

COUNTRIES AT THE CROSSROADS

Countries at the Crossroads 2012: Cambodia

Introduction

Cambodia emerged in 1998 from decades of war and internal upheaval. The period of warfare included a devastating bombing campaign by the United States between 1968 and 1973, followed by the takeover of the country by the infamous Khmer Rouge regime, whose oppressive strategies of collectivization caused the deaths of more than a million Cambodians between 1975 and 1979. The Khmer Rouge were ousted by an invasion of the Vietnamese army in 1979, but this was followed by another decade of intense civil war and international trade and aid sanctions, as the conflict was transformed into a proxy war in which rivalries between the Soviet Union, China, and the West were fought out. The war was brought to a close over the course of the 1990s, following the withdrawal of the Vietnamese in 1989 and a United Nations peacekeeping operation between 1991 and 1993. Insurgency continued in border areas until 1996, when amnesty was offered for remaining Khmer Rouge fighters.

Over the course of the 1990s, the Cambodian economy was reoriented from a socialist planning model to a free market model, and a new constitution ushered in a multi-party political regime characterized by regular elections. The first such election, organized by the United Nations in 1993, was won by the royalist FUNCINPEC party (*Front Uni National pour un Cambodge Indépendant, Neutre, Pacifique Et Coopératif*) recently returned from exile. The subsequent four years were characterized by political instability and sporadic violence as FUNCINPEC, smaller opposition parties, and the Cambodian People's Party (CPP), the ruling party of the 1980s, struggled to co-exist within a constitutional framework. In 1997, a battle broke out in Phnom Penh between royalist- and CPP-aligned military forces, and, in response, the royalist prime minister, Prince Norodom Ranariddh, fled into exile. New elections were held in 1998: these, and every subsequent national or local election, were won by the CPP, led by current Prime Minister Hun Sen.

Over the past decade, Cambodia has experienced a return to political stability and has enjoyed the highest rates of growth of any least developed country. Growth averaged 9 percent between 2000 and 2007.ⁱ The economy contracted by 2 percent in 2009 following the global financial crisis, setting back some prior progress on poverty reduction, before recovering to approximately 7 percent in 2011.ⁱⁱ During the 2000-2007 boom years, Cambodia's economy was transformed: an economy that had until the mid-1990s been almost entirely based upon subsistence farming saw the emergence of a manufacturing sector, focused on garments for export, and the rise of agribusiness in the form of plantations. Economic growth has been accompanied by improvements in human development indicators. The number of children in school has increased, infant mortality has fallen, and the percentage of the population that lives in poverty fell from approximately 47 percent of the population in 1993 to just over 30 percent in 2007.ⁱⁱⁱ However, the benefits of growth have not been equitably shared. Cambodia has seen a dramatic increase in inequality over the period from the introduction of free market reforms in 1989 to the present day. Poverty is concentrated in rural areas, where three-quarters of the population are still subsistence farmers in an agricultural economy which is underdeveloped and in which the harvest is highly dependent upon weather conditions from year to year. Consequently, the rural population remains very dependent upon highly politicized rural development programs, which are often used by the ruling party as a means to assure electoral support.

COUNTRIES AT THE CROSSROADS

Accountability and Public Voice

The level of formal accountability of government actors in Cambodia's political regime is low. Historically, fear of violence prevented citizens from holding government accountable. Over the past five to ten years, violence has become less common in the Cambodian political system as a means of silencing opponents of the government. Instead, a range of administrative and legal obstacles to accountability have emerged, which, along with the continued intense politicization of all levels of the Cambodian bureaucracy, ensure that the Cambodian government remains virtually immune to public criticism.

Cambodia's constitution and laws provide for regular elections with universal and equal suffrage, open to multiple parties, conducted by secret ballot and monitored by independent electoral authorities. Regular national elections have been held in a timely manner since the first, UN-organized election in 1993, and local elections have also been introduced through a quite radical decentralization program. In practice, however, opposition parties have been subjected to numerous forms of exclusion and harassment that have severely weakened their ability to hold the government to account. In this context, a number of elected opposition candidates have defected to the CPP.

Elections laws have been manipulated to enable the resurgence of the Cambodian People's Party following its defeat at the polls in 1993 and have given the party a considerable advantage in subsequent elections. For example, the electoral laws favor the largest party through a constituency-based proportional representation system via a party list, which requires parties to reach a certain size before putting up sufficient candidates to form a viable opposition. The system promotes party discipline and reduces the opportunities for candidates or elected officials to effectively represent constituents, since electoral regulations provide that candidates that are expelled from their party also lose their seat. The seat allocation system also favors larger parties. Innovations promoted by civil society groups, such as the possibility of independent candidates with no party affiliation, have been ruled out.

At the lowest level of government — the commune council — 98 percent of the 1,621 commune chiefs are members of the CPP. In 2007, a law was passed for the reorganization and election of subnational councils at the district and provincial level, the two levels of government that lie between the commune and the national level. The selection of these councils was based on the commune councilors' votes, which heavily biases the election in favor of the incumbent. Commune councilors also appoint village chiefs and members of the national parliament's upper house (the Senate). The commune is thus the key to selecting all other layers of government apart from the lower house of the national parliament. Because the CPP dominates in commune councils, thanks in part to its superior ability to organize across rural Cambodia, it is able to secure majorities at every other level of government. The system magnifies the advantages of incumbency and has a severely detrimental impact on the ability of voters to punish incompetent leaders via the ballot box. For example, an incompetent provincial or district governor cannot be directly removed by voters. Rather, these governors can only be removed by commune councilors, who hold their own position by virtue of their place on the party list. Commune councilors face pressure to appoint village chiefs and elect district and provincial chiefs in accordance with party dictates, rather than in response to the interests of their constituents.

