

Corruption and Cambodia's Governance System

The Need for Reform



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© Cover photo: 'I want to be one of them' by Phim Kanika. Winner of Transparency International Cambodia's 2014 photo competition: "Illustrate how corruption negatively affects your world". Primary education in Cambodia is supposed to be free for all children. Yet teachers often subsidise their low wages through unofficial payments. The impact of this kind of corruption trickles through society, hurting everyone along the way.

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Transparency International is the global civil society organisation leading the fight against corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

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Foreword

Corruption has been one of the most critical challenges and obstacles to a fair and equitable share of economic growth as well as progressive democratic development in Cambodia. It can be characterised as a social disease which has been transmitted systematically to all levels of the public administration. This corruption phenomenon has caused Cambodians and some foreign citizens doing business in the country to believe corruption is a way of life in Cambodia. As a result, most people resort to be willing victims; some have no choice but to participate in the system while others have even learned ways to effectively commit corruption and take advantage of such malpractices.

However, in recent years Cambodia has made steps to tackle corruption in response to growing demand. As good governance has been placed at the centre of the Government strategy, anti-corruption is one of the top priorities. The passage of the Anti-Corruption Law in 2010 and the establishment of the Anti-Corruption Institution soon after had opened windows of opportunity to change the whole landscape. As evidenced over the last few years, people's attitude towards corruption has been transformed remarkably; from once accepting corruption as a way of life, to becoming the challengers of corrupt systems. Increasing numbers of people in Cambodia are strongly demanding that the Government and politicians do their best to fight against corruption. This change is confirmed by evidence-based studies and results of the 2013 national elections in Cambodia.

Going forward, it is obvious that corruption will remain one of the top priorities in the Government's reform agenda and political debates. Therefore, this National Integrity System Assessment is a very invaluable and timely input for the Cambodian government, politicians, civil society organisations, private sector, media, development partners and all members of the society to see the whole picture of loopholes in the current integrity system within key institutions in Cambodia. With this knowledge anti-corruption stakeholders must take necessary

measures to fill up the gaps in order to fight against corruption more effectively. As I characterise corruption as a social disease, I see this holistic assessment as a major diagnosis to determine the nature and causes of the disease. Therefore, the list of recommendations given in this report can be seen as a prescription for curing this particular social disease.

On behalf of the Transparency International Cambodia team I would like to recognise and express my profound thanks to the invaluable contributions of the research team who have worked very hard to compile this report and to those who participated in the assessment. This assessment could only have been undertaken with the input, insights and expertise of many different stakeholders including the Government, Parliament, political parties, civil society organisations, private sector, media, development partners, and independent analysts. I also would like to thank Transparency International Secretariat in Berlin, Germany, for the input and comments on the methodology, ensuring the consistency and quality of the assessment and its report. Most importantly, I would like to thank the Board of Directors of Transparency International Cambodia and the study's Advisory Group for their leadership, guidance, and contribution to this very important report.

Last but not least, I would like to request your support and collaboration in ensuring the recommendations listed in this report get implemented so that the key institutions and overall integrity system can be strengthened and our efforts to fight against corruption can be more effective. This could lead to irreversible progress and positive results over the coming years.



Preap Kol

Executive Director

Transparency International Cambodia

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Preface

A HOPEFUL COUNTRY

Recognition is in order for Cambodia. The economy is growing at an annual rate of 7 per cent.¹ The country is no longer at war. Ever increasing numbers of children are accessing primary education.² Remarkable progress has been made in the reduction of child mortality.³ The prevalence of HIV, malaria and tuberculosis has fallen.⁴ Life expectancy increased by over a tenth in the past decade.⁵ The proportion of the population living below the poverty line reduced by 30 per cent between 2007 and 2011.⁶

Foreign donors, international businesses and United Nations peace-keepers have contributed but the most recent drivers of change are the country's people. Ever more Cambodians are exercising their political voice,⁷ pushing for the government to do better,⁸ and embracing modern technology.⁹ With 65 per cent of the population under the age of 30,¹⁰ youth provides great opportunity for further social and political transformation.

A TROUBLED PAST

This progress is leaps and bounds away from the turmoil that Cambodia suffered in the 1970s and 1980s. Under the Khmer Rouge regime (1975 – 1979) the public sector was obliterated. In the first weeks of the revolution, the Khmer Rouge killed the police, military and bureaucratic elite of the old society,¹¹ as well as teachers, doctors,

engineers,¹² and intellectuals.¹³ Conflict prevailed in Cambodia until settled by the Paris Peace Agreements in 1991.¹⁴

HOW DOES THIS RELATE TO CORRUPTION?

The shadow of Cambodia's recent past has shaped its contemporary political, societal, cultural, and economic context. The characteristics of these four foundations contribute to the weaknesses within and across the country's governance institutions. Consequently, the form of democracy that exists in Cambodia does not align with international standards against which the institutions are measured in this report.

Whilst the governance system has been rebuilt on the principles of democracy, as enshrined in the Constitution (1993, last amended in 2008),¹⁵ the foundations upon which the institutions depend have fostered a hierarchical system of political patronage in which corruption is commonplace. The lack of social security in the post-Khmer Rouge system may have contributed to a reliance on such patron-client relations for survival and protection.¹⁶ Today these patronage systems run both vertically and horizontally across government ministries.¹⁷ Moreover, political patronage is allowed to continue largely unimpeded for multiple reasons, including: the hesitancy of citizens to challenge the Government, stemming from the historical paternal-child relationship between the State and citizen,¹⁸ the awareness of

harsh punishments that have been visited upon previous dissenters and Government critics;¹⁹ and, limited understanding of, and commitment to, social accountability among civil society organisations.²⁰

Further contributing to the limitations of the current governance system: the killing of a quarter of the population, including the middle class, by the Khmer Rouge left few educated people capable of running effective governance institutions once the regime fell.²¹ With insufficient human resources, institutions may be constrained in their abilities to ensure the highest standard of

governance, including implementation of mechanisms for integrity and accountability.

Influences on the current state of the Cambodian governance system also exist beyond the country's borders including superpower politics, global capitalism and climate change.²² These issues, along with a further historical analysis of the legacy of colonisation and decolonisation on contemporary Cambodia,²³ go beyond the bounds of this report. Hence, whilst they are acknowledged, they are not discussed here in-depth.

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2 Royal Government of Cambodia (RGC), Achieving Cambodia's Millennium Development Goals: Update 2010, Ministry of Planning (Phnom Penh: RGC, 2010) p. 16

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9 See Media pillar, Structure and Organisation section: Internet coverage has rapidly increased in recent years. The most recent government estimates show 2.7 million people in Cambodia to have access to the internet, representing 18 per cent of the population, see: http://www.ifex.org/cambodia/2013/04/30/cambodia_internet_censorship_cchr.pdf [accessed 05 September 2013]; Whilst as of June 2011, an estimated 300 000 people were internet users in Cambodia, representing only two per cent of the population, see: Department of Media and Communication (DMC), Cambodia Communication Institute, Royal University of Phnom Penh (RUPP), Cambodian Communication Review 2011 (Phnom Penh: DMC, RUPP, 2011) p. 5

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11 Elizabeth Becker, *When the War Was Over: Cambodia and the Khmer Rouge Revolution* (New York: Public Affairs, 1986) p. 167

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13 Ibid. p. 162

14 David W. Roberts, *Political Transition in Cambodia 1991-99: Power, Elitism and Democracy* (London: Curzon Press, 2001) p. xiv; also see: David Chandler, *A History of Cambodia* (fourth edition) (Chiang Mai: Silksworm Books, 2008) pp. 277-287

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16 Thom Vimealea, Ousivhuoch, EngNetra and Ly Tem, *Leadership in Local Politics in Cambodia: A Study of Leaders in Three Communes*

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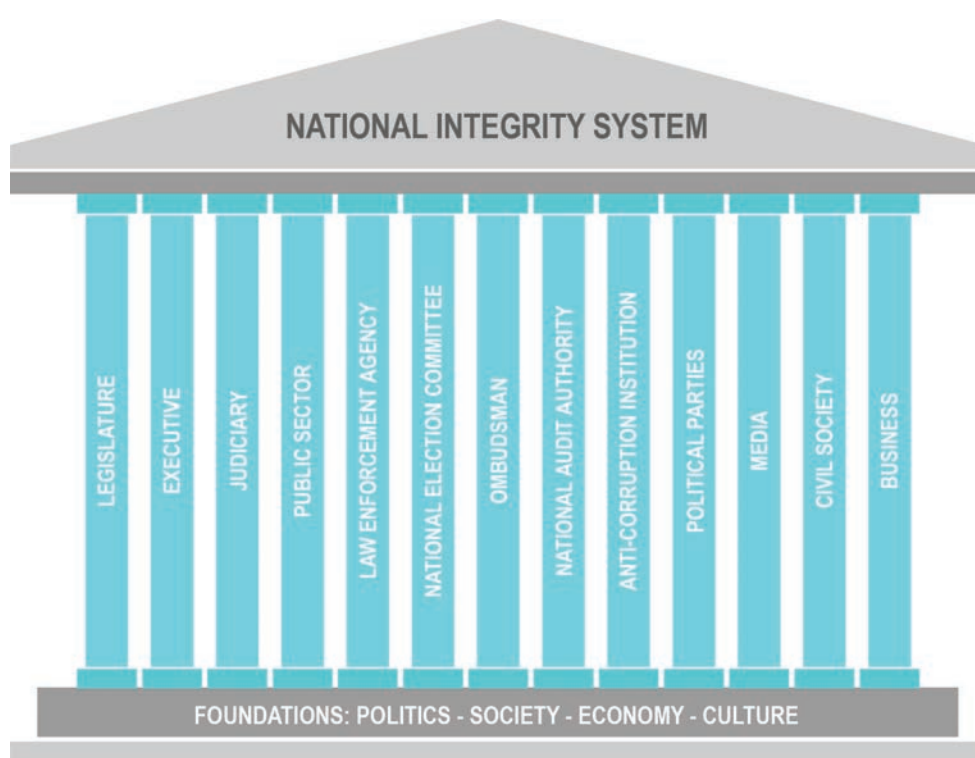
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I. About the National Integrity System Assessment



METHODOLOGY

The National Integrity System Assessment is a study of the state of a country's governance system. It aims to evaluate a country's current level of corruption and the effectiveness of anti-corruption mechanisms across multiple sectors, providing a nuanced analysis and key policy recommendations based on international best practices. It has been undertaken in over 100 countries based on the research methodology created at the Transparency International-Secretariat in Berlin, Germany.

The study focuses on 13 core governance institutions (or pillars), considered essential for upholding a strong system of integrity: the Legislature, Executive, Judiciary, Public Sector, Law Enforcement Agencies, National Election Committee, Ombudsman, National Audit Authority, Political Parties, Media, Civil Society, and Business. Alterations have been made to the international research framework regarding the Ombudsman pillar; sub-national complaints receiving mechanisms have been assessed because Cambodia does not have a national level ombudsman.

Each pillar is broken down into three dimensions and assessed in terms of its capacity, governance, and role. These are further separated into sub-dimensions: capacity focuses on the institution's resources and independence; governance assesses transparency, accountability and integrity mechanisms; and role varies according to the core functions and duties of the particular institution. Both legal provisions and practice are assessed in order to enable comparison between the existence of laws and their implementation.

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The assessment is guided by indicator 'score sheets'. The sheets contain a scoring question for each indicator, followed by a set of guiding questions to direct the research under that indicator, for example:

PILLAR	LEGISLATURE
INDICATOR NAME	Independence (practice)
Scoring question	To what extent is the legislature free from subordination to external actors in practice?
Guiding questions	To what extent is the legislature able to practice its rights and carry out its responsibilities as described under the law? Are there examples of attempted interference by external actors, particularly the government in the activities of the legislature? How many bills passed by the legislature originate from it rather than from the executive?

The guiding questions were created by examining international best practices, existing tools and Transparency International's own experience. Transparency International Cambodia,

in consultation with the study's Advisory Group, applied the methodology to the local context, adding some questions and omitting others, to ensure the assessment was nationally relevant.

To answer the guiding questions, the researchers have relied on a multitude of sources, including: interviews, reports, newspapers, books, journal articles, national laws and regulations, international laws, and online sources.

76 interviews, an average of six per pillar, were undertaken for the study. The interviewees were constituted by 63 experts from across the governance system – some of which were interviewed multiple times to provide a deeper understanding of the issues addressed. For each pillar, the researchers sought to interview senior officials internal to the institution. Many senior public sector officials did not agree to meet hence their voices could not be reflected. Full details on the interviews undertaken are included in each pillar report.

SCORING

Whilst the National Integrity System Assessment is a largely qualitative report, there is also a quantitative element. This provides each pillar with numerical scores so that they can be more easily compared at the macro-level. Offering an aerial view, the scores enable a holistic overview of the state of the governance system, through which key strengths and weaknesses can be quickly observed. The scores promote reflection on the report as a whole, preventing the reader from getting lost among the finer details.

All subsections under each pillar received a score of between one and five. The exact meaning of the score is tailored to each subsection. For

instance, see the table on the following page for the scoring indicators for the Legislature Pillar: Independence (practice) section which corresponds to the scoring question shown above:

PILLAR	LEGISLATURE
INDICATOR NAME	Independence (practice)
Minimum score (1)	Other actors regularly and severely interfere with the activities of the legislature with consequences for the behaviour of the legislature.
Mid-point score (3)	Other actors occasionally interfere with the activities of the legislature. These instances of interference are usually non-severe, such as threatening verbal attacks, without significant consequences for the behaviour of the legislature.
Maximum score (5)	The legislature operates freely from any interference by other actors, particularly the executive.

Once the scores had been initially assigned a score between one and five, they were converted into percentage points: 1(0), 2(25), 3(50), 4(75), 5(100). The average for each of the three dimensions was then made and used to calculate the average overall score for the pillar. The sum of the scores for capacity, governance and role were divided by three to find the total pillar score.¹ The final scores for the pillars and their dimensions are assigned with labels that signify the corresponding strength of the institution:

VERY WEAK	0-19
WEAK	20-39
MODERATE	40-59
STRONG	60-79
VERY STRONG	80-100

The National Integrity System Assessment presupposes that the weakness of a single institution could lead to serious flaws which

undermine the entire governance system. Without a solid system of integrity, in which all foundations and pillars are strong, the rule of law, sustainable development and a good quality of life struggle to be upheld.

CONSULTATIVE APPROACH AND VALIDATION OF FINDINGS

Transparency International Cambodia's research team has been responsible for collecting the data, drafting the qualitative report and suggesting the initial scores. Beyond this a consultative approach has been employed to ensure multiple layers of review and validation of the findings.

Each section of the report was sent to the Transparency International-Secretariat in Berlin, Germany, for quality assurance. Once feedback from the Secretariat was incorporated into the draft report by the Transparency International Cambodia research team, the report was sent to the organisation's Senior Management Committee for review, as well as the study's Advisory Group.

The Advisory Group, constituted by 12 experts from across media, business, academia, civil society, and the donor community in Cambodia provided detailed feedback on the report through consultative meetings and written submission. In particular, the Advisory Group scrutinised and validated the scores given to each sub-dimension.

Simultaneously, each interviewee was sent the relevant sections of the report in which they had been referenced, to enable them to send feedback before the final draft was completed. Moreover, Transparency International Cambodia organised a National Integrity Workshop in November 2013, inviting anti-corruption stakeholders and institution experts to discuss and review the draft report, as well as develop policy recommendations based on the findings.

Subsequently, the entire report was sent to an expert external reviewer, Dr. Kheang Un, from Northern Illinois University in the United States, to provide detailed feedback. He identified areas that needed further research, substantiation and consistency. The research team has worked to

incorporate all feedback as far as possible into the final draft. Then the completed report was sent again to Transparency International-Secretariat, and the Transparency International Cambodia Board of Directors, for final feedback before publication.

SCOPE OF THE REPORT

The assessment represents the current state of the governance system in Cambodia, relying primarily on sources from 2012 and 2013. Older sources have sometimes been used to provide a contextual background or comparative analysis over time. Where possible, the most recent data from 2013/4 has been incorporated.

Due to the broad scope of the study, the assessment of each pillar is relatively brief (on average 8000 words or 20 pages). In some instances, the study highlights gaps where further research is needed but goes beyond the scope of the methodology. The study does not claim to give an in-depth evaluation on par with academic research which may be undertaken for three, five

or even 10 years. So whilst the National Integrity System Assessment does not claim to uncover complex causal mechanisms existent in institutional environments, it provides a robust analysis of the current state of the governance system.

Importantly, an overall score for the integrity system is not given because the purpose of this assessment is not to compare Cambodia to other countries. The core objective of this report is to highlight the strengths and weaknesses of the institutions, and enable comparison on a national-level. For Transparency International, research is not just an end in itself but is a crucial component to engage in public policy debate and advocacy. Hence, with the evidence-based research, scores and multiple validation mechanisms used for the creation of this report, Transparency International Cambodia has ensured that the findings are robust enough to be used as a basis to make policy recommendations. These aim to promote the betterment of the governance system and the sustainable development of Cambodia.

1 The sum of the scores for capacity, governance and role were divided by three to find the total pillar score.

II. EXECUTIVE SUMMARY

THE ASSESSMENT REVEALS THAT OVERALL CAMBODIA HAS A WEAK INTEGRITY SYSTEM. IT IS NOT STRONG ENOUGH TO UPHOLD THE RULE OF LAW, ENSURE SUSTAINABLE DEVELOPMENT, AND A GOOD QUALITY OF LIFE FOR THE POPULATION AT LARGE. DESPITE THIS, SOME NOTABLE AREAS OF STRENGTH DO EXIST. MOST NOTABLY, SOME ASPECTS OF THE LEGAL FRAMEWORK ARE ROBUST AND COMPREHENSIVE.

KEY STRENGTHS OF THE NATIONAL INTEGRITY SYSTEM

The assessment indicates that civil society is the strongest pillar in the national integrity system. Whilst the report's findings indicate some areas of weakness in the legal framework and common practices of civil society organisations, the capacity, governance and role of civil society is shown to be consistently moderate. Legal provisions exist to safeguard an enabling environment for civil society. Civil society organisations are generally well-funded, supported by overseas development assistance. Civil society organisations are gradually beginning to hold the Government to account and contribute to discussions on policy reform, although progress is slow.

The pillar is not classified as strong due to a combination of internal competencies which need to be enhanced and external features which restrict civil society's activities. For instance, the capacities of boards of directors and transparent financial reporting mechanisms within civil society organisations have room for development. Meanwhile, civil society activists working on issues

that challenge the Government have faced undue interference and punishment from the authorities. In addition, the draft Law on Associations and Non-Governmental Organisations (LANGO) may restrict the freedoms of civil society if passed.

The Executive and political parties follow closely behind civil society. The integrity of both these institutions is bolstered by a relatively robust legal framework which seeks to safeguard adequate resources, independence and the ethical behaviour of their members. The Executive is constitutionally guaranteed a high-level of independence, which no external power including the King can mitigate. The National Assembly may only intervene in extraordinary circumstances such as if a member of the Executive commits serious misconduct and a decision to discipline that member must be made. The Executive has prioritised reforms to ensure the development of a well-governed public sector. Notable improvements have been made in terms of decentralisation and sub-national democratic development. Between the existing political parties, several social interests and groups are represented. Moreover, both the ruling Cambodian People's Party (CPP) and the leading opposition Cambodia National Rescue Party (CNRP) claim to

prioritise anti-corruption. The ruling party has initiated a number of anti-corruption reforms including passing the Law on Anti-Corruption and establishing the Anti-Corruption Institution in 2010. The opposition party publicly signed an anti-corruption pledge at a ceremony organised by Transparency International Cambodia, which the ruling party did not attend.

Despite the commendable features of the Executive and political parties, both institutions need to act on crucial reforms to ensure they are fully accountable to the plurality of voices in the society that they claim to represent. The ruling party has been criticised for its close ties to wealthy elites, whilst overlooking the interests of other social groups. The long-term effectiveness of both parties' publicly stated commitment to anti-corruption is yet to be seen. Moreover, the Executive's independence is limited in practice; it operates within the bounds of an interwoven network of ruling party, business and military elites. On top of this, mechanisms to ensure the ethical behaviour of members of the Executive appear to be absent in practice. Patron-client relations provide an unhindered nexus between the Government and business executives, centralising major procurement contracts, economic land concessions and access to resources within the control of a narrow group of people. Only by addressing these issues can the Executive and political parties progress into strong, autonomous, egalitarian institutions.

The amendment to the Law on Anti-Corruption strengthened the legal provisions that apply to the **Anti-Corruption Institution**, ensuring that it has an autonomous budget. Moreover, the Anti-Corruption Institution has also undertaken numerous activities to educate public servants and citizens about corruption and how to fight it using the available tools. Specifically, the institution has contributed to the development of an integrity course to be implemented in the national school curriculum, as well as undertaking workshops to disseminate the Law on Anti-Corruption and its amendment across the country. Challenges remain, however, that restrict the Anti-Corruption Institution from effectively undertaking its

oversight role in practice. The institution is politicised, independence from the Executive is limited, and decision-making remains opaque.

The Ombudsman has not been scored because there is no national-level unified body for receiving complaints about maladministration in the public sector. Despite this, commendable initiatives are being undertaken at the sub-national level. The District Ombudsman and Provincial Accountability Working Group are mechanisms acting to enhance accountability of decentralised public administration and Commune/Sangkat budgets respectively. Located under the Ministry of Interior, these projects indicate genuine political will and encouraging action of some government officials to improve the public sector.

KEY WEAKNESSES OF THE NATIONAL INTEGRITY SYSTEM

The Judiciary and law enforcement agencies are the two weakest pillars. This finding is supported by Transparency International's Global Corruption Barometer 2013, which showed the Judiciary and Police to be the institutions to which bribes are most commonly paid. In comparison to other institutions, the legal framework regulating the law enforcement agencies is weak. Key laws that apply to both institutions including the Law on the Organisation and Functioning of the Courts, and, the Law on the Status of Judges and Prosecutors have just been passed. Yet their content has come under strong protest from relevant stakeholders, especially civil society, on the grounds that they fail to ensure real independence of the Judiciary. Moreover, the salaries for judicial and law enforcement officials are not considered adequate to ensure a middle class living standard. This contributes to the reliance on supplementary income which may constitute conflict of interest and result in corruption. Both the Judiciary and law enforcement agencies are highly politicised, restricting the professionalism and objectivity of their activities.

Petty corruption remains commonplace across both the private and public sectors. Bribe-seeking and offering undermines the professionalism and

accountability of these governance institutions. It leads to situations where those that can afford to pay more receive preferential treatment, inequality is exacerbated, and impunity reigns.

CROSS-CUTTING ISSUES

A significant implementation gap exists between law and practice. Existing laws are not equally applied or effectively upheld. This cuts across all institutions, contributing to the weakness of the entire integrity system. In particular, the lack of political independence of the pillars is in reality far removed from that which they are ensured by law. Power is highly centralised within the intra-elite patronage network of the ruling CPP. This extends across public institutions, contributing to the opacity of decision-making structures. The Legislature and Judiciary are not separate from the Executive in practice, despite it being constitutionally guaranteed. This limits the possibilities for checks and balances between them. All three of these central government institutions in turn are closely aligned to the ruling party.

Concerns over the lack of independence extend to almost all pillars. Every television station and the majority of radio channels and print media are affiliated to the ruling party. High-level business and Government operate within a tightly woven mutually beneficial nexus. Civil society has experienced political interference, arrest, and detention of its foremost activists underlining restricted freedom to operate independently. Whilst assassinations of government critics appear to have declined in recent years, they have still occurred within the period under review in this report, including the death of environmental activists Chut Wutty and Hang Serei Oudoum in 2012. The Anti-Corruption Institution is politicised through the appointment of its senior officials, who are known to be close to the Prime Minister. Likewise, the National Election Committee and the public sector at large remain under strong influence from the ruling party.

The consolidated power across the governance system means that freedom of information is curtailed and citizens lack access to information

upon which to hold the Government to account. For instance, the National Audit Authority has not published all audit reports. The audit reports that have been released were published up to three years after the relevant financial year. This does not meet international standards.

Limited publicly available information means that official processes are opaque, providing an environment in which corruption is commonplace. The confidentiality of public officials' asset declarations, as stipulated in the Law on Anti-Corruption, prevents any genuine checks and balances from occurring through this process. The possibility for the imprisonment of a corruption whistleblower (Anti-Corruption law, Article 41) is likely to act as a deterrent from people speaking up about corrupt acts. In this system, democracy can only be described as limited.

FOUNDATIONS OF THE NATIONAL INTEGRITY SYSTEM

Some of the weaknesses within the pillars can be linked to the political, economic, cultural and societal foundations of the National Integrity System.

Despite rapid growth, Cambodia's economy is still weak and dependent on only four sectors: agriculture, garments, tourism, and construction. The lack of economic diversity is considered to be a challenge to sustainable growth and poverty reduction. Moreover, the country's transportation and energy infrastructure are not adequately developed. In this context, institutions tend to have insufficient resources to ensure effective operations and the highest standards of accounting, reporting, transparency and integrity are consequently difficult to achieve.

Cambodia's post-conflict environment has been characterised by a tightening of control by the ruling party. This has prevailed, relatively unchallenged by the population at large. Multiple factors may have enabled the centralised, patronage system to prevail, including the breakdown of social relationships and limited trust between people following the 1970s and 1980s turmoil, combined with the paternalistic view citizens have

typically held towards the Government. This may have resulted in a limited sense of entitlement and demand for the Government to be held to account. As a result, the independence and accountability of institutions across the integrity system is curtailed.

Whilst political transformation was indicated by the significant gains made by the opposition CNRP in the 2013 National Assembly elections, the ruling party retains its grip on power both vertically and horizontally across the governance system. Whilst more Cambodians are taking to the streets calling for improvements from the Government, a long journey remains on the path to democratisation in Cambodia.

III. PRIORITY RECOMMENDATIONS

Transparency International Cambodia, in consultation with anti-corruption stakeholders and governance experts, has developed crucial policy recommendations for all of the pillars assessed in this report.¹ We urge all relevant stakeholders to take the necessary action to work together and implement these reforms. In particular, we urge stakeholders to enact three core recommendations which would broadly benefit the governance system:

1. **Reform the Judiciary**
2. **Pass a Law on Access to Information**
3. **Amend the Law on Anti-Corruption**

REFORM THE JUDICIARY.

Judicial reform should prioritise the following actions:

- » Ensure that all courtrooms and court procedures are open to everyone;
- » Publish the decisions of judges as well as the reasons behind them;
- » Provide salary incentives to judicial officials, tied to performance and integrity;
- » Publish and implement a clear and transparent mechanism for the recruitment and appointment of judicial officials. Appointment criteria should be clear and well publicised, allowing candidates and selectors to have a clear understanding of where the bar for recruitment lies;

- » Ensure that judges are objectively recruited through an independent appointments body. This will ensure that the highest quality candidates are selected, and that they do not feel indebted to the particular politician or senior judge who appointed them.
- » Develop and introduce a course on the Judiciary to be included in the national high school curriculum. This would ensure that graduates have an understanding of: the functions of the courts; the roles of judges, prosecutors, and lawyers; the right to a fair trial; what a fair trial involves.
- » The three judicial reform laws, the Law on the Organisation and Functioning of the Courts, the Law on the Status of Judges and Prosecutors, and the Law on the Organisation and Functioning of the Supreme Council of Magistracy, that were passed in May 2014 should be reviewed in consultation with relevant stakeholders, especially civil society, and amended to ensure independence of the Judiciary.

PASS A LAW ON ACCESS TO INFORMATION.

Ensure that the law aligns with international best practice such as Article 19's 'Principles on Freedom of Information Legislation',² including the following provisions:

- » Ensure maximum disclosure of information;

- » Provide the public general access to official information;
- » Ensure the law applies to all persons indiscriminately;
- » Place obligations on public bodies to disclose information;
- » State that information requested will be provided free or at very low cost;
- » Include a requirement to establish an oversight body in the form of an independent information commission to safeguard implementation of the law.

AMEND THE LAW ON ANTI-CORRUPTION (2010).

The following amendments to the Law on Anti-Corruption should be prioritised:

- » Article 41: Defamation – the possibility of imprisonment for the complainant of a corruption-related crime should be removed. The onus of proof should be shifted on to the Anti-Corruption Unit to provide documentary evidence that the whistleblower has:
 - a) Falsely made a complaint about someone to whom there is no evidence of corrupt behaviour, and;
 - b) Was aware that the complaint was false.

Any investigation into such an allegation should be done in accordance with defamation provisions contained under the Penal Code (2009, Art. 305), which does not allow a custodial sentence for the defendant of any successful defamation claim.

- » Article 20: Asset declarations – omit the clause ‘highly confidential’ and add a provision that asset declarations will be shared with parliament and the public in the financial year following the relevant declaration.
- » Article 17: Asset declarations - include the requirement that the assets of spouses of

officials making declarations are also disclosed.

- » Article 13: Transparent reporting – include a provision that the Chairperson of the Anti-Corruption Unit should present its annual activity and financial report to parliament, and that reports shall be made publicly available in the following fiscal year.
- » Article 11: Independence – remove the provision that the Chairperson and Vice-Chairperson are appointed by royal decree at the request of the Prime Minister. Instead both should be selected through an open competitive recruitment process.

WHY ARE THESE REFORMS TOP PRIORITY?

Background, rationale and international good practice

Judicial Reform: The Judiciary is rated lowest compared with all the other institutions in the National Integrity System, being scored 16 out of 100. The score indicates that this core governance institution is very weak with inadequate resources, limited independence and a low level of accountability. The shortfalls of the judiciary result in a system whereby the rule of law is not adequately upheld, impunity reigns and corruption thrives. Consequently, reforming the judiciary is crucial to strengthening the system of governance in the country. Singapore’s judicial system³ provides an example of international good practice.⁴

Singapore’s judiciary has strong accountability and discipline practices. Supreme Court Judges can only be removed on the basis of misbehaviour or inability to undertake their functions. This is decided by an elaborate process involving an independent tribunal comprising judges and/or former judges – it cannot be decided by the Executive. Newly qualified Singaporean lawyers must undertake an ethics and responsibility programme as part of their professional development. Moreover, Singapore offers an advanced training system for members of the Supreme Court. Constitutional protections ensure that judges’ pay, power and terms cannot be reduced, safeguarding appropriate working conditions and independence.

Access to Information: Limited official information is accessible to the public across Cambodian government institutions. Hence, people do not tend to be clear on administrative processes, contributing to inefficiency. Opportunities for genuine oversight of public bodies are minimal. Bribes are regularly sought or offered, reinforcing a system in which the wealthy remain privileged and inequality is exacerbated. Access to information is a core principle of democracy, and maximum exposure enables people to make better decisions and informed investments, helping a strong, educated and productive society to grow. India's⁵ access to information law provides an example of international good practice:

India is recognised as one of the most advanced countries in the world in terms of its access to information legislation. Requests for information may be made through various forms with minimum administrative procedure, and without giving justification. Access fees are limited to the cost of reproduction and delivery. Exceptions to releasing information are in line with international best practices (restricted to potential harm to public interest or security). Strong appeals mechanisms are in place in case authorities refuse to release information.

Law on Anti-Corruption: As long as the threat of imprisonment exists for a person bringing a corruption-related complaint to the Anti-Corruption Unit, people are likely to be deterred from speaking up. The lack of transparent reporting mechanisms in turn reduces the accountability of the institution. Whilst the Chairperson is not independently selected it is difficult to safeguard the objectivity of the Anti-Corruption Institution's activities. With an effective Anti-Corruption Institution, corrupt practices will be reduced, strengthening the system of governance overall. Indonesia's Corruption Eradication Commission (KPK)⁶ provides an effective example of an anti-corruption agency:

The **Indonesian KPK** has transparent reporting mechanisms ensuring accountability of the institution. It publishes annual reports and must make its documents available to the public. The head of the KPK is chosen through an open selection process through which parliament nominates and the President appoints the head for a mandate of four years.

1 These are detailed at the end of each pillar report as well as in Annex II at the end of the full report.

2 Article 19 – Global Campaign for free expression, The Public's Right to Know: Principles on Freedom of Information Legislation (London: Article 19, 1999)

3 See: Bertelsmann Foundation 2014, Singapore Country Report: http://www.bti-project.de/uploads/tx_jpdwnloads/BTI_2014_Singapore.pdf; Reuters 2014, "Singapore to remake itself Asia's hub with new commercial courts," <http://litigationedge.asia/2014/02/12/singapore-to-remake-itself-as-asias-legal-hub-with-new-commercial-court-reuters-philomin/>; Transparency International, National Integrity System Country Study: Singapore, 2006: http://archive.transparency.org/regional_pages/asia_pacific/current_projects/nis_asia_pacific [all accessed 20 February 2014]

4 Further detail on international good practice recommendations for judicial reform is provided in Transparency International's Global Corruption Report 2007: Corruption and Judicial Systems (Cambridge: Cambridge University Press, 2007) pp. xxv-xxviii

5 See: India's Right to Information Act <http://www.righttoinformation.gov.in/> [accessed 29 January 2014]; and, the Right To Information assessment of India's Access to Information law at: http://www.rti-rating.org/view_country.php?country_name-India [accessed 29 January 2014]

6 Anti-Corruption Authorities 2010, "Country Profile Indonesia," <http://www.acauthorities.org/country/id> [accessed 08 February 2014]; Bolongaita, E. 2010. An Exception to the Rule? Why Indonesia's Anti-Corruption Commission Succeeds Where Others Don't – A Comparison with the Philippines' Ombudsman, U4 Issue 2010: 4, Bergen, Norway: <http://www.u4.no/publications/an-exception-to-the-rule-why-indonesia-s-anti-corruption-commission-succeeds-where-others-don-t-a-comparison-with-the-philippines-ombudsman/> [accessed 08 February 2014]; Schütte, S. 2012, 'Against the Odds: Anti-Corruption Reform in Indonesia,' Public Administration and Development, Vol. 32, pp. 38-48; Schütte S. 2011, 'Appointing Top Officials in a Democratic Indonesia: the Corruption Eradication Commission,' Bulletin of Indonesian Economic Studies, Vol. 47, No. 3, pp. 355-379

IV. COUNTRY PROFILE

FOUNDATIONS OF THE NATIONAL INTEGRITY SYSTEM IN CAMBODIA

Since a National Integrity System is deeply embedded in a country's overall social, political, economic and cultural context, a brief analysis of Cambodia's specific context is presented here for a better understanding of how these contextual factors impact integrity on the whole. There are four different 'foundations' of the system: political, societal, economic and cultural foundations.

POLITICAL FOUNDATIONS SCORE: 25

To what extent are the political institutions in the country supportive to an effective national integrity system?

Cambodia is a representative democracy operating under a constitutional monarchy. In practice, the ruling Cambodian People's Party (CPP) dominates the political process. Opposition parties and their leaders have been harassed and barred from exercising their rightful political power in the National Assembly.¹ The use of politically motivated judicial proceedings against opposition activists and politicians has not been uncommon, resulting in the opposition parties having limited political influence.²

The National Assembly elections in July 2013 saw significant gains for the opposition Cambodia National Rescue Party (CNRP), although the ruling party still maintained power. A positive step was

taken on the lead up to the election with the pardon of opposition leader Sam Rainsy by the King on request of the Prime Minister.³ A decrease in electoral violence was also witnessed compared to previous years.⁴ Nevertheless, widespread shortcomings were observed throughout the electoral process, including: eligible citizens not being included on the voter registry, invalid and duplicate names on the voter registry, and widespread use of suspect temporary alternative voter documents including Identification Certifications for Electoral Purposes (ICE) forms.⁵

The CNRP contested the result of the election and has organised subsequent protests. The opposition Members of Parliament-elect refused to take their seats in the National Assembly, meaning that the National Assembly passed the 2014 national budget without debate.⁶ At July 2014, one year after the election, although protests had abated negotiations between the CPP and CNRP were still in process and the opposition had yet to take their seats.

According to 2013 Freedom House data assessing various countries' degree of political freedoms and civil liberties, Cambodia is ranked as 'not free'.⁷ Although the country's legal framework and constitution does provide some civil rights,⁸ in practice these rights are not always protected or guaranteed. The Global Integrity Report 2012 gives Cambodia a score of 23 (very weak) for the actual implementation and enforcement of its legal framework. The framework

itself scores 60, leaving a sizable implementation gap of 37.⁹

Cambodia ranks in the 20th percentile (where 100 corresponds to highest rank and 0 corresponds to lowest rank) for government effectiveness on the World Bank's Worldwide Governance Indicators.¹⁰ Regionally, Cambodia is on par with Lao People's Democratic Republic, and fares considerably better than Myanmar ranked very low in the 2nd percentile.¹¹ Vietnam and Thailand are both rated as having far stronger government effectiveness than Cambodia, being in the 42nd and 60th percentile respectively.¹²

Prison conditions in Cambodia are extremely poor, cases of arbitrary detention continue to be reported.¹³ Tens of thousands of people have been caught up in land grabs and forced evictions across the country.¹⁴ A 2013 report from the UN Special Rapporteur on human rights in Cambodia stated that the situation in the country is akin to a limited democracy.¹⁵

SOCIETAL FOUNDATIONS SCORE: 25

To what extent do relationships among social groups and between social groups and the political system in the country support an effective national integrity system?

Cambodia has an approximate population of 15.2 million.¹⁶ Roughly 90 per cent of the population is ethnically Khmer, whilst 96 per cent follow the state religion, Buddhism.¹⁷ Several minorities including the Muslim Cham, ethnic Vietnamese and Chinese reside in the country.¹⁸

Minority rights are formally protected through Cambodia's ratification of relevant international conventions.¹⁹ However, these laws do not extend to non-citizens and the Citizenship Law limits citizenship to those who are ethnically Khmer. This means that some minority groups are unable to gain citizenship, often despite multiple generations of residency.²⁰

Anti-Vietnam sentiments have been promoted by opposition parties in election campaigns, resulting in increased discrimination being

demonstrated at the local level.²¹ In the post-election context, the opposition Cambodia National Rescue Party continues to use anti-Vietnamese rhetoric to rally and sustain its supporters,²² sparking concern from the United Nations human rights envoy to Cambodia.²³

The most significant cleavage in Cambodian society is the growing divide between the wealthy elite and the poor.²⁴ Land grabbing (expropriation of land by a government or business resulting in the forced displacement of existing residents, whom are often inadequately compensated) is endemic in Cambodia and has exacerbated this social divide. Typically, the evicted tend to be the rural and urban very poor.²⁵ For example, 4000 families were evicted from the Boeung Kak Lake area in Phnom Penh starting in 2008. Thousands more have been displaced in rural areas through government issued economic land concessions (ELCs) for industrial and agricultural development purposes. Evictees who refused forced relocation continue to occupy their land despite very poor living conditions at the site.²⁶

Civil society protests are commonplace in the capital though activists are sometimes subjected to grave consequences. For instance, in early January 2014, at least four people were killed and 20 more injured when police opened fire on a group of protestors calling for improved garment factory wages.²⁷ Following the clashes, 25 protestors were taken to a high-security prison.²⁸ In late May 2014, the 25 were released to their families. However, their convictions for incitement remain, resulting in an outcry by civil society actors including Human Rights Watch who has called for the convictions to be nullified.²⁹

ECONOMIC FOUNDATIONS SCORE: 25

To what extent is the socio-economic situation of the country supportive to an effective national integrity system?

Cambodia is classified as a low income country and has a GDP of 14.06 billion US dollars (2012).³⁰ Despite this, the country's economy grew rapidly at over 8 per cent per year between 2004 and

2012.³¹ The country has a predicted growth rate of 7 per cent in 2014, 2015 and 2016.³²

Cambodia's economy is dependent on a limited number of sectors; predominately agriculture, garment production, tourism and construction. This lack of diversification is cited by the Asian Development Bank as one of the key challenges to sustainable growth and poverty reduction.³³ Informal economic activities account for 80 per cent of GDP and close to 90 per cent of overall employment.³⁴ In the World Bank's 2014 Doing Business report, measuring the ease at which foreign business and investment is conducted in various countries, Cambodia ranks 137 out of 189 countries, a drop in two places from 2013.³⁵

Cambodia is ranked 138 out of 186 countries on the 2013 Human Development Index (HDI),³⁶ with an HDI value of 0.543.³⁷ This puts Cambodia in the classification of medium human development, alongside the likes of India and Equatorial Guinea.³⁸ Regionally, Cambodia ranks equal to Lao People's Democratic Republic but higher than Myanmar which falls in the low human development bracket.³⁹ Cambodia ranks 96 out of 186 countries on the Gender Inequality Index which measures gender disparities in provisions for reproductive health, gender specific empowerment and market participation, conducted by the United Nations Development Programme (UNDP).⁴⁰ UNDP also estimates that 30.1 per cent of the population live below the national poverty line.⁴¹

Social safety net institutions are not well established in the country. The most vulnerable groups are both the urban and rural poor, migrant workers and families affected by chronic illness and disability.⁴² Most disabled people depend on begging or menial jobs to survive.⁴³

Basic irrigation, transportation and energy infrastructure is limited in Cambodia.⁴⁴ Electrification rates are low; nationally only about 35 per cent of households have access to electricity according to the latest figures.⁴⁵ In Phnom Penh, approximately 90 per cent of residents are connected to the water supply which provides clean drinking water.⁴⁶ According to 2010 estimates

by the Asian Development Bank (ADB), 64 per cent of the wider population was using an improved drinking water source.⁴⁷

CULTURAL FOUNDATIONS SCORE: 25

To what extent are the prevailing ethics, norms, and values in society supportive to an effective national integrity system?

The social fabric of Cambodian society has been deeply affected by its recent history, namely the Khmer Rouge genocidal regime and the civil war that followed. The peace agreements were only signed in 1991,⁴⁸ meaning that the ramifications of such a divisive conflict continue to impact on modern society.⁴⁹ Scholars have argued that 'mistrust, fear, and the breakdown of social relationships' are evident in post-war Cambodia.⁵⁰ According to UNICEF, trust has been identified as a missing element in society.⁵¹

The past 20 years have been characterised by a tightening of control by the ruling Cambodian People's Party which has brought about 'top-down' stabilisation and reinforcement of social systems.⁵² Citizens tend to have a paternalistic view of the Government, meaning that there is little sense of citizen empowerment, citizen rights or obligation on the Government to be accountable to its people.⁵³ This contributes to reluctance among the Cambodian population to demand information and transparency from the Government.⁵⁴

Moreover, in recent years, citizens have had limited confidence in their individual or collective capacity to influence change.⁵⁵ The large protests following the 2013 National Assembly elections, however, indicates a shift in civil society,⁵⁶ with greater numbers of people feeling empowered to challenge the existing political structures.

Religion also influences cultural and social accountability in Cambodian society. There is a strong tension between Buddhist teachings of morality and accountability, and a society characterised by high levels of inequality and a deeply rooted social hierarchy.⁵⁷ The Cambodian monkhood has traditionally been politically aligned with the Government. Indeed, the great

supreme patriarch, Venerable Tep Vong, of the national sangha (or Buddhist clergy) is widely known to support the ruling party.⁵⁸ Moreover, the Prime Minister has ensured that ruling party members have contributed sums of money to pagodas.⁵⁹ Despite this, the 2013 National Assembly Elections saw a significant minority of monks joining the opposition Cambodia National Rescue Party's demonstrations.⁶⁰

1 Freedom House, *Countries at the Crossroads 2012: Cambodia* (Washington D.C.: Freedom House, 2012)

2 See Legislature report: Independence (practice) section.

3 Electoral Reform Alliance (ERA), *Joint-Report on the Conduct of the 2013 Cambodian Elections*, November 2013 (Phnom Penh: Electoral Reform Alliance, 2013) p. 4

4 Ibid.

5 Ibid; and, Transparency International Cambodia, *Final Election Observation Report on Cambodia's 2013 National Election* (Phnom Penh: Transparency International Cambodia 2013)

6 Hul Reaksmey, 'One Party Parliament Effortlessly Passes \$3.56 Billion Budget,' *The Cambodia Daily* (Phnom Penh) 12 November 2013

7 Freedom House, *Freedom in the World 2013: Democratic Breakthroughs in the Balance* (Washington D.C.: Freedom House 2013)

8 Constitution of the Kingdom of Cambodia, 1993, as amended in 2008 – Unofficial English translation supervised by the Constitutional Council, 2010: Ch. III

9 Global Integrity, *The Global Integrity Report 2012* (Washington D.C.: Global Integrity, 2012)

10 The World Bank, *Worldwide Governance Indicators 2012: Cambodia* (The World Bank, 2012)

11 Ibid.

12 Ibid.

13 Freedom House, *Countries at the Crossroads 2012: Cambodia* (Washington D.C.: Freedom House, 2012)

14 Joint letter regarding Boeung Kak Lake activists, May 29 2012, signed by Asian Forum for Human Rights and Development (FORUM-ASIA), Human Rights Watch, WITNESS, Amnesty International Secretariat, International Federation for Human Rights (FIDH), Civil Rights Defenders, Southeast Asian Press Alliance (SEAPA), Freedom House, Frontline Defenders. <http://www.hrw.org/news/2012/05/29/cambodia-joint-letter-regarding-boeung-kak-lake-activists> [accessed 27 November 2013]

15 Surya P. Subedi, Report of the Special Rapporteur on the situation of human rights in Cambodia, p. 9 http://64.91.228.155:8080/newgenlibtxt/CatalogueRecords/A-HRC-24-36_en.pdf [accessed 27 November 2013]

16 The CIA, *The World Factbook: Cambodia*, last updated 25 October 2013: <https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html> [accessed 25 November 2013]

17 Ibid.

18 Minority Rights Group International, *Cambodia Overview*: <http://www.minorityrights.org/3283/cambodia/cambodia-overview.html> [accessed 25 November 2013]

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V. CORRUPTION PROFILE

WHAT IS CORRUPTION?

Transparency International defines corruption in general terms as ‘the abuse of entrusted power for private gain’.¹ This includes grand corruption, petty corruption and political corruption. Grand corruption consists of corrupt acts committed at high-levels of government enabling leaders to benefit whilst perverting the public good. Petty corruption involves low to mid-level officials who abuse their entrusted power in everyday interactions with ordinary citizens such as in the course of service delivery. Political corruption is the manipulation of resources, policies and state institutions by political power-holders who abuse their positions to sustain their status and wealth.²

In the Cambodian context, lines can be blurred between an act of gift-giving and an act of bribe-paying.³ Gift-giving is institutionalised in the country, particularly to Buddhist monks and the poor.⁴ The phrase ‘gift-giving without sincerity’ is used as vocabulary for local corrupt practice.⁵ Gift-giving tends to be based on asymmetrical power relations; politicians, employers and civil servants may receive gifts for responsibilities included under their professional role.⁶ In this case, civil society organisation, Pact, underlines that such gift-receiving constitutes as an abuse of power.⁷

CORRUPTION LEVELS

Reports, case studies and international indicators show persistently high-levels of grand corruption, petty corruption and political

corruption in Cambodia. Transparency International’s Corruption Perceptions Index (CPI) ranked the country 160th out of 177 economies in 2013.⁸ Cambodia was given a score of 20 (where 0 is highly corrupt and 100 is very clean), slipping down two points from 2012.⁹ Globally, this puts Cambodia alongside countries such as Eritrea and Venezuela.¹⁰ Regionally, Cambodia was perceived to be the most corrupt among its ASEAN counterparts in 2013.¹¹ It is one point behind Myanmar which was five points behind Cambodia in 2012.¹² Laos and Vietnam are also considered less corrupt than Cambodia with scores of 26 and 31 respectively.¹³ Singapore is way ahead with a score of 86, being ranked 5th cleanest country, parallel to Norway.¹⁴

The International Republican Institute (IRI) survey of Cambodian public opinion from October to November 2013 showed a giant shift in the number of people believing that Cambodia is headed in the right direction.¹⁵ 55 per cent of respondents indicated that they think the country is still going in the right direction – a 24 point drop from one year before.¹⁶ 21 per cent of respondents believed that the country is off course.¹⁷ Of these, 30 per cent cited corruption, whilst 18 per cent underscored nepotism as the source of their discontent.¹⁸

The Bertelsmann Transformation Index (BTI) 2012 gave Cambodia a democracy rating of 3.8 (where 0 is lowest and 10 is highest), ranking 101st out of 128 economies.¹⁹ The report underlines that the lack of separation between government institutions erodes the democratization process.²⁰

It specifically highlights that the Cambodian People's Party holds a 'quasi-monopoly' over all significant democratic institutions.²¹

In the Global Integrity Report 2012, Cambodia received an overall score of 42 (very weak).²² A sizeable gap exists between the legal framework, scored 60, and actual implementation – considerably weaker with a score of 23.²³ The report described corruption in Cambodia as 'the norm,' permeating the lives of ordinary citizens.²⁴ In line with this, Transparency International's Global Corruption Barometer 2013 demonstrates that petty corruption is rife in Cambodia's public sector.²⁵ 65 per cent of respondents to the survey reported paying a bribe to both the police and the judiciary over the last 12 months.²⁶

According to Pact Cambodia's 2010 survey on 'Corruption and Cambodian Households,' 82 per cent of Cambodians believe that corruption is a problem.²⁷ Despite this, corruption is 'culturally embedded' and demonstrated to occur in a systematic way with people believing that corruption results in a better service.²⁸ Hence 60 per cent of the time, bribes are offered by households to secure a service, whilst they are sought by service-providers or middlemen 30 per cent of the time.²⁹ Women in households more commonly pay bribes than men, which is likely due to them often managing household accounts.³⁰

The World Bank's Ease of Doing Business report showed a slip of three places in Cambodia's ranking from 181 in 2013 to 184 in 2014,³¹ indicating that the business environment in the country is becoming less favourable. In September 2013, United States Ambassador to Cambodia, William Todd, publicly stated that corruption in the country is scaring off American firms.³²

CORRUPTION SPOTLIGHT: THEMES AND ISSUES (2012–2013)

i. Land and natural resources: violations

Land and natural resources are two of the most prominent corruption-related topics causing dispute in Cambodia. Reports by Global Witness have documented the nepotistic networks through

which power-holders are seizing natural resources for private gain, whilst inhibiting public access to land and resources required to sustain livelihoods.³³

On top of this, the United Nations regards Cambodia as a high deforestation country, due largely to governance issues, poor oversight of the forestry industry and agro-industrial expansion.³⁴ In 2013, Open Development Cambodia, an open data website, published several maps using US satellite data indicating that the Government has been significantly overstating the country's forest cover.³⁵ The maps suggest only 46.3 per cent of Cambodia is covered, in contrast to the most recent government figures released in 2010, which claimed approximately 57 per cent cover.³⁶

Land grabbing has led to forced evictions affecting thousands of people.³⁷ Amnesty International reports that increasingly excessive force has been used by authorities against peaceful anti-eviction protestors.³⁸ Impunity for the perpetrators of related violence has persisted.³⁹

ii. Courts: impunity and questionable convictions

The lack of independence of the judiciary remains a marked problem in Cambodia. Consequently, politically motivated convictions occur whilst the perpetrators of crimes often go unpunished. The cases noted below are not an exhaustive list of such cases but serve to illustrate some of the prominent issues.

The killer of slain environmental activist, Chut Wutty, has been allowed to walk free.⁴⁰ Wutty was fatally shot in April 2012 whilst he was investigating illegal logging in Southwest Cambodia.⁴¹ Five months later, the courts dropped the investigation into his alleged killer.⁴² This case is one of at least 300 allegedly politically motivated killings in Cambodia since the 1991 Paris Agreements were signed.⁴³ Documented by Human Rights Watch (2012), none of these killings have resulted in a credible investigation or conviction.⁴⁴

The owner of independent radio station, Mam Sonando, was sentenced to 20 years imprisonment in October 2012.⁴⁵ The charges related to a so-called 'secession' plot, attracted international outrage and were condemned by rights groups.⁴⁶

Even United States President Barack Obama called for Sonando's release as a step towards answering some of the problems related to the politicization of the judiciary when he visited Cambodia in November 2012.⁴⁷ In March 2013, the Court of Appeal overturned the strongest charges and Sonando was subsequently set free.⁴⁸

In 2013, former city governor, Chhouk Bandith, was jailed for 18 months after he shot and injured three protesting women.⁴⁹ Whilst Mr. Bandith was charged with 'unintentional violence,' the women's lawyers argued that he should have been charged with murder.⁵⁰ Rights groups have called the sentence too lenient and reflective of the country's pervasive culture of impunity.⁵¹

iii. Public financial management: unaccountable

In November 2013, international public health financing organisation, the Global Fund, released an unusually comprehensive report on the local culture of corruption in Cambodia. The extensive investigation uncovered fraud and financial abuse in grants given by the Global Fund to Cambodia for fighting AIDS, tuberculosis and malaria.⁵² According to the report, the senior procurement officer at the National Centre for HIV/AIDS, Dermatology and STD Control (NCHADS) told companies they must pay him bribes of up to 15 per cent of a government contract's value in order to secure it.⁵³ Moreover, the procurement officer improperly directed 317,000 US dollars-worth of Global Fund procurements to companies who had paid the bribes.⁵⁴ The misuse of donor resources is reportedly not new in Cambodia. Professor and author, Sophal Ear,⁵⁵ noted that this case was one of a series on ongoing embarrassments dating back to the UN transitional authority in Cambodia in the early 1990s, when the UN's land cruiser SUVs started disappearing.⁵⁶

iv. Elections: irregularities

Both the 2012 commune elections and 2013 National Assembly elections were marred by irregularities. Civil society organisations and independent election monitor, the Committee for Free and Fair Elections (COMFREL), found at least 100 cases of irregularities in the 2012 commune

elections.⁵⁷ These included intimidation, vote-buying and destruction of political parties' leaflets.⁵⁸ COMFREL reported that whilst the number of cases of violence and intimidation had decreased compared to previous years, three cases of murder relating to political parties and activists were recorded around the 2012 elections.⁵⁹ Moreover, the voter registration system showed considerable weaknesses allowing for undue political influence and did not ensure the right to vote for all eligible and registered voters.⁶⁰

In the 2013 National Assembly elections, COMFREL recorded a total of over 10,000 irregularities, four times higher than the number recorded in 2008.⁶¹ The most important irregularities concerned voter registration. Based on the findings from 906 observers in 407 polling stations, Transparency International Cambodia reported that in 60 per cent of polling stations, voters with proper identification could not find their names on the voter list and were turned away.⁶² The irregularities have resulted in the credibility of the official election results which showed a CPP win being highly contested. Opposition protests calling for a re-vote of the July election continued to the end of 2013, though they became less frequent in the first half of 2014 as the contesting parties engaged in negotiations.⁶³

v. Freedom of Information: limited

Non-profit freedom of information association, Reporters Without Borders, ranked Cambodia 143rd out of 179 countries in its Press Freedom Index 2013.⁶⁴ Cambodia's position slipped down 26 places from the previous year, which according to the report is due to increased authoritarianism and censorship.⁶⁵ Freedom House's Freedom of the Press Report 2013 maintained the status of Cambodia's press as 'not free'.⁶⁶ Whilst most media outlets are aligned to the ruling party, the internet presents an opportunity for an increasing number of people to access diverse information.⁶⁷ In 2012 however, the Government issued two circulars: one requiring internet cafes to register users and undertake surveillance on internet usage; the second to restrict permissible locations for internet cafes.⁶⁸

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VI. ANTI-CORRUPTION ACTIVITIES

The Royal Government of Cambodia continues to prioritise the fight against corruption in its Rectangular Strategy for Growth.¹ In line with this, the Government has implemented a number of commendable anti-corruption initiatives. Civil society organisations and donors have also advocated for and supported further anti-corruption activities. The business community has engaged in such efforts to a limited extent. These developments, detailed below, represent notable achievements towards the reduction of corruption in the country.

LEGAL FRAMEWORK

The Law on Anti-Corruption Law was passed in 2010. This law has the objective of combating corruption through education, prevention, and law enforcement measures.² The law created the National Council Against Corruption (NCAC) and the Anti-Corruption Unit (ACU).

In addition, Cambodia ratified the United Nations Convention Against Corruption (UNCAC) in 2007.³ Commendably, the Government initiated a participatory approach to the UNCAC review process in 2012.⁴ Civil society organisations, businesses, and the media were invited to contribute to the review of Cambodia's progress in achieving its commitments under the convention.⁵

GOVERNMENT ANTI-CORRUPTION BODIES AND INITIATIVES

Established in 2010, the ACU has a mandate to implement corruption-related laws and to lead corruption prevention activities.⁶ The NCAC acts as the board of the ACU and consists of 11 members from across government institutions. They review anti-corruption related policy and develop strategy for the ACU.⁷

The ACU has organised events in many provinces to inform people about the Anti-Corruption Law.⁸ ACU has also arrested a number of people suspected of high-level corruption. In November 2012 for instance, the ACU arrested two senior government officials suspected of tax fraud and embezzlement.⁹ On top of this, a former judge of Kandal province was arrested and sentenced to two years imprisonment on charges of bribery.¹⁰ In 2013, the ACU arrested two employees of a UK biofuel firm who were accused of forging land documents.¹¹

The Public Sector has undertaken several commendable initiatives to promote integrity, transparency and accountability in the delivery of services. Of particular note is the One Window Service Office (OWSO) project, which demonstrates transparent practice in the delivery of administrative services at the sub-national level.¹²

In addition, the Phnom Penh Water Supply Authority (PPWSA)¹³ has demonstrated exemplary accountable management in supplying 90 per cent of the city's residents with a reliable supply of water.¹⁴

CIVIL SOCIETY ANTI-CORRUPTION INITIATIVES

Civil society is steadily strengthening its voice against corruption in Cambodia. The launch of Transparency International Cambodia's three-year strategic plan 'Together Against Corruption' in October 2012 represents a significant boost to civil society's action on the issue. Transparency International Cambodia runs dozens of projects to raise awareness of corruption and mobilise society in the fight against it.¹⁵

The ACU and Transparency International Cambodia signed a Memorandum of Understanding and Cooperation Agreement in 2012 to work together on several initiatives to raise public awareness about the cause and consequences of corruption. These initiatives include the introduction of anti-corruption education in the national curriculum and the organisation of annual Anti-Corruption Day events.¹⁶

Civil society organisation, Pact, has led considerable initiatives against corruption in Cambodia. The organisation's 'Anti-Corruption Coordinated Action Program' (2004-2006), funded by the Danish development agency (DANIDA) and the US Agency for International Development (USAID) sought to build public support for government anti-corruption reforms.¹⁷ Pact provided expert technical advice on the Anti-Corruption Law in its draft form. Moreover, Pact has produced high quality reports on corruption including *Corruption and Cambodian Households* (2010)¹⁸ which provides useful insight into perceptions and attitudes towards corruption across the country.

