

Overall Score:

**46 - Very Weak**

Legal Framework Score:

**58 - Very Weak**

Actual Implementation Score:

**30 - Very Weak**

Category I. Civil Society, Public Information and Media

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## I-1. <sup>41</sup>Civil Society Organizations

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### 1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

**Comments:**

In 1996, a draft NGO law was prepared by the government through the Ministry of Interior. This, however, was shelved and put under further review by the MOI under a barrage of criticism from the civil society and even within the government itself. It has been revived intermittently (for instance in 1998 and 2006), but remains a draft and a subject of controversy as of this date.

The reaction of NGOs and other stakeholders to the draft law has been and continues to be mixed. On the one hand, enactment of an NGO law is perceived as positive, given that the current lack of specific law governing NGOs in Cambodia may be taken to mean that these NGOs presently have no formal legal personality and hence are not protected by law. It might be possible for an official, for example, to take exception to an NGO for some reason and create a court action to close it down. Having a law could provide some protection against indiscriminate action.

However, many NGOs have also been very wary of an NGO law because it can be used to restrict the freedoms that they currently enjoy. The preparation of the draft law came alongside the following statement from a high-ranking National Assembly official, "... so many NGOs are speaking too freely and do things without a framework. When we have a law, we will direct them." Regarding the initial draft law, two features appeared to have been the biggest concern of the civil society, namely the double registration requirements for local NGOs and the attempt by the initial draft to control the sources of NGO funding, mainly by excluding foreign assistance. Article 11 of the initial draft stated that funding sources should solely consist of members' contributions, donations from public authorities in Cambodia, and private donations. Article 18 further states that sources of funding of foreign associations shall only be derived from membership fees or from donations of national or foreign humanitarian donors. Foreign associations are not entitled to receive funds from any government or from public or private organizations. The UN's Cambodia Office of the High Commission for Human Rights has officially commented on this draft and said that with regard to Article 11: If this requirement was to be implemented, the majority of associations and local NGOs in Cambodia would have to close down; and with regard to Article 18: if implemented, it will, in effect, prevent the majority of international NGOs from operating in Cambodia.

Other previous drafts of the NGO Law included a requirement for all NGO funding to be coursed through the Ministry of Finance which is deemed contrary to the nature of NGOs as independent associations. The May 2005 draft, on the other hand, was problematic on numerous grounds with its complicated registration process (which could provide legal means to deny registration to legitimate groups), requirement for the activities of the NGOs to be monitored by and reported to the government (which is problematic as the job of human rights NGOs is to monitor also the abuses by that very government) and prohibition of activities for "political interests" (whose meaning was left unclear).

The latest update on the subject of the NGO law is that the World Bank has provided the government technical assistance to facilitate its completion. As their comments have been simply ignored by the government, human rights NGOs have withdrawn from the formal consultations and till this time adopt to their position embodied in a Joint Statement issued in August 2006. This Joint Statement essentially expressed the support of the signatory NGOs for the NGO law subject to the prior improvement of the integrity of the judicial system by passing relevant laws and to the allotment of more time for NGOs to establish harmony and develop trust in the government's initiative.

**References:**

World Bank Cambodia, Consultation Essential to Achieve a Good NGO Law, Newsletter, Vol. 4 No. 10,

<http://siteresources.worldbank.org/INTCAMBODIA/newsletters/21087881/OctoberNewsletter.pdf>.  
Asia Human Rights Commission, Cambodia: Government set to curb rights and activities of NGOs,  
<http://www.ahrchk.net/ua/mainfile.php/2006/1788/>; Gunila Riska, NGOs in the GMS:  
Involvement Related to Poverty Alleviation and Watershed Management Cambodia,  
[http://www.mekonginfo.org/mrc\\_en/doclib.nsf/0/B2C7B593F8EBDFDAC725682D000AC04C/\\$FILE/MAINREPORT.html](http://www.mekonginfo.org/mrc_en/doclib.nsf/0/B2C7B593F8EBDFDAC725682D000AC04C/$FILE/MAINREPORT.html).  
Joint Statement of Local non-governmental organizations and associations on "A Good Policy Environment for Developing the Law on Local Non-Governmental Organizations and Associations", August 8, 2006.  
Interview, Mr. Tieng Sophorn, Advocacy Action Program Manager, Star Kampuchea, 17 August 2008, 8:45 a.m., Star Kampuchea's office.

**References:**

The Constitution of the Kingdom of Cambodia, as amended in 1994, 1999, 2001, 2005, 2006 and 2008 (hereafter the Constitution"), with the following articles:

Article 42, which provides for the right of Khmer citizens to establish associations, including political parties;  
Article 35, which provides for the right of Khmer citizens to participate actively in the political, economic, social and cultural life of the nation; and  
Article 31, which states that the Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, and related covenants and conventions.

Article 20 of the Universal Declaration of Human Rights and Article 22 of the International Covenant on Civil and Political Rights (ICCPR) explicitly set out the right of everyone to freedom of association.

Cambodia's Civil Code, promulgated in December 2007, with the following sections:

Section 1, which authorizes the incorporation of non-profit juristic persons, be they associations or foundations; and  
Section 3, which deals more with the establishment of incorporated foundations for the public benefit.

**YES:** A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

**NO:** A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

**References:**

There are currently no legal or regulatory restrictions pertaining to the finances of CSOs in Cambodia nor are there are provisions under the law or some regulatory policy that specifically gives them liberty in relation to their fundraising activities. Of course, this proceeds primarily from the present lack of specific legislation governing CSOs in Cambodia. As mentioned, however, a draft NGO law has sought to impose restrictions on CSO finances.

**YES:** A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

**NO:** A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

**Comments:**

There is no legal requirement of public disclosure of NGO finances, proceeding mainly from the lack of specific legislation on NGOs in the country. However, there was an NGO Code of Ethical Principles and Minimum Standards for NGOs in Cambodia that was completed in August 2007 by a working group that was facilitated under CCC's (Cooperation Committee for Cambodia) NGO Good Practice Project. This code effectively calls on Cambodia NGOs to publicly disclose their sources of funding. In particular, Section 5 (Accountability and Transparency) of said code goes as follows:

The NGO provides members of the public, the target population, donors and governments with accurate information about their activities, finances and other relevant information.

Section 3.3 of the same code also states that an annual report is to be produced and made available.

Under the NGO Good Practice Project, a voluntary NGO certification system is further being established. The review process is designed to assess and determine if the applicant organization meets the required standards stated in the code, including the standard on public disclosure.

**References:**

Code of Ethical Principles and Minimum Standards for NGOs in Cambodia.  
[http://www.ccc-cambodia.org/GPPPProject/LinkageDocuments/ENG\\_NGO%20Code%20revision%2010.pdf](http://www.ccc-cambodia.org/GPPPProject/LinkageDocuments/ENG_NGO%20Code%20revision%2010.pdf);

Cooperation Committee for Cambodia, NGO Good Practice Project.  
<http://www.ccc-cambodia.org/GPPPProject/NGOGPP.htm>).

**YES:** A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

**NO:** A NO score is earned if no such public disclosure requirement exists.

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## 2. Are good governance/anti-corruption CSOs able to operate freely?

58

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

**Comments:**

A formal registration process, though without basis in law, has to be undergone by NGOs wishing to operate in Cambodia, be they local or international. Local NGOs register with the Ministry of Interior (though it can be noted that some local NGOs have applied before with the Council of Ministers). Registration requirements are not clearly laid out but NGOs seeking registration have normally been asked to provide copies of their statutes, information on their administration, staffing, history of the founder, and program activities.

International NGOs must register with the NGO Bureau of the Department of International Organizations of the Ministry of Foreign Affairs. They may also have cooperation agreements with some line ministries. Required registration documents include organizational philosophy, location, information on activities, staffing, funding and history of the founder.

The Council for the Development of Cambodia, Cambodia Rehabilitation and Development Board (CDC-CDRB) is the government agency acting as the Focal Point" and "One-Stop Service" for the government's relations with NGOs and donors.

As of June 2007, there are approximately 1873 associations and NGOs operating in Cambodia, according to the Ministry of Interior. This huge number has been touted by the government as, at the least, evidence of democracy and freedom of association in the country. However, unofficial barriers do exist. The registration process can be made difficult and long for organizations dealing with sensitive issues. Therefore, the organization founders, for fear of getting (informally) rebuffed, have to set out some strategy before going through the registration process. At least on paper, they might have to tone down the organizational mission or activities that may be considered suspicious by the registration officials. Hence, outside the formal arena, pressure and restrictions on the freedom of association do exist.

**References:**

Interview with Mr. Tieng Horn, Advocacy Action Program Manager, Star Kampuchea, August 18, 2008, 8:45-9:50 a.m., Star Kampuchea Phnom Penh office.

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, 2:30 p.m., Internews Office.

Ministry of Interior, Comments and Recommendations by the Ministry of Interior of the Royal Government of Cambodia on The Report of the Special Representative of the Secretary-General for Human Rights in Cambodia.  
[www.interior.gov.kh/document/Press\\_Recommendations\\_over\\_Jash\\_Ghai\\_En.pdf](http://www.interior.gov.kh/document/Press_Recommendations_over_Jash_Ghai_En.pdf).

Asian Development Bank, Civil Society Briefs: Overview of Civil Society in Cambodia, 2005.  
<http://www.adb.org/Documents/Reports/Civil-Society-Briefs/CAM/CSB-CAM.pdf>.

The Council for the Development of Cambodia, Role and Responsibilities of the Cambodian Rehabilitation and Development Board (Extracts from Sub-Decree No. 147, ANK BK, Article 13, December 29, 2005.  
<http://www.cdc-crdp.gov.kh/>.

**100:** CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

**75:**

**50:** CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

**25:**

**0:** Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

**Comments:**

Simply put, the engagement of the civil society in the government's policymaking process has been generally described as limited, restricted, constrained and superficial at best. It has been limited and restricted as there have been many times when the civil society has been excluded from the process. Cases in point refer to the preparation of the anti-corruption law and petroleum legislation. It is true that the civil society has been consulted at the early stage of the preparation of the anti-corruption law but after these initial consultations, they have been basically left in the dark. No one has yet seen the latest draft of the law that the government allegedly intends to submit to the newly elected National Assembly. As for the petroleum legislation, which is crucial to ensure the transparency of the collection and use of revenues that will flow from Cambodia's emerging oil and gas industry, no organization has yet been able to secure a copy of the government's draft. So far, they have been given the response that the document is confidential."

Civil-society engagement has also been constrained by insufficient financial, physical and human resources. Their operations and activities have also experienced obstructions to their staff and harassment, especially in the case of human-rights organizations. Their access to government officials has been very limited given that the government in general is suspicious of NGOs working in the field of governance.

Lastly, civil society engagement, like that of the opposition in the government, has been said to be artificially given because many, if not most, of their inputs and sentiments have not been ultimately taken into account. Many of their recommendations have been ignored.

**References:**

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, CSD office.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28 2008, 11:00 a.m., CDP office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, August 19, 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Mr. Tieng Sophorn, Advocacy Action Program Manager, Star Kampuchea, August 17, 2008, 8:45 a.m., Star Kampuchea's office.

Interview, Ms. Thou Heng, Program Coordinator, Advocacy and Policy Institute (API), August 20, 2008, 3:00 p.m., API's office.

**100:** Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

**75:**

**50:** Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

**25:**

**0:** Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

**Comments:**

As far as is known, no CSO has been reported to have been shut down since June of last year, although NGO activities, especially those of human-rights organizations, have met obstructions now and then.

**References:**

The Cambodian Human Rights and Development Association (ADHOC), Human Rights Situation 2007, ADHOC Seventh Annual Human Rights Situation Report, February 2008.

Center for Social Development, Annual Report 2007, The Court Watch Project October 2006 to September 2007, March 2008. <http://www.csdcambodia.org/pdf/2008/Annual%20Report%202007.pdf>.

The Observatory for the Protection of Human Rights Defenders, Defending Economic and Social Rights in Cambodia: A High-Risk Activity, February 2008. [www.omct.org/pdf/Observatory/2008/Cambodia\\_Mission\\_Report\\_200208\\_ENG.pdf](http://www.omct.org/pdf/Observatory/2008/Cambodia_Mission_Report_200208_ENG.pdf)

Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Cambodia Country Reports on Human Rights Practices, 2007. <http://www.state.gov/g/drl/rls/hrrpt/2007/100516.htm>.

Interview with Mr. Uch Kim Y, Campaign Program Officer, The Cambodian Human Rights and Development Association (ADHOC), August 25, 2008, ADHOC office.

Interview, Mr. Tieng Sophorn, Advocacy Action Program Manager, Star Kampuchea, August 17, 2008, 8:45 a.m., Star Kampuchea's office.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, August 19, 2008, 9:00 a.m., Pact Cambodia's office.

Cambodia Daily issues

**YES:** A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

**NO:** A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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### 3. Are civil society activists safe when working on corruption issues?

33

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

**Comments:**

As far as is known, no imprisonment (defined here as detention for more than 24 hours) of civil-society activists working on corruption issues has been reported since June last year. However, it has been reported that on June 19, 2007, eight foreign nationals were detained by Cambodian immigration police for more than nine hours after gathering to publicly appeal for justice for Born Samnang and Sok Sam Ouen.

Born Samnang and Sok Sam Oeun were the two men arrested for and convicted of killing the leader of the Free Trade Union of the Workers of the Kingdom of Cambodia (FTUWKC), Chea Vichea, in 2004 despite a trial marred with irregularities. Despite also an eventual pronouncement by the former Superintendent of Phnom Penh who led the arrest (now also in prison for kidnapping and murder charges) that the two men were innocent as well as the acknowledgement by the prosecutor himself during the appeal process that there were gaps during the investigation. The Court of Appeals judges overthrew the appeal and upheld the two men's convictions.

Note further that, as will be elaborated later, Dam Sith, editor-in-chief of the Moneaksekar Khmer newspaper and Sam Rainsy Party (SRP) parliamentary candidate, was detained on June 8, 2008, for alleged defamation and disinformation. He was released on bail July 27, 2007.

**References:**

Center for Social Development, Annual Report 2007, The Court Watch Project October 2006 to September 2007, March 2008. <http://www.csdcambodia.org/pdf/2008/Annual%20Report%202007.pdf>.

The Observatory for the Protection of Human Rights Defenders, Defending Economic and Social Rights in Cambodia: A High-Risk Activity, February 2008. [www.omct.org/pdf/Observatory/2008/Cambodia\\_Mission\\_Report\\_200208\\_ENG.pdf](http://www.omct.org/pdf/Observatory/2008/Cambodia_Mission_Report_200208_ENG.pdf)

Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Cambodia Country Reports on Human Rights Practices, 2007. <http://www.state.gov/g/drl/rls/hrrpt/2007/100516.htm>.

Interview with Mr. Uch Kim Y, Campaign Program Officer, The Cambodian Human Rights and Development Association (ADHOC), August 25, 2008, ADHOC office.

Yun Samean (Additional reporting by Stephen Kurczyk), Groups Call for Release of Newspaper Editor," The Cambodia Daily, June 10, 2008, Vol. 39, Issue 79.

"Cambodia: Release Jailed Editor, Journalists and Opposition Members Under Attack as Elections Near," Human Rights News. <http://www.hrw.org/english/docs/2008/06/11/cambod19105.htm>

Moeun Chhean Nariddh, "Cambodia Lost a Once-Good Reputation for Press Freedom," The Cambodia Daily, July 21 2008. <http://cjenglish.wordpress.com/>.

**YES:** A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

**NO:** A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | **NO**

**Comments:**

Civil-society activists in Cambodia are said to be constantly facing intimidation, which may take the form of physical harassment, verbal insults, threats and obstructions to their activities. In 2007, 46 cases of intimidation against human-rights activists were recorded by the local NGO, ADHOC. These activists were essentially involved in the protection of ordinary people against powerful people and in the public education about basic human rights. Members of the armed forces were used by authorities to obstruct the work of such activists and forcibly arrest them for questioning. Provincial authorities also verbally insulted and threatened them. No punishment has been meted on these actions. On the contrary, it is said that the very institutions which must hold such actions accountable made efforts to protect the people who committed them.

**References:**

The Cambodian Human Rights and Development Association (ADHOC), Human Rights Situation 2007, ADHOC Seventh Annual Human Rights Situation Report, February 2008.

Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Cambodia Country Reports on Human Rights Practices, 2007. <http://www.state.gov/g/drl/rls/hrrpt/2007/100516.htm>.

Interview with Mr. Uch Kim Y, Campaign Program Officer, The Cambodian Human Rights and Development Association (ADHOC), August 25, 2008, ADHOC office.

**YES:** A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

**NO:** A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

**Comments:**

In July 2007, a community leader involved in engaging local people to protest about fishery, forestry and land-grabbing issues was shot dead in his home. This activist was particularly involved in protesting the seizure of protected forests, supposedly for public benefit, by a private company. The murder occurred almost three months after another local activist involved in protecting a fishing lot against seizure was killed.

**References:**

The Cambodian Human Rights and Development Association (ADHOC), Human Rights Situation 2007, ADHOC Seventh Annual Human Rights Situation Report, February 2008.

The Observatory for the Protection of Human Rights Defenders, Defending Economic and Social Rights in Cambodia: A High-Risk Activity, February 2008.  
[www.omct.org/pdf/Observatory/2008/Cambodia\\_Mission\\_Report\\_200208\\_ENG.pdf](http://www.omct.org/pdf/Observatory/2008/Cambodia_Mission_Report_200208_ENG.pdf)

Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Cambodia Country Reports on Human Rights Practices, 2007.  
<http://www.state.gov/g/drl/rls/hrrpt/2007/100516.htm>.

Interview with Mr. Uch Kim Y, Campaign Program Officer, The Cambodian Human Rights and Development Association (ADHOC), August 25, 2008, ADHOC office.

**YES:** A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

**NO:** A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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#### 4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES | NO

**Comments:**

Note, however, that the right to form a trade union, as mentioned under Article 266 of the labor code, does not apply to the judges of the judiciary, persons appointed to a permanent post in the public service and personnel of the police, the army, or the military police, who are governed by a separate statute.

**References:**

The Constitution with the following articles:

Article 36, which specifically provided for the right of Khmer citizens of either sex to form and to be a member of trade unions, as determined by the law.

Article 42, which provides for the right of Khmer citizens to establish associations, including political parties.

Article 35, which provides for the right of Khmer citizens to participate actively in the political, economic, social and cultural life of the nation.

Article 31, which states that the Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, and related covenants and conventions.

Article 20, of the Universal Declaration of Human Rights.

Article 22, International Covenant on Civil and Political Rights (ICCPR) explicitly set out the right of everyone to freedom of association.

Cambodia's Labor Code, promulgated in March 1997, with the following articles:

Article 266, which provides that workers and employers have the right to form professional organizations of their own choice for the purpose of studying, promoting the interests, and protecting the rights, as well as the moral and material interests of the persons covered by the organization's statutes, without needing prior authorization.

Article 271, which provides that all workers, regardless of sex, age or nationality are free to be a member of the trade union of their choice.

**YES:** A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

**NO:** A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

**Comments:**

Seemingly, no formal barriers to the formation of trade unions in Cambodia exist. In the garment sector, 158, or 80 percent, of the 200 factories monitored by the Better Factories of Cambodia have been noted to at least have one union.

However, informal barriers have indeed existed and continue to exist. As noted, some independent and pro-opposition unions and federations have complained of unnecessary delays and costs in registering with the government.

The barriers are not limited to the registration requirements per se. Activities of trade unions have been said to be closely monitored and their protests violently cracked down on by authorities. In the past year, these violent crackdowns were witnessed many times. Many trade-union protesters were also arrested on such charges as destroying private property. The memory of murdered union activists, such as Chea Vichea and Hy Vuthy, and the alleged lack of justice in capturing their real assailants continue to haunt trade unionists as well. All of these incidents of intimidation, violence, arrest and murder inflict fear among workers in Cambodia and inadvertently impact on the freedom and strength of unionization in the country.

**References:**

Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Country Reports on Human Rights Practices, 2007, Cambodia.  
<http://www.state.gov/g/drl/rls/hrrpt/2007/100516.htm>

Better Factories Cambodia, International Labor Organization, Twentieth Synthesis Report on Working Conditions in Cambodia's Garment Sector, April 30, 2008.  
[http://www.betterfactories.org/content/documents/1/20th%20Synthesis%20Report%20Final%20\(EN\).pdf](http://www.betterfactories.org/content/documents/1/20th%20Synthesis%20Report%20Final%20(EN).pdf)

Daniel Adler, World Bank Justice for the Poor, Cambodia, August 2007 (Vol. 1 Issue 3), Informalizing the Formal: Labor Relations in Cambodia."  
<http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/J4PBriefingNoteIssue3.pdf>

**100:** Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

**75:**

**50:** Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

**25:**

**0:** Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

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## I-2. Media

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### 5. Are media and free speech protected?

50

5a. In law, freedom of the media is guaranteed.

YES | NO

**Comments:**

While there is the Press Law governing print media in Cambodia, there is no specific legislation yet governing broadcast media in the country (though there has been some confusion as to what is the actual coverage of the Press Law). As of this date, no specific move is known to have been made to initiate the creation of this piece of legislation. Similar to the reaction to a possible NGO law, there is some degree of lack of confidence as to whether enacting a law on broadcast media would actually help the industry and the freedom of media in Cambodia in general. Of course, instituting this legal infrastructure in an ideal situation would finally afford Cambodian media outfits their well-deserved rights, establish some grievance mechanism free of intimidation and open up the space for creation of more radio and TV stations (less their political connections). In light of Cambodia's political realities however, there is the concern that adopting a law would curtail, rather than boost, freedom of the media in Cambodia, if not even totally kill the few freedoms that independent broadcast media entities at least get to enjoy at the moment. Implementation is another issue to consider as well.

It is also important to note at the very outset that the Press Law has its weaknesses and contradictions and that its implementation has been compromised by the use of the UNTAC Law (Cambodia's prevailing criminal law) to also regulate the media sector in Cambodia.

The following are some problematic provisions in the Press Law:

Article 14, which simply states that the press shall not publish or reproduce any information which may affect national security and political stability; Article 13, which simply states that the press shall not publish or reproduce false information that humiliates or is in contempt of national institutions; Article 14, which provides that the press shall not publish anything which affects positive customs of society; and Article 20, which states that no person shall be arrested or subject to criminal charges as the result of the expression of opinions, while at the same stating that any act committed by an employer, editor or author of a text that violates the criminal law shall be punished according to that law. Of course, these provisions are acceptable restrictions to the freedom of media, but on the condition that they are clearly defined.

The UNTAC Law, Cambodia's prevailing criminal law, has also been used several times to charge media personalities with defamation, disinformation and libel. This shall be elaborated in the coming sections.

Note also that, as yet, there is no specific legislation governing Internet publishing in Cambodia.

**References:**

The Constitution of the Kingdom of Cambodia, as amended, with the following articles:

Article 41, which provides that Khmer citizens shall have freedom of expression, press, publication and assembly.

Article 35, which states that Khmer citizens of either sex shall have the right to participate actively in the political, economic, social and cultural life of the nation.

Article 31, which sets out that the Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women's and children's rights.

Article 19, of the Universal Declaration on Human Rights states that everyone has the right to freedom of opinion and expression and this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media.

Article 19 of the International Covenant on Civil and Political Rights similarly upholds the right of everyone to hold opinions without interference and the right to freedom of expression through any other media of his choice.

The Press Law adopted in 1995, Article 1, specifically assures the freedom of the press and freedom of publication in conformity with Articles 31 and 41 of the Constitution of the Kingdom of Cambodia.

**YES:** A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

**NO:** A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

**Comments:**

As the direct representatives of the people in the government, the freedom of expression of National Assembly members is of paramount importance, so important in fact that a key rationale for parliamentary immunity is precisely the protection of the MPs from prosecution for expressing their opinions while exercising their duties. Article 80 of Cambodia's Constitution explicitly

provides that no assembly member shall be prosecuted, detained or arrested because of opinions expressed during the exercise of his or her duties.

In August 2006, the Law on the Members of the Parliament was enacted. Article 5 of this Law states: Members of the Parliament may not abuse this parliamentary immunity to harm the dignity of others, the good customs of the society, law and order, and national security.

This article has been perceived as a restriction and violation of the rights of the MPS under Article 80 of the Constitution. As is the problem with the Press Law, what constitute good customs, law and order and national security are not clearly defined and can therefore be subject to whim. Hence, MPs can be prevented from speaking their minds on the National Assembly floor and arrested by the police for opinions expressed outside the parliament. The constitutionality of Article 5 of the Law on MPs has been challenged but the Constitutional Council ruled against this and proclaimed the provision to be constitutional. This ruling was not found to be surprising, given that the ruling party dominates the Constitutional Council.

Another perceived formal restriction to the freedom of speech is a Council of Ministers directive, issued in July 2006, that prohibits government officials and employees from speaking to the media or the public about corruption in the government.

References:

Asia Human Rights Commission, Cambodia: The Situation of Human Rights in 2006.  
<http://material.ahrchk.net/hrreport/2006/Cambodia2006.pdf>.

Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Cambodia Country Reports on Human Rights. Practices- 2007, <http://www.state.gov/drl/rls/hrrpt/2007/100516.htm>.

**References:**

The Constitution of the Kingdom of Cambodia, as amended, with the following articles:

Article 41, which provides that Khmer citizens shall have freedom of expression, press, publication and assembly.

Article 35, which states that Khmer citizens of either sex shall have the right to participate actively in the political, economic, social and cultural life of the nation.

Article 31, which sets out that the Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women's and children's rights.

Article 19, of the Universal Declaration on Human Rights states that everyone has the right to freedom of opinion and expression and this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media.

Article 19 of the International Covenant on Civil and Political Rights similarly upholds the right of everyone to hold opinions without interference and the right to freedom of expression through any other media of his choice.

The Press Law adopted in 1995, Article 1, specifically assures the freedom of the press and freedom of publication in conformity with Articles 31 and 41 of the Constitution of the Kingdom of Cambodia.

Law on the Members of the Parliament, particularly Article 5 thereof, which states that members of the parliament may not abuse their parliamentary immunity to harm the dignity of others, the good customs of the society, law and order, and national security.

The July 2006 Council of Ministers directive prohibiting government officials and employees from speaking to the media or the public about corruption in the government.

**YES:** A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

**NO:** A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

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## 6. Are citizens able to form print media entities?

50

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

**Comments:**

Article 8 of the Press Law provides that:

Before distribution of the press, the employer or editor shall submit an application to the Ministry of Information for identification purposes. The Ministry shall issue a receipt to the press after receiving the whole file.

This provision has been interpreted by the government to mean that print media entities have to register and seek the approval of the Ministry of Information before proceeding with their operations. This interpretation has, however, been questioned because the provision merely states that the employer or editor shall submit an application for identification and, that after receiving their whole file, the Ministry of Interior shall issue a receipt.