The neutrality of election authorities is questionable. Commune Election Committees tend to be staffed by individuals such as teachers, who are regarded as part of the state and therefore likely to be loyal to the government. This is particularly concerning as there have been complaints of widespread obstacles to voters successfully navigating the election

COUNTRIES AT THE CROSSROADS

process. A national survey by the respected Committee for Free and Fair Elections in Cambodia (COMFREL) found that more than a fifth of registered voters who failed to vote in the 2008 elections had gone to the polling station, but were prevented from voting because they did not have the right papers or because they could not find their name on the voter list.^{iv} There have been longstanding concerns that local authorities are vigilant in shepherding individuals expected to vote for the government through the election process to ensure that their ballot is cast, but that individuals suspected of voting for the opposition are given little help or information.

Vote-buying has become entrenched in the electoral system, both through elaborate gift-giving ceremonies whereby party figures distribute gifts of rice, money, and clothing to individuals in villages across the country, and through explicit provision of development assistance in exchange for support for the ruling party. Recent research suggests that the spending by the ruling party on development projects in Cambodia is far greater than the state's rural development budget.^v Both of these practices continue throughout the electoral cycle. State-owned and commercial media each give intensive coverage to members of the ruling party presiding over gift giving ceremonies, which far outstrips the opposition's minimal access to the media's election campaign "spots."

The recent emergence of a new form of electioneering that is based less on coercion and more on inducements, along with the institution of elected commune councils, have done little to promote official forms of vertical accountability. However, these reforms have prompted a change in the relationship between villages and local government. In the 1980s and 1990s, local government authorities were primarily responsible for security, and consequently were widely feared by citizens. The advent of decentralization, and a wider set of functions for local government, including responsibility for liaising with the ruling party to organize local development projects, has increased the popularity of local councils, and widened, to a limited extent, the pool of villagers who engage with councils and are consulted by councils on matters of local policy.^{vi} Nonetheless, there is evidence that participation in development planning is limited to a small pool of political insiders in each village, and that the very poor, women, ethnic minorities, and opposition voters are routinely excluded from such consultations.^{vii} Furthermore, consultative processes focus on local rather than national policy questions, and local development planning is only possible in areas that are not severely affected by issues such as land grabbing or the award of economic land concessions to investment companies.^{viii} In areas where large-scale agro-industrial or mining concerns dominate the local economy, commune-based participatory processes become irrelevant in practice. Consequently, although decentralization has been used to respond to expressed needs and thus garner popularity among voters, it has done little to award the poor a voice in the making of development policy.

Cambodia's Political Parties Law allows for a system of public campaign financing, however, as of yet no system has been established. Moreover, the law states that parties should file financial reports with the Ministry of Interior, but this does not happen in practice. Opposition parties have very limited access to funds and raise much of their money in diaspora communities outside Cambodia. The ruling party relies upon loans and donations from big business for the bulk of its campaign funds and for development projects, and also uses the targeted spending of state development funds as a means to shore up support. Companies that have supported the government with emergency loans have been rewarded with lucrative contracts. Rich individuals and businesses, including both Cambodian tycoons and foreign investors, that contribute directly to ruling party-sponsored development schemes are compensated for so doing via a formal system of honors and medals. There is also widespread involvement in the campaigning process of local government figures, who actively campaign for the ruling party during working hours, despite the fact that this is

COUNTRIES AT THE CROSSROADS

formally forbidden by Ministry of Interior edict. State resources such as cars are also routinely used for campaign purposes.

Opposition parties and their leaders have been continually harassed, although the nature of harassment has changed over time. Violence and intimidation still occur at the local level, but are now less common than social marginalization and exclusion from the benefits of party-sponsored rural development programs. At the national level, the use of judicial proceedings against opposition activists and politicians has become increasingly common, particularly defamation and disinformation suits. Sam Rainsy, the leader of the main opposition party, the Sam Rainsy party, has faced four lawsuits since 2008, and has been convicted three times on charges of ‘criminal defamation’, ‘racial incitement’, and ‘defamation’. The use of vague charges of libel and disinformation to target opposition leaders has been successful in causing such individuals to spend long spells in self-imposed exile as a means to avoid imprisonment in Cambodia. This has been detrimental to the ability of opposition parties to operate effectively. Other opposition figures and journalists have also been tried for similar offences.^{ix}

The constitution provides members of the national assembly with parliamentary immunity; however, the parliamentary immunity of opposition members is routinely lifted if they speak out against the CPP. This contributes to the continued subordination of the legislature to the executive branch of government, limiting the potential for horizontal accountability between the branches of government. In December 2011, the National Assembly voted to lift the parliamentary immunity of Chan Cheng, a member of the opposition Sam Rainsy Party, due to his alleged trespassing on private property during a land rights dispute.^x

Nepotism and corruption are rife within the civil service. Jobs and promotions are routinely awarded to those candidates with the most powerful family or political connections. This militates against the establishment of mechanisms for performance review, internal discipline or accountability. Technical standards are improving through a variety of training schemes, but attempts by donors to introduce a merit-based pay initiative in key areas of the public service were cancelled by the Government and replaced by a more ad hoc bonus scheme.

Cambodia has a large sector of non-governmental organizations (NGOs), which have been active in commenting on and advocating for government policy. The Cambodian government is currently preparing an NGO Law to regulate the operation of NGOs in Cambodia. The current draft of the law, made public in December 2011, has raised concern amongst NGOs because it provides for a complex registration process with provisions for denial of registration on vague grounds of undefined ‘legality’. Registration is essentially mandatory, as unregistered organizations cannot fully function under the law. The law also provides for the involuntary dissolution of organizations via a court order, but does not give clear grounds on which such a court order might be made. The law requires that associations, once registered, inform local authorities of their activities on an ongoing basis, a provision that places an onerous burden on organizations. NGOs are concerned that there is a lack of transparency or safeguards surrounding the processes outlined in the law outlines and that ambiguous terms are used throughout, leaving much to the discretion of officials implementing the process.^{xi} The law also makes the registration of foreign NGOs more complex and burdensome. Concern over the law is particularly acute because of the poor relationship between the government and NGOs that have mobilized to defend victims of land expropriation and that have criticized the government’s policies on land and forestry concessions.