The Committee for Free and Fair Elections (COMFREL) has been very active in monitoring parliament, elections, and citizens' – particularly women's – participation in democratic governance.¹⁹ A further notable organisation is the National Democratic Institute (NDI) that aims

to promote openness and accountability in government. In the lead up to the 2013 National Assembly elections, it organised candidate debates as well as promoting the importance of accuracy of voter lists. In cooperation with the Neutral Impartial Committee for Free and Fair Elections (NICFEC) and Centre for Advanced Study (CAS), NDI undertook a voter registry audit ahead of the July 2013 elections.²⁰

INTERNATIONAL ORGANISATIONS AND DONORS

Several international organisations are active in supporting anti-corruption activities. The United Nations Office on Drugs and Crime (UNODC) oversees the formal review process of the UNCAC and supports campaigns to mark Anti-Corruption Day.²¹ The Asian Development Bank (ADB) and the Organisation for Economic Co-operation and Development (OECD) have also invested efforts to fight corruption in the Asia-Pacific region. In 2011, the initiative set out its long-term strategic goals initiatives²² which saw 31 economies in the Asia-Pacific region commit to action against corruption.²³

The World Bank has been pushing for stronger anti-corruption measures for many years in Cambodia. Its 'Demand for Good Governance Project' (2008-2014) has overseen a number of positive developments, specifically the establishment of the Arbitration Council (AC) which is seen as a reliable mechanism for labour disputes.²⁴ The World Bank also supports the One Window Service Initiative (OWSI) and Phnom Penh Water Supply Authority (PPWSA).²⁵

Donors have a keen interest in anti-corruption activities in Cambodia. In particular, the Swedish International Development Cooperation Agency (SIDA)²⁶ and Australian Department of Foreign Affairs and Trade (DFAT) support Transparency International Cambodia to implement its 2012-2015 Strategic Plan.²⁷ Moreover, USAID has been one of the main supporters of anti-corruption initiatives over the last 10 years since its 2004 Corruption Assessment Report estimated that 'annual diversions from government coffers range between \$300 and \$500 million' in Cambodia.²⁸ Following this, USAID launched its global anti-

corruption strategy in Cambodia in 2005. It funded many of Pact's anti-corruption activities as well as supporting local democratic governance and anti-corruption reforms.²⁹ DANIDA has also supported Pact's initiatives against corruption.³⁰

The German development agency (GIZ) has been running notable projects to strengthen the Cambodian governance system. For instance, GIZ supports a programme to assist the National Audit Authority (2006-2014)³¹ and has also supported administrative reform and decentralisation since 2002.³² In addition, the Japanese development body (JICA) has been promoting judicial reform with its Legal and Judicial Development Project (2008-2012).³³

THE PRIVATE SECTOR

To engage the private sector, part of USAID's 'Mainstreaming Anti-Corruption for Equity' programme supported Pact's 'Clean Business Initiative'.³⁴ Although this project closed in 2010,³⁵ it managed to get 40 private sector leaders from across the country to sign a pledge to promote an enabling environment for fair business.³⁶

Transparency International Cambodia organised a regional workshop in March 2013 entitled 'Engaging the Private Sector in Anti-Corruption Initiatives'.³⁷ Private sector representatives actively participated in the workshop.³⁸ Subsequently Transparency International Cambodia developed its Business Integrity Programme that was launched at the start of 2014. The programme offers consultative services to businesses to ensure that they are compliant with local and international bribery laws.³⁹

SOURCES OF CAMBODIAN LAW

Nine sources of law underpin Cambodia's governance system, helping to regulate it and make it accountable. They are referred to throughout this report. The Constitution (1993, last amended in 2008) is the ultimate law of Cambodia. The Constitution requires that all further legislation must strictly comply with it.⁴⁰ Yet, the Constitutional Council, charged with

ensuring the constitutionality of laws, has seldom challenged any bills tabled before parliament.⁴¹

Laws (Chhab) are adopted by the National Assembly and Senate.⁴² They are then promulgated by the King.⁴³ In practice, laws originate from the Executive and pass through the Legislature with almost no debate.⁴⁴

Royal decrees (Preah Reach Kret), sub-decrees (Anu-Kret), proclamations (Prakas), and decisions (Sech Kdei Samrach) are executive regulations that bypass the Legislature.⁴⁵ A Royal decree is proposed by the Council of Ministers (the Executive level of Government) and signed by the King.⁴⁶ Sub-decrees tend to be proposed by relevant ministries, adopted by the Council of Ministers and signed by the Prime Minister.⁴⁷ Proclamations are prepared by ministries and signed by relevant ministers.⁴⁸ Decisions are made by the Prime Minister and relevant ministers.⁴⁹

Circulars (Sarachor) are used to define the works of government ministries.⁵⁰ They are signed by the Prime Minister and relevant ministers.⁵¹ Bylaws (Deika) are legal rules that may be created by sub-national councils.⁵²

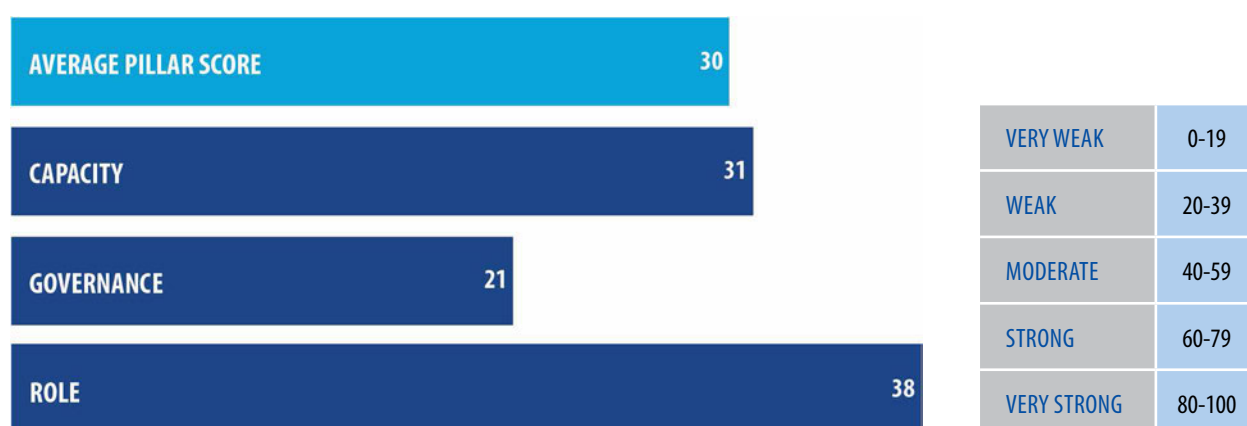
International law is also understood to be a source of Cambodian law.⁵³ The Cambodian Constitution recognises international human rights laws including the Universal Declaration of Human Rights.⁵⁴ Further international treaties and conventions can become Cambodian law if adopted by the National Assembly and Senate, and signed by the King.⁵⁵

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VII. NATIONAL INTEGRITY SYSTEM

1. Legislature



SUMMARY

The existing legal framework provides safeguards to ensure the Legislature has adequate resources to undertake its duties, whilst functioning independently and accountably to some extent. Specifically, the Constitution contains provisions to protect the independence of the National Assembly and Senate's budgets. Moreover, the Constitution affirms that unless an exceptional case arises, the National Assembly cannot be arbitrarily dissolved before the end of its five year mandate. The immunity of parliamentarians is also legally guaranteed; they may only be removed by a decision of one of the parliamentary bodies in combination with the Constitutional Council. According to the law, no parliamentarian may be removed from their position as a result of opinions expressed when performing their duties.

This study suggests that whilst certain legal provisions are in place to ensure the integrity of the Legislature, they are not comprehensive and contain loopholes. Moreover, those provisions that are in place are, in practice, not always enacted. Noteworthy is the lack of independence exercised by the Legislature. External actors, namely the Executive and political parties, regularly interfere with parliamentary roles. These external actors have also been known to exert undue interference in the lifting of parliamentary immunity and removing certain legislators from their posts. On top of this, the activities and decision-making processes of the Legislature are largely opaque. Integrity mechanisms to ensure ethical behaviour of legislators are inadequate. It is disloyalty to the ruling party, not unethical behaviour, that appears to be punished.

The diagram at the beginning of this chapter provides the scores for the Legislature in terms of its capacity, governance and role. The remainder of this section provides a qualitative background and explanation of the scores.

STRUCTURE AND ORGANISATION

Cambodia has a bicameral legislature consisting of the National Assembly and Senate.

The National Assembly is responsible for law-making and amending.¹ It must comprise at least 120 members.² Members are elected by universal suffrage, for five-year terms.³ Cambodia's 25 provinces,⁴ including the capital city, Phnom Penh, are used as constituencies.⁵ The National Assembly convenes twice a year, with each session lasting three months.⁶ The National Assembly has nine special groups, known as commissions.⁷ The commissions' roles include reviewing draft laws, recommending draft laws to the government based on whether there is a need to review them (and the degree of urgency), and inviting ministers to explain and clarify any issues related to their ministry before the commissions.⁸

The ruling Cambodian People's Party (CPP) lawmakers appointed by the special commissions' members without input from the opposition; the Cambodia National Rescue Party (CNRP) Members of Parliament-Elect were boycotting parliament when the commissions were selected.⁹ The Standing Committee (Permanent Committee) manages the National Assembly when the National Assembly is not in session.¹⁰ It consists of Chairman of the National Assembly, the Vice-Chairmen, and the Chairmen of National Assembly Commissions.¹¹

The Senate reviews laws passed in the National Assembly before they can be promulgated by the King.¹² The Senate is composed of a Standing Committee and nine specialised commissions.¹³ At present all nine commissions are made up of ruling party members.¹⁴ The number of Senators must not exceed half of the total number of National Assembly members. Senate terms are for six years. Similar to the National Assembly, the Senate meets for two sessions per year, each lasting three months.¹⁵

Originally termed the Constituent Assembly, the Legislature was first developed during the United Nations Transitional Authority in Cambodia (UNTAC).¹⁶ It was renamed the National Assembly when the Constitution was enacted in 1993.¹⁷ The Senate came into being with an amendment to the Constitution in 1999.¹⁸

The Constitutional Council is a further body of the Legislature which exists to safeguard respect for the Constitution regarding the laws adopted by the National Assembly and reviewed by the Senate.¹⁹ Commune Councils have legislative power at the local level to manage affairs within their roles.²⁰ Their role involves two parts: ²¹ duties to support and promote good governance in the commune and manage resources to meet basic needs of the commune;²² and to act as an agent of the central government in accordance to tasks given by government.²³

The results of the most recent National Assembly elections, held on 28 July 2013, were announced by the National Election Committee to be a CPP win of 68 seats to 55 of the CNRP.²⁴ This represents a significant shift from the last election in 2008, whereby the Cambodian People's Party gained a landslide victory, taking 90 of the available 123 seats.²⁵

King Norodom Sihamoni convened the fifth National Assembly on 23 September 2013 with only one party present: the CPP.²⁶ The CNRP refused to join the National Assembly.²⁷ Instead, it organised multiple protests initially calling for an independent probe into the irregular elections²⁸ and eventually for the Prime Minister to resign.²⁹ Despite the criticism of the election, it has been commended for involving lower levels of violence than previous elections, as well as showing greater enthusiasm from Cambodians to use their vote for political transformation.³⁰

The Senate remains dominated by the CPP. The most recent Senate elections held in January 2012, saw a significant win by the ruling party which took 46 (78 per cent) of the 57 contestable seats.³¹

Women remain underrepresented in both the National Assembly and Senate. In the National Assembly's fifth Legislature (2013-2018), women

hold 25 of the 123 seats, representing 20.5 per cent.³² This is a slight drop from the previous mandate in which women held 22 per cent of seats.³³ The low representation of women candidates is unsurprising given that women only made up 22 per cent of all election candidates – many of which were on the reserve list in case a male candidate dropped out.³⁴ In the 2012 Senate elections women took nine seats accounting for only 14 per cent of all Senators.³⁵

ASSESSMENT

1.1 CAPACITY

1.1.1 RESOURCES (LAW)

SCORE: 50

To what extent are there provisions in place that provide the Legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?

The legal framework contains some provisions to ensure that the Legislature has access to the necessary financial, human, and logistical resources to carry out its functions in practice.

Allowances for legislators as well as autonomous budgets for both the National Assembly and Senate are guaranteed in the Constitution.³⁶ Yet no minimum amount is mentioned regarding the size of the budget or allowances.

The budget for the Legislature is included in the national budget.³⁷ The national budget, formally referred to as the Annual Financial Law, is drafted primarily by the Minister of Economy and Finance.³⁸ The heads of institutions and public agencies, including the Senate and National Assembly, provide input for the national budget, in the form of a budget strategic plan which outlines vision, targets and the priority actions of their institution.³⁹ Yet the Legislature at large is not legally guaranteed to be consulted at this stage of budget drafting. Once the Minister of Economy and Finance has completed drafting the Annual Financial Law, it is submitted to the Government for approval.⁴⁰

Following Government approval, the Annual Financial Law is sent to the National Assembly in

the first week of November each year for review and approval.⁴¹ Then in the first week of December, the draft Annual Financial Law is submitted to the Senate, to be approved before 25 December.⁴² Given this timeframe, both the National Assembly and Senate are each guaranteed only a few weeks to review the budget, after it has already been approved by the Government. This may limit the possibility for adequate scrutiny of the budget by parliamentarians to ensure that public resources are appropriately allocated.

1.1.2 RESOURCES (PRACTICE)

SCORE: 25

To what extent does the Legislature have adequate resources to carry out its duties in practice?

The Legislature has resources that enable it to undertake its functions to a certain degree. Financial and human resource gaps are apparent, however, undermining the Legislature's ability to undertake all its duties in practice.

The aggregate budget figures at the Legislature's disposal are publicly available. For 2013, the Legislature (National Assembly, Senate and Constitutional Council) was collectively allocated 169,490.5 million riel (41,339.1 thousand US dollars).⁴³ This breaks down as 114,698 million riel⁴⁴ (27,975.1 thousand US dollars) for the National Assembly, while the Senate had 46,868 million riel⁴⁵ (11,431.2 thousand US dollars) and the Constitutional Council was given 7,924.5 million riel (1,932.8 thousand US dollars).⁴⁶ The Legislature's financial allocation is notably lower than that of the Council of Ministers (Executive) (249,275 million riel / 60,798.8 thousand US dollars), although it fares quite well in comparison with the budget for the Ministry of Justice (50,963 million riel / 12,430 thousand US dollars).⁴⁷ Higher than all three core governance institutions', however, is the budget for defense and security – underlining the Government's priority for public expenditure. The Ministry of Defence was allocated 980,515 million riel (239,150 thousand US dollars), whilst the Ministry of Interior, Public Security section had 620,125 million riel (151,250 thousand US dollars).⁴⁸

Aside from the aggregate figures, no further detail is publicly available on exactly how the Legislature's budget is distributed. Not even all Members of Parliament are reportedly provided with a detailed breakdown of the budget figures. Opposition CNRP Member of Parliament-Elect, Mu Sochua, for instance noted that parliamentarians are simply given the overall figures for each budget line without a clear explanation of what the money will be used for.⁴⁹ Hence, the possibility for scrutiny is significantly limited.

A potential resource gap is indicated by the reportedly deficient salaries for legislators. A senior government advisor noted that whilst the salaries for the Legislature are amongst the highest for civil servants, they are not adequate for parliamentarians to undertake all necessary duties. For example, salaries are allegedly not high enough to enable senators to visit their constituencies as often as they should do.⁵⁰

Moreover, the Committee for Free and Fair Elections in Cambodia (COMFREL) has highlighted inadequate resources in the provincial parliamentary offices. The offices in some provinces are either non-operational or the staff have no fixed working hours. Hence, COMFREL has underlined that greater staffing and budgets are needed so that the offices can effectively undertake their function of facilitating communication between parliamentarians and their constituencies.⁵¹

1.1.3 INDEPENDENCE (LAW)

SCORE: 50

To what extent is the Legislature independent and free from subordination to external actors by law?

Whilst a few legal provisions exist to provide independence of the Legislature, a number of loopholes exist.

Safeguarding independence of the Legislature, the Article 78 of the Constitution affirms that the National Assembly cannot be dissolved before the end of its five year mandate.⁵² An exceptional case may arise, however, if the Government is removed

twice within a period of 12 months. Following this, the King, on proposal from the Prime Minister and with approval from the Chairman of the National Assembly, may dissolve the National Assembly.⁵³ The election of a new National Assembly must be held within 60 days after the date of dissolution.⁵⁴

Parliamentary immunity is also constitutionally guaranteed. It can only be lifted by the Legislature; Article 104 of the Constitution states that the detention of a Senator is only possible when approved by the Senate or Permanent Committee of the Senate.⁵⁵ Likewise, the parliamentary immunity of a member of the National Assembly can only be revoked by decision of the National Assembly or Standing Committee of the National Assembly.⁵⁶

Both Articles 80 and 104 ensure that no member of the National Assembly or Senate can be prosecuted, arrested, or detained because of their opinions expressed when performing their duties.⁵⁷ In addition, the Senate and National Assembly have the independence to recall themselves for extraordinary sessions if at least one-third of each legislative body proposes to do so.⁵⁸ Furthermore, the Legislature is responsible for appointing its own staff, including technical staff. The President of the National Assembly and the President of the Senate are responsible for appointing the staff within their respective bodies.⁵⁹

1.1.4 INDEPENDENCE (PRACTICE)

SCORE: 0

To what extent is the Legislature free from subordination to external actors in practice?

The Legislature is not independent from the Executive level of Government and ruling party in practice.

Within the context of patronage politics, the Cambodian Legislature is hindered from acting as an independent oversight body or forum for democratic debate.⁶⁰ In practice, the Legislature is a space for political legitimisation of the Executive level of Government and ruling party.⁶¹

To illustrate this point, lack of legislative capacity has meant that law drafting power has been delegated almost exclusively to the Executive.⁶² Laws originate in the Executive, then pass through the National Assembly with little

their parliamentary immunity removed for speaking out against the Government.⁷³ Moreover, in June 2013, 27 opposition lawmakers from the Sam Rainsy Party (SRP) and the Human Rights Party (HRP) were stripped of their posts.⁷⁴ This

The infrequency of legislators challenging the Government indicates that prior punishments have sent strong enough messages to ruling party members to remain within the party line. Opposition Members of Parliament, however, have typically been more vocal against the Government, though this has come at the cost of being ignored and punished.

debate or opposition and are approved by the Senate in a similar fashion.⁶³ The only recorded exception was when the Senate rejected a law requiring that the Head of the Ministry of Women's Affairs must always be a woman.⁶⁴ This occurred in the Senate's first year of existence (1999-2000) and was rejected on the basis of unconstitutionality.⁶⁵ This was also one of the only petitions that the Constitutional Council met with a positive decision.⁶⁶ The Constitutional Council has seldom rules against legal provisions and any decisions it has made do not tend to be accompanied by detailed analytical reasoning.⁶⁷

Before a draft law is tabled in parliament, a CPP meeting is reportedly held during which the party leaders make a decision on how the party will vote.⁶⁸ The ruling party Members of Parliament must toe the party line and vote accordingly, even if they do not feel comfortable with the decision.⁶⁹ All voting in the National Assembly and Senate is currently done by raising hands,⁷⁰ deterring legislators from voting in opposition to their party.⁷¹

The infrequency of legislators challenging the Government indicates that prior punishments have sent strong enough messages to ruling party members to remain within the party line. Opposition Members of Parliament, however, have typically been more vocal against the Government, though this has come at the cost of being ignored and punished. For example, draft bills coming from the opposition party have been routinely rejected.⁷² Opposition legislators have also had

was justified on the basis that the opposition parliamentarians were in violation of the election by holding positions in two parties at the same time after the two parties unified into the newly established CNRP coalition.⁷⁵ The decision, made by a 12-member National Assembly Committee composed only of ruling CPP lawmakers, came just before a controversial bill on the denial of Khmer Rouge crimes was tabled in parliament.⁷⁶ Consequently, opposition legislators could not participate in the debate over the bill and were denied parliamentary protections as well as their salaries during the month-long campaign period on the lead up to the July 2013 elections.⁷⁷

One factor supporting independence of the Legislature is that the police cannot just enter the National Assembly or Senate at their own will. Whilst the law does not explicitly prohibit this, in practice any police or law enforcement official must seek approval from the President of the Senate or the President of the National Assembly to enter their respective parliamentary bodies.⁷⁸

The selection for candidacy for both the National Assembly and Senate is based on a party list, chosen by the party leaders.⁷⁹ Family members of the Executive and senior ruling party members are sometimes selected for the party list. For example, in the running for seats in the National Assembly in the July 2013 election were the youngest sons of both the Prime Minister and the Interior Minister.⁸⁰ Both sons were successfully elected and are CPP lawmakers in the fifth mandate of the National Assembly (2013 – 2018).⁸¹

1.2 GOVERNANCE

1.2.1 TRANSPARENCY (LAW)

SCORE: 25

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the Legislature?

Few provisions exist to make certain that the public can access the Legislature and obtain relevant information on its organisation and functioning.

Articles 88 and 111 of the Constitution states that sessions of the National Assembly and Senate shall be made public,⁸² although what exactly this means is not explained. Hence, many aspects relating to the transparency of the Legislature are not explicitly mentioned in the Constitution. Absent is any requirement that voting records be made public; agendas of legislative sessions be published; verbatim recordings of floor sessions be recorded; that members of the public can attend floor sessions; that draft bills be made public; and, the Legislature produce and publicise reports about its activities.

The Law on Public Finance System (2008) states that all revenues and expenditures of national administrations and related financial reports shall be transparent and publicly available.⁸³ Hence, the National Assembly and Senate are legally obligated to publish their financial reports.

Access to information on official documents of the Legislature is limited since no access to information legislation has been passed. The former opposition Sam Rainsy Party submitted two drafts of the law on access to information to the National Assembly between 2010 and 2013.⁸⁴ Both drafts were rejected on the basis that they had too much ‘foreign influence’ or were otherwise considered to be unfit.⁸⁵ Instead, the ruling party is drafting an access to information bill.⁸⁶

Members of both the Senate and the National Assembly are legally obliged to declare their assets every two years under the Law on Anti-Corruption (2010).⁸⁷ Nevertheless, the action lacks transparency given that the declarations are to be

kept ‘highly confidential’;⁸⁸ they are not required to be disclosed to the National Assembly or to the public.

1.2.2 TRANSPARENCY (PRACTICE)

SCORE: 25

To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the Legislature in practice?

The Legislature is to a large extent opaque; the public has limited access to relevant information on its functioning, decision-making and finances.

The National Assembly and Senate both have websites where information on their structures, related laws, press releases and activities are posted. Nevertheless, it is not uncommon for the National Assembly website to be inaccessible;⁸⁹ indeed, it has been ‘under construction’ on a number of occasions throughout the research for this report. Regular inaccessibility of the website, suggests limited political will to ensure public access to information on the parliament’s activities.⁹⁰ Even when the website is accessible, only selected information is published on it. Short articles and pictures of official meetings and law signings are provided. Lacking are any reports on the Legislature’s debates, financial expenditure, draft laws, and justification of the Legislature’s activities.⁹¹

Members of the public can attend live National Assembly debates.⁹² Yet reportedly this depends on them having a close relationship with senior ruling party members who may grant permission for entrance into the parliament.⁹³ The same goes for being able to access National Assembly voting records.⁹⁴ Hence, for the majority of people, this access is not possible. Moreover, whilst the Senate Rules of Procedure guarantee that the public can be present at live Senate sessions, permission from the Senate President must also be obtained and entrance is dependent on the seats available.⁹⁵

In the interest of transparency, parliamentary debates are aired on the government-controlled National Television of Kampuchea (TVK). The information conveyed, however, is limited due to the structure of the parliamentary sessions. During

debates, the parliament is divided into groups of 10. Each group has 20 minutes of speaking time.⁹⁶ The group speaks as a collective body rather than as individuals. As a result, minority parties in the fourth Legislature (2008-2013), including the Human Rights Party (HRP) and the National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (FUNCINPEC), which each only had two members in the National Assembly, were subsumed under the majority ruling party members in their group.⁹⁷ Given that the opposition has significantly gained in terms of numbers of seats in the fifth Legislature (2013-2018), there may be an opportunity for a greater diversity of voices to be heard during parliamentary sessions. Yet this remains to be seen in practice because the CNRP (which holds all opposition seats) has boycotted parliament since it was convened in September 2013⁹⁸ until the time this report was completed (July 2014).

Public availability of financial information on the Legislature is tightly controlled. The International Budget Partnership's Open Budget Survey 2012 ranked Cambodia as having 'little or no information' available on its national budget; a low score of 15 out of 100.⁹⁹ The Ministry of Economy and Finance does publish overall figures of the national budget including for the Senate and National Assembly.¹⁰⁰ Aside from this, little further detail of the budget is made publicly available.¹⁰¹ Neither is a more detailed budget breakdown provided to the National Assembly for review.¹⁰² This indicates that only a few members of the ruling elite have an overview of actual spending.

1.2.3 ACCOUNTABILITY (LAW)

SCORE: 25

To what extent are there provisions in place to ensure that the Legislature has to report on and be answerable for its actions?

Limited provisions exist to ensure that the Legislature has to be accountable for its actions.

The major organ to ensure checks and balances in terms of the constitutionality of laws passed is the Constitutional Council. This body of nine

members has the duty of ensuring that the laws adopted by the National Assembly and reviewed by the Senate guarantee respect of the Constitution.¹⁰³ Notably lacking, however, are any provisions relating to public consultation on relevant issues. Hence, the legal framework does not provide avenues by which decisions of the Legislature can be held to account by the public.¹⁰⁴

Moreover, no specific body exists to receive complaints regarding decisions or actions taken by the Legislature or its individual members. Whilst the Human Rights and Complaint Reception Committee of the Senate may receive complaints from individuals and organisations, the Committee is charged with investigating concerns of human rights abuses rather than focusing internally on issues relating to the legislature.¹⁰⁵

The National Assembly Commission on Human Rights holds a similar role, including hearing complaints from the community in relation to human rights violations by the state or organs of the state.¹⁰⁶

1.2.4 ACCOUNTABILITY (PRACTICE)

SCORE: 25

To what extent do the Legislature and its members report on and answer for their actions in practice?

Few mechanisms are in place to ensure that the Legislature reports on and is held accountable for its actions in practice.

Parliamentarians increasingly engage in public consultation on relevant issues by visiting and talking with their constituencies.¹⁰⁷ The ruling CPP parliamentarians often do this, though what they may say is reportedly tightly overseen by the party leaders.¹⁰⁸ During such consultations, the public have the opportunity to raise their concerns.¹⁰⁹ The Legislature rarely engages civil society regarding its decision-making processes. Formal public consultation on draft bills does not regularly occur; civil society has been asked for input on only a limited number of draft bills including the Law on Anti-Corruption and the Law on Associations and Non-Governmental Organisations (LANGO).¹¹⁰

Furthermore, the parliament gives very limited justification for the passing of bills.¹¹¹ As mentioned above, though parliamentary debates are recorded and aired on national television, the debates tend to be rather sparse.¹¹² Much of the discussion over

mention of rules on hospitality and gift-giving. The unregulated acceptance of gifts and hospitality may leave legislators vulnerable to unfairness and partiality in the conduct of their actions. If a gift influences a decision, it may be considered a bribe.

Whilst legislators are required to submit asset declarations to the Anti-Corruption Unit every two years, these are kept 'highly confidential' and not made public. Moreover, the assets held by legislators' family members are not required to be disclosed. This policy provides ample loopholes for legislators to engage in unethical behaviour.

the bill occurs earlier, in closed CPP meetings where the decision over which way party members will vote is made.¹¹³

Both the National Assembly and Senate have bodies for receiving complaints.¹¹⁴ Nevertheless, if a complaint was actually made against the Legislature, especially about parliamentarians from the ruling party, the likelihood of it being taken forward is very remote.¹¹⁵ Indeed, no public record exists of any independent investigation into the Legislature in response to a public complaint about it.

1.2.5 INTEGRITY MECHANISMS (LAW)

SCORE: 25

To what extent are there mechanisms in place to ensure the integrity of members of the Legislature?

Few legal provisions exist to ensure the integrity of legislators.

Chapter 15, on 'Discipline' of the Internal Regulations of the National Assembly outlines how Members of Parliament should be reprimanded and punished if they act 'wrongly'. First they are 'reminded', then 'blamed', then dismissed.¹¹⁶ The President of the National Assembly has to 'remind' any speaker who violates Principle 62 of the Internal Regulations: interrupting others, humiliating individuals or expressing any action leading to disorderliness.¹¹⁷ Aside from that, no further detail is provided on what constitutes wrong behaviour.

Notably lacking in the Internal Regulations of both the National Assembly¹¹⁸ and Senate¹¹⁹ is any

Furthermore, no conflict of interest policies appear to exist for legislators; consequently they may be unrestricted from undertaking secondary roles that could undermine their impartiality as Members of the National Assembly or Senate.

Whilst legislators are required to submit asset declarations to the Anti-Corruption Unit every two years,¹²⁰ these are kept 'highly confidential' and not made public.¹²¹ Moreover, the assets held by legislators' family members are not required to be disclosed. This policy provides ample loopholes for legislators to engage in unethical behaviour.

1.2.6 INTEGRITY MECHANISMS (PRACTICE)

SCORE: 0

To what extent is the integrity of legislators ensured in practice?

Integrity mechanisms for ethical behaviour of the Legislature are absent in practice. It is disloyalty to the ruling party rather than unethical behaviour that appears to be punished.

Opposition Members of Parliament in particular have been targeted for punishment in recent years.¹²² For instance, Mu Sochua had her parliamentary immunity lifted in 2009 following critical remarks she made regarding the Prime Minister.¹²³ Lifting her immunity occurred in a closed door session, and was voted for by raising hands, without hearing her arguments.¹²⁴

CPP legislators have also been disciplined. In 2001, three ruling party Senators, Chhang Song, Phay Siphan and Poeu Savath, rejected a

government-sponsored bill.¹²⁵ The consequences for their failure to respect the party line were severe; the party leadership expelled them from the party and they lost their seats in the Senate.¹²⁶ There have been no recorded cases of such dissent and reprimand among the ruling party legislative membership since. It appears that prior punishments have sent a clear enough message about the consequences of challenging the party, to ensure that legislators keep rank.

Such cases underline ethically questionable practices within the Legislature. In particular, rights groups have criticised the decisions made around these cases as limiting freedom of expression. The decisions also indicate the increasing political party influence over the Legislature.¹²⁷

A further loophole ensuring ethical integrity of the Legislature is the lack of possibility for scrutiny of legislators' asset declarations. In accordance with the Law on Anti-Corruption, these are submitted to the Anti-Corruption Unit (ACU) but are not publicly released.¹²⁸

1.3 ROLE

1.3.1 EXECUTIVE OVERSIGHT

SCORE: 25

To what extent does the Legislature provide effective oversight of the Executive?

Whilst some legal provisions exist to enable the Legislature to provide oversight of the Executive, the ability of the Legislature to do this in practice is severely limited.

Enshrined in the Constitution is the duty of Members of Parliament to provide oversight of the Executive. This includes proposing questions to the Government;¹²⁹ overseeing the performance of the Government; seeking clarifications on special issues;¹³⁰ and, inviting ministers to clarify any areas in his or her field of duty.¹³¹ The Legislature also has the power to impeach or express severe disapproval of the Executive once a motion of censure by two-thirds majority of the entire National Assembly is adopted.¹³²

In practice, the independent ability of the

Legislature to provide oversight of the Executive is blocked because the independence of the Legislature from the Executive is markedly limited.¹³³ Without separation of power between these core governance institutions, neither can provide objective checks and balances over the other.

Consequently, the measures available for the Legislature to provide oversight of the Executive are piecemeal and inadequate. For example, when ministers attend parliamentary sessions they only answer select questions posed by parliamentarians¹³⁴ rather than all questions as they are required to under the Internal Regulations of the National Assembly.¹³⁵ Moreover, when the national budget arrives in the National Assembly it lacks detail and comprehensive explanation of what each budget line will be spent on.¹³⁶ For instance, the lack of clarity around the unallocated 1.5 billion US dollars in the 2014 national budget sparked concerns.¹³⁷ The Ministry of Economy and Finance later confirmed that that the huge sum would be authorised by the Prime Minister for approximately 12 targets.¹³⁸ Nevertheless, the minimal detail given to the National Assembly (and public) explaining what each budget line will be spent on, underscores the lack of possibilities for Legislative oversight of the Executive.

1.3.2 LEGAL REFORMS

SCORE: 50

To what extent does the Legislature prioritise anti-corruption and governance as a concern in the country?

In recent years, the Legislature has been paying more attention to the promotion of public accountability and the fight against corruption. It has enacted comprehensive legal reforms although these are not without loopholes.

Some legal reforms to promote integrity and reduce corruption have been passed by the Legislature in recent years. Nevertheless, given that the laws are initiated by the Executive then passed by the Legislature without much opposition, debate or discussion,¹³⁹ it is the Government and ruling party rather than the Legislature per se that

In 2010, the Law on Anti-Corruption was passed by the National Assembly after more than 10 years in the drafting process. Whilst this is an encouraging development, the law has been criticised for containing loopholes. Notable is Article 41, which contains the provision that a complaint may be considered defamatory if no evidence is found to support it.

appears to have prioritised anti-corruption reforms.

In 2010, the Law on Anti-Corruption was passed by the National Assembly after more than 10 years in the drafting process. Whilst this is an encouraging development, the law has been criticised for containing loopholes.¹⁴⁰ Notable is Article 41, which contains the provision that a complaint may be considered defamatory if no evidence is found to support it. In this case, the complainant may be liable for imprisonment for between one and six months.¹⁴¹ Rights groups have criticised this provision for threatening freedom of speech,¹⁴² discouraging people from speaking out on corruption related issues.

The National Assembly also passed an amendment to the Law on Anti-Corruption in 2011. This aids the governance of the ACU by enshrining the independence of its budget. The amendment also strengthens the ACU's right to receive financial assistance from national and international organisations so long as this does not constitute a conflict of interest.¹⁴³

Cambodia also ratified the United Nations Convention against Corruption in 2007.¹⁴⁴ Moreover, the National Assembly passed the Civil Code the same year which has 1,305 articles dealing with a broad range of issues from contracts, to estate and torts which strengthen the governance of the country in a broad sense.¹⁴⁵ The Law on Implementation of the Civil Code was passed in 2011 aiming to protect sustainability of legal measures and implementation of the Civil Code.¹⁴⁶

In 2012, the Legislature passed the Law on Public Procurement.¹⁴⁷ This much needed piece of legislation seeks to regulate a sector vulnerable to bribery, kick-backs, and nepotistic preferences

in the awarding of procurement contracts.¹⁴⁸

RECOMMENDATIONS

1. Reports on all National Assembly sessions should be produced and made publicly available.
2. Amend the Law on the Election of Members of the National Assembly (LEMNA, Ch. V) to say that a position as a Member of Parliament is not dependent on membership to a political party. An individual should be able to stand as an independent Member of Parliament, so that their parliamentary position is not lost if they lose their position in a party.
3. Amend the LEMNA to state clearly how the National Assembly is to be formed. Article 6 states that the National Assembly shall have at least 120 seats.
4. Abolish the practice in the National Assembly and Senate of raising hands to vote. The secret ballot box must be reinstated immediately and all votes undertaken accordingly.
5. Develop a clear legislative procedure which states that all draft laws should be made publicly available for scrutiny before being passed.
6. Ensure a minimum binding quota of 30 per cent women is applied to candidate lists before an election, to boost women's representation in politics.
7. Uphold Article 80 of the Constitution of Cambodia which safeguards parliamentary immunity and states that: 'No assembly member shall be prosecuted, detained or arrested because of opinions expressed during the exercise of his (her) duties'. If an assembly member is accused the vote must be undertaken in the National Assembly by secret ballot.

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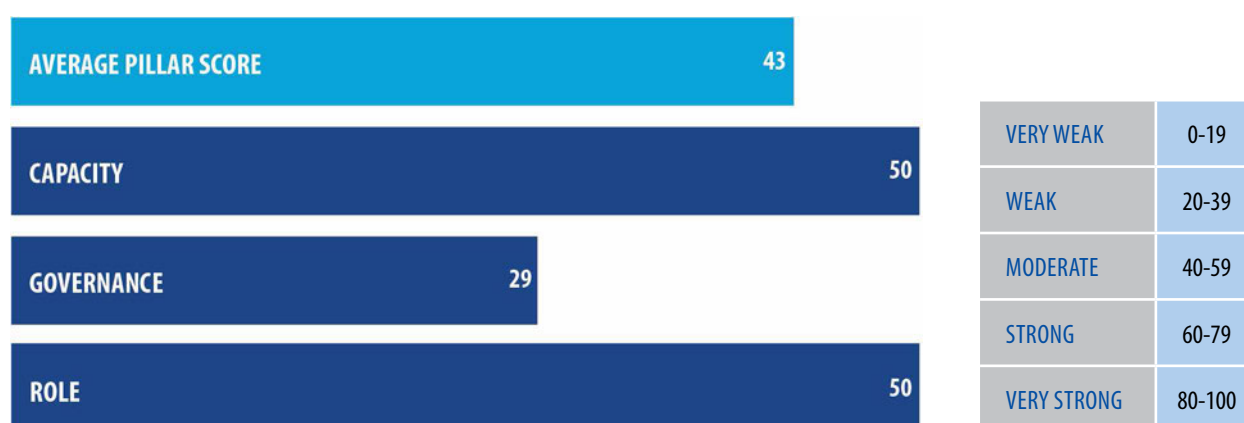
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- 144 United Nations office on Drugs and Crime (UNODC) United Nations Convention against Corruption Signature and Ratification Status as of 29 November 2013, UNODC 29 November 2013 <http://www.unodc.org/unodc/en/treaties/CAC/signatories.html> [accessed 20 March 2013]
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- 146 Law on Implementation of the Civil Code, 2011: Art. 2
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- 148 For instance a 2013 Global Fund report detailed significant acceptance of bribes in exchange for public procurement contracts associated with the Ministry of Health. See: The Global Fund, *Investigation Report of Global Fund Grants to Cambodia – Principal Recipients* CNM, NCHADS and MoH and NCHADS Sub-recipient MEDiCAM, *The Global Fund: To Fight AIDS, Tuberculosis and Malaria*, Office of the Inspector General, 14 November 2013, GF-OIG-13-050 (Geneva: The Global Fund, 2013)

VII. NATIONAL INTEGRITY SYSTEM

2. Executive



SUMMARY

The relevant legal framework provides a strong foundation to ensure a high level of integrity of the Executive. For instance, the Constitution guarantees a high level of independence for the Executive. The King cannot exert influence over the Government, whilst other core governance institutions may only intervene in extraordinary circumstances. In addition, the Constitution ensures that Members of the Executive must be answerable to the National Assembly by being obliged to answer questions when asked by Members of Parliament. The Government has prioritised a number of reforms to develop a well-governed public sector including decentralisation and deconcentration, as well as public financial management.

Despite these positive elements, several factors limit the integrity and accountability of the Executive. The Executive is not independent in practice; it is closely linked to the ruling party and power-holders within the intra-elite patronage system. Few legal provisions ensure that the public can access information on the activities of the Executive. Practice follows suit. The public can only obtain aggregate budget figures for the Council of Ministers. Meanwhile, the Council of Ministers does not publicise minutes of its meetings. Unethical behaviour of Members of the Executive appears to go largely unregulated and unsanctioned.

The diagram at the beginning of this chapter provides the scores for the Executive in terms of its capacity, governance and role. The remainder

of the section provides a qualitative background and explanation of the scores.

STRUCTURE AND ORGANISATION

The Executive is the Royal Government of Cambodia.¹ The Government has the duty to determine the policy of Cambodia,² command and use the military and armed forces,³ and manage the general affairs of the State.⁴

The organisation of the Government is referred to as the Council of Ministers.⁵ It is composed of the Prime Minister, Deputy-Prime Ministers, Ministers of State (senior ministers), Ministers, and Secretaries of State.⁶ The King as the Head of State is also included in the Executive branch,⁷ yet he has no formal powers; his role is largely ceremonial.⁸

The Prime Minister is the head of the Government and has conferred upon him a great amount of power by law to lead the work of the Council of Ministers,⁹ manage and sign commercial agreements,¹⁰ and raise proposals for the appointment, transfer and dismissal of high-ranking officers.¹¹ The current Prime Minister ('Samdech Akkak Moha Sena Padei Techo' or 'Illustrious Prince, Great Supreme Protector and Famed Warrior'¹²) Hun Sen has been in power for 29 years (as of 2014),¹³ making him Asia's longest serving political ruler.¹⁴

ASSESSMENT

2.1 CAPACITY

2.1.1 RESOURCES (LAW AND PRACTICE)

SCORE: 50

To what extent does the Executive have adequate resources to effectively carry out its duties?

The executive has some resources. However, low salaries and inadequate capacity of human resources present limitations for its effectiveness and professionalism.

The Executive's budget is included in the national budget;¹⁵ formerly known as the Annual Financial Law.¹⁶ Specifically, the Annual Financial Law states the forthcoming year's budget allocation for the Council of Ministers.¹⁷

The Executive appears to have a large amount of autonomy over its budget. Once the Minister of Economy and Finance has drafted the Annual Financial Law,¹⁸ it is sent to the Government for approval.¹⁹ Then, the law ensures that the Legislature has oversight and must review the draft Annual Financial Law before it is passed.²⁰ Whilst this does happen in practice, the Legislature is only provided with aggregate figures for the estimated expenditure of each institution.²¹ No further detail or explanation is given on how the budget lines are to be used.²² This offers limited scope for checks and balances of the budget, and centralises power with the Executive.

The financial resources available for the Council of Ministers appear to be increasing over time to safeguard the institution's sustainability. To illustrate this, the budget allocation for the Council of Ministers has increased by almost a third over the last five years, with total expenditure being at: 249,275 million riel (60,798.8 thousand US dollars) in 2013, up from 161,970.0 (39,504.9 thousand US dollars) in 2009.²³ The largest budget increases were from 2009 to 2011, with gradual increases between 2011 and 2013.²⁴

The resources at the disposal of the Government extend beyond the official Government budget figures. Cambodia remains dependent on aid,²⁵ receiving approximately 1 billion US dollars per year.²⁶ Further material contributions have been provided to the Executive including the sizeable Council of Ministers building which was a 49 million US dollar 'gift' from the Chinese Government.²⁷

Cambodia's public sector wage outlays for staff in areas outside of defence and security are smaller than in other countries with a similar GDP.²⁸ The World Bank reports that wage structure is also reportedly compressed,²⁹ meaning that incentives for better performance are not adequately provided. Hence, remuneration over one's career is not effectively tied to performance in one's formal role.³⁰ Secretary of State and Spokesman for the Council of Ministers, H.E. Phay Siphon, noted that salaries for the officials working in that institution are very limited.³¹ Despite being a senior official he claims to earn only 300 US dollars

Whilst the Executive contains some skilled officials including technocrats, a position in this upper level of Government is not necessarily linked to performance or capacity. The public sector is characterised by intra-elite patronage systems that run both vertically and horizontally, across and within ministries. Various branches of government remain interconnected through personal loyalties, business connections, rent-seeking, and other alliances

per month.³² Hence, the salaries are inadequate to maintain a middle class standard of living.³³ Because of this, many people have to supplement their income through savings, family members' income, or engaging in business.³⁴ This may lead to potential conflicts of interest, limiting the professionalism and effectiveness of the Executive.

Whilst the Executive contains some skilled officials including technocrats,³⁵ a position in this upper level of Government is not necessarily linked to performance or capacity. The public sector is characterised by intra-elite patronage systems that run both vertically and horizontally, across and within ministries.³⁶ Various branches of government remain interconnected through personal loyalties, business connections, rent-seeking, and other alliances.³⁷ This patronage system has promoted the continual expansion of the number of government positions, meaning that Cambodia has one of the largest Executives in the world.³⁸

2.1.2 INDEPENDENCE (LAW)

SCORE: 75

To what extent is the Executive independent by law?

The Executive is constitutionally guaranteed a high-level of independence from external influence.

The Constitution ensures that the King does not hold undue influence over the Government. In particular, the Article 17 states that the King 'shall reign but not govern'.³⁹ In other words, the King has a ceremonial role, but no political decision-making power.

The Executive is given a high-level of independence in its role and functions. The Constitution states that members of the Government are collectively responsible for the

overall policy of the Government.⁴⁰ In addition, the Prime Minister must administer the works of the Council of Ministers⁴¹ and chair its weekly plenary sessions.⁴²

Moreover, other core governance institutions are only given power to intervene in extraordinary circumstances. For instance, Article 126 ensures that the National Assembly has the power to pursue punishment of a member of the Government if he or she commits a serious offence in the undertaking of their duties.⁴³ The National Assembly would decide on whether to file charges against the person by secret ballot.⁴⁴

2.1.3 INDEPENDENCE (PRACTICE)

SCORE: 25

To what extent is the Executive independent in practice?

Other actors often interfere in the activities and decisions of the Executive.

The Executive level of Government is not independent from the ruling Cambodian People's Party (CPP).⁴⁵ All three core governance institutions are aligned to the party network.⁴⁶ The ruling party has a strong patronage system from the national to the sub-national level.⁴⁷

Whilst the Prime Minister is perceived to be 'all powerful',⁴⁸ closely connected individuals outside of the Executive are perceived to influence Government decisions. Such persons include office-holders' family members, military, and business elites.⁴⁹ Issues surrounding land grabbing and deforestation in Cambodia provide one indication that external actors influence Executive decisions.⁵⁰ Land has been awarded by the Government in economic land concessions to favoured business elites.⁵¹ In the case of Boeung Kak Lake, in which 4,000 families were evicted

from their homes in Phnom Penh, the Government awarded the occupied land to the company owned by a ruling party Senator.⁵²

Titles are very important in the well-established patron-client system in Cambodia.⁵³ The titles 'Okhna' and 'Advisor' are honours granted to elites in the private sector to recognise the link between the bureaucracy and business. The title 'Okhna' is bestowed by the King and is designated for individuals who have made contributions to the country in excess of 100,000 US dollars.⁵⁴ The title 'Advisor' is given to those who are associated with a powerful office holder in a personal, rather than official capacity.⁵⁵ The number of advisors is unknown although it is estimated that there may be more than 1000 connected personally to the Prime Minister.⁵⁶ This indicates that persons external to the Executive may be able to put pressure on the Prime Minister's decisions.

2.2 GOVERNANCE

2.2.1 TRANSPARENCY (LAW)

SCORE: 25

To what extent are there regulations in place to ensure transparency in relevant activities of the Executive?

Few regulations exist to enable the public to gain access to information on the relevant activities of the Executive.

The Law on Public Finance System (2008), Article 84, requires that all records and expenditures of national administrations must be transparent and available to the public.⁵⁷ Hence, it follows that the Executive's financial information should be publicly disclosed.

Whilst minutes of Council of Ministers meetings are to be recorded, the only requirement is that they be submitted to the King for his information.⁵⁸ No provision is given that ensures the public will have access to them.

Similar to civil servants, Government officials must disclose their assets every two years to the Anti-Corruption Unit. Yet these files are to be kept 'highly confidential' unless opened for investigation.⁵⁹ Thus, no legal requirement ensures

that the Executive's asset declarations are to be made publicly available.

Overall, existing provisions are limited regarding requirements for transparency of the Executive's activities. The absence of an access to information law also signifies a gap in the legal framework to ensure public disclosure of official information.

2.2.2 TRANSPARENCY (PRACTICE)

SCORE: 25

To what extent is there transparency in relevant activities of the Executive in practice?

The public is able to obtain limited information on the organisation, activities and functioning of the Executive.

The available budget figures on the Executive are limited. The public can access an aggregate figure for the Council of Ministers' allocated budget each year.⁶⁰ Yet a detailed breakdown on how the money will be used is not publicly disclosed.

The official website of the Council of Ministers offers press releases on the Executive's activities.⁶¹ Moreover, Phay Siphon, the Spokesperson for the Council of Ministers, gives regular comments to the media offering information on the Executive's activities and perspectives on different situations.⁶² However, minutes of Council of Ministers meetings are not published. Therefore, the public has limited access to the internal discussion and decision-making process of the Government.

The Government has twice rejected a draft access to information bill since 2010.⁶³ Submitted to the National Assembly by the former opposition Sam Rainsy Party (SRP),⁶⁴ both drafts were rejected in favour of a one the ruling party is creating.⁶⁵

Prime Minister Hun Sen has declared his assets to the Anti-Corruption Unit (ACU) in line with the Law on Anti-Corruption.⁶⁶ He has also been instrumental in urging ministers and other Government officials to follow suit and declare theirs.⁶⁷ Nevertheless, asset declarations are made to the Anti-Corruption Unit in sealed envelopes and kept confidential.⁶⁸

2.2.3 ACCOUNTABILITY (LAW)

SCORE: 50

To what extent are there provisions in place to ensure that members of the Executive have to report and be answerable for their actions?

Several provisions are in place to ensure checks and balances of the Executive. However, they are not comprehensive.

The Constitution guarantees that members of the Executive must be answerable to the National Assembly to a certain extent. Members of the National Assembly may put a motion against the Government according to Article 96.⁶⁹ If the issue raised applies to the accountability of one or several ministers, they are expected to reply.⁷⁰ If the matter refers to the overall policy of the Government then the Prime Minister is obliged to reply.⁷¹ Explanations can be given by members of the Executive verbally or in writing, but must be submitted within seven days of receiving the question.⁷²

keep him updated;⁷⁶ yet they are not required to be sent to the National Assembly or be made public. The Executive is also not legally obliged to consult the public during its decision-making processes. Hence, existing provisions are not comprehensive to ensure that the Executive is accountable for its activities.

2.2.4 ACCOUNTABILITY (PRACTICE)

SCORE: 25

To what extent is there effective oversight of Executive activities in practice?

Existing provisions provide limited oversight of the Executive.

The Government is externally audited by the National Audit Authority every year.⁷⁷ Moreover, in keeping with constitutional requirements,⁷⁸ the Prime Minister informs the King about the Council of Minister's meetings.⁷⁹ These layers of accountability are limited, however, because the Executive does not publicly release reports of its

In a gesture towards being held accountable, the Prime Minister and ministers do occasionally come to parliamentary sessions to answer questions. Yet when they do so, they reportedly tend to only answer about two-thirds of questions posed by opposition Members of Parliament. What's more, members of the Executive have been known to simply come and speak to the Legislature rather than answering any questions at all... Such practices contribute to a system whereby the Executive exerts undue influence over the Legislature rather than the Legislature providing oversight of the Executive.

Members of the Government are liable for punishment if they commit a crime or misdemeanour in the course of their duty. Article 126 of the Constitution states that the National Assembly has the power to hold Government officials to account in such instances.⁷³ The National Assembly shall decide whether to file charges with the competent court against the person in question.⁷⁴ The decision is made by secret ballot of simple majority of the National Assembly.⁷⁵

The reporting requirements on the Executive, however, are sparse. The minutes of Council of Ministers' meetings must be sent to the King to

meetings. Nor does it provide such reports or give detailed justifications for its decisions to the Legislature.⁸⁰

In a gesture towards being held accountable, the Prime Minister and ministers do occasionally come to parliamentary sessions to answer questions.⁸¹ Yet when they do so, they reportedly tend to only answer about two-thirds of questions posed by opposition Members of Parliament.⁸² What's more, members of the Executive have been known to simply come and speak to the Legislature rather than answering any questions at all. Notable is the Prime Minister's televised speech from 9

August 2012, whereby he simply spoke to the National Assembly for five hours, largely on disjointed topics with little practical application.⁸³ Such practices contribute to a system whereby the Executive exerts undue influence over the Legislature rather than the Legislature providing oversight of the Executive.

Overall, the checks and balances on the Executive are restricted due to the centralisation of control within a narrow group of power-holders (and the lack of separation of power between core governance institutions).⁸⁴ The use of sub-decrees illustrates this point; they are regularly passed without the approval of the National Assembly, thereby undermining the Parliament's legislative power.⁸⁵ Instead, sub-decrees are usually prepared by relevant ministries, adopted by the Council of Ministers, and signed by the Prime Minister.⁸⁶ They have been used to pass contentious legislation. For example, Sub-Decree No. 146 on Economic Land Concessions enables the Government to grant contracts for state-private land to be used for agricultural and industrial-agricultural exploitation.⁸⁷ Rights group, LICADHO, estimated that as of February 2012, more than 53 per cent of Cambodia's arable land had been carved out for economic land concessions.⁸⁸ They are typically granted to prominent political and business figures, in addition to politically favoured foreign businesses.⁸⁹ Since 1996, successive United Nations Special Representatives of the Secretary-General in Cambodia⁹⁰ have raised concerns about the impact of economic land concessions on human rights and livelihoods.⁹¹ Even so, the Constitutional Council has never been known to challenge the constitutionality of such sub-decrees, nor has any other governance institution publicly challenged their content or legality.

2.2.5 INTEGRITY MECHANISMS (LAW)

SCORE: 50

To what extent are there mechanisms in place to ensure the integrity of members of the Executive?

While a number of provisions exist, they do not cover all aspects related to the integrity of members of the Executive.

The Constitution provides safeguards against conflict of interest and a 'revolving door' between business and Government. Article 120 states that members of the Government should not simultaneously hold positions in trade and industry, or the public service.⁹² Furthermore, the Law on Anti-Corruption criminalises bribe-taking (in line with the Criminal Code),⁹³ abuse of power by public servants or those holding public office through election,⁹⁴ and illicit enrichment.⁹⁵ These provisions apply to members of the Government and are intended to ensure their ethical behaviour.

Legal provisions indicate that sanctions and punishment may be the consequence if serious misdeeds are committed by a member of the Government.⁹⁶ The National Assembly may decide whether to proceed with charges against a member of the Government who has committed a serious offence.⁹⁷ In addition, the Law on the Organisation and Functioning of the Council of Ministers states that irregularities, abuse of power, misbehaviour and inactivity could result in dismissal.⁹⁸ This is to be decided upon at the discretion of the Prime Minister.⁹⁹ These layers of accountability have the potential to safeguard the integrity of members of the Executive.

Cambodia currently has no whistleblower protection law. In addition, Article 41 of the Law on Anti-Corruption may in fact deter whistleblowing since a complainant can be imprisoned for between one and six months if the Anti-Corruption Unit does not find evidence to support their claim.¹⁰⁰ In that case, the claim would be considered defamatory.¹⁰¹ Overall, the legal framework offers inadequate whistleblower protection mechanisms through which to report misdeeds and misbehaviour of members of the Executive.

Rules on gifts and hospitality for the Executive appear to be absent. In addition, provisions around conflict of interest are limited. A Law on Conflict of Interest has reportedly been drafted to regulate such ethical behaviour, though this has not yet been passed.¹⁰² The Law on Anti-Corruption provides a definition of conflict of interest but no further provisions with regard to due process for regulating and sanctioning such behaviour.¹⁰³

2.2.6 INTEGRITY MECHANISMS (PRACTICE)

SCORE: 0

To what extent is the integrity of members of the Executive ensured in practice?

Unethical behaviour and conflicts of interest appear to be unregulated and unsanctioned.

Business and Government relations go beyond a ‘revolving door’ in Cambodia; they are more like noodle soup – inseparably bound up and part of the same mix.¹⁰⁴ Intra-elite patronage systems centralise power within a narrow group of office-holders.¹⁰⁵ Businessmen have backing from powerful patrons in exchange for kick-backs, personal enrichment, and making contributions to the ruling party.¹⁰⁶

Elaborate honorary titles formalise Government-business relations and ‘ksae’ (personal networks) that uphold the patronage system.¹⁰⁷ These include the title Okhna.¹⁰⁸ In exchange for the 100,000 US dollar contribution they make for ‘national reconstruction,’¹⁰⁹ Okhnas may be favoured with procurement contracts, economic land concessions, and access to resources.¹¹⁰

Global Witness (2009) has extensively documented how rights to exploit natural resources are allocated in closed meetings involving senior Government officials and business executives.¹¹¹ Moreover, evidence indicates that many political power holders are engaged in lucrative side businesses whilst simultaneously holding office.¹¹²

Cases of whistleblowing do not appear to occur within the Executive level of Government. Despite internal differences, the Cambodian People’s Party is famously cohesive.¹¹³ Every time a dispute arises, it appears to be discreetly handled internally rather than breaking out into the public sphere.¹¹⁴

2.3 ROLE

2.3.1 PUBLIC SECTOR MANAGEMENT (LAW AND PRACTICE)

SCORE: 50

To what extent is the Executive committed to and engaged in developing a well-governed public sector?

The Executive is somewhat active, but further developments are needed to ensure a public sector that is governed by high levels of transparency, accountability, integrity and inclusiveness.

The Government has prioritised a number of reforms to develop a well-governed public sector. Deconcentration and decentralisation reforms have been implemented to strengthen local governance and democracy.¹¹⁵ A number of achievements have been realised under this mandate: The Commune/Sangkat Law and the Law on Commune Elections, adopted in 2001, which signified the formal launch of deconcentration.¹¹⁶ The Organic Law, which focuses on sub-national administration, was later passed in 2008.¹¹⁷ The National Committee for Sub-National Democratic Development (NCDD) was also created in 2008 to effectively implement the Organic Law and decentralisation and deconcentration policy.¹¹⁸ Under the NCDD, the One Window Service Office initiative has bloomed, providing decentralised and accountable administrative services at the sub-national level.¹¹⁹

The Public Financial Management (PFM) Reform Programme, highlighted as key for public sector reform, was launched in 2004.¹²⁰ Since its initiation, successes have been recognised – including improved taxation and enhancing the public procurement process.¹²¹ Challenges to the full implementation of the project remain, however, such as limited capacity of officials in particular.¹²² Moreover, public sector salary reforms are yet to be effectively implemented.¹²³ Whilst the Government has attempted to increase public sector pay rates across the board by 20 per cent annually, there are still complex challenges with multiple fiscal and social implications.¹²⁴

2.3.2 LEGAL SYSTEM

SCORE: 50

To what extent does the Executive prioritise public accountability and the fight against corruption as a concern in the country?

There are a number of reforms initiated and promoted by the Executive to counter corruption and promote integrity. However, progress has

been gradual and existing relevant legislation contains loopholes.

The Government's commitment to fighting corruption has been reflected in its 'Rectangular Strategy for Growth', in which fighting corruption is listed as a priority.¹²⁵

To this end, the Law on Anti-Corruption was passed in 2010. The Executive was heavily involved in drafting and revising the bill, working closely with the Ministry of National Assembly-Senate Relations (MoNASRI).¹²⁶ Indeed, the Prime Minister himself explicitly called for the law to be passed, stating that 'to combat corruption, we have to establish a ... flawless law'.¹²⁷ Yet the Law on Anti-Corruption, which stagnated in the drafting process for more than 10 years, has been strongly criticised by experts and civil society organisations for its failure to meet international standards.¹²⁸ For instance, the law does not require public officials' asset declarations to be made public.¹²⁹ Moreover, a complainant of a corruption related offence may be liable for imprisonment on the basis of defamation if no evidence is found to support their claim.¹³⁰

Relevant Ministers have been making efforts to promote the Law on Anti-Corruption to the public, business community and civil servants. For instance, when he spoke to Japan's deputy foreign minister in 2011, Deputy Prime Minister, H.E. Sok An, stated that Cambodia had already been implementing the Law on Anti-Corruption to improve governance and attract foreign investment.¹³¹ Sok An also met with the British Ambassador to help him inform the British business community of the Law on Anti-Corruption.¹³² Moreover, the Anti-Corruption Unit has led numerous educational events about the Law on Anti-Corruption for students and civil servants.¹³³

RECOMMENDATIONS

1. The Executive should improve its transparency and accountability in the following ways (in accordance with Article 19 of the Principles on Freedom of Information¹³⁴):

i. Ensure the publication of all operational

information pertaining to the function of the Executive, including all ministries, committees, and sub-committees of ministries, in both paper and electronic format. This includes documents relating to all internal procedures, codes of conduct, lists of all members of the Executive, and disciplinary procedures of the Executive.

ii. Make all annual reports, official documents and details on expenditure of the Executive available to the public, in electronic format on the Government website and in paper format. All reports must be available to the public within one year of being drafted.

iii. Provide yearly updates on the financial income of all members of the Executive, including an up-to-date list of its current payroll. Ensure that this information can be accessed in both electronic format on the Government website and in paper format. All information must be available to the public within the relevant financial year.

2. Increase the baseline salary of members of the Executive to reduce the need to supplement income with bribery and other forms of income that may create conflicts of interest.

3. Increase public outreach and education on the laws of the country that explain the roles of the Executive and separation of powers, as stipulated under the Constitution.