Still, as far as formation of a print media entity is concerned, there appears to have been little difficulty in Cambodia.

Among the 169 countries assessed by Reporters without Borders for its press freedom index for the year 2007, Cambodia ranked 85, far surpassing the senior democracies in the ASEAN region, including the Philippines, Thailand, Indonesia and Singapore. Both the Cambodian government and some individuals have boasted this as a symptom of the flourishing democracy in the country.

However, it has been contested that the quantity of publications cannot be taken as a sign of the freedom of the media in Cambodia essentially for the following three reasons:

First, it is believed that there has been relatively little hassle in creating print media entities in Cambodia because only a small number of people, mostly those in the capital with good education, can read and do read the newspaper regularly. Cambodia's adult literacy rate is at 73.6 percent (UNDP Human Development Report, 2007/2008, as of 2005) but if you define literacy as the ability to read a newspaper and not only few words, then this rate may be much lower. Moreover, there are few publications with distribution outside of Phnom Penh and some provincial capitals.

Second, on the accuracy of the number itself, there are 303 newspapers, 32 newsletters, 98 magazines, 42 international media and nine imported newspapers on the official list of the Ministry of Information. However, as pointed out in the LICADHO report, this is a cumulative list and does not really reflect what actually appears on the newsstands. Further, several publications are listed more than once and others exist only on paper, having gone bankrupt or their owner having died. In reality, only 15-20 newspapers in Cambodia publish regularly. With probable daily circulations of 20,000 to 25,000 copies, Koh Santepheap, Rasmei Kampuchea and Kampuchea Thmei are believed to be the three top-selling newspapers.

Third, the press in Cambodia may be relatively free insofar as forming a print media entity. Past the formation stage however and into the actual publication, this freedom fizzles out and the press is no longer free in terms of quality and independence. Directly quoting some lines from the LICADHO report, if we look beyond just the quantity of newspapers and magazines, and listen to journalists and editors describe their working environment in Cambodia, we find a media closely controlled by politics, money and fear.

**References:**

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, Internews Office.

Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, Internews Office.

Interview, Anonymous, Media, August 22, 2008, 8:00, Phnom Penh Center.

LICADHO Cambodian League for the Promotion and Defense of Human Rights, Reading between the Lines: How Politics, Money and Fear Control Cambodia's Media," May 2008.  
<http://www.licadho.org/reports/files/119LICADHOMediaReport2008.pdf>

Reporters Without Borders, Worldwide Press Freedom Index 2007.  
[http://www.rsf.org/article.php3?id\\_article=24025](http://www.rsf.org/article.php3?id_article=24025).

Moeun Chhean Nariddh, "Cambodia Lost a Once-Good Reputation for Press Freedom," The Cambodia Daily, July 21, 2008.  
<http://cjenglish.wordpress.com/>.

**100:** Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

**75:**

**50:** Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

**25:**

**0:** Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

**References:**

In law, there is no such appeal mechanism. Articles 8 and 9 of the Press Law, which govern the registration regime are silent in regard to this right of appeal when a license is rejected.

Informally, people just approach the Ministry of Interior once again or the NGOs for support.

Interview, Anonymous, Media, August 22, 2008, 8:00, Phnom Penh Center.

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, Internews Office.

Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.

**YES:** A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

**NO:** A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Under the Press Law, there is no required duration limit for the processing of applications. Even so, in practice, it has been expressed that there appear to have been no problems regarding the time it takes to obtain print media licenses in Cambodia. In this sense, the duration is considered reasonable, especially in light of the Cambodian context.

**References:**

Interview, Anonymous, Media, August 22, 2008, 8:00, Phnom Penh Center.

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, Internews Office.

Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.

**100:** Licenses are not required or licenses can be obtained within two months.

**75:**

**50:** Licensing is required and takes more than two months. Some groups may be delayed up to six months.

**25:**

**0:** Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, it has been expressed that there appear to have been no problems regarding licensing for print media in Cambodia. However, unofficial payments are known to play a role in facilitating registrations in the country and this inevitably imposes a burden on those who are averse to corruption or who have less to offer, so to speak.

**References:**

Interview, Anonymous, Media, August 22, 2008, 8:00, Phnom Penh Center.

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, Internews Office.

Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.

**100:** Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

**75:**

**50:** Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

## 7. Are citizens able to form broadcast (radio and TV) media entities?

19

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

### Comments:

As opposed to the case of print media entities, there are indeed serious barriers to the formation of broadcast media entities in Cambodia. Radio and television are the two most powerful sources of information in the country. Thus, it is no wonder for some why the government is insistent upon maintaining its tight grip on the broadcast media and, in practice, broadcast media licensing has been considerably discriminatory.

Simply put, the major determinants of whether an application for a license will be rejected or not are the applicant's political affiliation and political connections. Over the years, the government has generally denied radio and television licenses to those considered not pro-CPP, the ruling party. All existing television stations in Cambodia are considered to be pro-government, pro-CPP and are either directly owned or co-owned by the government or owned by someone believed to be well connected to the CPP. As for radio, few independent and opposition-affiliated operators have managed to obtain licenses and it seems that this was only made possible by political maneuvering or by seeking the help of well-connected officials or the sale or transfer of an existing license (addressing this loophole, the government in early 2007 prohibited all TV and radio stations from transferring or selling their licenses. In case of inability to continue operations, a station must return the license to the Ministry of Information instead).

Indeed, it has been expressed that it is very difficult or close to impossible to secure a TV or radio license if you do not have affiliation with the CPP or you do not have a well-connected personal contact. The opposition SRP has repeatedly applied for radio and television licenses and has repeatedly been denied. Similarly, NGOs have attempted to secure radio licenses to no avail. That there are no more frequencies left is the oft repeated reason that the Ministry of Information uses to justify its denials. The very same reason has been conveyed to the Voice of Democracy Radio, created by the Cambodian Center for Human Rights, when the Ministry of Information rejected its latest attempt to obtain a license. Surprisingly however, a month after this incident, the ministry was able to find a frequency and grant a radio license to a CPP Secretary of State at the Ministry of Foreign Affairs.

### References:

Interview, Mam Sonando, President, Beehive Radio (Sambok Khmum Radio), August 20, 2008, Beehive Radio Office.

Interview, Anonymous, Media, August 22, 2008, institution's office.

LICADHO Cambodian League for the Promotion and Defense of Human Rights, Reading between the Lines: How Politics, Money and Fear Control Cambodia's Media," May 2008.

<http://www.licadho.org/reports/files/119LICADHOMediaReport2008.pdf>

**100:** Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

**75:**

**50:** Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

**25:**

**0:** Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | **NO**

**References:**

By law, no such appeal mechanism exists. Again, there is no specific legislation yet that governs broadcast media in Cambodia.

**YES:** A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

**NO:** A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | **25** | 0

**Comments:**

As mentioned before, the licensing procedure for broadcast media entities in Cambodia is discriminatory. Licenses have been readily given to those who are deemed to be pro-government or pro-CPP. By contrast, the government has even rejected license applications from those not deemed to be pro-government or pro-CPP.

**References:**

Interview, Mam Sonando, President, Beehive Radio (Sambok Khmum Radio), August 20, 2008, Beehive Radio Office.

Interview, Anonymous, Media, August 22, 2008, institution's office.

LICADHO Cambodian League for the Promotion and Defense of Human Rights, Reading between the Lines: How Politics, Money and Fear Control Cambodia's Media," May 2008.

<http://www.licadho.org/reports/files/119LICADHOMediaReport2008.pdf>

**100:** Licenses are not required or licenses can be obtained within two months.

**75:**

**50:** Licensing is required and takes more than two months. Some groups may be delayed up to six months.

**25:**

**0:** Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | **25** | 0

**Comments:**

As mentioned before, the licensing procedure for broadcast media entities in Cambodia is discriminatory. Licenses have been readily given to those who are deemed to be pro-government or pro-CPP, while such has apparently not been the case for those not deemed as pro-government. The cost of obtaining a license is not immediately clear. While it seems that the government has not prohibited interested parties from seeking licenses to operate, whether it can be considered as reasonable and aboveboard is dubious. Corruption is rampant in Cambodia and to facilitate the processing of licenses, some unofficial payments normally exchange hands.

By contrast, the government has even rejected license applications from those not deemed to be pro-government or pro-CPP.

**References:**

Interview, Mam Sonando, President, Beehive Radio (Sambok Khmum Radio), August 20, 2008, Beehive Radio Office.

Interview, Anonymous, Media, August 22, 2008, institution's office.

LICADHO Cambodian League for the Promotion and Defense of Human Rights, Reading between the Lines: How Politics, Money and Fear Control Cambodia's Media," May 2008.

<http://www.licadho.org/reports/files/119LICADHOMediaReport2008.pdf>

**100:** Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

**75:**

**50:** Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

## 8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

**Comments:**

To this date, the government does not seem to be preventing citizens from accessing content published online. As noted, there have been no known government restrictions on Internet access or reports that the government has monitored e-mail or Internet chat rooms. The National Information Communications Technology Development Authority (NIDA) is the specific government agency responsible for formulating and implementing IT policy in Cambodia. Currently, it has an ICT policy in draft. Public consultations on this policy have been done.

Note, however, that Internet users in Cambodia remain extremely limited in number. Only three out of 1,000 Cambodians use the Internet (UNDP Human Development Report, 2007/2008, [http://hdrstats.undp.org/countries/data\\_sheets/cty\\_ds\\_KHM.html](http://hdrstats.undp.org/countries/data_sheets/cty_ds_KHM.html)). Note that this statistic is from 2005). Factors that inhibit the widespread use of the Internet include the high cost, poor infrastructure, shortage of IT professionals, and low computer literacy rate. Most Cambodians do not have their own computers and so most Internet users utilize cyber cafes. UNICODE, a software that standardizes Khmer fonts, arrived in Cambodia only in 2006, though it has become popular since then.

**References:**

LICADHO Cambodian League for the Promotion and Defense of Human Rights, Reading between the Lines: How Politics, Money and Fear Control Cambodia's Media," May 2008.

<http://www.licadho.org/reports/files/119LICADHOMediaReport2008.pdf>

U.S. Department of State, Bureau of Democracy, Human Rights, and Labor; Country Reports on Human Rights Practices, Cambodia, 2007.

<http://www.state.gov/g/drl/rls/hrrpt/2007/100516.htm>.

National Information Communications Technology.

<http://www.nida.gov.kh>

Interview, Anonymous, NGO, September 5, 2008, 11:45 a.m., Lucky Bright Restaurant.

**100:** The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

**75:**

**50:** Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

**Comments:**

The government does not seem to be censoring citizens creating content on-line. It has to be mentioned again however that the number of citizens utilizing the internet is very small. As a source of information, the internet plays a very limited role in Cambodia. Several Khmer language newspapers, foreign publications such as the Phnom Penh Post and many NGOs also run their own websites. One popular critical website is KI Media whose slogan is Dedicated to Publishing Sensitive Information about Cambodia. This website is believed to be sympathetic to the opposition party, Sam Rainsy Party.

But again, it has been known that the government is currently in the process of establishing a department of cybercrime within the Ministry of Information. This department is intended to gain control over all internet providers in Cambodia. Given the political realities in the country, there is a budding fear that this initiative shall tighten more the government's and therefore the ruling party's rein over freedom of information in Cambodia.

**References:**

LICADHO Cambodian League for the Promotion and Defense of Human Rights, Reading between the Lines: How Politics, Money and Fear Control Cambodia's Media," May 2008.  
<http://www.licadho.org/reports/files/119LICADHOMediaReport2008.pdf>

U.S. Department of State, Bureau of Democracy, Human Rights, and Labor; Country Reports on Human Rights Practices, Cambodia, 2007.  
<http://www.state.gov/g/drl/rls/hrrpt/2007/100516.htm>.

Interview, Anonymous, NGO, September 5, 2008, 11:45 a.m., Lucky Bright Restaurant.

**100:** The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

**75:**

**50:** In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

**25:**

**0:** The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

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9. Are the media able to report on corruption?

58

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

**Comments:**

As mentioned, the Press Law is, however, often unjustly ignored in favor of the UNTAC Law. Many media personnel have been criminally charged under Articles 62 and 63 of the supposedly transitional Penal Code. Article 62 deals with the act of disinformation and states that such arises upon the publication, distribution or reproduction of information which is false, fabricated, made in bad faith with malicious intent and has disturbed or is likely to disturb public peace. Article 63 is on defamation and libel, such acts arising from allegations or imputations made in bad faith or that are known to be false but still published with malicious intent or from any insult, contemptuous remark or abusive language which does not claim to impute fact (Article 63 was amended in 2006, but just to remove the punishment of prison). Articles 62 and 63, as written, provide very strict

conditions for charging someone with disinformation, defamation or libel, but in Cambodia, many media personalities are believed to have been prosecuted for such crimes without any shred of evidence that their acts met the aforementioned conditions.

Some of such cases include: the libel case filed in July 2007 against Keo Sothear, publisher of Samleng Youvachun Khmer newspaper, over an article accusing a governor of selling a municipal building; the complaint filed in August 2007 against Keo Sothear, publisher of Samleng Youvachoun Khmer, Bun Tha, publisher of Khmer Amatak newspaper and the director of Voice of Royalists radio program (of the Norodom Ranariddh Party) broadcast on Beehive radio over the coverage of a police raid of a drug lab in a province; and, most recently, the defamation and disinformation case filed against and subsequent detention of Dam Sith, editor-in-chief of the Moneaksekar newspaper, over the allegation that Foreign Affairs Minister Hor Namhong was the head of the Khmer Rouge's Boeung Trabel so-called re-education center.

It has been pointed out that the UNTAC law was supposed to be a transitional law, effective only during Cambodia's transition period. What's more, in most well-founded democracies, legal provisions on disinformation or dissemination of false news do not exist. They are considered as violation of the people's right to freedom of expression under the Cambodian Constitution and Cambodia's obligation under international conventions.

References:

LICADHO Cambodian League for the Promotion and Defense of Human Rights, Reading between the Lines: How Politics, Money and Fear Control Cambodia's Media," May 2008.  
<http://www.licadho.org/reports/files/119LICADHOMediaReport2008.pdf>

Cambodia: Released jailed editor, "Journalists and Opposition Members Under Attack as Elections Near", Human Rights News.  
<http://www.hrw.org/english/docs/2008/06/11/cambod19105.htm>

Eath Daravuth, "Slain Reporter, Son Cremated," The Mekong Times, Monday, July 14, 2008.  
<http://cjrenglish.wordpress.com/>.

References:

The Press Law, particularly Article 10 thereof which states that defamation against a public figure arises from false allegations or imputations, which the journalist publishes or reproduces with malicious intent. Defamation committed in accordance with such article may result in the publication of a retraction, payment of compensation, and even a fine of up to 5 million riel (US\$1,258).

**YES:** A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

**NO:** A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

As asserted in the LICADHO report, self-censorship is probably the single biggest threat to the freedom of the media in Cambodia. It is not only that the government (as both owner and regulator) and other owners encourage it, especially with reference to stories dealing with corruption and any other sensitive issue, but that many journalists and broadcasters themselves, without prodding, practice it.

The high degree of self-censorship in Cambodia can be readily explained by several reasons: First, by political loyalty. As implied in other comments, all television stations and many radio stations and newspapers are seen as mouthpieces for the government and the ruling party. In terms of content, they are decidedly pro-government and pro-CPP.

Second, by political pressure. Media personnel who publish or air stories critical of the government are at a serious risk of losing their jobs or getting into trouble with their editors and employers. The editors and media owners, in turn, seek to restrain their writers and reporters for fear of damaging their relationship with the government and seeing their publications seized or their operations suspended or shut down.

Concrete incidents have happened to show the grave consequences of disclosing serious irregularities implicating the government or powerful and well-connected personalities in Cambodia. One of such incident was the firing of Soren Sowell (former news editor) by the owners of Cambodia Soir (French-language daily) after Sowell published excerpts from the controversial report issued by Global Witness entitled Cambodia's Family Trees. This report implicated associates of the Prime Minister for illegal logging in Cambodia and its publication, in full or in part, was banned by the government in June 2003. One of the Prime Minister's brothers reportedly said, in reaction to the report, that if anyone from Global Witness came to Cambodia, he would beat them on the head until it broke." Other incidents include the confiscation in November 2007 of the publication Free Press Magazine, managed by Lem Piseth who recently had to flee Cambodia (again) after receiving death threats. The magazine published stories on illegal logging and the murder of trade union leader Chea Vichea.

Three other equally important explanations for media personnel are fear for their safety, corruption and difficult access to information.

**References:**

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, Internews Office.

Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, Internews Office.

Interview, Anonymous, Media, August 22, 2008, 8:00, Phnom Penh Center.

Interview, Anonymous, NGO, August 22, 2008, 10:00 a.m., institution's office.

LICADHO Cambodian League for the Promotion and Defense of Human Rights, Reading between the Lines: How Politics, Money and Fear Control Cambodia's Media," May 2008.

<http://www.licadho.org/reports/files/119LICADHOMediaReport2008.pdf>

Reporters Without Borders, June 13, 2007, "Francophone Organization Asked to Help Save French-Language Daily Facing Sudden Liquidation."

[www.rsf.org/article.php3?id\\_article=22533](http://www.rsf.org/article.php3?id_article=22533)

Mayarith (Translated from Khmer by Heng Soy) , Magazine critical of Cambodian leaders confiscated, Radio Free Asia, 2 November 2007; can also be found in: KI Media

CACJE's Free Press Magazine muzzled by lack of Freedom of the Press?, 3 November 2007, <http://ki-media.blogspot.com/2007/11/cacjes-free-press-magazine-muzzled-by.html>

**100:** The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

**75:**

**50:** The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

**25:**

**0:** The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | **50** | 25 | 0

**Comments:**

For the pro-government media entities, there are no such restraints because few corruption-related stories are published by them (except perhaps when implicating someone critical of the government or someone who fell out of its graces). For the foreign-owned independent publications, there appears to be no restraints prior to publication as well. It has been said that if it is a balanced coverage, that is both the sides of the government and the other parties are taken into account, then there will be no problem. It has also been said that even if foreign-owned publications sometimes publish stories that are more critical of the government than opposition-affiliated newspapers, they still experience less political pressure compared with the latter, assumingly because of their foreign backing. Opposition-affiliated publications and other media entities critical of the government, by contrast, face immense pressure, including threats of being closed down, arrested and even killed.

It has been noted, however, that pre-publication restraints not only come from the government. When it comes to sensitive matters, there is pressure from the victims or whistleblowers themselves for the writer not to continue with the story or tone it down. This is, of course, for fear that the powerful people involved will get back at them. Likewise, the same powerful people exert pressure on the journalists via a carrot (bribe) and stick (threat) approach. According to the results of the survey done for the LICADHO report, 25 percent of the respondents said they knew journalists who took bribes in exchange for favorable coverage, 34 percent said they knew a colleague who took bribes for not reporting stories, and 35 percent didn't want to answer the question.

**References:**

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, Internews Office.

Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, Internews Office.

Interview, Anonymous, Media, August 22, 2008, 8:00, Phnom Penh Center.

**100:** The government never prevents publication of controversial corruption-related materials.

**75:**

**50:** The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

**25:**

**0:** The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

## 10. Are the media credible sources of information?

25

10a. In law, print media companies are required to publicly disclose their ownership.

YES | **NO**

### Comments:

In its report on how politics, money and fear control Cambodia's media, LICADHO identified, in detail, the ownership of Cambodia's major print, radio and television outlets. It revealed that confirming exactly who owns Cambodia's media can be difficult because of the use of front men to conceal the identity of the true owner. In at least one case, the media firm refused to divulge its ownership. Unless otherwise stated, media owners named in the report have been confirmed as much as possible by documents or reliable sources.

The information on the ownership of newspapers contained in the report was mainly based on the Ministry of Information list and interviews. However, the report also revealed some beliefs that the owners of at least two newspapers stated in the Ministry of Information list are not the real owners.

### Reference:

LICADHO Cambodian League for the Promotion and Defense of Human Rights, Reading between the Lines: How Politics, Money and Fear Control Cambodia's Media," May 2008.  
<http://www.licadho.org/reports/files/119LICADHOMediaReport2008.pdf>

### References:

This requirement is not provided under the Press Law. Under Article 9 of such law, the name of the employer and/or the name of the editor has to be disclosed for the purpose of applying with the Ministry of Information (curiously however, the same article requires submission of a certification of the individual's past criminal record of the employer and the editor).

**YES:** A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

**NO:** A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | **NO**

### Comments:

In its 2007 publication entitled Reading between the Lines: How Politics, Money and Fear Control Cambodia's Media," LICADHO (Cambodian League for Promotion and Defense of Human Rights) identified, in detail, the ownership of Cambodia's major print, radio and television outlets. It revealed that confirming exactly who owns Cambodia's media can be difficult because some use front men to conceal the identity of the true owner. In at least one case, the media firm refused to divulge its ownership (Apsara Media Group). Unless otherwise stated, media owners named in the report have been confirmed as much as possible by documents or reliable sources.

### References:

Again, there is no specific legislation governing broadcast media in Cambodia.

**YES:** A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

**NO:** A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

**Comments:**

Professionalism of journalists in Cambodia is perceived to be low. Yes, major journalist associations have some code of conduct or understanding of ethics in the field of journalism. However, these codes are also contravened, if not completely ignored. There is nothing like a Press Council that can enforce them and impose disciplinary action for non-compliance.

Aside from a lack of a disciplinary body, there are few other factors that contribute to and/or explain the low professionalism of journalists in Cambodia.

First is the culture of corruption. Corruption is said to be so unfortunately rampant and common among local journalists that journalism has become a business of robbery and that corrupt practices are no longer even considered as corruption. This situation is not only brought about by the demand for corruption from the journalists' side. The supply side is just as responsible for fueling corruption in the journalist profession. Even the NGOs are said to have bribed journalists to cover their activities and paint them in a good light.

Corruption inevitably leads to bias in reporting, a bias in favor of the rich and the powerful. Ultimately, it bestows doubt on the credibility of the information coming from the media in Cambodia. There are two forms of corruption in the journalist profession that are specially worth noting because the rich and the powerful become victims themselves. The first one involves the so-called "blocking paper" which, simply said, uses blackmail to extort money from prominent figures or businessmen in exchange for not publishing controversial stories (such as on illegal logging, corruption, extra-marital affairs) that implicate them. The second form involves the "jun bo" or the wishing paper, an ingenious scam meant to extort money. The wishing paper constitutes publication of a greeting (for birthday or other special occasion) addressed to a senior politician from a junior official or businessman, sometimes without the knowledge or consent of such junior official or businessman. A major practical explanation, of course, as to why corruption is the way it is in the journalist profession in Cambodia is the low level of salary of journalists and reporters. It is said that such a salary can in no way compensate for the risks they are facing in the course of doing their jobs, which brings us to the other practical explanation for the corruption, which is the lack of security. Rather than get themselves killed or harmed, many writers and reporters choose to get the money.

Another problem refers to commonly making allegations without enough evidence or no evidence at all. It is said that this is a sickness of the opposition-affiliated and pro-government publications. A person interviewed for the LICADHO report described the press in Cambodia as a mad dog, rather than a watch dog. To be fair, accessing information in Cambodia, even by media professionals, is extremely difficult and this problem, of course, affects the ability of journalists and reporters to provide sufficient evidence for their stories. It causes corruption because in order to obtain documents or information they need, journalists and reporters have to resort to bribery or other quid-pro-quo deals. People working for the media entities affiliated with the opposition can hardly be expected to get interviews or information from what is said to be a CPP-run government.

One last problem refers to lack of proper education and training of the media personnel in Cambodia. First of all, there are little educational opportunities for aspiring journalists in Cambodia. As far as is known, there are no departments of journalism in the universities in Cambodia. There is just the media section at the Royal University of Phnom Penh and before that, the Institute of Journalism funded by UNESCO. There is also the lack of training opportunities, especially training for handling technical issues (such as the emerging oil and gas industry in Cambodia). It is difficult to get funding for capacity building even from foreign donors and this is presumably so because media in Cambodia are not seen as independent.

**References:**

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, Internews Office.

Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, Internews Office.

Interview, Anonymous, Media, August 22, 2008, 8:00, Phnom Penh Center.

Interview, Anonymous, NGO, August 22, 2008, 10:00 a.m., institution's office.

Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Reading between the Lines: How Politics, Money and Fear Control Cambodia's Media, May 2008.  
<http://www.licadho.org/reports/files/119LICADHOMediaReport2008.pdf>.

Club of Cambodian Journalists, Code of Conduct.  
[http://www.ccj.com.kh/ccj/index.php?option=com\\_content&task=view&id=15&Itemid=30](http://www.ccj.com.kh/ccj/index.php?option=com_content&task=view&id=15&Itemid=30).

**100:** Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

**75:**

**50:** Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

**25:**

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

**Comments:**

The most recent election in Cambodia was the National Assembly election that took place July 27, 2008. The general assessment appears to be that while media coverage during the election period has indeed improved in comparison with the past elections, overall coverage remained to be significantly prejudiced in favor of the CPP.

As mentioned in the EU Observation Commission's Preliminary Statement, all opposition parties received access to state television TVK and state radio RNK as required by the election regulations. TVK televised debates among the different parties organized by the National Democratic Institute as well as produced, with the assistance of the UNDP, the Equity News and the Equity Weekly (but this did not run during the formal campaign period). The former was a daily program that featured all political parties based on an equitable formula, while the latter was a current-affairs program that featured expert discussions and special interviews with parliamentarians, senate members and key political party spokespersons. Opposition parties also got airtime at Women Media Center's FM102, Beehive FM105, and other private radio stations. However, as EU Observation Commission noted, the CPP maintained its dominance in terms of overall media coverage and this may have undermined the ability of the Cambodian electorate to make an informed choice, such ability being a function of voter education.

Television stations, especially the private ones, served as the propaganda machine of the CPP, showing frequently the accomplishments of the government and crediting that to the ruling party. The EU Observation Mission also recorded that TVK devoted more than 822 minutes to the government in its news programs compared to two minutes for the opposition, while the private organizations provided almost no opportunity to the opposition. As for the radio stations, those monitored by the EU Observation Mission devoted most time to the CPP and the government. Moreover, there was the incident wherein radio FM 105.25, a radio station in Kratie, that has sold airtime to opposition parties, was abruptly closed down by the government after merely being 13 days on the air. Similarly, the three Cambodian leading circulation dailies (Rasmei Kampuchea, Kampuchea Thmey and Koh Santepheap), likewise devoted the most coverage to the CPP, often in a favorable tone. To be fair, coverage of the opposition-affiliated newspapers was also biased in favor of the opposition. For instance, the Moneaksekar Khmer and Samleung Yuvachun Khmer were seen to have openly supported the SRP and the Norodom Ranariddh Party (NRP).