While there are opposition news outlets in Cambodia, the Cambodian government maintains tight control of state media and of the major commercial stations, both of which are

COUNTRIES AT THE CROSSROADS

strongly pro-CPP. Prime Minister Hun Sen's daughter is the director of the main commercial television station, Bayon TV. Radio stations such as Radio Free Asia and Voice of America operate in Phnom Penh and broadcast news that is often critical of the government, but these broadcasts cannot be received in all areas of the country. NGO-controlled radio stations also exist and broadcast commentaries, particularly on social issues. A talkback radio programme in which listeners can phone in and ask questions of government officials was initiated on Radio National Kampuchea, with support from the Australian Agency for International Development. However the program's organizers acknowledge that some subjects, such as the status of the border between Vietnam and Cambodia, are too difficult for them to tackle. Opposition leader Sam Rainsy was jailed for ten years in absentia in 2010 on charges of publishing false maps of this border.

Despite the variety of news sources operating in the country, newspaper editors have long been targets of attack in Cambodia. From 2008 to 2011, one editor was jailed for nine months on charges of disinformation after publishing accusations of corruption against deputy prime minister Sok An. Furthermore, control of the broadcast media serves the Cambodian government well in not only countering but also intimidating critics. For example, following a major televised event organized in 2009 by the Clean Hands Campaign, an anti-corruption campaign involving a network of foreign and Cambodian NGOs, the Cambodian government used sympathetic commercial media stations to air comedy shows in which NGOs were ridiculed, a backlash which had a chilling effect on the anti-corruption movement.^{xii} While there is no formal censorship of the Cambodian media, the United Nations Special Rapporteur for Human Rights has noted the general effect of recent attacks on freedom of expression on activists and journalists who "appear to be exercising self-censorship."^{xiii}

In general, the Cambodian government has not tried to censor the internet, but the imprisonment of an individual in 2010 for downloading and sharing cartoons of political leaders suggests that distribution of anti-government material from the internet can be prosecuted under the new penal code.

Civil Liberties

Serious gaps remain in Cambodia's record on civil liberties. The UN Special Rapporteur for Human Rights in Cambodia strongly criticized standards of justice in Cambodia after a series of politically motivated trials of activists and opposition party politicians between 2009 and 2011.^{xiv}

The poor funding of the police leads to a lack of proper training and oversight. In 2009, human rights organizations reported a number of deaths of individuals in police custody; it is suspected that the deaths resulted from police torture and failure to send victims for critical medical treatment.^{xv} Prison conditions are poor. Inmates are routinely beaten, and families of prisoners are forced to pay bribes to prison guards in order to secure food, medical care, and visiting rights for their incarcerated family members. Guards in a number of prisons commonly threaten to unlawfully extend inmates' sentences or to refuse to release inmates when their sentence is over, as a means of extracting bribes. Some of these issues are dealt with in a new draft prison law, which makes the practice of refusing to release prisoners illegal and also outlaws beatings and torture. The new law does not address the issue of corruption and demands for payment for basic amenities, by prison guards.^{xvi}

Cases of arbitrary detention continue to be reported. Groups including street sleepers and sex workers are particularly vulnerable. Research published in 2010 found that sex workers are routinely beaten and raped by police during raids conducted in the name of

COUNTRIES AT THE CROSSROADS

combating human trafficking. Sex workers, beggars, street children and other marginalized groups have also been detained in “Social Affairs Centers,” where conditions are appalling and inmates, including children, are subjected to beatings, rape and other forms of mistreatment. Similar conditions have been documented in drug detention facilities.^{xvii}

Political rights have been deteriorating in recent years. Freedom of expression and freedom of association have been severely curtailed by a new penal code which provides for crimes of disinformation and defamation not only against individuals but also against government institutions. Criminal charges have already been brought against a number of journalists under the new penal code. Three individuals, including one staff member of a human rights organization, were sentenced to two years in prison and a two million riel fine in August 2010 for distributing leaflets, even though distributing leaflets is not against the law, and no public order charges were apparently laid. The United Nations Special Rapporteur for Human Rights in Cambodia reported that the trial of these individuals did not appear to be fair and requests from the Special Rapporteur for clarification of the case were ignored by the Cambodian government.^{xviii} Another individual working for the World Food Programme was convicted in December 2010 of “incitement” and sentenced to imprisonment after downloading insulting cartoons of Cambodian political leaders from an opposition website, KI Media, and sharing them with colleagues.^{xix} These cases suggest that although political freedoms are deteriorating, there is increased reliance upon the judiciary, rather than on outright extra-judicial violence, to silence criticism of the government. However, in April 2012, an environmental activist was shot dead at a checkpoint, apparently by a military policeman, while leading journalists to a site of illegal logging activity in Koh Kong province. The military policeman who allegedly shot the activist also died at the scene in unclear circumstances. The activist, Chhut Wuthy, is the most prominent political activist to be murdered in Cambodia since the assassination of trade union leader Chea Vichea in a Phnom Penh street in 2004.

The Cambodian constitution enshrines the principle of gender equality and Cambodia is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women. The Cambodian government has worked to promote education for girls, with the result that girls enroll in primary school in roughly equal numbers to boys, although they are far less likely to go on to secondary and post-secondary education. Women are not well represented in public life, comprising only 34 percent of civil servants, 22 percent of members of parliament, and 14 percent of members of elected commune councils.^{xx} Despite formal commitments by political parties to promoting women in public life, in practice few parties put women at the top of their party lists during elections. Domestic violence is a continuing problem, although its incidence appears to be declining. In 2005 a law was passed outlawing domestic violence. A survey conducted in the same year reported that 22.5 percent of ever-married women experienced violence in their homes. A 2009 survey reported that this figure had dropped by almost a quarter.^{xxi}

The constitution also enshrines the equal rights of ethnic and religious minorities. Concerns have been raised about the government’s treatment of land belonging to ethnic minorities in the mountainous north-east of the country. Recognition of indigenous forms of land ownership has been poor, and a number of groups have lost land as a result. In contrast to this, in December 2011 the government issued the first communal land titles to three groups of indigenous people in the north-east of Cambodia.^{xxii} This landmark decision followed a long campaign by indigenous people, assisted by international and national NGOs. The status of minorities in lowland regions, such as the ethnic Cham population, is little different, in terms of rights, from the status of the majority Khmer. The Cham are able to practice their Islamic religion freely, but one NGO-supported report suggests the Cham children have greater difficulties coping with Cambodia’s underfunded and corrupt education