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- 2 Ibid. Art. 1
- 3 Ibid. Art. 2
- 4 Ibid. Art. 3
- 5 Ibid.
- 6 Ibid. Art. 4
- 7 Global Security, Royal Government of Cambodia, last updated on 02 June 2012 <http://www.globalsecurity.org/military/world/cambodia/government.htm> [accessed 23 February 2014]
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- 9 Law on the Organisation and Functioning of the Council of Ministers, 1994: Art. 8
- 10 Ibid. Art. 12
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- 12 Geoffrey Cain, 'Cambodia: Sihanouk's love affair with North Korea,' *Global Post* (Seoul) 04 February 2013
- 13 Hun Sen came to power on 14 January 1985, see: Denis D. Gray, 'Sihanouk: Cambodia's last true king,' *The Guardian* (London) 02 February 2013; Phun Vidjia and Jennifer Holligan, 'The Kingdom of Cambodia,' in *Rule of Law for Human Rights in the ASEAN Region: A Base-line Study* (Jakarta: Human Rights Resource Centre, 2011) p. 53
- 14 Tep Soravy and Vann Vicha, 'Hun Sen Says He Will Stay in Power Until He's 74,' *Radio Free Asia Khmer Service* (Phnom Penh) 06 May 2013
- 15 See: The NGO Forum on Cambodia, Cambodia National Budget, Budget Law Series http://www.cambodianbudget.org/budget_law_series.php [accessed 16 February 2014]
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- 20 Ibid. Art. 39 (3) – Unofficial English translation
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- 23 The NGO Forum on Cambodia, Database of Law Series on Finance for Management 2000-2013 (Phnom Penh: the NGO Forum on Cambodia, 2013) http://www.cambodianbudget.org/budget_database.php [accessed 24 February 2014]
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- 28 The World Bank, Cambodia More Efficient Government Spending for Strong and Inclusive Growth – Integrated Fiduciary Assessment and Public Expenditure Review (IFAPER), 30 November 2011, Report No. 61694-KH (Cambodia: World Bank, 2011) p. 18
- 29 Ibid. p. 20
- 30 Ibid.
- 31 Phay Siphon (H.E.), interviewed by Transparency International Cambodia (Phnom Penh) 24 April 2013
- 32 Ibid.
- 33 Ibid.
- 34 Ibid.
- 35 Senior Journalist in Cambodia, interviewed by Transparency International Cambodia (Phnom Penh) 26 September 2013 – interviewee requested anonymity
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- 40 Ibid. Art 121 (former Art. 102)
- 41 Law on the Organisation and Functioning of the Council of Ministers, 1994: Art. 17
- 42 Constitution of the Kingdom of Cambodia, 1993, as amended in 2008 – Unofficial English translation supervised by the Constitutional Council, 2010: Art. 123 (former Art. 104)
- 43 Ibid. Art. 126 (former art. 107)
- 44 Ibid.
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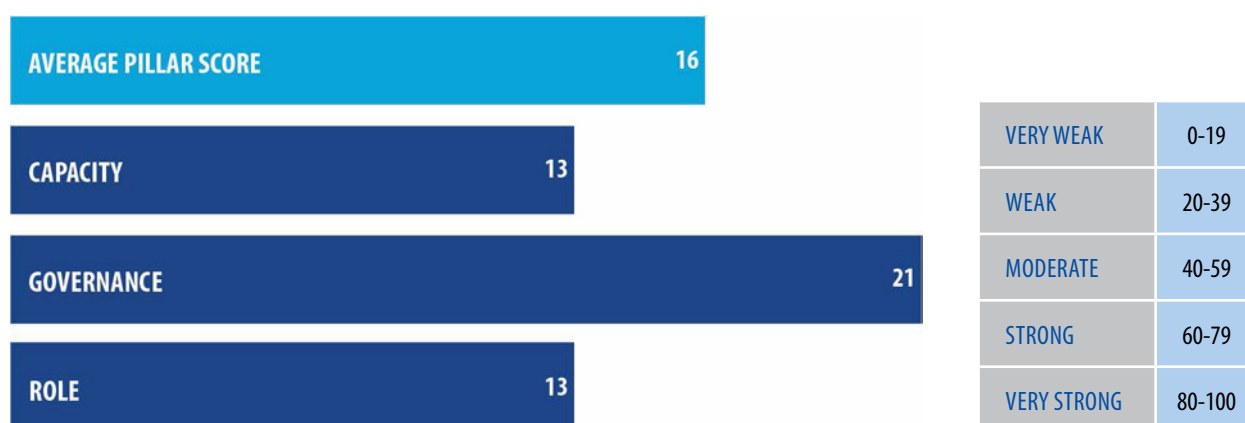
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VII. NATIONAL INTEGRITY SYSTEM

3. Judiciary



SUMMARY

The judicial branch is still recovering from its quasi-suppression during the Khmer Rouge period when laws were abolished and only a few judges and prosecutors survived. Since then, first through the United Nations Transitional Authority (UNTAC) and then on its own, the country has made substantial progress rebuilding a functioning judicial power. However, there currently exist a number of obstacles that impede the judicial system in Cambodia from functioning appropriately. In particular, political interference, understaffing, inadequate training of staff, limited financial resources, and the absence of key laws undermine the Judiciary.

The diagram at the beginning of this chapter assesses and scores the Judiciary in terms of its

capacity, governance and role. The rest of this chapter is dedicated to providing a qualitative overview and explanation of the scores.

STRUCTURE AND ORGANISATION

The pre-existing judicial system was eradicated during the Khmer Rouge period (1975-1979).¹ During that time, persons with a legal background were among those targeted for execution along with other highly educated professionals.² Only ten legal graduates, including five judges, were known to be left in the country following liberation in 1979.³ In 1992, UNTAC assisted with the writing of preliminary laws and the development of the present day Judiciary.⁴ At present, the Government has placed legal and judicial reform as a top priority in its Rectangular Strategy Phase III, which is

currently being implemented.⁵

The current Judiciary is created and governed by the Constitution (1993, last amended in 2008).⁶ The Constitution states that the Judiciary's role, as an independent power, is to interpret and implement the law.⁷ The Judiciary follows a hierarchical system, made up of First Instance Courts, an Appellate Court and a Supreme Court.⁸ There are 21 First Instance Courts located in 19 Provinces and two Municipals in Cambodia.⁹ If a judicial decision from the First Instance Courts is appealed it is heard in the Appellate Court in Phnom Penh.¹⁰ The Appellate Court has 16 judges and nine prosecutors.¹¹ It is a centralised court that has the power to examine appeals based on matters of law (Ang Chbab) and matter of fact (Ang Het) for both civil and criminal judgments throughout the country.¹² Appeals may also be taken to the Supreme Court, since it is the chief court of appeal in the country.¹³ The Supreme Court has a president, vice president, 16 judges and seven prosecutors.¹⁴ It primarily deals with matters of law (Ang Chbab).¹⁵

Two additional and separate judicial streams are present in Cambodia: the Military Court and the Extraordinary Chambers in the Courts of Cambodia (ECCC). The Military Court's authority lies in matters solely linked to military offenses involving military staff and cases involving damage to military infrastructure.¹⁶ The ECCC is a hybrid tribunal and was established by a treaty between the government and the United Nations (UN).¹⁷ The ECCC acts as an independent judicial organ, charged with prosecuting the former leaders of the Khmer Rouge.¹⁸ Both the Military Court and the ECCC are not assessed under this pillar because they do not adjudicate cases relating to ordinary Cambodian citizens.

The Judiciary in Cambodia functions with the help of lawyers, judicial police, prosecutors, and administrative court staff. While all of these are essential components for an effective and independent Judiciary, they are not assessed in detail under the Judiciary Pillar as the influence on the Judiciary by lawyers and the Bar Association is outside the methodology of this study. However,

both judicial police and prosecutors are assessed in more detail under the Law Enforcement Agencies Pillar.

ASSESSMENT

3.1 CAPACITY

3.1.1 RESOURCES (LAW)

SCORE: 0

To what extent are there laws seeking to ensure appropriate salaries and working conditions of the Judiciary?

There is an absence of essential and international standard legislation determining and regulating salaries, working conditions and budget allocation of the Judiciary in Cambodia. The overall situation leads to an inefficient Judiciary.

There is currently a distinct lack of international standard laws regarding the salaries, working conditions and budget allocation under the Ministry of Justice. The Constitution requires the promulgation of the Law on the Status of Judges and Prosecutors.¹⁹ This was passed in May 2014 but under strong protest from relevant stakeholders, especially civil society, on the grounds that it fails to ensure true independence of the judiciary.²⁰

Laws regulating court support staff are also limited. The law ensures that the Judiciary is assisted in investigations by judicial police consisting of police officers, police agents and other public officials.²¹ Judicial Police fall under the supervision and control of the Prosecutor General of the Court of Appeal.²² In addition, articles 128 and 129 under the Criminal Procedure Code (2009) state that investigating judges shall have a court clerk who assists in the day-to-day running of the court.²³

3.1.2 RESOURCES (PRACTICE)

SCORE: 25

To what extent does the Judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

The Judiciary has highly inadequate levels of financial, human and infrastructural resources,

which hinder it from functioning effectively.

The national budget, which is generated every year by the government, determines expenditure according to the government's annual objectives. It follows a process whereby it is approved by the National Assembly and the Senate before becoming

factors, including an employment system where job promotions or appointments are based on patronage and bribery, rather than merit.³⁶

The Government itself has recognised that there are insufficient resources at hand to guarantee the functioning of the Judiciary on a

An inability to enforce judgments highlights a lack of capacity and authority held by the judicial branch. More concerning, in some cases this allows criminal impunity.

law.²⁴ In 2011, 35,977.5 million riel (8,775 thousand US Dollars) was allocated to the Ministry of Justice as part of the national budget.²⁵ This represented 0.36 per cent of the national budget and reflects a low commitment to the rule of law.²⁶ In 2013, the budget of the Ministry of Justice rose to approximately 50,963 million riel (12,430 thousand US Dollars) but still represents only 0.42 per cent of the overall national budget.²⁷ It is noted that the Ministry of Justice does also receive external donor funding which contributes to the budget input from the Government.²⁸ Such funding focuses on capacity building to help reach key milestones in the rebuilding of the judicial and legal system based on the Government's Plan of Action for the Implementation of the Legal and Judicial Reform Strategy since 2005.²⁹ For example, an additional building for the Court of Appeal was funded by Australian Aid, and finished construction in 2012.³⁰ This has upgraded facilities for court clerks and provided extra courtrooms, allowing more cases to be heard.³¹

In practice, the functioning of the Judiciary remains affected by low salaries, insufficient resources and poor training, which results in high levels of corruption and inefficiency.³² An increase in the salary of judges and prosecutors has been advocated as a means to help reduce and fight corruption.³³ The judicial reform undertaken by the Government has included a substantial increase in the salaries of judges and court officials.³⁴ Overall salaries are too low for people in positions of power but this is not seen as the main cause of corruption.³⁵ The reasons for continued corruption may be due to a number of

level comparable to international standards. Specifically, funds lack in the areas of 'human resources, office space, supply and equipment, resources for disseminating laws among vulnerable groups, and the means to train judges, prosecutors, court clerks and other law enforcement officials'.³⁷ In response, the Government's Rectangular Strategy for Growth has a specific focus on legal and judicial reform, including further training and capacity building of judges and prosecutors, increased resources for courts and administration, and the creation of a court of administration attached to tribunals at all levels.³⁸

The current judicial system is criticised for a lack of support for legal aid, which is almost entirely reliant on external donor funding.³⁹ Current limitations on legal aid funding results in defendants being tried without legal representation, ultimately denying them access to justice.⁴⁰ In fact, the relatively low number of practicing lawyers in Cambodia remains a significant issue in general access to justice and the ability to have a functioning judicial system.⁴¹ While it is acknowledged that the number of judges and lawyers has dramatically increased since the eradication of the legal profession during the Khmer Rouge period, the proportion of judges and lawyers compared to Cambodia's population is still extremely low.⁴² Furthermore, legal aid lawyers appear to be diminishing; research carried out by the UN Office of the High Commissioner for Human Rights (OHCHR) indicated that in 2010 there were 199 legal aid lawyers in Cambodia, but that number has since decreased to 76 in 2013.⁴³

A scarcity of judges, lawyers, and courtrooms in the country is contributing to the ineffectiveness of the Judiciary.⁴⁴ Delays in processing claims within the courts, a lack of basic necessities to work properly, as well as a shortage of legal aid creates bottlenecks in the majority of provincial courts, resulting in many people waiting in pre-trial detention.⁴⁵

Enforcement of judgments is also limited.⁴⁶ This is in part due to a lack of intra-institutional support from both the judicial police and other law enforcement agencies.⁴⁷ An inability to enforce judgments highlights a lack of capacity and authority held by the judicial branch.⁴⁸ More concerning, in some cases this allows criminal impunity, which has consequently resulted in situations where citizens have taken the law into their own hands through mob killings of suspected criminals.⁴⁹ Furthermore the World Bank's 2012 Doing Business Survey ranks Cambodia at number 142 out of 185 economies in regards to enforcement of contracts under civil law.⁵⁰ In civil cases, the inability to enforce judgments related to contracts can affect both business and investment prospects in Cambodia.⁵¹

3.1.3 INDEPENDENCE (LAW)

SCORE: 25

To what extent is the Judiciary independent by law?

The Judiciary is partially independent by law. Whilst an independent Judiciary is enshrined within the Constitution, independence is compromised by influence of the Executive over the appointment of the governing body of the Judiciary.

Article 130 of the Constitution guarantees the separation of the respective powers of the Executive, Judiciary and Legislature in Cambodia.⁵² Article 128 of the Constitution states that the judicial power is an independent power and that authority of this branch is to be granted to the Supreme Court and to the lower courts of all sectors and levels.⁵³ The King is constitutionally bound to ensure the independence of the Judiciary and the Supreme Council of Magistracy is

mandated to assist in this function.⁵⁴

The Government has recognised the need for reform of the Judiciary to ensure more independence. To this end, the Supreme Council of Magistracy created a Code of Ethics for Judges and Prosecutors in 2007.⁵⁵

However, there are limited regulations specifically protecting judges from undue interference from external actors,⁵⁶ which curtails the Judiciary's ability to remain independent.

The process for appointing judges is located under Parts 6 and 7 of the Law on the Status of Judges and Prosecutors (2014).⁵⁷ The Supreme Council of Magistracy makes proposals for appointments, rank promotions, transfers, and removals of judges and prosecutors to the King.⁵⁸ Although the appointment of national-level judges is said to be grounded on professional criteria, under the law and in practice this criteria remains unclear.⁵⁹

The process for appointment to the Supreme Council of Magistracy is likewise stated under law. The Council is composed of the King as president, the Minister of Justice, the President and Prosecutor General of the Supreme Court, President and Prosecutor General of the Appellate court and three elected judges.⁶⁰ The independence of the Supreme Council of Magistracy is questioned by the fact that the Minister of Justice sits as a member of the Council, highlighting the executive influence over decisions relating to the Judiciary.⁶¹

3.1.4 INDEPENDENCE (PRACTICE)

SCORE: 0

To what extent does the Judiciary operate without interference from the government or other actors?

The Judiciary lacks independence since it faces regular and significant interference from the Executive level of the Government.

While the Constitution guarantees the separation of powers between the Executive and Judiciary, in practice the executive branch dictates much of the Judiciary's activities through the provisions of resources and through judicial appointments.⁶²

Reportedly, the process of appointing judges is one where individuals are required to pay their way into the Royal Academy for Judicial Professions⁶³ where they are trained, and then pay

Promotion and Defence of Human Rights (LICADHO), maintains that there is no legitimate evidence supporting the allegation that Sonando had planned secession.⁷⁵

Reportedly, the process of appointing judges is one where individuals are required to pay their way into the Royal Academy for Judicial Professions where they are trained, and then pay to get a professional position afterwards. There are no official documents stating these fees, but there are accepted rates to pay in order to attain certain positions.

to get a professional position afterwards.⁶⁴ There are no official documents stating these fees, but there are accepted rates to pay in order to attain certain positions.⁶⁵ Often, positions go to the highest bidder instead of the most qualified applicant.⁶⁶ Moreover, becoming a judge is considered to be not only linked to one's ability to pay but also to one's loyalty to the ruling political party.⁶⁷ As a result, a majority of judges and prosecutors are members of the ruling Cambodian People's Party and have little option but to execute party instructions.⁶⁸

There is evidence that the courts are frequently used to intimidate and silence political activists, while impunity is granted to those who are well connected to the ruling-elite.⁶⁹ Examples include politically motivated cases against opposition politicians and human rights defenders; impunity of individuals with government connections or who are in positions of power; and inconsistency and selectiveness of criminal investigations.⁷⁰

Judicial harassment and intimidation are methods sometimes used to restrain freedom of expression of people who speak out against the Government.⁷¹ Mam Sonando, who was sentenced to a 20 year jail sentence in November 2012 on charges of masterminding a secessionist plot and then released in March 2013,⁷² explained in an interview that although the law provides for the separation of powers, in practice the separation is not effective.⁷³ In his own experience, Mr. Sonando cited that the court had no independence and that his case had been aimed at restricting him from talking with people.⁷⁴ Dr. Pung Chhiv Kek, president of the Cambodian League for the

In April 2013, three members of the Prime Minister's body guard unit were charged and sentenced to three years in jail after allegedly beating up four people in a Koh Kong Hotel.⁷⁶ However, all of the men were released a few days later without further explanation.⁷⁷ In comparison, criminal prosecutions against human rights activists and members of opposition parties are more frequent with much harsher sentencing.⁷⁸

Highlighting further the lack of independence of the Judiciary was the reassignment of Phnom Penh Court Judge, Hing Thirith, to an isolated provincial court in 2004.⁷⁹ Mr. Thirith dismissed the case regarding Born Samnang and Sok Sam Oeun, who were accused of murdering trade union leader Chea Vichea,⁸⁰ on the grounds that there was no credible evidence to convict them.⁸¹ It is understood that Mr. Thirith's actions went against the ruling party line hence he was sanctioned.⁸² A Provincial Court official interviewed conceded that in practice judges cannot protect themselves from outside influence and external interference.⁸³

3.2 GOVERNANCE

3.2.1 TRANSPARENCY (LAW)

SCORE: 25

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the Judiciary?

There are limited legal requirements for public accessibility of information on the organisation, functioning and decision-making of the Judiciary in Cambodia.

The Criminal Code of Procedure (2007) stipulates that trial hearings shall be conducted in public.⁸⁴ Under certain circumstances such as danger to the public order, the court may mandate a complete or partially private hearing. Notably, such a decision is not eligible for appeal.⁸⁵ Additionally, in all criminal cases, the judgments should be announced at a public hearing.⁸⁶ Under Civil proceedings, the Code of Civil Procedure (2006) states that oral arguments made during civil proceedings are to be made in open court, unless doing so would cause a threat to public order or is forbidden by another legal provision.⁸⁷ The judgments of civil proceedings are also required to be pronounced in an open court, based on an original written judgment.⁸⁸

There appears to be no requirements to provide information on judicial statistics, membership of relevant organisations, or court hearing records and transcripts to the public. In civil proceedings, there is a requirement for court clerks to write down the proceedings of the hearing and provide a record for the court of appeal, but no mention is made of its availability to the public.⁸⁹ The Law on the Organisation and Functioning of the Courts, the Law on the Status of Judges and Prosecutors, and the Law on the Organisation and Functioning of the Supreme Council of Magistracy, recently passed in May 2014, provided no further stipulations requiring government institutions to disclose information on court procedures to the public. Article 7 of the Law on the Organisation and Functioning of the Courts expressly states that chamber deliberations remain confidential.⁹⁰ Therefore, other than the public judgments, no further information regarding legal reasoning will be made available.

The disclosure of assets every two years is required of trial judges, prosecutors, notary public, court clerks and bailiffs.⁹¹ However, the documents containing the asset declarations are kept in sealed envelopes and are not opened unless a person becomes subject to an investigation by the Anti-Corruption Unit.⁹² This implies that assets are not scrutinised, making the declaration of assets a token gesture that does nothing to support the transparency of the Judiciary.

The Supreme Council of Magistracy is the responsible entity for the appointment, transfers, and suspension of judges.⁹³ The Supreme Council of Magistracy makes recommendations for judicial positions to the King.⁹⁴ The Constitution states that judges cannot be dismissed from their position, but the Supreme Council of Magistracy will discipline 'delinquent judges'.⁹⁵ The term 'delinquent judge' is not defined under the Constitution and the term is not mentioned under the Law on the Organisation and Function of the Supreme Council of Magistracy (1994). The Law does, however, provide the Supreme Council of Magistracy with the power to decide and make recommendations on disciplinary actions, such as the transfer or suspension of duty.⁹⁶ The procedure for appointing, transferring and suspending judges from their duty is not mentioned under the Law on the Organisation and Function of the Supreme Council of Magistracy.⁹⁷ Furthermore, information regarding the procedures undertaken by the Supreme Council of Magistracy is not available to the public.⁹⁸

3.2.2 TRANSPARENCY (PRACTICE)

SCORE: 25

To what extent does the public have access to judicial information and activities in practice?

Little information on the organisation and functioning of the Judiciary is available to the public in Cambodia.

The Judiciary does not publish regular reports on its activities, spending and governance. Information about individual cases is available on notice boards present in each court in Cambodia.⁹⁹ However, there is no available online source that provides information on current cases before the courts.

In practice, the public has access to the public hearings of court cases, especially criminal cases.¹⁰⁰ However, it can be difficult to find out when a hearing will take place since most courts do not provide their schedule, aside from the courts that are working with the Cambodian Centre for Human Rights (CCHR) within their Trial Monitoring Project.¹⁰¹

Lack of access to information regarding ongoing court hearings negatively impacts citizens' access to justice and their right to a fair trial. For example, in the case of the 13 women of Boeung

Representative for Human Rights in Cambodia that no elections have been held for these three elected positions.¹¹¹ Moreover, the Law on the Status of Judges and Prosecutors, passed in May

While criminal proceedings contain the high threshold of conviction based on guilt beyond reasonable doubt, the rate of convictions is very high and convictions are often based on confessions obtained by police whilst suspects are under duress. Moreover, in politically tinged cases basic standards of trial procedure are often paid little more than ceremonial lip service.

Kak Lake, who were detained following their protest over the forcible eviction of 4000 families from the lake area,¹⁰² all were tried without a lawyer.¹⁰³ Pro-bono lawyers provided by LICADHO to represent the women were denied access their clients, were unable to bring witnesses, and were prevented from obtaining important court documents regarding the accused.¹⁰⁴

There appears to be some improvement on access to information for legal proceedings at the local level. For example, within the Banteay Meanchey Provincial Court, systems have been developed to help people gather information on cases.¹⁰⁵ A legal registry book to record lawsuits has been produced for people to be able to follow up on cases quickly and for free.¹⁰⁶ In addition, weekly and monthly updates as well as activity calendars for judges and prosecutors were made available in the Banteay Meanchey Court.¹⁰⁷

A notable restriction regarding transparency is that citizens are unable to obtain information on the appointment, transfer, or suspension of judges.¹⁰⁸ Moreover, there is no comprehensive website on the Judiciary. For instance, no functional websites exist for the Supreme Council of Magistracy and Supreme Court websites do not exist.¹⁰⁹

The appointment of some of the members of the Supreme Council of Magistracy is also non-transparent. The Law on the Organisation and Functioning of the Supreme Council of Magistracy states that its members shall include three judges that are elected by the judges of Cambodia.¹¹⁰ However, it has been noted by the UN Special

2014, not only failed to limit the influence of the Executive over the Judiciary but in fact codified the Ministry of Justice's right to members of the Supreme Council of the Magistracy.¹¹² It is yet to be seen if the Ministry of Justice will hold elections for these positions as prior law had mandated or if they will continue to exercise their Executive reach in appointing members.

3.2.3 ACCOUNTABILITY (LAW)

SCORE: 50

To what extent are there provisions in place to ensure that the Judiciary has to report and be answerable for its actions?

Some legal provisions ensure that the Judiciary has to report and be answerable for its actions. Although the law often states accountability provisions for the Judiciary, it provides limited explanation or details of how legal procedures should be undertaken.

Article 129 of the Constitution delineates that judges must undertake their duties 'with strict respect for the laws, wholeheartedly and conscientiously'.¹¹³ Accountability of such duties falls solely on the Supreme Council of Magistracy who is tasked with both appointing and taking disciplinary actions against judicial misconduct.¹¹⁴ The Chief of the Supreme Court chairs disciplinary matters regarding the conduct of a judge.¹¹⁵ In the event that the disciplinary matter involves the misconduct of the Chief of the Supreme Court, the King or Royal Representative chairs the matter.¹¹⁶ It is unclear if there is a specific procedure to be followed when making a decision regarding

disciplinary action against a judge. However, the decision on disciplinary action against a judge is not subject to any appeal process.¹¹⁷ Disciplinary actions can include transfer to another jurisdiction, suspension, disruption of service, or removal of cadre or titles.¹¹⁸

To assist the Supreme Council of Magistracy in investigating judicial misconduct, the Government created an 'Inspection Unit of the Disciplinary Council of the Supreme Council of Magistracy' tasked with assisting in the investigations of judicial misconduct.¹¹⁹ Nevertheless, it is believed that the unit will comprise of members of the Executive thus limiting the Judiciary's independence.¹²⁰

In criminal proceedings, judges may be challenged on a list of issues relating to potential conflicts of interest in presiding over a particular criminal proceeding.¹²¹ Challengers must provide reasons and evidence for their disputation.¹²² The relevant judge is then provided eight days to respond to the challenge before a decision is made.¹²³ The final decision regarding the challenge is based on the merits brought forward by both the judge and challenger¹²⁴ and is not subject to appeal.¹²⁵

Challenges against judges in courts of first instance are made to the president of the Court of Appeal,¹²⁶ while challenges against a judge of the Supreme Court or Appellate Court are made to the president of the Supreme Court.¹²⁷ It is noted that if a challenge is made against the President of the Supreme Court the decision to withdraw from the matter is based on the president's own decision, rather than a review by a third party.¹²⁸ The law does not provide an independent accountability mechanism to prevent a judge from presiding over a criminal matter in which they have a conflict of interest, highlighting its potential for abuse.

Judges have a duty to provide justification for their judgment in accordance with the Criminal Code of Procedure (2007). The judgment must be declared during a public hearing.¹²⁹ In addition, the law divides judgments of criminal cases into two parts: i.) the ground judgment, which refers

to the 'arguments of facts and laws which lead the court to make their decision;'¹³⁰ and, ii.) the enacting term judgment, which refers to the actual decision made by the court.¹³¹ Courts are required to investigate all charges and arguments presented during the hearing¹³² and provide their decision based on the threshold of 'beyond reasonable doubt'.¹³³ The law does not provide for specific disciplinary measures against judges who fail to provide justification for their decisions.

The Code of Civil Procedure (2006) provides rules regarding the rendering of both rulings and judgments under civil jurisdiction. Judges who have participated in the oral arguments of a particular proceeding have a duty to issue a judgment outlining the decisions made based on the oral arguments presented to them.¹³⁴ Judgments are also required to be provided in written form and include a statement of facts agreed upon by each party in the proceedings, including the specific matters in dispute, the grounds for the decision by the presiding judge, and the main and conclusive text of the judgment.¹³⁵ The judgment must be signed by the presiding judge or judges¹³⁶ and read aloud in an open court.¹³⁷ Furthermore, the judge also has a duty to ensure that the judgment is made within one month from the date on which oral arguments have concluded.¹³⁸ This duty to deliver a judgment within one month, however, shall not apply to cases of a complex matter or where special circumstances exist.¹³⁹ The law does not provide any further clarification on what could be deemed to be a 'complex matter', nor what may be referred to as 'special circumstances'.

3.2.4 ACCOUNTABILITY (PRACTICE)

SCORE: 0

To what extent do members of the Judiciary have to report and be answerable for their actions in practice?

In practice, accountability of members of the Judiciary for their actions is almost non-existent. This largely contributes to the ineffectiveness of the Judiciary in Cambodia.

The current reality is that judgments and the

reasons provided by judges for them are often influenced by politics rather than objective legal and professional deliberation.¹⁴⁰

While the law requires prosecutors and judges to examine all complaints, independent investigations are rarely undertaken during public trials and judges give verdicts grounded on written reports from the police and witness testimonies.¹⁴¹ No sanctions or light punishment are imposed on judges if they fail to provide reasons for their decisions.¹⁴² Although the recently passed Law on the Organisation and Functioning of the Courts does not establish any additional accountability mechanisms on the Judiciary, the Law on the Status of Judges and Prosecutors defines a limited framework for accountability. However, repercussions for unethical behaviour committed in the line of duty are less clear. Part 10 of the Law on the Status of Judges and Prosecutors covers ‘Disciplinary Sanction’ for both positions.¹⁴³ Article 54 states that gaps in fulfilling professional duties, or actions that are considered harmful to ‘honour, good morals, and the dignity of judges’ are deemed ‘disciplinary mistakes’.¹⁴⁴ These mistakes are subject to punishments stretching from verbal reprimands to complete dismissal.¹⁴⁵ However, Article 54 explicitly excludes repercussions for judges’ and prosecutors’ ‘use of discretion’ in implementing the law.¹⁴⁶ There are no provisions for holding judges or prosecutors accountable for poor legal judgment, nor unethical courtroom behaviour. Considering the existing lack of judicial independence, this effectively gives judges and prosecutors’ impunity for biased rulings and implementation of the law.

While criminal proceedings contain the high threshold of conviction based on guilt beyond reasonable doubt, the rate of convictions is very high and convictions are often based on confessions obtained by police whilst suspects are under duress.¹⁴⁷ Moreover, in politically tinged cases basic standards of trial procedure are often paid little more than ceremonial lip service. For instance, in the case of Mam Sonando, critics noted that the witness selection was arbitrary, evidence used was not credible and largely based on hearsay, and the case proceeded despite lacking many

fundamental standards of due process.¹⁴⁸

The body in charge of investigating complaints and taking disciplinary action according to the Constitution is the Supreme Council of Magistracy.¹⁴⁹ All members of the Supreme Council of Magistracy and many court judges are members of the ruling party.¹⁵⁰ The Phnom Penh Municipal Court President, in addition to being a member of the Supreme Council of Magistracy, is also a chair of Disciplinary Council of the Supreme Court of Magistracy, tasked to review and recommend any punitive measures against judges and prosecutors.¹⁵¹ This is a clear conflict of interest, indicating that complaints resulting in independent investigation are not feasible.

3.2.5 INTEGRITY MECHANISMS (LAW)

SCORE: 25

To what extent are there mechanisms in place to ensure the integrity of members of the Judiciary?

Limited mechanisms are in place to ensure the integrity of judicial officials.

The lack of means to ensure the ethical behaviour of members of the Judiciary constrains the potential of the Judiciary to guarantee the integrity of its members. The Supreme Council of Magistracy issued a Code of Ethics for Judges and Prosecutors in 2005.¹⁵² The Code covers some of the main areas susceptible to undermining the impartiality of judges. However, it is limited in scope. Gifts may be accepted if given from close friends or relatives, if given officially.¹⁵³ Considering the high rate of nepotism and the extraordinary interconnectedness of the judicial, political, and business elite in Cambodia, most “gifts” could be validated by this clause. There is no mention of receiving reimbursements, compensation and honoraria in connection with privately sponsored trips.

Bribe taking by judges is a punishable crime under the Criminal Code (2009).¹⁵⁴ Likewise, criminal charges can be brought against persons who provide a judge with a bribe¹⁵⁵ or provide gifts or donations to a public official.¹⁵⁶ These provisions are reiterated under the Law on Anti-Corruption (2010).¹⁵⁷

Judges and prosecutors are not allowed to hear cases represented by lawyers with whom they have close personal relationships.¹⁵⁸ As mentioned above,¹⁵⁹ the introduction of the Criminal Code of Procedure (2007) and the Code of Civil Procedure (2006) have strengthened limitations on judges where there are conflicts of interests. The Criminal Code of Procedure (2007) states a list of issues pertaining to potential conflicts of interest that allow a challenge to a particular judge presiding over a case.¹⁶⁰ Under civil jurisdiction, challenges can be made for a retrial in situations where it can be shown that a judge committed a crime in connection with the discharge of his or her official duties.¹⁶¹

The Law on the Status of Judges and Prosecutors addresses retirement, but put forth no regulations to cover restrictions for judges entering the private or public sector after leaving the judicial profession.¹⁶² Hence, there is no legislation to cover potential conflicts of interest that could arise after former members of the Judiciary change professions.

3.2.6 INTEGRITY MECHANISMS (PRACTICE)

SCORE: 0

To what extent is the integrity of members of the Judiciary ensured in practice?

In practice, the integrity of members of the Judiciary is poorly ensured and almost absent, particularly in high profile cases. Court decisions and judgments may be influenced by monetary factors, where wealthier people receive lenient sentences to win cases. This compromises the very nature of the judicial structure.

The Code of Ethics for Judges and Prosecutors is not implemented in practice. In court cases that are not high profile, court officials are considered to perform their job correctly.¹⁶³ However, when high-profile cases are being undertaken, judicial officials reportedly often have to make court decisions according to orders received from senior government officials, undermining their independence and the ability to ensure citizen's right to a fair trial.¹⁶⁴

There has been widespread criticism and outcry

from civil society and other external actors over the impartiality of high-profile cases. These include the conviction of Chea Vichea's alleged killers¹⁶⁵ and the three-year (now suspended) sentencing of forced evictee and rights protestor, Yorm Bopha.¹⁶⁶ However, there is no record of the public ever being able to hold a judge accountable for an impartial ruling. Even the case of Mam Sonando (see Independence: practice), over which concerns were explicitly raised by United States President, Barack Obama,¹⁶⁷ did not result in any investigation or sanction against an impartial judge. When Mr. Sonando's 20 year sentence¹⁶⁸ was suddenly overturned,¹⁶⁹ no credible investigation was undertaken into the questionable legal proceedings that led original sentence. This underscores the lack of practical mechanisms for ensuring the ethical conduct of the Judiciary, even when people are bold enough to speak out about unprincipled behaviour.¹⁷⁰

There is a climate of widespread corruption whereby the payment of bribes to judges is often expected and commonplace in order for defendants to ensure a dismissal or ruling in their favour.¹⁷¹ In fact, Transparency International's Global Corruption Barometer (2013) indicated that 65 per cent of respondents who had come into contact with judicial officers had been asked to pay a bribe in the last 12 months.¹⁷² The Global Corruption Barometer Data for 2013 also indicated that in Cambodia the Judiciary was perceived to be the most corrupt institution out of 12 public institutions reviewed.¹⁷³

3.3 ROLE

3.3.1 EXECUTIVE OVERSIGHT

SCORE: 0

To what extent does the Judiciary provide effective oversight of the Executive?

The Judiciary has no effective oversight of the Executive. This highlights a crucial limitation on the checks and balances in place to limit the reach of the Executive, as stated under the Constitution.

The Constitution provides that the Judiciary covers administrative cases of the Executive.¹⁷⁴ However, there is no Administrative Code or Code

of Administrative Procedures. Therefore, while the courts can hear administrative cases, there is no information or standard procedure about how to investigate and follow through with such a case.¹⁷⁵

Freedom House affirms that there have been no cases in which the judicial branch has exercised successful oversight of the Executive.¹⁷⁶ Instead, the Executive branch is routinely reported to have tight control over the actions of the Judiciary.¹⁷⁷ It would appear that judges who act outside the reach of the Executive are quickly removed from their position.¹⁷⁸ For example, Judge Hing Thirith was quickly removed from his position to an isolated provincial court the day after dismissing charges against two men regarding the murder of the outspoken trade union leader, Chea Vichea, in 2004.¹⁷⁹ Thirith's decision was perceived to go against the ruling party line.¹⁸⁰

Criminal prosecution of government officials from the ruling Cambodian People's Party (CPP) is limited and often only occurs after intense international pressure.¹⁸¹ For example, the District Governor of Bavet District, Svay Rieng Province was charged with a misdemeanour crime, carrying a sentence of a maximum two years, for shooting a gun into a crowd of garment worker protesters, injuring three women.¹⁸² In 2012, the Provincial Court abruptly dropped all charges.¹⁸³ It was only after much public outcry that the Court of Appeal Prosecutor announced that the case was to be investigated further.¹⁸⁴ Effective oversight of the Executive cannot occur if the Judiciary is not independent and subject to Executive control. As a consequence, in actuality there is limited accountability of the Executive in Cambodia.

3.3.2 CORRUPTION PROSECUTION

SCORE: 25

To what extent is the Judiciary committed to fighting corruption through prosecution and other activities?

There is low commitment of the Judiciary, a body already severely affected by corruption, to fight corruption through prosecution and other activities. While the Judiciary has assisted in the

prosecution of a few corruption cases, indicating some commitment to fighting corruption, the number of cases remains low.

Only a limited number of corruption cases appear to have been prosecuted by the Judiciary.¹⁸⁵ It is difficult for law enforcement agencies to detect and investigate corruption cases in Cambodia, especially in cases of linkage of the suspect with political power.¹⁸⁶ The 2010 Law on Anti-Corruption charges the Anti-Corruption Unit (ACU) and the National Council Against Corruption (NCAC) with fighting against corruption, but it does not define any legal scope for the judiciary to combat the issue.¹⁸⁷

Judicial police, under the control of the ACU, undertakes the investigation of corruption cases.¹⁸⁸ Once the criminal charges have been made, the case is transferred to the courts to begin the criminal trial.¹⁸⁹ Corruption cases undertaken include the prosecution of a former judge in Kandal Province who was charged with accepting a bribe of 5000 US dollars.¹⁹⁰ Additionally, a prosecutor from Pursat province was charged with corruption and extortion in 2010.¹⁹¹ The decision was upheld on appeal by the courts in 2012 and 2013.¹⁹² The ACU has led in this work, whilst engaging in cooperation with the courts.

RECOMMENDATIONS

1. The Government must increase and regulate salaries for judges, prosecutors, and court staff according to role and position.
2. Publish and implement a clear and transparent mechanism for the recruitment and appointment of judicial officials. Appointment criteria should be clear and well publicised, allowing candidates and selectors to have a clear understanding of where the bar for recruitment lies.
3. Ensure that judges are objectively recruited through an independent appointments body. This will ensure that the highest quality candidates are selected and that they do not feel indebted to the particular politician or senior judge who appointed them.

4. The Government should respect and uphold the following principles to ensure greater transparency and independence of the courts:

- i. Ensure that the court register for all courts is publicly available.
- ii. Ensure that official and accurate court transcripts are published and made available online.
- iii. Ensure that all judgments under both civil and criminal jurisdictions are published including the reasoning behind the decision.
- iv. Assign defendants with a lawyer within 48 hours of Prosecution being assigned to a criminal case, providing legal aid when legal counsel is not affordable.
- v. Ensure that each court must have its own budget and resource pool each year. A set budget allowance must be delineated to each court and followed up with annual reports to provide accountability on the budget expenditure.
- vi. Immediately release any suspect found not guilty by a court.
- vii. Develop and enforce clear regulations for bail.

viii. In consultation with other stakeholders, especially civil society, review and amend the recently passed laws on the Status of Judges and Prosecutors, the Law on the Organisation of the Courts, and the Law on the Organisation and Functioning of the Supreme Council of the Magistracy to ensure the judiciary has true and complete independence.

5. The Bar Association should increase the number of admitted lawyers and the Ministry of Justice should increase the number of judges in order to create competition and increase the capacity of the entire legal sector.

6. The Ministry of Justice should provide part of their annual budget for funding of legal aid. The Government should establish a legal aid department in the Ministry of Justice.

7. Develop and implement a curriculum to ensure that the functions of the courts; the roles of prosecutors, lawyers, and judges; the right to a fair trial and what that would involve is taught in high schools, so that all graduates have an understanding of the judicial system and how it should work.

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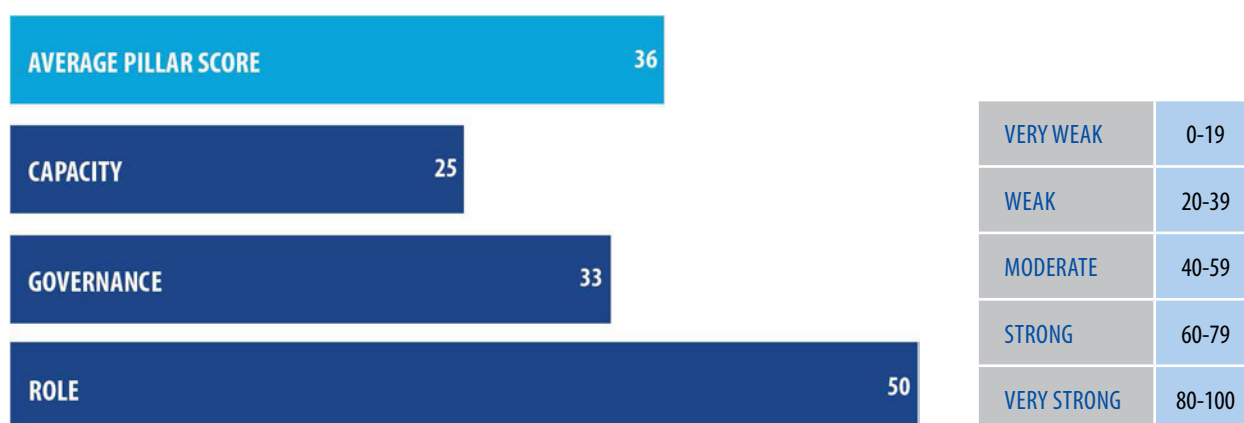
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VII. NATIONAL INTEGRITY SYSTEM

4. Public Sector



SUMMARY

The public sector has a number of key elements in place both practically and within its legal framework to uphold a strong system of integrity. Notably, several legal provisions exist to safeguard its independence. For instance, civil servants are required to be neutral and politically non-partisan when exercising their official functions. Commendable steps have been taken to decentralise power from the top-level national administration to the sub-national level. Pockets of change demonstrating exemplary transparency and accountability have been developed, including the Phnom Penh Water Supply Authority and initiatives coordinated by the National Committee for Sub-National Democratic Development (NCDD). The public sector has also taken proactive

steps to educate the public about fighting corruption. In 2012, noteworthy progress was made when the Law on Public Procurement was passed. This key legislation which has already begun to be implemented will help to regulate crucial procurement contracts.

Despite these positive steps, the integrity of the public sector still needs to be improved in a number of areas. Specifically, the sector lacks independence in practice. It is highly politicised at the senior levels of the administration. The public service is strongly connected to the Cambodian People's Party (CPP) and operates through an entrenched system of patronage. Hence, the activities of the sector are closely linked to the interests of the ruling-elite. Petty corruption is commonplace across the sector with public

officials seeking and accepting bribes for the delivery of essential services.

The diagram at the beginning of this chapter provides the scores for the public sector in terms of its capacity, governance and role. The remainder of the section provides a qualitative background and explanation of the scores.

STRUCTURE AND ORGANISATION

This public sector pillar report covers ministries and public agencies on both the national and sub-national level. This includes but is not limited to the Ministry of Interior; Ministry of Defence; Ministry of Information; Ministry of Health; Ministry of Education, Youth and Sport; Ministry of Women's Affairs; Ministry of Labour and Vocational Training; Ministry of Agriculture Forestry and Fisheries; Ministry of Rural Development; Ministry of Land, Urbanization and Construction; Ministry of Water Resources and Meteorology; Ministry of Economy and Finance; and provincial administrations. Additionally, all members of the civil service are also included under the public sector pillar which covers a broad range of professions including education and medical professionals. Not included are the public institutions covered specifically in other pillar reports of the national integrity system assessment.¹

Article 145 of the Constitution states that the sub-national administration of Cambodia is to be divided into provinces and municipalities.² Sub-national divisions are to be governed in accordance with the Organic Law.³ Provinces are divided into districts (Srok) and districts into communes (Khum). Municipalities are divided into Khan, and Khan into Sangkat.⁴ The establishment of Commune Councils in 2002 and later the passage of the Organic Law in 2008 represented significant steps towards local democratic development, decentralized at the sub-national level.⁵ Subsequently, the NCDD was created to effectively implement the Organic Law to further the deconcentration and decentralisation of power from the top-level administration.⁶

ASSESSMENT

4.1 CAPACITY

4.1.1 RESOURCES (LAW AND PRACTICE)

SCORE: 25

To what extent does the public sector have adequate resources to effectively carry out its duties?

Significant resources gaps, inadequate salaries, as well as insufficient technical ability of staff result in limited project implementation and service delivery. The Government has adopted a set of measures to address these shortfalls, but the issue is complex with extensive financial obstacles.

Given that educated people were targeted for execution under the Khmer Rouge in the 1970s⁷ and the education sector was not broadly reconstructed until the 1990s,⁸ the public sector's human resources skills, capacity, and expertise remain limited to this day. Whilst the education system has made considerable gains over the last 20 years it cannot yet produce enough civil service professionals who can perform at the level required to adequately support the sector.⁹

The Law on Public Finance System (2008) sets the fundamental principles for public financial management.¹⁰ It gives the Minister of Economy and Finance responsibility for drafting the Annual Financial Law (national budget).¹¹ The 2014 national budget is totaled at 3.5 billion US dollars.¹² This represents a 13 per cent overall increase from 2013.¹³ Security and defense was allocated 400 million US dollars, accounting for 13 per cent of the entire 2014 budget.¹⁴ Education was only allocated 280 million dollars, whilst health was provided 225 million dollars.¹⁵ The opposition and many non-governmental organisations regularly criticise the budget for allotting vastly inadequate sums for both health and education.¹⁶

The overall size of wage bill allocation in Cambodia is consistent with countries with a comparable per-capita GDP.¹⁷ Wage outlays for public sector staff have been steadily increasing since 2007 and rose sharply in 2008 and 2009.¹⁸ However, the proportion of the wage bill spent on defence and security is oversized and the

2008/2009 rise was mainly due to increases for defence related staff.¹⁹ The prioritisation for defence and security due to Cambodia's recent border conflict with Thailand²⁰ has left limited space for increases in the pay of other civil service employees.²¹ In fact, if defence and security is removed, the wage bill for the remaining civil service is lower than for countries with comparable per-capita GDP.²²

Overall, public servants receive low salaries which cannot adequately support their daily living requirements.²³ Lower level public servants receive on average 40 US dollars per month.²⁴ The average base salary for civil servants across the board is 105 US dollars per month.²⁵ Salaries are set by ministries according to relevant legislation. The Sub-Decree on the Organisation and Functioning of the Ministry of Health (1997) for instance, states that the Ministry's Department of Personnel shall be responsible for organising labour fees (salaries).²⁶

The World Bank has raised doubts over whether certain sectors' wages have been adequately prioritised.²⁷ The proportion of wages allocated for education for example has decreased since 2007, despite the fact that employees in the sector have increased.²⁸ The inadequacy of teachers' salaries is a source of widespread discontent. For example, on World Teachers' Day in October 2013, teachers gathered at Freedom Park in Phnom Penh to call for an increase in public teachers' salary to 1 million riel per month (approximately 250 US dollars). The teachers also called for better resourced schools.²⁹

Not reflected in the official public sector wage data are additional allowances. The World Bank notes that allowances³⁰ dominate total remuneration of civil servants.³¹ Base wages account for only 44 per cent of total remuneration of civil servants in Cambodia compared with up to 90 per cent in more industrialised countries.³² In addition, large salary supplements supported by foreign donors have not generally been included in wage figures.³³ These include the Merit Based Pay Initiative which the Government terminated in 2009 due to concerns that it promoted equal pay for unequal work.³⁴ The scheme was replaced

by the solely donor-financed Priority Operating Costs (POC).³⁵ Sub-decree No. 66 defines a POC as a lump-sum payment attached to development goals. It is separate from salaries and salary supplements and is provided to public servants who work within the framework of development cooperation.³⁶

Insufficient resources adversely affect the delivery of public services. In the health sector for instance where institutional financial challenges remain,³⁷ limited capacity,³⁸ staff shortages,³⁹ and insufficient medical supplies result in public health centres being unable to adequately provide crucial services.⁴⁰ Consequently, private healthcare providers have become more common, charging higher fees and attracting staff that would otherwise have worked in the public healthcare facilities.⁴¹

The Government has implemented across the board salary increases to respond to the shortfalls over the last decade.⁴² Nevertheless, these have not been sufficient.⁴³ It takes many years to ensure that salary reforms are fiscally sustainable.⁴⁴ It also involves complex reorganisation of finances, converting sizeable off-budget additions into base wages.⁴⁵ Yet the ultimate consequence of consistently low wages is that the public sector struggles to attract and retain motivated, talented staff. This underscores the need for the Government to prioritize renumeration of their employees adequately.⁴⁶

4.1.2 INDEPENDENCE (LAW)

SCORE: 25

To what extent is the independence of the public sector safeguarded by law?

Several legal provisions exist that safeguard the independence of the public sector. Nevertheless, these laws do not cover all aspects of independence of the public sector and some provisions contain loopholes.

The Common Statute of Civil Servants (1994) requires civil servants to be neutral when exercising their functions.⁴⁷ This means that when civil servants are acting in their official capacity they must not work for or against any political candidate

or political party.⁴⁸ Moreover, they are forbidden to use state resources to undertake political activities.⁴⁹

Four employment categories, A to D, exist for the civil service. Each has minimum requirements that a candidate must meet in order to be hired.⁵⁰ Moreover, the recruitment of civil servants is to be undertaken through competitive examination. This is only a 'principle', however,⁵¹ so it may not necessarily be enforced. Moreover, there are no general rules concerning the content of the competitive examinations.⁵² Hence, the objective criteria for the appointment of public sector employees are limited and do not fully prevent political interference.

Whilst no specified institution to protect public sector employees against arbitrary dismissals exists, there is a due process for disciplinary sanctions, including dismissal.⁵³ If a civil servant's misconduct is considered severe enough, a disciplinary inquiry must be undertaken according to Sub-Decree no. 10 on Establishing Procedures for Imposing Disciplinary Sanctions on Civil Servants (1997).⁵⁴ The inquiry's findings are to be examined by the head of the relevant institution who may then decide whether to dismiss the case or bring it before a disciplinary council.⁵⁵ Once the case is received, the disciplinary council reviews it and votes by secret ballot on the disciplinary action to be taken.⁵⁶ This process, if followed, would safeguard public sector employees from being arbitrarily dismissed.

4.1.3 INDEPENDENCE (PRACTICE)

SCORE: 25

To what extent is the public sector free from external interference in its activities?

Commendable efforts have been made to decentralise power to sub-national administrations. However, further up the public sector hierarchy, the ruling political party regularly interferes in the activities of the public sector.

Commendable initiatives have been made by the Government and public sector on decentralisation and deconcentration (D&D) of power to sub-national administrations. To this

end, Commune Councils were established in every province in 2002.⁵⁷ More recently, decentralisation has been a cornerstone of the Government's Rectangular Strategy for Growth. The 2013-2018 strategy (Phase III) prioritises implementation of the "National Program for Democratic Development at the Sub-National Level 2010-2019". This includes focusing on further expansions of One Window Service Offices (OWSOs),⁵⁸ as well as empowering sub-national administrations to supervise and manage civil servants on the sub-national level.⁵⁹

Yet, to claim that the recruitment and promotion practices of the public sector are independent from political interference would be to say that the public sector is not politicised.⁶⁰ In practice, all public sector institutions are politicised from the top as the upper level ministerial positions are appointed and the impact trickles down through the institutional hiring structure.⁶¹

Appointments lower down the hierarchy tend to be based on nepotism.⁶² Formally, public sector positions are advertised and anyone can apply.⁶³ Yet those who actually get jobs tend to have friendships or familial ties to the senior staff in the affiliated ministry.⁶⁴ It is not uncommon to have multiple members of the same family in one ministry or department.⁶⁵

Further underlining the lack of independence of the public sector is its closeness to the ruling Cambodian People's Party (CPP). A change in government has not occurred in Cambodia for decades; Prime Minister Hun Sen has been in power since 1985.⁶⁶ When the first elections were held in 1993, following the United Nations transitional period after years of turmoil throughout the 1970s and 1980s, royalist party FUNCINPEC won seven more seats than CPP. Yet having already exercised substantial political power for nearly a decade, Hun Sen and the CPP refused to admit defeat.⁶⁷ As a result, a coalition was formed between the CPP and FUNCINPEC as a means to diffuse post-election tensions. It did not take long though, before the royalist party lost its voice in decision-making.⁶⁸ Since the initial elections, the entire civil service remained under the CPP's control;⁶⁹ this is one of the key ways the

party has retained power ever since.

Public sector institutions and employees remain close to the ruling party at all levels of the system.⁷⁰ If public sector employees have not already joined the ruling party, they are asked to do so once they reach a certain level of seniority.⁷¹ Hence, recruitment and promotion processes, as well as general activities of the public sector are inseparably bound up with the ruling party's interests.

Due to this, public sector employees are generally limited in expression of political views, particularly if they differ from the ruling party's perspective.⁷² It is not considered safe to openly express political opinions due to fear of reprisals from senior staff⁷³ who, as mentioned above, must (in practice) be members of the CPP.⁷⁴ Hence, opinions and ideas expressed within the public sector rarely diverge from those of the ruling party, limiting independence, debate and democratic decision-making within the public sector.

to Information has not been passed and existing provisions contain loopholes.

Appointed public officials and civil servants must declare their assets to the Anti-Corruption Unit (ACU)⁷⁷ 30 days after taking office and every two years before the 31st of January thereafter.⁷⁸ Declaration of assets and liabilities must include all those belonging to the public official, both inside and outside the country.⁷⁹ The Chairperson of the ACU can decide whether to open the sealed declaration as he or she deems necessary.⁸⁰ As a result, each asset declaration is not necessarily verified.⁸¹ The law does not require asset declarations to be made public nor does it require any assets belonging to public servants' family members to be declared. Moreover, not all public servants must make asset declarations; the law only applies to appointed public officials with a specific mandate and civil servants who are appointed by Royal decree or sub-decree.⁸² Hence, the asset declaration requirement does little to

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Civil servants in their official capacities reportedly campaigned for the ruling party in the lead-up to the July 2013 National Assembly election.⁷⁵ This, as well as the use of state resources by civil servants during the campaigning (despite legal prohibitions), blurred the lines between public sector impartiality and political interest.⁷⁶

4.2 GOVERNANCE

4.2.1 TRANSPARENCY (LAW)

SCORE: 50

To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?

While a number of laws and provisions exist, they do not cover all aspects related to the transparency of the public sector. A Law on Access

promote the transparency of public officials.

No access to information law has been passed in Cambodia indicating a limit to the legal safeguards regarding public sector transparency. Despite this, multiple laws, regulations, and policies contain provisions requiring official information to be made publicly available. For instance, the Government's Strategic Plan on Social Accountability for Sub-National Democratic Development prioritises improving 'transparency and access to ... information on standards, budgets and performance'.⁸³ To this end, the NCDD will strengthen sub-national administrations to understand and implement public disclosure requirements.⁸⁴ The guidelines will include which information on standards, budgets, and performance is made available; how the information

The National Committee for Sub-National Democratic Development (NCDD) oversees the One Window Service Office (OWSO) initiative which has been hailed as a remarkable ‘window of transparency’. The OWSO initiative has established decentralised administrative offices to which 186 public services have been delegated. The official prices for the services are displayed on the OWSO wall for all to see, limiting the likelihood of an unofficial fee being sought or offered.

will be presented so it is easily understood; and how the information should be disseminated.⁸⁵

Moreover, the Law on Archives (2005), which regulates the management and maintenance of information in government archives,⁸⁶ permits ‘publicised documents’ to be viewed by members of the public for research purposes.⁸⁷ The term ‘publicised documents’ is not clearly defined, however, and those not considered to be publicised documents cannot be accessed for 20 years after the date of creation.⁸⁸ Thus, the lack of a clear definition presents the opportunity for documentation to be arbitrarily kept private.

The Press Law (1995) also contains provisions relating to accessing information. Specifically, it provides for the right of the press to ‘access information in government held records’.⁸⁹ A request must be sent to the relevant institution, specifying the information required. The institution is then obliged to respond within 30 days of receiving the request.⁹⁰ The downside is that this law only applies to members of the press; hence, unlike journalists, ordinary Cambodian citizens cannot demand access to government records.⁹¹

According to the Common Statute of Civil Servants (1994) public sector vacancies are required to be advertised publicly to ensure fair and open competition. Specifically, the recruitment of civil servants is expected to be undertaken through competitive examination⁹² which must be publicised three months before the examination date.⁹³

The public is only able to obtain certain relevant information on the organisation and functioning of the public sector. Detailed breakdowns of sub-national level public spending, procurement contracts and official costs are publicly available. Yet public access to information is considerably limited in other areas of the public sector.

Citizens have varied access to information on public sector activities and records. In some cases, the public sector demonstrates very good practice, making a great deal of information available. Commendable are the initiatives undertaken by the NCDD. The NCDD is an inter-ministerial body which promotes democratic development through decentralisation reforms throughout Cambodia. It maintains a publicly available commune database detailing expenditure at the local level.⁹⁴ The NCDD website also displays details of local level public procurement projects. For each project, details on whether or not bidding for the contract occurred is given; as well as which date bidding opened, how many contractors competed and when the contract was awarded.⁹⁵

The NCDD also oversees the OWSO initiative which has been hailed as a remarkable ‘window of transparency’.⁹⁶ The OWSO initiative has established decentralised administrative offices to which 186 public services have been delegated.⁹⁷ The official prices for the services are displayed on the OWSO wall for all to see, limiting the likelihood of an unofficial fee being sought or offered.⁹⁸ Moreover, financial records are kept according to internal procedures and disclosed to the public upon request.⁹⁹

The transparent practices of the OWSO remain fairly unique in the Cambodian context. Public access to information is notably limited in other areas of the public sector. In its 2012 report on Cambodia, Global Integrity (a non-profit

4.2.2 TRANSPARENCY (PRACTICE)

SCORE: 25

To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?

organisation that champions transparent and accountable governance) highlighted the void of public access to official information.¹⁰⁰ ‘Public Requests for Government Information’ was particularly weak, scoring a mere two out of 100.¹⁰¹ In particular, disclosure of information requested by citizens is given at the discretion of officials and is very often denied on the basis of supposed national security concerns or heavy bureaucracy.¹⁰² In some cases information is reportedly provided in exchange for money.¹⁰³ The Cambodian Center for Independent Media (CCIM) found in a 2012 survey that of the 1522 nationally surveyed respondents, 32.5 per cent claimed they had faced difficulties when seeking government information.¹⁰⁴ Moreover, the Cambodian Center for Human Rights (CCHR), found that responses to press requests for information have been inconsistent,¹⁰⁵ despite the Press Law safeguarding press access to government records. Notably absent from the public sector is the public disclosure of officials’ assets. In line with the Law on Anti-Corruption, these are kept highly confidential.

Public sector vacancies are generally advertised through job agencies and websites such as the Government’s National Employment Agency.¹⁰⁶ Nevertheless, advertising jobs does not alone guarantee fair and open competition. Even though the position might be advertised, the actual appointment of staff sometimes depends on familial and friendship connections.¹⁰⁷ As previously mentioned in the independence section, it is not uncommon to find multiple members of one family working in the same Ministry or department.¹⁰⁸ Although there exists a veneer of transparency in the public sector hiring process, the sector remains famously nepotistic and unsuccessful candidates regularly cite a lack of connections for their failure to obtain public positions.

4.2.3 ACCOUNTABILITY (LAW)

SCORE: 50

To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?

While a number of laws and provisions exist, they do not cover all aspects of accountability of public sector employees and some provisions contain loopholes.