Except for warnings, which were unheeded, the NEC has not undertaken any other measure against those entities violating the requirement of a free and equal media access for all the parties.

Note that in response to the comments made by the EU Observation Commission regarding media coverage during the past election, the NEC simply said that the access to media by political parties needs to be reviewed. No elaboration was offered regarding the dominance of the CPP in the media's coverage.

**References:**

European Union Observation Commission, Preliminary Statement, July 29, 2008. [http://www.eueomcambodia.org/English/PDF/preliminary/EU%20EOM%20Preliminary%20Statement%2029%20July\\_eng.pdf](http://www.eueomcambodia.org/English/PDF/preliminary/EU%20EOM%20Preliminary%20Statement%2029%20July_eng.pdf).

National Election Committee, The National Election Committee (NEC)'s Clarification to EU EOM Preliminary Statement on the 2008 National Election In Cambodia. [http://www.ncelect.org/kh/English/NEC%20Response/resp\\_%20EU\\_%2030\\_07\\_08.pdf](http://www.ncelect.org/kh/English/NEC%20Response/resp_%20EU_%2030_07_08.pdf)

National Democratic Institute for International Affairs (NDI), Statement of the NDI Pre-Election Delegation to Cambodia, April 4, 2008. [http://www.accessdemocracy.org/library/2287\\_kh\\_statement\\_CambodiaDelegation\\_en\\_040408.pdf](http://www.accessdemocracy.org/library/2287_kh_statement_CambodiaDelegation_en_040408.pdf).

United Nations Development Program, Equity News and Equity Weekly. <http://www.un.org/kh/undp/2008-National-Assembly-Elections.html>.

LICADHO, Cambodian League for the Promotion and Defense of Human Rights, Free Expression and Democracy: Government Should Lift ban on Radio Station. (Media Statement), June 5 2008. <http://www.licadho.org/press/files/183LICADHOPRRadioBan08.pdf>.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, HRP Headquarters.

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Anonymous, Media, August 22, 2008, 8:00 a.m., Phnom Penh Center.

Interview, Anonymous, Media, August 22, 2008, 10:00, institution's office.

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as

disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

**Comments:**

All opposition parties received access to state television TVK and state radio RNK during the 2008 National Assembly election period. TVK televised debates among the different parties organized by the National Democratic Institute as well as produced, with the assistance of the UNDP, the Equity News. However, television stations in Cambodia including the state-owned media outlet, have been observed to be mainly serving as propaganda machine for the CPP, showing frequently the accomplishments of the government and crediting such to the ruling party. The EU Observation Mission moreover recorded that TVK devoted more than 822 minutes to the government in its news programs compared to two minutes for the opposition, while the private organizations provided almost no opportunity to the opposition.

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, HRP Headquarters.

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Anonymous, Media, August 22, 2008, 8:00 a.m., Phnom Penh Center.

Interview, Anonymous, Media, August 22, 2008, 10:00, institution's office.

European Union Observation Commission, Preliminary Statement, July 29, 2008. [http://www.eueomcambodia.org/English/PDF/preliminary/EU%20EOM%20Preliminary%20Statement%2029%20July\\_eng.pdf](http://www.eueomcambodia.org/English/PDF/preliminary/EU%20EOM%20Preliminary%20Statement%2029%20July_eng.pdf).

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

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## 11. Are journalists safe when investigating corruption?

0

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

**Comments:**

Dam Sith, editor-in-chief of the Moneaksekar Khmer newspaper and SRP candidate in the past July 27, 2008, parliamentary elections, was arrested and detained on June 8, 2008, for alleged defamation and disinformation. An article in the Moneaksekar Khmer quoted allegations by Sam Rainsy that Foreign Affairs Minister Hor Namhong was head of the Khmer Rouge's infamous Boeung Trabek so-called reeducation center. Dam Sith was released on bail on June 15 and eventually briefly left the country.

In August 2007, a deputy prime minister filed complaints against Keo Sothear (publisher of Samleng Youvachoun Khmer), Bun Tha (publisher of the Khmer Amatak newspaper) and the director of Voice of Royalists radio program (the Norodom Ranariddh Party) on Beehive radio in relation to an incident of a police raid of a drug lab in the Kampong Speu province.

In July 2007, the publisher of the Samleng Youvachoun Khmer newspaper, Keo Sothear, was charged with libel by the Phnom Penh governor over an article accusing the governor of selling a municipal building.

**References:**

Yun Samean (additional reporting by Stephen Kurczyk), The Cambodia Daily, June 10, 2008, Vol. 39, Issue 79.

Cambodia: Released jailed editor, Journalists and Opposition Members Under Attack as Elections Near," Human Rights News. <http://www.hrw.org/english/docs/2008/06/11/cambod19105.htm>

Moeun Chhean Nariddh, "Cambodia Lost a Once-Good Reputation for Press Freedom," The Cambodia Daily, July 21 2008. <http://cjrenglish.wordpress.com>

Eath Daravuth, "Slain Reporter, Son Cremated," Mekong Times, July 14, 2008. <http://cjrenglish.wordpress.com/>

LICADHO, Cambodian League for the Promotion and Defense of Human Rights, "Reading between the Lines: How Politics, Money and Fear Control Cambodia's Media," May 2008. <http://www.licadho.org/reports/files/119LICADHOMediaReport2008.pdf>.

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Anonymous, Media, August 22, 2008, 8:00 a.m., Phnom Penh Center.

Interview, Anonymous, Media, August 22, 2008, 10:00, institution's office.

**YES:** A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

**NO:** A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

**Comments:**

On June 21, 2007, military police assaulted two reporters in the Kampong Speu province and confiscated their cameras, film and sound-recording devices.

In the same month last year, three freelance reporters also had their cameras and mobile phones confiscated by a court prosecutor and bodyguards after taking pictures of the car of said prosecutor, which stopped next to ox carts illegally transporting timber in the Pursat province.

Further, the results of the 2007 survey used for the LICADHO report showed that 54 percent of the respondents had been threatened because of their work. The threats included death threats (17 percent), threats to cause an injury (15 percent) and threats to take legal action (30 percent). Most threats were communicated by phone or in person. Journalists in the provinces have also been said to be more exposed to physical and legal threats. Asked what had been the effect of the threat on their report, more than a third of the survey respondents said they became scared, 18 percent said they changed a story, 13 percent decided not to publish a story, 13 percent said they stopped reporting completely on that topic and almost 4 percent said they left the country.

Furthermore, more than a third of the reporters and editors surveyed said that they had their equipment confiscated, usually by police or soldiers.

Journalists from opposition-affiliated newspapers and those critical of the government have been said to be living a very risky life, while journalists from pro-government newspapers can defame anyone without fear of being arrested or harmed. Investigations by the Ministry of Interior on assaults against journalists typically do not lead to anything. When followed-up on their investigation, officials of the Ministry of Interior simply say that the investigation is still continuing, despite the fact that some cases have already been active 10 years.

**References:**

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Anonymous, Media, August 22, 2008, 8:00 a.m., Phnom Penh Center.

Interview, Anonymous, Media, August 22, 2008, 10:00, institution's office.

LICADHO Cambodian League for the Promotion and Defense of Human Rights, Reading between the Lines: How Politics, Money and Fear Control Cambodia's Media," May 2008.

<http://www.licadho.org/reports/files/119LICADHOMediaReport2008.pdf>

**YES:** A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

**NO:** A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

**Comments:**

Khim Sambo, reporter for the Moneaksekhar Khmer newspaper, and his son, Khat Sarinpheata, were shot dead by unidentified assailants on July 11, 2008. Khim Sambo wrote on such topics as politics, election irregularities, deforestation and land encroachment. The government has accepted the assistance of the U.S. Federal Bureau of Investigation (FBI) in investigating the killing. Given, however, the FBI's failure to reveal its official findings about the 1997 grenade attack on an opposition rally, there has been some suspicion that the FBI will also not reveal the truth about Sambo's shooting.

Since 1993, at least 10 journalists have been killed in Cambodia.

**References:**

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.

Yun Samean (additional reporting by Stephen Kurczyk), The Cambodia Daily, June 10, 2008, Vol. 39, Issue 79. Cambodia: Release Jailed Editor, Journalists and Opposition Members Under Attack as Elections Near," Human Rights News.

<http://www.hrw.org/english/docs/2008/06/11/cambod19105.htm>

Moeun Chhean Nariddh, "Cambodia Lost a Once-Good Reputation for Press Freedom," The Cambodia Daily, July 21 2008.

<http://cjenglish.wordpress.com/>

Eath Daravuth, "Slain Reporter, Son Cremated," Mekong Times, July 14, 2008.

<http://cjenglish.wordpress.com/>

Neou Vannarin, Katie Nelson, "U.S. Aid Accepted in Probe of Journalist s Slaying," The Cambodia Daily, August 4, 2008, Vol. 40, Issue 19.

**YES:** A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

**NO:** A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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43  
I-3. Public Access to Information

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12. Do citizens have a legal right of access to information?

33

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

**Comments:**

Access to information in Cambodia is extremely difficult in reality, not only for the ordinary citizen, but even for legislative members, public officials (officials from one ministry cannot easily access information from other ministries), NGO employees, etc. Whatever constitutional guarantee there is to freedom of information (FOI) is not apparently being followed. A specific legislation which sets out in detail the process for accessing information in a non-discriminatory, inexpensive and speedy manner must be adopted.

In August 2007, a policy framework on access to information was drafted by the Cambodian government to serve as guide for the drafting of a law on Freedom of Information. The draft of this policy framework has been said to be developed with the aid of transparent consultations with key stakeholders. On July 25, 2007, a national workshop was held to get further input from the stakeholders.

The said policy framework is yet to be adopted.

In 2005, a draft Freedom of Information Law was made under the initiative of an FOI Working Group (composed of NGOs) and with the assistance of an Australian expert. This draft was said to be made for the purpose of providing the government some reference while making the FOI law.

Regarding the Press Law, the exceptions stated in Article 5 thereof are common and internationally accepted exceptions to the freedom of access to information of the press; for instance, the exception in relation to the need to preserve national security or respect the privacy rights of individuals. However, the law has failed to consider the so-called public-interest test; that is, if the public interest outweighs the damage that can be done to other interests, the information must still be released. Moreover, there is no complaint or appeal mechanism available in the event that the request for information is rejected. This gives rise to the situation wherein government officials can just deny any request for information and provide any justification for it.

As regards the National Archives Law, there are exceptions to the access of the researcher to the public archives. Other public archives can only be accessed for free research 20 years after the dates of the documents, while documents that can affect national defense, national security and public order can be accessed 40 years after their publications. Again, the lack of limitations and the lack of consideration for the public interest-test are the biggest concerns with regard to these exceptions.

**References:**

Pact Cambodia, FOI Working Group, Freedom of Information brochure: The Right to Know is the Right to Live (Cambodians Have the Right to Know), March 2008. [http://www.pactcambodia.org/Publications/Anti\\_Corruption/FoI%20Brochure%20-%20English.pdf](http://www.pactcambodia.org/Publications/Anti_Corruption/FoI%20Brochure%20-%20English.pdf)

Access to Information, A Clear Policy Framework for Cambodia, August 13, 2007, draft.

Draft Law on Freedom of Information by the Civil Society.

U.S. Department of State (Bureau of Democracy, Human Rights, and Labor; Country Reports on Human Rights Practices, Cambodia, 2007. <http://www.state.gov/g/drl/rls/hrrpt/2007/100516.htm>.

Article 19, Memorandum on the Cambodian Law on the Press, October 2004. <http://www.article19.org/pdfs/analysis/cambodia-press-law-oct-2004.pdf>.

**References:**

The Constitution, with the following articles:

Article 31, which states that the Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions

Article 19, of the Universal Declaration on Human Rights and Article 19 of the ICCPR assure the right of everyone to seek, receive and impart information and ideas through any media.

Article 35, which provides that Khmer citizens of either sex shall have the right to participate actively in the political, economic, social and cultural life of the nation.

Article 41, which provides Khmer citizens the freedom of expression, press, publication and assembly law.

The Press Law, Article 19, which guarantees the right of the press to access information in government-held records, with several exceptions.

The National Archives Law, which certifies the right of persons to use public archives for research and consultations, with exceptions.

**YES:** A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

**NO:** A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | **NO**

**Comments:**

Under the draft policy framework on access to information, an independent Information Commissioner is envisioned to be responsible for deciding appeals about denied access to information and enforcing compliance with the law upon discovery of misconduct.

Under the draft FOI Law made under the initiative of the FOI Working Group, an independent Information Commission shall also be responsible for making decisions on complaints by the public in relation to a refusal to disclose information or records by public institutions.

**References:**

There is no such provision under the law as yet.

**YES:** A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

**NO:** A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | **NO**

**Comments:**

The draft policy framework and FOI law from the civil society both set out an institutional mechanism for requesting government records.

**References:**

There is no such established institutional mechanism under the law.

**YES:** A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

**NO:** A NO score is earned if there is no such formal mechanism or institution.

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### 13. Is the right of access to information effective?

10

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

There is nothing reasonable about the time it takes for requests for information or response to documents. In the first place, requests for information are normally met with the answer, "it is confidential" or "it is a state secret". Many follow-ups to requests will be to no avail as the people in the government will just keep passing you from person to person, only to be told finally that your request is still being processed, even if you have requested the document a long time ago.

Again, the victims of the above-mentioned situations have not only been the ordinary citizens; access to information has been similarly difficult even for those holding government positions already or with high-ranking posts outside the government sector, including officials of donor agencies.

To get the information or the document that one needs, one has to build a relationship with someone from within the agency or simply put, establish a personal contact within that office. Either that or you pay under the table. It is said that the situation will be close to hopeless if you do not do either of these two options.

**References:**

Interview, Mr. Tieng Sophorn, Advocacy Action Program Manager, Star Kampuchea, August 17, 2008, 8:45 a.m., Star Kampuchea's office.  
Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, August 19, 2008, 9:00 a.m., Pact Cambodia's office.  
Interview, Ms. Thou Heng, Program Coordinator, Advocacy and Policy Institute (API), August 20, 2008, 3:00 p.m., API's office.  
Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, 2:30 p.m., Internews Office.  
Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.  
Interview, Anonymous, Media, August 22, 2008, 8:00 a.m., Phnom Penh Center.  
Interview, Anonymous, Media, August 22, 2008, 10:00 a.m., Institution's office  
Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.  
Interview, Anonymous, Executive, August 31, 2008, 10:00 a.m., Residence.

**100:** Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

**75:**

**50:** Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

**25:**

**0:** Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

There is nothing reasonable about the cost that you need to pay to obtain information. First of all, there are no clear guidelines as to how much one has to pay in requesting information or a document. Secondly, to facilitate one's request, one often has to dole out money as unofficial payment.

**References:**

Interview, Mr. Tieng Sophorn, Advocacy Action Program Manager, Star Kampuchea, August 17, 2008, 8:45 a.m., Star Kampuchea's office.  
Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, August 19, 2008, 9:00 a.m., Pact Cambodia's office.  
Interview, Ms. Thou Heng, Program Coordinator, Advocacy and Policy Institute (API), August 20, 2008, 3:00 p.m., API's office.  
Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, 2:30 p.m., Internews Office.  
Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.  
Interview, Anonymous, Media, August 22, 2008, 8:00 a.m., Phnom Penh Center.  
Interview, Anonymous, Media, August 22, 2008, 10:00 a.m., Institution's office  
Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP),

August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.  
Interview, Anonymous, Executive, August 31, 2008, 10:00 a.m., Residence.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

As mentioned, there is no such appeal mechanism. Many follow-ups to requests lead nowhere, unless one has a personal contact within the targeted office or pays money.

**References:**

Interview, Mr. Tieng Sophorn, Advocacy Action Program Manager, Star Kampuchea, August 17, 2008, 8:45 a.m., Star Kampuchea's office.  
Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, August 19, 2008, 9:00 a.m., Pact Cambodia's office.  
Interview, Ms. Thou Heng, Program Coordinator, Advocacy and Policy Institute (API), August 20, 2008, 3:00 p.m., API's office.  
Interview, Mr. Moeun Chhann Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, 2:30 p.m., Internews Office.  
Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.  
Interview, Anonymous, Media, August 22, 2008, 8:00 a.m., Phnom Penh Center.  
Interview, Anonymous, Media, August 22, 2008, 10:00 a.m., Institution's office.  
Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.  
Interview, Anonymous, Executive, August 31, 2008, 10:00 a.m., Residence.

**100:** The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

**75:**

**50:** The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

As mentioned, there is no such appeal mechanism. Many follow-ups to requests lead nowhere unless one has a personal contact or pays money.

**References:**

Interview, Mr. Tieng Sophorn, Advocacy Action Program Manager, Star Kampuchea, August 17, 2008, 8:45 a.m., Star Kampuchea's office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, August 19, 2008, 9:00 a.m., Pact Cambodia's office.  
 Interview, Ms. Thou Heng, Program Coordinator, Advocacy and Policy Institute (API), August 20, 2008, 3:00 p.m., API's office.  
 Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, 2:30 p.m., Internews Office.  
 Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.  
 Interview, Anonymous, Media, August 22, 2008, 8:00 a.m., Phnom Penh Center.  
 Interview, Anonymous, Media, August 22, 2008, 10:00 a.m., Institution s office.  
 Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.  
 Interview, Anonymous, Executive, August 31, 2008, 10:00 a.m., Residence.

**100:** In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

**75:**

**50:** In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

**25:**

**0:** The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

**Comments:**

The reason that government officials normally give is that the information/document is confidential or is a state secret.

**References:**

Interview, Mr. Tieng Sophorn, Advocacy Action Program Manager, Star Kampuchea, August 17, 2008, 8:45 a.m., Star Kampuchea's office.  
 Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, August 19, 2008, 9:00 a.m., Pact Cambodia's office.  
 Interview, Ms. Thou Heng, Program Coordinator, Advocacy and Policy Institute (API), August 20, 2008, 3:00 p.m., API's office.  
 Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, 2:30 p.m., Internews Office.  
 Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.  
 Interview, Anonymous, Media, August 22, 2008, 8:00 a.m., Phnom Penh Center.  
 Interview, Anonymous, Media, August 22, 2008, 10:00 a.m., Institution s office.  
 Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.  
 Interview, Anonymous, Executive, August 31, 2008, 10:00 a.m., Residence.

**100:** The government always discloses to the requestor the specific, formal reasons for denying information requests.

**75:**

**50:** The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

**25:**

**0:** The government does not regularly give reasons for denying an information request to the requestor.

## 14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

### Comments:

The selection of senate members is not done by universal election. As set out in Article 99 of the Constitution, some of the senate members shall be appointed and some shall be elected by non-universal election. Note that the Senate in Cambodia only came about as a result of a political compromise between FUNCINPEC and CPP (the ruling parties then) after the 1998 General Elections.

### Reference:

Council for Administrative Reform, Government and National Defense.  
[http://www.car.gov.kh/cambodia/government\\_en.asp](http://www.car.gov.kh/cambodia/government_en.asp)

### References:

The Constitution with the following articles:

Article 34, which provides all Khmer citizens, male and female and at least 18 years of age, the right to vote.

Article 31, which provides that Cambodia shall recognize the human rights stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the Covenants and Conventions.

Article 21, Universal Declaration of Human Rights and Article 25 of the ICCPR which provide that everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Article 76, which provides that the National Assembly members shall be elected by a free, universal, equal, direct and secret ballot.

The Law on Elections of Members of the National Assembly, as amended, in particular, Article 5 thereof, which states that Members of the National Assembly shall be elected by a general, universal, free, fair, equal, direct, and secret election by means of secret balloting.

The Law on Commune Council Elections, as amended, with Article 2, which states that Commune Council shall be elected by a general, universal, just, free and fair, equal and direct election.

**YES:** A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

**NO:** A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

### References:

Article 31, which provides that Cambodia shall recognize the human rights stipulated in the United Nations Charter, the Universal Declaration of Human rights, the Covenants and Conventions.

Article 21, Universal Declaration of Human Rights and Article 25 of the ICCPR which provide that the will of the people shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free-voting procedures.

The Law on the Election of the National Assembly, as amended, with Article 3, which states that election of Members of the National Assembly shall be held every five years.

The Law on Commune Council Elections, as amended, with Article 3, which states that the election of all commune/sangkat councils shall be held once every five years.

**YES:** A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

**NO:** A NO score is earned if no such framework exists.

## 15. Can all citizens exercise their right to vote?

83

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

### Comments:

For the July 2008 National Assembly elections, the number of voters on the final list was 8,125,529 which was around 326,000 more than the number of voters for the 2007 Commune Council election. Note that a permanent voter register was introduced in Cambodia after the 2002 Commune Council election and that since then the number of registered voters for each election has increased. Voter turnout has also improved from 75 percent to 66 percent during the Commune Council election.

However, deletion of names from the 2008 voter's list has been revealed by a Voter Registration Audit (VRA) conducted by the independent institutions, COMFREL (Commission on Free Elections) and NICFEC (Neutral and Impartial Committee for Free and Fair Elections in Cambodia), with technical assistance from CAS (Center for Advanced Studies and NDI (National Democratic Institute for International Affairs (NDI)). The VRA found that more than 550,000 names were deleted from the register. Around 500,000 invalid names were correctly removed, while the rest were found to be valid registered voters and ought to be restored to the list. As noted by the EU, the NEC did not restore such names to the list citing time, legal and operational constraints. These incidents sparked strong protests from opposition parties who believed that it was the names of their supporters who were removed from the list. They, in fact, constitute one basis for the opposition's rejection of the election results. It also induced strong criticisms from monitors and rights groups who said that such actions implied that many people across the country have been disenfranchised.

Note that in response to the issue of the deleted names, the NEC stated that such was properly done within the electoral law and NEC's regulations and procedures, in an inclusive and transparent manner.

### References:

European Union Observation Commission, Preliminary Statement, July 29, 2008.

[http://www.eueomcambodia.org/English/PDF/preliminary/EU%20EOM%20Preliminary%20Statement%2029%20July\\_eng.pdf](http://www.eueomcambodia.org/English/PDF/preliminary/EU%20EOM%20Preliminary%20Statement%2029%20July_eng.pdf).

COMFREL, NICFEC, CAS, NDI, press statement on the VRA, June 13, 2008.

[http://www.accessdemocracy.org/library/2343\\_kh\\_statement\\_voterslist\\_engpdf\\_07172008.pdf](http://www.accessdemocracy.org/library/2343_kh_statement_voterslist_engpdf_07172008.pdf).

Yun Samean, "Four Parties Reject Results of Rigged Election," Cambodia Daily, July, 29, 2008, Vol. 40, Issue 15.

Pin Sisovann, Fergal Quinn (additional reporting by Eang Mengleng), "Monitors Critical of Array of Voter Problems," Cambodia Daily, July 29, 2008, Vol. 40, Issue 15.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, HRP Headquarters in Phnom Penh.

National Election Committee (NEC), "NEC has Broadcasted Preliminary Results of the Election," 29 July 2008.

<http://www.ncelect.org.kh/English/PressRelease/2008/Press%20Release/07-2008/07-149-08.pdf>

**100:** Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

**75:**

**50:** Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

**25:**

**0:** Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

**Comments:**

In connection with the 2008 parliamentary election process, there has been no complaint specifically about ballot tampering as far as is known.

However, it has been observed that election documents and materials were stored in unsecured areas and not properly protected. Ballot boxes were also not properly sealed in many of the polling stations visited by the observers for the EU Observation Commission. The boxes should be entirely or at least partially transparent. During the counting and consolidation process, EU observers noted that in 11 percent of the stations they visited, the total number of voters' names marked on the list did not equal the number of ballots found inside the ballot box.

Note that the EU Observation Commission has rated the polling process as good or very good in 88 percent of the polling stations visited and the closing and counting process as good or very good in 84 percent of said stations.

**References:**

European Union Observation Commission, Preliminary Statement, July 29, 2008. [http://www.euomcambodia.org/English/PDF/preliminary/EU%20EOM%20Preliminary%20Statement%2029%20July\\_eng.pdf](http://www.euomcambodia.org/English/PDF/preliminary/EU%20EOM%20Preliminary%20Statement%2029%20July_eng.pdf).

COMFREL, NICFIC, CAS, NDI, press statement on the VRA, June 13, 2008, [http://www.accessdemocracy.org/library/2343\\_kh\\_statement\\_voterslist\\_engpdf\\_07172008.pdf](http://www.accessdemocracy.org/library/2343_kh_statement_voterslist_engpdf_07172008.pdf).

Yun Samean, Four Parties Reject Results of Rigged Election, Cambodia Daily, July, 29, 2008, Vol. 40, Issue 15.

Pin Sisovann, Fergal Quinn (additional reporting by Eang Mengleng), Monitors Critical of Array of Voter Problems, Cambodia Daily, July 29 2008, Vol. 40, Issue 15.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, HRP Headquarters in Phnom Penh.

**100:** Ballots are secret, or there is a functional equivalent protection, in all cases.

**75:**

**50:** Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

**25:**

**0:** Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

**Comments:**

No claims to the contrary have been raised with reference to the 2008 National Assembly elections.

**References:**

European Union Observation Commission, Preliminary Statement, July 29, 2008. [http://www.euomcambodia.org/English/PDF/preliminary/EU%20EOM%20Preliminary%20Statement%2029%20July\\_eng.pdf](http://www.euomcambodia.org/English/PDF/preliminary/EU%20EOM%20Preliminary%20Statement%2029%20July_eng.pdf).

COMFREL, NICFIC, CAS, NDI, press statement on the VRA, June 13, 2008, [http://www.accessdemocracy.org/library/2343\\_kh\\_statement\\_voterslist\\_engpdf\\_07172008.pdf](http://www.accessdemocracy.org/library/2343_kh_statement_voterslist_engpdf_07172008.pdf).

Yun Samean, Four Parties Reject Results of Rigged Election, Cambodia Daily, July, 29, 2008, Vol. 40, Issue 15.

Pin Sisovann, Fergal Quinn (additional reporting by Eang Mengleng), Monitors Critical of Array of Voter Problems, Cambodia Daily, July 29 2008, Vol. 40, Issue 15.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, HRP Headquarters in Phnom Penh.

**100:** Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

**75:**

**50:** Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

**25:**

**0:** Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

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## 16. Are citizens able to participate equally in the political process?

75

16a. In law, all citizens have a right to form political parties.

YES | NO

### References:

The law on the political party, Article 9, which states that Khmer citizens, 18 years old or older and who have permanent residences in the Kingdom of Cambodia, may have the right to form a political party by filing only a letter of notice with the Ministry of Interior.