COUNTRIES AT THE CROSSROADS

system, because their first language, which is not Khmer, is not used in the public school system.^{xxiii}

The government has a poor record on treatment of refugees, including ethnic Khmer refugees from Vietnam. In 2009, Uighur refugees fleeing persecution in China following protests in Xinjiang province were deported by the Cambodian government back to China, despite holding UNHCR-issued Persons of Concern documents. This action violated Cambodia's obligations under the UN Refugee Convention. The deportation occurred shortly before the arrival of Chinese Vice-President Xi Jinping who reportedly thanked the Cambodian government for its actions and announced further aid, loan and investment commitments to Cambodia.^{xxiv}

Religious practice in Cambodia has increasingly come under government purview in recent years. The highest spiritual leaders in the two Buddhist orders are political appointees, as are those appointed to the leadership of individual temples. Monks in Cambodian temples, especially ethnic Khmer monks who come from the southern part of Vietnam, are kept under surveillance by temple leaders. Politicians frequently pay for temple building or restoration as part of patronage activities aimed at securing local support in various parts of the country.

Trade unions are permitted in Cambodia, and have been active in demanding improvements in wages and conditions in the country's garment industry. The government has created an arbitration council to which trade unions can bring disputes with employers for arbitration. Cambodian garment factories are also subject to an International Labor Organization monitoring regime which monitors working conditions and the rights of trade unionists. The reports issued by the monitoring regime have been used by the Ministry of Commerce to claim that Cambodian goods are 'ethically produced' – a claim which has been viewed as shoring up Cambodia's export niche in an increasingly competitive global market.^{xxv} However, following a mass strike in 2010, 300 unionized workers were illegally fired, and there have been reports that, in the aftermath of the global financial crisis of 2008, employers are bringing in new forms of fixed contract work which has a negative impact on workers' rights and job security.^{xxvi}

Violence is still routinely used in policing of protests. This is particularly so during forced evictions of households from land slated for development, when military units are brought in and use batons and tear gas and occasionally gunfire against unarmed civilians. The government passed legislation in 2009 which bans protests of more than 200 people as a threat to public order. Organizers of protests are required to get government permission in advance. Even with permission, a number of demonstrations have been forcibly dispersed. There are no opportunities for citizens to gain redress when their rights are violated, unless they themselves are politically connected and can call on political patrons to intervene on their behalf.

Rule of Law

Failure to promote the rule of law is a continuing concern in Cambodia. Despite repeated declarations and numerous action plans formulated with donor agencies, judicial reform has not occurred and the executive branch continues to dominate the judiciary. Although according to the constitution, judicial affairs should be managed by an independent Supreme Council of Magistracy, in practice, the Ministry of Justice controls appointments, and judges are uniformly loyal to the CPP. Bribery is routine in court cases, and the courts are regularly used to harass land protestors and opposition party politicians.^{xxvii} There have been no cases where judicial oversight has been successfully exercised over executive power. By contrast, on the rare occasions when judges have shown independent leanings, they have been quickly

COUNTRIES AT THE CROSSROADS

removed, as in the case of Judge Heng Thirith, who dismissed the charges against two men arrested for the murder of a trade union leader in 2004, and was removed from his post the next day.^{xxviii} Prosecutors, similarly, work closely with judges and are directly controlled by the Ministry of Justice.

Due process is routinely violated as a result of corruption and the politicization of the Cambodian judicial system. The government has made little effort to reform the judicial system, with the consequence that the wealthy and well-connected enjoy a high level of impunity, while the poor and political opponents of the government face unfair trials. Generally the rate of conviction in Cambodian courts is high, and convictions are often made on the basis of confessions extracted by police from suspects under duress.^{xxix}

International human rights monitors, including United Nations Special Rapporteurs, have repeatedly decried the conduct of trials that have been held in camera, with little notice, and in which convictions have been handed down on the basis of no apparent evidence.^{xxx} New training programs have been instituted for the judiciary in recent years, but this has yet to bear fruit in the actual conduct of trials, which, in any case, are marred as much by corruption and politicization as they are by lack of education. Counselors are generally available, in particular through legal aid non-governmental organizations. However, defence lawyers have also been subject to political pressure. A lawyer defending an opposition politician facing a defamation suit in 2009 was threatened with debarring by the president of the Bar Association and withdrew from the case, leaving the defendant unrepresented.^{xxxi}

Prosecution of CPP officials occurs but is extremely rare and tends to happen only in special circumstances of either intense international pressure, or where intra-party rivalries are playing out. Illustrating the first of these categories, in March 2012, the district governor of Bavet District in Svay Rieng province was fired from his position after shooting a gun into a crowd of protesting garment workers, injuring three of them. He was subsequently charged with ‘causing unintentional injuries’. Human rights groups criticized the minor nature of the charge, with some arguing that shooting a gun at somebody constitutes attempted murder.^{xxxii} This lenient treatment suggests that the individual in question was sacrificed in response to pressure generated by the international outcry at the blatant nature of his offence, and reflects the Cambodian government’s sensitivity to the concerns of buyers for Western clothing brands over suggestions of human rights abuses in factories supplying their products. In the same case, the German Puma Company, which buys the products of the factory concerned, protested to the Cambodian government and paid the medical expenses of the injured workers.^{xxxiii} In an example of prosecutions of CPP officials that apparently reflect internal party power struggles, the new anti-corruption law has been used to prosecute a handful of officials, including a former prosecutor from Pursat province, and the police chief of Banteay Meanchey province. These prosecutions have all targeted officials in the north and west of the country, areas that were significant in land and timber deals, and that were connected with Prime Minister Hun Sen’s internal party rivals.^{xxxiv}