Provisions for managing complaints in public procurement procedures include several layers of checks and balances. The institutions involved in the bidding process are first in charge of receiving complaints from bidders at any stage of the process.¹⁰⁹ If the way in which the institution addresses the issue is not satisfactory, the complainant can seek further investigation and resolve from the Ministry of Economy and Finance.¹¹⁰ If the decision made by the Ministry is still deemed unacceptable, the issue can then be taken to the Judiciary to be dealt with through the courts.¹¹¹

Furthermore, public sector employees can be charged with extortion, bribery, and corruption in accordance with the Law on Anti-Corruption (2010). Article 3 of the law is applicable to all forms of corruption in all levels and sectors throughout Cambodia,¹¹² including the public sector. Moreover, if a civil servant releases official facts which they were not authorised to disclose, they may face disciplinary sanctions.¹¹³

Both external and internal audit mechanisms for public sector ministries and agencies are in place as provided for in the Law on Audit (2000).¹¹⁴ External audits are undertaken by the National Audit Authority (NAA).¹¹⁵ Internal audit departments provide a further layer of accountability by undertaking in-house financial audits.¹¹⁶ Public Sector ministries and institutions are legally bound to prepare financial statements which are used as the basis of the Government’s annual consolidated financial statement.¹¹⁷ The Ministry of Justice is obligated to prepare the consolidated statement and submit it to the legislature for review.¹¹⁸

Whilst Cambodia does not have a national ombudsman, a number of mechanisms for citizen complaints and redress are in place. Two commendable pathways for citizens’ complaints are on the sub-national level: the District Ombudsman and Provincial Accountability

Working Group (PAWG).¹¹⁹ The District Ombudsman is attached to the OWSO and acts as an accountability mechanism to prevent maladministration and unsolicited fees in the OWSO.¹²⁰ The PAWGs process citizens' complaints regarding the management of commune/sangkat funds.¹²¹ Complaints can be deposited in any of the 2,545 PAWG boxes placed across the country.¹²² If a submitted complaint falls within the mandate of the PAWG then further investigation is undertaken.¹²³

However, the complaints system is generally fragmented and confusing, with different mechanisms through which to make complaints about various aspects of the public sector. Further public sector complaints receiving and processing mechanisms include but are not excluded to: the Senate Commission on Human Rights; Reception of Complaints; Investigation and National Assembly-Senate Relations;¹²⁴ the National Authority on Land Conflict Resolution for land dispute complaints;¹²⁵ the ACU for complaints relating to corruption of public officials;¹²⁶ and the National Cadastral Commission which handles complex complaints regarding land ownership disputes, specifically for untitled land.¹²⁷

Limiting accountability of the public sector is the lack of any whistle-blowing legislation. The Law on Anti-Corruption (2010) provides a loose duty of the ACU to ensure that corruption whistleblowers are kept secure.¹²⁸ On the contrary, Article 41 of the Law on Anti-Corruption enables complainants of a corruption-related crime to be imprisoned from between one and six months if no evidence is found to support their claim.¹²⁹

4.2.4 ACCOUNTABILITY (PRACTICE)

SCORE: 25

To what extent do public sector employees have to report and be answerable for their actions in practice?

A few provisions are in place to ensure that public sector employees have to report and be answerable for their actions. These, however, are not widespread across the entire sector.

Several public sector accountability mechanisms

are worth noting. In particular, the award-winning Phnom Penh Water Supply Authority (PPWSA) has demonstrated exemplary accountable management, reducing corruption in the sector and providing reliable water to the people of the capital city.¹³⁰ In addition, the District Ombudsmen have created accountability mechanisms to prevent maladministration at the OWSOs,¹³¹ by receiving and processing related complaints submitted by citizens.¹³² On top of this, the PAWG investigate citizens' complaints relating to sub-national administrations.¹³³

Whilst the Government's Rectangular Strategy for Growth prioritises accountable governance, the aforementioned initiatives remain islands of change that have not yet broadly spread across the public sector. Beyond the transparent PPWSA, OWSO and PAWG, public sector officials have reporting lines up the institutional hierarchy enabling some level of oversight. Nevertheless, the credibility of the relevant reports and their actual oversight function is not clearly defined.¹³⁴ Moreover, institutional reports are not necessarily released to the public, providing limited possibility for checks and balances. Despite existing complaints and reporting mechanisms, people may be hesitant to bring forward complaints, given that there is also no legislation to guarantee whistle-blower protection and the entire public sector is closely affiliated with the ruling party.¹³⁵

Aside from the scattering of publicly known cases of misconduct involving high-level public servants,¹³⁶ information on cases involving lower level public servants is not made publicly available.¹³⁷ Spokesperson for the Council of Ministers, H.E. Phay Siphon, explained in an interview that if a public servant is not adequately performing their role, they would not be publicly disciplined due to the current lack of an appropriate administrative court.¹³⁸ Instead their role or duties would be internally altered.¹³⁹ An internal disciplinary committee would decide on the mode of punishment.¹⁴⁰ For instance, an official guilty of misconduct may be moved to a less favourable post in which they have less access to resources.¹⁴¹ Thus, the public servant would be quietly punished whilst enabling them and their associates to save

Many members of the public sector are aware of corruption taking place in their workplace but do not feel that they have the right or ability to speak up and report it, or provide advice to those performing the wrongdoing. This appears to occur even though many public sector employees receive training on how to report corruption within their workplace.

face.¹⁴²

4.2.5 INTEGRITY MECHANISMS (LAW)

SCORE: 50

To what extent are there provisions in place to ensure the integrity of public sector employees?

Whilst several anti-corruption legal provisions exist to safeguard the integrity of public sector employees, they are not comprehensive.

The Law on Civil Servants contains a general expectation of civil servants' behaviour: civil servants are required to respect the law¹⁴³ and refrain from any actions that would undermine the dignity, honour, and integrity of their position.¹⁴⁴ This includes using the rights and authority of their position for personal profit.¹⁴⁵ These expectations are only loosely explained, however, so may be limited in their ability to safeguard the integrity of public sector employees.

The Criminal Code includes provisions criminalising the giving and receiving of bribes by public officials¹⁴⁶ and members of the medical board of practitioners,¹⁴⁷ as well as general corruption provisions that are applicable to all citizens.¹⁴⁸ The Law on Anti-Corruption also criminalises the bribery of foreign public officials,¹⁴⁹ illicit enrichment through corruption,¹⁵⁰ and acts that benefit from corruption proceeds.¹⁵¹

While appointed public sector employees are among those required to declare their assets every two years, this information is not made public¹⁵² and the declaration of assets remains unseen unless a corruption claim is investigated.¹⁵³ On top of this, the law does not require the disclosure of assets registered under the names of the public servants' immediate family members. Hence, the asset declarations provisions provide limited scope for ensuring the integrity of public servants.

4.2.6 INTEGRITY MECHANISMS (PRACTICE)

SCORE: 0

To what extent is the integrity of public sector employees ensured in practice?

Integrity mechanisms for ensuring ethical behaviour of public sector employees are limited in practice. Corruption is entrenched within the widespread patronage system in the public sector.¹⁵⁴

Existing regulations are not effective in ensuring the ethical behaviour of public sector employees; bribery in the public sector is widespread. Transparency International's Global Corruption Barometer 2013 shows that in a 12 month period 62 per cent of respondents in Cambodia reported paying a bribe to the Registry and Permit Services; 57 per cent to the Land Services; and 38 per cent to Medical and Health Professionals.¹⁵⁵

Many members of the public sector are aware of corruption taking place in their workplace but do not feel that they have the right or ability to speak up and report it, or provide advice to those performing the wrongdoing.¹⁵⁶ This appears to occur even though many public sector employees receive training on how to report corruption within their workplace.¹⁵⁷

Several structural factors limit the potential for public sector employees to prevent and report corruption. An embedded intra-elite patronage system exists vertically and horizontally across political institutions in Cambodia.¹⁵⁸ This may be because Cambodian society was effectively shattered under the Khmer Rouge.¹⁵⁹ Social safety nets were lost,¹⁶⁰ hence political networks may have subsequently been entrenched as a means of social protection. The current CPP power-holders are largely the same individuals that attained power in 1979 when the Khmer Rouge

regime was overthrown.¹⁶¹ In each of the national elections since the United Nations Transitional Authority (1992-3), the CPP's grip on power has remained, both through brute force and gaming the electoral system.¹⁶² Today, power, status, and access to lucrative opportunities depend on association with powerful office-holders.¹⁶³ Protection, status, and lucrative opportunities are restricted without political connections and support.¹⁶⁴ For this reason, even if individual public sector employees would like to behave with more integrity, the system in which they exist provides few opportunities to initiate change without them (and their families) becoming ostracised, losing status or losing access to financial resources.

4.3 ROLE

4.3.1 PUBLIC EDUCATION

SCORE: 50

To what extent does the public sector inform and educate the public on its role in fighting corruption?

A number of proactive steps are being undertaken by the public sector to educate the public on corruption and on citizens' roles in fighting corruption.

Fighting corruption continues to be a priority of the Government in its current legislature (2013-2018) as stated in its Rectangular Strategy for Growth Phase III.¹⁶⁵ Building on the steps made by the Government in its fourth legislature (2008 – 2013)¹⁶⁶ the Rectangular Strategy for Growth prioritises 'strengthening education to "stop corrupt practices"'.¹⁶⁷ This includes mainstreaming awareness of the Law on Anti-Corruption and raising awareness of the consequences of corruption particularly among the youth.¹⁶⁸

In the pursuit of educating the public on corruption and how to curb it, a number of initiatives have been undertaken on both the national and provincial level. Sub-national administrations have organised trainings to disseminate knowledge about the Law on Anti-Corruption, focusing on asset declarations and types of corruption.¹⁶⁹ In addition, the Ministry of Education, Youth and Sport (MoEYS) in coordination with the ACU (and with the support

of Transparency International Cambodia) is working on developing a curriculum to promote anti-corruption in schools.¹⁷⁰

4.3.2 COOPERATE WITH PUBLIC INSTITUTIONS, CIVIL SOCIETY ORGANISATIONS, AND PRIVATE AGENCIES IN PREVENTING/ ADDRESSING CORRUPTION

SCORE: 50

To what extent does the public sector work with public watchdog agencies, business, and civil society on anticorruption initiatives?

Public institutions have undertaken multiple initiatives to help reduce corruption, in cooperation with businesses, international organisations, and civil society organisations. Despite some successes, good practices have not yet spread across the entire Public Sector.

With the aim of becoming more transparent in tax-collection activities, the General Department of Taxation for the Ministry of Economy and Finance partnered with Aceda Bank Plc. for the sale of vehicle tax stamps.¹⁷¹ The initiative, which began in 2012, transferred the role of selling tax stamps for all forms of transportation to Aceda.¹⁷² The move was done to ensure greater accountability through closer monitoring of tax stamp sales, providing checks and balances on corrupt officials¹⁷³ who may otherwise have demanded bribes. In addition, the Tax Department has further cooperated with Aceda so that people can now pay their taxes electronically to the account of the Tax Department through the Bank's online services.¹⁷⁴ This likewise minimises the opportunities for corrupt officials to demand bribes.

Furthermore, public institutions, particularly the Ministry of Interior and the NCDD, have cooperated with the World Bank in the Demand for Good Governance Project (DFGG). This project running from 2009 until 2014 is tasked with strengthening public administration, ultimately leading to more accountable, less-corrupt governance.¹⁷⁵ Specifically, one of the components of the project has established the OWSOs.¹⁷⁶ The OWSOs work to reduce corruption by publicly

displaying the fees for various services in the office.¹⁷⁷ Hence, this transparent approach enables people to ensure they are not being charged additional informal fees for services.

Notable examples exist of the public sector working with civil society organisations to promote integrity and reduce corruption. For example, the Ministry of Interior worked with the Democracy Resource Center for National Development (DND), a local non-governmental organisation,¹⁷⁸ to partner with OWSOs in Kampong Cham, Kratie, and Prey Veng to monitor and improve their performance.¹⁷⁹ Using citizen report cards and exit surveys, the partnership revealed practices where OWSO staff behaviour was non-compliant with accountability and transparency standards.¹⁸⁰ Consequently, actions were taken to sanction underperforming staff, resulting in improvements in the accountability of service delivery.¹⁸¹ Moreover, commune councils have worked constructively with external actors to demand greater accountability in schools.¹⁸² A successful project has been the Amara and Youth Resource Development Program (YRDP), a non-governmental organisation (NGO) that collaborated with commune councils in Battambang to stimulate public demand for improvements in teachers' performance.¹⁸³ Despite these successes, civil society's role in demanding accountability from the Government still has room for improvement. Typically, related organisations have assisted the Government in service-delivery rather than demanding accountability from it.¹⁸⁴ Solid understanding and commitment to social accountability, as well as mechanisms to demand it are not yet widespread among civil society groups.¹⁸⁵

4.3.3 REDUCE CORRUPTION RISKS BY SAFEGUARDING INTEGRITY IN PUBLIC PROCUREMENT

SCORE: 50

To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including review and complaint mechanisms, and meaningful sanctions for improper conduct by both suppliers and public officials?

The introduction of the 2012 Law on Public Procurement has provided a foundational framework to standardise public procurement and is gradually being implemented in practice. Nevertheless, the law contains several loopholes.

The Law on Public Procurement was unanimously passed in the legislature in 2012. Previously, public sector procurements had been governed by fragmented legal provisions contained within several prakas, sub-decrees and internal regulations.

The law requires procurement entities to develop an annual procurement plan,¹⁸⁶ aiding objective and transparent processes. To implement the plan, Articles 8 and 9 state that the procuring entities should form a 'procurement committee'¹⁸⁷ and a 'procurement unit' adequately staffed with a clear structure for undertaking activities.¹⁸⁸ With the aim of ensuring accountability, the law requires open bidding as a general rule in the procurement of goods, works and services. Exceptions to open bidding are regulated by the law and kept to a minimum. The law also demands that standard bidding documents be used and formulated by procurement units.¹⁸⁹ These are reportedly used in practice.¹⁹⁰ The law also provides rules to ensure the objectivity of the contractor selection process.¹⁹¹ These include providing all bidders with 'fair and equal' chances to participate (although 'fair and equal' are not defined in this instance). In order to promote transparency, the law requires amendments to the bidding process to be shared publicly.¹⁹²

In practice, amendments, bid advertisements, and relevant documents appear on the websites for the Ministry of Economy and Finance, relevant multi-lateral organisation's websites, and local bulletin boards.¹⁹³

Whilst the law no doubt represents a positive step in regulating public procurement, it is not entirely comprehensive. Presenting a limitation to accountability, the law does not mention any maintenance of registers or statistics on contracts. Consequently, public procurement over a period of time cannot easily be monitored to evaluate if the law is being complied with and if fair practices

are being undertaken. Aside from alerting all bidders about the outcome of the competition, the law makes no requirement of public dissemination of procurement decisions, although these are still usually made public in practice.¹⁹⁴ The law does not mention that the procurement committee and unit should be independent. In fact, both bodies are under the control of the procuring entity.¹⁹⁵ Therefore, authority may be centralised with one person overseeing all aspects of procurement. This limits the opportunities for effective checks and balances.

A report released by the Global Fund in 2013 detailed significant acceptance of bribes in exchange for public procurement contracts associated with the Ministry of Health.¹⁹⁶ This indicates that existing accountability mechanisms to monitor public procurement practice need to be strengthened.

RECOMMENDATIONS

1. Ensure recruitment into the public sector is open to all regardless of political affiliation, as a step towards safeguarding the sector's impartiality.
2. Public agencies and ministries across the sector should adopt the good practices of the National Committee for Sub-National Democratic

Development (NCDD) in publishing details of expenditure, procurement contracts, and bidders online and available to all.

3. Establish an independent committee to govern all public servants. This committee should transparently set out standards for recruitment, promotion, career development, and salary structure. The committee should also monitor implementation of the standards to ensure that the objective and professional processes are followed across the public sector.
4. Educate the broader public about the difference between the Government, public sector, and private sector. With greater understanding of what to expect from different institutions, people are more likely to enact checks and balances and call for accountability from power-holders.
5. Civil society and the donor community must work together with the Government and public sector to ensure the political impartiality of public servants. Civil servants must not campaign for any political party in their official capacity or use state resources to politically campaign at any time. Civil society and donors must take measures to monitor and hold the public sector to account on this.

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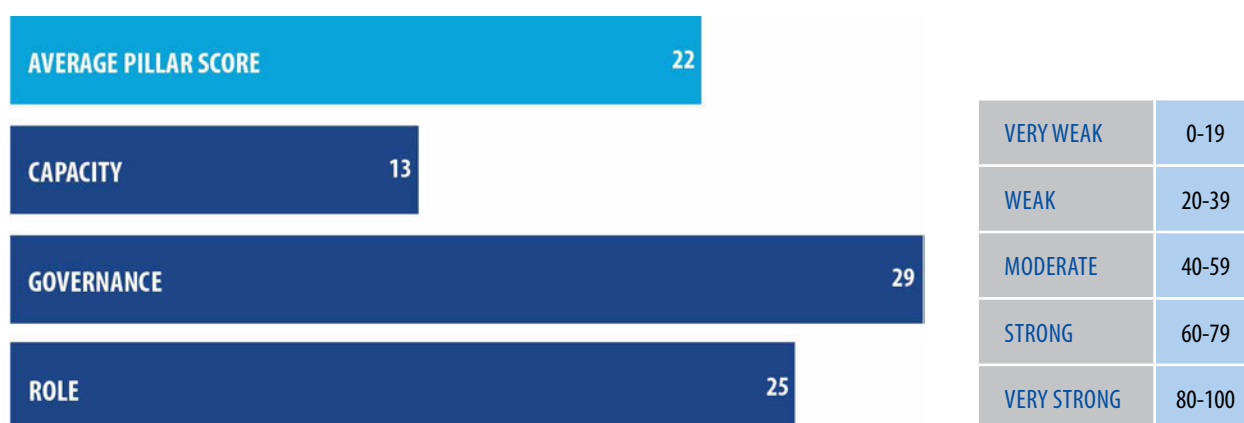
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VII. NATIONAL INTEGRITY SYSTEM

5. Law Enforcement Agencies



SUMMARY

Law enforcement in Cambodia is undertaken by the national police force, the Royal Gendarmerie (referred to as ‘military police’), and public prosecutors. The functioning, structure, and mechanisms of these three institutions is provided under various laws.

Accountability mechanisms for the national police and Gendarmerie are essentially provided under Declaration No. 006 of the Discipline of the National Police Forces (1995) and the Law on the General Status of Military Personnel (1997). The Criminal Code of Procedure (2007) stipulates certain conditions where prosecutors are to provide information to relevant stakeholders regarding their activities.

The Law on the Status of Judges and Prosecutors, passed in May 2014, provides limited legal mechanisms to safeguard the independence, transparency, and accountability of public prosecutors.¹ Further limiting the integrity of law enforcement agencies is the inadequacy of financial resources at their disposal. As a consequence, low level corruption and bribery is commonplace, impeding public trust in the various law enforcement institutions. Moreover, excessive use of force by both the national police and Gendarmerie, and the lack of credible investigations into such cases, highlights the limited accountability of these agencies.

The diagram at the beginning of this chapter provides the scores for the law enforcement agencies in terms of their capacity, governance,

and role. The remainder of the section provides a qualitative evaluation and explanation of the scores.

STRUCTURE AND ORGANISATION

The law enforcement agencies assessed under this pillar include those that prevent and detect crime and maintain public order: the national police force and Gendarmerie. In addition, this pillar also provides a discussion of the rules and regulations that apply to public prosecutors who contribute to law enforcement by bringing claims to the court system.

The national police force, consisting of approximately 64,000 officers, is situated under the authority of the Ministry of Interior.² The General Commissariat of National Police governs the national police and covers six departments: security, public order, transport, border, administration, and judicial police.³ At the sub-national level there are 24 Provincial and Municipal police Commissariats, 193 District and Quarter Police Inspections, and 1621 Administration Police Posts.⁴ The Provincial Police Commissariat is under the direct guidance of the Provincial Governor.⁵ Additionally, District Police fall under the general guidance of the District Governor, but work under technical command of the Provincial Police Commissariat.⁶

The Gendarmerie falls within the chain of command from the Royal Cambodian Armed Forces, under the authority of the Prime Minister, and housed within the Ministry of National Defence.⁷ The Gendarmerie Department works within a military system of rank and superiority, with all functions overseen by a commander.⁸ They undertake a variety of policing activities, exercising nationwide jurisdiction over both civilians and military personnel.⁹ Furthermore, the Gendarmerie is mandated to maintain security and public order, and ensure respect of the law.¹⁰ The Gendarmerie has a general inspector who directly controls the operations and use of the Gendarmerie according to law. The general inspector provides advice to the Prime Minister regarding the policies and functions of the Gendarmerie.¹¹

The Criminal Code of Procedure (2007) defines the structure and role of public prosecutors. Prosecutors are responsible for bringing charges of criminal offences against persons to the courts, issuing conclusions for courts to enforce laws and implementing decisions on criminal offences.¹² Prosecutors are divided across the Supreme Court, Court of Appeal and Court of First Instance.¹³ Both the Supreme Court and Court of Appeal consist of one prosecutor general, deputy prosecutors and additional prosecutors.¹⁴ The Court of First Instance includes prosecutors and deputy prosecutors.¹⁵ All prosecutors are employees of the courts and are therefore under the administration of the Ministry of Justice, which has the duty of ensuring the functioning of the courts and all prosecutors.¹⁶

Judicial police (consisting of police officers, police agents and other public officials granted such powers by law) assist public prosecutors in the investigation of criminal matters.¹⁷ Judicial police fall under the supervision and control of the Prosecutor General of the Court of Appeal.¹⁸ Their primary investigative function is to assist courts and prosecutors, rather than enforcing the law upon individuals.¹⁹ While the judicial police are mentioned in this report, they are not specifically assessed as a law enforcement agency under this pillar.

ASSESSMENT

5.1 CAPACITY

5.1.1 RESOURCES (LAW)

SCORE: 50

To what extent are there laws seeking to ensure appropriate salaries and working conditions of the law enforcement agencies?

There is an absence of legislation determining working conditions and budget allocation of the law enforcement agencies in Cambodia. However, information on the salaries of national police, Gendarmerie, and prosecutors are provided under various sub-decrees.

The annual budgets for the national police, Gendarmerie, and public prosecutors are subsumed under different ministries, specifically the Ministry

of Interior (Public Security section), Ministry of National Defence, and Ministry of Justice.²⁰ The annual national Budget Law only provides aggregate figures for each ministry,²¹ making it difficult to ascertain how much of the budget is

prosecutors varies depending on their seniority. For example, the General Prosecutor attached to the Supreme Court has a monthly allowance of 2.5 million riel (629 US dollars), whilst the Deputy General Prosecutor at the same court has an

There have been cases where national police officers have had an insufficient budget to conduct investigations, leading to a number of undesirable outcomes: asking complainants to finance the investigation; to paying for the investigations from their own pocket; to not conducting the investigation at all.

allocated to the operations of each law enforcement agency. There do not appear to be legal provisions that would guarantee an operational budget to ensure that the police and Gendarmerie can perform their roles effectively. The Law on the Status of Judges and Prosecutors provides minimal further legal regulation regarding wages, working conditions and budget determination of the Prosecutorial Department.²²

National police salaries are calculated according to experience and rank, in reference to Sub-Decree No. 204 on Payment of Functional Salary to the National Police Officers (2008) and Sub-Decree No. 04 on the Basic Salary Adjustments of National Police Officers (2009). In accordance with these sub-decrees, average monthly police salaries in 2013 ranged from 235,600 riel (57 US dollars) for the lower staff sergeant positions to 510,720 riel (123 US dollars) for police captains.²³

Military personnel, such as the Gendarmerie, have the right to a salary, determined by rank, knowledge, role, service, and seniority.²⁴ In addition, supplementary allowances can be provided to military personnel based on the nature of tasks and exposure to risk undertaken as part of their duty.²⁵ There is, however, no further explanation of how to determine supplementary allowances, which could potentially lead to supplementary payments to Gendarmes based on arbitrary criteria.

The salaries of judges and prosecutors were increased in 2003 by the Sub-Decree on Judge's Allowances (2002).²⁶ The monthly allowance for

allowance of 2.2 million riel (553 US dollars).²⁷ At lower levels of seniority, the prosecutors attached to the Supreme Court and Appeal Court are paid 1,700,000 Riel (427 US dollars) per month.²⁸ The salary grade of prosecutors has recently been increased under Royal decree.²⁹

5.1.2 RESOURCES (PRACTICE)

SCORE: 0

To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

Law enforcement agencies generally have inadequate financial resources. Consequently, operations cannot always be undertaken effectively.

The money allocated to law enforcement agencies under the national budget is considered to be inadequate; it covers salaries, but does not provide an operations budget to effectively undertake their operations.³⁰ There have been cases where national police officers have had an insufficient budget to conduct investigations, leading to a number of undesirable outcomes: asking complainants to finance the investigation; to paying for the investigations from their own pocket; to not conducting the investigation at all.³¹

Of further note is the limited number of female police officers within the national police force. Female officers working for the national police force reportedly constitute less than five per cent of the total national police force.³² The lack of females undertaking police investigations has been suggested as one of the possible reasons why there

is a continual lack of capacity of law enforcement to combat crimes against women and children.³³

A further resource limitation is the low salary for law enforcement officials.³⁴ In accordance with the salary pay rolls set out under Sub-Decree No. 204 on Payment of Functional Salary to the National Police Officers and Sub-Decree No. 04 on the Basic Salary Adjustments of National Police Officers, the lowest ranked police officers make less than two US dollars per day. This is scarcely above the international definition of extreme poverty (one US dollar per day).³⁵ The majority of police officers' income is believed to not come from official salaries but rather from illicit sources of revenue such as bribe-taking.³⁶ Supporting this, 65 per cent of respondents to Transparency International's Global Corruption Barometer 2013 in Cambodia reported paying a bribe to the police in the last 12 months.³⁷ This highlights the limitations of trust and confidence that citizens have in the national police force.³⁸

Despite attempts to raise the salaries of judges and prosecutors to an average rate between 400 and 600 US dollars per month,³⁹ they are still considered too low to guarantee the lifestyle of a middle class family without supplementary income.⁴⁰ Given that an adequate income is a basic precondition for a professional and dedicated workforce,⁴¹ insufficient pay is understood to prevent law enforcement agencies from attracting suitably qualified and committed staff.⁴²

The technical equipment available to national police to undertake their duties is also considered inadequate.⁴³ Computer sets and software for crime database management have been provided in 24 municipal and provincial police headquarters through the Cambodian Criminal Justice Assistance Project (CCJAP) funded by Australian Department of Foreign Affairs and Trade (DFAT).⁴⁴ However, the functional longevity of computers and other technical equipment is considered to be short due to low maintenance skills in provinces.⁴⁵ Relying on donor support for technical equipment is an unsustainable strategy to ensure law enforcement agencies' have adequate access to resources of this kind. Indeed, if foreign donors provide the basic equipment, but sufficient

resources are not available to maintain them properly, issues around unreliable equipment may continue.

Donor support has also funded the provision of forensic kits and associated training for police investigations.⁴⁶ This aimed at limiting the number of public prosecutions that commence based solely on confessions, rather than physical evidence.⁴⁷ There have been mixed reviews, however, of the effectiveness of such training.⁴⁸ Issues regarding the lack of adequate evidence used for criminal prosecutions continue to be reported.⁴⁹

The institution website for the Gendarmerie provides reports on various military and skills training undertaken by the institution.⁵⁰ However, information regarding the salaries, operations budget, and other resources of the Gendarmerie were not accessible online or otherwise during the research of this report. It was therefore not possible to provide an assessment of resources that assist the Gendarmerie to undertake its operations.

5.1.3 INDEPENDENCE (LAW)

SCORE: 0

To what extent are law enforcement agencies independent by law?

The independence of law enforcement agencies in Cambodia is limited. Few legal safeguards are in place against nepotistic hiring practices and legal protection against political interference is also minimal.

By law, all public institutions and ministries in Cambodia must recruit their staff through fair and competitive examination-based recruitment procedures.⁵¹ There are, however, limited legal provisions that provide specific detail on recruitment procedures for the national police, Gendarmerie, and public prosecution.

The Department of Personnel and Professional Training recruit the national police force.⁵² There does not, however, appear to be any detail regarding professional criteria and procedures for recruiting national police officers. The absence of a law on the police force in Cambodia means that few legal

safeguards are in place to prevent political interference in its activities.⁵³ A proposed national police act will reportedly include provisions regarding merit-based recruitment and promotion of all police officials, yet the law remains in a draft form with no indication of when it is likely to be passed.⁵⁴

Recruitment criteria for Gendarmes must be provided by prakas issued by the Ministry of Defence.⁵⁵ Provisions regarding the promotions of military personnel, however, are provided under the Law on the General Status of Military Personnel (1997). Specifically, officers who wish to be promoted must ensure that their name is on the promotions list and promotions should occur in accordance with a minimum duration of completed service for each level of seniority.⁵⁶

The recently passed Law on the Status of Judges and Prosecutors states that prosecutors must go through the same training and apprenticeship process as judge students. Those that pass the training and an exam are put forth for selection by the Prakas of the Ministry of Justice on recommendation from the Supreme Council of the Magistracy to complete an internship.⁵⁷ If the internship is completed satisfactorily, the Supreme Council of the Magistracy appoints the candidate a public prosecutor by royal decree.⁵⁸ However, as the law has yet to be implemented its functionality is yet to be assessed.

The lack of precise specifications defining professional requirements for the recruitment of law enforcement officials in the country weakens the foundation of these institutions. Moreover, it offers limited safeguards against nepotistic hiring practices.

The separation of powers under the Constitution,⁵⁹ particularly the provisions stating that the judiciary is an independent power,⁶⁰ signifies that the public prosecution (housed under the Ministry of Justice) is free by law from any political interference. According to the hierarchy of the Prosecutor's Department, by law the Minister of Justice is able to: file complaints; issue a written injunction to the Prosecutor General to be included in the case file; request the prosecutor

to bring charges; and, make any conclusions deemed appropriate by the Minister.⁶¹ Hence, instead of simply providing advice, this provision allows the Minister of Justice to strongly influence the activities of the prosecutors, which may impede prosecutors' independence.

5.1.4 INDEPENDENCE (PRACTICE)

SCORE: 0

To what extent are law enforcement agencies independent in practice?

Law enforcement agencies are not independent in Cambodia in practice. The politicisation of law enforcement agencies, particularly in recruitment, undermines the separation of the institutions from the Executive level of Government.

The recruitment for law enforcement agencies is reportedly based on political patronage and loyalty.⁶² Bribe-paying and political connections are a significant component of the recruitment of police officers.⁶³ For example, a police officer in the Kampot provincial Police Department explained that the requirements to join the police force are threefold: 1) hold a high school diploma; 2) have connections with high ranking officers; and, 3) have between 2,500-3000 US dollars to buy a position at the commune or district level.⁶⁴ The absence of a law on the police means that there is no effective human resources mechanisms to safeguard more professional recruitment policies.⁶⁵

The payment of bribes is also required in practice to enter the prosecutorial profession and receive promotions.⁶⁶ The independence of prosecutors is restricted due to limited professional criteria upon which they are appointed. Without clear professional criteria, recommendations may be made according to political or personal affiliation.⁶⁷ Reportedly, a majority of judges and prosecutors in Cambodia are members of the Cambodian People's Party (CPP) and have no liberty to deviate from party instructions.⁶⁸ As a result, the prosecutorial profession is politicised through its members' close affiliation to the ruling party.⁶⁹

5.2 GOVERNANCE

5.2.1 TRANSPARENCY (LAW)

SCORE: 25

To what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement agency activities?

Few provisions are in place to ensure that the public can access relevant information on law enforcement agencies in Cambodia. The absence of necessary laws in certain cases and inadequate specifications of existing mechanisms result in limited safeguards to ensure transparency of law enforcement agencies' activities.

Under the Criminal Code of Procedure (2007) all criminal investigations are confidential. Personnel participating in investigations, such as prosecutors, police officers, and Gendarmes (amongst others), must maintain professional confidentiality.⁷⁰ Furthermore, Declaration No. 006 on the Discipline of the National Police Forces also states that national police are tasked with protecting the confidentiality of the nation, Ministry of Interior, and his or her own unit.⁷¹ Whilst confidentiality may be important during an investigation, there does not appear to be legal provision to ensure the disclosure of information that would be in the public interest.

Furthermore, there are no set legal provisions that require national police, the Gendarmerie, and prosecutors to provide public reports on institutional activities or their strategic plans. The absence of an access to information law further limits the legal safeguards for the transparency of public institutions. Overall, the existing provisions do little to prevent the opacity of law enforcement agencies during their investigations.

The disclosure of assets is required of public servants, including the national police, Gendarmerie, and prosecutors.⁷² They must declare their assets to the Anti-Corruption Unit (ACU) within 30 days of taking office, then every two years thereafter.⁷³ Problematically, asset disclosures do not concern spouses and dependent children.⁷⁴ Furthermore, declarations are not required to be made public, but rather kept in a sealed envelope with the Anti-Corruption Unit.⁷⁵ The envelope is

only opened if a corruption investigation is undertaken against an individual.⁷⁶ This prevents public scrutiny of the assets of law enforcement agency officials, limiting the effectiveness of the asset declaration provisions.

The Criminal Code of Procedure contains limited provisions to allow victims of crimes to access their case files. The law stipulates that up until the hearing, the Prosecutor General of the Court of Appeal and lawyers may examine a dossier and case file.⁷⁷ Furthermore, lawyers or their secretaries may be authorised by the court to copy documents in the court dossier, at their own cost and under the supervision of the court clerk.⁷⁸ Therefore, victims may be able to access their case files through their lawyers. This may, however, be problematic in cases where the victim cannot afford legal representation, particularly with regard to the limited legal aid system currently operating in Cambodia.⁷⁹

5.2.2 TRANSPARENCY (PRACTICE)

SCORE: 25

To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?

Whilst some information regarding law enforcement agencies is accessible online, more substantial information such as asset declarations and activity reports are not published.

In the interest of providing the public with relevant information, regular updates from the national police are provided on the websites of the Ministry of Interior's Media and Information Department,⁸⁰ as well as on the website of the General Commissariat of National Police.⁸¹ The website of the national police states its vision, mission, and values.⁸² It also contains a database where people can find the police inspectorate office location and contact numbers, applicable laws, and information about the structure of the police force.⁸³ It is regularly updated with news relevant to the activities of the national police.⁸⁴ To enable the public to contact the police force for help at any time and find out information or provide comments directly, a special number is available

on the national police's website.⁸⁵ Furthermore, complaints and comments can be made to the national police through drop boxes available around the country.⁸⁶

Despite these steps towards openness, shortcomings regarding the transparency of the national police exist. The activity reports which are reportedly produced by the national police every six months and include achievements of work and rates of crime⁸⁷ are not publicly available online. While it is commendable that the national police appears to have a Facebook page that contains some pertinent information, such as Declaration No. 006 on the Discipline of the National Police Forces, the page is not updated regularly which limits its impact.⁸⁸

Information on the Gendarmerie can likewise be found on their website⁸⁹ which includes information regarding the institution's structure, latest news, and details on training and general operations.⁹⁰ However, the website provides limited access to any official reports on institutional activities or statistics relevant to the work carried out by the Gendarmerie. The Gendarmerie also appears to have a Facebook Group, but it is closed to the public and requires administrative permission to access its content.⁹¹

Only limited information is available on the Prosecutor Department of the Ministry of Justice, as the Ministry of Justice webpage has been repeatedly unavailable throughout the research for this study.⁹² Two levels of reporting are noted to be undertaken in practice: a publishable report on the activities of prosecutors; and, the confidential one which is sent to the General Prosecutor, but never released to the public.⁹³ Despite there being widespread knowledge that a publicly releasable report is in fact created,⁹⁴ nothing of this sort has been available online, nor widely disseminated.

Both the national police and the Gendarmerie received training on asset declarations following the introduction of the Law on Anti-Corruption (2010)⁹⁵ and reportedly, many members of law enforcement agencies do actually declare their assets.⁹⁶ Nevertheless, information on the asset

declarations of national police, Gendarmerie, or prosecutors is not publicly disclosed, resulting in the asset declaration being a token gesture towards transparency rather than a substantive mechanism to enable greater accountability of the institution.

5.2.3 ACCOUNTABILITY (LAW)

SCORE: 75

To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?

A number of laws are in place to ensure that law enforcement agencies are accountable for their actions. However, some limitations exist in the laws relating to the reporting activities of the police, as well as in disciplinary proceedings for public prosecutors.

The General Commissariat of Police, under the supervision of the Ministry of Interior, manages national police units.⁹⁷ The organisation of the national police at the sub-national level is hierarchical; the Provincial Police Commissariat is under the direct guidance of and is accountable to the Provincial Governor.⁹⁸ In addition, while police officers that are posted in districts fall under general guidance of the District Governor, they remain under the technical command of the Provincial Police Commissariat.⁹⁹ This hierarchical structure is reinforced under Declaration No. 006 on the Discipline of the National Police Forces, providing commanders with responsibility over all orders given before the law, as well as the success or failure to implement those commands by subordinate police officers.¹⁰⁰ Subordinate police officers are also required to comply with all superior orders without protest or request for explanation¹⁰¹ and report to their superior officer once an order is implemented.¹⁰²

In 2011, the Ministry of Interior issued a Prakas on the Roles and Responsibilities of Commune Police Posts which required commune police to attend monthly meetings with commune councils, report on security to commune chiefs and district police, and perform all tasks as instructed by the district police.¹⁰³ However, there do not appear to be similar legal provisions for reporting procedures

for the police at the national level.

Declaration No. 006 on the Discipline of the National Police Forces outlines steps to be taken in the event of misconduct by a police officer. Misconduct is first sanctioned with a warning by a commanding officer.¹⁰⁴ Repeated incidences of misconduct are subject to a decision by a disciplinary council.¹⁰⁵ The police officer under investigation is required to provide a personal memo stating a defence of their actions.¹⁰⁶ There are, however, no provisions that allow an appeal against a decision of the Disciplinary Council. Disciplinary measures that may be taken include demotion of rank, removal from function, transfer out of unit, expulsion from the police force, and submission to the court for prosecution.¹⁰⁷ Furthermore, information on specific punishments for types of misconduct of police officers is provided under Article 8.C of Declaration No. 006.¹⁰⁸

The draft national police law is understood to elaborate on the roles, responsibilities, and ranking of police, as well as disciplinary and administrative procedures.¹⁰⁹ There is, however, no specified date on when this law is likely to be passed,¹¹⁰ consequently impeding the prevailing legal provisions that articulate the accountability structure within the national police force.

The Gendarmerie falls under the administration of the General Staff of the Royal Cambodian Armed Forces, which reports directly to the Prime Minister.¹¹¹ The functions of the Gendarmerie are conducted under a line of authority, at the top of which is a Commander, who is responsible for resolving and adjudicating all relevant issues related to the administration and operation of the Gendarmerie.¹¹² An Internal Regulation on the Gendarmerie Royal Khmer (2013) outlines the activity reporting procedures to be conducted by all members of the Gendarmerie.¹¹³ Specifically, activity reports are required to be provided daily, weekly, monthly, quarterly, and annually.¹¹⁴

The Ministry of Defence or any other qualified authority undertakes sanctions and other disciplinary action of Gendarmes, after consultation with the Disciplinary Council.¹¹⁵

Sanctions are to be applied in accordance with Article 45 of the Law on the General Status of Military Personnel of the Royal Cambodian Armed Forces (1997), which includes elimination from the promotions list, early retirement, and suspension of position.¹¹⁶

The Prosecutor General of the Court of Appeal has authority over all prosecutors across all Cambodian courts.¹¹⁷ To ensure accountability of each prosecutor, the Prosecutor General of the Court of Appeal is empowered to conduct inspections of the prosecutorial departments within the court system.¹¹⁸ In the case of a serious offence within a prosecutorial department, the Prosecutor General must make a report to the Minister of Justice.¹¹⁹

Each prosecutorial department is additionally accountable to the Supreme Council of Magistracy, which is tasked with both appointing prosecutors and taking disciplinary actions against misconduct by them.¹²⁰ Decisions regarding disciplinary actions against prosecutors are decided by the Disciplinary Council of the Supreme Council of Magistracy, acting under the Chairmanship of the General Prosecutor of the Supreme Court.¹²¹ In the event that the disciplinary matter involves the misconduct of the General Prosecutor of the Supreme Court, the matter is chaired by the King or Royal Representative.¹²² It is unclear if there is a procedure to be followed when making a decision regarding disciplinary action against a prosecutor. However, the decision on disciplinary action against a prosecutor is not subject to any appeal process.¹²³ Disciplinary actions can include transfer to another jurisdiction, suspension, disruption of service, or removal of cadre or titles.¹²⁴

Disciplinary councils that oversee respective state institutions undertake complaints about and investigations into the misconduct of civil servants, including law enforcement agency officials.¹²⁵

If the complaint relates to corrupt behaviour of a law enforcement official, people can then use the Anti-Corruption Unit (ACU)'s reporting mechanism.¹²⁶ This involves a complaint box system whereby people can anonymously leave a complaint note in the physical boxes, one of which

has been erected outside the ACU headquarters in Phnom Penh.¹²⁷ Alternately, people can call the ACU's complaint hotline and leave a message,¹²⁸ or send the complaint via email.¹²⁹ The complaint boxes system installed at the commune level, however, reportedly has not worked well due to technical issues.¹³⁰ Moreover, the lack of assurance of anonymity is said to reduce people's confidence in the system and lessen the likelihood that they will make a complaint due to fear of reprisals.¹³¹ Complainants can, after all, be liable for punishment by imprisonment if insufficient evidence is found to support their claim.¹³²

Law vests the ACU with the powers to investigate cases of corruption by law enforcement officials.¹³³ To this end, the Chairman of the ACU (rather than a prosecutor) has the duty to take the lead and coordinate an investigative mission and has the power to arrest a suspect.¹³⁴ Following the arrest, the ACU passes the case on to the prosecutor who then resumes his or her normal duties.¹³⁵

To further ensure the accountability of the law enforcement agencies, victims of crimes can access the justice system to pursue prosecution. Under the Criminal Procedure Code, anyone claiming to be the victim of an offence may file a complaint.¹³⁶ To enable victims to hold prosecutors to account if they do not respond or choose not to process a complaint, victims can appeal to the Prosecutor General at the Court of Appeal.¹³⁷

5.2.4 ACCOUNTABILITY (PRACTICE)

SCORE: 0

To what extent do law enforcement agencies have to report and be answerable for their actions in practice?

The accountability of law enforcement agencies appears to be limited in practice. Clashes between civilian protestors and both national police and Gendarmes have raised concerns from human rights groups about the accountability of both law enforcement agencies.

Numerous incidences of reportedly excessive use of force by both national police and the Gendarmerie occurred since the July 2013 National

Assembly election.¹³⁸ For instance, on 15 September 2013, police opened fire into a crowd of people during a post-election clash at a roadblock by the Kbal Thal overpass in Phnom Penh.¹³⁹ A 29 year old man was shot and killed during the clash, whilst trying to return home from work.¹⁴⁰ Additionally, on 12 November 2013, in Phnom Penh's Stung Meanchey district, police fired at a crowd of striking factory workers, killing one woman and injuring nine other people.¹⁴¹

At 10am, on 3 January 2014, approximately 2000 members of the security forces advanced on a crowd of about 100 garment sector protestors demanding higher wages.¹⁴² Police opened fire on the crowd and up at surrounding balconies, leaving at least four people dead and at least 40 injured.¹⁴³ 13 more protestors were beaten and taken to a maximum-security prison and subsequently denied release on bail.¹⁴⁴ The United Nations, human rights groups, and retailers from top clothing brands condemned the actions.¹⁴⁵

In addition, on 27 January 2014, Gendarmes used batons to beat several protestors who had gathered in Phnom Penh, rallying for the granting of a radio relay station and TV license to Mam Sonando.¹⁴⁶ At least 10 people were reportedly injured and human rights groups have further condemned the response from the Gendarmerie.¹⁴⁷ A spokesman for the Gendarmerie stated that the use of force was necessary in this instance as protestors had violated the government's ban on demonstrations.¹⁴⁸

The appropriate authorities ostensibly investigate all incidences involving the use of force by police and Gendarmerie.¹⁴⁹ However, a representative from the Cambodian League for the Promotion and Defence of Human Rights (LICADHO) has stated the organisation has identified 10 fatal shootings by police or Gendarmerie between 2012 and 2013, none of which have resulted in what they deem to be credible prosecutions or investigations into the incidents.¹⁵⁰ With regard to the 3 January 2014 deaths, the investigation into who among the Gendarmerie's ranks fired the shots was notably slow to move. Spokesperson for the Gendarmerie, Kheng Tito, claimed one month after the incident

Further limiting the accountability of prosecutors is that they reportedly do not systematically give reasons to relevant stakeholders regarding their decision to prosecute or not. Reasons are only provided when prosecutors are challenged (or when the media interviews them) and the explanations provided have been found in certain cases to be incoherent or incomplete.

that the investigation was underway but they 'hadn't received any results'.¹⁵¹

Both the frequency of incidents over the last 12 months, along with the lack of credible investigations into such events, would indicate a severe shortfall in accountability of both the national police and Gendarmerie. It also suggests a lack of political will to ensure these law enforcement agencies are held to account.

Despite a lack of legal provisions insisting on activity reporting by prosecutors, reporting mechanisms exist for prosecutors from the provincial to the national level.¹⁵² The public prosecution office at the provincial level reports to the General Prosecutor in Phnom Penh.¹⁵³ The prosecution reports annually about the activities of the office.¹⁵⁴ On top of this, they report case-by-case, especially about important cases such as those involving high-level people or foreigners.¹⁵⁵ During the research process of this report no reports on the activities of prosecutors were found online. Hence, information on the actions of prosecutors is not easily accessible to a broad audience, limiting the ability for the public to hold prosecutors accountable for their actions.

Further limiting the accountability of prosecutors is that they reportedly do not systematically give reasons to relevant stakeholders regarding their decision to prosecute or not.¹⁵⁶ Reasons are only provided when prosecutors are challenged (or when the media interviews them)¹⁵⁷ and the explanations provided have been found in certain cases to be incoherent or incomplete.¹⁵⁸ Moreover, reflection and debate on investigations after they have ended allegedly occurs on an arbitrary basis.¹⁵⁹ Thus, there is limited opportunity for open reflection and learning from past lessons to improve future accountability.

It is not clear whether the anti-corruption

complaints process has resulted in the ACU undertaking investigations into allegations of corruption by law enforcement agents, largely because the decision-making process over which cases to investigate remains opaque. Nevertheless, the fact remains that a limited number of probes into cases of corruption involving law enforcement officials have been initiated. For example, the ACU investigated a prosecutor from Pursat province in 2010 for corruption-related charges.¹⁶⁰ He was sentenced to 19 years in prison after being found guilty of accepting 3000 US dollars in bribes to release two suspected timber smugglers.¹⁶¹

5.2.5 INTEGRITY MECHANISMS (LAW)

SCORE: 25

To what extent is the integrity of law enforcement agencies ensured by law?

Whilst a limited number of legal provisions exist to safeguard the integrity of police and prosecutors, they are not comprehensive and significant gaps exist.

Declaration No. 006 on the Discipline of the National Police Forces (1995) provides a set of conduct expectations of all members of the national police force. For example, there are guidelines on police obligations and moral behaviour,¹⁶² as well as the correct usage of an officer's uniform¹⁶³ and appropriate salutation and communication with senior officers.¹⁶⁴ There are also important provisions relating to the use of firearms, specifically stating that a police officer is only permitted to shoot a firearm when it is a direct order from a superior officer, the police officer is acting in self-defence, or it is necessary to protect lives or public or private property.¹⁶⁵ Furthermore, any injury caused while using a weapon shall receive sanction according to the law.¹⁶⁶

In addition, the declaration provides

information on types of punishment to be imposed in relation to certain offences by police officers.¹⁶⁷ Notably, any police officer shall be subject to warning and reprimand if he or she receives a bribe of up to 5000 riel¹⁶⁸ or embezzles State property from 10,000 to 100,000 riel.¹⁶⁹ Moreover, a police officer shall be subject to demotion or expulsion if he or she receives a bribe of 5001 riel and over¹⁷⁰ or embezzles state property of 100,0001 riel and over.¹⁷¹

Despite this, Declaration No.006 does not include any rules on conflicts of interest, rules on gifts and hospitality, or post-employment restrictions for police officers. Hence, it does not provide a fully comprehensive list of legal safeguards to ensure the integrity of the national police force.

It has been reported that the draft National Police Law contains a code of conduct for national police officials that would supplement the current declaration.¹⁷² However, there is no set deadline for the promulgation of the national police law.¹⁷³

The Supreme Council of Magistracy issued a Code of Ethics for Judges and Prosecutors in 2007.¹⁷⁴ In the interest of integrity, this Code forbids prosecutors from working cases in which they have close personal relationships with the opposing lawyers.¹⁷⁵ Aside from this, the Code is limited in scope regarding the integrity of public prosecutors. The Code permits prosecutors to accept gifts if they are little in value and ‘not relevant to their judicial position’.¹⁷⁶ What counts as ‘little value’ and ‘relevant’ in this instance is not defined, however. Ambiguity in these definitions could allow arbitrary decisions to be made on whether the size of the gift and its nature is in violation of the Code of Ethics. On top of this, the Code does not provide guidelines for appropriate behaviour regarding receiving reimbursements, compensation, or honoraria in connection with privately sponsored trips. Consequently, inadequate legal safeguards are in place to ensure that public prosecutors do not receive unofficial gifts and payments for their own benefit, compromising the professionalism of their work.

The Law on Anti-Corruption (2010) stipulates that national police, Gendarmerie, and prosecutors are required to declare their assets 30 days after taking office and every two years thereafter.¹⁷⁷ Sanctions for non-compliance range from one month to one year incarceration.¹⁷⁸ Nevertheless, the asset declarations are not required to be verified. The Head of the ACU may open the declaration, submitted in electronic form and by envelope, for an investigation if he or she considers it necessary.¹⁷⁹ Otherwise, the declarations are kept highly confidential.¹⁸⁰ Thus, the provisions for declaring assets are limited in terms of ensuring integrity among law enforcement officials.

5.2.6 INTEGRITY MECHANISMS (PRACTICE)

SCORE: 25

To what extent is the integrity of members of law enforcement agencies ensured in practice?

Limited action has been taken to ensure integrity among law enforcement agencies. Yet violations of ethical guidelines appear to be commonplace.

Training is received by law enforcement officials according to the content of Declaration No.006 on the Discipline of the National Police Forces, as well as the asset declaration procedure.¹⁸¹ However, training is usually very short.¹⁸² Furthermore, common violations of the provisions in Declaration No.006 on the Discipline of the National Police Forces indicate a lack of integrity in the law enforcement agency. For example, the numerous incidents regarding the use of force by national police against protesters contradicts the specific provisions within Declaration No. 006 regarding the use of use of fire arms and injuring civilians.¹⁸³

Bribe-taking by police officials is widespread across the country. In 2013, 65 per cent of respondents to Transparency International’s Global Corruption Barometer in Cambodia had paid a bribe to the police in the last 12 months.¹⁸⁴ In a case of child-rape, the parents had to pay the equivalent of 45 US dollars to the police before the police agreed to even initiate an investigation.¹⁸⁵ The police also reportedly participate directly and indirectly in the illegal prostitution industry and

In 2013, 65 per cent of respondents to Transparency International's Global Corruption Barometer in Cambodia had paid a bribe to the police in the last 12 months.

at times trafficking as police officers extort money or take bribes from brothel owners, sometimes on a daily basis.¹⁸⁶ In another instance from early 2013, police officers shot a citizen who refused to pay them a bribe at an unofficial police checkpoint.¹⁸⁷ In this case, however, the two police officers were removed from their positions with criminal charges pending at the Phnom Penh Municipal Court.¹⁸⁸ The Phnom Penh Municipal Court found both men guilty of extortion, while one of the former officers was also sentenced for aggravated weapon use.¹⁸⁹ This provides a positive example of disciplinary sanction being undertaken in accordance with Declaration No.006.

There have been reports of national police and Gendarmerie receiving gifts of cash from private companies,¹⁹⁰ as well as being contracted to act as security for private companies.¹⁹¹ This indicates a potential conflict of interest, where police and Gendarmerie may be compelled to protect the interest of individuals and private companies instead of the interest of the State and general public. Significantly, such conflicts of interests and rules about receiving gifts are not covered under legislation.

The American Bar Association provided training for prosecutors on ethics following the adoption of the Code of Conduct on Judges and Prosecutors in 2007.¹⁹² This was the first ethics training received by judges and prosecutors in the country.¹⁹³ The Minister of Justice administered further training on the implementation of the Code of Conduct in 2012, with assistance of the United Nations Office on Drugs and Crime (UNODC) and representatives of the Asia Regional Trafficking in Persons Project.¹⁹⁴ In the lead-up to this additional training, a ministry directive was released calling for strict obedience to the Code of Conduct. Yet the Code appears to have been all but ignored thereafter.¹⁹⁵ If trainings or evaluations on the implementation of the code have occurred since 2012, minimal information about them has been disseminated.¹⁹⁶

5.3 ROLE

5.3.1 CORRUPTION PROSECUTION

SCORE: 25

To what extent do law enforcement agencies detect and investigate corruption cases in the country?

Law enforcement agencies play a restricted role in the detection and investigation of corruption cases in Cambodia. This is in part due to the broad jurisdiction of the Anti-Corruption Unit (ACU) officials who are granted principal authority to undertake such work.

There is no special police unit dedicated to investigating corruption-related offences. Rather, this falls under the mandate of the ACU.¹⁹⁷ In fact, Article 22 of the Anti-Corruption Law states that 'other units that are aware of corruption... shall make corruption complaints to the Anti-Corruption Unit'.¹⁹⁸ This indicates that the ACU is the primary institution responsible for investigating corruption cases.

The Chairman and Deputy Chairpersons of the ACU are entitled to the status of judicial police.¹⁹⁹ This status may also be extended to any officials of the ACU, through Prakas issued by the Ministry of Justice.²⁰⁰ As judicial police, members of the ACU are empowered to undertake investigations of corruption-related offences.²⁰¹ In addition, the Law on Anti-Corruption also extends the powers of the ACU to lead, coordinate, and control the mission of officials to the point of arresting a suspect.²⁰²

The ACU is legally entitled to request cooperation in its investigations from various 95 institutions and operational forces, such as the National Police and other armed forces.²⁰³ Hence, depending on the circumstances, other units (aside from the ACU) may participate in corruption-related investigations.

In practice, what appears to happen is that the ACU undertakes the initial investigation of the corruption case and then passes it to the relevant

prosecutor.²⁰⁴ In his speech at a workshop organised by Transparency International Cambodia in October 2013, the Chairman of the ACU confirmed this.²⁰⁵ He explained that the ACU cannot itself prosecute; prosecutors have that duty.²⁰⁶

The Chairman also indicated that the courts have a role in deciding which persons to investigate in a corruption case.²⁰⁷ Once the ACU has undertaken the initial investigation and passed it to the prosecutor, it is up to the courts to decide whether the ACU should investigate the case any further.²⁰⁸ Therefore, if a prosecutor does not give approval or the court does not provide a warrant, the ACU investigation would stall.²⁰⁹ The ACU Chairman cited the discretion of the courts regarding prosecution as the reason few corruption cases have been prosecuted.²¹⁰ Ultimately, the number of investigations undertaken is likely to depend on the genuine political will of the top power-holders to combat corruption, rather than decisions of prosecutors.

Yet, the likelihood of prosecutors to permit and participate in objective investigations into suspected cases of corruption may be restricted due to the lack of independence of the courts to which they are attached.²¹¹

RECOMMENDATIONS

1. Draft and pass a Law on Police, making a clear distinction between the Gendarmerie, civil police, and judicial police. Ensure that the law:
 - i. Requires regular reporting of all police activities, to be publicly accessible within the financial year. Reporting must be detailed such as providing reasons for their decisions, backing this up with evidence.
 - ii. Define disciplinary action that should be taken in the case of misconduct by police.
 - iii. Have clear recruitment criteria for hiring and promotion of police officers.
 - iv. Ensure the independence of the police force by stating that police officers must be politically non-partisan; they must not undertake activities for or against any political party in the exercise of their official functions.

2. Recruit more women police officers. Promote positive female role models in the police on university campuses to encourage more women to join the police force as a career choice.

3. Donors should provide more funding to the Police Academy of Cambodia to enhance the training and capacity of the national police.

4. Given that the Royal Cambodian Armed Forces have largely been outside of the scope of this report, Transparency International Cambodia should undertake an individual pillar report specifically focusing on this institution.

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VII. NATIONAL INTEGRITY SYSTEM

6. National Election Committee (NEC)



SUMMARY

The National Election Committee (NEC) has a number of elements in place that lay the foundation for an effective electoral body. Notably, it has increasing amounts of financial resources that rely less and less on foreign donors, contributing to the sustainability of the institution. The legal framework contains strong provisions for ensuring the independence, accountability, and integrity of the institution. The NEC is moreover enshrined as an independent and neutral body in the Law on the Election of Members of the National Assembly (LEMNA) (1997). On top of this, the Code of Conduct for Electoral Officials provides safeguards for the ethical behaviour of NEC staff.

The integrity of the NEC is compromised, however, by its actual lack of independence.

Specifically, the closeness of senior NEC staff members to the Cambodian People's Party (CPP) limits impartiality. This was illustrated by the widespread irregularities that plagued the 2013 National Assembly election. Moreover, the NEC is restricted in its ability to regulate candidate and political party finance since a Law on Campaign Finance has not yet been passed.

The diagram at the beginning of this chapter provides the scores for the NEC in terms of its capacity, governance, and role. The remainder of the section provides a qualitative background and explanation of the scores.

STRUCTURE AND ORGANISATION

The NEC was established through the Law on the Election of Members of the National Assembly

(LEMNA) (1997).¹ The role of the NEC is to organise and manage the elections of the Senate, National Assembly, commune councils, and of capital, provincial, municipality, district and khan councils.² It also announces election results, develops and distributes civic education material, monitors the media, registers voters and political parties, and deals with complaints and appeals linked to the elections.³

The NEC itself is the national level electoral body, composed of a Chairperson, Vice-Chairperson and seven members.⁴ Presently, only one member of the nine person committee is a woman.⁵ The electoral body has local level factions that are utilised during electoral periods to administer the election including Provincial/Municipal Election Commissions (PECs), Commune/Sangkat Election Commissions (CECs), and Polling Station Commissions (PSCs).⁶

ASSESSMENT

6.1 CAPACITY

6.1.1 RESOURCES (PRACTICE)

SCORE: 50

To what extent does the NEC have adequate resources to achieve its goals in practice?

Sizable resource gaps exist within the NEC budget, particularly with regard to capacity development and staff training. In practice this means that the NEC is unable to effectively carry out all of its duties.

There are regular increases of financial resources to the NEC from the Government. As such, national elections have gradually been funded by the State to a greater extent, with less input from foreign donors.⁷ This has contributed to greater financial sustainability of the NEC.⁸ In fact, the NEC said that the July 2013 National Assembly Election was fully funded by the Cambodian government aside from 26,000 US dollars' worth of computer equipment donated from South Korea.⁹ This is a significant reduction in reliance on donor funds compared to previous National Assembly elections. In 2008, foreign donors covered 40 per cent of the election budget,¹⁰ whilst in 2003 foreign donors' funds amounted to 60 per

cent of the election bill.¹¹

The NEC has adequate staffing arrangements with 281 permanent staff and many further employees hired during election time.¹² However, capacity development and training opportunities for NEC staff are not sufficient; training is offered only for pre-election instruction focusing on the election regulations and ensuring that staff members have the core competencies to administer the election.¹³ As a consequence, in 9.3 per cent of polling stations during the 2013 National Assembly elections, observers reported that polling station officials did not appear to understand the regulations and procedures of the voting process.¹⁴ There were concerns following the 2013 election that the 'safety boxes' containing polling records were not sealed properly.¹⁵ The NEC Secretary General later admitted that this was because the staff responsible had inadequate knowledge and skills due to a lack of training.¹⁶

6.1.2 INDEPENDENCE (LAW)

SCORE: 75

To what extent is the NEC independent by law?

Several laws and provisions exist to safeguard the independence of the NEC, although they do not safeguard every aspect of independence.