**YES:** A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

**NO:** A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

### References:

Law on the Election of the National Assembly, Articles 33 and 34, which basically state that a Khmer national from birth who is at least 25 years of age on the date of election, eligible to vote and registered in the voting list, has a residence in the Kingdom of Cambodia, is nominated by a registered political party and does not meet the any criterion specified in Article 34, is eligible to stand as a candidate for the National Assembly elections

The law on Commune Council Elections, Articles 45 and 46, which state that a Khmer national from birth who is at least 25 years of age on the date of the election, is able to read and write in Khmer, is registered in the voter's list of the commune/sangkat where he/she wishes to run, and does not meet any of the criterion specified in Article 46, is eligible to stand as candidate for the Commune Council elections.

**YES:** A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

**NO:** A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

**Comments:**

There are no formal barriers, but informal ones. As noted, it has been difficult in practice to form a political party in Cambodia if it does not particularly declare itself as pro-status quo. It has been expressed further that the government only permits the formation of other political parties to sustain the facade of democracy in the country.

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, HRP Headquarters in Phnom Penh.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, HRP Headquarters in Phnom Penh.

**100:** While there is no guarantee of electoral success, political parties can form freely without opposition.

**75:**

**50:** Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

**25:**

**0:** Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

**Comments:**

On the surface, there appeared to have been no major barriers impeding citizens from running for political office. Closer analysis reveals, however, that a few factors did bear upon the matter.

For instance, as a result of the registration process for political parties who wished to participate in the July 2008 National Assembly elections, the United People of Cambodia Party (UCPB) and other three small parties were not registered by the NEC on the grounds that some of their candidates were not on the official voter's list. Out of the 213 rejected candidates, 200 were rejected because their names were not on the final voter register. The UCPB and the other three parties consequently complained about misleading instructions and unequal treatment of small parties by the NEC. The EU Observation Commission commented that this incident did not, however, significantly affect the rights of political parties to participate in the elections.

In the recent election, there has also been a general lack of participation of women in all aspects of the political and electoral process as noted by the EU Observation Commission (note that there is no quota assuring female representation in Cambodia). Out of the total number of candidates for the 2008 National Assembly election, only 14.8 percent (172) were women. Several female candidates and politicians informed EU observers of the discrimination they encountered during the candidate-nomination process and internal political party elections. Many male politicians, however, claimed that they found it difficult to encourage women to go into politics.

As for the cost of running a political campaign, the finances of the political parties are used to help the individual candidates, though it has been expressed that post-buying occurs; that is, one has to pay a certain amount to be included in the political party's list of candidates. The more money offered, the higher you get on the list.

There is another factor deterring citizens from running for political office, as permitted under the law. As mentioned, the SRP parliamentary candidate and Moneaksekar Khmer editor-in-chief, Dam Sith, has been forced to leave the country after being arrested on defamation charges. His case was only one of many cases of serious intimidation and even murder of political party activists and supporters during the election period. It has been revealed that from July 2007 to the end of the election campaign, there had been at least 21 cases of murder of political party activists, supporters and a journalist, Mr. Khim Sambo. There have also been at least 56 cases related to physical harassment and intimidation. Fear for one's safety arguably is another deterrent to the free exercise of a Cambodian's right to run for political office.

**References:**

European Union Observation Commission, Preliminary Statement, July 29, 2008.

[http://www.euomcambodia.org/English/PDF/preliminary/EU%20EOM%20Preliminary%20Statement%2029%20July\\_eng.pdf](http://www.euomcambodia.org/English/PDF/preliminary/EU%20EOM%20Preliminary%20Statement%2029%20July_eng.pdf).

COMFREL, 7th Monitoring Report on Pre-Elections Assessment (Situation Prior to the 2008 National Assembly Elections), July 25, 2008.

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Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

**100:** While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

**75:**

**50:** Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

**25:**

**0:** Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | **50** | 25 | 0

**Comments:**

According to the official release made by the National Election Committee regarding the election results, the CPP won 58.1 percent of the votes, or 90 seats in the National Assembly; the SRP got 22 percent, or 26 seats; the HRP got 6.6 percent, or 3 seats; the NRP got 5.6 percent, or 2 seats, and FUNCINPEC got 5 percent, or 2 seats.

Opposition parties have contested these results and as of this time, at least the Sam Rainsy Party and Human Rights Party plan to still boycott the first meeting of the National Assembly and have a separate swearing-in ceremony presided over by the King. They have also asked the King for assistance in resolving their grievances. The opposition parties' protest proceeds from their claim that numerous irregularities have happened during the election at their expense and the expense of the Cambodian people. Their complaints include the deletion of the names from the voter's list, suspicious expansion of the voter's list, unwarranted distribution of the Form 1018 (one of the identity documents), tampering with Form 1104, voter buying, unequal access to the media, obstruction of campaign activities, brutality against and killing of political party activists and intimidation and threat of voters through the presence of village and group chiefs in or around the polling station and location of CPP and police stations close to the polling places. It has been expressed that if these irregularities had not occurred during the election, the number of seats that opposition parties could have gained would be much more than what has been afforded to them according to the NEC-declared results.

That the CPP got 90 seats in the National Assembly has become a concern. It turns out that the CPP does not even need the 50 percent + one formula that they have introduced into the Constitution and that was intended to guide the formation of the government. Already, the CPP has declared that its party MPs will occupy all the chairmanships in the National Assembly committees (before, some chairmanships were given to opposition party MPs). This, of course, has been heatedly opposed by the opposition parties as it would effectively mean that the opposition MPs would simply be adornment to the National Assembly without significant powers. Their participation is just a show of democracy, without any real meaning.

Further, at least according to the internal rules of the National Assembly, 30 MPs are needed to file a motion. If the opposition MPs all band together, they will meet this threshold, but the problem is that the opposition parties are not assuredly united. Numbers for the SRP and HRP will only amount to 29.

The participation and influence of the opposition MPs in legislative proceedings is indeed predicted to worsen. Before, the freedom of expression of opposition MPs was already seriously restrained (with MP officials essentially asked to shut up whenever they speak on the National Assembly floor). Their participation in NA committees came without any real powers and their parliamentary immunity was at the risk of being lifted anytime. With the CPP controlling 90 of the seats in the National Assembly, all these restrictions on the opposition MPs are expected to worsen.

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

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Yun Samean, "Opposition Appeals to Retired King for Help," The Cambodia Daily, 4 September 4, 2008, Vol. 40, Issue 42.

**100:** The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

**75:**

**50:** The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

**25:**

**0:** The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

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## II-2. Election Integrity

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### 18. Is the election monitoring agency effective?

55

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

#### References:

The Law on the Election of the National Assembly, Article 12 thereof states that the NEC shall be an independent and neutral body in the carrying out of its activities but Article 13 states that the members of the NEC shall be effectively nominated by the Ministry of Interior for submission to the Council of Ministers who will, in turn, submit the nominations to the National Assembly for approval. In other words, the appointment of the NEC members ultimately depends on the selection of an executive agency, the Ministry of Interior.

Further, Article 121 of the same law incorporates the budget of the NEC into the government budget (even contributions from foreign governments, international organizations, charitable individuals, and nongovernmental organizations shall go to the government budget with the exception of some foreign financing), effectively depriving NEC of the power to autonomously administer funds.

Having been created under the Law on the Election of the National Assembly, the NEC does not also have a constitutional mandate.

The Law on Commune Council Elections, Article 8 thereof states that the members and officials of NEC, PEC, CEC, and PSC shall be independent, impartial and honest but as mentioned above already, the nomination of NEC members originates from the Ministry of Interior.

Also, Article 177 of the Commune Council Elections Law integrates the budget of the NEC for the Commune Council election into the national budget (contributions from foreign governments, international organizations, charitable individuals, and nongovernmental organizations must also go to the government budget with the exception of some foreign financing).

**YES:** A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

**Comments:**

Five out of the current nine NEC members are associated with the CPP (two are from FUNCINPEC and the other two from SRP) and NEC decisions are made by majority, rather than consensus. There are no fixed terms for the members, making them susceptible to arbitrary dismissals. The majority of the chairpersons and members of the Provincial Electoral Committees (PECs) and Commune Council Electoral Committees (CECs) appointed by NEC are also from the CPP. Most of them have been said to be from local government departments and, in some cases, fulfilled their role in the previous elections in a manner biased to the ruling party. Given these characteristics, it has been said that NEC appointments do not support and, in fact, are themselves a telling indication of the lack of independence of the NEC. The NEC is not politically neutral. There is considerable political pressure, perhaps more implicit and informal, on the institution.

Note that in response to the above assertions, the NEC emphasized that electoral officials, to begin with, are not appointed. They are recruited based on job postings and clear professional criteria as what was done for the past elections. The criteria exclude the political affiliation requirement. The NEC also emphasized that it is not a political institution; thus, it cannot play politics while carrying out its duties. This has to be assessed against the realities.

**References:**

European Union Observation Commission, Preliminary Statement, July 29, 2008. [http://www.eueomcambodia.org/English/PDF/preliminary/EU%20EOM%20Preliminary%20Statement%2029%20July\\_eng.pdf](http://www.eueomcambodia.org/English/PDF/preliminary/EU%20EOM%20Preliminary%20Statement%2029%20July_eng.pdf).

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Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, CSD office.

**100:** Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

Yes, the NEC has a professional, full-time staff. Its structure includes a General Secretariat with six departments. However, it has been said that political loyalty overrides the professionalism of NEC's full-time staff.

**References:**

COMFREL, 7th Monitoring Report on Pre-Elections Assessment (Situation Prior to the 2008 National Assembly Elections), July 25, 2008. <http://www.comfrel.org/images/others/1217922918PR%2012%20on%20PEA%20En.pdf>.

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Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, CSD office.

**100:** The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

**25:**

**0:** The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

**Comments:**

No claims to the contrary have been raised, particularly on the basis of the situation during the past elections.

**References:**

European Union Observation Commission, Preliminary Statement, July 29, 2008. [http://www.eueomcambodia.org/English/PDF/preliminary/EU%20EOM%20Preliminary%20Statement%2029%20July\\_eng.pdf](http://www.eueomcambodia.org/English/PDF/preliminary/EU%20EOM%20Preliminary%20Statement%2029%20July_eng.pdf).

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Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, CSD office.

**100:** Reports are released to the public on a predictable schedule, without exceptions.

**75:**

**50:** Reports are released, but may be delayed, difficult to access, or otherwise limited.

**25:**

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

Insofar as the reception of complaints during the 2008 parliamentary electoral period is concerned, the role of the NEC has been said to have improved, attributable partly to the increased understanding of the rules. The complaint procedures remain complex, however, and in the end, only a few complaints were actually resolved. It is believed that many violations have gone unpunished, reinforcing a culture of impunity in Cambodia.

By the end of the election campaign, 202 complaints were received by the Commune Election Commissions (CECs), 113 by Provincial Election Commissions (PECs) and 39 by the NEC. Many of the complaints lodged during the campaign period can be considered to be minor in nature, such as destruction of campaign material, interference with the electoral campaign of other parties and insults, but others were serious, including threats and intimidation, vote buying, use of state assets and civil servants in the campaign and alleged violations of the electoral regulations by CEC officials themselves.

The total number of resolved complaints and penalized offenders cannot be confirmed, but COMFREL noted that out of the 116 complaints filed with the CEC, at least at the time of its July 15, 2005, statement on the atmosphere of the election, 29 were resolved and 52 cannot be resolved. Offenders for the resolved cases were indeed penalized in various ways, including disenfranchisement and imposition of fines, though some cases were unclear with regard to the law. The bigger problem, however, rests with the unresolved cases, the cases that were politically motivated, the cases that have gone unreported due to fear of retribution and alleged blind political loyalty as well as the problems related to complaint resolution in general (e.g. complex complaint procedure, lack of public education about the process, or a decision on a case without scrutiny of evidence). There are special procedures obliging election officials who witness electoral offenses to initiate proceedings, even when the actual victims do not complain, but these procedures have never been used. Many claimants unsatisfied with the handling of their complaints have approached opposition parties, but, as mentioned, the opposition complaints were ultimately rejected by the CC. For these reasons and more, it is believed that the recent electoral process reaffirmed the culture of impunity in Cambodia.

In response to the assertions made by independent groups regarding complaint resolution during the 2008 parliamentary election process, the NEC essentially said that such assertions must be supported by concrete instances, that more concrete recommendations must be advanced, but that, undeniably, the electoral process including complaint resolution has improved.

**References:**

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Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, HRP Headquarters.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, CSD office.

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

**50:** The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

## 19. Are elections systems transparent and effective?

71

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

### Comments:

A permanent voter register was introduced after the 2002 Commune Council election and since then the number of registered voters for each election has increased.

With reference to the voter-registration process for the 2008 parliamentary election, there had been allegations of voter-list manipulation. These allegations primarily proceeded from the finding of a Voter Register Audit (VRA) conducted by COMFREL and NICFEC, with the assistance of CAS and NDI, that names of around 50,000 legitimate voters were wrongly deleted from the voter's register. As noted by the EU Observation Commission, the NEC did not restore such names to the list.

Again, in response to the issue of the deleted names, the NEC stated that such was properly done within the electoral law and NEC's regulations and procedures, in an inclusive and transparent manner.

Another problem raised with the voter register was its so-called artificial expansion. A main complaint filed, for instance, by the opposition Human Rights Party (HRP) was regarding the increase of the voter list by adding duplicated names into the register. This complaint was rejected by the Constitutional Council.

Another inherent problematic feature of the voter-registration process that has been said to affect its transparency and credibility as a whole is the reliance of the NEC on the information provided from the local level which is said to be politically biased. Authorities at the local levels identify, if they do not already know, the political affiliation of the people in their respective communities. For those who are not pro-ruling party, there is discrimination. This discrimination may not be explicit, but it is there. Some difficulties could happen during registration.

### References:

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Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, CSD office.

**100:** There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

**75:**

**50:** There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

**25:**

**0:** The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

**Comments:**

Note that for the Commune Council elections, the NEC has the final decision over election complaints.

**References:**

Once claims of electoral fraud are rejected at the NEC level, the contesting parties can appeal to the Constitutional Council, which has its own constitutional mandate and, just to note, is not a tribunal. The Constitution, in particular Article 136 thereof, identifies the Constitutional Council as the supreme institution that shall have the right to decide on contested cases involving the election of National Assembly and senate members. The Law on the Election of the National Assembly, as amended, in Articles 73, 114 and 117, affirms this role of the Constitutional Council as the highest competent body to adjudicate election complaints.

**YES:** A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

**NO:** A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

**Comments:**

All opposition complaints regarding the 2008 parliamentary election results were rejected by, first, the NEC and then the Constitutional Council. The NEC and CC based their decisions on lack of evidence and perceived incorrect timing for filing the complaints (for instance, complaints pertaining to the voter list should have been filed around the time such list was posted). The opposition has not found the rejection surprising as they do not perceive the NEC and CC to be independent. For them, they are the political tools of the CPP. Most members of NEC and CC are, in the first place, from the ruling party. This lack of independence and neutrality has also been the key concern of the EU Observation Commission, ANFREL, COMFREL, NICFEC, the U.S. Embassy and many other groups and individuals. It is believed that the opposition does have acceptable evidence for their claims, even if the gathering and presentation of such evidence, starting from the lowest level and the start of the electoral period, is burdened by complex procedures and inadequate time. The complaint mechanism has been strongly criticized as unnecessarily complicated.

Note that the opposition considers the results as illegitimate, given what they claim as systematic and massive electoral fraud. The alleged fraud mainly included the deletion of names from and, at the same time, artificial expansion of the voter list. Owing to these irregularities, the Sam Rainsy Party has demanded a recounting or re-voting in several provinces. Following the rejection of their appeals, however, the SRP and HRP opted to air their grievances overseas, beginning with letters to the signatories of the 1991 Paris Peace Agreement about the alleged fraud.

Note also that while the four major parties initially united to reject the election results, there has been a recent fracturing in this united stance because the CPP permits FUNCINPEC to be an ally in the upcoming government and NRP conveys its interest to become part of this alliance.

**References:**

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Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, CSD office.

**100:** The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

**75:**

**50:** The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

**25:**

**0:** The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

**Comments:**

Months before the official campaign period for the 2008 parliamentary elections, CPP already started its campaigning and it has been observed that it utilized its incumbency and the government machinery, including government employees, military and security forces in the process of doing so. Most civil servants and security personnel have been said to have actively participated in the CPP's campaign activities. Also, the police failed to take action or investigate allegations pertaining to the widely criticized use of state vehicles and government property during the campaign. It has been noted that some police and military officers removed the license plates from state vehicles and used such vehicles for campaigning. A CPP lawmaker has been reported to admit the truth in these allegations, but justified the wrongdoing by saying that only a few individuals were unaware of the laws were involved. During the election day, it has also been noted that members of the military and police stayed around the vicinity of the polling station, implicitly exerting pressure on the voters.

To be fair, opposition parties were also criticized for advance campaigning and for allowing their supporters from civil service to participate in their activities, but this was a much lesser degree compared to the case of the CPP.

Lack of neutrality among military and security forces is a violation of the Code of Conduct for law-enforcement officials during the election for National Assembly members. The NEC is the body responsible for ensuring compliance with this code, but no action is known to have been undertaken to address claims of partiality among the members of the armed forces and national police.

**References:**

European Union Observation Commission, Preliminary Statement, July 29, 2008. [http://www.eucomcambodia.org/English/PDF/preliminary/EU%20EOM%20Preliminary%20Statement%2029%20July\\_eng.pdf](http://www.eucomcambodia.org/English/PDF/preliminary/EU%20EOM%20Preliminary%20Statement%2029%20July_eng.pdf).

COMFREL, 7th Monitoring Report on Pre-elections Assessment (The Situation Prior to the 2008 National Assembly Elections), July 25, 2008. <http://www.comfrel.org/images/others/1217922918PR%2012%20on%20PEA%20En.pdf>.

Yun Samean, Use of State Cars to Campaign Called Biased, The Cambodia Daily, 11 July 2008, Vol. 40, Issue 3.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), 27 August, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), 1 September 2008, HRP Headquarters.

**100:** The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

**75:**

**50:** The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

**25:**

**0:** The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

**References:**

The law on the Election of the Members of the National Assembly, as amended, Articles 26 to 28, 102 and 108, which basically allow domestic or international, independent or political-party agents to observe the whole electoral process in accordance with the regulations set out by the NEC.

The law on Commune Council Elections, as amended, Articles 88-110, which, likewise, allow domestic or international, independent or political-party agents to observe the whole electoral process in accordance with the regulations set out by the NEC.

**YES:** A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

**NO:** A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

**Comments:**

The NEC has been said to be very cooperative with international observers and this undoubtedly makes it easy for the observers to perform their missions.

It is interesting to note, however, how two differing assessments have come from the international observer groups in the aftermath of the elections. On the one hand, the EU Observation Mission, ANFREL, NDI and the observer group from the U.S. Embassy essentially came to the conclusion that the 2008 parliamentary election has showed improvements, but still fell short of international standards. On the other hand, the observer groups from Japan and Russia concluded that the election process was fully consistent with international standards and had been held in the best circumstances.

It has been expressed that the common problem with the engagement of observers from foreign embassies, upon the invitation of the government or with its express accommodation, is that, first and foremost, the government is bound to show only the best aspects of the electoral process to the concerned observers. The other problem is that most observers are short-term monitors, that is, they witness several days of the election and then they return home, hence missing the many irregularities that occur considerably prior to the formal campaign period. In Cambodia, it has been said that campaigning takes place years before the scheduled election. The statements, therefore, from the Japanese and Russian observers have been rejected by many.

**References:**

European Union Observation Commission, Preliminary Statement, July 29, 2008.

[http://www.eueomcambodia.org/English/PDF/preliminary/EU%20EOM%20Preliminary%20Statement%2029%20July\\_eng.pdf](http://www.eueomcambodia.org/English/PDF/preliminary/EU%20EOM%20Preliminary%20Statement%2029%20July_eng.pdf).

National Democratic Institute for International Affairs (NDI), Statement of the NDI Pre-Election Delegation to Cambodia, April 4, 2008.

ANFREL, Report on Pre-election Situation (Cambodia General Election 2008).  
[http://anfrel.org/country\\_mission/cambodia/2008/Pre-Election%20report%202008%20ANFREL.pdf](http://anfrel.org/country_mission/cambodia/2008/Pre-Election%20report%202008%20ANFREL.pdf).

U.S. Embassy Assessment of the Recent Cambodian National Elections (Press Release).  
[http://cambodia.usembassy.gov/pr\\_080108.html](http://cambodia.usembassy.gov/pr_080108.html).

Embassy of the Russian Federation, Report of the Election Observer Team of the Russian Federation, July 28, 2008.  
<http://www.embrusscambodia.mid.ru/pr019-e.html>.

Japanese Embassy, Statement of the Japanese Government Observation Commission on the 2008 National Assembly Election in the Kingdom of Cambodia.  
<http://www.kh.emb-japan.go.jp/index-e.htm>.

**100:** Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

**75:**

**50:** Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

**25:**

**0:** Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

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17. Is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

**References:**

The Law on the Election of the National Assembly, in particular Article 11, which states that the election of the members of the National Assembly shall be administered by the National Election Committee (NEC) and that the NEC shall have Provincial/Municipal Electoral Commissions (PECs), Commune Electoral Commissions (CECs), and Polling Station Commissions (PSCs) to carry out its work.

The Law on Commune Council Elections, in particular Article 7, which provides that the management of commune/sangkat council elections shall be administered by the NEC and that the NEC shall appoint the PECs, CEC and PSC to carry out its work.

**YES:** A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

**NO:** A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

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75  
II-3. Political Financing

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20. Are there regulations governing the financing of political parties?

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

**References:**

The Political Party Law, in particular Article 27 thereof, which states that political-party finances can consist of contributions from private Khmer enterprises and persons.

**YES:** A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties, including prohibitions against foreign donations.

**NO:** A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to political parties.

YES | NO

**References:**

By law, there are no such limits.

**YES:** A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

**NO:** A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on corporate donations to political parties.

YES | NO

**References:**

By law, there are no such limits.

**YES:** A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

**NO:** A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

**References:**

By law, there are no such limits.

**YES:** A YES score is earned if there are any limits in size on political party expenditures. A YES score is earned if all party expenditures are prohibited.

**NO:** A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for the disclosure of donations to political parties.

YES | **NO**

**Comments:**

Notably, there is no requirement for public disclosure of financial records, nor is it mandatory for such records to be inspected by the MoEF or the NEC. Another concern is that most transactions are cash and therefore not reflected in the account books.

**References:**

The Law on Political Parties, in particular Articles 30 to 32, which basically attribute to the Ministry of Economic and Finance (MoEF) the power to examine the financial records of the political parties as submitted to it in a yearly report.

The Law on the Election of the Members of the National Assembly, as amended, in particular Articles 81-83, which essentially gives the NEC the discretion to examine the account books of the political parties as they pertaining to campaign finance.

**YES:** A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

**NO:** A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances and expenditures of political parties.

YES | **NO**

**References:**

By law, there are no such requirements.

**YES:** A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures or if such requirements exist but allow for parties to self-audit.

20g. In law, there is an agency or entity that monitors the financing of political parties.

**YES** | NO

**References:**

The Law on Political Parties, in particular Articles 30 to 32, which basically attribute to the Ministry of Economic and Finance (MoEF) the power to examine the financial records of the political parties as submitted to it in a yearly report.

The Law on the Election of the Members of the National Assembly, as amended, in particular Articles 81-83, which essentially gives the NEC the discretion to examine the account books of the political parties as they pertaining to campaign finance.

**YES:** A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

**NO:** A NO score is earned if there is no such agency or entity.

## 21. Are there regulations governing the financing of individual political candidates?

0

21a. In law, there are regulations governing private contributions to individual political candidates.

YES | NO

### Comments:

Note that under the Political Party Law, the state can allocate some of the budget to the political parties for use in campaigning. The small opposition parties have expressed their need for a portion of the budget as well, given their meager resources compared to the resources of the larger parties. However, no such allocation from the state budget has been offered to this date. Legislation to enforce this particular provision needs to be passed.

In regard to campaign financing, note that there is a lack of campaign-finance regulation and the adoption of such a regulation has been one of the recommendations for improving electoral integrity in Cambodia. The civil society has specifically recommended the inspection of campaign finances to the National Election Committee (NEC), but it has been said that the NEC, in response, just noted that such inspection is not mandatory.

Articles 37 and 81 to 83 from the Law on the Election of the National Assembly simply require submission of statements on the political party bank account to which all contributions to the political party shall be credited and from which all their expenses shall be debited. The articles also require maintenance of an account book that shows campaign finances, which may be examined by the NEC. There are no limits to contributions or spending, nor is there a mandatory assets disclosure or mandatory inspection of party financial records. It is believed that this current lack of campaign-finance regulation heavily favors the ruling party.

Note that under the Law on Commune Council Elections, there are no provisions equivalent to what are stipulated under Articles 37 and 81 to 83 from the Law on the Election of the Members of the National Assembly regarding campaign finance

### References:

By law, no such regulations exist.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

Asia Network for Free Elections, Polling and Counting Statement: ANFREL Proposes Cambodia for Electoral Reform, July 29, 2008.

[http://www.anfrel.org/mission.asp?current\\_id=607&place\\_id=23](http://www.anfrel.org/mission.asp?current_id=607&place_id=23).

Lao Mong Hay, commentary, Can Cambodian Election be Free and Fair? (Column, Rule by Fear), UPI Asia Online, October 31, 2007.

[http://www.cambodiatribunal.org/CTM/UPI%20Asia%2010\\_31\\_07.pdf](http://www.cambodiatribunal.org/CTM/UPI%20Asia%2010_31_07.pdf).

**YES:** A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to individual political candidates, including prohibitions against foreign donations.

**NO:** A NO score is earned if there is no regulation of private contributions to individual political candidates.

21b. In law, there are limits on individual donations to political candidates.

YES | NO

**References:**

By law, there are no such limits.

**YES:** A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

**NO:** A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are limits on corporate donations to individual political candidates.

YES | **NO**

**References:**

By law, there are no such limits.

**YES:** A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

**NO:** A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21d. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | **NO**

**References:**

By law, there are no such requirements.

**YES:** A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

**NO:** A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21e. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates.

YES | **NO**

**References:**

By law, there are no such requirements.

**YES:** A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures or if such requirements exist but allow for candidates to self-audit.

21f. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | **NO**

**References:**

By law, there is no such agency. Under the Law on the Election of the Members of the National Assembly, as mentioned before, the NEC has the discretion to examine the campaign financing of political parties, but not of individual political candidates.

**YES:** A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

**NO:** A NO score is earned if there is no such agency or entity.

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## 22. Are the regulations governing the political financing of parties effective?

0

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | **0**

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

**75:**

**50:** Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

**75:**

**50:** Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

**75:**

**50:** Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

Under the law, it is not obligatory for the MoEF or the NEC to inspect the financial records of political parties. No such inspection is known to have been undertaken. Again, the civil society has specifically recommended such an inspection to the NEC, but the NEC, in response, said that such is not mandatory.