The military in Cambodia is generally subject to civilian rule. However, the civil-military relationship is highly politicized, with commanders of the armed forces all loyal to the ruling CPP. In 2009, a reshuffle of the armed forces command saw Armed Forces Commander General Ke Kim Yan fired and replaced by his deputy Pol Saroeun, in a move that was regarded as promoting the military’s loyalty to Prime Minister Hun Sen, and reducing the influence of the rival Chea Sim-Sar Kheng faction of the CPP.^{xxxv} In recent years, Prime Minister Hun Sen’s son has also assumed powerful positions in the Royal Cambodian Armed Forces (RCAF): he is currently deputy commander of the RCAF and head of anti-terrorist operations. The military have been used frequently to enforce eviction orders, and have used violence against protestors in these contexts. The police and military are not subject to oversight by any effective or dedicated independent accountability institutions,

COUNTRIES AT THE CROSSROADS

with the result that there are no avenues through which citizens can complain against the actions of the police or military.

Under the 2001 Land Law, any Cambodian has the right to own land alone and in association with others. Indigenous communities practicing traditional forms of swidden agriculture have the right to register community ownership of indigenous land. The law also provides for a category of State Private Land, which is unoccupied land that may be allocated by the government as concessions, either for social or developmental purposes. Social concessions are awarded for a specified period of time to poor landless people, while economic land concessions are leased, generally for a period of 99 years, to companies for the purposes of development, usually for plantation agriculture. The law also stipulates that occupants of land who lack legal title have the right to apply for title if they began living on the land before the law came into force, and if they have lived there continuously for five years, provided there was no prior land claim.

According to the UN Special Rapporteur on Human Rights in Cambodia, “The judiciary has not been effective in upholding the rights of many people affected by a lack of land title.”^{xxxvi} The courts have in fact been used to criminalize villagers seeking to defend land claims against businesses attempting to evict them from their homes. Conflicts over land claims are widespread in Cambodia and land disputes have become one of the most important issues for human rights activists in Cambodia. Land conflicts vary in nature, but prominently involve two categories of dispute: disputes between private individuals over ownership of a piece of land, or disputes that arise when the government awards occupied land to private companies as an economic land concession and the company in question then seeks to evict previous occupiers. In the first category of cases, corruption within the court system and the heavy involvement of military officers in pressing claims to land ownership, particularly in areas in the north and west that were battlefields until the late 1990s, means that confidence in the justice of outcomes adjudicated by state agencies is low.

Cases where the government has awarded land concessions have highlighted a variety of rights issues. In some cases, the legality of the government’s decision to award the concession in the face of untested claims to ownership rights by occupiers is questionable. In the recent Boeung Kak Lake eviction case, in Phnom Penh, the government awarded the land occupied by the Boeung Kak community to a company owned by a CPP senator, claiming that the land was state public land and occupiers were, therefore, not entitled to claim ownership of it. However, the 2001 Land Law also prevents the award of state public land as land concessions. When this provision was evoked, the government quickly reclassified the land as state private land, which also cannot be subject to ownership claims but which can be awarded as concessions. The lack of authoritative maps showing the boundaries of state public and private land renders the position of occupiers tenuous and subject to state discretion.

A further issue is the violence associated with eviction, and the failure to properly consult or compensate those evicted. The military and police are routinely used to conduct forced evictions, and human rights activists have documented an increase in the willingness of security sector personnel to use force in these operations, with no repercussions. In a recent case in Kompong Speu province, for example, military personnel fired weapons in the air to disperse protestors protesting a Supreme Court decision to award ownership of an area of land to what one NGO called “an obscure farmers’ association represented by a military general.” In this case, the protestors claimed that some of the victims of eviction lived on land that was not part of the court order anyway.^{xxxvii} On other occasions, courts have gone beyond ordering evictions and have convicted evicted occupiers or complainants of defamation or incitement following land cases and protests. For example, in 2009, a high school teacher who filed a complaint against his school principal who, he alleged, had profited from the

COUNTRIES AT THE CROSSROADS

illegal appropriation and sale of school lands, was convicted of defamation. The convicted teacher was a member of an opposition-affiliated trade union.^{xxxviii}

Beginning in 2008, Cambodian courts have also been hosting the Extraordinary Chambers of the Court of Cambodia (ECCC), commonly known as the Khmer Rouge Tribunal, for the prosecution of former leaders of the Democratic Kampuchea (DK) regime. The tribunal is a hybrid international-local court, created with UN support and funded by a number of donors (notably Australia, the European Union, and Japan). The establishment of these chambers has long been a vexed issue, with the political interests of a variety of governments, including the Cambodian government, serving to arbitrarily restrict the court's mandate to cover only a handful of former leaders of Democratic Kampuchea. The mandate of the tribunal prevents any kind of reckoning for leaders and officials of foreign governments, such as the Nixon Administration in the United States whose illegal carpet-bombing campaign contributed significantly to Cambodia's destabilization in the 1970s,^{xxxix} as well as avoiding a more thorough accounting of human rights abuses committed by lower level Khmer Rouge, some of whom remain in official positions in Cambodia.

Just as the mandate of the court reflects political deals struck between various governments and the United Nations, its processes also reflect the Cambodian government's concern to maintain tight control over the proceedings. Two international judges resigned in 2011 and 2012, claiming that the Cambodian government was interfering in the investigative work of the tribunal, and that cooperation had broken down between international and Cambodian judges.^{xl} The court convicted the head of the infamous S-21 Detention Centre at Tuol Sleng in Phnom Penh and is currently trying four former DK leaders — Ieng Sary, Ieng Thirith, Nuon Chea and Khieu Samphan — all of whom were ministers in the DK regime. Although the Cambodian government initiated the process of moving towards an international tribunal in 1997, it has recently opposed any further prosecutions by the tribunal beyond these five defendants, arguing that further investigations would be destabilizing to Cambodian society. The work of the ECCC has also continually been marred by rumors of corruption, with officials allegedly paying for the opportunity to have jobs with the tribunal, and passing portions of their salary to superiors in the Ministry of Justice.^{xli} The difficulties besetting the tribunal suggest that hopes that the tribunal might have a salutary effect on standards of justice more broadly in Cambodia have not been realized.