The NEC is housed under the Ministry of Interior and thus does not have its own constitutional status.¹⁷ The Constitution does, however, make reference to an organisation responsible for National Assembly elections. Article 76 notes that the electoral law shall define the modalities and mandate of the electoral body.¹⁸

In accordance with the Constitution, the Law on Election of Members of the National Assembly (LEMNA) (1997) details the expected functioning of the NEC. Regarding the NEC's independence, it states that electoral duties are to be performed in a neutral and impartial manner.¹⁹ This applies to both members of the NEC and to election commission staff at all levels.²⁰

Regarding commune elections, the Law on the Elections of the Commune/Sangkat Council (2001) states that: electoral staff from national, provincial,

A highly criticised aspect of the 2013 national election was the exclusion of eligible voters from the voter registry, as well as the existence of invalid and duplicate names on the voter list.

and commune election committees, as well as voter registration and polling station staff, must maintain their independence, impartiality, and honesty in their related functions and roles.²¹

Recruitment procedures and required capacities of electoral staff are defined in the Regulations and Procedures of the National Assembly (2003). These apply to NEC staff, Provincial Election Committee members and staff, Commune Election Committee members, registration assistants, polling station officials, and ballot-counting groups. The regulations state that recruitment procedures should be based on the principles of equality and merit.²² The selection criteria for the appointed members of the NEC, including the Chairperson and Vice-Chairperson are quite minimal, however, requiring only competence in politics, relevant work experience, and a good reputation.²³

The appointment of the Chairperson, Vice-Chairperson, and members of the NEC is made by royal-decree at the request of the Council of Ministers.²⁴ Safeguarding some degree of independence, the National Assembly must agree by absolute majority before the nominated persons can be appointed.²⁵

Violations of electoral law, regulations, or procedures can result in sanctions of NEC members, ranging from suspension to dismissal.²⁶ The National Assembly can decide to dismiss the Chairman, Vice-Chairman, or members of the NEC.²⁷ This enables formal separation of the NEC from the Executive level of Government, placing checks and balances in the hands of the National Assembly. NEC staff members are not, however, protected from removal without relevant justification. Hence, the legal framework does not provide safeguards against political interference regarding arbitrary dismissals of NEC members.

6.1.3 INDEPENDENCE (PRACTICE)

SCORE: 0

To what extent does the NEC function independently in practice?

In reality, the NEC does not function independently. There is strong influence from the ruling party affecting its decisions and actions.

Appointments of staff at national and provincial levels are reportedly politicised.²⁸ They tend to be based on political affiliations rather than purely on merit and qualifications.²⁹ The independence of the staff recruitment process in the lead up to the 2013 National Assembly election was particularly questionable. It has been reported that official vetting procedures for appointing Provincial Election Committees (PECs), Commune Election Committees (CECs), and Polling Station Committees (PSCs) were not followed.³⁰

Specifically, the closeness of senior NEC staff members to the CPP suggests a lack of independence. NEC Chairman, Im Suosdey, for instance, was previously deputy chairman of the CPP's youth wing, the Youth Association of Cambodia (YAC).³¹ Those loyal to the CPP are the majority in the NEC,³² and as such, five out of its current nine NEC members are ruling party members.³³

The NEC's independence was questioned during the 2013 National Assembly elections.³⁴ The United Nations Special Rapporteur on Human Rights, Surya Subedi, and other non-governmental organisations (NGOs) flagged concerns over the independence of the NEC prior to the election.³⁵ Mr. Subedi made a number of recommendations intended to promote independence and integrity; none of which were put in place in time for the election.³⁶

A highly criticised aspect of the election was the exclusion of eligible voters from the voter registry, as well as the existence of invalid and

duplicate names on the voter list.³⁷ Although the opposition Cambodia National Rescue Party (CNRP) and civil society organisations demanded that the NEC undertake an independent investigation into the election irregularities,³⁸ analysts raised doubts over the extent to which the NEC would even be capable of undertaking an independent investigation itself due to its close ties to the ruling party.³⁹

6.2 GOVERNANCE

6.2.1 TRANSPARENCY (LAW)

SCORE: 50

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the NEC?

A number of legal provisions are in place to ensure public access to information on relevant activities of the NEC. Information on political party finances is not, however, required to be made publicly available.

The Law on the Election of Members of the National Assembly (LEMNA) and Amendments of the Law on Election of Members the National Assembly (2013) requires the NEC to ensure that certain information is available to the public in the lead-up to the national election. This includes: dissemination of the electoral calendar;⁴⁰ public announcements of the names and locations of the polling stations at least 30 days prior to polling day;⁴¹ publicly posting the official voters' lists at each polling station;⁴² and, posting the provisional results of the Election of Members of the National Assembly.⁴³ The NEC is not required to provide details of its internal decision-making processes apart from decisions on all complaints and appeals, which should be conducted through public hearing.⁴⁴

The Law on Political Parties (1997) details provisions on political party funding but does not require the information to be made available to the public.⁴⁵ Likewise, the law allows the NEC to examine the account books of any political party if deemed necessary,⁴⁶ yet no such information must be publicised.

6.2.2 TRANSPARENCY (PRACTICE)

SCORE: 25

To what extent are reports and decisions of the NEC made public in practice?

While the public can obtain some relevant information on the organisation and functioning of the NEC in practice, detailed information on the NEC's activities and spending are not publicly available.

The NEC is active to a certain extent in informing the public of required information. To this end, the body publishes regular press releases on its website to provide people with information on its activities.⁴⁷ Detailed reports on the NEC's activities and spending, however, are not publicly available.

The NEC's website also contains important information on voter registration, political party registration, relevant laws, and a hotline contact number for queries about the 2013 National Assembly election.⁴⁸ Despite this, some particular information required by election monitors is not publicly available.⁴⁹ For instance, a record of who received the controversial Identity Certificates for Elections (ICE) forms was not released.⁵⁰ The NEC also denied requests to publish the final data of its internal voter registry audit.⁵¹

From the national to the local level, the NEC delivers public announcements, provides advertisements in newspapers, and disseminates information regarding the electoral calendar and voter registration.⁵² There is little transparency at the local level, however, regarding matters such as complaint resolution, recruitment procedures, and availability of information.⁵³

6.2.3 ACCOUNTABILITY (LAW)

SCORE: 50

To what extent are there provisions in place to ensure that the NEC has to report and be answerable for its actions?

Several legal provisions exist to ensure the accountability of the NEC. Nevertheless, they are not comprehensive enough to guarantee adequate accountability of the institution.

The Regulations and Procedures for the Election of Members of the National Assembly (RPE-MNA) (2003) provide some guidelines for the NEC's relationship with the media.⁵⁴ The guidelines indicate that journalists wishing to report on the election will require accreditation by the NEC.⁵⁵ Requiring journalists to be directly accredited by the NEC in order to report on the election has the potential to limit journalists' independence and their ability to report impartially on the electoral body. Contradictorily, the same Regulations and Procedures require the media to promote free and fair elections.⁵⁶

The Regulations and Procedures for Election of Members of the National Assembly states that party representatives can observe the election process during the revision of voter lists and registration of voters, as well as during the polling and counting of ballot papers.⁵⁷ In addition, the Law on the Election of the Members of the National Assembly (Arts. 26-28, 102 and 108) allows domestic, international, political-party, or independent agents to observe the entire electoral process in accordance with NEC regulations.⁵⁸ Likewise, the amended Law on Commune Council elections (Arts. 88-110) allows the above-mentioned agencies to also monitor the commune council electoral process.⁵⁹

The legal framework provides for certain timely and enforceable reviews of NEC decisions, such as in the case of registration rejection⁶⁰ or rejection of appeals.⁶¹ The Constitutional Council conducts these reviews in an open public hearing. Article 136 of the Constitution identifies the Constitutional Council as the highest institution to make final decisions on contested cases involving the NEC.⁶² Both the Law on the Election of Members of the National Assembly (1997),⁶³ and the Law on the Election of Members of the Senate (2005)⁶⁴ affirm the role of the Constitutional Council to adjudicate election complaints.

There is a legal requirement for the Department of Finance and the General Secretariat of the NEC to prepare an annual financial report at the end of the fiscal year and have it audited no later than three months after that time.⁶⁵ The report must be sent to the Ministry of Economy and Finance.⁶⁶

The law does not, however, require the reports to be made publicly available. Moreover, there is no mention of how discrepancies are to be addressed, should they arise.

6.2.4 ACCOUNTABILITY (PRACTICE)

SCORE: 25

To what extent does the NEC have to report and be answerable for its actions in practice?

Limited provisions are in place to ensure that members of the NEC are accountable for their actions in practice.

It is difficult to confirm to what degree the head of the NEC actually accounts for its staff.⁶⁷ The lines of communication are not made evident.⁶⁸ Some administrative functions, such as voter registration, are delegated to other bodies.⁶⁹ For example, elected commune councils are responsible for voter registration. Although the NEC is accountable for the final voter list, placing responsibility for voter registration with councils - 97 per cent of which are CPP controlled - offers opportunities for bias and manipulation in compiling the voter list.⁷⁰

The NEC provides regular updates on its activities through press releases on its website.⁷¹ Moreover, activity reports are reportedly submitted to the National Assembly, providing some degree of accountability.⁷² Neither detailed NEC activity reports nor details on expenditure are released to the public, however, providing the public with limited possibility to ensure proper oversight of the electoral body.

6.2.5 INTEGRITY MECHANISMS (LAW)

SCORE: 50

To what extent are there mechanisms in place to ensure the integrity of the NEC?

There are some mechanisms in place to safeguard the integrity of the NEC; yet they contain significant gaps.

There is a code of conduct for electoral officers. It covers guidelines on their general conduct; requirements for registration, polling and counting stations; relationship with political parties, their

representatives and observers; as well as training and penalties.⁷³ Although, the code of conduct does not directly mention conflict of interest, it does state that election officials must not be political party candidates running in the election.⁷⁴ Election officials are also prohibited from receiving wages from a political party as well as holding office in any political party.⁷⁵ The code of conduct also requires election officials to be impartial in their actions, attitude and speech, and to show no indication of a bias or preference towards any political party.⁷⁶ In addition, it stipulates that election officials shall not influence voters.⁷⁷ It does not, however, include reference to any provision ensuring the quality of the NEC's service directly to voters. Nor does it mention post-employment restrictions for NEC staff.

According to the Law on the Election of Members of the National Assembly, all newly appointed chairpersons, vice-chairpersons, and members of the NEC are required to take an oath of office⁷⁸ (though the law contains no specific description on the content of this oath). Additionally, polling station committee staff must take an oath to be neutral and impartial upon commencing employment.⁷⁹ Providing a further integrity mechanism, the Regulations and Procedures of the Election of Members of the National Assembly requires election committee staff members to have employment contracts.⁸⁰

The NEC has staff recruitment policies to ensure that women and minority groups are represented. The Regulations and Procedures for the Election of Members of the National Assembly (2003) details that geographical areas where there are appropriate numbers of ethnic minorities should, if possible, have one member of the Provincial Election Commissions (PECs) and of the Commune Election Commissions (CECs) from among the ethnic minority groups.⁸¹ Likewise, there should be at least one female member for PECs and CECs if possible.⁸² Yet, even with one woman at each level of the election commission, women are still underrepresented.

6.2.6 INTEGRITY MECHANISMS (PRACTICE)

SCORE: 50

To what extent is the integrity of the NEC ensured in practice?

The NEC takes several measures to ensure the integrity of its members. Nevertheless, the NEC does not appear to be entirely effective in sanctioning irregular behaviour.

Existing codes of conduct are reportedly, to some extent, effective in ensuring the ethical behaviour of NEC staff and officials.⁸³ NEC staff members above a certain level – certainly those working in the Secretariat of the NEC and on the Provincial Election Committee – swear an oath at the beginning of employment to uphold the guiding principles enshrined in the code of conduct.⁸⁴ The core principles in the Code of Conduct for Electoral Officers include impartiality and equal treatment of all political parties.⁸⁵

According to the Head of the Executive Department of the NEC, Mr. Hoeu Rong, the institution takes irregular or corrupt practices very seriously. For example, he explained that if a commune chief responsible for delivering voter information to the commune wore a cap or T-shirt bearing the logo of any political party whilst undertaking his duties, they would be dismissed immediately.⁸⁶ Indeed, there have been a few cases of staff from the polling station at the commune level being disciplined or suspended due to election fraud.⁸⁷ Such cases have followed a hearing and investigation process detailed according to the complaint received in the Regulations and Procedures for the Election of Members of the National Assembly.⁸⁸

Despite this, external observers have alleged that the NEC is not effective enough in sanctioning breaches for irregular and corrupt behaviour.⁸⁹ The institution is widely considered biased in favour of the ruling CPP.⁹⁰ It is thought that the NEC's possible lack of impartiality would allow politically motivated misconduct of their staff to go unsanctioned.⁹¹

During election time, the NEC must audit the income and financial expenses incurred by candidates or political parties. Yet, these responsibilities listed in the Law on Election of Members of the National Assembly (LEMNA) are rather vague... A law on campaign finance has not been passed; such a law would likely contain important provisions to better regulate candidate and political party finance.

6.3 ROLE

6.3.1 CAMPAIGN REGULATION

SCORE: 0

Does the NEC effectively regulate candidate and political party finance?

The NEC takes limited measures in regulating candidate and political party finance.

During election time, the NEC must audit the income and financial expenses incurred by candidates or political parties.⁹² Yet, these responsibilities listed in the Law on Election of Members of the National Assembly (LEMNA) are rather vague. The law does not provide any detail on how often, in what format, and to what level of detail political parties should submit reports on their income and expenditure to the NEC. Moreover, nothing is mentioned regarding the process that the NEC should follow if they wish to discipline election candidates or parties if their financial records contain irregularities. A law on campaign finance has not been passed; such a law would likely contain important provisions to better regulate candidate and political party finance.

In practice, members and supporters of the CPP dominate the NEC.⁹³ This is especially apparent at the provincial and commune/sangkat level where electoral commissions are staffed by former civil servants known for their bias towards the CPP.⁹⁴ The composition of the NEC changed in 2012 with the appointment of two additional committee members, bringing the total to nine. However, the recruitment and selection of these members was not open and did not involve the opposition parties.⁹⁵ This has created mistrust among other political parties taking part in elections.⁹⁶

The NEC is legally required by Article 16 and

18 of LEMNA to ensure that media access is allocated equally across political parties.⁹⁷ This does not happen in practice, however, and the media is largely biased in favour of the CPP.⁹⁸ In the lead up to the 2013 National Assembly election not a single television channel covered the return of opposition leader Sam Rainsy to Cambodia.⁹⁹ Furthermore, the Committee for Free and Fair Elections in Cambodia (COMFREL) monitored three major television channels during the election campaign National Television of Kampuchea (TVK), Cambodian Television Network (CTN), and Bayon News TV and found that programming was strongly biased toward the ruling party.¹⁰⁰ On Bayon News TV, COMFREL's findings showed that the ruling party dominated 88 per cent of airtime during the election campaign.¹⁰¹

6.3.2 ELECTION ADMINISTRATION

SCORE: 25

Does the NEC ensure the integrity of the electoral process?

The NEC is somewhat active in seeking to ensure free and fair elections. Yet, its success is curtailed by its limited capacity and a lack of independence.

Voter registration is indisputably a problem in Cambodia.¹⁰² One reason is that the existing mechanisms for identification are insufficient: there is no civil registry or standardised system of national identification cards in the country. Hence, the NEC cannot ensure that all eligible voters can even register to vote.¹⁰³ Prior to the 2013 National Assembly election, the National Democratic Institute (NDI) undertook a Voter Registry Audit. The resulting report showed that 11 per cent of eligible citizens who believed they had registered to vote were not in fact on the voter

list.¹⁰⁴ Moreover, for many names that were included, personal data was incorrect and several of the persons listed were ineligible to vote (i.e. under 18 years of age).¹⁰⁵ The recommendations made to the NEC in the Voter Registry Audit to address such issues were not enacted prior to the election.¹⁰⁶

Transparency International Cambodia, which monitored the 2013 election, found widespread irregularities. The organisation deployed 906 observers across 409 polling stations and found unacceptable practices in over 60 per cent of them.¹⁰⁷ This included over-registration and the use of suspect temporary identification cards issued inconsistently in the two weeks prior to the election.¹⁰⁸ In other cases, duplicate names were found enabling the same person to vote more than once.¹⁰⁹

The NEC undertakes various voter education activities such as public service announcements.¹¹⁰ In addition, the NEC has created some posters along with radio and television shows to ensure people have the knowledge required to accurately register and be able to vote.¹¹¹ These measures do not appear to have been adequately effective, however, given that nearly 11 per cent of eligible citizens who thought they were registered were not found on the voter list.¹¹² Furthermore, immediately prior to the election the NEC shut down the online version of the voter list and declared it illegal for political parties or civil society organisations to carry a copy of the voter list to assist voters unable to find their polling station on election day.¹¹³

The 2013 National Assembly election gave rise to doubts over the NEC's willingness to take necessary measures to remedy voter list shortfalls to ensure the right to vote.¹¹⁴ Moreover, widespread voter disenfranchisement and registration irregularities have undermined the confidence of many people in the integrity of the elections and their results.¹¹⁵

RECOMMENDATIONS

1. The Government should create an independent, constitutionally mandated National Election

Committee (NEC) with authority, comprehensive jurisdiction, and an independent budget to operate effectively. Membership should be either comprised of: a) Members of political parties elected to the National Assembly, represented in equal numbers from the ruling party and opposition party/parties on the NEC, in addition to one member who is nominated by the King; or, b) All independent members (anyone can apply). Members should be selected through the following process:

i. Candidates should submit their applications for screening to an independent selection committee.

ii. For the all-independent members option, the recruitment of NEC members should be done through an open and transparent process. Terms of References and application deadlines should be open to the public and a screening and interview process should be undertaken by a selection committee that includes political party members and civil society representatives and allows the opportunity for public input and oversight.

iii. The member selection committee members should be comprised of representatives in equal number from the ruling party and opposition party/parties in parliament, in addition one member nominated by the King who will be the chair of the committee.

iv. Selection procedures for members of Provincial Election Committees, Commune Election Committees, and Chief of Polling Stations should follow similar mechanisms of recruitment under the facilitation of the NEC.

2. Final candidates should be chosen from the shortlist by election in the National Assembly. Voting should be undertaken by secret ballot. The Government should create an independent committee for election dispute resolution. Members should be elected to the committee in accordance with the above recommendations for the creation of an independent NEC.

3. The NEC should strictly enforce the principle of transparency and impartiality in the selection of election officials at all levels.

4. The NEC should develop and enforce clear mechanisms to hold civil servants to account that violate the requirement that they remain politically neutral (under the Common Statute of Civil Servants); if they undertake activities for or against any political party in the undertaking of their official duties or if they use state resources to campaign for a political party at any time.
5. The existing voter registration process should be dismantled. A valid civil registry to be created, or at the minimum, a permanent election bureaucracy should administer voter registration. The responsibility should not remain with partisan Commune Councils.
6. The NEC should set up an offline computerization system to conduct voter registration and create a voter list the system includes the identity of the biological data with right thumbprint.
7. The NEC should establish an independent committee to oversee implementation of code of conduct/principles for broadcast media and access to the state-run TV and radio during electoral period.
8. International donors should add electoral reform as a key benchmark for the Government to receive funds.
9. The Government must complete drafting and pass a Law on Campaign Finance. This should include:
 - i. Limitations on how much individuals and organisations can donate to political campaigns and parties.
 - ii. Requirements for election candidates and political parties to publicly disclose the details of their campaign contributions and expenditures.
 - iii. Bans against vote buying.

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VII. NATIONAL INTEGRITY SYSTEM

7. Ombudsman

DIMENSIONS	INDICATOR
Capacity	Resources (Law and Practice)
	Independence (Law and Practice)
Governance	Transparency (Law and Practice)
	Accountability (Law and Practice)
	Integrity Mechanisms (Law and Practice)
Role	Investigation
	Promoting Good Practice

SUMMARY

Cambodia does not have an ombudsman with the specific purpose of investigating maladministration of public authorities at the national level. Despite this, Transparency International Cambodia has decided to include the Ombudsman Pillar in this assessment because such an institution is considered by international standards to be important to uphold a strong system of integrity.¹ The purpose of this section of the report is twofold: i.) to highlight some of the existing government initiatives to ensure effective oversight of public institutions; and, ii.) to underscore the need for the establishment of a national ombudsman.

This pillar assesses two complaints mechanisms that operate at the sub-national level: the District

Ombudsman (DO) attached to the One Window Service Offices (OWSO), and the Provincial Accountability Working Group (PAWG). We have chosen to focus on these mechanisms because both aim to provide transparent and accountable public administration at the sub-national level. They are commendable initiatives that can hopefully be learned from in order to expand a unified complaints mechanism to the national level.

In summary, the existing legal provisions regulating both the DO and PAWG are comprehensive for ensuring their independence and professionalism. Moreover, according to the World Bank (2013), 95 per cent of DO clients reported confidence in its independence and effectiveness. The DO appears to have adequate

The existing legal provisions regulating both the District Ombudsman (DO) and Provincial Accountability Working Group (PAWG) are comprehensive for ensuring their independence and professionalism. Moreover, according to the World Bank (2013), 95 per cent of DO clients reported confidence in its independence and effectiveness.

capacity to undertake investigations and provide oversight to sub-national public administrations. The PAWG however, has unstable financial resources and is not being effectively utilised due to limited public awareness about its role and functions. Streamlining the DO and PAWG under one mandate, as planned by the Ministry of Interior in 2014, may create a more sustainable accountability mechanism to investigate sub-national public sector maladministration.

The table at the beginning of this chapter provides an overview of the factors qualitatively assessed for the DO and PAWG within the Ombudsman Pillar. Due to the absence of a national ombudsman, this pillar is not given the same weight or scored like the other 12 pillars within the National Integrity System Assessment.

STRUCTURE AND ORGANISATION

While the Constitution provides the right for citizens to complain, this is limited to complaints regarding breaches of the law rather than maladministration.² A law to create a national ombudsman has been contemplated since 2003³ and has been made a priority by the Council for Legal and Judicial Reform.⁴ This led to a 2009 assessment of the existing complaints mechanisms.⁵ Nevertheless, as of July 2014 no law has been passed that establishes a single national mechanism for receiving complaints about maladministration by public authorities.

Instead, there are multiple public sector complaints-handling systems.⁶ Each one processes complaints regarding different topics or sectors.⁷ This leads to a fragmented system in which it can be confusing to know where the complaint should be correctly sent. Further stalling the effectiveness of the system is the lack of adequate communication of information between the numerous complaints investigating bodies.⁸

This pillar focuses on two exemplary sub-

national mechanisms: the DO and PAWG. Whilst separate, these initiatives are closely connected – the Ministry of Interior plans to merge the OWSO/DO and PAWG projects in 2014.⁹ The reasons are both to streamline the government funding of the projects under the Ministry of Interior budget, as well as creating a single accountability mechanism at the sub-national level.¹⁰

District Ombudsman (DO)

The DO has been created to act as the accountability mechanism to prevent maladministration and the payment of unsolicited service fees at the OWSO.¹¹ The OWSO/DO initiative began in 2008¹² with the purpose of establishing one location to provide administrative services to the public in a transparent manner.¹³ After the initial success of the OWSO/DO pilot program, which established offices in Battambang and Siem Reap provinces,¹⁴ a four-year project was initiated in 2009.¹⁵ Accordingly, OWSO/DOs were established in all 24 districts and municipalities¹⁶ in Cambodia.¹⁷ The programme is a component of the Demand for Good Governance (DFGG) Project and has been jointly funded by the Government and World Bank. The National Committee for Sub-National Democratic Development (NCDD) housed in the Ministry of Interior manages it.¹⁸

The DO receives, processes, and investigates any complaints related to administration within the OWSO.¹⁹ The Government has delegated 186 services to the OWSO from 10 line ministries.²⁰ The DO therefore not only assesses the behaviour of OWSO staff, but also ensures that the administration conducts its work in line with the particular guidelines from each line ministry.²¹

Provincial Accountability Working Group (PAWG)

The purpose of the PAWG is to ensure accountability and transparency in the use of the commune/sangkat²² budget and its use for

activities under the management of the NCDD-Secretariat.²³ Citizens can file complaints to the PAWG about the misuse of commune/sangkat funds or misconduct of sub-national government officials through complaint boxes, placed in various locations around the country.²⁴ The PAWG then investigates such complaints,²⁵ although issues that fall outside of the PAWG's mandate are referred to relevant ministries for further action.²⁶ The national level Accountability Working Group is mandated to oversee and monitor the functions of the PAWGs.²⁷

ASSESSMENT

7.1 CAPACITY

7.1.1 RESOURCES (LAW AND PRACTICE)

To what extent do the complaints mechanisms have adequate resources to achieve their goals in practice?

The human resources of the DO and PAWG have been strengthened through guidelines and training sessions. Yet, with the reduction donor funding and insufficient government funding, particularly for the PAWG, their financial resources remain unstable. In a bid to ensure the longevity of both projects, the Ministry of Interior will merge them under one mandate in 2014.

The OWSO/DO project was established under the Demand for Good Governance (DFGG) initiative, funded by a transitional donor arrangement between the Government of Cambodia and the World Bank.²⁸ As of 2013, the total amount of funding provided stood at 5.3 million US dollars by the World Bank and 1.2 million US dollars by the Government.²⁹ The project required the Government to undertake an extra 25 per cent of funding responsibility each year, starting at 0 per cent in 2009 and increasing to 100 per cent in 2013.³⁰ The project was initially intended to be finalised in 2013, but was extended until March 2014 to meet all expected project outcomes.³¹

After the official project end in March 2014, the OWSO/DO will continue to deliver administrative services by using the district/municipality funds to cover operational costs.³²

Each district administration has its own separate budget and will be individually responsible for ensuring that the OWSO/DO receives financial support.³³

By law, the DO is entitled to receive payment for his or her role as organised by the District Council.³⁴ The Ministry of Interior is also currently developing a sub-decree for incentives for the DO.³⁵ This indicates that the Government is working towards ensuring that the salary of the DO is high enough to sustain an adequate standard of living.

There has been considerable effort to ensure that staff capacity within each OWSO and DO is adequate. This has been in the form of developing guidelines for the work and investigation of the DO, as well as mandatory staff training by the NCDD and District Support Teams.³⁶ In practice, before staff commence employment at the OWSO and DO, the Ministry of Interior organises five different training courses on project orientation, how the OWSO/DO system works, technical training, good governance (including training on integrity and transparency), and the DO complaint-handling mechanism.³⁷ The NCDD and District Support Teams have also provided refresher training for staff representatives from the OWSO/DO in each District/Municipality.³⁸

The PAWG system was introduced in 2005 with financial and technical assistance from the World Bank and United Nations Development Programme (UNDP)'s project to support democratic development in Cambodia through decentralisation and deconcentration.³⁹ In 2006, over 2,500 accountability boxes were placed around the country with accompanying leaflets that provided information about the complaints mechanism, as well as forms to submit a complaint.⁴⁰ However, these complaints boxes fell into disuse throughout 2007 and 2008 due to a lack of resources to provide investigations into the complaints.⁴¹ To counter this, the project was strengthened from 2008 with a focus on building the capacity of PAWG members. This included the creation of investigation guidelines, training, and recruitment of a provincial and national support team.⁴² Non-governmental organisations (NGOs) also helped with various

capacity building activities within this project.⁴³

Nevertheless, donor funding for the project ceased in 2010 and the Government has since solely funded it.⁴⁴ Yet, government funding alone is not enough to provide adequate resources for the effective work of each PAWG.⁴⁵ Hence, the human resources and funding of the PAWGs are too unstable to enable them to continue working in a satisfactory manner.

7.1.2 INDEPENDENCE (LAW AND PRACTICE)

To what extent are the complaints mechanisms independent in law and in practice?

Existing legal provisions provide strong safeguards to ensure the independence and professionalism of the DO and PAWG. Moreover, in practice, 95 per cent of DO clients have reported high-levels of confidence in the mechanism's independence.

The principle of the independence of the DO is enshrined under Prakas No. 927 on the Organisation and Functioning of the DO in Municipality, District and Khan (2009).⁴⁶ Specifically, the Prakas provides that the DO is to work impartially in receiving complaints from citizens.⁴⁷ It also defines the DO as an impartial representative of citizens.⁴⁸ Furthermore, it highlights the independence of the DO from the district/municipality and khan⁴⁹ political administrations.⁵⁰

One DO is elected for each OWSO⁵¹ and the District Ombudsman Election Committee decides the choice by a majority vote.⁵² The DO holds their position for a five-year term, with the option of being re-elected.⁵³ Nominations for the DO position are based on good moral behaviour within the community.⁵⁴ Candidates for the DO position must be independent; they must not be employed by the Government, or be a civil servant, member of the national police, or a member of the military.⁵⁵ Significantly, to help ensure the independence of the DO from political influence, candidates must not engage with, or possess any position in, any political party leadership structure or be a member of any political party.⁵⁶ These provisions ensure that the DO is a neutral and independent

investigator of complaints.

There are additional professional criteria to be met by any potential DO candidate before being considered for the position, including the following: a candidate must hold permanent residency in the municipality, district, or khan in which she/he wants to be appointed; have experience in administration, civil society, or the private sector for up to five years; and, have an educational background from secondary school, or an equivalent level of education.⁵⁷ In the event that both a man and a woman are nominated for the DO role, the woman's application is given greater priority.⁵⁸ This seeks to boost women's participation in a sector in which they are otherwise notably underrepresented.⁵⁹

It has been observed that the DO office is often physically located next door or attached to the OWSO. This reportedly makes it difficult for people to anonymously report on the conduct of OWSO officials.⁶⁰ Despite this, figures recorded by the World Bank suggest that 95 per cent of DO clients report a high-level of confidence in the independence, credibility, and effectiveness of the DO as a complaints-handling mechanism.⁶¹

To ensure objective investigations of complaints regarding the NCDD commune/sangkat budget, each PAWG consists of provincial level officials, as well as private sector representatives and civil society representatives.⁶² The selection of the civil society and private sector members of the PAWG takes place after a meeting with various NGOs and business contractors working within the respective municipality or province.⁶³ During the meeting, provincial level officials provide information on the roles, functions, working procedure, and obligations of a PAWG member, before two representatives from civil society and the private sector are chosen to sit as a member on the PAWG.⁶⁴ The provincial governor, who is appointed by the Ministry of Interior, chairs the PAWG.⁶⁵ This could limit the independence of the PAWG from political influence in practice since the chair of the PAWG is not elected independently from the national government.

7.2 GOVERNANCE

7.2.1 TRANSPARENCY (LAW AND PRACTICE)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the complaints mechanisms? Is there transparency in practice?

Reports on the activities of both the DO and PAWG have been publicly released. Nevertheless, available reports are not up-to-date.

The process of investigating complaints by the DO is provided under Prakas No. 927. In all situations where the DO investigates a complaint, the persons who are subject to the complaint must be notified of both the complaint and outcome of the solution.⁶⁶ In addition, strict confidentiality is required for all documents and information obtained during an investigation, such as the identity of the complainant, witnesses, and the person subject to the complaint.⁶⁷ The DO must also obtain consent from all citizens, merchants, business persons, companies, or firms that are involved with a particular investigation before any material surrounding the investigation can be made public.⁶⁸

Throughout the implementation of the OWSO/DO project, the Asia Foundation has provided quarterly reports on information relating to the project.⁶⁹ Information provided in these reports includes the number of complaints received under the complaint mechanism, how many cases have been resolved, any administrative issues, and areas for further improvement.⁷⁰ The reports also provide a summary of how the project has been implemented in comparison with project expectations.⁷¹ It is noted that throughout the research of this study, activity reports on the OWSO/DO after 2012 have not been located online.⁷²

To ensure transparency, the PAWG is required to disclose all promotional materials regarding its work.⁷³ Additionally, the PAWG also makes monthly and yearly reports to the national level Accountability Working Group on progress and achievements of investigations.⁷⁴ Limited information is available, however, on the NCDD

website; the majority of information regarding the PAWG has not been updated since 2009.⁷⁵ This limits opportunities for public scrutiny regarding the PAWGs' activities. However, the incomplete information may relate to the insufficient resources of the PAWGs.

A certain amount of information is not disclosed by the PAWGs in the interest of confidentiality and protection of complainants. Circular No. 14 on the Revision and Establishment of the Provincial Accountability Working Group (2008) requires all PAWG members to uphold the confidentiality of reports and complaints from citizens.⁷⁶ This is a key feature of the PAWG complaint mechanism, as highlighted to the public on the NCDD website.⁷⁷

7.2.2 ACCOUNTABILITY (LAW AND PRACTICE)

To what extent are there provisions in place to ensure that the complaints mechanisms report to and are answerable for their actions? Does this occur in practice?

Whilst the DO and PAWG report to relevant authorities ensuring some checks and balances, they do not necessarily publicly disclose information on all their non-confidential activities. Doing so would enable further public oversight of the complaints mechanisms.

The DO is required to produce both monthly and quarterly reports.⁷⁸ These reports are integrated into overall OWSO/DO reports.⁷⁹ The OWSO is required to produce weekly reports and send them to the District/Municipality or Khan Governor.⁸⁰ In addition, the Ministry of Interior is also responsible for reporting results on the implementation of the OWSO/DO project to the Council of Ministers, NCDD, and concerned ministries and institutions.⁸¹ There are no provisions, however, which indicate that these reports must be available to the public. Hence, there is limited public oversight of DO activities.

In practice, the only reports that have been publicly accessible online are the quarterly and annual OWSO/DO progress reports as prepared by the Asia Foundation.⁸² Yet, these reports ceased publication at the end of 2012.⁸³

There is no provision specifically mentioning

whistle blowing procedures for misconduct by the DO or support staff. However, there are provisions that allow for the removal of the DO.⁸⁴ This can occur if the DO is involved in any criminal acts or misdemeanour, or if more than one third of the Municipality Election Committee shows dissatisfaction with the DO.⁸⁵

The PAWGs are accountable to the national level Accountability Working Groups, which are mandated to oversee and monitor the functions of the PAWGs.⁸⁶ All PAWGs are required to provide monthly and annual reports to the national level, summarising the work completed, complaints investigated, and results of investigation.⁸⁷ The national level Accountability Working Group then provides feedback to the PAWG,⁸⁸ ensuring a layer of checks and balances in practice.

7.2.3 INTEGRITY MECHANISMS (LAW AND PRACTICE)

To what extent are there provisions in place to ensure the integrity of the complaint mechanisms? Is this ensured in practice?

Several provisions to regulate the ethical behaviour of DO and PAWGs exist but they are not entirely comprehensive.

There is no specific code of conduct for the DO or support staff of the DO who are not representatives of a particular line ministry;⁸⁹ they are not bound by the civil servant code of conduct,⁹⁰ as they are deemed technically to fall outside that framework.⁹¹ This, likewise, means that the DO and support staff are not required to submit asset declarations under the Law on Anti-Corruption (2010).⁹²

Nonetheless, the DO and support staff are required to fulfil their tasks and responsibilities according to Prakas No. 927 on the Establishment and Functioning of the District Ombudsman. As stated previously, the Chief of the DO is restricted in other potential roles and functions that may impede their function as an independent investigator. Specifically, the Chief of the DO cannot hold a position as a civil servant, judicial officer, member of the Royal Cambodian Armed Forces, national police, or hold any political

position.⁹³

Furthermore, the DO Handbook mentions provisions related to the behaviour and ethics of DOs and their staff. The DO and support staff are expected to be gentle, dignified, and disciplined; maintain harmony and friendship between general civil servants and boards of directors in each municipality, district, and khan.⁹⁴ Moreover, there are strict rules against drinking alcohol and gambling during working hours.⁹⁵

The PAWGs do not have a set code of conduct. Yet, their conduct is expected to follow their internal manual on complaints resolution.⁹⁶ Specifically, the PAWGs are mandated to uphold confidentiality whilst undertaking investigations into complaints.⁹⁷

7.3 ROLE

7.3.1 INVESTIGATION

To what extent are the complaints mechanisms active and effective in dealing with complaints from the public?

Data indicates that the DO is effective at resolving the complaints it receives. Survey results suggest, however, that the PAWG is not well utilised due to limited citizen awareness of its role and functions.

The DO manual provides the procedure for filing a complaint about the OWSO. Citizens can make a complaint by letter, verbally, or by filling in a complaint form.⁹⁸ This complaint form can be obtained at the DO's office then dropped into a DO complaint box⁹⁹ or handed directly to the DO.¹⁰⁰

According to the DO's manual, after receiving complaints the DO or their secretary assesses the content of the complaint.¹⁰¹ If in line with the mandate of the DO, the complaint is investigated.¹⁰² The investigation process involves interviewing complainants, any witnesses, and may consult with specialists from a government institution or from the private sector.¹⁰³ The DO then writes a report on the investigation, including a recommendation based on the evidence presented from the investigation.¹⁰⁴

A former manager of one of the OWSOs made a complaint to the DO about the requests for informal payments. The complaint was initially investigated by the DO and handled further by the host ministry at a senior level. The official was subsequently dismissed and replaced and signs were set up at OWSOs to warn users against the payment of unofficial fees. This provides an example of the DO system promoting good practice, working effectively as a complaints mechanism, and taking responsive action to complaints made.

As of 2012, the DO had collectively received 5,443 complaints, of which 931 were about the OWSO; 877 (94 per cent) of those were resolved.¹⁰⁵ These figures indicate that the DO is acting as an effective complaints mechanism.¹⁰⁶

Citizen complaints to the PAWG can be made by physically inserting them into accountability boxes located around the country, via telephone, or by directly talking to a PAWG member.¹⁰⁷ The PAWG investigates complaints and may also recommend disciplinary measures to be taken when necessary.¹⁰⁸ Complaints that fall outside of the mandate of the PAWG are referred to relevant ministries for further action.¹⁰⁹

NCDD survey data (2011) indicates that citizens rarely put complaints forward through the PAWG complaint mechanism.¹¹⁰ In spite of the considerable effort undertaken in 2008 and 2009 to increase the capacity of the PAWG,¹¹¹ most citizens were unaware of the PAWG accountability boxes.¹¹² Hence, complaints were most often directed to the Commune Chief.¹¹³

7.3.2 PROMOTING GOOD PRACTICE

To what extent are the complaints mechanisms active and effective in raising awareness within government and the public about standards of ethical behaviour?

The DO promotes good practice by effectively responding to the complaints, resulting in appropriate punishments for public servants' maladministration. Yet, lack of public knowledge regarding the PAWG appears to limit its effectiveness in raising awareness, both within government and the public, about the standards of ethical behaviour.

The DO oversees complaints regarding services undertaken by the OWSO from 10 line ministries.¹¹⁴ According to the complaints handling manual, the punishment of a poorly performing OWSO staff member (who has been the subject of a complaint) is decided on by their relevant line ministry.¹¹⁵ The DO can provide recommendations to the senior staff within the line ministry on an appropriate sanction for the OWSO staff.¹¹⁶

The NCDD has increased public awareness of the OWSO/DO initiative through the facilitation of presentations at public meetings within all districts/municipalities.¹¹⁷ Some of these presentations have occurred at citizens' forums, biannual business forums, and monthly citizen hours.¹¹⁸ Presentations have included a formal overview of the roles and responsibilities of the OWSO/DO. The NCDD has also provided question and answer sessions following the presentations, allowing citizens to provide feedback on the topics discussed.¹¹⁹

In addition, a former manager of one of the OWSOs made a complaint to the DO about the requests for informal payments.¹²⁰ The complaint was initially investigated by the DO and handled further by the host ministry at a senior level.¹²¹ The official was subsequently dismissed and replaced and signs were set up at OWSOs to warn users against the payment of unofficial fees.¹²² This provides an example of the DO system promoting good practice, working effectively as a complaints mechanism, and taking responsive action to complaints made.

The role of the PAWG covers not only investigation of complaints, but also research and advocacy for citizens about the roles, obligations and procedures of the PAWG.¹²³ However, the lack

of public awareness of the PAWG as a complaints mechanism indicates that further education is needed to promote good practice within the community.¹²⁴

RECOMMENDATIONS

This report shows that the Government has made significant efforts to improve accountability within public sector institutions. Both the PAWG and OWSO/DO models have proven to be successful initiatives in increasing accountability and transparency of administrative work by public officials. Yet these efforts exist largely at the sub-national level.

Ultimately, the inclusion of the Ombudsman as a pillar within the National Integrity System Assessment highlights the importance of establishing a national ombudsman. It is needed to provide a single, clear, complaints-receiving mechanism, to provide independent checks and

balances, and investigate complaints into the actions of public administrators across the entire sector.

1. Merge the PAWG and OWSO/DO projects to create an ombudsman mechanism that covers all sub-national administrations.
2. Encourage all government ministries to divert their administrative functions at the sub-national level to fall under the OWSO/DO model.
3. Undertake an education campaign to ensure that more members of the public are aware of the sub-national complaints mechanism's function.
4. Establish a national ombudsman. Work with the DO and PAWG models to extend their effective provisions and practices to the national level.
5. The District Ombudsman Office should be used as a role model for the Access to Information Law, when enacted, to address access to information complaints at least at the local level.

1 Transparency International-Secretariat developed the National Integrity System Assessment methodology in consultation with international governance experts. The assessment is based on internationally recognised benchmarks of best practice and represents an ideal governance system. Following this, a national Ombudsman is considered to be a necessary institution within an international standard democratic governance system.

2 Constitution of the Kingdom of Cambodia, 1993, as amended in 2008 – Unofficial English translation supervised by the Constitutional Council, 2010: Art. 39

3 Council for Legal and Judicial Reform (CLJR) and GIZ, Pre-Assessment on Ombudsman and Other Complaint Mechanisms in Cambodia, authored by Dara Khlok and Ruth Gruber (Phnom Penh: CLJR/GIZ, 2009) p. 1

4 Ibid.

5 Ibid.

6 Examples of public sector complaints handling systems include but are not excluded to: the Senate Commission on Human Rights, Reception of Complaints, Investigation and National Assembly-Senate Relations (CHRCI) which provides a mechanism for complaints against public servants; the National Authority on Land Conflict Resolution which receives and processes land dispute complaints; and, the Anti-Corruption Unit which receives and investigates complaints relating to the corrupt behaviour of public officials. See: Kingdom of Cambodia, Senate, Decision No. 077 on Role, Duty, and Competence of the Commission on Human Rights, Reception of Complaints, and Investigation, 8 June 2006: Art. 2(a); Sub-Decree No. 47 on the Organisation and Functioning of the Cadastral Commission, 31 May 2002: Ch. 2, Art. 4; and Anti-Corruption Unit, Institution Website, Mission: http://www.acu.gov.kh/en_sub_index.php?4a8a08f09d37b73795649038408b5f33=1&03c7c0ace395d80182db07ae2c30f034=1 [accessed 05 September 2013]

7 Ibid.

8 Ruud Corsel, Economist, Supporting Policy and Institutional Reforms and Capacity Development in the Water Sector, Ministry of Water Resources and Meteorology, interviewed by Transparency International Cambodia (Phnom Penh) 07 November 2013

9 Chan Sothea, Director Policy Development and Analysis Division & Director of OWSO program, interviewed by Transparency International Cambodia (Phnom Penh) 27 November 2013

10 Ibid.

11 It is noted that the mandate for the DO is specifically limited to providing accountability of public administration specifically at the OWSO, and does not extend to any further public official positions outside of this mandate. See: Decision No. 12 on the Establishment of the One Window Service Office and Ombudsman Office at District/Khan level, 30 June 2008: Art. 3; and Democracy Resource Centre for National Development (DND), Baseline Survey: Situation Analysis of the One Window Service Office (OWSO) and the District Ombudsman (DO), authored by Nhek Sarin, Bun Rithy, Long Leang, But Sambo, Lay Dara, and Pich Channary (Baseline Survey Team) (DND, 2011) p. 15

12 Decision No. 12 on the Establishment of the One Window Service Office and Ombudsman Office at District/Khan level, 30 June 2008: Arts. 2-3

13 Ibid. Art. 2; Thon Vimealea, Heng Seiha, Krut Virak, and Ly Tem, 'Assessment of One Window Service Office and District Ombudsmen Pilot Projects' in Annual Development Review 2010-11 (Phnom Penh: CDRI, 2011) p. 193; and Democracy Resource Centre for National Development (DND), Baseline Survey: Situation Analysis of the One Window Service Office (OWSO) and the District Ombudsman (DO), authored by Nhek Sarin, Bun Rithy, Long Leang, But Sambo, Lay Dara, and Pich Channary (Baseline Survey Team) (DND, 2011) p. 6

- 14 Democracy Resource Centre for National Development (DND), Baseline Survey: Situation Analysis of the One Window Service Office (OWSO) and the District Ombudsman (DO), authored by Nhek Sarin, Bun Rithy, Long Leang, But Sambo, Lay Dara, and Pich Channary (Baseline Survey Team) (DND, 2011) pp. 6 and 14; and Ray Worner, Study on the Potential for One Window Service Office Models for Rural Districts in Cambodia: Final Report (Phnom Penh: Royal Government of the Kingdom of Cambodia, 2011) p. 10
- 15 Ibid.
- 16 Note that Districts and Municipalities are sub-dimensions of provinces. Like provinces, both Districts and Municipalities are legal entities. They have elected councils charged with the responsibility of promoting and sustaining democracy; representing the public and ensuring local autonomy. See: Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans, 2008: Ch. 1 – Unofficial English translation
- 17 Ibid. and Ministry of Interior, Terms of Reference for Study on Building Partnerships as part of the Demand for Good Governance Project: <http://www.dfgmoi.gov.kh/documents/com-TOR-Partnership-Updated-22-feb-12-bank-nol-05-mar.pdf> [accessed 27 November 2013]
- 18 Ibid. and One Window Service Office, Official Website, About the One Window Service Office: http://www.owso.gov.kh/?page_id=1843 [accessed 20 January 2014]
- 19 Democracy Resource Centre for National Development (DND), Baseline Survey: Situation Analysis of the One Window Service Office (OWSO) and the District Ombudsman (DO), Nhek Sarin, Bun Rithy, Long Leang, But Sambo, Lay Dara, and Pich Channary (Baseline Survey Team) (DND, 2011) p. 15; Thon Vimealea, Heng Seiha, Kruey Virak, and Ly Tem, 'Assessment of One Window Service Office and District Ombudsmen Pilot Projects' in Annual Development Review 2010-11 (Phnom Penh: CDRI, 2011) p. 204; World Bank, Demand for Good Governance Project (DFGG), DFGG Learning Note No. 6: Issues and Options for Staffing Citizen Service Centers, authored by Janelle Plummer (Phnom Penh: DFGG, 2013) p. 2; and Prakas No. 927 on the Organisation and Function of the District Ombudsman in Municipality, District and Khan, 12 March 2009: Art. 10 and Art. 2
- 20 These line ministries include the Ministry of Interior, Ministry of Commerce, Ministry of Tourism, Ministry of Land Management and Urbanization, Ministry of Industry, Mines and Energy, Ministry of Culture and Fine Art, Ministry of Agriculture, Ministry of Health, and Ministry of Education, Youth and Sport. See: National Committee for Sub-National Democratic Development (NCDD), District Support Team (DSTR), and One Window Service Office (OWSO), Demand for Good Governance Project: Annual Progress Report 2012 of the OWSO/DO (Phnom Penh: NCDD/DST/OWSO, 2013) p. 6; Ministry of Interior, Governance Resource and Learning Center, Demand for Good Governance Project: Main Achievements 2009-2013 (Phnom Penh: Ministry of Interior, 2013) p. 8; and Ros Thansan, Policy Advisor, District Support Team One Window Service Office Project, Mol, interviewed by Transparency International Cambodia (Kampong Thom) 29 November 2013
- 21 Ros Thansan, interviewed by Transparency International Cambodia (Kampong Thom) 29 November 2013
- 22 Commune/Sangkat Councils are local authorities elected for five-year terms. They are responsible for serving local interests of the residents within the Commune/Sangkat; as well as representing the Government, and holding power delegated from the national level administration to the sub-national level. See: National League of Communes/Sangkats of the Kingdom of Cambodia, official website: http://www.nlcs.org.kh/Page/EN/Commune_Sangkats/About_Communes_Sangkats.html [accessed 17 February 2014]. So, the PAWGs are charged with ensuring that these sub-national administrations use their budgets accountably.
- 23 United Nations Development Programme/Cambodia (UNDP), Project to Support Democratic Development through Decentralization and Deconcentration (PSDD): Final Report (UNDP, 2011) p. 36; National Committee for Sub-National Democratic Development, Official Website, Accountability Working Group, Who We Are: <http://www.ncdd.gov.kh/en/accountability/49-who-we-are> [accessed 01 December 2013]; and Ministry of Interior (MOI) and Department of Local Administration (DoLA), Final Report on Assessment of Provincial/Municipal/Commune/Sangkat Fund Accountability Work Group, authored by Jenny Knowles (Phnom Penh: MOI/DoLA, 2007) p. 11
- 24 United Nations Development Programme/Cambodia (UNDP), Project to Support Democratic Development through Decentralization and Deconcentration (PSDD): Final Report (UNDP, 2011) p. 36
- 25 United Nations Development Programme/Cambodia (UNDP), Project to Support Democratic Development through Decentralization and Deconcentration (PSDD): Final Report (UNDP, 2011) p. 36; National Committee for Sub-National Democratic Development, Official Website, Accountability Working Group, Who We Are: <http://www.ncdd.gov.kh/en/accountability/49-who-we-are> [accessed 1 December 2013]; Ministry of Interior (MOI) and Department of Local Administration (DoLA), Final Report on Assessment of Provincial/Municipal/Commune/Sangkat Fund Accountability Work Group, authored by Jenny Knowles (Phnom Penh: MOI/DoLA, 2007) p. 11; and National Committee for Sub-National Democratic Development, Official Website, To Whom You Make a Complaint Against?: <http://www.ncdd.gov.kh/en/accountability/52-to-whom-you-make-complaint-against> [accessed 13 February 2014]
- 26 Chan Sothea, interviewed by Transparency International Cambodia (Phnom Penh) 27 November 2013
- 27 United Nations Development Programme/Cambodia (UNDP), Project to Support Democratic Development through Decentralization and Deconcentration (PSDD): Final Report (UNDP, 2011) p. 38
- 28 Ibid. and Ministry of Interior, Governance Resource and Learning Center, Demand for Good Governance Project: Main Achievements 2009-2013 (Phnom Penh: Ministry of Interior, 2013) p. 8
- 29 Ministry of Interior, Governance Resource and Learning Center, Demand for Good Governance Project: Main Achievements 2009-2013 (Phnom Penh: Ministry of Interior, 2013) p. 8
- 30 Chan Sothea, interviewed by Transparency International Cambodia (Phnom Penh) 27 November 2013; and Ruud Corsel, interviewed by Transparency International Cambodia (Phnom Penh) 07 November 2013
- 31 Ibid.
- 32 Chan Sothea, interviewed by Transparency International Cambodia (Phnom Penh) 27 November 2013; and Ros Thansan, interviewed by Transparency International Cambodia (Kampong Thom) 29 November 2013
- 33 Chan Sothea, interviewed by Transparency International Cambodia (Phnom Penh) 27 November 2013
- 34 Prakas No. 927 on the Organisation and Functioning of the District Ombudsman in Municipality, District and Khan, 12 March 2009: Art. 11
- 35 Chan Sothea, interviewed by Transparency International Cambodia (Phnom Penh) 27 November 2013; and Ros Thansan, interviewed by Transparency International Cambodia (Kampong Thom) 29 November 2013
- 36 Chan Sothea, interviewed by Transparency International Cambodia (Phnom Penh) 27 November 2013. See: Prakas No. 927 on the Organisation and Functioning of the District Ombudsman in Municipality, District and Khan, 12 March 2009: Art. 10
- 37 Ros Thansan, interviewed by Transparency International Cambodia (Kampong Thom) 29 November 2013; and National Committee for Sub-National Democratic Development (NCDD), District Support Team (DSTR), and One Window Service Office (OWSO), Demand for Good Governance Project: Annual Progress Report 2012 of the OWSO/DO (Phnom Penh: NCDD/DST/OWSO, 2013) p. 15
- 38 National Committee for Sub-National Democratic Development (NCDD), District Support Team (DSTR), and One Window Service Office (OWSO), Demand for Good Governance Project: Annual Progress Report 2012 of the OWSO/DO (Phnom Penh: NCDD/DST/OWSO, 2013) p. 15
- 39 Chan Sothea, interviewed by Transparency International Cambodia (Phnom Penh) 27 November 2013; National Committee for Sub-National Democratic Development, Official Website, Accountability Working Group, Who We Are: <http://www.ncdd.gov.kh/en/accountability/49-who-we-are> [accessed 01 December 2013]
- 40 Ibid. p. 37
- 41 Ibid. p. 38

42 Ibid. pp. 37-9; National Committee for Sub-National Democratic Development, Official Website, Accountability Working Group, Who We Are: <http://www.ncdd.gov.kh/en/accountability/49-who-we-are> [accessed 01 December 2013]; and Chan Sothea, interviewed by Transparency International Cambodia (Phnom Penh) 27 November 2013

43 Chan Sothea, interviewed by Transparency International Cambodia (Phnom Penh) 27 November 2013

44 Ibid.

45 Ibid.

46 Prakas No. 927 on the Organisation and Functioning of the DO in Municipality, District and Khan, 12 March 2009

47 Ibid. Art. 2

48 Ibid. Art. 3

49 Note that a Khan is a sub-national legal entity in a city; Phnom Penh is divided into Khans and Sangkats. Each Khan has an elected council charged with the promoting and sustaining democratic development. See: Law on Administrative Management of the Capital, Provinces, Municipalities, Districts and Khans, 2008: Ch. 1 – Unofficial English translation

50 Ibid. Art. 10

51 Ray Worner, Study on the Potential for One Window Service Office Models for Rural Districts in Cambodia: Final Report (Phnom Penh: Royal Government of the Kingdom of Cambodia, 2011) p. 24

52 Ros Thansan, interviewed by Transparency International Cambodia (Kampong Thom) 29 November 2013; and Democracy Resource Centre for National Development (DND), Baseline Survey: Situation Analysis of the One Window Service Office (OWSO) and the District Ombudsman (DO), authored by Nhek Sarin, Bun Rithy, Long Leang, But Sambo, Lay Dara, and Pich Channary (Baseline Survey Team) (DND, 2011) p. 15

53 Prakas No. 927 on the Organisation and Functioning of the District Ombudsman in Municipality, District and Khan, 12 March 2009: Art. 8

54 Chan Sothea, interviewed by Transparency International Cambodia (Phnom Penh) 27 November 2013

55 Ros Thansan, interviewed by Transparency International Cambodia (Kampong Thom) 29 November 2013; and Prakas No. 927 on the Organisation and Functioning of the District Ombudsman in Municipality, District and Khan, 12 March 2009: Art. 4

56 Prakas No. 927 on the Organisation and Functioning of the District Ombudsman in Municipality, District and Khan, 12 March 2009: Art. 4

57 Prakas No. 927 on the Organisation and Functioning of the DO in Municipality, District and Khan, 12 March 2009: Art. 4

58 Chan Sothea, interviewed by Transparency International Cambodia (Phnom Penh) 27 November 2013 Ibid.

59 See Legislature Pillar (Structure and Organisation) and Law Enforcement Agencies Pillar (Structure and Organisation) for data on women's underrepresentation in Cambodian public institutions.

60 Ros Thansan, interviewed by Transparency International Cambodia (Kampong Thom) 29 November 2013

61 World Bank, Cambodia - Demand for Good Governance Project: P101156 – Implementation Status Results Report: Sequence 08, authored by Janelle Plummer (Washington D.C.: World Bank, 2013) p. 5

62 Circular No. 14 on the Revision and Establishment of the Provincial Accountability Working Group, 23 December 2008: pp. 1-2; and United Nations Development Programme/Cambodia (UNDP), Project to Support Democratic Development through Decentralization and Deconcentration (PSDD): Final Report (UNDP, 2011) p. 36

63 Circular No. 14 on the Revision and Establishment of the Provincial Accountability Working Group, 23 December 2008: Annex 1 – Selection Procedure of Civil Society and Contractor

64 Ibid.

65 Circular No. 14 on the Revision and Establishment of the Provincial Accountability Working Group, 23 December 2008, p. 1; and United Nations Development Programme/Cambodia (UNDP), Project to Support Democratic Development through Decentralization and Deconcentration (PSDD): Final Report (UNDP, 2011) p. 36

66 Prakas No. 927 on the Organisation and Functioning of the District Ombudsman in Municipality, District and Khan, 12 March 2009: Art. 3

67 Ibid. Art. 16

68 Ibid. Art. 10

69 See: Demand for Good Governance, Non-State Actor Component, Project Website, DFGG-NSA Project Reports: www.dfgg-nsac.org/en/the-project/project-reports [accessed 29 January 2014]

70 See for example: The Asia Foundation, Demand For Good Governance Project, Quarterly Progress Report: Quarter 3, July-September 2012 (Phnom Penh: The Asia Foundation, 2012); The Asia Foundation, Demand For Good Governance Project, Quarterly Progress Report: Quarter 2, April-June, 2012 (Phnom Penh: The Asia Foundation, 2012); and The Asia Foundation, Demand For Good Governance Project, Quarterly Progress Report: Quarter 1, January-March 2012 (Phnom Penh: The Asia Foundation, 2012)

71 Ibid.

72 See: Resources – Law and Practice

73 Circular No. 14 on the Revision and Establishment of the Provincial Accountability Working Group, 23 December 2008: p. 4

74 United Nations Development Programme/Cambodia (UNDP), Project to Support Democratic Development through Decentralization and Deconcentration (PSDD): Final Report (UNDP, 2011) p. 38; Circular No. 14 on the Revision and Establishment of the Provincial Accountability Working Group, 23 December 2008: pp. 2-3; and Prakas No. 927 on the Organisation and Functioning of the District Ombudsman in Municipality, District and Khan, 12 March 2009: Art. 4

75 See: National Committee for Sub-National Democratic Development, Official Website, Accountability: <http://www.ncdd.gov.kh/en/accountability/49-who-we-are> [accessed 01 December 2013]

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77 National Committee for Sub-National Democratic Development, Official Website, Confidentiality of Complaints to the PAWG: <http://ncdd.gov.kh/en/accountability/53-complaint-are-confidentially-kept> [accessed 15 November 2013]

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Prakas No. 927 on the Organisation and Functioning of the District Ombudsman in Municipality, District and Khan, 12 March 2009: Art. 4

88 Circular No. 14 on the Revision and Establishment of the Provincial Accountability Working Group, 23 December 2008: pp. 2-3

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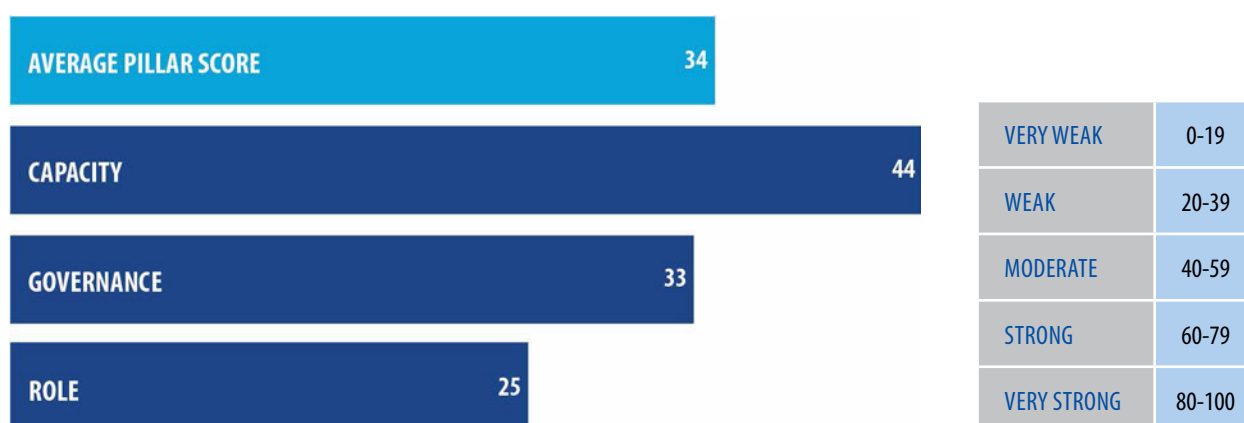
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VII. NATIONAL INTEGRITY SYSTEM

8. National Audit Authority (NAA)



SUMMARY

The National Audit Authority (NAA) has made some positive progress during its existence of little over a decade. Staff numbers within the NAA have risen significantly since the institution began functioning in 2002. Consistent training and support allow for the progressive professional development of the institution. To ensure the ethical behaviour of staff, the NAA has a Code of Ethics upon which staff members are trained once a year.

