will. While donors should be sensitive to the current availability of resources in Cambodia, not all governance reforms require more money. The following three initial actions would significantly improve governance and demonstrate the RGC's resolve to reform the public sector.

State Asset Management

Nontransparent, illegal sale and leasing of public property has been an ongoing problem. To address this, the RGC should consider publishing a list of state assets and their owners, reviewing major contracts involving the sale or lease of state property, and requiring an open tendering system for the sale or lease of state property.

Advance Notice and Comment Period for New Laws and Regulations

The absence of an advance notice and comment period affects the private sector in particular. Thus the RGC should mandate a 60-day comment period prior to approval of all laws and regulations and give notice of exactly when new laws will come into effect. It should also consult with the private sector before the Council of Ministers approves a draft law. Such reforms would have a positive impact on private sector development while incurring little extra cost for the RGC.

Separation of Branches of Government

The lack of effective separation between the branches of government results in the absence of checks and balances. One powerful reform that would signal the RGC's commitment to judicial reform would be amending the Law on the Organization and Functioning of the Supreme Council of Magistracy as follows: removing any council members who hold posts in either the executive or legislative branches, (requiring that council membership be a full-time job), and creating a separate budget line for the council and courts.

Recommendations for Donors

Land Reform

Land is arguably the most critical development issue in Cambodia. Given its leading role in the land reform process thus far, ADB should be a partner in implementing a new land law in close collaboration with other donors and civil society. Significant support in the form of loans and technical assistance will be needed to establish any new titling system and strengthen the institutions that will administer it, especially the provincial and municipal offices of the Ministry of Land Management, Urbanization, and Construction.

Another critical issue on which ADB and other donors may wish to offer support is the mapping and classification of Cambodia's land stock, which is crucial to secure good title to land occupied by the poor.

National Audit Authority

Recent efforts to establish the National Audit Authority are an important step toward good governance. Provided that a neutral, apolitical auditor general is appointed, ADB and other donors should help establish the National Audit Authority. This will require substantial institution building. The authority's initial operations will signal Cambodia's seriousness about improving the public sector's accountability.

A Commercial Court

The creation of specialized courts, such as a commercial court, is one way to address the judiciary's lack of independence. Specialized courts are common in countries following both civil law or common law tradition. The primary advantage would be

that its focused nature would enable the RGC to develop a court with a clear jurisdiction untainted by the generally corrupt court system. If the RGC were to enact a law establishing a commercial court, appoint experienced commercial lawyers as judges, and allocate a sufficient budget, ADB and other donors should seriously consider providing assistance. For example, they could provide judges with intensive training and, if the Government wished, help draft the law to establish a commercial court. Such assistance could help build private sector confidence.

Commune Councils

The anticipated election of 1,600 commune councils, each with 5–11 members, will represent one of the most significant political reforms undertaken in Cambodia. With adequate skills in management, planning, and finance, these councils might be the most effective vehicle for rural development planning and poverty alleviation. Many of the council members will be first-time officeholders who will require both training and information. Donors and civil society groups should be much more active in examining the proposed Law on Commune Administrative Management to ensure that the environment in which the councils will operate will facilitate local development. They and the RGC should also evaluate the councils' potential needs, an area in which ADB in cooperation with other interested donors might become involved. ADB might also consider (co-)financing a rural credit program and commercial co-financing of private sector projects linked to development plans created by commune councils. Promoting such linkages could promote growth and empowerment that would bolster good governance and contribute to poverty alleviation.

Supreme Council of Magistracy and Courts

One aspect of reforming the judiciary is undertaking major reforms in the structure and working of the Supreme Council of Magistracy. If the RGC were to eliminate all executive and legislative branch officials from the council, forbid members from being active judges, and provide an autonomous budget, ADB and interested donors may wish to offer assistance to strengthen the institution. We recommend

that ADB and other donors raise this issue with the Government and civil society groups concerned, such as the Bar Association.

To raise judges' capacity to handle commercial cases, ADB might consider developing a training program drawing on resources currently available at the Cambodian Bar Association and other legal training programs.

Provincial Finance Administration

Two key initiatives in relation to the decentralization of fiscal powers are the Law on Financial Procedures and Provincial-Municipal Properties and reforms in health and education sector disbursements. The implementation of decentralizing measures will depend on the financial management capacities of provincial administrations, which currently are exceedingly low. Thus a core set of provincial officials must gain sufficient skills in financial management, budgeting, and reporting to ensure the success of public finance reforms. An initial step might be to assess current skills and any training provided.

National Assembly and Senate Finance and Banking Commissions

The National Assembly's and Senate's weakness are 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. A legislature equipped to play an active monitoring role adds accountability and transparency. To more effectively play such a role, training should focus on the Finance and Banking commissions and selected permanent staff of the two legislative bodies. Technical assistance to these commissions

should form part of the assistance provided in finance and banking.

Public Sector–Private Sector Forums

Policy making related to economic development and the creation of a market economy occurs within a small circle of senior officials and technocrats, with little input from the private sector. However, the RGC has taken encouraging steps in promoting public-private sector contacts, but such contacts need to be regular, organized, and systematic. This will increase the effectiveness of reforms by drawing on the considerable experience and skills of the private sector and provide valuable insights into the impact of reforms on private sector growth.

ADB or other donors can serve as a catalyst for developing such contacts. When providing technical assistance for drafting laws or regulations related to economic reform, ADB could insist that 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. Thus we recommend that donors incorporate the private sector more explicitly as partners in economic studies and missions.

Conclusion

The study has highlighted some critical governance issues that could affect Cambodia's development either positively or negatively. It has also emphasized that reform is a long-term process that requires setting achievable goals and providing consistent support. While many challenges lie ahead, the commitment to the reform process demonstrated by the RGC and the achievements made to date are heartening.