Anticorruption and Transparency

Historically, the CPP maintained its position in Cambodian politics by siphoning funds from aid inflows and illegal logging enterprises into rural development projects and gift-giving exercises aimed at building support among rural voters. In the context of the constitutional reforms of the early 1990s, corruption was entrenched at all levels of the reorganized state bureaucracy. This occurred as the outcome of two developments. First, the creation of a free market regime of private property allowed the privatization and sale both of state assets and natural resources, including resources previously used as commons, such as water resources and forests. Second, political loyalties were cemented throughout the public service by means of a deal by then-coalition partners FUNCINPEC and the CPP to divide ministries between them. Control of key agencies such as the Department of Forestry and Wildlife within the Ministry of Agriculture, Forestry and Fisheries became an opportunity to make money for the party via the award of logging concessions and timber export licences, often conducted in direct violation of relevant legislation and publicly announced policy. Such revenues were directed into political slush funds used for electoral campaign purposes.

COUNTRIES AT THE CROSSROADS

Large-scale corruption is rife. Information about the business affairs of senior officials is hard to obtain, and, consequently, the exact scale of wealth amassed by those in power is difficult to gauge. Close relations between state and business have led to repeated procurement scandals. Well-connected business tycoons, both from Cambodia and from overseas, have received a large share of government projects, such as the development of Special Economic Zones.

Cambodia's domestic private sector, although it diversified somewhat from 2003 to 2007, is dominated by a number of large conglomerates. These conglomerates are heavily involved in activities such as importing items under monopoly licenses; tendering for infrastructure projects such as school building, electricity supply and the running of Special Economic Zones; and supplying goods and services to government agencies such as the military or the Ministry of Health. High-profile land disputes have featured the relatives of ministers and other government figures. These relatives have been able to secure the backing of the military and judiciary in pursuing land claims against poor villagers.

Since the economic boom from 2003 to 2007, lavish donations to the CPP from private business, both Cambodian and foreign, have decreased the CPP's dependence on revenue siphoned from state budgets, including foreign aid budgets. This has created opportunities for progress on public financial management reform. Progress in the last few years has included substituting cash transfers for more transparent bank transfers in payments made by the Ministry of Economics and Finance; rationalizing bank accounts within the Ministry of Economics and Finance from 904 accounts in 2004 to only two in 2010; and increasingly using commercial banks for bank transactions. Improvements in revenue collection have also increased tax and non-tax revenues. Government management of budgetary data has improved; however, the government has remained resistant to the use of external auditing.^{xliii}

The government of Cambodia endorsed the Asian Development Bank/Organisation for Economic Co-operation and Development (ADB/OECD) Anti-Corruption Action Plan for Asia and the Pacific in 2003, which commits governments to establishing national systems for promoting integrity in public service, combating bribery and encouraging public discussion of corruption issues. It also ratified the United Nations Convention Against Corruption.

After ten years in the drafting process, an anti-corruption law was finally passed in 2010, which provides for imprisonment for up to 15 years of officials found guilty of corruption. The law is weak in several areas and consequently it is likely to be ineffective. For example, the law contains a provision that whistleblowers face imprisonment if police cannot find evidence to support their allegations of corruption. In a context where the police and the judiciary are considered loyal to the ruling party, this clause raises clear disincentives for citizens to make accusations against anyone who is politically well connected.

The anti-corruption law established two new institutions: the Anti-Corruption Unit, which is charged with overseeing police investigations into corruption cases, and the Anti-Corruption Council, which is responsible for anticorruption policy-making. These bodies complement existing ones, including the National Audit Authority (NAA), created in 2002, and the Ministry of National Assembly-Senate Relations and Inspection (MoNASRI), created in 1999, which has a mandate to investigate corruption. Neither the NAA nor MoNASRI has ever conducted an investigation that has led to prosecution of officials for corruption. This is reflected in Cambodia's low ranking of 164 out of 182 countries on Transparency International's Corruption Perception Index in 2011.

The independence of these new bodies is called into question by the fact that their leaders are CPP members. The head of the new Anti-Corruption Unit is a close advisor to the prime minister and all the members of the Anti-Corruption Council, which is supposed to

COUNTRIES AT THE CROSSROADS

oversee the work of the Anti-Corruption Unit, are government officials, political appointments, and CPP members. The Council includes the head of the Anti-Corruption Unit, the Minister of MoNASRI and the head of the NAA, two members of the Constitutional Council who are also members of the CPP, the Secretary of State for the government's human rights committee, a secretary of state from the Council of Ministers, the head of the government's legal and judicial reform program and the head of the government's legal council, a judge from the Phnom Penh Municipal Court, and a representative from the Royal Palace. As such, they represent senior officials and politicians associated with the pre-existing and dysfunctional regimes for anti-corruption, legal and judicial reform. Cambodian NGOs working in the area of anti-corruption have expressed concern about these appointments.^{xliii} The politicization of the Anti-Corruption Unit and the Anti-Corruption Council, particularly when assessed against the ruling party's historical reliance upon corruption to raise election funds and its record in politicizing law enforcement in order to assure impunity for party insiders, suggests that important allies of the party are unlikely to be targeted by the new anti-corruption regime.

The Anti-Corruption Law required that officials declare their assets, and the Anti-Corruption Council implemented this as their first program of work. However, this information will not be made publicly available: instead, officials were asked to submit a statement of their assets in a sealed envelope which will only be opened if an accusation of corruption is made. Rather than decisively reducing opportunities for corruption, this system simply creates new opportunities for investigators to hold accused officials for ransom.

"Facilitation fees" are common at all levels of the public service, including within the education and healthcare systems. Parents are required to pay fees to register children in primary school, and also have to pay teachers for extra tutoring outside of school hours. Children who do not pay private tuition fees routinely fail to pass exams, and are thus forced to repeat primary school years, resulting in high drop out rates. The payment of extra fees and bribes is also routine in high schools and universities, largely because wages for teachers and other public officials are below the subsistence level.