Despite these developments, limited staff competencies pose a challenge for the NAA to effectively undertake its functions in practice. In addition, the closeness of the NAA senior members to the ruling party may hamper the possibility for objective, impartial audits to be completed.

Moreover, the infrequency and delays in the publication of audit reports result in limited possibilities for checks and balances on the NAA.

Both current and former senior NAA staff members were invited by Transparency International Cambodia to be interviewed and contribute their voices to this pillar report. They did not accept the offer. The absence of their input combined with the limited secondary available information on the NAA makes it difficult to fully assess.

The diagram at the beginning of this chapter provides the scores for the NAA in terms of its capacity, governance and role. The remainder of the section provides a qualitative background and explanation of the scores.

STRUCTURE AND ORGANISATION

The NAA was established by the Law on Audit (2000) as the supreme audit institution in Cambodia.¹ It launched its operations at the beginning of 2002.²

The NAA is empowered to undertake external audits of the Government³ and all government ministries, sub-national offices, and agencies; as well as public financial institutions, public enterprises, and any other organisation receiving financial assistance, goods, or services from the Government.⁴ The NAA's audits focus on the accounting records, management systems, operational controls, and programmes of the relevant institutions.⁵

The NAA's mission is to help develop public finances and increase the transparency of public financial processes.⁶ It is also tasked with reinforcing the accountability of the administration of public funds, assets, and public enterprises.⁷

An Auditor-General and two Deputy Auditor-Generals lead the NAA.⁸ It is further comprised of by a Secretariat-General, an administration and finance department, a technical department, and three departments in charge of auditing.⁹

ASSESSMENT

8.1 CAPACITY

8.1.1 RESOURCES (LAW)

SCORE: 50

To what extent are there provisions in place that provide the NAA with adequate resources to effectively carry out its duties?

Several provisions exist to provide the NAA with the resources it needs to function effectively.

The Law on Audit (2000) provides that the NAA shall have its own separate budget provided for in the National Budget.¹⁰ This is important to ensure that the NAA has control over its own accounting and finances without undue interference from external actors.

Fiscal stability regarding the budget for the NAA is provided for under the Public Auditing Standards (2011). Specifically, the standards

specify that the NAA shall have the right to resources and a sufficient budget to undertake its function.¹¹ Furthermore, the Public Auditing Standards state that the budget of the NAA is not to be reduced, unless it is unavoidable to do so.¹² This indicates some consideration to protect the budget allocation for the NAA. The Public Auditing Standards is not a legally binding document, however, so it offers only limited protection for the fiscal stability of the NAA.

8.1.2 RESOURCES (PRACTICE)

SCORE: 50

To what extent does the audit institution have adequate resources to achieve its goals in practice?

The NAA has some resources, but notable resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.

In 2013, the Government allocated 8,319 million riel (2,029 thousand US dollars) to the NAA budget.¹³ This is a slight increase from 2012, when the NAA was provided with 6,948 million riel (1,694.6 thousand US Dollars).¹⁴ The budget has risen significantly since the NAA launched its operations in 2002, when the institution had only 2,650 million riel (676.5 thousand US Dollars).¹⁵ This positive trend enables the NAA to further expand and develop its operations and enhance its effectiveness over time.

According to the NAA's report in 2011 on its ten-year achievements (2001-2011), the number of staff working for the organisation increased from an initial six people to 201 employees in 2011.¹⁶ There have also been advances in terms of technical ability through training and support, primarily through support from the German development agency, GIZ.¹⁷ Further donors such as the World Bank, Asian Development Bank (ADB), and other bilateral organisations have also provided support for capacity development of the NAA.¹⁸

Despite this, the NAA's human resources are still considered to be limited in terms of capacity and skill.¹⁹ Furthermore, staff members are not fully trained on all necessary topics because some important tools, frameworks, and guidelines have

not yet been completed.²⁰ Insufficient human resources may in part explain why the NAA has completed and published few audit reports.²¹

8.1.3 INDEPENDENCE (LAW)

SCORE: 50

To what extent is there formal operational independence of the NAA?

While a number of legal provisions exist, they do not cover all necessary aspects of independence for the NAA.

The NAA is not mentioned in the Constitution; hence its independence is not constitutionally guaranteed. The Law on Audit (2000) does, however, emphasize the independence of the NAA, stating that it shall be a public entity in control of its own operations.²² In addition, the Public Auditing Standard states that the NAA must perform its audits objectively and without prejudice or political influence.²³ Furthermore, the NAA must ensure that its activities do not impact on its independence and goals.²⁴

In the pursuit of independence, further provisions safeguard the freedom of the NAA to set its own agenda and goals. The Public Auditing Standards state that the Auditor General is free to decide the institution's strategy, rules, audit methods, procedures, and operations.²⁵ Moreover, whilst the NAA must report to the National Assembly, Senate, and the Government for informational purposes, these bodies are not entitled to influence the policies and activities of the NAA.²⁶

The Auditor-General determines the appointment of NAA staff.²⁷ Several objective criteria are provided by law to ensure the impartial selection of NAA staff members. These include possessing a bachelor degree or equivalent degree relevant to the NAA's areas of work.²⁸ Additionally, auditors should be familiar with accounting and auditing standards as well as the legal specifications of the NAA.²⁹

Both the Auditor-General and Deputy Auditor-Generals of the NAA are appointed via royal decree on recommendation of the Government and

approved by a two-thirds majority of all members of the National Assembly.³⁰ The Auditor-General and Deputy Auditor-Generals are each appointed for a five-year term, which may be renewed once for a second five-year term.³¹ Whilst the appointment of the head staff of the NAA must go through parliamentary vote, the prerequisite that any candidates are to be recommended by the Government indicates potential for political interference by the Executive.

Despite this, a number of objective criteria do exist for candidates of the chief positions at the NAA. For example, candidates for the Auditor-General and Deputy Auditor-General positions must: have Cambodian nationality at birth; be at least 40 years old; hold a degree in accounting, economics, finance, law, or commerce, which shall have proper certification; and, have professional work experience of at least ten years.³² The Law on Audit also states that candidates for the appointment of Auditor General or Deputy Auditor General must not hold a position in the governing body of any political party.³³

The Public Auditing Standards, a non-legally binding document, contains provisions to avoid conflicts of interest. Specifically, it states that auditors must not audit an entity where they have a close connection (kinship or other relationship) with the entity's administration.³⁴ Moreover, members of the NAA are prohibited from becoming members of the management committee of audited entities and they must turn down gifts and gratuities that could compromise their independence.³⁵

Further provisions to ensure the independence of the NAA appear to be absent from the Law on Audit. The Auditor-General and staff members of the NAA do not have immunity from prosecutions resulting from the normal exercise of their duties.³⁶ In addition, there are no legal provisions ensuring that the Auditor-General and NAA staff will be protected from removal without justification. The Law on Audit allows for the removal of the Auditor-General in the event that he or she commits a 'gross mistake'.³⁷ Yet there is no specification of what a 'gross mistake' would amount to, enabling the possibility of arbitrary interpretations of the

term. This could lead to undue interference from external actors in the removal of the Auditor-General and administration of the NAA.³⁸

8.1.4 INDEPENDENCE (PRACTICE)

SCORE: 25

To what extent is the NAA free from external interference in the performance of its work in practice?

Whilst the day-to-day running of the NAA may be independent, the engagement of the Auditor-General in political activities limits their independence and political neutrality.

The NAA's structure is clearly defined and the institution is relatively free to manage its day-to-day activities independently.³⁹ For instance, it is able to order new audits if deemed necessary.⁴⁰

Furthermore, it is not common for staff members of the NAA to be reappointed or released from employment.⁴¹ Director-level staff members are in place until they retire; there is no time frame for their contracts.⁴² It is also not common for the Auditor-General or Deputy Auditor-Generals to be removed from their position before the end of their term without relevant justification.⁴³

Nevertheless, similar to other public sector institutions, the NAA is politicised starting from the top-level. In particular, the Auditor-General is appointed on direct recommendation from the Government. The current Auditor-General, Som Kimsour, is also a Central Committee member of the Cambodian People's Party (CPP).⁴⁴ Given that the entire public sector is closely affiliated to the ruling party,⁴⁵ the inclusion of the NAA within this partisan nexus indicates that the NAA has restricted authority to ensure checks and balances on the financial management of other public institutions.

8.2 GOVERNANCE

8.2.1 TRANSPARENCY (LAW)

SCORE: 25

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decisions by the NAA?

Limited provisions are in place to ensure that relevant information on the activities and the decision-making of the NAA are publicly accessible.

The Law on Audit stipulates that the NAA's main function is to undertake external audits.⁴⁶ The law also lists the various institutions that are subject to being audited by the NAA.⁴⁷ The different types of external audits undertaken by the institution are also listed in the law, including: financial statement audits, externally funded project audits, and performance audits.⁴⁸

In the interest of transparency, the NAA is required to audit and certify the Government's annual budget settlement, as prepared by the Ministry of Economy and Finance.⁴⁹ The NAA's report on the budget settlement is then submitted to the National Assembly.⁵⁰ No provision specifies, however, whether this report should be debated in parliament.

In addition, the Auditor-General must report to the National Assembly, Senate, Council of Ministers, Ministry of Economy and Finance, and other relevant ministries in the case of any irregularities in the accounting records, monetary, and asset management of any audited entity.⁵¹

Moreover, the Auditor-General shall regularly report to the National Assembly and Senate on any problems arising from the conduct of his or her duties.⁵² What counts as regular in this instance, however, is not clearly defined which may result in such reporting occurring infrequently.⁵³

The Law on Audit states that reports issued by the Auditor-General are recognised as public documents.⁵⁴ Nevertheless, no deadline for the publication of such reports is provided for in the law. This could permit the delayed publication of audit reports without any legal provision upon which to hold the NAA to account.

Reports issued by the Auditor-General should only not be published if the information contained within is considered 'contrary to the public interest'.⁵⁵ Information contrary to the public interest is described as information compromising the security, defence, sovereignty, or international

Since the creation of the NAA only two audit reports on budget settlement have been made public; these were released at least three years after the relevant fiscal years. The 2006 Audit Report on Public Financial Management was published in 2009 and the corresponding report from 2007 was not published until 2011. Delays in publishing the two available NAA audit reports were reportedly compounded by an initial delay in the submission of the budget reports by the Government to the NAA.

relations of Cambodia; or as information compromising the commercial interest of a legal entity or person.⁵⁶ This clause does not, however, provide sufficient detail on how the management of restricted information is to be undertaken. For instance, not mentioned is the decision process through which information should be classified as ‘contrary to the public interest’ and which institution should be responsible for handling classified information. The ambiguity of this clause creates the possibility for the Government to arbitrarily withhold information from the public.

8.2.2 TRANSPARENCY (PRACTICE)

SCORE: 25

To what extent is there transparency in the activities and decisions of the NAA in practice?

While the public and Members of Parliament can obtain relevant information on the organisation and functioning of the NAA, the publication of audit reports is delayed and infrequent.

The NAA’s website contains some useful information, including relevant laws and regulations – the Law on Audit and Public Auditing Standards – as well as details on the structure and leadership of the organisation.⁵⁷ An information section gives up-to-date details on meetings, workshops, trainings, and announcements.⁵⁸ Also published on the website is the NAA’s performance report from 2001 to 2011.⁵⁹

Since the creation of the NAA only two audit reports on budget settlement have been made public; these were released at least three years after the relevant fiscal years.⁶⁰ The 2006 Audit Report on Public Financial Management was published in 2009 and the corresponding report

from 2007 was not published until 2011.⁶¹ Delays in publishing the two available NAA audit reports were reportedly compounded by an initial delay in the submission of the budget reports by the Government to the NAA.⁶² This does not meet the minimum international standard requiring that an audit report should be published every year, and no later than two years after the relevant fiscal year.⁶³

The NAA does not publish the results of audits of individual agencies.⁶⁴ Nor does it release the audit reports on the Government’s annual budget settlement to the public.⁶⁵ For instance, the 2012 audit report on the Government’s annual budget settlement has reportedly been produced, although it is restricted to internal use.⁶⁶ Information on audits of the NAA itself is also not available.

8.2.3 ACCOUNTABILITY (LAW)

SCORE: 50

To what extent are there provisions in place to ensure that the NAA has to report and be answerable for its actions?

While a few provisions exist, they do not cover all aspects regarding accountability of the NAA.

The Law on Audit states that for informational purposes the NAA shall report directly to the National Assembly, Senate, and Government.⁶⁷ However, no requirements stipulate what the frequency, content, or deadline for submission of these reports should be. The International Standards of Supreme Audit Institutions, by contrast, require a country’s supreme audit institution to provide a report on its activities to responsible public bodies once a year.⁶⁸ Given the lack of such a timeframe in the national legislation,

there is no guarantee that regular information is released. This may prevent external actors from being able to effectively hold the NAA to account for its actions.

The Law on Audit stipulates that in the case of emergency, the Permanent Committee may establish a special commission to review the activities and operations of the NAA.⁶⁹ Beyond this, the law does not provide any further requirements for the NAA to undergo regular internal or external audits of its own financial management and performance. By contrast, Internal Audit Departments are established by law in all ministries and state enterprises.⁷⁰ They all must submit reports of each audit assignment to the NAA.⁷¹ However, with no legal requirements on the NAA itself to undergo such a process of internal auditing, there are limited checks and balances to ensure that the NAA meets the auditing standards that it demands of other institutions.

Other public institutions may hold the NAA to account to a certain extent, by challenging the NAA's audit results regarding performance audits of their own institution.⁷² Audited institutions have 28 days to give written comments to the Auditor-General on relevant performance audit reports.⁷³ By law, the Auditor-General must then take these comments into account when writing the final audit report.⁷⁴

8.2.4 ACCOUNTABILITY (PRACTICE)

SCORE: 25

To what extent does the NAA have to report and be answerable for its actions in practice?

Limited access to information remains a challenge in ensuring the accountability of the NAA in practice.

The NAA prepares an audit report for each audit it conducts.⁷⁵ The NAA then gives the audit reports to the National Assembly, Senate and Government.⁷⁶ The National Assembly directs the NAA's reports to its Finance and Banking Committee (Second Commission) for discussion.⁷⁷ This allows for some degree of accountability and feedback on the reports. The details of such discussions and any recommendations or follow-

up actions taken are not publicly available.

Enabling some external scrutiny, the NAA has started a system where audit results can be challenged by relevant public agencies. For instance, the NAA has offered the National Bank the opportunity to provide feedback on its audit results to the Second Commission of the National Assembly.⁷⁸

Overall, access to relevant and detailed information remains an obstacle for ensuring the accountability of the NAA. Neither the reports on individual audits,⁷⁹ nor the audit reports on the Government's annual budget settlement are released to the public.⁸⁰ The former Auditor-General stated that members of the National Assembly had audited the NAA.⁸¹ No report is publicly available to confirm this, however. Furthermore, the New Zealand office of the Auditor-General conducted a peer review of the Cambodian NAA in 2010.⁸² Likewise, this report has not been made publicly available. Ultimately, no official information is accessible on independent annual financial audits of the NAA's own finances. Given this, opportunities for public scrutiny to hold the NAA to account are considerably limited.

8.2.5 INTEGRITY MECHANISMS (LAW)

SCORE: 50

To what extent are there mechanisms in place to ensure the integrity of the NAA?

The NAA's Code of Ethics aims to safeguard the integrity mechanisms of the institution.

The Code of Ethics of Public Auditors of the NAA was published in 2002. It includes five chapters and 31 provisions on the topics of: trust, confidence and credibility; integrity; independence, objectivity and impartiality; political neutrality; conflicts of interest; professional secrecy; competence and professional development.⁸³

Notable is the Code of Ethics' section on conflicts of interest. This states that auditors are required to protect their independence and avoid conflicts of interest by refusing any gifts or gratuities.⁸⁴ This provision aims to safeguard the integrity of auditors by ensuring that their work

All government departments are required to undertake an internal audit, which is submitted to the NAA. Part of the NAA's mandate is to review the effectiveness of such internal audits. Issues reportedly remain, however, regarding the capacity of internal audit structures within public ministries. This may contribute to the apparent inconsistency of audits undertaken by the NAA.

remains objective and not influenced by informal rewards.

Independence and objectivity are also categorised as fundamental principles of the Code of Ethics. Chapter three, for instance, is dedicated solely to the principles of independence, objectivity, and impartiality.⁸⁵ It specifically highlights the importance of the NAA's political neutrality.⁸⁶ Likewise, this provision safeguards the professionalism of the NAA by protecting it against the influence of any particular political party.

The Code of Ethics is not entirely comprehensive, however; it does not mention any post-employment restrictions for NAA staff. A lack of limitations on the professional roles and issues former NAA staff may work on immediately after their employment with the NAA leaves the door open for potential influence of the former staff in the work of the NAA. Take the hypothetical example of a former senior NAA-staff member who gains post-employment in a different public institution. In the first year of their new role, if they are allowed to communicate directly with NAA auditors during the external audit of their current workplace, the possibility stands that they could influence the outcome of the NAA's audit report.

8.2.6 INTEGRITY MECHANISMS (PRACTICE)

SCORE: 25

To what extent is the integrity of the NAA ensured in practice?

Limited mechanisms appear to be in place to ensure the integrity of NAA staff members.

Officials of the NAA are reportedly aware of the institution's Code of Ethics.⁸⁷ With the aim of ensuring its provisions are followed, NAA staff members are trained on it once per year.⁸⁸

The quality of the Code of Ethics' training

cannot be confirmed given that little secondary information is publicly available on it. The NAA's website does briefly mention the training,⁸⁹ but no further data on its content or evaluation of its effectiveness is provided.

In addition, monitoring procedures to ensure staff members abide by the Code of Ethics do not appear to be well developed; nor do disciplinary mechanisms for misconduct.⁹⁰ No cases of violation of the Code of Ethics have been publicly reported.⁹¹

Overall, the limited available information poses a challenge to fully assessing whether the integrity of the audit institution is ensured in practice.

8.3 ROLE

8.3.1 EFFECTIVE FINANCIAL AUDITS

SCORE: 25

To what extent does the NAA provide effective audits of public expenditure?

While the NAA is somewhat active in auditing public expenditure, its effectiveness is limited due to insufficient competencies.

The Law on Audit allows various types of audits to be undertaken by the NAA, including audits on ministries' financial statements, institutional systems and operations, and performance audits.⁹² All government departments are required to undertake an internal audit, which is submitted to the NAA.⁹³ Part of the NAA's mandate is to review the effectiveness of such internal audits.⁹⁴ Issues reportedly remain, however, regarding the capacity of internal audit structures within public ministries.⁹⁵ This may contribute to the apparent inconsistency of audits undertaken by the NAA.⁹⁶

The NAA provides trainings for the internal audit departments within ministries.⁹⁷ Such training aims to enable ministries to undertake more effective audits of their own public

expenditure.⁹⁸

By law, liaison is required between the NAA and internal audit departments of each ministry.⁹⁹ This aims to avoid duplication of auditing procedures. Yet in practice, there appears to be duplication and a lack of effective cooperation of the audit mechanisms within ministries.¹⁰⁰ The duplication is reportedly due to the overlap of auditing roles of the NAA and internal ministry audit departments.¹⁰¹ The General Inspectorate Department under the Ministry of Economy and Finance, the General Inspection Departments in line ministries, and the Ministry of Parliamentary Affairs and Inspection also have auditing roles that may add further to the lack of clarity and duplication of auditing procedures.¹⁰²

Reports by the NAA regarding the audits of individual ministries are not available to the public.¹⁰³ Hence, no observation on the content of the review of internal audit effectiveness can be undertaken at present.

The NAA's audit activities are typically limited to financial regularity and compliance audits.¹⁰⁴ Since 2009 however, the NAA has begun undertaking audits based on performance, though these are not yet systematic.¹⁰⁵

8.3.2 DETECTING AND SANCTIONING MISBEHAVIOUR

SCORE: 25

Does the NAA detect and investigate misbehaviour of public officeholders?

The NAA has limited powers to detect and sanction misbehaviour of public officeholders.

Under the Law on Audit, the NAA has the right to collect all necessary information from the Government, ministries, and public enterprises that it audits.¹⁰⁶ Following this, the Auditor-General can comment upon any issues or irregularities relating to public accounts, moneys, assets, and liabilities.¹⁰⁷ Hence, the NAA has the potential to detect and report on the misbehaviour of public officeholders in relation to public financial management.

The NAA does not have the authority to

investigate fraud and corruption; this power resides with the Anti-Corruption Unit (ACU).¹⁰⁸ A dignitary selected by and from the NAA does, however, sit on the National Council Against Corruption (NCAC).¹⁰⁹ Therefore, the NAA may play an oversight role in the activities of the Anti-Corruption Unit.

The NAA has notably published a number of documents that highlight the standard of behaviour public officeholders, including NAA staff, are expected to uphold.¹¹⁰ Yet, due to the limited public availability of information, it is not clear whether the NAA defines applicable sanctions for the misbehaviour of public officeholders.

8.3.3 IMPROVING FINANCIAL MANAGEMENT

SCORE: 25

To what extent is the NAA effective in improving the financial management of the Government?

The NAA's influence in improving the financial management of the Government is limited.

An additional audit report is conducted by the NAA in order to assess the extent to which its prior audit report recommendations have been followed by public institutions.¹¹¹ There is no clearly defined review mechanism, however, on how to proceed if institutions have not implemented the recommendations.

In the report on its own activities and achievements from 2001 to 2011, the NAA stated that some of its recommendations have been accepted and acted upon by government institutions, including the Ministry of Economy and Finance.¹¹² Given that the NAA's additional audit reports are not publicly available there is little information to support that claim.

Overall, the lack of publicly available information makes it difficult to fully assess the NAA's potential contribution to the improvement of public financial management.

RECOMMENDATIONS

1. Amend Article 40 of the Law on Audit (2000) to require the Permanent Committee of the National Assembly to establish an independent

technical audit team to review the activities and operations of the NAA on an annual basis, not only in emergency.

2. Pass a Law on Access to Information requiring the NAA's audit and financial reports to be disclosed to the public in the following relevant financial year. Update the Law on Audit (2000) to include this requirement.

3. Develop internal review mechanisms to ensure that the NAA's Code of Ethics (2002) is implemented and adhered to by all NAA staff members.

4. International donors should underline effective auditing and regular production and publication of audit reports as a benchmark for receiving aid money.

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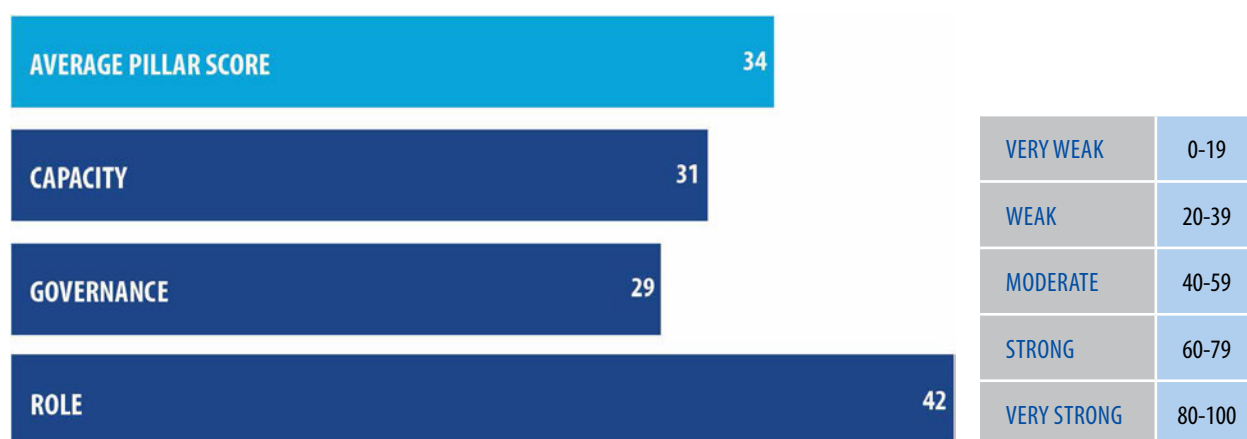
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VII. NATIONAL INTEGRITY SYSTEM

9. Anti-Corruption Institution (ACI)



SUMMARY

The Law on Anti-Corruption (2010) established Cambodia's Anti-Corruption Institution (ACI). The ACI comprises of the Anti-Corruption Unit (ACU) and the National Council Against Corruption (NCAC). Despite having been in existence for only three years, the ACI has several foundations in place to make it an effective mechanism against corruption. In particular, the legal framework provides for independence of the institution's budget, enabling it to have autonomy over its accounting and auditing procedures. In addition, the ACU has been particularly active in undertaking educational activities such as disseminating information about the Law on Anti-Corruption across the country. The ACI has capacities to

investigate corruption cases and has undertaken a limited number since 2010.

Whilst recognising these positive factors, the ACI requires considerable development in a number of areas. The closeness of the ACI to the Prime Minister and ruling party curtails the ability of the ACI to function independently. Moreover, opaque decision-making processes and selective release of information to the public result in limited checks and balances on the ACI.

The diagram at the beginning of this chapter provides the scores for the ACI in terms of its capacity, governance, and role. The remainder of the section provides a qualitative background and explanation of the scores.

STRUCTURE AND ORGANISATION

The central mission of the ACU is to spearhead initiatives against corruption in all forms, at all levels of society.¹ It follows a three-pronged approach: public education, prevention, and enforcement of the Law on Anti-Corruption.² The NCAC acts as an oversight body, providing guidance and consultation to the ACU.³ The NCAC is also tasked with developing anti-corruption strategy and policy,⁴ of which the ACU implements.⁵

The process of establishing the Law on Anti-Corruption, which contains provisions for setting up the ACU and NCAC, took many years of requests by donors and development partners.⁶ Drafting the law began in 1994;⁷ the Government issued sub-decrees in 1999 and 2006 calling for the ACU to be created.⁸ The ACU and NCAC were finally established in 2010, following the passing of the Law on Anti-Corruption earlier that year.⁹

ASSESSMENT

9.1 CAPACITY

9.1.1 RESOURCES (LAW)

SCORE: 75

To what extent are there provisions in place that provide the ACI with adequate resources to effectively carry out its duties?

Several legal provisions exist to ensure adequate resources for the ACI.

When the ACI was first established, the Law on Anti-Corruption ceded control of the budget to the executive level of government: the Council of Ministers.¹⁰ Subsequently, the Law on Anti-Corruption was amended ensuring that the ACI has a separate budget for its activities.¹¹ The ACI budget is now part of the national budget and goes through the Ministry of Economy and Finance (MoEF). The ACU Chairman makes a request to the MoEF which then prepares the remuneration and proposes it for approval from the Prime Minister.¹²

The ACI also has a formal guarantee of fiscal stability. The proportion of the National Budget allocated to the ACI is between 0.2 per cent and 0.3 per cent each year.¹³ This guarantee is important

because it ensures that the ACI's budget cannot be arbitrarily downsized over time.¹⁴

If necessary, the ACI can propose an additional budget to the Government.¹⁵ Moreover, the ACU may receive donations or assistance from national and international organisations, so long as this does not constitute a conflict of interest.¹⁶ A conflict of interest in this instance, however, is not specifically defined.

Regarding human resources, the Chairman and Vice-Chairman of the ACU are appointed at the request of the Prime Minister.¹⁷ The ACU Chairman has the power to propose the appointment of assistants, vice-presidents, members of the NCAC, and vice-presidents of the ACU.¹⁸ The 2011 amendment to the Law on Anti-Corruption provided more power to the Chairman of the ACU to appoint and terminate the employment of appointed ACI officials ranking from under department director.¹⁹ Given this, the appointment of ACI members are largely centralised based on the preferences of the ACU Chairman and Prime Minister.

9.1.2 RESOURCES (PRACTICE)

SCORE: 25

To what extent does the ACI have adequate resources to achieve its goals in practice?

The ACI has some resources, yet significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.

The budget of the ACU increased from 2012 to 2013. It had a rounded figure of 27,484 million riel (6,703.4 thousand US dollars) in 2013, up from 22,145 million riel (5,401.2 thousand US dollars) in 2012.²⁰ The stated budget figures are for total government expenditure for the planned year (excluding donor funds). Given that the public sector relies heavily on external donor financing,²¹ it is noted that the total budget at the ACI's disposal may be considerably higher than the national budget figures provided here. Despite this, the resources at the ACU's disposal are considered rather limited to enable the agency to reach its full capacity in fighting corruption effectively.²²

Like much of the civil service, the low salaries provided to ACU staff are too small to retain the highly qualified and expert staff it requires.²³ To build much needed capacity and specific expertise among ACU staff,²⁴ the Danish international

(KPK) process to select two new advisory board members in 2013 was more open and accountable. The process spanned months, took recommendations from the public and culminated in eight finalists being interviewed by the KPK

The Chairperson of the ACU was politically appointed at the request of the Prime Minister (in line with the Law on Anti-Corruption). The current Chairman was previously a senior advisor to the Prime Minister and has been described as a controversial choice whose selection could potentially limit the overall independence of the institution.

development agency, DANIDA, supported multiple training courses throughout 2011 and 2012.²⁵ Organised in cooperation with civil society organisation, Pact, the courses were provided to at least 100 ACU officials.²⁶ They covered topics such as the procedure for receiving corruption-related complaints, how to investigate and manage cases, as well as training on the Forestry Law, Tax Law, Procurement Law, and customs legislation.²⁷

Nothing is mentioned publicly about an ethics screening of candidates for employment. Once employed, however, an initial training course is provided for all new staff members.²⁸ Nevertheless, the training is considered to be too general and not specialised enough to equip staff in different departments with the understanding and resources they need to undertake their roles effectively.²⁹ Further career progression and training opportunities are not publicly disclosed indicating that a clear process for such occasions may not have been developed.

The Chairperson of the ACU was politically appointed at the request of the Prime Minister (in line with the Law on Anti-Corruption).³⁰ The current Chairman was previously a senior advisor to the Prime Minister and has been described as a controversial choice whose selection could potentially limit the overall independence of the institution.³¹ No public or parliamentary audition was undertaken of a shortlist of candidates prior to the appointment of the ACU Chairman. In short, it was not an open process. Comparatively, the Indonesian Corruption Eradication Commission's

before the final two were chosen.³² This indicates that the ACU's process of appointment measures up to neither international, nor regional standards.

9.1.3 INDEPENDENCE (LAW)

SCORE: 25

To what extent is the ACI independent by law?

Few legal provisions exist which seek to ensure the independence of the ACI.

The ACI is an official body established by the Law on Anti-Corruption.³³ It was initially subsumed under the Council of Ministers but in 2011 the law was amended to guarantee a separate budget for the ACI.³⁴

In the interest of objectivity, a limited number of professional criteria are outlined in the Law on Anti-Corruption regarding the selection of members of both the NCAC and ACU. For instance, members must have a minimum number of years of work experience, a higher education degree, high moral standards, and no record of misdemeanour or felony.³⁵ Exactly what is meant by 'high moral standards' is not defined and the law does not require an ethics screening or background check to be undertaken prior to hiring a staff member of the ACI.

The Law on Anti-Corruption ensures that the process by which officials are appointed is highly centralised, largely between the ACU Chairperson and the Prime Minister. Both the Chairperson and Vice-Chairperson of the ACU are to be appointed by sub-decree at the request of the Prime Minister.³⁶

The ACU Chairman has the power to propose the appointment of many ACI officials from assistants to members of the NCAC.³⁷ The ACU Chairperson may also appoint and terminate the employment of officials ranked under department director in the ACI.³⁸ In order to do this, the ACU Chairperson issues a request to the President of the NCAC who then makes the corresponding announcement.³⁹

Seven of the 11 members of the NCAC are selected by different public sector institutions such as the National Audit Authority, Supreme Council of Magistracy, and the Royal Government.⁴⁰ Two members of the NCAC are selected by the National Assembly and Senate through voting.⁴¹ A further member is selected by the King and the eleventh member is the Head of the ACU.⁴² If all the public sector institutions were independent, this process of appointment might enable an objective NCAC to be created, containing a plurality of political voices.⁴³ However, the ACU Chairperson can make proposals for the appointments of the NCAC,⁴⁴ underlining a potential limitation by law in the objectivity of the selection process.

The reporting and reviewing mechanisms of the ACI are highly centralised through law between the Chairperson of the ACU, the NCAC, and the Prime Minister. The Chairperson of the ACU submits reports to the NCAC⁴⁵ which then submits reports to the Prime Minister.⁴⁶ The law does not require the ACI's reports to be shown to parliament or to the public.

Absent from the law are any restrictions on the political activities of the ACU Chairperson or the length of term in office. Hence, the same individual could stay in power for an unlimited amount of time, potentially curtailing the independence and objectivity of the institution.

No legal protection is offered by the legislation to prevent the arbitrary dismissal of ACI staff from their posts, particularly the Chairperson. Thus, if the Government was unhappy with the activities of the ACU (for example, if the ACU investigated a member of the central ruling-elite), no legal provisions would prevent the Government removing the ACU Chairperson from their post. Finally, the director and members of the ACI are

not immune from prosecutions resulting from the normal discharge of their duties. These gaps in the law underline that the independence of the ACI may be compromised due to the lack of legal safeguards against unwarranted political interference in its activities.

9.1.4 INDEPENDENCE (PRACTICE)

SCORE: 0

To what extent is the ACI independent in practice?

The fact that the ACI is fundamentally politicised raises doubts over its independence.

The operations of the ACI cannot be considered non-partisan since the institution is politicised through the political appointment of the ACU's officials, particularly the Chairperson. The current Chairperson is well-known to be a senior advisor to the Prime Minister.⁴⁷ Moreover, senior officials of the ACI including the ACU Chairperson are Cambodian People's Party (CPP) members.⁴⁸ Seven of the 11 NCAC members are appointed by different public sector ministries and agencies.⁴⁹ In theory this could enable some degree of plurality within the NCAC, yet in practice, it does not because the entire public sector is closely linked to the CPP.⁵⁰ Moreover, one NCAC dignitary is selected by the Cambodia Human Rights Committee (CHRC);⁵¹ the current ACU Chairman, Om Yentien, is also the Chairman of the CHRC⁵² indicating the interconnectedness between the two institutions. Consequently, the NCAC is not politically impartial and seems to have little scope for objective oversight of the ACU.

Questionable steps taken in response to accusations of embezzlement against a senior official highlight the interconnectedness between the ACI and the Government. In early 2013, 300 employees of Telecom Cambodia went on strike calling for the firm's then Director General, Lao Sarouen, to be removed for his suspected involvement in embezzlement of state funds.⁵³ Despite an investigation being planned by the ACU for his alleged misconduct,⁵⁴ Mr. Sarouen was promoted to an undersecretary of state position in the Ministry of Posts and Telecommunications. Following this, the ACU

investigation was abandoned.⁵⁵ Such a case raises concerns over the lack of independence of the ACU from the Government as well as the culture of impunity in the country.⁵⁶

Moreover, some of the limited number of investigations undertaken by the ACU since its 2010 inception have been perceived as politically motivated.⁵⁷ The concrete reasons behind decisions to investigate certain persons over others cannot be confirmed, however, given that the ACI does not make these justifications public. An official from within the ACI who could have provided insight into this process would not meet Transparency International Cambodia for this study, further limiting access to information on its internal decision-making practices.⁵⁸

9.2 GOVERNANCE

9.2.1 TRANSPARENCY (LAW)

SCORE: 25

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ACI?

There are few legal provisions that require public access to information on the activities and decision-making processes of the ACI.

The ACU is responsible for the review and creation of documents related to corruption⁵⁹ and is also charged with the preparation and review of the annual budget of both the ACU and NCAC.⁶⁰ The ACU also develops action plans in accordance with NCAC strategy and policy.⁶¹

All activities of the ACU, including investigation and decision-making on anti-corruption cases, are reported to the NCAC.⁶² The NCAC then reports to the Prime Minister⁶³ on a bi-annual and annual basis.⁶⁴

The Law on Anti-Corruption does not require any of the above-mentioned information to be made publicly available. The lack of legal provisions contained in the Law on Anti-Corruption relating to public disclosure of information, combined with an access to information law having not yet been passed, underlines the limited legal demands on

the ACI to publish information.

9.2.2 TRANSPARENCY (PRACTICE)

SCORE: 25

To what extent is there transparency in the activities and decision-making processes of the ACI in practice?

While the public can obtain some relevant information on the organisation and functioning of the ACI, information on decisions that concern them and how these decisions were made is not available.

A fair amount of information on the ACU's activities is provided on its website.⁶⁵ This includes information on its investigations and prosecutions, as well as events it has undertaken to educate the public about the Law on Anti-Corruption, its amendments, and related legal documents.⁶⁶

Nevertheless, the information provided contains a number of gaps. Given the politicisation of the ACI,⁶⁷ the institution may consider the political implication of information before releasing it. Activity reports and human resources recruitment data are not available to the public. Notably absent are justifications and reasoning behind the ACI's decisions on which cases to investigate.⁶⁸ Moreover, the ACU does not clearly disclose information about how many and what type of complaints it has received. The Hong Kong Independent Commission Against Corruption (ICAC) by contrast, demonstrates exemplary transparent practice. The ICAC has a publicly available online database detailing the number of complaints received, number of persons prosecuted, convicted, cautioned, or recommended for disciplinary action.⁶⁹

9.2.3 ACCOUNTABILITY (LAW)

SCORE: 25

To what extent are there provisions in place to ensure that the ACI has to report and be answerable for its actions?

Few legal provisions exist to ensure that the ACI produces reports and is accountable for its actions.

The General Department of Administration and Security, as part of the ACU, is in charge of making monthly, quarterly, interim, and annual sum-up reports on the activities and direction of the ACI.⁷⁰ The ACU then reports to the NCAC, including details of all investigations undertaken.⁷¹ The NCAC in turn reports directly to the Prime Minister, on a semi-annual or annual basis.⁷² These reports are not required to be shared with the National Assembly or with the public. Hence, limited checks and balances on the ACI are ensured through these provisions.

Along with all ministries, government agencies, and public institutions, the ACU is required to have an independent audit carried out by the National Audit Authority (NAA).⁷³ This includes an audit of financial statements, audits of institutional systems and operations, and an evaluation of performance.⁷⁴ One of the members of the NCAC, however, is required to be selected from the NAA as stipulated in the Law on Anti-Corruption.⁷⁵ The inclusion of a NAA representative on the NCAC raises questions regarding conflicts of interest. It could potentially limit the scope of genuine accountability in the undertaking of an audit of the ACI by the NAA.

Cambodia has limited legal provisions regarding whistleblower protection.⁷⁶ The ACU is legally required to 'take necessary measures to keep the whistle blowers secure'.⁷⁷ This provision, however, is not explained in any further detail. Moreover, Article 41 of the Law on Anti-Corruption somewhat contravenes the notion of whistle bower protection. Article 41 is interpreted to mean that a person bringing a complaint to the ACU may be punished for defamation if no evidence is found to support their claim; the complainant can then be liable for imprisonment from between one to six months.⁷⁸ As a result, people may be deterred from making complaints about corrupt behaviour particularly if they relate to misconduct of members of the ACI itself.⁷⁹

9.2.4 ACCOUNTABILITY (PRACTICE)

SCORE: 25

To what extent does the ACI have to report and be answerable for its actions in practice?

Few provisions are in place to ensure accountability of the ACI.

The ACU provides details on how to file a corruption-related complaint on its website.⁸⁰ In addition, the ACU has established its own Internal Investigation Section, charged with the duty of investigating corruption cases within the agency itself.⁸¹ Staff members in this section work undercover and are not known to other employees.⁸² They report directly to the Chairman of the ACU.⁸³ No further information is available, however, about how the Internal Investigation Section conducts its operations.

The ACI's reports are not made public, nor is there any record of whether they are filed in line with legal requirements. Even if the ACU did file reports in accordance with the law, only a small centralised group of people are required to see them (the NCAC and Prime Minister).⁸⁴ Hence, very few layers of accountability exist to enable genuine checks and balances.

The ACI does not appear to have a whistleblowing policy aside from the ambiguous provision that the ACU is required to take necessary steps to 'keep the whistle blowers secure'.⁸⁵ Moreover, given potential punishment to a whistleblower (see Article 41 noted above in the 'Accountability (law)' section), people may be deterred from submitting complaints to the ACU for fear of retaliation.⁸⁶

9.2.5 INTEGRITY MECHANISMS (LAW)

SCORE: 50

To what extent are there mechanisms in place to ensure the integrity of members of the ACI?

While a number of laws and provisions exist, they do not cover all aspects related to the integrity of members of the ACI.

Both the ACU and NCAC are legally required to develop and adopt internal regulations for the performance of their own work.⁸⁷ To this end, the ACU has created an Internal Investigation Section which is responsible for investigating cases of corruption within the ACU itself.⁸⁸ It has the aim of deterring corrupt practices and ensuring high-

The ACU has competencies with regard to corruption prevention. Specifically, it has undertaken a number of anti-corruption activities such as the International Anti-Corruption Day events on 9 December each year since 2010. These events are an indication of the ACU's willingness to involve civil society in its activities.

levels of integrity throughout the agency.⁸⁹ There is no further information though, on how the Internal Investigation Section performs its work or whether it has been an effective mechanism in ensuring the integrity of the ACU.

All members of the ACI are required to declare their assets to the ACU every two years.⁹⁰ This information is not, however, required to be made public. Neither does the law require officials to disclose the assets held by their spouse. Hence, the asset declaration provision is insufficient to ensure the accountability of the ACI staff in practice.

Conflict of interest is mentioned in the Law on Anti-Corruption only in relation to the financial resources accepted by the ACI as an institution, rather than any conflict of interest relating to the actions of an individual member of the ACI.⁹¹ Thus, the provision is limited in safeguarding the ethical behaviour of ACI officials. There is also a lack of legal provisions regarding gifts, hospitality, or post-employment restrictions of ACI officials.

9.2.6 INTEGRITY MECHANISMS (PRACTICE)

SCORE: 25

To what extent is the integrity of members of the ACI ensured in practice?

Due to the closed nature of the ACI, available information on its integrity mechanisms is limited. From the information found however, the existing integrity mechanisms are insufficient to ensure a high-level of ethical behaviour among ACI staff members.

Two long-term anti-corruption advocates, Sok Sam Oeun of the Cambodian Defenders Project, and Sek Barisoeth, who previously worked for Pact, believe it is likely that the ACU has some sort of internal regulation but are not sure whether this

could amount to a Code of Conduct.⁹² Without an interview with an internal ACU staff member the existence of an ACU Code of Conduct could not be confirmed.⁹³ Certainly no code of conduct is publicly available on the ACU's website.

Nevertheless, as is reported in the 'Resources (Practice)' section above, staff members have allegedly been trained on integrity issues at the start of their employment, including sessions to enable them to better understand and implement the Law on Anti-Corruption.⁹⁴ No information is publicly available on whether integrity screening mechanisms are used during the recruitment of ACI staff members.

9.3 ROLE

9.3.1 PREVENTION

SCORE: 25

To what extent does the ACI engage in preventive activities regarding fighting corruption?

The ACI is somewhat active in preventive anti-corruption activities.

The ACU has competencies with regard to corruption prevention. Specifically, it has undertaken a number of anti-corruption activities such as the International Anti-Corruption Day events on 9 December each year since 2010.⁹⁵ These events are an indication of the ACU's willingness to involve civil society in its activities. The 2011 and 2012 events were undertaken with support from Pact and Transparency International Cambodia, with funding from the Danish, Swedish and Australian development agencies (DANIDA, SIDA and AusAID). These events have involved and been broadcast to increasing numbers of people, raising awareness about corruption and contributing to a culture against it. In particular, vast numbers of young students have joined the events, engaging the leaders of tomorrow in the

aim of preventing future corruption.⁹⁶ In 2011, approximately 900 participants attended, including government officials, civil society representatives, and students.⁹⁷ In 2012, the event grew to host about 2,500 people. Aired live on Southeast Asia TV (SEA TV), the event had a broad reach and promoted awareness of corruption and its impact on society.⁹⁸

The ACU made a submission to parliament shortly after its establishment in 2010.⁹⁹ The submission called for an amendment to the Law on Anti-Corruption to make the ACI's budget separate from the Council of Ministers.¹⁰⁰ This submission was successful and the law was amended in 2011.¹⁰¹ Beyond this, the ACI does not appear to have recommended legislative reforms and there is no explicit mention in the Law on Anti-Corruption enabling it to do so.

If the ACU has research capacities, they are certainly not obvious. The institution does not seem to have produced any research reports contributing to corruption-related knowledge and prevention.

9.3.2 EDUCATION

SCORE: 75

To what extent does the ACI engage in educational activities regarding fighting corruption?

The ACU is generally quite active in educating the public on corruption and how to fight it using the available tools.

In the pursuit of educating the public on anti-corruption issues, the ACU signed a Cooperation Agreement with Transparency International Cambodia in November 2012.¹⁰² The Cooperation Agreement is intended to support education and dissemination activities of the ACU from 2012 to 2015. This includes developing an anti-corruption lesson in the national school's curriculum, publishing educational material, and creating television broadcasts and songs to provide people with knowledge of corruption and how to fight it.¹⁰³

On top of this, the ACU has been taking positive measures to educate public sector officials and students about fighting corruption. In line with

the Government's Rectangular Strategy for Growth, in which education is listed as a central means of combatting corruption,¹⁰⁴ the ACU undertakes regular dissemination workshops on the Law on Anti-Corruption and its amendment. For instance, on 30 January 2013, it conducted a workshop involving 450 participants at the Vanda Institute, an education and learning centre in Phnom Penh. The workshop emphasised that good governance and eliminating corruption is core to national stability, economic development, and sustainability.¹⁰⁵ Such education workshops are an ongoing phenomenon. For instance, between September and December 2012, the ACU took dissemination workshops to many municipalities across 14 provinces; engaging over 12,000 participants, including officials at district and commune levels, as well as police and military officials. Moreover, in early 2012, the ACU held Anti-Corruption Law dissemination workshops at 18 different universities across 12 different provinces, engaging over 10,000 people including students.¹⁰⁶

The ACU, with assistance from Pact and DANIDA, printed 30,000 Anti-Corruption Law pocket guides to help people gain a better understanding of the related legal provisions.¹⁰⁷ Moreover, television spots to promote awareness of the law were broadcast on major stations – Cambodian Television Network (CTN), Bayon, SEA TV, and National Television of Kampuchea (TVK) – at least once a day for three to six month periods throughout 2011 and 2012.¹⁰⁸

9.3.3 INVESTIGATION

SCORE: 25

To what extent does the ACI engage in investigation regarding alleged corruption?

The ACU has the capacity to investigate cases and sanction corrupt behaviour. Despite this, relatively few cases appear to have been investigated and reasoning behind which cases are chosen to be investigated are opaque.

Legally speaking, the ACU has investigative capacities and duties. It is charged with monitoring and investigating corrupt practices across ministries and institutions, in both public and

private offices.¹⁰⁹ Only the Chairman, deputy chairpersons, and ACU officials who are appointed as judicial police are empowered to undertake corruption investigations.¹¹⁰ To this end, the ACU is given special privileges to aid it in undertaking investigations, including: checking and observing bank accounts; and phone tapping of suspected corruption criminals.¹¹¹

In order to undertake investigations, the ACU has a designated Investigation and Intelligence Department. The ACU may also request cooperation in its investigations from various ‘institutions and operational forces,’ such as the National Police.¹¹² Once the ACU has undertaken the initial investigation it then passes the case to a prosecutor.¹¹³ The ACU cannot prosecute; courts and prosecutors share that duty.¹¹⁴

The ACU Chairman reported that the institution received 800 complaints in the first eight months of 2012,¹¹⁵ of which it investigated 30 per cent.¹¹⁶ This means that at least 240 cases should have been investigated in 2012. Still, just 11 corruption investigation cases have been documented on the ACU’s website since 2010 (as of January 2014).¹¹⁷ Hence, if further investigations have been undertaken, this is certainly not systematically communicated to the public.

Of the cases that have been investigated and prosecuted, it is difficult to say whether these came about on the ACI’s own initiative, whether they were responses to complaints from the public, or whether they were politically influenced. Given the ACI’s closeness to the Government and ruling party, doubts are raised over the ACI’s potential for undertaking objective investigations.¹¹⁸ Furthermore, the ACI does not publish justifications for why particular cases have been chosen for investigation over others.

Nevertheless, the Chairman of the ACU, in a 2013 public speech at a workshop organised by Transparency International Cambodia, suggested that the courts have a role in deciding which persons to investigate in a corruption case. He explained that after the ACU has undertaken the initial investigation and passed it to the prosecutor, it is up to the courts whether the investigation

goes further.¹¹⁹ Following this, the ACU Chairman cited the decisions of the courts as the reason few corruption cases have been prosecuted.¹²⁰

RECOMMENDATIONS

1. Amend Article 41 of the Law on Anti-Corruption. The law currently allows for the imprisonment of a whistleblower who files a report against corrupt activity, if the investigation that ensues is deemed to have led to a ‘useless inquiry’. The amendment of Article 41 should shift the onus of proof on to the ACU to provide documentary evidence that the whistle blower has:

- i. Falsely made a complaint about someone to whom there is no evidence of corrupt behaviour; and,
- ii. Was aware that the complaint was false.

Any investigation into such a false allegation should be done in accordance with defamation provisions contained under the Penal Code which does not allow a custodial sentence for any successful defamation claim.

2. The ACU should make its activity and financial reports publicly available. Reports should be available within the relevant financial year.

3. Amend Article 11 of the Law on Anti-Corruption, removing the provision that the Chairperson and Vice-Chairperson should be appointed by royal decree at the request of the Prime Minister. Instead both should be selected through a competitive recruitment process. The recruitment committee which screens applicants and draws up a shortlist of candidates should be comprised of equal members of all sitting political parties in the National Assembly (and not based on percentage of seats held).

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- 2 National Council of Anti-Corruption (NCAC), Five Year Strategic Plan, 2011-2015: p. 10
- 3 Law on Anti-Corruption, 2010: Art. 6
- 4 National Council of Anti-Corruption (NCAC), Five Year Strategic Plan, 2011-2015: p. 8
- 5 Ibid. p. 9
- 6 Cambodian Center for Human Rights (CCHR), Briefing Book for Donors and Others on the Law on Associations and Non-Governmental Organisations and the Shrinking Space for Civil Society in Cambodia (Phnom Penh: CCHR, 2011) p. 6
- 7 Pact, Fighting Corruption in Cambodia: The Demand for an International Standard Anti Corruption Law in Cambodia (Phnom Penh: Pact, 2005) p. 2
- 8 National Council of Anti-Corruption (NCAC), Five Year Strategic Plan, 2011-2015: p. 6
- 9 Anti-Corruption Unit, official website, 'Background on the establishment of the ACU': http://acu.gov.kh/en_index.php?4a8a08f09d37b73795649038408b5f33=home&03c7c0ace395d80182db07ae2c30f034=2 [accessed 25 March 2013]
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- 11 Law on Anti-Corruption, 2010, as amended: Art. 16. For details on amendment, see: Law on Amendment of Law on Anti-Corruption, 2011: 'Article 16_New. Budget and resources of Anti-Corruption Institution'
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- 23 Ibid.
- 24 Capacities in the area of legal expertise in particular have been noted as needed. See: Global Integrity, Global Integrity Report Cambodia – 2012: https://www.globalintegrity.org/global_year/2012/ [accessed 08 January 2014] indicator 75d
- 25 Houth Ratanak, Program Coordinator, Governance Unit, Pact, interviewed by Transparency International Cambodia (Phnom Penh) 22 January 2013
- 26 Ibid.
- 27 Ibid.
- 28 Sok Sam Oeun, Director of the Cambodian Defenders Project, interviewed by Transparency International Cambodia (Phnom Penh) 15 August 2013. Note that Sok Sam Oeun is the former trainer of ACU officials on the Law on Anti-Corruption.
- 29 Ibid.
- 30 Law on Anti-Corruption, 2010: Art. 11
- 31 Sebastian Strangio and Vong Sokheng, 'Controversial pick of anticorruption chief', The Phnom Penh Post (Phnom Penh) 21 May 2010
- 32 The Jakarta Post, 'The Corruption Eradication Commission (KPK) gets new advisors': <http://www.thejakartapost.com/news/2013/05/24/kpk-gets-new-advisors.html> [accessed 07 November 2013]
- 33 Law on Anti-Corruption, 2010: Ch. 2
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- 37 Sub-Decree on the organisation and functioning of the Anti-Corruption Unit, 2011: Art. 6; for further information, see Resources (law) section.
- 38 Law on the Amendment of Law on Anti-Corruption, 2011: 'Article 10_Double. Prakas of President of National Anti-Corruption Council'
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- 40 Law on Anti-Corruption, 2010: Art. 6
- 41 Ibid.
- 42 Ibid.
- 43 In practice however the selection of NCAC members from different bodies of the public sector does not enable a plurality of voices because the entire public sector is politicised and close to the ruling party. See: Independence (practice) section in the ACI pillar, as well as Independence (practice) section in the Public Sector pillar.
- 44 Sub-Decree on the organisation and functioning of the Anti-Corruption Unit, 2011: Art. 6
- 45 Ibid. Art. 13
- 46 Ibid. Art. 10
- 47 Sebastian Strangio and Vong Sokheng, 'Controversial pick of anticorruption chief', The Phnom Penh Post (Phnom Penh) 21 May 2010
- 48 Sok Sam Oeun, interviewed by Transparency International Cambodia (Phnom Penh) 15 August 2013; and, Political Analyst and Journalist, interviewed by Transparency International Cambodia (Phnom Penh) 02 August 2013 – interviewee requested anonymity;
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- 50 See Public Sector pillar: Independence (practice) section.
- 51 Law on Anti-Corruption, 2010: Art. 6
- 52 Lauren Crothers and Khy Sovuthy, 'Subedi Calls for Accountability In Meeting With Hun Sen', The Cambodia Daily (Phnom Penh) 16 January 2014
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57 LICADHO, The Delusion of Progress: Cambodia's Legislative Assault on Freedom of Expression, A LICADHO Report, October 2011 (Phnom Penh: LICADHO, 2011) pp. 32-33

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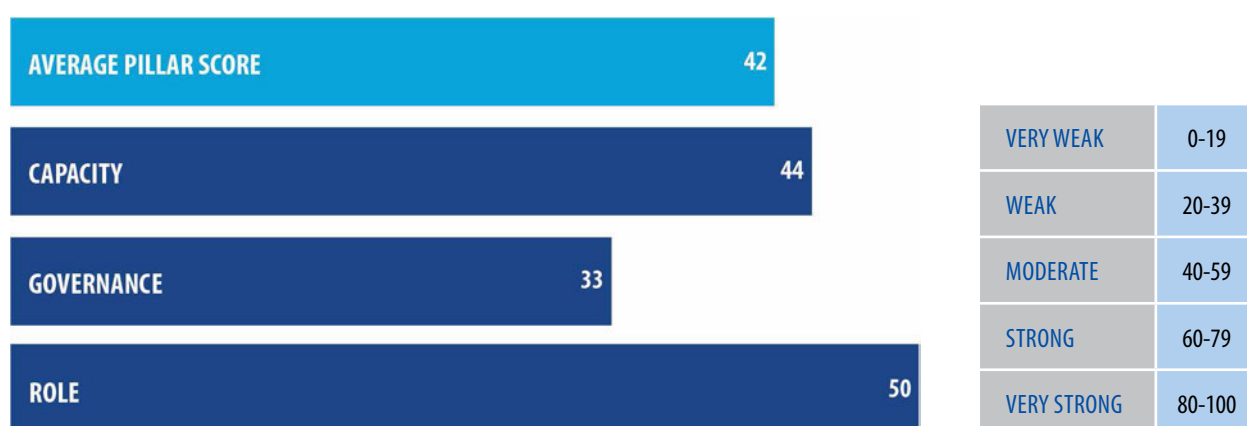
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VII. NATIONAL INTEGRITY SYSTEM

10. Political Parties



SUMMARY

The legal framework allows for the establishment and operations of political parties. Law protects the existence of political parties, ensuring that they cannot be dissolved unless officially declared bankrupt. Moreover, no restrictions on the ideology of political parties exist, ensuring that political party members can freely decide which perspective to promote. Several political parties proclaim to be committed to anti-corruption and have initiated and promoted a number of anti-corruption reforms including the passage of the Law on Anti-Corruption and establishment of the Anti-Corruption Unit (ACU) in 2010.

A notable implementation gap is seen between law and practice regarding the capacities of political parties. Whilst legal provisions provide for equality

of opportunity, in practice resources and airtime during campaigns are markedly unbalanced. The ruling party dominates the television and radio stations giving little space for opposition parties to broadcast their platform. Similarly, whilst a number of legal provisions exist to safeguard the independence of political parties, in reality the ruling party and government are tightly interconnected.

The diagram at the beginning of this chapter provides the scores for the political parties in terms of their capacity, governance, and role. The remainder of the section provides a qualitative background and explanation of the scores.

STRUCTURE AND ORGANISATION

Cambodia is a representative democracy

operating under a constitutional monarchy.¹ In practice, the ruling Cambodian People's Party (CPP) dominates the political process.² The 2013 National Assembly elections saw significant gains for the opposition Cambodia National Rescue Party (CNRP), although the ruling party maintained power.³

The CPP is held firmly in place by an extensive patronage network which centralises power.⁴ It is led by Chairman Samdech Chea Sim; Vice-Chairman Samdech Hun Sen; and, Honorary Chairman Samdech Heng Samrin.⁵ These three also serve as Senate President;⁶ Prime Minister;⁷ and, National Assembly President,⁸ respectively – underlining the closeness between the ruling party, Executive, and Legislature. The CPP was formed out of the Kampuchean People's Revolutionary Party which was founded in 1951.⁹ In 1991 the party officially abandoned its communist roots and renamed itself the Cambodian People's Party.¹⁰

The leading opposition party, the CNRP, was formed as a coalition between two former opposition parties: the Sam Rainsy Party (SRP) and the Human Rights Party (HRP).¹¹ The CNRP was created in mid-2012 so the parties could run as one in the 2013 National Assembly election.¹² The coalition is led by President Sam Rainsy (former President of the SRP) and Vice-President Kem Sokha (former President of the HRP).

Sam Rainsy had previously been in self-imposed exile to avoid an 11 year prison sentence on charges of disinformation and destruction of public property.¹³ He was granted a royal pardon and allowed to return to Cambodia two weeks before the 2013 National Assembly election.¹⁴ Prominent opposition parliamentarian, Mu Sochua, heads the women's platform tasked with ensuring equality and security for women across the country.¹⁵

The royalist party, FUNCINPEC, was once the main political opponent to the CPP.¹⁶ It won the country's first democratic elections in 1993 with 58 seats.¹⁷ However, since formally entering a coalition with the CPP in 2004, FUNCINPEC's influence has been dramatically reduced; competing

on an independent ticket, it won no parliamentary seats in 2013.¹⁸ Minor political parties also exist, including the Cambodian Nationality Party (CNP), Khmer Anti-Poverty Party (KAPP), and the Khmer Economic Development Party (KEDP).¹⁹ They have common platforms involving promoting democracy and fighting corruption.²⁰

During election time, each registered party submits a list of candidates in order of preference.²¹ Independent candidates cannot run in the election, meaning that political parties are the only avenues for interest aggregation, policy agenda setting, and thus control of the Government.²² Political parties are therefore central to the fabric of the political system.²³

ASSESSMENT

10.1 CAPACITY

10.1.1 RESOURCES (LAW)

SCORE: 75

To what extent does the legal framework provide an environment conducive to the formation and operations of political parties?