It has been expressed further that inspection of the records will not be enough of a regulatory measure because many transactions, especially in relation to an electoral campaign, are cash and thus not reflected in the account books.

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties. The agency is fair in its application of this power.

**75:**

**50:** The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

As mentioned, no inspection of the political party finances has been known to have been conducted.

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

**75:**

**50:** The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

By law, no such audit is mandated. In practice, no such audit is known to have been conducted.

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** Political party finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

**75:**

**50:** Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

**25:**

**0:** Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

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### 23. Are the regulations governing the political financing of individual candidates effective?

0

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

**Comments:**

There are no such limits in law or in practice.

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

**75:**

**50:** Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

**Comments:**

There are no such limits in law or in practice.

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

**75:**

**50:** Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

No such investigation is known to have been conducted.

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns. The agency is fair in its application of this power.

**75:**

**50:** The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

Again, no investigation of campaign finances is known to have been conducted.

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

**75:**

**50:** The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices.

**75:**

**50:** The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

**25:**

**0:** The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

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## 24. Can citizens access records related to the financing of political parties?

0

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Political parties are not known to have published such data, but on the part of the Sam Rainsy Party and Human Rights Party, it has been said that members of the general public are welcome to come to their offices and make a request to check their financial records. Owing to Cambodia's political realities, such disclosure of financial data, however, has to be done carefully to ensure that the sources will be protected. Moreover, the people themselves are not informed of their right to check such information.

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** Political parties disclose their sources of funding and expenditures at least every quarter.

**75:**

**50:** Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Political parties are not known to have published such data, but on the part of the Sam Rainsy Party and Human Rights Party, it has been said that members of the general public are welcome to come to their offices and make a request to check their financial records. Owing to Cambodia's political realities, such disclosure of financial data, however, has to be done carefully to ensure that the sources will be protected. Moreover, the people themselves are not informed of their right to check such information.

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Political parties are not known to have published such data, but on the part of the Sam Rainsy Party and Human Rights Party, it has been said that members of the general public are welcome to come to their offices and make a request to check their financial records. Owing to Cambodia's political realities, such disclosure of financial data, however, has to be done carefully to ensure that the sources will be protected. Moreover, the people themselves are not informed of their right to check such information.

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

## 25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

### Comments:

In practice, there has been no such disclosure.

### References:

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** Individual candidates disclose their sources of funding and expenditures at least every quarter.

**75:**

**50:** Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

**25:**

**0:** Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

### References:

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take two to four weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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Category III. Government Accountability

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III-1. Executive Accountability

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27. Can the chief executive be held accountable for his/her actions?

50

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

**Comments:**

As noted, reasons have been indeed provided for the policy decisions of the chief executive, but not all the time and not all the time satisfactorily. The process by which such policy decisions and reasons have been arrived at has generally lacked transparency and public participation. In addition, the policies may have been compelled by the self-interested parties surrounding the chief executive and not by the critical evaluation of the public benefit and costs that may result from such policies.

There have been important policies that the public only came to know about after the fact. Also, it has been noticed that the reasoning for key policy decisions often include the qualification that the implementation of such policies must be done in light of the Cambodian context. This exception is valid under certain circumstances, but at times, it is felt that it is used as an excuse to delay enforcement of regulations that may adversely affect the interests of the influential and the wealthy. Some, if not many, policies of the government are also donor-initiated. While the principles of country ownership are normally at the core of donor-funded projects and donor assistance is highly appreciated, whether the foreign reasoning for such policies match the domestic interest cannot be assured. What makes things difficult is the cloud of secrecy that sometimes hovers over the negotiations.

The lack of transparency and public engagement in the policy-making process also lends doubt to the integrity of the reasons for the chief executive's policy decisions. As noted, even if the reasoning sounds good, but the process by which it is made is not inclusive and transparent, then such reasoning cannot be considered as legitimate and cannot be trusted fully. There have been times when the civil society was openly engaged in the policy-formulation process, but there have been more times when the civil society was sidelined, especially for matters that are sensitive and thus could mean more to the public. Even when the civil society is engaged into the process, that does not also mean that its concerns and recommendations will be taken into account. The engagement, it turns out, is superficial.

In addition, there are just too many advisers to the chief executive. There are some advisers who are highly qualified and skilled, but there are some who are not. The criteria for their selection are not known. The influence of such advisers makes one guess that many policies could have been based more on politics than on the public interest.

**References:**

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Anonymous, Executive, August 31, 2008, 10:00 a.m., residence.

**100:** The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

**75:**

**50:** The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

**25:**

**0:** The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

**References:**

The Constitution, in particular, Article 39 thereof, which provides Khmer citizens the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs, committed during the course of their duties and that the settlement of these complaints shall be the purview of the courts.

The Law on the Organization and Functioning of the Constitutional Council, in particular, Article 19 thereof, which states the following:

A party to a trial, who considers that a law enforced by a court or a decision of an institution violates his fundamental rights and liberties, may raise the unconstitutionality of this Law upon the court.

The court, where it finds the request grounded, shall submit the case to the Supreme Court in within 10 days.

The Supreme Court shall examine and submit the law to the Constitutional Council in a maximum period of 15 days, except if the request is judged inadmissible.”

**YES:** A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

**NO:** A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

**Comments:**

Simply put, as a matter of practice, the judiciary does not review the actions of the executive. The principle of checks and balances is not practiced. There is no separation of powers. The executive dominates the judiciary and the legislature. The chief executive and ministry officials, it has been said, have made themselves untouchables.”

**References:**

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

**100:** When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

**75:**

**50:** The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

**25:**

**0:** The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

**Comments:**

It is felt that the chief executive has been abusing his authority to issue sub-decrees. While it is true that sub-decrees can and must be issued in order to implement enacted laws, not all the sub-decrees issued by the prime minister can be said to have served this purpose. In the first place, some sub-decrees have alone been used to govern matters that, given their import, must be and are commonly governed by law (e.g. procurement). If the purpose is really to implement the laws, what the government should have been doing is submitting for approval the draft of implementing rules and regulations together with the draft law to the National Assembly. The number of sub-legislations being issued by the government, mostly without public consultation and knowledge, is felt to be too many to be considered reasonable and compliant with the constitutionally enshrined principle that only the legislative branch has the power to make laws. Issuance of executive orders in Cambodia has become the norm, so much so that the executive is felt to be exercising legislative power.

**References:**

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Anonymous, Executive, September 9, 2008, 2:30 p.m., office.

**100:** The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

**75:**

**50:** The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

**25:**

**0:** The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

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## 28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

### References:

The Constitution with the following articles:

Article 31, which states that every Khmer citizen shall be equal before the law.

Article 39, which provides Khmer citizens the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs, committed during the course of their duties.

Article 126, which provides that each member of the Royal Government shall be liable for punishment for any crime or misdemeanorr that he/she has committed in the course of his/her duty.

The UNTAC Law, which invokes the principle of equality under the penal law, as particularly mentioned in Article 66 thereof; Articles 37, 38, 49 and 57, which distinctively cite embezzlement, corruption, forgery of public documents and infringement of individual rights as felony acts with which elected officials, public officials, civil servants or security forces, acting in their capacity as such, can be charged.

The New Criminal Procedure Code, in particular Article 3 thereof, which states that criminal actions apply to all persons or legal entities, regardless of race, nationality, color, sex, language, creed, religion, political tendency, national origin, social status, resources or other situations.

**YES:** A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

**NO:** A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

### References:

The Constitution, in particular, with the following articles:

Article 31 which states that every Khmer citizen shall be equal before the law

Article 39 which provides Khmer citizens the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs committed during the course of their duties

Article 126 which provides that each member of the Royal Government shall be liable for punishment for any crime or misdemeanor that he/she has committed in the course of his/her duty

The UNTAC Law which imbibes the principle of equality under the penal law, as particularly mentioned in Article 66 thereof; Articles 37, 38, 49 and 57 distinctively cited embezzlement, corruption, forgery of public document and infringement of individual rights as acts of felony with which elected officials, public officials, civil servants and security forces, acting in their capacity as such, can be charged

The New Criminal Procedure Code, in particular, Article 3 thereof which states that Criminal actions apply to all natural persons, physical person or legal entities, regardless of race, nationality, color, sex, language, creed, religion, political tendency, national origin, social status, resources or other situations

**YES:** A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

**NO:** A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

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## 29. Are there regulations governing conflicts of interest by the executive branch?

0

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | **NO**

### Comments:

Under the June 16, 2005, draft of the Anti-Corruption Law, in particular Article 18 thereof, state senior officials are required to declare their assets and liabilities according to the procedure stated therein and refusal or false declaration of assets and liabilities are punishable by imprisonment and fine.

### References:

By law, no such requirement exists. It is believed that this requirement of asset disclosure is one reason why the government is taking a long time in having the Anti-Corruption law passed.

Draft Law on Anti-Corruption, June 16, 2005 version.

Prak Chan Thul, "Petition on Corruption to be Sent to the Council," The Cambodia Daily, June 10, 2008, Vol. 39, Issue 79.

**YES:** A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

**NO:** A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | **NO**

### Comments:

Under the June 16, 2005, draft of the Anti-Corruption Law, in particular Article 18 thereof, state senior officials are required to declare their assets and liabilities according to the procedure stated therein and refusal or false declaration of assets and liabilities are punishable by imprisonment and fine.

**References:**

By law, no such requirement exists.

Draft Law on Anti-Corruption, June 16, 2005 version.

**YES:** A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

**NO:** A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | **NO**

**Comments:**

Under the UNTAC Law, in particular Article 58 (bribery) thereof, however, it is provided that any person who corrupts or attempts to corrupt any elected official, civil servant or military personnel by promising service or any benefit whatsoever in exchange for any one of these same benefits is guilty of bribery and shall be liable to a punishment of one to three years in prison. Benefits may be interpreted to include gifts and hospitality.

The June 16, 2005, draft of the Law on the Anti-Corruption defines benefits, which, when given to a public official so that that public official shall refrain from performing his duty, constitutes bribery. This, includes gifts which, in turn, refer to any property or service that is given to or for the benefit of a person that is not consideration for an agreement and not as gift in accordance with custom or tradition.

**References:**

By law, no such regulations exist.

UNTAC law

Draft Law on Anti-Corruption, June 16, 2005 version.

**YES:** A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

**NO:** A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | **NO**

**Comments:**

Under the June 16, 2005, draft of the Anti-corruption Law, procedures governing asset declaration shall be determined by the Supreme National Council for Anti-Corruption.

**References:**

By law, there are no such requirements.

Draft Law on Anti-Corruption, June 16, 2005, version.

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

**Comments:**

Members of the Royal Government, which include heads of government and ministers, are only prohibited from engaging in activities in trade or industry during their term, as provided under Article 20 of the Constitution.

However, the June 16, 2005, draft of the Anti-Corruption Law, at least requires for the imposition of post-employment restrictions. Article 16 of the said draft stipulates that the state shall establish policies and regulations seeking to prevent conflicts-of-interest by imposing restrictions on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure.

**References:**

In law, there are no such restrictions.

Constitution Draft Law on Anti-Corruption, June 16, 2005, version.

**YES:** A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

**NO:** A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | **0**

**Comments:**

In law and in practice there are no such regulations.

**References:**

Interview, Anonymous, Executive, August 31, 2008, 10:00 a.m., residence.

Interview, Anonymous, Executive, August 22, 2008, 4:00 p.m., office.

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

**100:** The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

In law and in practice, there are no such regulations.

**References:**

Interview, Anonymous, Executive, August 31, 2008, 10:00 a.m., residence.  
Interview, Anonymous, Executive, August 22, 2008, 4:00 p.m., office.  
Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.  
Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

**100:** The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

In law and in practice, there has been no such asset disclosure done.

**References:**

Interview, Anonymous, Executive, August 31, 2008, 10:00 a.m., residence.  
Interview, Anonymous, Executive, August 22, 2008, 4:00 p.m., office.  
Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.  
Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

**100:** Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50:** Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

**25:**

**0:** Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

**Comments:**

Under the June 16, 2005, draft of the Anti-Corruption Law, procedures affecting asset declaration shall be determined by the Supreme National Council for Anti-Corruption. Article 13 of the said draft law, just to note additionally, stipulates that the state shall promote and protect the freedom to seek information related to corruption.

**References:**

By law, there is no such provision.

**YES:** A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

**NO:** A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

In law and in practice, there is no such access. Asset disclosures by executive officials have not been done.

**References:**

Interview, Anonymous, Executive, August 31, 2008, 10:00 a.m., residence.

Interview, Anonymous, Executive, August 22, 2008, 4:00 p.m., office.

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some additional delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

In law and in practice, there is no such access. Asset disclosure by executive officials have not been done.

**References:**

Interview, Anonymous, Executive, August 31, 2008, 10:00 a.m., residence.

Interview, Anonymous, Executive, August 22, 2008, 4:00 p.m., office.

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## 26. Can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

### References:

The Constitution, in particular, Article 39 thereof, which provides Khmer citizens the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs, committed during the course of their duties; the settlement of these complaints shall be the purview of the courts.

**YES:** A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

**NO:** A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

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## 31. Official government functions are kept separate and distinct from the functions of the ruling political party.

0

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

### Comments:

Simply put, it has been said that the government has been captured by the ruling party. Any participation of the opposition and civil society has been superficial and intended to present a facade of democracy to the international community. The government bureaucracy has been a mere extension, a rubber stamp of the ruling party. Its resources have been used to advance party activities, as was seen during the recent parliamentary elections.

With the ruling party securing a clear majority in the National Assembly as a consequence of the electoral results, this capture of the government by the ruling party is predicted to tighten even more.

### References:

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, August 19, 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Mr. Tieng Sophorn, Advocacy Action Program Manager, Star Kampuchea, August 17, 2008, 8:45 a.m., Star Kampuchea's office.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, HRP Headquarters.

Interview, Anonymous, Executive, August 31, 2008, 10:00 a.m., residence.

Interview, Anonymous, Executive, August 22, 2008, 4:00 p.m., office.

**100:** Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

**75:**

**50:** The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

**25:**

**0:** The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

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## III-2. Legislative Accountability

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### 32. Can members of the legislature be held accountable for their actions?

0

32a. In law, the judiciary can review laws passed by the legislature.

YES | **NO**

**Comments:**

Just to note, the Constitutional Council is not a court. It is a constitutional body outside of the judiciary. Per the constitution, it shall have nine members, to be selected among the dignitaries with a higher-education degree in law, administration, diplomacy or economics and who have considerable work experience. Three members shall be appointed by the King, three by the Assembly, and the three others by the Supreme Council of the Magistracy.

**References:**

The Constitution, Articles 92, 136, 140 and 141 in particular, states that the Constitutional Council is the only organ that can review the laws adopted by the National Assembly and decide on their constitutionality or whether they are inconsistent with the principles of preserving national independence, sovereignty, territorial integrity and political unity. Internal rules of the National Assembly, Internal rules of the Senate and other organizational laws are required to be sent to this body for review prior to their promulgation. Other laws may also be submitted to the CC for review upon the request of the King, the Prime Minister, the National Assembly President, one tenth of the National Assembly members, the Senate President or one fourth of the members of Senate. Khmer citizens can also appeal against the constitutionality of a law.

The Law on the Organization and Functioning of the Constitutional Council, in particular Article 15 thereof, affirms the above constitutional provisions.

**YES:** A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

**NO:** A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

**Comments:**

The Constitutional Council, which has its own constitutional mandate, has indeed reviewed the organic laws as well as the internal regulations of the National Assembly (NA) and the senate and amendments thereto, before their promulgation, as stipulated under the Constitution and the Law on the Organization and Functioning of the Constitutional Council. Under the constitution and the aforementioned law, other laws already promulgated by the king may also be referred to the Constitutional Council for review at the initiative of the king, the prime minister, the senate and NA president, one tenth of the senate members, one tenth of the NA members or the courts. This, however, has rarely been done. To ensure that the laws conform to the spirit of the constitution, the government has been enjoined by the civil society to exercise more than its right to refer laws other than the organic laws and internal regulations adopted by the NA and the senate to the Constitutional Council. It has been said, however, that a more serious problem is the perceived lack of independence of the Constitutional Council.

**References:**

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Mr. Uch Kimy, Campaign Program Officer, The Cambodian Human Rights and Development Association (ADHOC), August 25, 2008, 8:45 a.m., ADHOC office.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, HRP Headquarters.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

**100:** When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

**75:**

**50:** The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

**25:**

**0:** The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

**Comments:**

Article 80 of the Constitution and the Law on the Members of the Parliament bestows the power to remove the immunity of the members of the parliament. As past events have shown, this power seemed to have been used in a discriminatory manner, targeting opposition members accused of defamation. Incidentally, it is also provided in the law that National Assembly members cannot be prosecuted, detained or arrested because of opinions expressed during the exercise of his or her duties.

In April 2008, the Phnom Penh court, through the Ministry of Justice, asked the National Assembly to suspend the immunity of opposition MP Sam Rainsy over a lawsuit filed by Foreign Affairs Minister Hor Namhong against said MP for alleged defamation and disinformation. Sam Rainsy claimed that the Minister was the chief of the Boeng Trabaek Prison during the Khmer Rouge Regime. Mr. Hor Namhong eventually dropped the lawsuit.

Note that in 2005, the parliamentary immunity of Sam Rainsy and two other National Assembly members were removed for allegedly defaming the National Assembly Chairman and the Prime Minister (Cheam Channy for organizing an illegal army and Sam Rainsy for defamation). The government was accused of plotting to kill its political rivals and Prince Ranariddh was accused of taking bribes to join forces with Hun Sen's Cambodian People's Party in forming the government. Chea Poch was accused of defamation. Sam Rainsy and Chea Poch eventually fled the country. Sam Rainsy was tried in absentia in December 2005. Cheam Channy was arrested in February and tried in August 2005 for creating an illegal armed force. His trial fell far short of international fair trial standards and took place in a military court, which has no jurisdiction over civilians. Channy was sentenced to seven years in prison. Amnesty International believes his charges have no basis.

Channy was released a year after by virtue of a pardon issued by King Norodom Sihamoni. The pardon also applied to Sam Rainsy. Chea Poch was also able to return to this seat.

**References:**

Prosecutors Asked for Suspension of Sam Rainsy's Immunity

June 18, 2008.

<http://cambodiamirror.wordpress.com/2008/06/18/wednesday-1862008-prosecutors-asked-for-suspension-of-sam-rainsy%E2%80%99s-immunity/>

Amnesty International USA

Press Release

February 6, 2006

Amnesty International Prisoner of Conscience Cheam Channy Released in Cambodia.

Organization Calls for Immediate End to Politically Motivated Trial

<http://www.amnestyusa.org/document.php?lang=e&id=ENGUSA20060206001>

Asia Human Rights Commission

Cambodia: The Situation of Human Rights in 2006.

<http://material.ahrchk.net/hrreport/2006/Cambodia2006.pdf>

BBC News

Sam Rainsy Appeals on Cambodia.

February 4, 2005

<http://news.bbc.co.uk/2/hi/asia-pacific/4235951.stm>

**References:**

The Constitution, with the following articles:

Article 31, which states that every Khmer citizen shall be equal before the law.

Article 39, which provides Khmer citizens the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs. committed during the course of their duties.

Article 80, which states that the accusation, arrest, or detention of an assembly member shall be made only with the permission of the National Assembly or by the Standing Committee of the National Assembly, except in case of flagrante delicto, and that the decision of the Standing Committee shall be submitted to the National Assembly for approval by a two-thirds majority vote of the assembly members.

The UNTAC Law, which invokes the principle of equality under the penal law, as particularly mentioned in Article 66 thereof; Articles 37, 38, 49 and 57, which cite embezzlement, corruption, forgery of public document and infringement of individual rights as felony acts with which elected officials, public officials, civil servants and security forces, acting in their capacity as such, can be charged.

The New Criminal Procedure Code, passed in August 2007, in particular Article 3 thereof, which states that criminal actions apply to all persons or legal entities, regardless of race, nationality, color, sex, language, creed, religion, political tendency, national origin, social status, resources or other situations.

The Law on the Members of the Parliament, specifically Articles 7 to 11 thereof, which also provide that the accusation, arrest, or detention of an assembly member shall be made only with the permission of the National Assembly, except in the case of flagrante delicto, and that the National Assembly can decide on the issue of parliamentary immunity by two-thirds vote of the assembly members.

**YES:** A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

**NO:** A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

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33. Are there regulations governing conflicts of interest by members of the national legislature?

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | **NO**

**Comments:**

Under the June 16, 2005, Draft of the Anti-Corruption Law, in particular Articles 18, 32 and 53 thereof, which states that senior officials, which include members of the National Assembly and the Senate, are required to declare their assets and liabilities according to the procedure stated therein and refusal or false declaration of assets and liabilities are punishable by imprisonment and imposition of fines.

**References:**

In law, no such requirement exists.

Draft Law on Anti-Corruption, June 16, 2005 version.

**YES:** A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

**NO:** A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

**Comments:**

The June 16, 2005, draft of the Anti-Corruption Law requires for the imposition of such post-employment restriction. Article 16 of the said draft stipulates that the state shall establish policies and regulations seeking to prevent conflicts-of-interest by imposing restrictions on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure. Public officials, as defined in the draft, include persons holding legislative office.

**References:**

In law, no such restrictions exist.

Draft Law on Anti-Corruption, June 16, 2005 version.

**YES:** A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | **NO**

**Comments:**

The June 16, 2005, draft of the Law on the Anti-Corruption defines benefits, which, when given to public officials encourages them to refrain from performing their duties, constitutes bribery, including gifts which, in turn, refers to any property or service that is given to or for the benefit of a person that is not consideration for an agreement and not a gift in accordance with custom or tradition.

**References:**

In law, no such regulations exist.

Draft Law on Anti-Corruption, June 16, 2005 version.

**YES:** A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

**NO:** A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

**References:**

In law, there are no such requirements.

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | **0**

**Comments:**

There have been no such regulations, even in informal practice.

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

There are no such regulations, even in informal practice.

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

There have been no such asset disclosures.

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50:** Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

### 34. Can citizens access the asset disclosure records of members of the national legislature?

0

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

#### References:

By law, there is no provision ensuring such access.

**YES:** A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

**NO:** A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

#### Comments:

There have been no such disclosures. It has been expressed, however, that the Sam Rainsy Party president and parliamentarian have voluntarily disclosed assets before.

#### References:

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

There have been no such disclosures. It has been said, however, that the Sam Rainsy Party president and parliamentarian have voluntarily disclosed assets before.

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

---

### 35. Can citizens access legislative processes and documents?

50

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

**References:**

The Constitution, with the following articles:

Article 31, which states that the Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the Covenants and Conventions (Article 19 of the Universal Declaration on Human Rights and Article 19 of the ICCPR assure the right of everyone to seek, receive and impart information and ideas through any media).

Article 35, which provides that Khmer citizens of either sex shall have the right to participate actively in the political, economic, social and cultural life of the nation.

Article 41, which provides Khmer citizens the freedom of expression, press, publication and assembly law.

Article 88, which provides that the National Assembly sessions shall be held in public, except at the request of the Chairman or at least one-tenth of the National Assembly members or the King or the Prime Minister.

The Press Law, Article 19, which guarantees the right of the press to access information in government-held records, with several exceptions.

The National Archives Law which certifies the right of persons to use public archives for research and consultations, with exceptions.

The Internal Regulations of the National Assembly for the Third Mandate, in particular Article or Principle 18 thereof, which provides that the records and documents of the National Assembly can be disclosed to the public with the permission of the National Assembly President.

The Internal Regulations of the Senate, in particular Article 20 thereof, which provides that the minutes and other documents of the Senate can be disclosed to the public with the written approval of the Senate President.

**YES:** A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

**NO:** A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Documents of the National Assembly and the Senate are extremely difficult to access. As mentioned before, even the parliamentary members themselves, specifically the opposition members, and ministry officials have difficulty accessing the documents that they need. Personal contact within the institution is needed if one wishes to get any result at all to a request for a document. It sometimes takes half a month or one month just to get initial feedback to one's request and such initial feedback basically just says that one has to wait more for his or her requested document or that the document is confidential or a state secret. The other alternative is to make unofficial payments to secure the needed document.

Even copies of the relatively new laws adopted by the National Assembly and promulgated by the king or draft laws under review and debate are very difficult to access. According to Article 93 of the Constitution, all laws promulgated by the king shall be published in the Official Journal and throughout the country, in accordance with the schedule for the effective date of the law, that is, ten days after signing in Phnom Penh, 20 days after signing throughout the country and after the promulgation date for urgent laws. This Official Journal, or Official Gazette, however, is not completely accessible to the ordinary citizen and its publication has been even stopped, allegedly due to lack of budget allocation. When one takes the initiative to search and request for a copy of the new law or a draft law, he or she normally encounters difficulty (even being told the request is annoyingly intrusive) unless he or she has good contacts or makes an unofficial payment.

Three key factors deterring free, non-discriminatory and affordable access to legislative records and government documents in general are the lack of specific legal and institutional infrastructure governing freedom of information in Cambodia, lack of financial resources, and lack of an organized system of file keeping.

Hearings of the National Assembly are closed to the general public and records or minutes of its meetings are not publicly available. Some groups or individuals may be given permission to watch the NA proceedings by securing an identification card with the General Secretariat. The process has been said to be complicated. Records of the legislative processes may be requested from the General Secretariat, but the process is difficult and unreasonably lengthy even with contact from within.

**References:**

Interview, Mr. Tieng Sophorn, Advocacy Action Program Manager, Star Kampuchea, August 17, 2008, 8:45 a.m., Star Kampuchea's office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, August 19, 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Ms. Thou Heng, Program Coordinator, Advocacy and Policy Institute (API), August 20, 2008, 3:00 p.m., API's office.

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Anonymous, Media, August 22, 2008, 8:00 a.m., Phnom Penh Center.

Interview, Anonymous, Media, August 22, 2008, 10:00 a.m., Institution s office.

Interview, Anonymous, Executive, August 31, 2008, 10:00 a.m., residence.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Access to records of legislative processes and documents is extremely difficult. It has been expressed that unofficial payments are at times necessary to facilitate one's request.

**References:**

Interview, Mr. Tieng Sophorn, Advocacy Action Program Manager, Star Kampuchea, August 17, 2008, 8:45 a.m., Star Kampuchea's office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, August 19, 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Ms. Thou Heng, Program Coordinator, Advocacy and Policy Institute (API), August 20, 2008, 3:00 p.m., API's office.

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Anonymous, Media, August 22, 2008, 8:00 a.m., Phnom Penh Center.

Interview, Anonymous, Media, August 22, 2008, 10:00 a.m., Institution s office.

Interview, Anonymous, Executive, August 31, 2008, 10:00 a.m., residence.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Yem Punharith, Secretary General, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Phann Sambo, Steering Committee Member, Human Rights Party (HRP), September 1, 2008, 3:00 p.m., HRP Headquarters in Phnom Penh.