Recommendations

- The Cambodian government should make a renewed commitment to upholding freedom of expression, including by revising the penal code to decriminalize criticism of politicians and government institutions.
- The Cambodian government should take steps to revise the Anti-Corruption Law to provide proper protection for whistle-blowers and to ensure that the independence of the Anti-Corruption Unit and the Anti-Corruption Council is enshrined in law.
- The Cambodian government should take urgent steps to make progress on its declared policies and strategies on judicial reform.
- International parties and the Cambodian government should reconsider the mandate and procedures of the Extraordinary Chambers of the Cambodian Courts established to try crimes from the DK era.

COUNTRIES AT THE CROSSROADS

-
- ⁱ International Monetary Fund, “IMF Executive Board Concludes 2010 Article IV Consultation with Cambodia,” news release, December 14, 2011, <http://www.imf.org/external/np/sec/pn/2010/pn10158.htm>.
- ⁱⁱ International Monetary Fund, “IMF Executive Board Concludes 2011 Article IV Consultation with Cambodia,” news release, December 7, 2011, , <http://www.imf.org/external/np/sec/pr/2011/pr11447.htm>.
- ⁱⁱⁱ “Data By Country: Cambodia,” World Bank, accessed December 14, 2011, <http://data.worldbank.org/country/cambodia>.
- ^{iv} The Committee for Free and Fair Elections in Cambodia (Comfrel), *Survey Report on Voter List and Registration* (Phnom Penh: 2009.)
- ^v David Craig and Pak Kimchoeun, “The Politics of Party Financing,” in *Cambodia’s Economic Transformation*, edited by Caroline Hughes and Kheang Un, Copenhagen: NIAS Press, 2011
- ^{vi} Joakim Ojendal and Kim Sedara, “*Korob, Kaud, Klach*: In Search of Agency in Rural Cambodia,” *Journal of Southeast Asian Studies* 37, no.3 (2006): 507.
- ^{vii} Hughes, Caroline et al, “Big Business and Local Leaders in Three Communes,” in edited by Caroline Hughes and Kheang Un, Copenhagen: NIAS Press, 2011
- ^{viii} Ibid.
- ^{ix} Office of the High Commissioner for Human Rights in Cambodia, “Briefing Note on the Use and Abuse of Disinformation and Defamation Lawsuits,” briefing note, June 15, 2009, accessed December 15, 2011, http://www.un.org.kh/index.php?option=com_content&view=article&id=161:the-use-and-abuse-of-defamation-and-disinformation-lawsuits&catid=44:un-speeches-and-statements&Itemid=77.
- ^x Cambodian League for the Promotion and Defense of Human Rights (LICADHO). “Cambodian Democracy Absorbs Another Blow as Assembly Strips Opposition MP's Immunity,” press release, December 20, 2011, accessed December 20, 2011, <http://www.licadho-cambodia.org/pressrelease.php?perm=265>.
- ^{xi} Borithy Lun, “Third Draft of Cambodia’s Associations and NGO Law Overlooks Key Concerns,” *The Guardian*, August 12, 2011, accessed December 15, 2011, <http://www.guardian.co.uk/global-development/poverty-matters/2011/aug/12/third-draft-cambodia-ngo-law>; International Centre for Not-For-Profit Law, *Comments on the Third Draft Law on Associations and Non-Governmental Organisations of the Kingdom of Cambodia*, August 1, 2011, accessed December 15, 2011, [NEED NEW LINK](#); Cambodia Office of the High Commissioner for Human Rights, “Cambodia’s Draft NGO Law Must Be Fully in Line with International Law – UN Experts,” news release, October 14, 2011.
- ^{xii} Sam Campbell, “Reality off the Rails in Phnom Penh,” *Asia Times Online*, June 26, 2009, http://www.atimes.com/atimes/Southeast_Asia/KF26Ae02.html.
- ^{xiii} Surya P. Subedi, “Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, UN General Assembly Human Rights Council, Fifteenth Session, Agenda Item 10, Doc no. A/HRC/15/46,” September 16, 2010, 7.
- ^{xiv} Human Rights Watch, “Cambodia: Opposition Leader Sam Rainsy’s Trial a Farce,” news release, January 28, 2010, accessed December 15, 2011, <http://www.hrw.org/news/2010/01/28/cambodia-opposition-leader-sam-rainsy-s-trial-farce>.
- ^{xv} Asian Human Rights Commission, “Cambodia: Respect for Suspects’ Rights will Prevent Death in Police Custody,” press release, July 27, 2009, accessed December 15, 2011 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-159-2009/?searchterm>.

COUNTRIES AT THE CROSSROADS
Draft – Not for Attribution or Redistribution

^{xvi} Licadho: Cambodian League for the Promotion and Defense of Human Rights, “Comments and Legislative Recommendations: the Draft Law on Prisons,” briefing paper, October 2011, accessed December 15, 2011, <http://www.licadho-cambodia.org/reports/files/161LICADHOBriefingPaper-PrisonLaw2011-English.pdf>.

^{xvii} Human Rights Watch, *Skin on the Cable: the Illegal Arrest, Arbitrary Detention and Torture of People who Use Drugs in Cambodia*, 2010, accessed December 15 2011, <http://www.hrw.org/reports/2010/01/25/skin-cable-0>; Human Rights Watch, *Off the Streets: Arbitrary Detention and Other Abuses Against Sex Workers in Cambodia*, 2010, accessed December 15, 2011, http://www.hrw.org/sites/default/files/reports/cambodia0710webwcover_2.pdf.

^{xviii} Surya P. Subedi, “Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, United National General Assembly Human Rights Council, 18th Session, Agenda Item 10, doc. No. A/HRC/18/46,” August 2, 2011, accessed December 15, 2011, [NEED NEW LINK](#), 7.

^{xix} *Ibid*, 8.

^{xx} United Nations Development Program in Cambodia, *Key Facts about Gender Equality in Cambodia*, accessed December 15, 2011, <http://www.un.org.kh/undp/what-we-do/gender-equality/gender-equality>.