The legal framework is largely conducive to the establishment and operation of political parties.

The right to create associations and political parties is guaranteed by the Constitution.²⁴ Moreover, the legal process for establishing a political party is outlined in the Law on Political Parties (1997). It states that a group of at least 80 persons, all over 18 years of age, holding permanent residence in Cambodia may form a political party by sending a letter of notice to the Ministry of Interior.²⁵

Following establishment, a political party must then formally register with the Ministry of Interior. At this stage, the party must have at least 4,000 members from multiple provinces and municipalities.²⁶ Upon registration, a party must share its statutes (by-laws), internal rules if it has any, and membership list with the Ministry of Interior. Political parties must also pay a registration fee.²⁷

An application can be rejected if the registration documents are considered insufficient.²⁸ In this

case, the Ministry of Interior may request that the political party submits further documentation.²⁹ If the party fails to submit the additional documentation within a period of 15 days, the Ministry of Interior will reject the application.³⁰ Following this, the political party has the right to file a complaint to the Constitutional Council

organisation can donate to a political party.

Notably lacking is a Law on Campaign Finance which would contribute to safeguarding the integrity of political parties' funding and spending. Hence, with existing legal provisions, the integrity of political financing cannot be entirely ensured.

With the aim of enabling equality of opportunity, the law ensures that the State may allocate equal amounts of subsidies from the national budget to reimburse electoral campaigning expenses. A further provision restricts political parties from receiving financial contributions from government institutions, civil society organisations, public institutions, and foreign firms. There are no controls or clear guidance on the donations that parties can accept from private companies, nor is there a cap on the amount an individual or organisation can donate to a political party.

which then decides the case within 30 days of the complaint. If it decides in favour of the party, the Ministry of Interior must immediately proceed with registration of the party.³¹ However, if an unregistered or dissolved party continues its activities it may be sanctioned. The penalty is a fine in cash from one million to five million riel (250 to 1250 US dollars) and imprisonment for between one month and one year.³²

The Law on Political Parties protects the existence of political parties, ensuring that no authority has the right to dissolve them.³³ The only exception is if a political party is declared bankrupt following a final judgment of the court.³⁴ Moreover, no legal restrictions on party ideology exist, enabling political parties to decide freely which political perspective to promote. The only restricted activities are with regard to the creation of movements that threaten national unity.³⁵

With the aim of enabling equality of opportunity, the law ensures that the State may allocate equal amounts of subsidies from the national budget to reimburse electoral campaigning expenses.³⁶ A further provision restricts political parties from receiving financial contributions from government institutions, civil society organisations, public institutions, and foreign firms.³⁷ There are no controls or clear guidance on the donations that parties can accept from private companies, nor is there a cap on the amount an individual or

10.1.2 RESOURCES (PRACTICE)

SCORE: 25

To what extent do the financial resources available to political parties allow for effective political competition?

While opposition parties can draw on some financial resources, these are considerably lower than the resources of the ruling party. Political competition among parties is thus biased towards the ruling party.

The ruling party has greater sustainability of funding and organisational resources than any of the other political parties.³⁸ The CPP relies upon funding from private companies for the bulk of its campaign funds and development projects,³⁹ along with voluntary contributions from party members and supporters.⁴⁰ Beyond this, public servants are reportedly required to make contributions to the CPP,⁴¹ particularly during election campaigns.⁴² Furthermore, civil servants in their official capacities have purportedly campaigned for the ruling party⁴³ and illegally used state resources for related activities.⁴⁴ Such actions contravene the Law on the Common Statute of Civil Servants (1994, Art. 37).⁴⁵

The opposition parties have less than sufficient resources.⁴⁶ Despite the Law on Political Parties providing that the State should allocate equal amounts to all political parties for campaign

financing, this does not appear to be the case in practice.⁴⁷ The opposition parties mainly rely on contributions from relatively wealthy Cambodians living overseas.⁴⁸ Moreover, opposition politicians are required to use their own resources for campaigning.⁴⁹ Leading female CNRP Member of Parliament-Elect, Mu Sochua, reported that party members that wished to run in the 2013 National Assembly election for the CNRP had to pay between 10,000 and 15,000 US dollars to be included on the party's candidate list.⁵⁰ This money reportedly goes towards campaign financing since little other resources are available.⁵¹ Due to the financial constraints of most Cambodian citizens, this fee requirement problematically limits the pool of possible CNRP candidates.⁵²

Airtime during campaigns is markedly unequal, being largely dominated by the ruling party.⁵³ As of 2012, all television channels in Cambodia were controlled by or affiliated with the CPP.⁵⁴ Hence, political television content tends to be pro-CPP whilst either criticising or simply ignoring opposition parties.⁵⁵ Radio stations are similarly connected to the ruling party although there are a few independent ones including Beehive Radio (FM 105) and Sarika FM.⁵⁶

10.1.3 INDEPENDENCE (LAW)

SCORE: 75

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

Multiple legal provisions exist to safeguard the independence of political parties.

Political parties are legally protected from being banned by the authorities under Article 34 of the Law on Political Parties which states that 'no authority may have the right to dissolve any political party'.⁵⁷ The only exception is if the party is declared bankrupt by final judgement of the court.⁵⁸

Further safeguarding the equal rights of political parties, legal provisions state that all political parties shall receive equal treatment from the Government, as well as from state authorities at all levels.⁵⁹

Whilst members of the Royal Cambodian Armed Forces (RCAF) and National Police may join as members of a political party, they are restricted from undertaking activity in support of or in opposition to any political party.⁶⁰

The Law on the Common Statute of Civil Servants (1994) requires that civil servants may not in their official capacities work for or against any political party or candidate.⁶¹ Moreover, Article 37 of the Statute explicitly forbids them from using state resources for political campaign activities.⁶² These provisions help to safeguard the independence of political parties from the Government and public sector at large.

10.1.4 INDEPENDENCE (PRACTICE)

SCORE: 0

To what extent are political parties free from unwarranted external interference in their activities in practice?

There is little distinction between the Government and ruling party. The CPP/Government nexus also interferes in the activities of the opposition parties.

Hierarchy is extremely important in Cambodian society.⁶³ Although this is a common cultural attribute in many Southeast Asian societies, it is particularly pronounced in Cambodia. Stepping outside of the proper hierarchical order is seen as dangerous and to be feared.⁶⁴ This concept had particular resonance following the 1970s and 1980s genocide and civil war.⁶⁵ More than 20 years since the Paris Peace Accords were signed, the maintenance of hierarchy remains deeply ingrained in the country's cultural fabric, particularly in the governance system (see Foundations: Culture).⁶⁶ Recognition of this is essential for understanding the method of control exerted by the CPP/Government and the hesitancy of people to challenge it.⁶⁷

Visualising Cambodian politics as a pyramid,⁶⁸ the all-powerful CPP-controlled apex dominates the broad base of civil servants beneath it.⁶⁹ Consequently civil servants, including the security authorities and military, are aligned with the ruling party.⁷⁰ Not all political parties and supporters

are treated equally by the authorities, however, and security forces have violently suppressed opposition party protests on multiple occasions.⁷¹ Although in October 2013 there appeared to be a softening of the CPP/Government's stance towards opposition protests,⁷² this was short-lived. In January 2014 the CPP/Government forcibly cleared CNRP protesters from Freedom Park in Phnom Penh.⁷³ This followed the violent suppression of a protest by striking garment factory workers by the police where at least four dead and more than 40 injured.⁷⁴

In 2012, Human Rights Watch released a report documenting 300 killings of political dissenters, journalists, and activists in Cambodia since 1993.⁷⁵ None of the documented killings have resulted in a credible investigation or prosecution.⁷⁶ The majority of killings appear to have occurred before 2000, however,⁷⁷ suggesting that the CPP/Government altered its strategy of controlling dissent to be less violent.

The CPP/Government now uses a range of administrative and legal tactics to keep its opponents in check,⁷⁸ illustrated particularly by the aggressive tactics taken against opposition parliamentarians Mu Sochua and Ho Vann.⁷⁹ In 2009, Mu Sochua had her parliamentary immunity lifted so that she could be prosecuted for defamation following critical remarks she made about the Prime Minister.⁸⁰ The same year, Ho Vann was also stripped of his parliamentary immunity to allow a defamation case to be brought against him by the Royal Cambodian Armed Forces (RCAF).⁸¹ Rights groups have criticised such cases as acts of intimidation by the ruling party, restricting democratic space in the country.⁸²

is no regulation requiring that this information be made publicly available.

Political parties are legally bound to submit regular reports on their activities and expenditure. Reports are to be submitted to the Ministry of Interior and Ministry of Economy and Finance before 31 December each year.⁸³ The reports must detail activities of the political party for that year, as well as balance sheets for expenditure, a statement of the parties' bank accounts, and a statement of assets including properties and business outcomes.⁸⁴ Moreover, all documents related to accounting must be kept for seven years; ensuring longer term access to records for party members and external individuals and institutions in accordance with political parties' statutes and internal regulations.⁸⁵

Notably lacking are any requirements that political parties make their financial information publicly available; the Law on Political Parties makes no specific mention of this. The financial reports submitted annually by political parties to the Ministry of Interior and Ministry of Economy and Finance are not required to be disclosed to the public. Since Cambodia has no access to information legislation that would mandate the public availability of information, there are no additional safeguards that could.

Regulations on disclosure of political campaign money are also absent; Cambodia does not have a Law on Campaign Finance. Moreover, no mention is made of disclosure of campaign financing in the Law on Political Parties, or the Code of Conduct for Political Parties, Candidates and Political Party's Agents During the Election of National Assembly Members (2008).

10.2 GOVERNANCE

10.2.1 TRANSPARENCY (LAW)

SCORE: 25

To what extent are there regulations in place that require parties to make their financial information publicly available?

Whilst political parties are required to submit financial reports to the Ministry of Interior and Ministry of Economy and Finance each year, there

10.2.2 TRANSPARENCY (PRACTICE)

SCORE: 25

To what extent can the public obtain relevant financial information from political parties?

It is difficult to access financial information from political parties since it is not made publicly available. The opposition CNRP did, however, provide details of its funding sources when requested by Transparency International

Cambodia.

Political parties reportedly submit reports annually to the Ministry of Interior,⁸⁶ in line with legal requirements under the Law on Political Parties.⁸⁷

Political parties do not, however, make their financial information publicly available. Financial reports are not contained on the CPP or CNRP websites, nor are they provided on the websites of the Ministry of Interior nor the Ministry of Economy and Finance.

Transparency International Cambodia asked the CNRP and the CPP to disclose details of their party funding sources for the July 2013 general election. The CNRP disclosed details on funding sources for the party since the start of 2013. The CPP did not respond.

10.2.3 ACCOUNTABILITY (LAW)

SCORE: 25

To what extent are there provisions governing financial oversight of political parties by a designated state body?

Whilst a number of legal provisions exist to ensure accountable financing and expenditure of political parties, the laws are not fully comprehensive.

Political parties are required to submit their financial reports on an annual basis to the Ministry of Interior and Ministry of Economy and Finance.⁸⁸ The financial report must include both income and expenditure;⁸⁹ political parties' assets including ownership properties and business outcomes must be accounted for.⁹⁰ On top of this, a statement of the political party's bank accounts must be submitted.⁹¹ Hence, regulations on the submission of annual financial reports are fairly comprehensive.

Lacking are any mechanisms to empower a designated state body to demand financial reports specifically during election periods. A Law on Campaign Finance that would likely regulate this has not yet been passed.

No mention of a standard format for submitting financial reports is provided in the laws or websites

of the Ministry of Interior or Ministry of Economy and Finance. The Secretary of State and Spokesperson for the Council of Ministers, Phay Siphon, also reported that no such standard format exists.⁹² However, if a political party fails to submit a financial report with the required content and documents, it is subject to a fine of three million riel (approximately 750 US dollars). If the offence is repeated, the party may be subject to a double fine and be forced to temporarily cease its activities.⁹³

10.2.4 ACCOUNTABILITY (PRACTICE)

SCORE: 25

To what extent is there effective financial oversight of political parties in practice?

Political parties provide financial reports to the Ministry of Interior on an annual basis. Despite this, the quality and accuracy of the reports cannot be commented on since the reports are not made public.

Publicly available information for this section is notably limited and political parties' financial reports themselves are not published. Overall, this contributes to the constraints on effective financial oversight of political parties in practice.

Sanctions for non-compliance with financial oversight regulations are perceived to apply to the opposition. For instance, the CNRP understands that if it is late in submitting the annual financial report to the Ministry of Interior, the party would probably be brought to court and might have to pay a fine⁹⁴ in accordance with the Law on Political Parties.⁹⁵

By contrast, the CPP reportedly does not face sanctions for the incomplete or late submission of financial reports.⁹⁶ Given the affiliation of the public sector to the CPP,⁹⁷ it is considered unlikely the Ministry of Interior would voice any issue against the ruling party regarding its submission of financial reports.⁹⁸

10.2.5 INTEGRITY MECHANISMS (LAW)

SCORE: 75

To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?

The parties have a number of regulations in place for democratic governance.

The process of selecting CPP leadership is explained in the party's by-laws. The Party's General Assembly elects the governing committees of the CPP on all levels (national, provincial, district, and grassroots).⁹⁹ The core power of the party is held in the national-level Central Committee which makes decisions during plenums occurring every six months.¹⁰⁰ The Central Committee elects the Standing Committee which leads the overall affairs of the party between Central Committee plenums.¹⁰¹ The Chairman and Vice-Chairman of the CPP are selected by the Congress of the Central Committee through an absolute majority vote for a five-year mandate.¹⁰²

The Standing Committee of the CPP makes the decision on candidates for general election. This is provided for in the CPP internal regulations.¹⁰³ The regulations do not, however, explicitly state how the decision should be arrived at; no mention of a democratic vote is made.

The by-laws of the CPP state that the Central Committee decides on the party's internal and external policies.¹⁰⁴ On top of this, the General Assembly of the nationwide CPP representatives is held every five years. This gives all members the opportunity to formulate party policies,¹⁰⁵ though final decisions remain with the Central Committee.¹⁰⁶ No mention is made with regard to exactly how policies are to be decided by the Central Committee. This could represent a limitation since committee members are not legally guaranteed equal voice in decision-making processes and certain members could overrule the perspectives of others.

The President of the CNRP is determined through election within the party congress. It must be decided upon through an absolute majority of votes (50 per cent +1).¹⁰⁷ Likewise, the

Permanent (Standing) Committee of the CNRP is charged with selecting candidates for National Assembly and Senate election. If a consensual decision cannot be reached, the Committee may request the President of the Party to appoint, replace, or change candidates on the election list.¹⁰⁸ The CNRP policies are decided on through absolute majority vote in the Party Congress, as guaranteed in the Party's Internal Regulations.¹⁰⁹

10.2.6 INTEGRITY MECHANISMS (PRACTICE)

SCORE: 25

To what extent is there effective internal democratic governance of political parties in practice?

The major political parties follow some provisions for democratic governance. Nevertheless, gaps remain.

Political party leaders appear to be appointed through closed-door processes,¹¹⁰ or they simply remain unchanged over decades. In the case of the CPP, leaders Hun Sen, Chea Sim and Heng Samrin have been part of the core power holders in the country since they fought alongside the Vietnamese to defeat the Khmer Rouge in 1979.¹¹¹ The three remained powerful throughout the 1980s as part of the People's Revolutionary Party of Kampuchea (PRPK)¹¹² and Hun Sen became Prime Minister in 1985.¹¹³ In October 1991, when the PRPK changed its name to the Cambodian People's Party, the three leaders assumed top positions in the party¹¹⁴ and remain in power to this day.

The powerful core of the CPP, the Central Committee, consists of 34 senior permanent party members including the three top leaders mentioned above.¹¹⁵ The CPP Central Committee decides the party's policies.¹¹⁶ Outside of the Central Committee, CPP members are reportedly not generally asked openly for their opinion on what should be included in party policies.¹¹⁷ Nevertheless, most party members allegedly have a friend or 'sponsor' in the Central Committee who can send a message to the party leaders on their behalf.¹¹⁸

Within the CPP Central Committee, party policies are agreed by consensus decision-making following discussion of the ideas presented. The three party leaders – Heng Samrin, Hun Sen and

Chea Sim – must all be in agreement before a party policy is adopted.¹¹⁹ They represent different provincial clans and constituencies who they tend to consult before making a decision.¹²⁰

The provincial CPP Standing Committees nominate candidates from their constituencies for National Assembly elections. The final decision over who will be on the party list of candidates is made by the Central Committee through a secret vote.¹²¹ Preference tends to be given to candidates with degree level qualifications, a high level of knowledge of the CPP and its policies, financial means to contribute to the party, as well as general popularity within the party.¹²²

The CNRP elects its leaders, President and Vice-President, through a vote in its Party Congress. Since the party was formed in 2012, the leadership vote has taken place only once. All members of the CNRP from across the country were invited to attend the congress.¹²³ The Party Congress also elects the Party's Steering Committee which consists of 100 members.¹²⁴ The Steering Committee then selects 26 members to form the Standing Committee which governs the day-to-day functioning of the party.¹²⁵ Prior to the merger between the SRP and the HRP in July 2012, the SRP held 26 seats in the National Assembly while the HRP had three seats.¹²⁶ Once the parties merged Sam Rainsy became the President of the new CNRP, while Kem Sokha, previously the leader of the HRP, became the Vice-President.¹²⁷

Election candidates of the CNRP are nominated by provincial-level working groups.¹²⁸ The suggested lists are then sent to the President and Vice-President of the Party for approval.¹²⁹ Both top power holders reportedly must be in agreement on all candidates before the lists are approved.¹³⁰

The CNRP Standing Committee decides on the party's policies.¹³¹ Standing Committee members discuss with the provincial Steering Committee and grassroots leaders to obtain their input.¹³² Expert working groups are also consulted to give advice on particular topics.¹³³ Working groups are made up of people within government ministries and civil society organisations.¹³⁴ Ultimately, the CNRP Standing Committee decides which policies

the party will take forward through consensual agreement.¹³⁵

10.3 ROLE

10.3.1 INTEREST AGGREGATION AND REPRESENTATION

SCORE: 50

To what extent do political parties aggregate and represent relevant social interests in the political sphere?

While the political party system is effective in aggregating and representing several social interests, there remain significant social groups who are excluded from representation by the major political parties.

Cambodia has a small number of relatively stable political parties with distinct political platforms, most notably the ruling CPP and the main opposition CNRP.

The ruling party has greater sustainability of funding and organisational resources than any of the other parties.¹³⁶ Central to the CPP's political platform is national patriotism. The party projects the motto 'Nation, Religion, King,' promoting the building and maintaining of a Cambodia founded on national solidarity, defence, and freedom from external interference.¹³⁷ Essential to the party's platform is the maintenance of peace and sustainable economic growth.¹³⁸

The CPP is accountable to society at large to a certain extent. This is reflected in the progress Cambodia has made regarding the Millennium Development Goals.¹³⁹ For instance, the child mortality rate has decreased substantially from 124 per 1,000 live births in 1998 to 43 in 2011 according to World Bank data.¹⁴⁰ Moreover, the CPP has represented the interests of rural people through infrastructure building. This includes the reconstruction of roads that were severely damaged during the civil war.¹⁴¹

Despite these gains, the CPP has been criticised for its close relationships with wealthy business elites¹⁴² which, to some extent, has come at the expense of other social interests and groups. This is illustrated by the CPP's economic land concession

While a number of reforms have been initiated and promoted by political parties to counter corruption and promote integrity, their effectiveness is yet to be seen.

(ELC) scheme in which vast amounts of land have been granted to private companies to build agro-industrial developments.¹⁴³ Whilst ELCs may be in the interest of promoting economic growth, they have resulted in the forcible eviction and displacement of thousands of families from their homes.¹⁴⁴

The opposition CNRP promotes a social-democratic outlook emphasising the improvement of public health and education services, establishing a public retirement scheme, and implementing a social land concession plan.¹⁴⁵ The CNRP does not appear to be representative of all minority groups' interests, however, and has used anti-Vietnamese rhetoric to rally its supporters.¹⁴⁶

10.3.2 ANTI-CORRUPTION COMMITMENT

SCORE: 50

To what extent do political parties give due attention to public accountability and the fight against corruption?

While a number of reforms have been initiated and promoted by political parties to counter corruption and promote integrity, their effectiveness is yet to be seen.

The CPP's anti-corruption commitment has been voiced by the Prime Minister himself: in a 2010 donor meeting he stated that 'the Royal Government considers the fight against corruption as a top priority'.¹⁴⁷ In 2013, senior CPP parliamentarian, H.E. Cheam Yeap, echoed this, noting that fighting corruption is of the utmost importance to the ruling party.¹⁴⁸ Certainly, the party has made important advances on the issue; passing the Law on Anti-Corruption and establishing the ACU in 2010. Despite these efforts, the Anti-Corruption Law has been criticised for containing loopholes.¹⁴⁹ Moreover, the independence of the ACU is limited.¹⁵⁰ Nevertheless, fighting corruption remains a central

tenet of the Government's Rectangular Strategy for Growth Phase III (2013-2018),¹⁵¹ indicating that further efforts will be made to address the issue.

The CNRP states that fighting corruption is central to its political position.¹⁵² Party members were vocal on this topic in speeches in the lead-up to the 2013 National Assembly election.¹⁵³ A central CNRP electoral commitment was to increase the minimum public official's salary to one million riel (250 US dollars) per month as a way of reducing corruption in the public sector.¹⁵⁴ Notably, the CPP has tried to apply 20 per cent salary increases across the sector for years¹⁵⁵ and also continues to prioritise public sector salary reform in its current Rectangular Strategy for Growth.¹⁵⁶ Considerable fiscal constraints pose challenges to such reforms, however,¹⁵⁷ and civil servant salaries remain too low to support an adequate level of living.¹⁵⁸

Transparency International Cambodia initiated an Anti-Corruption Pledge aimed at political parties prior to the 2013 National Assembly election. Six out of the eight political parties expressed their commitment to fight corruption by signing the pledge at the ceremony held on 12 June 2013.¹⁵⁹ Notably, the CPP did not attend. Several days later, the CPP released a reactive statement stating that it was not necessary for the party to sign the pledge since it had already taken actions to combat corruption.¹⁶⁰

RECOMMENDATIONS

1. Enforce the ban on use of state resources by public servants for political campaigning as stated in the Law on the Common Statute of Civil Servants (1994, Art. 37).
2. The Ministry of Interior should establish clear provisions for a sanction or punishment mechanism for any political parties who fail to

submit their financial reports on time (by 31 December each year) so that all parties are held accountable.

3. All political parties including the ruling party should sign an integrity pledge and uphold their proclaimed anti-corruption commitments.

4. Any form of discrimination should be officially banned from political campaigning and public statements by political party members and public officeholders.

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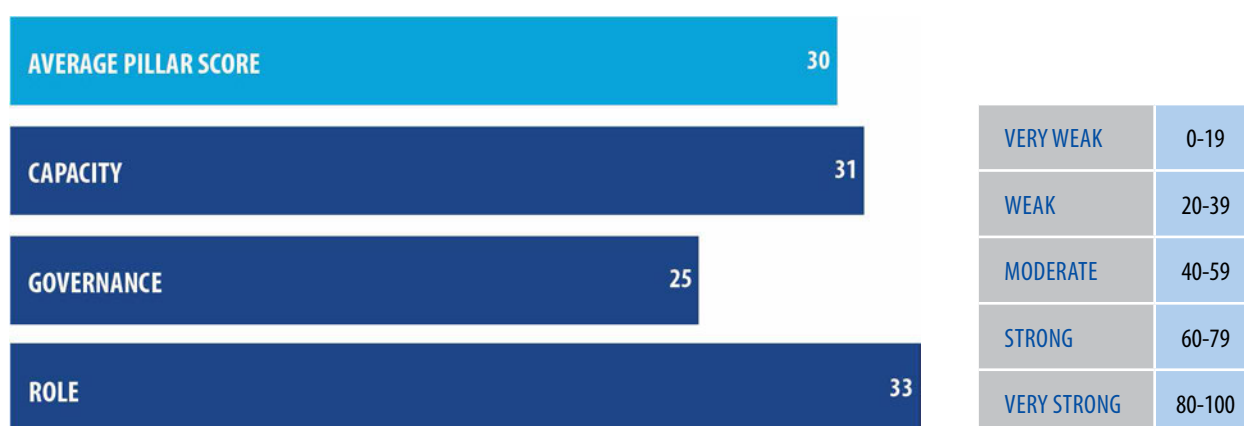
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VII. NATIONAL INTEGRITY SYSTEM

11. Media



SUMMARY

The legal framework regulating the Cambodian media contains some positive provisions. For instance, Article 1 of the Press Law (1995) guarantees freedom of the press and freedom of publication. This is consistent with constitutional protections which safeguard the right to free expression and a free press. In addition, the Press Law protects the confidentiality of sources (Art. 2) and prohibits pre-publication censorship (Art. 3). In practice, a number of media organisations have effective internal accountability mechanisms in place. These include clear avenues for submitting feedback as well as active use of blogs and social media where the public can post comments. A few of the major newspapers feature fairly regular articles on the activities of the Anti-Corruption

Unit (ACU) helping to inform the public about corruption. Likewise, a handful of independent media outlets frequently report on governance issues from a neutral standpoint.

Yet these good practices are by no means sector-wide. The ruling Cambodian People's Party (CPP) and their affiliates monopolise control of the media, financially and otherwise; hence, broadly speaking the media has very limited independence in practice. The majority of media outlets offer a distinctly biased account, presented from the perspective of the CPP. Defamation and other criminal charges have been used to silence and intimidate journalists. Given this, journalists' freedom of expression on politically sensitive issues is hampered due to fear of repercussions from the ruling party. Two laws have been recently

drafted which may further limit freedom of information: the Law on Associations and Nongovernmental Organisations (LANGO) and the Cyber Law. Furthermore, because Cambodia has not yet passed an access to information law, the disclosure of official information depends upon limited and fragmented legal provisions.

The diagram at the beginning of this chapter assesses and scores the media in terms of its capacity, governance, and role. The rest of this chapter is dedicated to providing a qualitative overview and explanation of the scores.

STRUCTURE AND ORGANISATION

Cambodia's media is very active and consists of 400 Khmer language newspapers, 34 foreign-language newspapers,¹ 70 radio stations,² and 10 national television broadcast channels.³ The country has no public service broadcaster. In 2010 it was recorded that 62 per cent of households had a television and 44 per cent of households had radio access.⁴ Meanwhile, 18 per cent of men read a newspaper at least once per week, compared to 12 per cent of women.⁵ For the most part, these traditional forms of media are controlled by the Government.⁶

New media, including the internet, is progressively being used in Cambodia. 2013 government estimates showed that approximately 2.7 million people in Cambodia have access to the internet, representing 18 per cent of the population.⁷ Compared to neighbouring Vietnam, Cambodia's internet penetration is relatively low; 35.6 per cent of the Vietnamese population were estimated to have access to the internet as of 2013.⁸ However, Cambodia has seen a very rapid increase in internet coverage in recent years, with only an estimated five per cent of the population having had internet access in 2012.⁹ In 2011, an even lower 300,000 people were estimated to be internet users in Cambodia, representing only two per cent of the population.¹⁰ The introduction of smart phones and 3G wireless networks (nearly countrywide) has played an important role in the increased use of the internet by the Cambodian population.¹¹

The Press Law was passed in 1995. Despite this, Cambodia still lacks any broadcasting law or broadcasting authority to ensure oversight of the sector. Moreover, there is no media ombudsman to address complaints about the press.

ASSESSMENT

11.1 CAPACITY

11.1.1 RESOURCES (LAW)

SCORE: 50

To what extent does the legal framework provide an environment conducive to a diverse independent media?

While the legal framework permits the establishment and operation of media entities, the registration procedure fails to prevent government control of the media.

The Constitution guarantees freedom of expression and of the press.¹² This reflects Universal Declaration of Human Rights (UDHR, 1948), Article 19 which states that 'everyone has the right to freedom of expression'. Whilst the UDHR does not directly impose legal obligations on states, aspects of it, including Article 19, have become customary international law giving them strong legal force.¹³ Likewise, the International Covenant on Civil and Political Rights (ICCPR), ratified by Cambodia in 1992, guarantees everyone the right to 'freedom of opinion' and 'freedom of expression'.¹⁴ This international law is legally binding on signatory states.¹⁵ The Press Law (1995) further bolsters these international commitments, safeguarding 'freedom of the press and freedom of publication'.¹⁶

Broadcast media outlets can exist in Cambodia. The Press Law regulates the setting up and registration of media outlets. Registration applications must be sent to the Ministry of Information¹⁷ and must include identification of the press outlet, the names and addresses of the editor or employer, and criminal record certification.¹⁸ The failure of an organisation to register before they begin publication may result in a fine of between 500,000 and one million riel¹⁹ (125 to 250 US dollars).

Whilst there is a plurality of media sources, the majority are monopolised by the ruling party and its affiliates, hence all political perspectives and social interests are not well represented.

Whilst the registration procedure may be a mere formality, the registration requirements could be used by the Government to control the media and constrain press freedom,²⁰ in that applications could be arbitrarily denied. Moreover, the Press Law says nothing on the matter of revoking registration which could be interpreted by the Ministry of Information as a license to do so.²¹

11.1.2 RESOURCES (PRACTICE)

SCORE: 25

To what extent is there a diverse independent media providing a variety of perspectives?

Whilst there is a plurality of media sources, the majority are monopolised by the ruling party and its affiliates, hence all political perspectives and social interests are not well represented.

Different media organisations exist in and outside of the capital, although the majority are based in Phnom Penh. No major print media organisations exist outside of the capital, although several provincial newspapers exist. Radio stations, however, are more broadly distributed. 70 are registered across the country, half of which are based in Phnom Penh.²²

Media organisations do not tend to represent the entire political spectrum. Those that report on political issues appear to be largely biased towards the ruling party. For instance, the 10 television stations, all of which are owned by or closely affiliated to the CPP,²³ show little coverage of opposition party activity. Even the return of opposition leader Sam Rainsy to Cambodia from self-imposed exile²⁴ was not aired on the state broadcaster, National Television of Kampuchea (TVK).²⁵ In line with this, pro-ruling party private media officials stated that they simply lacked interest in covering the event.²⁶ For independent news agencies, however, Sam Rainsy's return was

one of the biggest stories of 2013. Dozens of journalists welcomed Mr. Rainsy at the airport including international news agency, Reuters, as well as multinational non-profit news agency, the Associated Press.²⁷

The opposition, Cambodia National Rescue Party (CNRP), has repeatedly requested for licenses to run its own television and radio stations in order to boost its media coverage. The requests, however, have reportedly been denied by the Minister of Information.²⁸ In light of this, the opposition party launched an online television station called CNRP TV in November 2013. This has been an attempt to circumvent the need for television licenses from the Ministry of Information and capitalise on the increasing use of social media in Cambodia.²⁹

Similarly, radio stations tend to be linked to and promote the ruling party's perspective.³⁰ Nevertheless, there are a limited number of independent radio stations such as ABC, Radio France and Beehive that provide alternative perspectives, including those of the opposition parties.³¹ The two major English-language newspapers, the Phnom Penh Post and Cambodia Daily, as well as Khmer newspaper Nokorwat News³² and RKD News online,³³ offer more balanced sources of information, reporting on a broad variety of topics from a non-affiliated, independent position.

For the most part, the media does not appear to reflect a broad spectrum of social interests and groups. Cambodia has nothing like a public service broadcaster that would be broadly accessible, provide universal appeal, be controlled by the public, free from political interference, and provide particular attention to minorities.³⁴ There are a few Khmer radio stations such as Voice of Democracy (FM 106.5MHz) and Women's Media Centre (FM102) that report on a variety of social interests and groups, including human rights

reports and youth opinions.³⁵ The majority of media, particularly television,³⁶ however, is focused largely on entertainment³⁷ rather than diverse social interests and groups of people.

Media professionals working within and trained at the Department of Media and Communication (DMC) of the Royal University of Phnom Penh, have a reputation for producing high quality, credible research.³⁸ Still, on the broader scale, finding journalists with adequate qualifications and skills can be a challenge.³⁹

11.1.3 INDEPENDENCE (LAW)

SCORE: 25

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?

Aside from protecting freedom of expression and of the press, few legal safeguards exist to prevent unwarranted external interference in the media's activities.

Freedom of expression and of the press is enshrined in the Constitution.⁴⁰ Furthermore, Cambodia has also ratified the International Covenant on Civil and Political Rights (ICCPR) which safeguards freedom of expression and the right to hold opinions without interference (Art. 19).⁴¹ Regarding the protection of sources, the 1995 Press Law contains the provision that 'the press has rights to maintain the confidentiality of its sources'.⁴² Evidently, the legal framework in Cambodia expressly provides for the protection of these fundamental press rights.

Despite this, considerable burdens are placed on journalists associations, potentially curtailing their independence. The Press Law, for instance, states that journalists' associations must establish a code of ethics that ensures published information is 'consistent with a sense of justice'.⁴³ Yet this term is not clearly defined, nor linked to the concept of political neutrality. As a result, some journalists may interpret this as an implied imperative to comply with the government's viewpoint or sense of justice,⁴⁴ potentially leading to acts of self-censorship. The codes of ethics must also ensure that articles strictly comply with

Khmer grammar.⁴⁵ As global campaign for free expression, Article 19, points out, there may be editorial reasons for deviating from strict grammar rules including: to capture nuance, for rhetorical effect, and to distinguish between spoken and written word.⁴⁶ Ultimately, writing style is something which should be left up to the discretion of the editor, rather than being centrally controlled by government.⁴⁷

Cambodia has no access to information law although different drafts have been presented by opposition parliamentarians to the National Assembly since the end of 2010.⁴⁸ The most recent draft was dismissed by the Government,⁴⁹ allegedly on the basis that it was unconstitutional.⁵⁰ The ruling party is drafting an alternative access to information law.⁵¹

Whilst no specific libel or defamation law exists in the country, there are articles in a number of laws relating to the issue. Historically, the provisions relating to the judiciary and criminal law during the 1992 transitional period (referred to as the 'UNTAC Criminal Law'), covered criminal disinformation,⁵² defamation,⁵³ and incitement.⁵⁴ When the Penal Code, which replaced the UNTAC Criminal Law, was passed in 2009 the custodial sentence for defamation was removed.⁵⁵ Nevertheless, Article 41 of the Law on Anti-Corruption (2010) contravenes this progress by including a provision that criminalises defamation; if a complaint is considered false, the complainant can be punished by imprisonment for between one and six months.⁵⁶ Furthermore, the Penal Code continues to make it a crime to present any statement that undermines the honour and reputation of a person or institution (defamation).⁵⁷ The Press Law also includes defamation as a 'grave professional abuse' by journalists.⁵⁸ These provisions may limit the independence of the media by acting as a deterrent to free expression on politically-sensitive topics.

11.1.4 INDEPENDENCE (PRACTICE)

SCORE: 25

To what extent is the media free from unwarranted external interference in its work in practice?

Overt censorship of the media by external actors does not appear to be widespread. Yet the Ministry of Information occasionally gives advice to media organisations on how to present information so as to avoid crossing any politically- sensitive boundaries. On the other hand, self- censorship, or at least very careful editorial decision-making, is broadly practiced to ensure that delicate lines are not crossed. The Government is the central concern of many editors making self-censorship decisions.

Overt censorship of traditional media does not appear to be commonplace and internet censorship is low compared to Cambodia's regional neighbours. Nevertheless, the ruling party monopolises the majority of the media, limiting its independence in practice.

Freedom House ranked Cambodia's media as 'not free' in its 2012 Press Freedom Index.⁵⁹ On top of this, Reporters Without Borders' 2013 World Press Freedom Index ranked Cambodia as 143rd out of 179 countries,⁶⁰ slipping a substantial 26 places from 2012. The drop was said to be due to an increase in authoritarianism from the Government over the media.⁶¹

Overt censorship of the media by external actors does not appear to be widespread.⁶² Yet the Ministry of Information occasionally gives advice to media organisations on how to present information so as to avoid crossing any politically-sensitive boundaries.⁶³ On the other hand, self-censorship, or at least very careful editorial decision-making, is broadly practiced to ensure that delicate lines are not crossed.⁶⁴ The Government is the central concern of many editors making self-censorship decisions.⁶⁵ Given that journalists have faced defamation cases in the past for publishing content critical of the Government and ruling party,⁶⁶ there is a general consensus among journalists that a high-level of caution is needed to avoid making statements that could result in retaliation and punishment from the Government.⁶⁷

All this considered, journalists experience a certain amount of fear regarding freedom of expression. Editor-in-Chief of the Phnom Penh Post Khmer, Kay Kimsong, noted that the level of fear experienced by a journalist may depend on

their own level of professionalism and political affiliation. If the level of professionalism is high then the journalist may have less fear because they know their sources are reliable. Likewise, if a journalist is independent and politically non-partisan they will not have to ensure accountability to one particular party and they can have a greater level of freedom in what they say.⁶⁸

The shooting of environmental activist Chut Wutty in April 2012⁶⁹ and the murder of Hang Serei Oudom, a journalist who had exposed illegal logging in September 2012,⁷⁰ have added to a culture of fear among journalists.⁷¹ These extrajudicial killings have raised deep concerns about the personal safety of those who report on politically-sensitive issues.⁷²

Legal provisions relating to freedom of expression and of the press have been utilised in recent years to intimidate journalists.⁷³ In January 2011, a coordinator of Cambodian rights group, ADHOC, was fined one million riel (240 US dollars) and ordered to pay three million riel (722 US dollars) to a company he was considered to have defamed during an interview.⁷⁴ The company is owned by the wife of the Minister of Industry, Mines and Energy, indicating a close connection to the ruling party and a potential political motive for the case.⁷⁵ In October 2011, then newspaper editor, Pen Samitthy, was sued by the prosecutor of Siem Reap province for publishing two articles on illegal logging.⁷⁶

Given that all television stations, the majority of radio stations, as well as the main Khmer newspapers are all affiliated with or directly owned by members of the CPP, the editorial stances of these media associations are very much set by the party.⁷⁷ For instance, the most popular television

station, the Cambodian Television Network (CTN), is owned by an advisor to the Prime Minister. An additional channel, Bayon TV, is owned by the Prime Minister's daughter.⁷⁸

The internet has typically remained unrestricted in Cambodia. In November 2012, however, the Minister of Telecommunications signed a circular stating that internet cafes cannot be located within 500 meters of a school. Cambodian rights group, LICADHO, mapped the internet cafes that would be affected if this circular was implemented;⁷⁹ the findings showed that almost all of Phnom Penh's city center internet cafés would have to close.⁸⁰ This has been perceived as a step towards a tighter control of Cambodia's online media,⁸¹ limiting the public's ability to access independent information via the internet.⁸²

The licensing procedure for media undertaken by the Ministry of Information in accordance with the Press Law appears to be discriminatory. Media outlets that are in support of the ruling party or Government tend to be given licenses easily. On the other hand, those perceived to be critical of the Government or explicitly in favour of the opposition party seem to find it more challenging to obtain licenses. Radio broadcasters who are deemed not to be pro-government, for instance, have been denied licenses from the Ministry of Information claiming that there are no frequencies available.⁸³

11.2 GOVERNANCE

11.2.1 TRANSPARENCY (LAW)

SCORE: 25

To what extent are there provisions to ensure transparency in the activities of the media?

There are very few legal provisions across the sector seeking to establish transparency with regard to relevant media activities. Nevertheless, some individual rules and codes of media outlets exist, including regulations regarding reporting policies.

Legal provisions regarding transparency in the media sector broadly-speaking are limited. The absence of a broadcasting law, as well a law on access to information emphasises the shortcomings

of the existing legal framework with regard to disclosure of information.

A small number of media outlets make their individual codes of conduct transparent. The Cambodian Center for Independent Media (CCIM) for instance, provides its code of ethics on its website, specifying seven aspects of crime reporting which it expects journalists to follow. It also states that journalists should keep their hands clean and not accept bribes for their work.⁸⁴

The disclosure of broadcast company ownership is not required under the law. The Press Law (Art. 9) does, however, demand that the identity of the employer or editor of the organisation be disclosed to the Ministry of Information.⁸⁵

11.2.2 TRANSPARENCY (PRACTICE)

SCORE: 25

To what extent is there transparency in the media in practice?

In general, media outlets do not publicly disclose information on their activities. A handful of independent media outlets are more open to providing details of their owners and internal staff structures on their websites.

Confirming exactly who owns the print and broadcast media in Cambodia can be challenging given that many media outlets do not readily disclose such information. The English-language print media, which consists of the Cambodia Daily and Phnom Penh Post, are forthcoming about their ownership and provide details of their publisher on their websites and print editions. However, most major Khmer broadcasters, such as the large television channels, do not go out of their way to explain their business connections which are thought by commentators to be very complex⁸⁶ and connected to the ruling party.⁸⁷

A majority of media associations do not make information on their staff policies publicly available. A few, however, are forthcoming with such information. The Phnom Penh Post and Cambodia Daily provide an overview of their internal staff and management structure on their websites.⁸⁸ Moreover, the Cambodian Center for

Independent Media (CCIM) is transparent about its activities and reporting by providing its annual reports on its website.⁸⁹

11.2.3 ACCOUNTABILITY (LAW)

SCORE: 25

To what extent are there legal provisions to ensure that media outlets are answerable for their activities?

A limited number of provisions are in place to ensure the accountability of media employees. However, there is no effective sector-wide accountability system in place.

Cambodia has nothing like a press council to ensure that codes of ethics are maintained and respected. It lacks a broadcasting regulatory authority as well as any broadcasting legislation to provide professional oversight of media outlets. Consequently, media outlets are not required to submit reports on their financing or activities to any oversight body. Thus, few legal checks and balances are in place to ensure accountability of the media are provided.

In addition, there is no media ombudsman that could deal with complaints about the press and facilitate investigations and corresponding responses from media outlets. Still, the Press Law states that media entities are required to correct erroneous information in a timely manner. A person has the right to demand retraction of an article, text, picture, or drawing if it is considered false.⁹⁰ Media outlets may also be required to pay compensation to the offended party, in addition or instead of publishing a retraction.⁹¹

11.2.4 ACCOUNTABILITY (PRACTICE)

SCORE: 25

To what extent can media outlets be held accountable in practice?

While media outlets have some effective accountability mechanisms in place, these are limited to a select group of independent organisations. The absence of a press council or media ombudsman results in a lack of any broad reaching mechanism to ensure accountability of the entire sector.

Some media organisations offer clear avenues for submitting feedback and providing responses without external prompting. The Phnom Penh Post and Cambodia Daily for instance, offer online contact information to submit comments. Editor-in-Chief of the Phnom Penh Post Khmer, Kay Kimsong, explains that the paper has a policy of always responding to comments and allows journalists to respond directly to the public,⁹² ensuring that the process is open and accountable. Additionally, some online Khmer media organisations allow for public feedback and comments on articles and stories, such as the Women's Media Centre of Cambodia (WMC)⁹³ and the Cambodian Center for Independent Media's Voice of Democracy (VOD) Hot News.⁹⁴

Social media and online forums are utilised by a limited number of media associations in Cambodia. For instance, BBC Media Action's, entertaining and educational show, Loy9, has a particularly active Facebook page.⁹⁵ It provides an interactive space in which viewers post comments, give feedback, and answer questions relating to the show's content.⁹⁶ Loy9 also has a regularly updated blog on which topics relevant to the show are posted and people can react and make comments. The producers of Loy9 incorporate the feedback from their viewers in order to ensure that the program remains accountable.⁹⁷ The number of internet users countrywide, however, remains markedly low.⁹⁸ As a result, online interaction to hold media to account is not representative of the overall public's relations to the media.

There is no such thing as a press council or sector-wide media ombudsman in Cambodia. Moreover, individual media outlets do not tend to have media ombudsmen of their own or any oversight committee beyond their organisational boards.⁹⁹

11.2.5 INTEGRITY MECHANISMS (LAW)

SCORE: 25

To what extent are there provisions in place to ensure the integrity of media employees?

A limited number of provisions are in place to ensure the integrity of media employees. These

include individual codes of conduct in some media outlets. A sector-wide code of conduct does not exist, however, nor does a press council.

No sector-wide code of ethics currently exists. Nevertheless, the Press Law stipulates that journalist associations should each establish a code of ethics to implement certain sector-wide principles.¹⁰⁰ These principles include respect for the privacy rights of individuals, and the importance of maintaining a high level of academic integrity by only reporting facts for which the origin is known.¹⁰¹

Major media outlets tend to have codes of ethics including local organisations such as the Cambodian Center for Independent Media (CCIM),¹⁰² Voice of America,¹⁰³ and Radio Free Asia.¹⁰⁴ Large Khmer broadcasters such as television stations Bayon TV and My TV do not make their codes of ethics publicly available, however, and did not respond when contacted by Transparency International Cambodia to request disclosure of such information. Hence, their integrity mechanisms, even if in existence, are not transparent.

Only a very limited number of media organisations have some form of ethics committee. Independent radio show, Voice of Democracy, for instance, has a small committee consisting of its Editor-in-Chief, Editor, and external experts.¹⁰⁵

11.2.6 INTEGRITY MECHANISMS (PRACTICE)

SCORE: 25

To what extent is the integrity of media employees ensured in practice?

The approach to ensuring the integrity of media employees is generally reactive and piecemeal. Existing mechanisms include training of staff on ethics.

Journalists do not appear to commonly receive independent instruction on ethics. Noteworthy however, was the ethics and accountability training for journalists organised by CCIM in July 2010. Attended by 39 journalists this training focused on what ethics means in practice and gave a space for the participants to reflect on ethics in the

Cambodian media.¹⁰⁶ Moreover, in June 2013, Transparency International Cambodia organised a professional training for young journalists, equipping the participants with skills to undertake investigative journalism whilst maintaining a high level of integrity.¹⁰⁷

No professional organisation defending journalists and governing media ethics exists at present.¹⁰⁸ There is no press council and the majority of media organisations do not have ethics committees. Hence, the integrity of the media is not broadly ensured in practice. In addition, journalists are known to write or censor stories with a partisan perspective in exchange for money.¹⁰⁹ Such practices usually constitute an infringement of gifts and hospitality principles if the journalist's organisation has any (which is not always the case).

Whether or not journalists rely on multiple sources and report on both sides of an issue tends to very much depend on the media organisation they work for. Reporters from independent media such as the Phnom Penh Post, Cambodia Daily, Women's Media Centre of Cambodia (WMC), Voice of Democracy (VOD), and Radio Free Asia (RFA) typically find multiple and credible sources and report from a neutral perspective.¹¹⁰ Yet aside from a handful full of independent media outlets, the majority are directly controlled or connected to the CPP.¹¹¹ Hence, they tend to only report from the perspective of the ruling party, drawing on a very limited number of sources.

11.3 ROLE

11.3.1 INVESTIGATE AND EXPOSE CASES OF CORRUPTION PRACTICE

SCORE: 0

To what extent is the media active and successful in investigating and exposing cases of corruption?

Investigating and exposing cases of corruption is rarely undertaken by the media.

No specific media outlets with a focus on investigative journalism exist in the country, nor is it a key part of the media's overall work. Journalists tend to fear exposing politically sensitive information. The lack of protection for

journalists and whistleblowers of any kind deters reporters from digging into certain issues.¹¹² CCIM is the only media organisation of note that has produced investigative reports, including one report on the issue of corruption in the passport office in 2010.¹¹³

For the most part, journalists do not seek to expose cases of corruption. There is a perception that focusing on corruption will be seen to be meddling in government affairs and donors usually prefer politically safer topics. As a result, it is hard to report on corruption without facing some sort of political risk.¹¹⁴

11.3.2 INFORM PUBLIC ON CORRUPTION AND ITS IMPACT

SCORE: 50

To what extent is the media active and successful in informing the public on corruption and its impact on the country?

Media outlets pay some attention to informing the public on corruption and its impact. Nevertheless, such reports are limited to a few independent organisations; the topic runs the risk of upsetting the Government, so it is considered to be sensitive.

The major newspapers – the Phnom Penh Post and the Cambodia Daily – feature fairly regular articles reporting on the activities of the ACU and the investigations it undertakes.¹¹⁵ These newspapers are published in the English-language, but also translated into Khmer. There are also Khmer newspapers that report on corruption, such as the Nokorwat News Daily¹¹⁶ and Rasmei Kampuchea. The latter of which, reported on 19 December 2013 that the ACU had arrested the Chief of the Department for Tax Auditing in Siem Reap Province.¹¹⁷

Relatively few programmes are run by the media to educate the public on corruption and how to curb it. Nevertheless, anti-corruption has been featured on BBC Media Action's participatory youth television programme, Loy9. A combination of education and entertainment, Loy9 is broadcast by three major television channels, three times per week.¹¹⁸ Loy9 is estimated to reach between

one million and three million viewers per week.¹¹⁹ Whilst the core focus of the programme is not corruption, Loy9 informs youth on related issues such as the voter registration period and elections.¹²⁰ Transparency International Cambodia's 'Youth Empowerment Camp for Transparency and Integrity' (YETI) was also featured on the show.¹²¹ This has helped to raise awareness about the causes of corruption and the resulting consequences it has on the politics, economics, and development of Cambodia.¹²²

On top of this, CCIM and Transparency International Cambodia have teamed up for a weekly radio talk show focusing solely on issues relating to corruption and integrity. Broadcast on Sarika FM every Thursday at lunch time, the programme features guest speakers on topics ranging from 'corruption and elections' to 'roles of youth in fighting against corruption'.¹²³ It has high-level support from the ACU which has sent representatives to participate in the show, including the Unit's Director of its Department for Education and Prevention who spoke on the 'Roles of the Anti-Corruption Unit' on 24 April 2013.¹²⁴

11.3.3 INFORM PUBLIC ON GOVERNANCE ISSUES

SCORE: 50

To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?

While a handful of independent media outlets pay attention to informing the public on governance issues, the majority of media organisations offer limited quality reports; often from a biased perspective.

Both the English and Khmer-language versions of the Phnom Penh Post and Cambodia Daily offer regular, unbiased, and comprehensive information on the activities of government and other governance actors. In the lead up to the July 2013 National Assembly election, for example, both papers reported on the activities of all major political parties from a neutral standpoint.¹²⁵ Similarly, Radio Free Asia Khmer,¹²⁶ Voice of

America Khmer,¹²⁷ and more recently Thmey Thmey,¹²⁸ offer frequent balanced accounts of political activities.

The Khmer-language Rasmei Kampuchea¹²⁹ and Deum Ampil (DAP)¹³⁰ newspapers also regularly report on government activities and governance issues, although the perspectives they present tend to be partisan. The majority of television and radio stations are sympathetic to the views of the ruling CPP and are not favourable to the opposition parties.¹³¹ For instance, in December 2013, Rasmei Kampuchea published an article stating that opposition CNRP leaders, Sam Rainsy and Kem Sokha, were causing social instability in the country.¹³² In contrast, a limited number of media outlets openly criticise the government and support the opposition including newspaper, Moneaksekar Khmer.¹³³

With the aim of upgrading the quality of independent media reporting on democratic governance, CCIM organised a training workshop for journalists on this topic. Held in June 2012, the training was attended by 30 journalists from different media associations.¹³⁴

RECOMMENDATIONS

1. The Ministry of Information and relevant media and civil society organisations should work together to draft a new code of conduct and code of ethics that will apply to all journalists in Cambodia. The code of conduct should contain provisions for independent investigation and reporting.
2. Media and civil society organisations should work towards the promotion of media organisations signing up to follow the code of conduct and code of ethics; and should promote these codes nationally.
3. Organise the creation of a press council to hear and investigate complaints about the actions of the media in Cambodia.
4. The Government should conduct a review of the legal status of the state media especially the National Television of Kampuchea (TVK) and the National Radio of Kampuchea (RNK). They should both operate under the state's funds and be transformed into actual public media that serve the general public interest rather than the government only.

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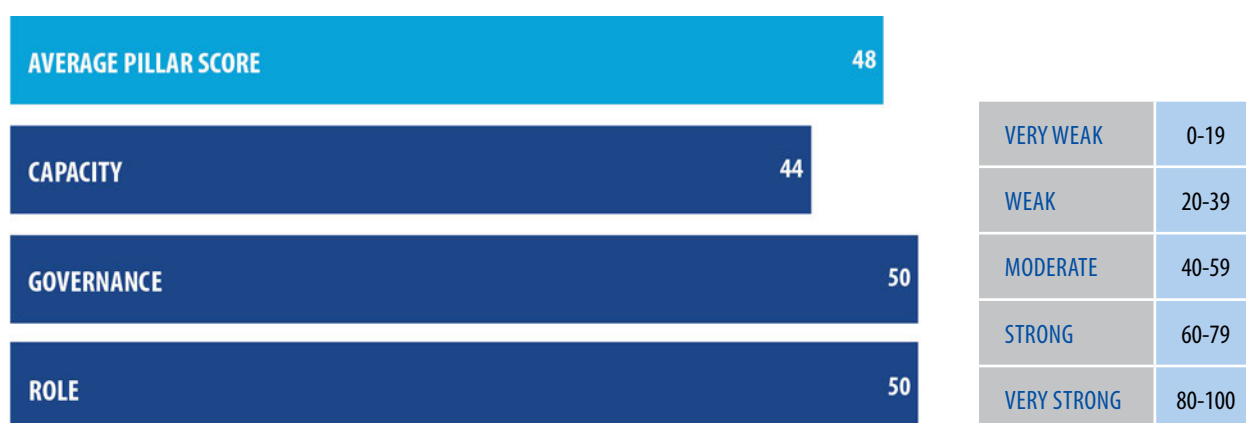
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VII. NATIONAL INTEGRITY SYSTEM

12. Civil Society



SUMMARY

This report finds that the existing legal framework to safeguard the existence and independence of civil society organisations (CSOs), as well as the right to form them, is relatively strong. The right to form associations, to free expression, and free publication are constitutionally guaranteed. Resources received by civil society on an aggregate level are substantial, largely bolstered by official development assistance. On average, civil society salaries are higher than for the public sector and civil society organisations are generally able to attract staff with adequate qualifications.

Limitations remain, however, in the freedom of all civil society to exist and function without

undue external interference. CSOs and individuals that work on sensitive topics which challenge and critique the Government have been subjected to judicial harassment, detention, and even assassination. Moreover, the draft Law on Associations and Non-Governmental Organisations (LANGO) concerns rights groups over its potential to restrict civil society space in Cambodia. Steps are being taken by CSOs aiming to hold government to account and demand policy reform, yet progress to date has been gradual.

The diagram at the beginning of this chapter provides the scores for civil society in terms of its capacity, governance, and role. The remainder of the section provides a qualitative background and explanation of the scores.

STRUCTURE AND ORGANISATION

A CSO may be defined as being non-state affiliated with a non-profit agenda.¹ It must have a formal governance structure and be able to practice independent self-governance.² The term ‘civil society organisation’ is often, and indeed in this report, employed as an umbrella label under which non-governmental organisations (NGOs) are included. A distinction is made here between national CSOs, operating only in Cambodia, and international CSOs, operating in at least two countries. The term civil society refers in this report to the aggregate CSOs; a sector distinct from both government and business.

CSOs have played a central role in the development of Cambodia over the last three decades.³ From the grassroots and community level, to influencing government policy, CSOs have been recognised by the Government and donors as ‘development actors in their own right’.⁴

The sector has experienced exponential growth since a relative level of peace was restored in Cambodia in the mid-1990s.⁵ Almost 3,500 civil society organisations were registered in the country as of 2010, provoking the Prime Minister to comment that Cambodia is ‘a heaven for NGOs’.⁶ Approximately 500 of the registered CSOs were listed as being international.⁷ A little over 1,200, or 34 per cent, of all registered CSOs are considered to be active: 904 local organisations and 322 international ones.⁸

The number of civil society organisations registered in Phnom Penh is disproportionately high in comparison to the rest of the country. This does not necessarily reflect activity, however, since many organisations have their head offices in the capital yet undertake their projects in the provinces.⁹

The Cambodian Rehabilitation and Development Board (CRDB) and the Council for the Development of Cambodia (CDC) are intended to serve as a ‘focal point’ between the Government and the country’s CSOs.¹⁰

ASSESSMENT

12.1 CAPACITY

12.1.1 RESOURCES (LAW)

SCORE: 50

To what extent does the legal framework provide an environment conducive to civil society?

Although several provisions exist to ensure an environment conducive to civil society, a number of restrictions remain which may hamper the activities of CSOs.

The legal framework permits the establishment of CSOs. For instance, the Constitution guarantees the right to form associations.¹¹ Furthermore, the draft LANGO (due to be passed in 2014), will, according to the Government, enshrine the rights and regulations of CSOs to undertake their functions. Despite this, rights groups have criticised the draft legislation saying that it will restrict the lawful activities of civil society.¹²

CSOs must register with the Ministry of Interior.¹³ International CSOs have to register with the Ministry of Foreign Affairs and International Cooperation.¹⁴ The current legal framework does not, however, provide procedural safeguards to ensure a transparent and apolitical registration process. Indeed, no set time frame for the approval of applications exists.¹⁵ Organisations that fail to register can be subjected to forced closure.¹⁶

The threat of charges of disinformation, defamation, and incitement are further barriers to the freedom of civil society to engage in advocacy activities.¹⁷

Cambodian taxation regulations are not unfavourable to CSOs. According to the Law on Taxation (1997), non-governmental organisations (NGOs) are not required to pay taxes on their income if they have religious, charitable, scientific, literary, or educational purposes.¹⁸ Taxation applies to the salaries of civil society staff at the same rate as private companies; a maximum rate of 20 per cent.¹⁹

12.1.2 RESOURCES (PRACTICE)

SCORE: 50

To what extent do civil society organisations have adequate financial and human resources to function and operate effectively?

CSOs generally have an adequate amount of resources to undertake their activities, yet small resource gaps exist which can hinder their effectiveness.

CSOs are well funded in general. Data collected by the Cambodian Rehabilitation and Development Board (CRDB) and Council for the Development of Cambodia (CDC) indicates that official development assistance and CSOs' core resources have increased over the past decade.²⁰ They amounted to 1.385 billion US dollars in 2011 and 1.375 billion US dollars in 2012.²¹ Moreover, development cooperation disbursements showed significant growth of 14 per cent per year between 2002 and 2012.²²

Funding sources for CSOs are not particularly diverse; they tend to rely heavily on international donor funding.²³ A survey produced by the Cooperation Committee for Cambodia (CCC, 2011) estimates that grants and donations are the most significant form of funding for CSOs in the country. Survey respondents indicated that 73 per cent of their funding comes from grants and donations, whilst 20 per cent comes from commercial interests such as office rentals or the sale of publications. Only two per cent comes from the Government.²⁴

The CCC's 2009 survey on salaries paid to local staff in CSOs showed that for lowest level positions, salaries average at 106 US dollars per month in medium-sized national CSOs and 137 US dollars per month in similar sized international organisations.²⁵ For higher level positions, staff members in national organisations are paid on average 750 US dollars per month and 928 US dollars per month in international organisations.²⁶ In contrast, the average base salary for civil servants is 105 US dollars per month, with the lowest level public servants receiving only 40 US dollars monthly remuneration (not including additional allowances).²⁷ Compared with average public sector salaries, civil society pay fares quite

well.

Whilst public servants have access to additional allowances which boost their total remuneration considerably,²⁸ the comparably high civil society basic wages may provide some explanation as to why CSOs are generally able to attract adequately qualified individuals. 65 per cent of CSOs reported that the average level of education among their staff members was a university degree or higher.²⁹

In addition to paid staff, many CSOs have strong grassroots networks and altogether rely on many non-paid volunteers for community work.³⁰ Of the 309 CSOs that responded to the CCC's 2011 survey, a total of over 1,400 non-paid international and local volunteers were being utilised.³¹

12.1.3 INDEPENDENCE (LAW)

SCORE: 50

To what extent do legal safeguards exist to prevent unwarranted external interference in the activities of civil society organisations?

Whilst a number of laws and provisions exist to prevent unwarranted interference in the activities of CSOs, they are not entirely comprehensive.