Interview, Mr. Im Francois, Head, Election and Parliamentary Unit, Center for Social Development, September 11, 2008, 8:30 a.m., CSD office.

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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### 13 III-3. Judicial Accountability

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#### 36. Are judges appointed fairly?

17

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | **NO**

**Comments:**

There are currently two laws in the drafting process, key to judicial reform, that affect the status of judges in Cambodia: the Law on the Statute of Judges and the Law on the Amendment of the SCM.

Under the December 29, 2005, Draft of the Law on the Statute of Judges, the power of appointment, transfer, or suspension of judges still rests with the SCM, but it appears that the Ministry of Justice will play a bigger role compared with the status quo because requests from any judge or institution referring to appointment or transfer, for example, must be processed by the Ministry of Justice.

The Draft of the Law on the Statute of Judges, at least as of March 2008, has been with the Council of Ministers, waiting for council discussion meetings. The confidence that this law will be passed anytime soon is low. It is believed that impeding its passage are some issues between the SCM and the Ministry of Justice. Another problem includes the insufficient participation by the public in the drafting of the law. Some consultations with the NGO were initially made, but eventually faltered. In addition, there is little assurance that the comments of the NGO will be integrated into the law. For instance, one provision that the civil society sought and was present in the earlier draft was that all judges must be non-partisan. This line, however, was no longer in the draft when it reached the National Assembly.

The Draft Law on the Amendment of the SCM, again as of March 2008, is still with the Ministry of Justice. There is said to be no progress on this draft law. It is said that one reason why this is so is some issue between the Ministry of Justice and SCM.

Reference:

NGO Committee for the Monitoring of CDCF (Cambodia Development Cooperation Forum) Indicators, NGO Statement on the Monitoring of CDCF Indicators, March 4, 2008.  
[http://www.ngoforum.org.kh/Development/Docs/Statement%202007/NGO%20Statement%20to%202007%20CDCF\\_English.pdf](http://www.ngoforum.org.kh/Development/Docs/Statement%202007/NGO%20Statement%20to%202007%20CDCF_English.pdf)

**References:**

No, the procedure for selecting national-level judges is not transparent. It is not open to the public. At times, it is said to not be according to the law.

According to the Constitution, in particular Article 34 thereof, the Supreme Council of Magistracy (SCM) is the body to make proposals to the king on the appointment of judges and prosecutors for all courts.

The Law on the Organization and Functioning of the SCM, specifically Article 11, affirms such power of the SCM. First and foremost, however, the decision-making process of the SCM is not open to the public at any stage. The workings of the SCM in general, not only with reference to the appointment of judges, are closed. Under the current SCM law, the competence and functioning of the SCM, not only with regard to appointments, lack further elaboration. Second, there have been appointments that have not been according to the law. As raised by the United Nations Special Representative of the Secretary General for Human Rights in Cambodia and the Special Report on the Independence of Judges and Lawyers, the Royal Decree of August 9, 2007, replacing the president of the Court of Appeals with a new appointee, appears not to have been made on the basis of the decision of the SCM. The decree states that the action was requested by the Chairman of the SCM following proposals from the Council of Legal and Judicial Reform and the Ministry of Justice. In other words, the replacement and the appointment of the new Court of Appeals president was at the request of the executive. Prior to the issuance of the royal decree, no meeting of the council was known to have been convened.

Even some appointments to the SCM themselves are neither transparent nor said to have been according to law. Per the Law on the Organization and Functioning of the SCM, its members shall include three judges that are elected by the judges of Cambodia. It has been noted by the United Nations Special Representative of the Secretary General for Human Rights in Cambodia and the Special Report on the Independence of Judges and Lawyers that no elections have been held for these three elected positions.

The Extraordinary Chambers in the Courts of Cambodia (ECCC) also follow the existing Cambodian procedures for the appointment of its judges, as stated in Article 10 of the Law on the Establishment of the ECCC. As will be explained later, the appointments of Cambodian judges to the ECCC have likewise not been without controversy.

Note that the ECCC was established in the existing Cambodian court structure to bring to trial senior leaders of the Democratic Kampuchea and those who were most responsible for serious violations of Cambodian laws related to international humanitarian laws and customs (and international conventions recognized by Cambodia) that were committed from April 17, 1975, to January 6, 1979.

References:

The Law on the Organization and Functioning of the Supreme Council of Magistracy.

The United Nations Office of the High Commissioner for Human Rights Joint Public Statement ( The United Nations Special Representative of the Secretary General for Human Rights in Cambodia and the Special Report on the Independence of Judges and Lawyers Express Concern Over Judicial Independence in Cambodia in the Light of Recent Judicial Appointments), August 23, 2007. [http://cambodia.ohchr.org/webdocuments/statements/2007/Joint%20Statement%20SRSG%20SRIJL%20SCM\\_23-Aug-2007\\_eng.pdf](http://cambodia.ohchr.org/webdocuments/statements/2007/Joint%20Statement%20SRSG%20SRIJL%20SCM_23-Aug-2007_eng.pdf).

The Center for Social Development, Annual Report The Court Watch Project" (October 2006 to September 2007), March 2, 2008. <http://www.csdcambodia.org/pdf/2008/Annual%20Report%202007.pdf>.

**YES:** A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

**NO:** A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

**Comments:**

Yes, in practice, it has been said that the selection of national-level judges is based on professional criteria, but the criteria are unclear under the law and in practice. It has been said that political loyalty is the overriding consideration for the selection of national-level judges.

Note that the selection criteria for choosing Cambodian judges for the ECCC were also not clear.

Under the December 29, 2005, Draft of the Law on the Statute of Judges, there are clearer mechanisms and criteria for selection of judges.

While on the subject of professionalism, note, too, that a code of ethics for judges is currently in place, but this code does not provide any penalties for non-compliance.

**References:**

Code of Ethics for Judges, February 5, 2007.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous executive, September 9, 2008, 2:45 p.m., office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

**100:** National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

**75:**

**50:** Most national-level judges selected meet these qualifications, with some exceptions.

**25:**

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

**References:**

By law, there is no such confirmation process provided.

**YES:** A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

**NO:** A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

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### 37. Can members of the judiciary be held accountable for their actions?

50

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

**References:**

The UNTAC Law, in particular Article 26 thereof, which provides that all criminal judgments must indicate the evidence on which the judge relies and the explicit grounds of conviction.

The New Law on Criminal Procedure, adopted by the National Assembly in June 2007, which provides that judgments shall consist of the reasoning supporting the judge's decision.

The Code of Civil Procedure, in particular Article 189 thereof, which provides that a written judgment shall include the grounds for the decision.

Internal Rules of the Extraordinary Chambers in the Courts of Cambodia, in particular Rule 101 thereof, which states that judgments must set out the legal reasons supporting the chamber's decision.

The Law on the Organization of the Courts, in particular Article 9 thereof, which states that the procedures of the military courts shall be the same as that of the provincial or the municipal courts.

**YES:** A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

**NO:** A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

**Comments:**

Yes, they give reasons for their judgments, but in many cases such reasons are stated in general (for example, according to relevant laws or to evidence) and are not sufficiently detailed and, hence, cannot be satisfactorily considered well-founded.

**References:**

Interview, Anonymous executive, September 9, 2008, 2:45 p.m., office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

The Center for Social Development, Annual Report, The Court Watch Project (October 2006 to September 2007), March 2, 2008. <http://www.csdcambodia.org/pdf/2008/Annual%20Report%202007.pdf>.

**100:** Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

**75:**

**50:** Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

**25:**

**0:** Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

**References:**

The Constitution, in particular Articles 33 and 134 thereof, which state that the Supreme Council of the Magistracy (SCM) shall decide on disciplinary actions against any delinquent judges or prosecutors.

The Law on the Organization and Functioning of the SCM, in particular Articles 11 to 16 thereof, which state that the SCM, in the form of a Disciplinary Council, shall decide on appointments, transfers, disruptions from (actual) function, suspensions, placements outside the cadre or removal of titles for all judges and prosecutors. The decision of the Disciplinary Council shall then be submitted to the SCM for approval.

**YES:** A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

**NO:** A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

**Comments:**

Note further that in May 2005, the Secretariat within the SCM has been dissolved and shifted to the Ministry of Justice. This is believed to have effectively put the SCM under the control of the Ministry of Justice.

Note that there is also a judicial-control mechanism within the Ministry of Justice that causes confusion for the judicial-disciplinary mechanism in Cambodia. Under the Sub-decree on the Organization and Functioning of the Ministry of Justice, the office of Judicial General Inspector has been created.

**References:**

No, the SCM is not protected against political interference. As provided in Article 2 of the Law on the Establishment of the SCM, the SCM membership includes the Minister of Justice. The budget of the SCM is also integrated into the budget of the Ministry of Justice, as described in Article 19 of the Law on the SCM.

Transparency International, Global Corruption Report.

[http://www.transparency.org/publications/gcr/download\\_gcr/download\\_gcr\\_2007](http://www.transparency.org/publications/gcr/download_gcr/download_gcr_2007).

Special Representative of the Secretary-General for Human Rights in Cambodia, Mr. Yash Ghai, Statement to the Human Rights Council, September 26, 2006. [http://cambodia.ohchr.org/download.aspx?ep\\_id=309](http://cambodia.ohchr.org/download.aspx?ep_id=309).

Center for Social Development, Annual Report, Court Watch Project (October 2006 to September 2007), March 2, 2008.

<http://www.csdcambodia.org/pdf/2008/Annual%20Report%202007.pdf>.

**YES:** A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

**NO:** A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

The circumstances underlying the replacement of the president of the Court Appeals in August 2007 shed doubt on the effectiveness and independence of the SCM as the judicial disciplinary agency. First of all, it appears that no meeting has been convened prior to the issuance of a royal decree, which makes it doubtful whether an investigation by the SCM has been conducted. And again, the replacement appears to have been effectively made at the request of the executive.

The dismissal of the CA president, then the only female serving as a high-ranking judge, was said to be due to allegations of corruption prompting the judge to release sex trafficking offenders who were convicted by a lower court. Without discussing the merit of the allegations made, the decision and investigation should have been for the SCM to make through its capacity as a disciplinary council. The Constitution clearly states that the judicial power is an independent power and that the SCM is the body to take disciplinary actions against any delinquent judges.

The existence of another entity with judicial control within the Ministry of Justice, the Judicial Inspectorate, has also led to bypassing the authority of the SCM. The investigation of the case and eventual suspension of the chief prosecutor of the Kampong Cham court was carried out by the Ministry of Justice, not the SCM.

**References:**

Interview, Anonymous, Judiciary, 29 August 2008, 5:30 p.m., Restaurant

Interview, Anonymous, Judiciary, 1 September 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, 1 September 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, 1 September 2008, 11:00 .a.m.

Interview, Anonymous, Executive, 9 September 2008, 2:45 p.m., Office

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

The Center for Social Development, Annual Report, The Court Watch Project (October 2006 to September 2007), March 2, 2008. <http://www.csdcambodia.org/pdf/2008/Annual%20Report%202007.pdf>.

The United Nations Office of the High Commissioner for Human Rights Joint Public Statement ( The United Nations Special Representative of the Secretary General for Human Rights in Cambodia and the Special Report on the Independence of Judges and Lawyers Express Concern Over Judicial Independence in Cambodia in the Light of Recent Judicial Appointments), August 23, 2007. [http://cambodia.ohchr.org/webdocuments/statements/2007/Joint%20Statement%20SRSG%20SRIJL%20SCM\\_23-Aug-2007\\_eng.pdf](http://cambodia.ohchr.org/webdocuments/statements/2007/Joint%20Statement%20SRSG%20SRIJL%20SCM_23-Aug-2007_eng.pdf).

International Herald Tribune, The Associated Press, Cambodia Genocide Tribunal Hit by Fears of Delay, August 13, 2007. <http://www.iht.com/articles/ap/2007/08/13/asia/AS-GEN-Cambodia-Khmer-Rouge-Trial.php>.

**100:** The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

**75:**

**50:** The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

Again, the dismissal of the Court of Appeals president and the investigation of the alleged corruption appear to have been done at the initiative of the executive, not the SCM.

**References:**

Interview, Anonymous, Judiciary, 29 August 2008, 5:30 p.m., Restaurant

Interview, Anonymous, Judiciary, 1 September 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, 1 September 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, 1 September 2008, 11:00 .a.m.

Interview, Anonymous, Executive, 9 September 2008, 2:45 p.m., Office

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

The Center for Social Development, Annual Report, The Court Watch Project (October 2006 to September 2007), March 2, 2008. <http://www.csdcambodia.org/pdf/2008/Annual%20Report%202007.pdf>.

The United Nations Office of the High Commissioner for Human Rights Joint Public Statement ( The United Nations Special Representative of the Secretary General for Human Rights in Cambodia and the Special Report on the Independence of Judges and Lawyers Express Concern Over Judicial Independence in Cambodia in the Light of Recent Judicial Appointments), August 23, 2007. [http://cambodia.ohchr.org/webdocuments/statements/2007/Joint%20Statement%20SRSG%20SRJL%20SCM\\_23-Aug-2007\\_eng.pdf](http://cambodia.ohchr.org/webdocuments/statements/2007/Joint%20Statement%20SRSG%20SRJL%20SCM_23-Aug-2007_eng.pdf).

The Associated Press, "Cambodia Genocide Tribunal Hit by Fears of Delay," August 13, 2007. <http://www.ihf.com/articles/ap/2007/08/13/asia/AS-GEN-Cambodia-Khmer-Rouge-Trial.php>.

**100:** When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

**75:**

**50:** The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

0

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

**Comments:**

Note that under the June 16, 2005, Draft of the Anti-Corruption Law, in particular Articles 18, 32 and 53 thereof, state officials, which include judges, are required to declare their assets and liabilities according to the procedure stated therein and refusal or false declaration of assets and liabilities are punishable by imprisonment and fines.

While on the subject of conflicts of interest, it is noteworthy to raise criticism against how members of the Supreme Council of the Magistracy continue to work in their capacities as judges and prosecutors for national courts, or as ministers of justice. In effect, the regulator is also the regulated, which is a clear contravention of the conflict-of-interest principle. Issues on conflicts of interest also implicate the Cambodian judges of the Extraordinary Chambers in the Courts of Cambodia (ECCC). All of them simultaneously serve as judges for other national courts, leading to doubts concerning the independence of the ECCC and the pace of the dispensation of justice.

**References:**

By law, there is no such requirement.

UN News Center, UN Concerned at Appointment of Judge on Khmer Rouge Tribunal to National Court.

[www.un.org/apps/news/story.asp%3FNewsID%3D23519%26Cr%3Dcambodia%26Cr1%3D+ECCC+judge&hl=en&ct=clnk&cd=1](http://www.un.org/apps/news/story.asp%3FNewsID%3D23519%26Cr%3Dcambodia%26Cr1%3D+ECCC+judge&hl=en&ct=clnk&cd=1)

Trial, Criminal Court of Cambodia (Establishment of Extraordinary Chambers Responsible for the Prosecution of Crimes Committed by the Khmer Rouge in Cambodia), Structure and Organization.

<http://www.trial-ch.org/en/international/criminal-court-for-cambodia/structure-and-organisation.html>

International Herald Tribune, Associated Press, Cambodia Genocide Tribunal Hit by Fears of Delay, August 13, 2007.

<http://www.ihf.com/articles/ap/2007/08/13/asia/AS-GEN-Cambodia-Khmer-Rouge-Trial.php>

**YES:** A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

**NO:** A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

**Comments:**

Again, under the UNTAC Law, in particular Article 58 (Bribery) thereof, it is provided that any person who corrupts or attempts to corrupt any elected official, civil servant or military personnel by promising service or any benefit whatsoever in exchange for any one of these same benefits is guilty of bribery and shall be liable to a punishment of one to three years in prison. Benefits may be interpreted to include gifts and hospitality.

The June 16, 2005, draft of the Law on Anti-Corruption defines bribery as any compensation given to a public official so that the public official performs or refrains from performing his or her duty. The definition includes gifts, which, in turn, refers to any property or service given to or for the benefit of a person that is not consideration for an agreement and is not a gift in accordance with custom or tradition.

**References:**

By law, there are no such regulations.

**YES:** A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

**NO:** A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | **NO**

**References:**

By law, there are no such requirements.

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

**References:**

By law, there are no such restrictions.

**YES:** A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | **0**

**References:**

As mentioned, there are no such regulations by law or according to informal practice.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

Interview, Anonymous executive, September 9. 2008, 2:45 p.m., office

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

**100:** The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

**References:**

As mentioned, there are no such regulations by law or according to informal practice.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

Interview, Anonymous executive, September 9. 2008, 2:45 p.m., office

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

**100:** The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

**References:**

As mentioned, there are no such regulations by law or according to informal practice.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

Interview, Anonymous executive, September 9. 2008, 2:45 p.m., office

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

**100:** National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

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### 39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | **NO**

**References:**

By law, there are no provisions ensuring such access.

**YES:** A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

**NO:** A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

**References:**

As mentioned, there are no such regulations by law or according to informal practice.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

Interview, Anonymous executive, September 9. 2008, 2:45 p.m., office

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

As mentioned, there are no such regulations by law or according to informal practice.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

Interview, Anonymous executive, September 9. 2008, 2:45 p.m., office

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## III-4. Budget Processes

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40. Can the legislature provide input to the national budget?

58

40a. In law, the legislature can amend the budget.

YES | NO

**Comments:**

Although in principle, the legislature can amend the budget, in practice, it seems to be the case that whatever budget the executive submits to the National Assembly can usually be expected to be approved without major, if no changes at all. This is hard to confirm 100 percent because the legislative process is closed to the public and civil-society initiatives targeting budget analyses are few and new. A case in point, however, is the 2008 Budget Law which was analyzed by a local NGO, the NGO Forum on Cambodia. According to such analysis, although the 2008 Budget Law was significantly debated during its review and civil-society concerns (including massive increases in recurrent expenditures, which is fully at the discretion of the executive) have been raised via some National Assembly members, no changes to the budget proposed by the executive have been made.

Note that in the Legislature, the Commission on Economy, Finance, Banking and Auditing, or Commission No. Two, is the group responsible for studying the draft budget law in detail, calling in people from the executive office for questioning and clarification,

and determining if the draft law is suitable for final voting. This Commission has nine members, with only two members from the opposition of the past mandate. It has been thus expressed that with the majority of its members from the ruling party, this commission ends up more defending the budget prepared by the executive than studying it objectively. The executive office has been said to dominate the budget cycle in its entirety.

**References:**

The Constitution, in particular with the following articles:

Articles 90, 91 and 113 thereof, which, as a whole, provide that the National Assembly shall have the right to propose any amendments to the laws, including the budget law, so long as they do not seek to reduce public income or increase the burden on the people and that the adoption of such laws, as amended, can be decided by a simple majority of the assembly members.

Article 113, which states that the senate shall examine and give out opinions and can request to rectify a draft law, in which case the National Assembly shall consider the draft law for the second time.

The Internal Regulations of the National Assembly (NA), as amended in 2006, in particular Principle or Article 26 thereof, which states that all MPs can propose an amendment to a draft law.

The Internal Regulations of the senate, in particular Article 28 thereof, which states that a Senate member can request to change draft laws.

Interview, Ngo Sothath, Development Issues Program Coordinator, NGO Forum on Cambodia, August 25, 2008, 3:00 p.m., NGO Forum Office.

Interview, Chea Kimsong, Budget Monitoring Officer, NGO Forum on Cambodia, August 25, 2008, 3:00 p.m., NGO Forum Office.

NGO Forum on Cambodia, Guide to the National Budget, November 2007.

<http://www.ngoforum.org.kh/Development/Docs/Budget/Guide%20to%20the%20National%20Budget%20-%20English.pdf>.

NGO Forum on Cambodia, Analysis of the Implementation of the 2007 Budget and the 2008 Budget Law, January 2008.

<http://www.ngoforum.org.kh/Development/Docs/Budget/Budget%20Law%202008%20-%20English.pdf>.

**YES:** A YES score is earned if the legislature has the power to add or remove items to the national government budget.

**NO:** A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

**Comments:**

Technically, if an expenditure is not included in an adopted budget law, the government has to go back to the National Assembly for approval. It is hard to confirm whether such a necessity occurred last year and this year or even if there could have been such necessity in the first place for several reasons:

First of all, the budget process in Cambodia, in all stages, is closed to the public. Analysis of the budget can be made based only on what documents are available, but these documents are not complete and the legislative process itself is not transparent.

Second, the comprehensiveness of the budget adopted by the government has been questionable. For example, adopted budgets have lacked itemization. Also, there have been major public expenditures that have been off-budget, mainly referring to investment expenditures directly funded by external financing. The share of direct external financing in the total capital budget has been found to be very high. In the Budget Law, it represented 75.2 percent of the total capital expenditure in 2004 and 72.9 percent in 2006.

Third, budget implementation has been problematic. There have been some public expenditures that cannot be ascertained for which fiscal year they have been incurred. All of these budget problems adversely impact on the legislative process through which the executive can be held accountable and responsible.

Note, however, that problems relating to budget credibility have been and are being addressed by the components of the Public Financial Management Reform Program (PFMRP), launched by the government in 2004 with the support of several donors and a cluster of projects. In its Phase One, PFMRP has sought to enhance budget comprehensiveness and implementation and has produced good results including the adoption of a Budget Strategic Plan, consolidation of all government accounts, complete elimination of arrears and the functioning of cash-management units. Several concerns lag, however, and are targeted to be achieved in Phase Two of the PFMRP. Challenges include: improving financial reporting and transparency; strengthening audits and inspections to ensure that budget managers are able to commit expenditures in line with budgets and cash flow forecasts; capacity building; and instituting a public forum for discussion about the budget and public information about budget details.

Two important laws that have been passed in connection with the PFMRP are the new Law on the Public Financial System (replacing the 1993 Law) and the Law on Administration of Capital, Province, Municipality, District and Khan. These laws essentially decentralize financial control, including budget management. What seems to be two of the biggest hurdles to this decentralizing are: the lack of existing technical capacity at the local levels to perform fiscal duties; the lack of existing technical capacity at the national level to monitor overall fiscal management; and, as the government cautioned, the pace of change in the

attitudes and perceptions of people at the different levels of government as the new system inevitably comes with realignments of responsibilities and benefits.

**References:**

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Ngo Sothath, Development Issues Program Coordinator, NGO Forum on Cambodia, August 25, 2008, 3:00 p.m., NGO Forum Office.

Interview, Chea Kimsong, Budget Monitoring Officer, NGO Forum on Cambodia, August 25, 2008, 3:00 p.m., NGO Forum Office.

Royal Government of Cambodia, Public Financial Management Reform Program Stage Two ( Building on Improved Budget Credibility Toward Achieving Better Financial Accountability), Revised Draft, May 20, 2008.

NGO Forum on Cambodia, Guide to the National Budget, November 2007.

<http://www.ngoforum.org.kh/Development/Docs/Budget/Guide%20to%20the%20National%20Budget%20-%20English.pdf>.

NGO Forum on Cambodia, Analysis of the Implementation of the 2007 Budget and the 2008 Budget Law, January 2008.

<http://www.ngoforum.org.kh/Development/Docs/Budget/Budget%20Law%202008%20-%20English.pdf>.

H.E. Keat Chhon, Senior Minister at the Ministry of Economy and Finance and Chairman of the Committee on Economic and Financial Policy, remarks at the Third Annual Review Meeting of the Public Financial Management Reform Program, Building on Improved Budget Credibility Toward Achieving Better Financial Accountability. (Unofficial English translation), Government Palace, May 28, 2008.

<http://www.mef.gov.kh/minister/speeches/2008/06-06-2008/20080506.doc>.

**100:** All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

**75:**

**50:** Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

**25:**

**0:** The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

**Comments:**

No, the legislature currently does not have sufficient capacity to monitor the budget process and provide input or changes. Their technical capacity is low and there is also the problem of lack of finances and skilled human resources.

The PFMRP recognizes that capacity development has to catch up with the other reform activities under the program. Unfortunately, the capacity-building plans of PFMRP only target the Ministry of Economy and Finance (MoEF) and the line Ministries. These plans include technical skill development and human resource policy development.

**References:**

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Ngo Sothath, Development Issues Program Coordinator, NGO Forum on Cambodia, August 25, 2008, 3:00 p.m., NGO Forum Office.

Interview, Chea Kimsong, Budget Monitoring Officer, NGO Forum on Cambodia, August 25, 2008, 3:00 p.m., NGO Forum Office.

Royal Government of Cambodia, Public Financial Management Reform Program Stage Two ( Building on Improved Budget Credibility Toward Achieving Better Financial Accountability), Revised Draft, May 20, 2008.

**100:** Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

**75:**

**50:** Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

**25:**

**0:** Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

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#### 41. Can citizens access the national budgetary process?

25

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

**Comments:**

No. There is no citizen participation during the whole budget cycle. Budget hearings are closed. There is no substantive public forum for discussion and debate. The entire process from preparation to implementation is closed, even to NGOs. Records and minutes of meetings are not publicly accessible. NGOs only get to raise their concerns through using their connections with National Assembly members and holding workshops.

The above-mentioned problem is, of course, part of the broader problem of lack of freedom of information and public participation in the policy-making process of the government.

**References:**

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Ngo Sothath, Development Issues Program Coordinator, NGO Forum on Cambodia, August 25, 2008, 3:00 p.m., NGO Forum Office.

Interview, Chea Kimsong, Budget Monitoring Officer, NGO Forum on Cambodia, August 25, 2008, 3:00 p.m., NGO Forum Office.

Interview, Ms. Mu Sochua, Deputy Secretary General (Sam Rainsy Party) and Former National Assembly (FUNCINPEC), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

NGO Forum on Cambodia, Analysis of the Implementation of the 2007 Budget and the 2008 Budget Law, January 2008.  
<http://www.ngoforum.org.kh/Development/Docs/Budget/Budget%20Law%202008%20-%20English.pdf>.

Royal Government of Cambodia, Public Financial Management Reform Program Stage Two ( Building on Improved Budget Credibility Toward Achieving Better Financial Accountability), Revised Draft, May 20, 2008.

**100:** Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

**75:**

**50:** There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

**25:**

**0:** Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

**Comments:**

No, there is no such citizen participation. Budget hearings are closed. NGOs have to raise their concerns, specifically with reference to the 2008 budget law, through their connections in the National Assembly but, as mentioned, such were not considered in the end.

**References:**

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Ngo Sothath, Development Issues Program Coordinator, NGO Forum on Cambodia, August 25, 2008, 3:00 p.m., NGO Forum Office.

Interview, Chea Kimsong, Budget Monitoring Officer, NGO Forum on Cambodia, August 25, 2008, 3:00 p.m., NGO Forum Office.