^{xxi} Suzanne M. Müller, “Small Steps, Great Success,” *Development and Cooperation*, accessed December 15, 2011, <http://www.dandc.eu/articles/168889/index.en.shtml>.

^{xxii} Maeve Galvin, “Land rights mean social justice for Cambodia's indigenous peoples,” *uary* 27, 2012, accessed 2 May 2012, http://www.ilo.org/asia/info/public/WCMS_172209/lang-en/index.htm

^{xxiii} Kurt Bredenburg, “Educational Marginalization of Cham Minority Populations: a Report from Cambodia,” *Journal of Education for International Development* 3, no. (2008), accessed y 3, 2012, <http://www.equip123.net/jeid/articles/7/Bredenburg-KAMPUCHEAN.pdf>

^{xxiv} Human Rights Watch, “[China: Forcibly Returned Uighur Asylum Seekers At Risk](#),” press release, December 22, 2009, accessed May 2, 2012, <http://www.hrw.org/news/2009/12/22/china-forcibly-returned-uighur-asylum-seekers-risk>.

^{xxv} “Leading Garment Brand Representatives Remain Positive About Sourcing from Cambodia,” *International Finance Corporation*, 2008, accessed December 15, 2011, <http://www.ifc.org/ifcext/mekongpsdf.nsf/Content/Feature20>.

^{xxvi} “Cambodian Workers Sacked After Asking for Living Wage,” *Oxfam Australia* (blog), February 21, 2011, accessed December 15, 2011,

<https://www.oxfam.org.au/2011/02/cambodian-workers-sacked-after-asking-for-living-wage/>.

^{xxvii} Rights Expert Urges Strengthening of Cambodian Justice System,” *UN News Centre*, June 17, 2010, accessed 3 May 2012,

<http://www.un.org/apps/news/story.asp?NewsID=35052&Cr=cambodia&Cr1>.

^{xxviii} The two men arrested were subsequently convicted of the murder by another judge and spent five years in jail before being released on bail in December 2009 following an international campaign by human rights organisations. The real perpetrators of the murder, which was almost certainly politically motivated, have never been found.

^{xxix} Surya P. Subedi, “Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, UN General Assembly Human Rights Council, Fifteenth Session, Agenda Item 10, Doc no. A/HRC/15/46,” September 16, 2010, p. 13.

^{xxx} *Ibid*, 6.

COUNTRIES AT THE CROSSROADS

^{xxx} Licadho: Cambodian League for the Promotion and Defence of Human Rights, “Mu Sochua Verdict: Another Blow for Cambodian Democracy,” press release, August 4, 2009, accessed December 15, 2011, <http://www.licadho-cambodia.org/pressrelease.php?perm=213>.

^{xxxii} May Titthara and David Boyle, “Shooting in Bavet at PUMA Supplier Unintentional,” *Phnom Penh Post* il 20, 2012, accessed May 2, 2012, <http://www.phnompenhpost.com/index.php/2012042055678/National-news/shooting-unintentional.html>.

^{xxxiii} “Puma officials go to Cambodia after Factory Shooting,” *Reuters*, ruary 23, 2012, accessed May 2, 2012, <http://www.reuters.com/article/2012/02/23/puma-cambodia-idUSL5E8DN8S820120223>.

^{xxxiv} Sebastian Strangio, “Potemkin Graft Crackdown in Cambodia,” *Asia Times*, June 11, 2011, accessed May 2, 2012, http://www.atimes.com/atimes/Southeast_Asia/MF11Ae01.html.

^{xxxv} *Ibid.*

^{xxxvi} Surya P. Subedi, “Report of the Special Rapporteur on the Situation of Human Rights in Cambodia.Eighteenth Session, Agenda item 10, Doc. A/HRC/128/46,” gust 2, 2011, accessed y 3, 2012, http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-46_en.pdf.

^{xxxvii} Licadho: Cambodian League for the Promotion and Defence of Human Rights, “[Five Shooting Incidents at Land Dispute Protests in the Past Two Months Show Alarming Increase in Use of Lethal Force](#),” press release, January 26, 2012, <http://www.licadho-cambodia.org/pressrelease.php?perm=269>

^{xxxviii} Licadho: Cambodian League for the Promotion and Defence of Human Rights, “Cambodian Teacher Convicted of Defamation in Land Dispute with School Principal,” December 8, 2009, <http://www.licadho-cambodia.org/articles/20091208/102/index.html>.

^{xxxix} Taylor Owen and Ben Kiernan, “Bombs Over Cambodia,” *The Walrus*, Oct. 2006, accessed 3, 2012, <http://walrusmagazine.com/articles/2006.10-history-bombing-cambodia/2/>.
^{xl} “Khmer Rouge Judge Spells Out Grievances,” Voice of America, March 21, 2012, accessed May 2, 2012, <http://www.voanews.com/english/news/asia/southeast/Khmer-Rouge-Judge-Spells-Out-Grievances---143674956.html>

^{xli} Seth Mydans, “Corruption Allegations Affect Khmer Rouge Trials,” *New York Times*, April 9, 2009, accessed May 3, 2012, <http://www.nytimes.com/2009/04/10/world/asia/10cambo.html>.

^{xlii} World Bank, “Implementation Status and Results: Cambodia Public Financial Management and Accountability,” November 11, 2011, accessed December 15, 2011, http://www-wds.worldbank.org/external/default/main?pagePK=64193027&piPK=64187937&theSitePK=523679&menuPK=64187510&searchMenuPK=64187283&siteName=WDS&entityID=0000A8056_2011111106403972.

^{xliii} Norbert Klein, “Civil Society: The National Anti-Corruption Council Is Not an Independent Institution and the Nomination of Officials Is Politically Oriented,” *The Mirror*, June 16, 2010, accessed December 15, 2011, <http://www.cambodiamirror.org/2010/06/17/civil-society-the-national-anti-corruption-council-is-not-an-independent-institution-and-the-nomination-of-officials-is-politically-oriented-wednesday-16-6-2010/>.