Cambodia's legal framework permits citizens the right to form and engage in groups regardless of political ideology, religion, or objectives. This is enshrined in Article 41 of the Constitution which states that 'Khmer citizens will have the freedom of expression, press, publication, and assembly'.³² Moreover, Article 35 states that 'Khmer citizens of either sex will have the right to participate actively in the political, economic, social, and cultural life of the nation'.³³ Cambodia has also ratified the Universal Declaration of Human Rights (UDHR, 1948) and International Covenant on Civil and Political Rights (ICCPR, 1966). Both of these international bodies of law enshrine the right to freedom of association.³⁴

A number of permissible grounds for state interference in CSOs exist in Cambodia as defined by law. Under domestic law, defamation, disinformation, and incitement may limit what

Human rights defenders and activists in particular have received threats and forms of intimidation from the authorities. According to the Cambodian Human Rights and Development Association (ADHOC), between January and April 2013 there were 46 new cases of judicial harassment of community activists and representatives. This added to the 238 recorded by the organisation in 2012.

CSOs can express and advocate on.³⁵ The Law on Anti-Corruption for instance, contains a clause stating that if someone brings a complaint to the Anti-Corruption Unit (ACU) for which no evidence can be found, the complaint could be considered defamatory and the complainant may be liable for between one and six months imprisonment.³⁶

The draft LANGO³⁷ has raised concerns over the restrictions it would put on ordinary Cambodian citizens' involvement in further developing the country.³⁸ The concerns come from CSOs, donors, media, foreign Governments, and community based organisations (CBOs) and focus on the draft law's provisions regarding: registration requirements, the power the Government would have in suspending or closing CSOs, and the lack of an appeal process for such decisions.³⁹

12.1.4 INDEPENDENCE (PRACTICE)

SCORE: 25

To what extent can civil society exist and function without undue external interference?

Civil society activists and organisations working on contentious issues have been subjected to undue interference from the Government.

Most CSOs work on issues such as health, education, and community development.⁴⁰ Topics of this kind are not considered particularly sensitive since they do not tend to criticise the Government. Hence, many such CSOs have constructive relationships with Government.⁴¹ Advocacy and policy CSOs, however, tend to be more critical and regularly challenge government policy. As a result, they often have less positive relationships with the Government⁴² and appear to be more susceptible to undue interference from the authorities.

Human rights defenders and activists in

particular have received threats and forms of intimidation from the authorities.⁴³ According to the Cambodian Human Rights and Development Association (ADHOC), between January and April 2013 there were 46 new cases of judicial harassment of community activists and representatives. This added to the 238 recorded by the organisation in 2012.⁴⁴

Civil society has experienced the detention of some of its foremost activists including one of Cambodia's best-known promoters of democracy (and a government critic), Beehive Radio station director, Mam Sonando. Mr. Sonando was sentenced to 20 years imprisonment in October 2012 on charges of masterminding a 'secessionist' plot, widely thought to be politically trumped up.⁴⁵ Yet, five months later he was released when the Court of Appeal suspended his sentence.⁴⁶

2012 was the worst year on record in terms of the arrest and detainment of land rights activists, according to data collected by CSOs. More than twice as many activists were arrested as in previous years.⁴⁷ A high profile case was the detainment of 13 women activists in May 2012 for their protesting over the Boeung Kak Lake evictions which forcibly removed 4,000 families from their homes in Phnom Penh.⁴⁸ All of the women were set free, except one: 29 year-old Yorm Bopha who was sentenced to three years in prison on accusations of 'intentional violence'.⁴⁹ Supporters protesting outside her trial were reportedly subdued by the police who beat them with electric batons.⁵⁰ Ms. Bopha was released on bail more than a year after her arrest.⁵¹

Several cases regarding arrests and assassinations of civil society advocates have been recorded in recent years. Two of the most recent extra-judicial killings of civil society activists and journalists include the shooting of environmental

activist, Chut Wutty,⁵² and the murder of journalist, Hang Serei Oudom in 2012.⁵³ In total Human Rights Watch (HRW, 2012) reported that 300 activists, journalists, opposition politicians, and others have been killed in politically motivated attacks in Cambodia since the Paris Peace Agreements were signed in 1991.⁵⁴

12.2 GOVERNANCE

12.2.1 TRANSPARENCY (PRACTICE)

SCORE: 50

To what extent does transparency exist in civil society organisations?

Whilst CSOs generally make information on their activities publicly available, limited information of their financial expenditure is released.

2011 survey data from the Cooperation Committee for Cambodia (CCC) found that from the 309 CSOs that responded, a substantial majority (88 per cent) of them produced a financial report. Only half of these, however, made this information available to the public.⁵⁵

Despite this, CSOs tend to be transparent regarding the sources of their funding. They provide information to the Council for the Development of Cambodia (CDC), the overview of which is publicly available on their website.⁵⁶ The website highlights each organisation's budget and allows for further exploration of individual organisations' data which expands on financial assistance partners, including any funding from the Government.⁵⁷

Further aiding the transparency and disclosure of information is the existence of boards of directors for the majority of CSOs. The CCC estimates that 80 per cent of CSOs have a board of directors.⁵⁸

12.2.2 ACCOUNTABILITY (PRACTICE)

SCORE: 50

To what extent are civil society organisations answerable to their constituencies?

In general, CSOs' boards are only partially effective in providing oversight of CSOs'

management decisions.

Nearly 80 per cent of civil society respondents to a 2012 CCC survey indicated that they have a governing body that most commonly meets every three months.⁵⁹ Boards reportedly do not, however, always and effectively provide strategic direction, assess how programmes are doing, or approve reports and budgets.⁶⁰ This may stem from the insufficient knowledge and expertise of some board members on relevant areas such as management and operations.⁶¹

Some organisations are transparent in their practices and aim to include a wide variety of beneficiaries from across different constituencies on their boards.⁶² This contributes towards better oversight of CSOs' activities. Nevertheless, friends or relatives, even spouses or children of a CSO's staff have been known to be invited to sit on the organisation's boards.⁶³ This practice clearly threatens the effectiveness of board members in providing impartial oversight of CSO management.

12.2.3 INTEGRITY MECHANISMS (LAW AND PRACTICE)

SCORE: 50

To what extent is the integrity of civil society organisations ensured in practice?

In general, CSOs are taking some measures to ensure the ethical behaviour of their staff, but they are not fully comprehensive.

Driving these efforts is the CCC which initiated the Code of Ethical Principles and Minimum Standards for NGOs in Cambodia (hereafter referred to as the Code of Ethical Principles). Established in 2007, the Code of Ethical Principles aims to maintain and enhance good practices amongst CSOs and enhance their reputation in order to build trust with stakeholders.⁶⁴ It includes nine principles, 26 standards,⁶⁵ and many more indicators to guide the behaviour of CSOs to promote a high level of integrity within their organisational structure.⁶⁶

The CCC has designed innovative mechanisms for monitoring compliance of the Code of Ethical Principles. CSOs can apply to be considered for

certification under the Voluntary Certification System (VCS)⁶⁷. In order to be certified, the organisations are assessed on their compliance with the Code of Ethical Principles.⁶⁸ So far, the uptake of this mechanism has been encouraging, with 150 applicants having been reviewed by the three independent bodies of the CCC⁶⁹ and at least 44 having been awarded the certificate of good governance and professional practice.⁷⁰ Despite these positive steps, these figures indicate that only approximately 12 per cent of the 1,200 CSOs that are considered to be active in the country are explicitly trying to follow this code of conduct.

Implementation of the Code of Ethical Principles and other codes of conduct may be lacking due to the limited management and leadership capacity of some CSOs in Cambodia.⁷¹ Many local and grassroots organisations are still trying to build up effective operational systems and ensuring an enabling environment such as long-term funding.⁷² Hence, their priority is not necessarily adhering to a code of conduct or regulatory mechanism.⁷³

Whilst relatively few CSOs have ascribed to the CCC's Code of Ethical Principles, this does not mean that they are not following a related set of principles. Many international CSOs such as Pact,⁷⁴ international development organisations such as Oxfam, intergovernmental organisations such as United Nations,⁷⁵ and associated agencies have their own regulatory mechanisms which govern ethical practice. These are available on their websites.⁷⁶

12.3. ROLE

12.3.1 HOLDING GOVERNMENT TO ACCOUNT

SCORE: 50

To what extent is civil society active and successful in holding government to account for its actions?

CSOs are somewhat active in seeking to hold government to account for its actions, though effectiveness so far is gradual.

Civil society's public watchdog function has been on Cambodia's development agenda for many years, yet only a relatively small number of organisations are engaging in social accountability.⁷⁷

One issue stems from a limited understanding among CSOs about the potential roles they can play in holding the Government to account.⁷⁸ Typically, CSOs in Cambodia have 'helped the government out' in terms of providing services in lieu of the Government,⁷⁹ rather than providing checks and balances on government activities and the effectiveness of their own service delivery mechanisms.

Nevertheless, some organisations are shifting their focus to hold state service providers to account.⁸⁰ For instance, the Democracy Resource Center for National Development (DND), partnered with One Window Service Offices (OWSOs) in Kampong Cham, Kratie, and Prey Veng provinces to improve the performance of the OWSOs.⁸¹ The grant provided by the World Bank to DND was used to monitor the OWSOs using exit surveys and citizen report cards.⁸² It has been described as extremely effective, identifying non-compliant practices, providing feedback to the OWSO national management, and resulting in strong messages or due sanctions to targeted staff.⁸³ This constructive engagement method, whilst creating a certain level of tension within the OWSO offices, has improved accountability and decentralisation of the sub-national administration.⁸⁴

Despite these successes, notable challenges remain for the widespread shift of CSOs from providing services to assisting social accountability.⁸⁵ These include a limited understanding of and commitment to social accountability, coupled with a hesitancy to disturb relationships with relevant government agencies and a lack of informed implementation plans.⁸⁶

12.3.2 POLICY REFORM

SCORE: 50

To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?

Many organisations contribute to discussions on policy reform aimed to enhance the integrity and transparency of the governance system, though progress is gradual.

Multiple CSOs work on policy reform relevant

to combatting corruption. In 2011, for example, the Coalition for Integrity and Social Accountability (CISA) produced guidelines for a better procurement system in Cambodia.⁸⁷

The NGO Forum coordinates civil society efforts on the monitoring and promotion of budget transparency in relation to the Government's Public Financial Management Reform Program (PFMRP).⁸⁸

Many CSOs have successfully participated in at least one of 19 technical working groups across 12 sectors in Cambodia,⁸⁹ in which civil society, development partners, and Government actors engage in policy dialogue.

In addition, Cambodians for Resource Revenue Transparency (CRRT) has cooperated with the Government to develop the Extractive Industry Revenue Management Framework. This aims to ensure continuous commitment from the Government in improving revenue policy and administration reforms to manage the industry.⁹⁰

Moreover, the National Democratic Institute (NDI) aims to promote openness and accountability in Government. In pursuit of this it organises constituency dialogues to enable meaningful engagement between citizens and their elected representatives. NDI holds roughly 24 dialogues per year across 12 provinces in Cambodia, depending on the number of districts with multi-party representation.⁹¹

Notably, Pact and Transparency International Cambodia were included in the Government's United Nations Convention Against Corruption (UNCAC) Review Process in 2012. This gave them the opportunity to partake in discussions assessing Cambodia's compliance with the international law and to push for domestic reform in line with it.⁹²

Despite these efforts, the Asian Development Bank (ADB) reported in 2012 that progress regarding civil society's engagement in policy reform has been slow.⁹³ For example, it took over 10 years of CSOs pushing for the adoption of the Law on Anti-Corruption before it was finally passed in 2010.⁹⁴ In general, civil society does not appear to have a great deal of influence when it

comes to policy lobbying without support from external development partners and aid agencies.⁹⁵

RECOMMENDATIONS

1. Civil society should take lead in organising more extensive collaboration and meetings with the Government; and should continue promoting consultation and relationship building between them.
2. Civil society organisations should lead by example, promoting best practices in transparent reporting, by producing annual reports detailing activities and finances. Reports should be made publicly available within the subsequent financial year.
3. Civil society organisations are encouraged to sign up and adhere to the Code of Ethical Principles and Minimum Standards for Non-Governmental Organisations in Cambodia (Cooperation Committee for Cambodia) to promote integrity and professional practice across the sector.
4. In preparation for the passing of the Law on Associations and Non-Governmental Organisations (LANGO), the Government should:
 - i. Allow external review by civil society organisations and discussion of the draft law to ensure that it complies with international law.
 - ii. Particularly, ensure the LANGO adheres to the Freedom of Association provisions of the International Covenant on Civil and Political Rights (ICCPR), which Cambodia has ratified.⁹⁶

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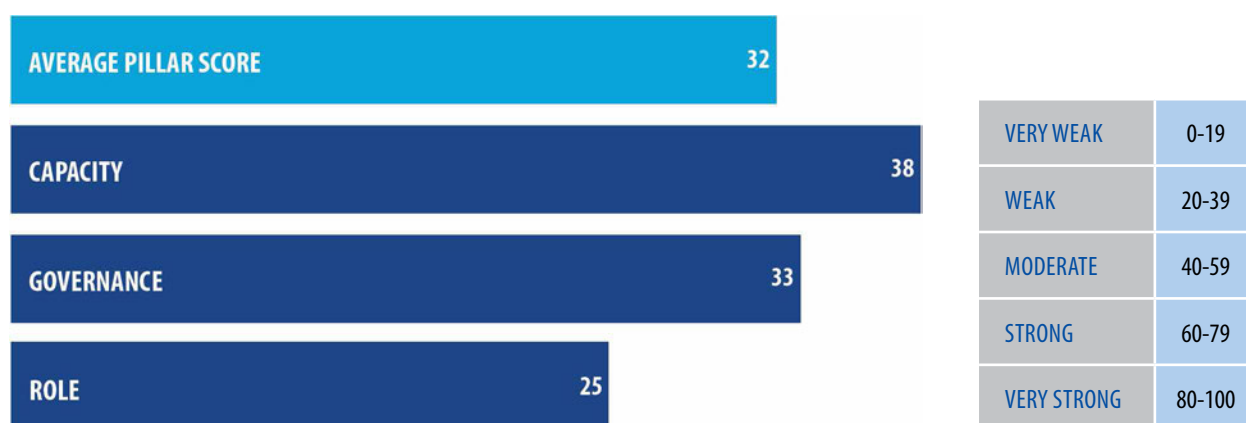
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VII. NATIONAL INTEGRITY SYSTEM

13. Business



SUMMARY

The business sector has several elements in place enabling it to uphold a certain level of integrity. Specifically, the existing legal framework provides a relatively favourable environment for the creation and running of businesses. The Law on Commercial Enterprises (2005) allows various types of businesses to operate and provides a framework for their establishment. Moreover the Civil Code (2007) gives clear information on the creation of contracts. Additionally, the Law on Copyright and Related Rights (2003) offers legal safeguards to protect intellectual property rights. On top of this, the legal framework provides appropriate provisions and institutions to ensure transparency in the activities of the private sector. The Law on Commercial Enterprises requires all

companies to prepare and maintain financial and business records. Furthermore, the Law on Corporate Accounts, their Audit and the Accounting Profession (2002) sets out provisions to ensure that businesses' financial statements are audited annually.

Threats to business integrity include the limited implementation of certain laws, as well as widespread petty corruption and high-level nepotism within the patronage network of the ruling elite. The seeking and offering of bribes is commonplace in the business sector. In the 2013-14 ASEAN¹ Business Outlook Survey, 81 per cent of US investors who responded raised corruption as a concern to those doing business in Cambodia. Moreover, Transparency International's Global Corruption Barometer 2013

found that 62 per cent of respondents in Cambodia had paid bribes to the Registry and Permit Services in the last 12 months, whilst 65 per cent had paid a bribe to the Judiciary. Both these institutions are relied upon by businesses in their functioning and operations. Finally, without an accountable Judiciary, it is challenging for companies to settle disputes fairly.

The diagram at the beginning of this chapter assesses and scores the business sector in terms of its capacity, governance, and role. The rest of this chapter is dedicated to providing a qualitative overview and explanation of the scores.

STRUCTURE AND ORGANISATION

The business sector in Cambodia comprises just over 25,000 businesses, including 15,000 foreign owned businesses.² The majority of firms are small and medium sized enterprises.³

According to the Law on Commercial Enterprises⁴ business organisation in Cambodia can take various forms including: a partnership; subsidiary;⁵ limited liability company;⁶ or a sole proprietorship.⁷

Cambodia has experienced an economic boom over the last 15 years, with an average yearly growth of 8 per cent.⁸ Whilst the country's economy contracted in 2009 as a result of the global economic downturn, growth has steadily returned since 2010.⁹ According to official figures from the Ministry of Economy and Finance, the country experience 6 per cent growth in 2010, up to 7.1 in 2011. It then rose to 7.3 per cent in 2012 and 7.6 per cent in 2013.¹⁰ Growth in 2014 is projected to be 7.0 per cent according to the Ministry¹¹ and 7.5 according to the Asian Development Bank (ADB).¹²

Industry is the motor behind the growth of the Cambodian economy.¹³ In particular, expansion in the garment sector, construction, tourism, and agriculture has driven development.¹⁴

Since Cambodia joined the World Trade Organisation (WTO) in 2004, trade has continuously risen.¹⁵ The export of garments and footwear to the US and European Union (EU) is

highly significant. In 2011, the US imported Cambodian garments and footwear worth 2.7 billion US dollar, whilst the EU imported 1.62 billion US dollars.¹⁶ Cambodia is one of the very few countries classified as 'least developed' to export over two billion US dollars annually.¹⁷

Cambodia's tourism sector has also been rapidly expanding, driven by interest in Angkor Wat, a UNESCO World Heritage Site and one of the Wonders of the World. The collection of ancient Khmer ruins received 2.8 million visitors in 2011 alone. This figure is projected to increase to seven million by 2015.¹⁸

Despite notable growth in the garment sector and tourism, the majority of the population maintain an agrarian existence. Approximately 80 per cent of the population are farmers,¹⁹ with rice being the dominant crop of production.²⁰

ASSESSMENT

13.1 CAPACITY

13.1.1 RESOURCES (LAW)

SCORE: 75

To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?

The existing legal framework provides a relatively favourable environment for the creation and running of individual businesses in Cambodia. Laws have progressively been passed to ensure a safe business environment.

The Law on Commercial Enterprises (2005) provides a legal framework for the formation and operation of private businesses in Cambodia.²¹ This law allows various types of businesses to operate, including partnerships, limited liability companies, foreign businesses, branch operations, and public enterprises.²² The most common type of business in Cambodia is the private limited company.²³ The Law on Commercial Enterprises also gives detail on how a private limited company is formed, how business should be conducted, and how a company is dissolved.

The formation of a business in Cambodia is an 11-step process that requires numerous types of

Establishing a business in Cambodia tends to be a bureaucratic and lengthy process. Business registration was described by the Bertelsmann Transformation Index 2012 as corrupt and inefficient and is becoming more difficult according to the World Bank's Doing Business 2014 report – Cambodia ranked 137 out of 189 countries in 2014.

registration.²⁴ First, there must be evidence of start-up capital equalling at least four million riel (950 US dollars), as well as a unique company name that is not already in use.²⁵ This is followed by the creation of company by-laws, business objectives, and articles of association, which must be published in a state-recognised newspaper.²⁶ The business is required to be incorporated and is issued a company seal by the Director of Companies of the Ministry of Commerce.²⁷ All business being conducted in Cambodia must also be registered on the Commercial Register of the Ministry of Commerce.²⁸ Furthermore, the company must register for Value Added Tax (VAT) and Patent at the Tax Office.²⁹ The final steps in the process of starting up a private limited company are to notify the Ministry of Labour about the state of operations and hiring of employees and to undergo an inspection from a labour official.³⁰

The operation of a company is determined by the Law on Commercial Enterprises³¹ which restricts the operations to the information contained within the companies' own by-laws.³² A private limited company has the right to perform business outside Cambodia.³³ The Law on Commercial Enterprises also contains detailed provisions defining the rights and responsibilities of directors and shareholders. This includes strict requirements on the handling of company shares and dividends.³⁴

A company that files for bankruptcy with the courts is regulated under the Law on Bankruptcy (2007). This law provides a reorganisation procedure to restructure the insolvent company. Furthermore, the Law on Commercial Enterprises contains specific provisions for the functions and powers of a receiver.³⁵ Resolving insolvency averagely takes approximately six years and costs 15 per cent of the debtor's estate.³⁶

The Intellectual Property Department (IPD) of

the Ministry of Commerce ensures the protection of intellectual property rights.³⁷ Following Cambodia's 2004 accession to the WTO, several laws have been created that regulate and protect intellectual property rights.³⁸ Cambodia's Law on Copyright and Related Rights protects original works of authorship in Cambodia,³⁹ including exclusive economic rights.⁴⁰ It also limits the reproduction of published work without consent to private use only.⁴¹ In addition, the Law Concerning Marks, Trade Names and Acts of Unfair Competition (2002) protects registered trademarks from use by any other person or company.⁴²

The promulgation of the Law on the Implementation of the Civil Code (2011) has brought into effect the Civil Code (2007) as the main text defining the rules for contracts in Cambodia.⁴³ The Civil Code (2007) provides clear information on the creation of various contracts used in business and explains situations when breaches of contract occur under the law.⁴⁴

13.1.2 RESOURCES (PRACTICE)

SCORE: 25

To what extent are individual businesses able in practice to form and operate effectively?

In general, to start and operate a business is very costly in terms time and bureaucratic procedures, as well as requiring a moderate investment of money.

Establishing a business in Cambodia tends to be a bureaucratic and lengthy process. Business registration was described by the Bertelsmann Transformation Index 2012 as corrupt and inefficient⁴⁵ and is becoming more difficult according to the World Bank's Doing Business 2014 report⁴⁶ – Cambodia ranked 137 out of 189 countries in 2014.⁴⁷

The Doing Business report ranks the ease of doing business in a country according to 10 categories including starting a business, registering property, and resolving insolvency. Cambodia's ranking for starting a business dropped between 2013 and 2014; the country placed 181 out of 189 countries in 2013 and slipped down to 184 for 2014. This decline is due to an increase in bureaucratic procedures and the resulting time and cost involved in starting a business. Companies seeking to register must deal with a high level of red tape.⁴⁸ In 2014, the multi-stage process takes 104 days to complete and costs 150.6 per cent of income per capita.⁴⁹ Compared with 2013, it involves two additional procedures, 19 additional days, and costs 50.1 per cent more of income per capita.⁵⁰

Cambodia trails its regional neighbours: taking 66 more days, 4 more procedures, and costing 120.8 per cent more of income per capita than the East Asia and Pacific regional average.⁵¹ The country is ahead of Myanmar, however, which remains at the bottom of the list in 189th position for starting a business.⁵²

In addition to the official fees, bribe-paying is commonplace; 62 per cent of business respondents to Transparency International's Global Corruption Barometer 2013 in Cambodia reported paying a bribe to the registry and permit services.⁵³ Despite this, progress is being made to boost transparency and accountability for the administration services commonly used by small businesses at the local level.⁵⁴ The One Window Service and Ombudsman Project (OWSO), initiated in 2009 under the control of the National Committee for Sub-National Democratic Development (NCDD),⁵⁵ has established 36 operating offices across the country.⁵⁶ These offices provide services such as registering small businesses and providing construction permits.⁵⁷ They are unique in that they publicly display fees for services,⁵⁸ which helps prevent illicit payments from being sought or offered.⁵⁹

The lack of efficiency and effectiveness of the courts remains a key issue, resulting in the rule of law being poorly maintained.⁶⁰ Nevertheless, steps have been taken in recent years to provide

a credible commercial dispute resolution organisation to implement Cambodia's commercial laws outside the Judiciary: the National Arbitration Centre.⁶¹ The National Arbitration Centre began its operations in March 2013.⁶²

13.1.3 INDEPENDENCE (LAW)

SCORE: 25

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of private businesses?

There are a limited amount of legal safeguards in place to prevent unwarranted external interference in the activities of private businesses.

The registration process for the creation of a business is impeded by complex procedures that are reliant on the roles of public officials and are reportedly subject to corrupt practices.⁶³ The process to create a private limited company in Cambodia requires potential business owners to communicate with a state-recognised newspaper to publish the intention to start a business.⁶⁴

Applicants must then also provide registration and incorporation documents to public officials working on behalf of the Director of Companies of the Ministry of Commerce, who have the power to issue the company seal and incorporate the company.⁶⁵ Additionally, the potential business owner must rely on public officials to register VAT and patents at the Tax Office,⁶⁶ as well as complying with notifications and inspections by an official from the Ministry of Labour.⁶⁷ The Ministry of Labour decides if the documents are sufficient for registration.⁶⁸ This includes approving the name of the business, which can be rejected for 'any reason'.⁶⁹ Furthermore, the Law on Commercial Rules and Register requires businesses to be registered under the commercial register.⁷⁰ All of these registration procedures are subject to the decisions of public officials, increasing opportunities for undue interference of external actors in the starting up of a business in Cambodia.

The Council for Development of Cambodia (CDC) established a business complaint desk in December 2012.⁷¹ It has been tasked with dealing with all complaints, especially regarding non-

The independence of the business sector is notably limited due to widespread nepotism within the patronage system of the ruling party, as well as the frequency of bribe-paying to public officials for needed services.

compliant practices, relating to standard services, excessive fees, and unjustified delays in document processing.⁷² The establishment of the Complaint Desk signals positive steps taken in order to reinforce the independence of businesses in Cambodia. Nonetheless, the scarce information in relevant regulations on exactly how a complaint will be handled signifies a limitation in the legal framework to ensure objectivity and professionalism in the activities of businesses.

13.1.4 INDEPENDENCE (PRACTICE)

SCORE: 25

To what extent is the business sector free from unwarranted external interference in its work in practice?

The independence of the business sector is notably limited due to widespread nepotism within the patronage system of the ruling party, as well as the frequency of bribe-paying to public officials for needed services.

Whilst the day-to-day functioning of businesses may be free of interference⁷³ (other than common illicit payments made to public officials - detailed below), the overarching system involves a nexus of high-level political and business elites that are inextricably interrelated and dependent on each other.⁷⁴ There are established monopolies and political ties are important in order to operate a profitable business.⁷⁵ Business and politics operate within the 'ksae' (patronage)⁷⁶ framework of the ruling party;⁷⁷ Khmer-language even has a specific term for this: 'khnorng' which means 'back', referring to the backing of businessmen by government patrons.⁷⁸

The prestigious royal title 'Oknha' possessed by hundreds wealthy men and women in Cambodia is conferred in return for ongoing support to the ruling party and its charity projects.⁷⁹ At the same time, holding the title can enable individuals to get greater access to land, contracts, business deals,

and further resources.⁸⁰ The title is reportedly granted to people if they donate at least 100,000 US dollars to the government.⁸¹ Formally, such donations are given for public infrastructure projects such as building schools,⁸² though it is not transparent how this money is used in practice.

The maintenance of the patronage networks sometimes occurs in more subversive ways. The Prime Minister's wife has been head of the Red Cross since 1998.⁸³ On World Red Cross Day 2013, multiple prominent businessmen gave personal donations to the Red Cross; totalling 14 million US dollars,⁸⁴ these donations were made by persons known to be aligned with the Cambodian People's Party (CPP).⁸⁵ Cambodia National Rescue Party (CNRP) Vice-President, Kem Sokha, stated that the donations had been given to secure close ties to the country's most powerful family and argued that to operate a successful enterprise requires serving the Prime Minister.⁸⁶ Moreover, independent social development research consultant, Kem Ley, claimed that the in the lead-up to the July 2013 election the ruling party was misappropriating money raised by the Red Cross.⁸⁷

Petty corruption in business transactions is widespread in Cambodia. State officials regularly solicit unofficial payments in their dealings with private businesses, infringing on the independence of commercial activity. According to the US Department of State Investment Climate Statement 2013, facilitation payments commonly occur to speed up business transactions.⁸⁸ Transparency International's Global Corruption Barometer data 2013 shows that bribes are often paid to administrative services relevant to businesses: 62 per cent of respondents in Cambodia reported paying a bribe to the Registry and Permit Services, 57 per cent to the Land Services, and 18 per cent to the Tax Revenue in the last 12 months.⁸⁹

Petty corruption is facilitated due to the fact

that most payments are already made in cash.⁹⁰ The Bertelsmann Transformation Index 2012 states that Cambodia's private sector is dominated by informal economy activities; accounting for almost 80 per cent of GDP and 90 per cent of overall employment.⁹¹ Since receipts do not tend to be given the paper trail is minimal,⁹² enabling illicit payments to go unrecorded.

Bribes are also often paid to the courts in the settlement of commercial disputes.⁹³ The Global Corruption Barometer 2013 shows that the Judiciary is the public institution to which bribes are most commonly paid in Cambodia with 65 per cent of respondents having reported that they had paid a bribe in this sector in the last 12 months.⁹⁴ The National Arbitration Centre is making progress, however, in terms of offering an effective dispute-resolution mechanism that enables companies to by-pass the courts.⁹⁵

If a businessperson decided to complain or file a lawsuit based on the misconduct of the public administration, the process would not be straightforward. Whilst complaints mechanisms do exist on a number of levels including the Anti-Corruption Unit (ACU)'s complaints box system, the overall framework is ineffective and fragmented. Various mechanisms exist for complaints regarding different parts of the public administration and it is not entirely clear which complaint should go where, not to mention how, when or if it will be processed.⁹⁶

13.2 GOVERNANCE

13.2.1 TRANSPARENCY (LAW)

SCORE: 50

To what extent are there provisions to ensure transparency in the activities of the business sector?

Whilst a number of provisions and institutions are in place to ensure transparency in the activities of the business sector, there are still some shortcomings.

Cambodia possesses various instruments for financial auditing and reporting. The Law on Commercial Enterprises (2005) requires all companies to prepare and maintain financial and

business records, including a securities register, at their registered offices in Cambodia.⁹⁷ Business accounting records must be kept for ten years after the end of the relevant financial year⁹⁸ and the company and its agents are legally responsible for ensuring that all records are maintained in an accurate and properly preserved condition.⁹⁹

The Law on Commercial Enterprises contains numerous provisions that refer to the appointment and duties of a financial auditor.¹⁰⁰ Further information is provided under the Law on Corporate Accounts, their Audit, and the Accounting Profession (2002), which sets out the main dispositions for accounting, financial reporting, and auditing. Under this law, all business enterprises are required to prepare financial statements¹⁰¹ and an independent auditor must audit accounts annually if the company meets two of three criteria set out in the related Prakas from the Ministry of Commerce.¹⁰² The criteria are i.) annual revenue exceeding three billion riel (750,000 US dollars); ii.) total assets exceeding two billion riel (500,000 US dollars); and/or, iii.) more than 100 employees.¹⁰³

In addition, since 2012, 'all for-profit enterprises, non-profit entities and other obliged entities as well as small and medium enterprises (SMEs)'¹⁰⁴ must comply with the Cambodian International Financial Reporting Standards (CIFRSs) and Cambodian International Financial Reporting Standards for Small and Medium-sized Entities.¹⁰⁵ The CIFRSs are equivalent to the full International Financial Reporting Standards (IFRS).¹⁰⁶

In 2005, the Sub-Decree on the Code of Ethics for Professional Accountants and Auditors was adopted, based on the International Code of Ethics for Professional Accountants of the International Federation of Accountants.¹⁰⁷ Hence, there has been a positive and noteworthy shift by the Government to adopt international standards for financial reporting and auditing.

The National Bank of Cambodia (NBC) conducts annual off-site and on-site supervision reports.¹⁰⁸ The off-site supervision aims to examine the financial strength and transparency of banking

institutions and takes corrective measures with the institutions that have not observed the existing laws.¹⁰⁹ The on-site supervision focuses on the examination of the financial conditions and activities of banks.¹¹⁰ The Regulation on the Internal Control of Bank and Financial Institutions (2010) serves as reference for the supervisions. It specifies that internal audits of banks and financial institutions should be conducted on a yearly basis.¹¹¹

Nevertheless, neither the Law on Corporate Accounts, their Audit and the Accounting Profession (2002), nor the Law on Commercial Enterprises (2005) require audits to be published. This limits the possibilities of scrutiny of company finances by external sources.

Cambodia considered joining the Extractive Industries Transparency Initiative (EITI) in 2007, which was agreed upon by a global coalition of governments. It requires States to ensure that revenues from oil, gas, and mining assets are publicly disclosed.¹¹² However, Cambodia has since declined to sign up to the initiative.¹¹³

13.2.2 TRANSPARENCY (PRACTICE)

SCORE: 50

To what extent is there transparency in the business sector in practice?

Whilst businesses do disclose some relevant information about their organisation and activities, it is often incomplete. Information regarding revenue, contracting, and expenditure can be difficult to obtain.

General data on businesses is available to the public on companies' websites¹¹⁴ as well as the Ministry of Commerce website. This includes the ownership structure of registered companies, business objectives, terms, registered capital, the name of the chairman and management structure, current address, and agent of registration.¹¹⁵ For greater detail on commercial activity regarding revenue, contracting and expenditure, information is harder to come by.

Extractive industries remain opaque. Cambodia has not published any information on their

revenue in the Extractive Industries Transparency Initiative (EITI) reports.¹¹⁶ Moreover, the sector has been criticised for non-transparent, nepotistic practices in the dividing up of access to resources and associated contracts. In 2011, such a case came to light involving Australian mining company OZ Minerals Ltd. that had allegedly paid 1.15 million US dollars to family members of officials inside the Ministry of Industry, Mines and Energy in 2009. It is believed that the illicit payments were made during OZ Mineral's buyout of a partner company in Ratanakiri province to secure a gold exploration deal.¹¹⁷

To promote transparency in the management of extracted resources, the civil society coalition, Cambodians for Resource Revenue Transparency (CRRT) is working with the Government and private sector.¹¹⁸ Whilst there is still progress to be made to achieve openness and accountability in the sector, improvements to-date include the Ministry of Economy and Finance's practice of providing details on its website of the income it receives for the rental of land used by extractive industries.¹¹⁹

In addition to the extractive industries, the need for more transparency within the garment sector has been called for.¹²⁰ Record keeping at factories is not always up-to-date which exacerbates the lack of accountability of retailers.¹²¹ For instance, lack of reliable data led to discrepancies over lost wages when workers were left jobless following the closing of a garment factory in 2013.¹²²

With the aim of improving such practices, the International Labour Organisation's (ILO) Better Factories Cambodia (BFC) project monitors factories to ensure they are adhering to a comprehensive list of national and international labour standards.¹²³ In particular, the project monitors wages, workers' contracts, and general welfare in the factories.¹²⁴ BFC produces regular reports detailing compliance and progress, providing oversight of the factories that have registered with the project.¹²⁵

Corporate social responsibility is a relatively new notion in Cambodia and is not widely

practiced.¹²⁶ Even so, some larger national businesses and subsidiaries of international businesses practice a certain measure of corporate responsibility and sustainability. This includes the ANZ Royal Bank, which reports on its corporate responsibility activities.¹²⁷ In addition, Cambodian conglomerate, Mong Reththy Group, is transparent about its social accountability policies.¹²⁸ It also documents, on its website, social and civil events that have been undertaken by the company.¹²⁹

Moreover, in December 2013, global beverage industry, Coca Cola, signed an agreement with the ACU to promote and support anti-corruption practices for business in Cambodia.¹³⁰ Coca Cola made public its aspiration to demonstrate to other companies that business in Cambodia can be done without having to pay bribes. Coca Cola intends to set an example through its own business practices in the country.¹³¹ This agreement signals the beginning of a positive shift towards promoting greater transparency and accountability in the business sector.

13.2.3 ACCOUNTABILITY (LAW)

SCORE: 25

To what extent are there rules and laws concerning both oversight of the business sector and corporate governance of individual companies?

The existing rules and laws relevant to business in Cambodia provide limited oversight of the sector and the governance of individual companies.

There are no specific laws in Cambodia that encourage good corporate governance and this weakens the accountability of the business sector.¹³²

The Law on Commercial Enterprises (2005) does not stipulate exactly to whom managers of different types of enterprises must report to. However, a certain number of duties are allocated to shareholders and directors. The Law on Commercial Enterprises clearly states the powers given to Directors,¹³³ as well as required qualifications.¹³⁴ Directors of companies have the responsibility to call an annual general meeting of shareholders,¹³⁵ though shareholders can also call a meeting if necessary.¹³⁶ Additionally, directors

must provide an annual financial statement to all shareholders for the current and previous year, as well as auditors' reports and any other information respecting the financial position of the company that is required under the company's own by-laws.¹³⁷

The National Bank of Cambodia (NBC) is charged with the regulation and supervision of banks, financial institutions and other relevant firms such as auditors and liquidators.¹³⁸ Its role is to ensure economic stability by providing assistance on economic policy, overseeing payments systems in Cambodia, and monitoring the financial market.¹³⁹ The Securities and Exchange Commission of Cambodia is the body in charge of overseeing the 2011-established Cambodian Stock Exchange.¹⁴⁰

13.2.4 ACCOUNTABILITY (PRACTICE)

SCORE: 25

To what extent is there effective corporate governance in companies in practice?

Effective corporate governance of companies exists to a certain degree, safeguarded through oversight bodies. Nevertheless, this exists within a system where rule of law is not strongly upheld and regulations, with respect to corporate governance, are not ensured in practice.

Cambodian companies do not face stringent penalties for misconduct since rule of law is not adequately upheld.¹⁴¹ Consequently, the existing provisions are not very effective in ensuring good corporate governance.¹⁴² In line with this, non-profit policy institute, Revenue Watch, has highlighted lack of accountability as a central reason why Cambodia fares poorly on its Resource Governance Index 2013. This index, which measures the governance of state-owned companies, natural resource funds, and sub-national transfers shows that Cambodia fails to meet even the minimum standards for resource governance.¹⁴³

Oversight bodies are effective to a certain degree, although improvements could be made. For the banking sector, the National Bank of Cambodia (NBC) is charged with the responsibility

of oversight.¹⁴⁴ The NBC came under scrutiny in 2010 when the International Monetary Fund (IMF) claimed in a report that the oversight responsibilities of the bank were far above its resources and capacity.¹⁴⁵ Consequently, the IMF urged the NBC to temporarily halt banking licensing.¹⁴⁶ Subsequently, a high-profile case came to light involving telecommunications giant, Mobitel, which launched a money-transfer-service for mobile phone users in September 2010 without oversight from the NBC¹⁴⁷ - thus violating the NBC's regulations.¹⁴⁸ After the media uncovered this issue, the NBC stated that it would act to ensure its laws were followed.¹⁴⁹ The NBC then gave Mobitel until February 2011 to fully comply with the relevant regulations.¹⁵⁰ Since then, the NBC has been commended for significant improvements in its regulatory role to ensure reporting and transparency in the banking sector.¹⁵¹

The ILO's Better Factories Cambodia initiative provides monitoring and reporting of garment factories, all of which must agree to be monitored in order to receive an export license.¹⁵² Overall, improvements have been noted, particularly in the proper payment of wages.¹⁵³ Even so, compliance gaps still remain, particularly relating to worker health and safety such as excessive heat levels in the factories and other issues such as regular overtime.¹⁵⁴

13.2.5 INTEGRITY MECHANISMS (LAW)

SCORE: 25

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

Cambodian legislation provides several mechanisms to ensure the integrity of those acting in the business sector. Foreign enterprise legislation and specific codes of conduct are also applicable in the country.

Large multinational companies present in Cambodia have their own codes of conduct.¹⁵⁵ Companies affiliated with the United States and the United Kingdom are subject to the United States Foreign Corrupt Practices Act and the

United Kingdom Anti-Bribery Act (2010) respectively.¹⁵⁶ Corporate codes of conduct and corporate responsibility are frequent in multinationals and in their Cambodian subsidiaries. However, they are rare or non-existent in most local companies.¹⁵⁷

The Credit Bureau of Cambodia (CBC) is one of the few Cambodian organisations that have published a code of conduct online. However, the code of conduct does not cover conflicts of interest, nor bribery and corruption (except for data corruption). Moreover, the code says nothing of individual behaviour, nor do its provisions extend to boards.¹⁵⁸

The adoption of the Law on Anti-Corruption (2010) created a legal framework to fight and punish corruption. Through this law, the National Council Against Corruption (NCAC) and the Anti-Corruption Unit (ACU) were established.¹⁵⁹ The Anti-Corruption Law reiterates the corruption offences stipulated under the Criminal Code.¹⁶⁰ Under the Criminal Code, legal entities, including companies, are responsible for criminal acts committed either on their behalf or by a representative of the company.¹⁶¹ Companies are responsible for various criminal acts including giving bribes to employees,¹⁶² money laundering,¹⁶³ and bribery of judges.¹⁶⁴ Furthermore, the Law on Public Procurement (2012) states that punishment will be given to all bidders who commit corruption.¹⁶⁵

The Law on Anti-Corruption does not expressly prohibit bribery when doing business abroad. Furthermore, it does not directly mention effective mechanisms for sanctions in the case of private sector bribery, but it does refer to sanctions for bribery in more general terms. In addition, while there are extensive legal provisions that criminalise corrupt behaviour, the Law on Anti-Corruption provides little protection for whistle-blowers. In fact, the law includes provisions for sentences of up to six-months for those filing complaints if their corruption assertions cannot be proven.¹⁶⁶ This in practice reduces the possibility of whistleblowers taking risks to denounce corrupt practices.

13.2.6 INTEGRITY MECHANISMS (PRACTICE)

SCORE: 25

To what extent is the integrity of those working in the business sector ensured in practice?

Given the high level of bribe-seeking and receiving in the business sector, and the limited implementation of the Law on Anti-Corruption, the mechanisms to ensure the integrity of those working in the sector are inadequate.

Demand for and supply of bribes are commonplace in the business sector in Cambodia. 81 per cent of US investors who responded to the 2013-14 ASEAN Business Outlook Survey, undertaken by the American Chamber of Commerce in Singapore and US Chamber of Commerce, raised corruption as a concern to those doing business in the country.¹⁶⁷ This is particularly true for the business registration process.¹⁶⁸ Indeed, according to Transparency International's Global Corruption Barometer 2013, the Registry and Permit Services were found to be the service with the second highest bribe-receiving rate in the country; 62 per cent of respondents reported paying a bribe to these services in the last 12 months.¹⁶⁹

The Global Corruption Barometer 2013 also shows the Judiciary to be the most corrupt institution with 65 per cent of respondents having paid a bribe to it.¹⁷⁰ In line with this, the US Department of State 2013 Investment Climate Statement on Cambodia identified corruption in the Judiciary as the single greatest deterrent to companies from doing business in Cambodia.¹⁷¹

The US Ambassador to Cambodia has described implementation of the Law on Anti-Corruption as limited since it was adopted in 2010.¹⁷² Since its inception, the ACU has launched several high profile cases, including against the police and Judiciary. Nevertheless, investigations and prosecutions remain relatively low compared with the number of complaints received. Relatively few cases of corruption appear to have been investigated despite claims from the ACU's Chairman that the Unit received 700 complaints in 2011 and 800 in the first eight months of 2012.¹⁷³

10 Cambodian companies and individuals are listed on the World Bank's blacklist of ineligible firms and individuals as of 2013.¹⁷⁴ This list includes individuals and firms that have been sanctioned through the Bank's fraud and corruption policy under its Procurement Guidelines or Consultant Guidelines.¹⁷⁵ Cambodia does not have a publicly available nationwide blacklist of companies.

13.3 ROLE

13.3.1 ANTI-CORRUPTION POLICY

ENGAGEMENT

SCORE: 25

To what extent is the business sector active in engaging the domestic government on anti-corruption?

The business sector's activity to engage the Government on anti-corruption is limited.

Anti-corruption has previously appeared on the agenda in meetings of the Cambodian Chamber of Commerce. Of particular note was a meeting held on 20 October 2010, shortly after the passing of the Law on Anti-Corruption, between the ADB and Chamber of Commerce representatives to discuss corruption issues faced by the Chamber's members.¹⁷⁶ Despite this, discussing the topic does not appear to be the norm for the Chamber;¹⁷⁷ little further mention of meetings on anti-corruption has been noted on the Chamber's website or in the media.

Private sector firms had the opportunity to engage government officials on anti-corruption through a dinner organised by Cambodia's largest independent business association, CAMFEBA in July 2012. The event aimed to educate business people on how the government is enforcing the Law on Anti-Corruption.¹⁷⁸ Senior representatives from the ACU attended the dinner along with business representatives.¹⁷⁹ CAMFEBA's Executive Director, Som Chamnan, noted that the dinner meeting was an opportunity for business people to meet the officials of the ACU and talk together to find ways to address the corruption-related problems that businesses are facing.¹⁸⁰

The Government-Private Sector Forum meets

regularly to discuss long-term policy issues as well as day-to-day operations. It provides a consultative platform on which business and Government representatives can meet to discuss and resolve any issues arising from business activities.¹⁸¹ Corruption has been raised as a concern in the forum.¹⁸²

13.3.2 SUPPORT FOR/ENGAGEMENT WITH CIVIL SOCIETY

SCORE: 25

To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?

Engagement of the business sector with civil society has been fairly limited, although two significant schemes have been initiated.

The Clean Business Initiative, which was launched by civil society organisation (CSO), Pact, with support from USAID in 2008, has been one key attempt to engage the private sector against corruption. The scheme sought to reduce corruption by creating a coalition of ‘clean’ businesses that would challenge any public officials demanding or receiving under-the-table fees.¹⁸³ Whilst the initiative had the backing of major banks, including ANZ Royal and Acleda,¹⁸⁴ other businesses were not so convinced.¹⁸⁵ Reportedly, some individuals and firms felt that it was not clear how the programme was meant to help stop public-sector corruption. According to Sandra D’Amico, Managing Director of Human Resources Inc., few local businesses joined the initiative because it was perceived as a duplication of existing private sector efforts to improve the business environment¹⁸⁶ – such as the Private Sector Working Group.¹⁸⁷ Whilst the initiative had a large launch event, limited activity appears to have come from the scheme thereafter.

In March 2013, Transparency International Cambodia began discussions with the private sector on business integrity by organising a regional workshop entitled ‘Engaging the Private Sector in Anti-Corruption Initiatives’.¹⁸⁸ The aim of the workshop was to discuss corruption-related challenges faced by the private sector and generate

recommendations for Transparency International Cambodia’s Business Integrity Programme.¹⁸⁹ Private sector representatives from various industries participated in the workshop and provided active input.¹⁹⁰ Subsequently the Business Integrity Programme has been developed with cooperation through meetings and input from relevant firms and individuals.¹⁹¹ The Programme was launched in January 2014, offering consultative services to businesses, as well as customised policies, procedures and training to ensure that companies are compliant with local and international bribery laws.¹⁹² It is based on a successful model piloted by Transparency International’s office in Malaysia and is being implemented in a number of countries in the region.¹⁹³

RECOMMENDATIONS

1. All businesses should create a code of conduct, specifically containing anti-bribery provisions. Each employee should sign it when they begin work and sanctions should be developed internally for the breach of its provisions.
2. The Government, Anti-Corruption Unit, and Ministry of Economy and Finance should work together to enable an environment where clean business is incentivised. For instance, tax incentives could be given to companies that pay their tax properly, with harsher penalties for those that do not.
3. The Government should sign up to the Extractive Industries Transparency Initiative (EITI). Moreover, the Government should implement mechanisms to carefully monitor and regulate Cambodia’s mineral and petroleum industries ensuring that resources are sustainably managed for the reduction of poverty and future development of the country.

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VIII. CONCLUSION

Cambodia can be characterised as a country with a weak national integrity system. This study indicates that the Judiciary is the weakest pillar, followed by the law enforcement agencies. The strongest pillar is civil society, followed by the Executive, and political parties. All three of these pillars are classified as moderate, suggesting that whilst they have some strong elements, the provisions to ensure their ethical behaviour, independence, and accountability need to be strengthened. The majority of pillars fall within the weak bracket. Across the system, a marked implementation gap between law and practice has been indicated. Whilst laws may be fairly comprehensive, they are not being effectively upheld or equally applied.

Despite the limited robustness of the system overall, pockets of transformation towards excellence can be observed. Since the National Integrity System Assessment was first undertaken in Cambodia in 2006, the Law on Anti-Corruption has been passed, which brought about the creation of the Anti-Corruption Unit (ACU). Some cases of bribery, fraud, and extortion have been

prosecuted. Public sector decentralisation and deconcentration efforts have enabled transparent and accountable governance practices to grow at the sub-national level. Nevertheless, several overarching themes remain which restrict the full realisation of a democratic governance system.

The elite patronage network ensures that the pillars are inextricably interrelated. It simultaneously constricts them whilst preserving them. In practice, the entrenched and widespread patron-client relations ensure that power-holders are primarily accountable to each other rather than the population at large. This limits genuine political will to make needed changes to improve the governance system for all.

The lack of separation between the core governance institutions – Executive, Judiciary, and Legislature – confines decision-making to a limited few who are loyal to the ruling party. The hierarchical, politically-partial public sector means that political opponents are not treated equally by the authorities. Those who stand outside of the patronage nexus, including government critics

and human rights activists, tend to be viewed as threats rather than as constructive partners who can add value to the reform process.

The weakness of the Judiciary hinders the effectiveness of all other governance institutions. Without an autonomous, well-functioning, competent judicial system, rule of law cannot be upheld. Hence, whilst a considerable number of relatively strong laws exist, implementation is limited. Weak rule of law discourages investment, allows impunity to prevail, and provides residents with little access to justice.

Restricted freedom of information is a further cross-cutting issue preventing the development of a highly democratic governance system. Few layers of accountability can exist across the system whilst institutions' decision-making structures remain opaque, only select official information is published, and the media is broadly controlled by or affiliated to the ruling party. This hinders the development of knowledge, debate, and a pluralistic society in which diverse voices are heard.

Women remain underrepresented across decision-making bodies. They account for 20.5 per cent National Assembly members, 14 per cent of Senators, and only 5 per cent of the national police force. Increasing women's representation is necessary to achieve gender equality and ensure that women's needs are adequately provided for across society.

The future for Cambodia is uncertain. Cambodians are calling for the Government to do better. They are urging for public institutions to be made more accountable. The Government's efforts to accommodate the demands of its growing educated and resourceful citizenry remain inadequate. Whilst power-holders may feel threatened by political transformation, further democratisation is necessary. In a rapidly developing country, the governance system must also transform to ensure that it fulfills the population's needs. The Government must become more representative of plural voices including minority groups; it must provide adequate services; and, ensure the protection of rights for all residents of Cambodia.

The recommendations provided in this report complement existing frameworks for the development of Cambodia. They provide further impetus and direction for strategic cooperation between governance stakeholders to achieve greater equality and justice, and reduction of corruption. By prioritising judicial reform and greater access to information, the underlying weaknesses across the national integrity system would begin to be addressed.

ANNEX I: SUMMARY OF SCORES

1. LEGISLATURE

DIMENSIONS	Indicator	Law	Practice
CAPACITY 31/100	Resources	50	25
	Independence	50	0
GOVERNANCE 21/100	Transparency	25	25
	Accountability	25	25
	Integrity Mechanisms	25	0
ROLE 38/100	Executive Oversight		25
	Legal Reform		50
AVERAGE 30/100			

2. EXECUTIVE

DIMENSIONS	Indicator	Law	Practice
CAPACITY 50/100	Resources		50
	Independence	75	25
GOVERNANCE 29/100	Transparency	25	25
	Accountability	50	25
	Integrity Mechanisms	50	0
ROLE 50/100	Public Sector Management (law and management)		50
	Legal System		50
AVERAGE 43/100			

3. JUDICIARY

DIMENSIONS	Indicator	Law	Practice
CAPACITY 13/100	Resources	0	25
	Independence	25	0
GOVERNANCE 21/100	Transparency	25	25
	Accountability	50	25
	Integrity Mechanisms	25	0
ROLE 13/100	Executive Oversight	0	
	Corruption Prosecution	25	
AVERAGE 16/100			

4. PUBLIC SECTOR

DIMENSIONS	Indicator	Law	Practice
CAPACITY 25/100	Resources	25	
	Independence	25	25
GOVERNANCE 33/100	Transparency	50	25
	Accountability	50	25
	Integrity Mechanisms	50	0
ROLE 50/100	Public Education	50	
	Cooperate with Public Institutions, CSOs and Private Agencies in Preventing/Addressing Corruption	50	
	Reduce Corruption Risks by Safeguarding Integrity in Public Procurement	50	
AVERAGE 36/100			

5. LAW ENFORCEMENT AGENCIES

DIMENSIONS	Indicator	Law	Practice
CAPACITY 13/100	Resources	50	0
	Independence	0	0
GOVERNANCE 29/100	Transparency	25	25
	Accountability	75	0
	Integrity Mechanisms	25	25
ROLE 25/100	Corruption Prosecution		25
	AVERAGE 22/100		

6. NATIONAL ELECTION COMMITTEE

DIMENSIONS	Indicator	Law	Practice
CAPACITY 42/100	Resources	-	50
	Independence	75	0
GOVERNANCE 42/100	Transparency	50	25
	Accountability	50	25
	Integrity Mechanisms	50	50
ROLE 13/100	Campaign regulation	0	
	Election administration	25	
	AVERAGE 32/100		

8. NATIONAL AUDIT AUTHORITY

DIMENSIONS	Indicator	Law	Practice
CAPACITY 44/100	Resources	50	50
	Independence	50	25
GOVERNANCE 33/100	Transparency	25	25
	Accountability	50	25
	Integrity Mechanisms	50	25
ROLE 25/100	Effective Financial Audits		25
	Detecting and Sanctioning Misbehaviour		25
	Improving Financial Management		25
	AVERAGE 34/100		

9. ANTI-CORRUPTION INSTITUTION

DIMENSIONS	Indicator	Law	Practice
CAPACITY 31/100	Resources	75	25
	Independence	25	0
GOVERNANCE 29/100	Transparency	25	25
	Accountability	25	25
	Integrity Mechanisms	50	25
ROLE 42/100	Prevention		25
	Education		75
	Investigation		25
	AVERAGE 34/100		

10. POLITICAL PARTIES

DIMENSIONS	Indicator	Law	Practice
CAPACITY 44/100	Resources	75	25
	Independence	75	0
GOVERNANCE 33/100	Transparency	25	25
	Accountability	25	25
	Integrity Mechanisms	75	25
ROLE 50/100	Interest Aggregation and Representation	50	
	Anti-Corruption Commitment	50	
AVERAGE 42/100			

11. MEDIA

DIMENSIONS	Indicator	Law	Practice
CAPACITY 31/100	Resources	50	25
	Independence	25	25
GOVERNANCE 25/100	Transparency	25	25
	Accountability	25	25
	Integrity Mechanisms	25	25
ROLE 33/100	Investigate and Expose Cases of Corruption Practice	0	
	Inform Public on Corruption and its Impact	50	
	Inform Public on Governance Issues	50	
AVERAGE 30/100			

12. CIVIL SOCIETY

DIMENSIONS	Indicator	Law	Practice
CAPACITY 44/100	Resources	50	50
	Independence	50	25
GOVERNANCE 50/100	Transparency	50	
	Accountability	50	
	Integrity Mechanisms	50	
ROLE 50/100	Holding Government to Account	50	
	Policy Reform	50	
	AVERAGE 48/100		

13. BUSINESS

DIMENSIONS	Indicator	Law	Practice
CAPACITY 38/100	Resources	75	25
	Independence	25	25
GOVERNANCE 33/100	Transparency	50	50
	Accountability	25	25
	Integrity Mechanisms	25	25
ROLE 25/100	Anti-Corruption Policy Engagement	25	
	Support for/Engagement with Civil Society	25	
	AVERAGE 32/100		

SUMMARY OF PILLAR SCORES

PILLAR	Capacity	Governance	Role	Average Score
1. LEGISLATURE	31	21	38	30
2. EXECUTIVE	50	29	50	43
3. JUDICIARY	13	21	13	16
4. PUBLIC SECTOR	25	33	50	36
5. LAW ENFORCEMENT AGENCIES	13	29	25	22
6. NATIONAL ELECTION COMMITTEE	42	42	13	32
8. NATIONAL AUDIT AUTHORITY	44	33	25	34
9. ANTI-CORRUPTION INSTITUTION	31	29	42	34
10. POLITICAL PARTIES	44	33	50	42
11. MEDIA	31	25	33	30
12. CIVIL SOCIETY	44	50	50	48
13. BUSINESS	38	33	25	32

ANNEX II: RECOMMENDATIONS FOR FURTHER RESEARCH

1.	Undertake a pillar assessment on the Armed Forces. Whilst the Gendarmerie is broadly assessed in the Law Enforcement Agencies Pillar, the Royal Cambodian Armed Forces have not been assessed under this report. Since they are an important institution to ensure the security of the country and are closely connected to the country's power-holders. ¹ An assessment of the institution would provide a further understanding of existing governance structures
2.	Undertake a pillar assessment on Buddhism. 95 per cent of the Khmer population is Buddhist. ² Religious norms play an important role in cultural practices, values and behaviour. An assessment of Buddhism, its associated institutions, and the role it plays in the governance of Cambodia, would also provide a more comprehensive picture of the system.
3.	Undertake a pillar assessment on the donor community. External donor funding accounts for one-third or 40 per cent of annual public expenditure in Cambodia. ³ This significant contribution to the governance system also requires analysis to ensure an entirely holistic assessment of Cambodia's governance system.

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ANNEX III: WHY OFFICIALS OF CERTAIN PILLARS WERE NOT INTERVIEWED

JUDICIARY

Transparency International Cambodia sent invitations to officials both within the Ministry of Justice and Supreme Court in March 2013. Neither of them agreed to be interviewed.

ANTI-CORRUPTION INSTITUTION

The ACU has signed two Cooperation Agreements and two Memoranda of Understandings with Transparency International Cambodia, suggesting a shared understanding of collaboration towards anti-corruption goals between the two organisations. In addition, in an in-person meeting between the two organisations on 15 January 2013, the Chairman of the ACU agreed to be interviewed by Transparency International Cambodia for this report. Despite this, the ACU never set a date for interview so the meeting could not occur in practice.

Following the in-person meeting, Transparency International Cambodia delivered two official interview invitation letters to the ACU including the interview questions as requested by the ACU Chairman, and then followed up with several phone calls. Eventually it became clear that the ACU was not going to agree to an interview date,

so Transparency International Cambodia stopped calling the ACU regarding this matter.

Meanwhile, the ACU continued to be responsive to Transparency International Cambodia in other areas that had been previously agreed in the Cooperation Agreements and Memoranda of Understanding. These included a senior ACU official's participation as a keynote speaker of Transparency International's Regional Workshop on Promoting Integrity and Transparency in the Business Sector held in Phnom Penh in March 2013. ACU officials also attended Transparency International Cambodia's youth integrity camps in December 2012 and May 2013; this willingness to collaborate with Transparency International Cambodia in the fight against corruption in the country was welcomed.

Transparency International Cambodia believes that the ACU's voice would have strengthened this report. Nevertheless, it was decided that the assessment of the ACI should continue given that it is a key institution contributing to the integrity of the country's governance system. Transparency International Cambodia hopes for greater cooperation and partnership with the ACU in the future.

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The Cambodia National Integrity System Assessment provides an evaluation of the state of the country's governance system. It assesses 13 institutions from the Judiciary to the Anti-Corruption Unit to civil society. A well-functioning National Integrity System safeguards against corruption and contributes to the larger struggle against abuse of power. Corruption undermines good governance, the rule of law, and fundamental human rights. It leads to misuse of resources, cheats citizens, harms the private sector, and distorts financial markets. Yet when governance institutions are characterised by appropriate regulations and accountable behaviour, corruption is less likely to thrive. Transparency International Cambodia has developed key policy recommendations based on the findings of this report. The recommendations, contained within, seek to engage government, donors and civil society to push forward crucial reforms to improve the integrity system. Strengthening the National Integrity System promotes better governance across all aspects of society, and, ultimately, contributes to a more just society overall.

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