Interview, Ms. Mu Sochua, Deputy Secretary General (Sam Rainsy Party) and Former National Assembly (FUNCINPEC), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Royal Government of Cambodia, Public Financial Management Reform Program Stage Two ( Building on Improved Budget Credibility Toward Achieving Better Financial Accountability), Revised Draft, May 20, 2008.

NGO Forum on Cambodia, Analysis of the Implementation of the 2007 Budget and the 2008 Budget Law, January 2008.

<http://www.ngoforum.org.kh/Development/Docs/Budget/Budget%20Law%202008%20-%20English.pdf>.

**100:** Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

**75:**

**50:** Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

**25:**

**0:** Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

**Comments:**

No. The only budget documents that are known to be publicly available are associated with the National Budget Law, after promulgation by the King, but these documents, as mentioned, lack itemization. The Budget Settlement Law also has associated documents, but they lack explanations as to the enacted level and actual outcomes of the expenditures. Furthermore, the latest copy that is known to be publicly available is the one for 2004. The Monthly Bulletin of Statistics also contains information, but does not provide breakdowns by ministries.

There are other budget-related documents that are produced by the government, but are not said to be publicly available, including the First Budget Circular, monthly figures on budget implementation, the mid-year reviews and national audit reports.

As a result of the PFMRP, a mid-year review was conducted in July 2007, but this document seems to be not accessible to the public. A document entitled Budget in Brief, 2007 has also been said to be published.

Again, the above-mentioned problem is reflective of the overall problem of lack of freedom of information and public participation in the policy-making process for the government in Cambodia.

**References:**

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Ngo Sothath, Development Issues Program Coordinator, NGO Forum on Cambodia, August 25, 2008, 3:00 p.m., NGO Forum Office.

Interview, Chea Kimsong, Budget Monitoring Officer, NGO Forum on Cambodia, August 25, 2008, 3:00 p.m., NGO Forum Office.

Interview, Ms. Mu Sochua, Deputy Secretary General (Sam Rainsy Party) and Former National Assembly (FUNCINPEC), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Royal Government of Cambodia, Public Financial Management Reform Program Stage Two ( Building on Improved Budget Credibility Toward Achieving Better Financial Accountability), Revised Draft, May 20, 2008.

The NGO Forum on Cambodia, Guide to the National Budget, November 2007.  
<http://www.ngoforum.org.kh/Development/Docs/Budget/Guide%20to%20the%20National%20Budget%20-%20English.pdf>.

NGO Forum on Cambodia, Analysis of the Implementation of the 2007 Budget and the 2008 Budget Law, January 2008.  
<http://www.ngoforum.org.kh/Development/Docs/Budget/Budget%20Law%202008%20-%20English.pdf>.

**100:** Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

**75:**

**50:** Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

**25:**

**0:** Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

### 43. Is the legislative committee overseeing the expenditure of public funds effective?

25

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

**Comments:**

No. It has been expressed that the executive office does not submit regular reports to Commission No. Two of the National Assembly or the relevant senate committee. It is bound in secrecy, so to speak. When opposition members request documents that they need to facilitate their analyses and decision-making, officials from the executive office respond that the document is confidential. It has also been said that since Commission No. Two is dominated by CPP members, enforcement of reporting obligations of the executive office is low.

**References:**

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Ngo Sothath, Development Issues Program Coordinator, NGO Forum on Cambodia, August 25, 2008, 3:00 p.m., NGO Forum Office.

Interview, Chea Kimsong, Budget Monitoring Officer, NGO Forum on Cambodia, August 25, 2008, 3:00 p.m., NGO Forum Office.

Interview, Ms. Mu Sochua, Deputy Secretary General (Sam Rainsy Party) and Former National Assembly (FUNCINPEC), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

**100:** Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

**75:**

**50:** Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

**25:**

**0:** There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

**Comments:**

No, the relevant committees are clearly partisan. As mentioned, only two out of the nine members of the Commission No. Two from the past mandate came from the opposition. Even if one of the opposition MPs served as the deputy chairman for said commission, the CPP members still dominate the body. The dominance of the CPP MPs is also true for the relevant committee under the senate.

With the CPP members winning 90 seats in the National Assembly, it is feared that the role of opposition MPs will be reduced even further, becoming merely a show of democracy for the benefit of the international community.

**References:**

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Ngo Sothath, Development Issues Program Coordinator, NGO Forum on Cambodia, August 25, 2008, 3:00 p.m., NGO Forum Office.

Interview, Chea Kimsong, Budget Monitoring Officer, NGO Forum on Cambodia, August 25, 2008, 3:00 p.m., NGO Forum Office.

Interview, Ms. Mu Sochua, Deputy Secretary General (Sam Rainsy Party) and Former National Assembly (FUNCINPEC), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

**100:** The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

**75:**

**50:** The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

**25:**

**0:** The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

**Comments:**

No. The committee has the power in principle, but, in reality, it does not have teeth or independence.

**References:**

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Ngo Sothath, Development Issues Program Coordinator, NGO Forum on Cambodia, August 25, 2008, 3:00 p.m., NGO Forum Office.

Interview, Chea Kimsong, Budget Monitoring Officer, NGO Forum on Cambodia, August 25, 2008, 3:00 p.m., NGO Forum Office.

Interview, Ms. Mu Sochua, Deputy Secretary General (Sam Rainsy Party) and Former National Assembly (FUNCINPEC), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

**100:** When irregularities are discovered, the committee is aggressive in investigating the government.

**75:**

**50:** The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

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42. Is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

**References:**

The Internal Regulations of the National Assembly of the Kingdom of Cambodia, specifically Principle or Article 6 thereof, which identifies the Commission on Economy, Finance, Banking and Auditing (or Commission No. Two, as it is commonly called) as one of the commissions of the National Assembly.

The Internal Regulations of the Senate of the Kingdom of Cambodia, specifically Article 6 thereof, which identifies the Committee on Finance, Banking and Audit as one of the committees of the senate.

**YES:** A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

**NO:** A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

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Category IV. Administration and Civil Service

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IV-1. <sup>26</sup> Civil Service Regulations

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44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

**References:**

The Law on the Common Statute of Civil Servants, in particular the following articles:

Article 37, which provides that civil servants shall be neutral when exercising their functions and shall forbid themselves from using their positions and the state facilities to work for or against a political candidate or a political party.

Article 38, which stipulates that each civil servant shall consistently demonstrate a professional aptitude in the exercise of his/her duties.

Article 35, which strictly forbids civil servants from using the prerogatives and authority of their position for personal profits or to threaten or violate the rights of citizens or undertake an activity that undermines the honor and integrity of their position.

Article 33, which states that each civil servant shall respect the law.

**YES:** A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

**NO:** A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

**References:**

Law on the Common Statute of Civil Servants, in particular the following articles:

Article 13, which states that, in principle, the recruitment of civil servants shall be undertaken through competitive examinations, except for contrary arrangements enacted by the Royal Government.

Article 16, which provides that permanent employment with the civil service shall be allowed only at the end of a probationary period and that such obligatory probationary period may be waived by incumbent civil servants being promoted within the same group of bodies, through competitive examination or test.

Article 20, which lays down a formal mechanism for granting promotions, including the preparation of the promotions list by a ranking committee, criteria for inclusion on the promotions lists (tenure of service and professional evaluation by the supervisor) and automatic promotions for those recognized for their exceptional qualities of his or her work without taking seniority into account.

Article 35, which strictly forbids civil servants from using the prerogatives and authority of their position for personal profits or to threaten or violate the rights of citizens or undertake an activity that undermines the honor and integrity of their position.

Articles 39 to 48, which essentially provide for the Disciplinary Council, a body that shall give advice and propose sanctions to the Minister in relation to transgressions and professional breaches warranting second-degree sanctions. Proceedings involving second-degree sanctions shall also be preceded by a preliminary inquiry.

**YES:** A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

**NO:** A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

**References:**

The Law on the Common Statute of Civil Servants, specifically the following articles:

Article 58, which states that any civil servant shall be entitled to call upon a court to handle litigation related to civil service after all administrative remedies have been exhausted to no avail.

Article 59, which provides for the creation of a committee that shall be the administrative organ to deal with litigation related to civil service, to be presided over by the Secretary of State for the civil service.

**YES:** A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

**NO:** A NO score is earned if no such mechanism exists.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

**References:**

The Law on the Common Statute of Civil Servants essentially states that a person who has been condemned for a crime or attempted offense against good morals, good conduct, honor or integrity cannot enter the civil service. This is, in effect, a lifetime ban.

The UNTAC Law, specifically Article 38 thereof, which states that a civil servant convicted of corruption, as defined therein, may be prohibited by the court from holding any position in public administration, but only for two years.

**YES:** A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

**NO:** A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

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45. Is the law governing the administration and civil service effective?

19

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

Civil servants are not politically independent. They have clear political loyalties. Most recruitment has been determined more by political affiliation and the influences of nepotism, cronyism and patronage rather than some professional criteria. In the exercise of their responsibilities, they respect the party line and refrain from actions and activities that can adversely harm the very interests that made it possible for them to have their positions. During the elections, they have openly campaigned for and supported their political patrons.

**References:**

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Ms. Mu Sochua, Deputy Secretary General (Sam Rainsy Party) and Former National Assembly (FUNCINPEC), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

**100:** Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

**75:**

**50:** Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

**25:**

**0:** Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, political affiliation, nepotism, cronyism, patronage and money override merit and experience as criteria for recruitment. Job-buying, or the practice of paying to get a position, has been said to be a common practice.

**References:**

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

**100:** Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

**Comments:**

Political affiliation, nepotism, cronyism, patronage and money are the overriding considerations for civil service management actions.

**References:**

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

**100:** Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

**75:**

**50:** Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

**Comments:**

The civil service has not developed a job-classification system or job descriptions. Some civil servants are not part of the formal assignment of duties.

**References:**

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

**Comments:**

Recognizing that the quality of the public-sector performance and the extent of corruption within the civil service are directly determined by the salary and incentive structure facing civil servants, the Merit-Based Pay Initiative (MBPI) was launched in 2005 as part of the Public Financial Management Reform Program (PFMRP) of the government. In simple terms, the MBPI provides civil servants the opportunity for higher pay on the basis of their merit and performance. Some 300 civil servants working in critical PFMRP areas were the initial beneficiaries of this scheme and as of this date, efforts are being made to spread the MBPIs to more agencies.

There are some issues, however, that beset the MBPI. First and foremost, it has been said that the additional pay resulting from the initiative may be considered substantial for low-ranking and provincially-based civil servants, but not for the others. For this reason and more, the MBPI must not be considered as a panacea to the problem of corruption in civil service. The second concern pertains to the sustainability of the scheme because the greater portion of the cost is borne by foreign donors. If the MBPI is to be sustainable, the government must be prepared and committed to shoulder an increasing portion of the cost over time. Another problem is the determination of merit and the impact that patronage, nepotism and cronyism has on merit. To begin with, it has been said that opportunities for improving the qualifications of a civil servant (i.e. further education, training) has not been equally available to all. Again, those with connections and influence have tended to be favored. This already skews the effectiveness of the MBPI and it is feared that such a scheme could even aggravate the existing gap between those with influence and those without.

**References:**

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Chamroen Ouch, Programs Officer, ADB, September 8, 2:30 p.m., ADB Office.

World Bank, Country Assistance Strategy Progress Report, April 17, 2008.

[http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/04/30/000020953\\_20080430114456/Rendered/PDF/433300CASP0ID/](http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/04/30/000020953_20080430114456/Rendered/PDF/433300CASP0ID/)

Embassy of the United States in Cambodia, Development Partners' Consensus Statement on Governance for the Cambodian Development Cooperation Forum (delivered by U.S. Ambassador to Cambodia, Joseph A. Mussomeli). [http://cambodia.usembassy.gov/sp\\_061907b.html](http://cambodia.usembassy.gov/sp_061907b.html).

Phnom Penh, June 19, 2007, World Bank, Merit-Based Pay for Civil Servants to Spur Work on Cambodia s Reforms," June 2, 2005. <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/EXTPUBLICFINANCE/EXTPEAM/0,,contentMC>

**100:** Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

**75:**

**50:** Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

**25:**

**0:** Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

**References:**

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

**100:** The government publishes such a list on a regular basis.

**75:**

**50:** The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

**25:**

**0:** The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

**Comments:**

As far as is known, the committee on the management of disputes relating to civil service is inactive. Based on the Anukret creating it, the State Secretary of Civil Service also has a Department of Administrative Litigation, but, yet again, as far as is known, this department is inactive. Like other executive agencies, it is not considered independent because it is under the auspices the Office of the Council of Ministers. It has been noted that in relation to the management of civil service issues, adhoc

councils at the ministerial level are commonly the administrative bodies tapped to deal with such issues. These bodies are formed on a case-to-case basis and are likewise not seen as independent.

**References:**

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

Interview, Anonymous executive, October 21, 2008, 7:00 p.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

**100:** The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

**75:**

**50:** The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

**25:**

**0:** The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

**Comments:**

As noted, teachers' salaries, in particular, are not paid regularly or even fully at times, due to corruption. It has also been expressed that, in practice, some delays in salary payments happen because a portion of such salaries have to be deducted and given to higher-ranking officials as part of the agreement for giving the civil servants their posts.

**References:**

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

U.S. Department of State, Bureau of Democracy, Human Rights, and Labor; Country Reports on Human Rights Practices, Cambodia, 2007.

<http://www.state.gov/g/drl/rls/hrrpt/2007/100516.htm>.

**100:** In the past year, no civil servants have been paid late.

**75:**

**50:** In the past year, some civil servants have been paid late.

**25:**

**0:** In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

**Comments:**

Over time, very few civil servants have actually been convicted of corruption. A high-profile case back in 2006 has been said to have resulted to the removal of 10 mid-level customs officials from their position. It is difficult to verify where these former officials are presently. In any case, it has been noted that the transfer or re-assignment of government officials accused of corruption has been the common method used to deal with the situation. For instance, in September 2007, accusations of embezzlement of state funds against a high-ranking Cambodia Telecom official surfaced. It seems that the accused official has been consequently transferred to a different post. Note that re-assignment has also been the strategy typically used to deal with allegedly delinquent judges and law-enforcement officials. The Court of Appeals President, dismissed on what seemed to be more of executive request, has been said to have been assigned to another government post.

In general, most corruption cases against civil servants do not prosper inside the court system or outside it. It has been noted that complaints from citizens or civil servants themselves who have been brave enough to come forward and reveal acts of corruption have generally not been treated seriously by concerned government agencies. Corruption cases filed with the local courts and concomitant investigations have generally proceeded slowly and their course appears to have been predetermined. The Corruption Monitor, which is a regular publication of Pact Cambodia with funding from USAID, has publicized concrete corruption-related stories illustrating the lack of serious reception of corruption complaints by government offices, the lack of transparency and independence in investigations and the general lack of political will to duly punish corrupt officials.

**References:**

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Corruption Monitor issues (first released in December 2007), Pact Cambodia (funded by USAID). <http://www.pactcambodia.org/publications.htm>.

Bureau of Democracy, Human Rights, and Labor; U.S. Department of State, Cambodia Country Reports on Human Rights Practices, 2007. <http://www.state.gov/g/drl/rls/hrrpt/2007/100516.htm>.

U.S. Department of State, 2008 Investment Climate Statement, Cambodia. <http://www.state.gov/e/eeb/ifd/2008/103670.htm>.

**100:** A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

**75:**

**50:** A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

**25:**

**0:** There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

0

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

**Comments:**

Under the June 16, 2005, Draft of the Anti-Corruption Law, in particular, Articles 18, 32 and 53 thereof, senior officials, which include civil servants appointed by royal decrees or subdecrees, are required to declare their assets and liabilities according to the procedure stated therein and refusal or false declaration of assets and liabilities are punishable by imprisonment and imposition of fine.

**References:**

By law, no such requirement exists.

**YES:** A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

**NO:** A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | **NO**

**References:**

By law, no such requirements exist.

**YES:** A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

**NO:** A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | **NO**

**References:**

By law, there are no such restrictions.

**YES:** A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | **NO**

**References:**

By law, there are no such regulations.

**YES:** A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

**NO:** A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | **NO**

**References:**

By law, there are no such requirements.

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

By law, there are no such restrictions on post-government private sector employment. In practice, some civil servants even have simultaneous employment in the government and in the private sector.

**References:**

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

**100:** The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

By law and in practice, there are no such regulations.

**References:**

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

**100:** The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

By law and in practice, there are no such requirements.

**References:**

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

**100:** The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

**75:**

**50:** The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

**25:**

**0:** Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

By law, there is no such audit. Asset disclosures by civil servants are simply not done.

**References:**

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

**100:** Civil service asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50:** Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

**25:**

**0:** Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

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#### 47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | **NO**

**References:**

By law, there is no provision ensuring such citizen access. As mentioned, asset disclosure by civil servants, senior or otherwise, is not required.

**YES:** A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

**NO:** A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | **0**

**Comments:**

By law or in practice, there is no such citizen access. Asset disclosure by state officials are not done.

**References:**

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

**Comments:**

By law or in practice, there is no such citizen access. Asset disclosure by state officials are not done.

**References:**

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## IV-2. Whistle-blowing Measures

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### 48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

6

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

**Comments:**

Under the Council of Ministers, the Anti-Corruption Body (ACB) was established in August 2006 by virtue of the Sub-Decree on the Creation of the ACB. This sub-decree stipulated that one of the roles of the ACB is to gather any document and information related to any form of corruption and maintain confidentiality of the information source. Notwithstanding the requirement of keeping the identity of the source in confidence, the sub-decree does not really provide any concrete protection to the whistleblower. It has been expressed that, in principle, there must be protection available to the whistleblowers involved in the cases under ACB. However, the implementation of this principle within the ACB cannot be confirmed.

As for the relevant provision in the draft Anti-Corruption Law, already 14 years in the making, there have been recent pronouncements from the Information Minister that the draft has finally been completed by the government and shall be submitted to the forthcoming National Assembly after the new penal code is approved. One of the biggest concerns of the civil society, who have not seen the final draft and are clamoring for a copy, is that the draft to be submitted to the NA is close to the 2006 draft, which does not have a provision on whistleblower protection. It has been expressed that the draft of the Anti-Corruption Law provides that those who threaten whistleblowers shall be punished by one to three years of imprisonment, but whether this is the version that the government intends to submit to the National Assembly is not known. Again, the government has not distributed copies of its latest draft to the civil society or the donor community for review.

**References:**

By law, there is currently no such protection afforded to whistleblowers, primarily because of the lack of anti-corruption legislation in the country.

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Sub-decree on the Creation of the Anti-Corruption Body, August 22, 2006.

**YES:** A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

**NO:** A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

**Comments:**

Again, as mentioned, there is no law as yet protecting whistleblowers. Even if it has been expressed that, in principle, there must be some protection afforded to whistleblowers involved in the cases under the ACB, the implementation of this principle cannot be confirmed.

**References:**

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, August 19, 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

**100:** Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

**References:**

By law, no such protection exists. The jurisdiction of the ACB, as provided in the sub-decree, covers any form of corruption, but again, other than keeping the identity of the source secret, there is really no protection afforded to the whistleblowers for the cases under the ACB.

**YES:** A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

**NO:** A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

**Comments:**

By law, or by informal practice, there is no such protection.

**References:**

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, August 19, 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

**100:** Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

38

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

The ACB has both full time and part-time staff. Its structure includes a governing council and several units (investigation, legal/law enforcement promotion, finance and human resource, education and cooperation). Full time civil servants run the administrative units. However, the lawyers for the ACB have been said to be working only part-time . Moreover, overall capacity of the staff is low.

The MoNASRI also has fulltime-staff, but the knowledge and experience of such staff have been said to be limited and its anti-corruption operations have been said to have been largely inactive.

Likewise, the Commission on Interior, National Defense, Investigation, Anti-Corruption and Public Service Administration has full time staff, but their technical capacity is similarly low and the body, just to note, is said to be partisan.

**References:**

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Ms. Mu Sochua, Deputy Secretary General (Sam Rainsy Party) and Former National Assembly (FUNCINPEC), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

World Bank, Country Assistance Strategy Progress Report, April 17, 2008.

[http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/04/30/000020953\\_20080430114456/Rendered/PDF/433300CASP0ID/](http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/04/30/000020953_20080430114456/Rendered/PDF/433300CASP0ID/)

U.S. Department of State, 2008, Investment Climate Statement, Cambodia, <http://www.state.gov/e/eeb/ift/2008/103670.htm>.

**100:** The agency/entity has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

In terms of funding for the offices mentioned before, there appeared to have been no problems. Still, political considerations do have an effect on agency funding. The ACB, for instance, is not financially independent because its budget is part of the budget of the Council of Ministers, as provided under the relevant sub-decree.

**References:**

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

**100:** The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

It depends on the case. For the ACB, some of its cases are ultimately brought to court for trial, which could take a long time for a decision. There is no definite time limit, although some of the accused have already been put in pre-trial detention and some have been released on bail.

For the MoNASRI, it is known to submit its findings to the head of the government. On the other hand, the Commission on Interior, National Defense, Investigation, Anti-Corruption and Public Service Administration passes on the complaints it receives to the appropriate ministries. The performance of said institutions is hindered by partisanship and political considerations. The process takes a long time; actions are belated, if taken at all.

**References:**

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

Interview, Ms. Mu Sochua, Deputy Secretary General (Sam Rainsy Party) and Former National Assembly (FUNCINPEC), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

**100:** The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

The ACB does initiate investigations. Currently, it has cases under trial. However, this unit is said to not be independent from politics and other influences, so its workings are believed to be compromised.

Likewise, it has been said that the Commission on Interior, National Defense, Investigation, Anti-Corruption and Public Service Administration has indeed reviewed complaints, but does not have teeth, nor is it independent.

The MoNASRI's anti-corruption operations have been said to be largely inactive.

**References:**

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

Interview, Ms. Mu Sochua, Deputy Secretary General (Sam Rainsy Party) and Former National Assembly (FUNCINPEC), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Clean Hand (produced by the Center for Social Development), Our Country, Our Future, February 2007.

U.S. Department of State, 2008, Investment Climate Statement, Cambodia, <http://www.state.gov/e/eeb/afd/2008/103670.htm>.

**100:** When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

**75:**

**50:** The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. Is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

**Comments:**

Note, however, that while, in principle, citizens can make complaints to the ACB or its lawyers either in person, through a hot line or the Complaints Box outside the office of the ACB, these mechanisms are not really being used for three reasons: one, because many people are not aware of their existence; two, because the people who do know that they exist are afraid to use them (not least because there is no guarantee that they will be protected) and; three, because many believe that the body is not impartial.

The ACB however is said to have received anonymous complaints by some means. It also acts on cases authorized by or given on the direct order of the Prime Minister.

As for the Commission on Interior, National Defense, Investigation, Anti-Corruption and Public Service Administration within the National Assembly, this commission was once chaired by an opposition MP. It has been said that the opposition MP actually went out there to encourage people to report any corruption they witnessed. By virtue of these efforts, the commission received complaints, but, unfortunately, people fear retribution and the commission does not have the teeth or independence from politics and other influences.

The MoNASRI is also believed to not be politically independent and has been said to have been largely inactive.

**References:**

By virtue of their legal mandates, the following offices can be contacted by citizens to report corruption:

The Anti-Corruption Body (ACB), established under the purview of the Council of Ministers by virtue of the Sub-Decree on the Creation of the ACB, can, in principle, be contacted by citizens for complaints relating to corruption by visiting the ACB office, approaching the ACB lawyers in person, calling a hotline or using the Complaint Box outside the office of the ACB.

The Ministry of National Assembly and Senate Relations and Inspection (MoNASRI) can likewise be approached by the citizens because the Law on the Establishment and Functioning of MoNASRI has given this institution the power to enforce measures preventing public wrongdoing and corruption by public servants.

Within the National Assembly, there is also the Commission on Interior, National Defense, Investigation, Anti-Corruption and Public Service Administration, which can receive complaints.

**References:**

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

Interview, Ms. Mu Sochua, Deputy Secretary General (Sam Rainsy Party) and Former National Assembly (FUNCINPEC), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Sub-decree on the Creation of the Anti-Corruption Body, August 22, 2006.

Clean Hand (produced by the Center for Social Development), Our Country, Our Future, (Edition No. 2), February 2007.

U.S. Department of State, 2008, Investment Climate Statement Cambodia.  
<http://www.state.gov/e/eeb/ifd/2008/103670.htm>

**YES:** A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

**NO:** A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

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48  
IV-3. Procurement

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51. Is the public procurement process effective?

50

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

**Comments:**

There is currently no law on public procurement. The existing framework consists of decrees and guidelines, especially the Sub-Decree on Public Procurement, dated October 2006. While this sub-decree has been a huge improvement over the 1995 sub-decree on procurement, it still does not have an explicit conflict-of-interest provision. The sub-decree does require public procurement officials to sign the Code of Conduct, which has conflict-of-interest provisions, but this code does not stipulate sanctions for non-compliance.

It has been said, however, that the government plans to pass a public-procurement law. In fact, the enhancement of the legal framework on procurement (including preparation of a law and implementation of the regulations on procurement decentralization, for instance) is one of the core provisions of the Public Financial Management Reform Program (PFMRP).

Moreover, a Manual on Standard Operating Procedures (SOP) and the concomitant Procurement Manual for Externally Financed Projects/Programs in Cambodia, promulgated by a Prakas, are currently being used to specifically guide procurement for projects and programs funded by donors. Note that most public procurement in Cambodia is externally financed. The Procurement Manual has explicit conflict-of-interest provisions that essentially state that it is the duty of public-procurement officials and staff to declare potential conflicts of interest that arise when the individual has direct or indirect relationships with bidders, consultants, contractors or suppliers or anything else that affect or might be deemed to affect the individual's impartiality. Bidders and consultants with potential conflicts of interest will also be considered ineligible to bid.

As will be elaborated later, the procurement regime in Cambodia has been said to have greatly improved following the procurement scandal involving the Cambodian government back in 2006. Oversight has strengthened as a result of such unfortunate developments. In addition, the PFMRP also targeted procurement as one of the areas in public-financial management that needed improving.

**References:**

Manual on Standard Operating Procedures.

<http://www.mef.gov.kh/>

Procurement Manual for Externally Financed Projects/Programs in Cambodia.

<http://www.mef.gov.kh/>

Sub-decree on Public Procurement, October 28, 2006.

**YES:** A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

**NO:** A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

**Comments:**

Procurement officials in Cambodia have been said to lack training partly due to lack of resources. Between 2008 and 2010, the PFMRP aims to develop the capacity of procurement officials, both at the national and local levels. Some training opportunities have already been made available under donor-assistance projects. For instance, the World Bank has provided technical support to the government to reinforce its ability to identify and remedy fraud and corruption in procurement. It has also provided technical assistance to train MoNASRI staff on investigative techniques.

**References:**

As mentioned, there is no law yet on public procurement. Under the related sub-decree, there is also no mention of mandatory professional training for procurement officials.

Royal Government of Cambodia, Public Financial Management Reform Program Stage Two ( Building on Improved Budget Credibility Toward Achieving Better Financial Accountability), Revised Draft, May 20, 2008.

World Bank, (International Development Association), Country Assistance Strategy Progress Report, April 27, 2008.

[http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/04/30/000020953\\_20080430114456/Rendered/PDF/433300CASP0ID/](http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/04/30/000020953_20080430114456/Rendered/PDF/433300CASP0ID/)

**YES:** A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

**NO:** A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

**Comments:**

As mentioned, most public procurement in Cambodia is externally financed. Ever since government procurement problems for seven World Bank-funded projects were discovered in 2006, resulting in bank suspension of disbursements on three active projects, the procurement regime for externally-financed projects in the country has greatly improved.

In the case of the World Bank, specifically, it and the Cambodian government have established a number of preventive and oversight measures to mitigate fiduciary risks to World bank-financed projects, one of which is the adoption of anti-corruption action plans called Good Governance Framework (GGF). The GGF includes measures to strengthen procurement procedures, which have been voluntarily adopted by the government. Early implementation reviews indicate there has been an increasing level of implementation of the GGF and that compliance with the procurement, financial management and disclosure elements was generally high across all projects. Another oversight measure adopted to prevent procurement problems was the use of an International Procurement Agent (PA). While the World Bank required that procurement in only the three formerly suspended projects be handled by the PA, it has been said that the government decided to require the PA for all ongoing and future World Bank-financed projects. This action has been taken by the bank as evidence of the government's commitment to ensure the integrity of the procurement process and to break established collusive cartel arrangements.

Note, however, that as a result of the 2006 procurement problems, oversight has become so strong and the bureaucracy so strict that it is said to have unfortunately made it difficult to push procurement activities forward. There are also reservations as to the sustainability of the reforms.

Note further that for procurements outside externally-financed projects, it has been said that connections and influence are important to getting procurement contracts, which may imply contraventions of the conflict-of-interest provisions.

**References:**

World Bank, (International Development Association), Country Assistance Strategy Progress Report, April 27, 2008.

[http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/04/30/000020953\\_20080430114456/Rendered/PDF/433300CASPID/](http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/04/30/000020953_20080430114456/Rendered/PDF/433300CASPID/)

Economics Today, Cambodia Economic Watch (Special Issue), Public Financial Management Reform: Government Improves Budgeting but More Work is Needed," July 2008.

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

**75:**

**50:** Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

**25:**

**0:** Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

**References:**

By law, or in the related sub-decree or the manuals mentioned before, there is no such mechanism provided.

**YES:** A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

**NO:** A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

**Comments:**

The Procurement Manual for Externally Financed Projects/Programs also explicitly states that International Competitive Bidding (ICB) is the most appropriate and preferred method of procurement because it will provide users a wide range of choices from competing suppliers and provide the suppliers (or potential suppliers) adequate, fair and equal opportunities for the goods and works being procured. Its use is mandatory for all contracts with estimated value above US\$100,000. Again, note that the majority of the major public procurements in Cambodia are externally financed.

There continues to be the requirement of registration, however, with a committee headed by the Department of Public Procurement, registration complicates and undermines the competitive tender process. This requirement is essentially provided under Article 29 of the Sub-Decree on Public Procurement. Aspiring bidders have to register first to be able to participate in public projects. Those with so-called connections and influence have been said to certainly have an advantage over the others, especially in relation to procurements outside the externally-financed projects where oversight is not high. For procurements not externally financed, connections and influence have been said to be a major consideration throughout the procurement process.

Addressing the registration issue, the Procurement Manual for Externally Financed Projects/Programs states that there is no registration requirement on the part of the donor agencies (other than for the purpose of legal incorporation in the firm's country of origin), but in the event that the executing agency insists on the registration, it must form part of the contract-awarding procedure and must not be used as criterion for eligibility, evaluation or post qualification.

Aside from the issue on registration, another problem besetting the competitive bidding process in Cambodia is the weak information system.

**References:**

As mentioned, there is no law on public procurement as yet.

However, the Sub-Decree on Public Procurement, in particular Article 8 thereof, states that international competitive bidding shall be selected for more expensive projects and domestic competitive bidding shall be implemented when there is sufficient domestic production or sufficient construction capacity and/or when the planned expenses are not big enough to draw the attention of foreign suppliers or contractors.

Procurement Manual for Externally Financed Projects/Programs in Cambodia. <http://www.mef.gov.kh/>.

Sub-decree on Public Procurement, October 28 2006.

Business Anti-Corruption Portal, Cambodia Country Profile 2008.  
<http://www.business-anti-corruption.com/normal.asp?pageid=282>.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**YES:** A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

**NO:** A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

**References:**

The Sub-Decree on Public Procurement, in particular Article 6 thereof, states that direct contracting can only be done in the following cases: the material is available only from one source; the goods or services are necessary to respond to natural calamities and within a short period of time; or for study or development purposes.

Further, the Procurement Manual on Externally Financed Projects/Programs explicitly states that direct contracting shall be used as little as possible because it does not provide for either transparency or competition. It always requires no objection by both the donor agency and the Ministry of Economy and Finance (MoEF) and can only be used under the following circumstances: standardization of equipment is available from only a single proprietary source; exceptional cases, such as a response to a natural disaster; and when the goods, works or services represent the natural continuation of an ongoing or recently completed contract and it can be demonstrated that lower prices will not be obtained through further bidding.

**YES:** A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

**NO:** A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

**Comments:**

The Sub-Decree on Public Procurement, specifically Articles 38 to 40 thereof, states that bidders or consultants have the right to file written complaints at all stages of the procurement process. The complaints shall be submitted to the procurement-executing agencies and can be raised again with the Ministry of Economy and Finance (MoEF) in case of dissatisfaction with the decision of the procuring entities. As a last resort, the decision of the MoEF may be appealed in the courts.

Under the Procurement Manual for Externally Financed Projects/Programs, this explicit complaint mechanism is also set out and required to be built into all bidding documents. The stated mechanism allows bidders, suppliers, contractors and consultants to lodge a complaint about the procurement process from time to time, with and without justification. The complaint shall be submitted to the procuring entity and can be appealed at the Department of Public Procurement (DPP) in the MoEF. The findings of the DPP with regard to the complaint shall be final, but without prejudice to any other recourse or remedies available under the laws of Cambodia, including going to the court for resolution.

For procurements outside the externally-financed projects, it has been said that losing companies can perhaps also approach the Government Private Sector Forum or the Chamber of Commerce, but these bodies have been said to not be entirely open. Connections are important.

**References:**

Procurement Manual for Externally Financed Projects/Programs in Cambodia. <http://www.mef.gov.kh/>

Sub-decree on Public Procurement, October 28 2006.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**YES:** A YES score is earned if there is a formal appeal process for unsuccessful bidders.

**NO:** A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

**References:**

As mentioned, the Sub-Decree on Public Procurement, specifically Article 40, and the Procurement Manual for Externally Financed Projects/Programs will not be used as prejudice against other recourse or remedies available under the laws of Cambodia, including going to the courts for resolution.

**YES:** A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

**NO:** A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

**Comments:**

The Sub-Decree on Public Procurement, specifically Article 45 thereof, states that when bidders, receivers, suppliers, consulting companies or individual consultants are found to be involved in any corruption, fraud, compulsion or collusion, the Minister of the Ministry of Economy and Finance MAY fully prohibit those companies or individuals from participating in supplying commodities, construction activities, services, permanently or for not less than a three-year period. The prohibition is thus not automatic.

However, the Procurement Manual for Externally Financed Projects/Programs provides that if it is determined that a bidder or consultant has engaged in corrupt, fraudulent, coercive or collusive practices in competing for or executing a donor agency-financed contract, such bidder or consultant will be declared ineligible, either indefinitely or for a stated period of time.

Note that for procurements outside the externally-financed projects, it has been said that it depends on one's connections whether one gets sanctioned for any discovered violation.

**References:**

Sub-decree on Public Procurement, October 28 2006.

Procurement Manual for Externally Financed Projects/Programs in Cambodia.  
<http://www.mef.gov.kh/>.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence

**YES:** A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

**NO:** A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

**Comments:**

For procurements funded by donors, no major violation of procurement regulations has been known to be reported since the procurement scandal in 2006. As mentioned before, it has been noted that the government's compliance with the procurement elements of the Good Governance Framework (GGF) has been high, at least across all World Bank-financed projects.

For procurements outside the externally-financed projects, it has been expressed that whether one gets sanctioned for a violation depends on one's connection.

**References:**

World Bank, Country Assistance Strategy Progress Report, April 17, 2008.

[http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/04/30/000020953\\_20080430114456/Rendered/PDF/433300CASP0ID/](http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/04/30/000020953_20080430114456/Rendered/PDF/433300CASP0ID/)

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

**75:**

**50:** A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

**25:**

**0:** There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52a. In law, citizens can access public procurement regulations.

YES | NO

**Comments:**

The absence of statutory provisions ensuring citizen access to procurement regulations is reflective, of course, of the overall problem of lack of freedom of information in Cambodia. As mentioned, the legal infrastructure governing public procurement in the country is governed by a set of decrees and guidelines that make it even more difficult for ordinary citizens to access and, therefore, be informed.

The strong donor interest in procurement, however, has, thankfully, enabled the advancement of transparency in procurement management. The Manual on Standard Operating Procedures for Externally-Financed Projects/Programs has identified disclosure to civil society as one of the key guiding principles of procurement for donor-funded initiatives. In line with this, the Procurement Manual on Externally-Financed Projects/Programs has referred to transparency as a benefit of following procurement procedures that are consistent with the best practices. According to it, transparency in the procurement process is essential to ensure that the correct procedures are being employed, to encourage firms in competing for contracts and to provide an invaluable check against corrupt and collusive practices.

Note that the above-mentioned manuals are posted on the website of the Ministry of Economy and Finance, although not necessarily downloadable. The old Sub-Decree on Public Procurement is posted on the website of the Council of Jurists, but not the new sub-decree and other relevant guidelines.

Note further that under the Draft Anti-Corruption Law, June 16, 2005, version, specifically Article 15 thereof, it is provided that the state shall take necessary measures to manage public procurement on the basis of transparency, competitiveness and clearly stated procedures as well as discretion in all procurement processes

**References:**

By law, or specifically under the Sub-Decree on Public Procurement, there is no such provision ensuring citizen access to public-procurement regulations.

Manual on Standard Operating Procedures (SOP) for Externally-Financed Projects/Programs in Cambodia. <http://www.mef.gov.kh/>.

Procurement Manual for Externally-Financed Projects/Programs in Cambodia. <http://www.mef.gov.kh/>.

1995 Sub-Decree on Public Procurement. [http://www.bigpond.com.kh/Council\\_of\\_Jurists/Finpubl/fin014f.htm](http://www.bigpond.com.kh/Council_of_Jurists/Finpubl/fin014f.htm).  
Draft Law on Anti-Corruption, June 16, 2005 version.

**YES:** A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

**NO:** A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

**References:**

The Sub-Decree on Public Procurement, specifically Article 36 thereof, states that the summary of the results of the assessment of contract awarding shall be posted on the notice board or uploaded on the webpage, if any, of the procurement-executing agencies for the public to see.

Under the Procurement Manual on Externally-Financed Projects/Programs, there are more specific disclosure requirements provided in compliance with the principle of transparency. The requirements include: local advertisement of all awards of contracts funded by the World Bank and ADB as well as eventual posting of the Summary of Evaluation at the project and/or the executing agency's website; compilation of the reports, Summary of Evaluation and Contracts Register by the Project Management Units; compilation of a Register of Contracts and its posting at the project and/or executing agency's website; and issuance of a notice to the general public through a Khmer-language newspaper of national circulation, inviting interested parties to review and inspect all Summaries of Evaluation.

Note again that under the June 16, 2005, Draft Anti-Corruption Law, specifically Article 15 thereof, it is provided that the state shall take necessary measures to manage public procurement on the basis of transparency, competitiveness and clearly stated procedures and discretion in all the procurement processes.

**YES:** A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

**NO:** A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Again, by law, there is no such requirement ensuring citizen access to public procurement regulations. The manuals are posted on the website of the Ministry of Economy and Finance (although not necessarily downloadable) and the old Sub-Decree on Public Procurement is posted on the website of the Council of Jurists. However, the new sub-decree and other newly executed guidelines are not available online as far is known. More importantly, there are very few Cambodians with access to the Internet so most users need to go to the cyber cafes. Indeed, as with any other document or information from the government, relatively new laws and regulations in Cambodia are difficult to access, especially for the ordinary citizen. Connections are needed and, as been expressed, unofficial payments are made at times.

**References:**

Interview, Mr. Tieng Sophorn, Advocacy Action Program Manager, Star Kampuchea, August 17, 2008, 8:45 a.m., Star Kampuchea's office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, August 19, 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Ms. Thou Heng, Program Coordinator, Advocacy and Policy Institute (API), August 20, 2008, 3:00 p.m., API's office.

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Anonymous, Media, August 22, 2008, 8:00 a.m., Phnom Penh Center.

Interview, Anonymous, Media, August 22, 2008, 10:00 a.m., Institution s office.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Anonymous, executive, August 31, 2008, 10:00 a.m., residence.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Again, by law, there is no such requirement ensuring citizen access to public procurement regulations. However, the manuals are posted on the website of the Ministry of Economy and Finance (although not necessarily downloadable). The old Sub-Decree on Public Procurement is also posted on the website of the Council of Jurists, but the new one and other newly executed guidelines are not. As in any other document or information from the government, relatively new laws and regulations in Cambodia are

difficult to access, especially for the ordinary citizen. Connections are needed and, as been expressed, unofficial payments are made at times.

**References:**

Interview, Mr. Tieng Sophorn, Advocacy Action Program Manager, Star Kampuchea, August 17, 2008, 8:45 a.m., Star Kampuchea's office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, August 19, 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Ms. Thou Heng, Program Coordinator, Advocacy and Policy Institute (API), August 20, 2008, 3:00 p.m., API's office.

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Anonymous, Media, August 22, 2008, 8:00 a.m., Phnom Penh Center.

Interview, Anonymous, Media, August 22, 2008, 10:00 a.m., Institution s office.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Anonymous, executive, August 31, 2008, 10:00 a.m., residence.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

**Comments:**

It has been noted that in practice, many procurements are still not widely publicized. However, the Public Financial Management Reform Program (PFMRP) is working on further addressing this problem of lack of transparency through enhanced publicity and disclosure. This is one of its main concerns for Stage Two.

**References:**

Office of the U.S. Trade Representative, 2008 National Trade Estimate Report on Foreign Trade Barriers. [http://www.ustr.gov/assets/Document\\_Library/Reports\\_Publications/2008/2008\\_NTE\\_Report/asset\\_upload\\_file915\\_14632.pdf](http://www.ustr.gov/assets/Document_Library/Reports_Publications/2008/2008_NTE_Report/asset_upload_file915_14632.pdf).

World Bank, Country Assistance Strategy Progress Report, April 17, 2008. [http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/04/30/000020953\\_20080430114456/Rendered/PDF/433300CASPID/](http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/04/30/000020953_20080430114456/Rendered/PDF/433300CASPID/)

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

**75:**

**50:** There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisments and bidding may be too short to allow full participation.

**25:**

**0:** There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

**Comments:**

Lack of citizen access remains a serious problem. As mentioned, however, the Public Financial Management Reform Program (PFMRP) is working on further improving transparency through enhanced publicity and disclosure. This is one of the main concerns of Stage Two.

**References:**

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

World Bank, Country Assistance Strategy Progress Report, April 17, 2008.

[http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/04/30/000020953\\_20080430114456/Rendered/PDF/433300CASPID/](http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/04/30/000020953_20080430114456/Rendered/PDF/433300CASPID/)

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

**100:** Records of public procurement results are publicly available through a formal process.

**75:**

**50:** Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

**25:**

**0:** This information is not available to the public through an official process.

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## IV-4. Privatization

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53. Is the privatization process effective?

33

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

**Comments:**

According to the Business Anti-Corruption Portal, the government has either fully or partly privatized the following sectors: transportation, health care, education, and banking. The public agricultural companies, such as rubber plantations, the fertilizer company, and the fish export company, have also been named as objects for privatization. The process of privatization has resulted in many state-owned companies as well as many land concessions being awarded to high-level politicians and their associates. 20 to 30 percent of Cambodia's land is now owned by one percent of the population.

Source:

**References:**

There is currently no law on privatization. Privatization is primarily governed by a 1995 sub-decree. Under this sub-decree, specifically Article 11 thereof, and related circulars, the general rule is to ensure competition for the privatization of public enterprises by invitation for bids and ensuring the broadest publicity. Direct contracting can only be used if the call for bids is unfruitful as a result of the following events: absence of candidates, offers presented by the candidates are not in conformity with the requirements, or the financial offer is below the preliminary evaluation.

Note that foreigners are not allowed to own land as provided under the Law on Investment of Cambodia. Land ownership is reserved to natural and legal Cambodians, although, according to the Land Law, natural and legal foreign persons may secure control over land through concession, a long-term lease for up to 99 years or a renewable short-term lease.

**YES:** A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

**NO:** A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | **NO**

**References:**

By law, there are no such regulations.

**YES:** A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

**NO:** A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | **0**

**Comments:**

By law or in informal practice, there are no such regulations.

**References:**

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

**75:**

**50:** Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

**25:**

**0:** Conflict of interest regulations do not exist, or are consistently ineffective.

## 54. Can citizens access the terms and conditions of privatization bids?

15

54a. In law, citizens can access privatization regulations.

YES | NO

### References:

By law, there is no such provision ensuring citizen access to the details of privatization regulations.

**YES:** A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

**NO:** A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

### Comments:

Privatizations are rarely announced and have not been transparent. The public tends to learn about them ex-post facto, that is, when the sale has already been made. The partial privatization and concomitant restructuring of the Foreign Trade Bank of Cambodia and the slated privatization of Cambodia Telecom have found their way into the media, but the public has not been and is not really informed about the privatization terms and conditions per se.

The lack of transparency is not surprising, not only because, as mentioned numerous times, of the lack of freedom of information in Cambodia, but also because the sub-decree on privatization itself enshrines the confidentiality of the entire privatization process. Article 14 of the said sub-decree essentially provides that the entire privatization process from company evaluation until conclusion of the sale is highly confidential in nature and that penalties are imposable on those who shall violate this requirement. No exceptions are stated.

### References:

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

U.S. Department of State, 2008, Investment Climate Statement, Cambodia.

<http://www.state.gov/e/eeb/ifid/2008/103670.htm>.

**100:** There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

**75:**

**50:** There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

**25:**

**0:** There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

**References:**

By law, there is no such requirement.

**YES:** A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

**NO:** A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

At least the Sub-decree on Privatization of Public Enterprises and the related circular can be downloaded from the website of the Council of Jurists (French versions). As noted before, however, a very small number of Cambodians have access to the Internet, mostly in cyber cafes. Undeniably, access to information in Cambodia is extremely problematic. Even existing laws are not freely accessible by the general public. The same problem also faces parliamentary members, governmental, non-governmental officials and media personnel. Connections and unofficial payments are needed.

**References:**

Interview, Mr. Tieng Sophorn, Advocacy Action Program Manager, Star Kampuchea, August 17, 2008, 8:45 a.m., Star Kampuchea's office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, August 19, 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Ms. Thou Heng, Program Coordinator, Advocacy and Policy Institute (API), August 20, 2008, 3:00 p.m., API's office.

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Anonymous, Media, August 22, 2008, 8:00 a.m., Phnom Penh Center.

Interview, Anonymous, Media, August 22, 2008, 10:00 a.m., Institution's office.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

**Comments:**

As mentioned, the sub-decree and related circular are available online, but a small number of Cambodians have access to the Internet. Alternative means of free and cheap access are not really available. For most people, especially ordinary Cambodians, connections and unofficial payments are needed to facilitate requests for supposedly public documents and information.

**References:**

Interview, Mr. Tieng Sophorn, Advocacy Action Program Manager, Star Kampuchea, August 17, 2008, 8:45 a.m., Star Kampuchea's office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, August 19, 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Ms. Thou Heng, Program Coordinator, Advocacy and Policy Institute (API), August 20, 2008, 3:00 p.m., API's office.

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Anonymous, Media, August 22, 2008, 8:00 a.m., Phnom Penh Center.

Interview, Anonymous, Media, August 22, 2008, 10:00 a.m., Institution s office.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## Category V. Oversight and Regulation

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### V-1. National Ombudsman

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#### 56. Is the national ombudsman effective?

0

56a. In law, the ombudsman is protected from political interference.

YES | NO

**References:**

By law, there is no such ombudsman.

**YES:** A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

In law, there is no ombudsman. There are agencies, such as the Ministry of National Assembly and Senate Relations and Inspection (MoNASRI) and the National Human Rights Commission, but these are executive agencies and their mandates and powers are limited. In practice, these agencies are not independent.

**References:**

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

**75:**

**50:** This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

**25:**

**0:** This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**References:**

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

**References:**

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

**References:**

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

**References:**

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

**75:**

**50:** The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

**25:**

**0:** The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

**75:**

**50:** The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**References:**

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

**75:**

**50:** The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

**References:**

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

**75:**

**50:** In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

**25:**

**0:** Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

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57. Can citizens access the reports of the ombudsman?

0

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

**References:**

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**YES:** A YES score is earned if all ombudsman reports are publicly available.

**NO:** A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

**References:**

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Reports take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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55. Is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

0

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | **NO**

**References:**

By law, there is no such entity.

**YES:** A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

**NO:** A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

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## V-2. Supreme Audit Institution

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59. Is the supreme audit institution effective?

53

59a. In law, the supreme audit institution is protected from political interference.

**YES** | NO

**Comments:**

Despite the above determination, the NAA is believed to not be politically independent, even by law. In terms of a budget, while Article 17 on the Law on Audits provides that the NAA shall have a separate budget, this budget is requested via the government. Moreover, the Auditor General of the NAA is appointed upon the recommendation of the government, as provided under Article 18 of the subject law.

Again, it has been expressed that the main factor impeding independence of the NAA is the political and economic situation of the country. There is said to be significant political resistance to allowing the NAA to fully function and exercise its powers because the NAA is meant to be an independent institution, outside the executive domain.

**References:**

The Law on Audits, specifically Article 14 thereof, states that the NAA is an independent public entity.

National Audit Authority, Strategic Development Plan, 2007-2011.

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Chamroen Ouch, Programs Officer, ADB, September 8, 2:30 p.m., ADB Office.

**YES:** A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

Under the Law on Audits, specifically Article 18 thereof, the Auditor General shall have a term of five years and can be re-elected once for another five-year term. The Auditor-General elected by the National Assembly in 2001 remains as the Auditor General at present. While no threat of removal of the current Auditor General has been reported, the political underpinnings of appointments in any institution in Cambodia render the belief that the Auditor General is not fully protected from removal without relevant justification. The Auditor General is appointed under the recommendation of the government and this renders the position not politically independent. Moreover, Article 18 of the Audit Law states that the Auditor General shall be replaced in case he or she commits serious mistakes. What constitutes a serious mistake is not defined and this may leave the dismissal of the Auditor General to arbitrary decisions or political considerations.

**References:**

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Chamroen Ouch, Programs Officer, ADB, September 8, 2:30 p.m., ADB Office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

Yes, the audit agency has a professional full-time staff. Its structure consists of a cabinet, administration and finance department, technical department and audit departments. As of July 2007, the NAA has 225 on staff, of which 198 are auditors and 27 are administrative and finance staff. Among the 198 auditors, however, only 29 auditors have experience in the finance and accounting field and the rest, while they have their Bachelor s or Master s degree, have only theoretical knowledge of auditing.

Therefore, the audit capacity of the NAA staff is low, along with insufficient opportunities for training. Limited resources further explains the inability of the NAA to fulfill all of its audit responsibilities and produce quality audit work. Thankfully, some donor and government support has been contributed to building the NAA's capacity. Capacity building and professional development are also core components of the NAA Strategic Development Plan, 2007 to 2011.

Note also that a code of ethics for auditors and auditing standards are in place and currently being enforced. Much of the work has been said to be moving forward.

However, it has been mentioned that in evaluating the effectiveness of an institution in Cambodia, a more important criterion is political neutrality rather than professionalism. The former, ultimately, shall undermine the latter.

**References:**

National Audit Authority, Strategic Development Plan, 2007-2011.

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Chamroen Ouch, Programs Officer, ADB, September 8, 2:30 p.m., ADB Office.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

**Comments:**

As in other institutions in Cambodia, the NAA appointees and the process by which they were appointed are not independent from politics, connections or any other influence.

**References:**

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Chamroen Ouch, Programs Officer, ADB, September 8, 2:30 p.m., ADB Office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

In terms of funding, it has been said that there seems to be no problem. It has been noted, however, that the government's budget approval and the NAA's management of its resources are affected by delays in the issuance of the government's budget-settlement statement. Given the political influences underlying the institution, political considerations also affect agency funding and its operations.

**References:**

National Audit Authority, Strategic Development Plan, 2007 to 2011.

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Chamroen Ouch, Programs Officer, ADB, September 8, 2:30 p.m., ADB Office.

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

**Comments:**

Under the Law on Audits, the NAA must submit regular reports to the National Assembly and the Senate and such reports shall be considered public documents. In practice, the NAA only submits reports to the legislature and such reports have never been made publicly available. Audit reports of the NAA are also not up-to-date. It has been said that the NAA is still working on its 2004 audit reports. Donors have attempted to make the generation of the audit reports a condition of a loan, but that appears to be up for negotiation.

The above-described problem is, again, reflective of the overall lack of public access to information in Cambodia.

**References:**

National Audit Authority, Strategic Development Plan, 2007 to 2011.

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Chamroen Ouch, Programs Officer, ADB, September 8, 2:30 p.m., ADB Office.

Business Anti-Corruption Portal, Cambodia Country Profile, 2008.

<http://www.business-anti-corruption.com/normal.asp?pageid=282>

**100:** The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

**75:**

**50:** The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

**25:**

**0:** The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

**Comments:**

The legislature, mainly the Commission on Economy, Finance, Banking and Audits of the National Assembly, which receives the reports of the NAA, does not act on the findings of the audit agency and it has been noted that, apart from its lack of independence from politics and other influences, there are two other important factors impeding its ability to do so: First, is the weak link, or interface, between the NAA and the parliament. The mechanism for such an interface must be clearly established and made operational. Second, is the low quality of the audit reports produced by the NAA. Auditing standards, according to best practices, must be formalized and audit assignments must be detailed and made operational. These two obstacles are being addressed under the NAA's Strategic Development Plan, 2007 to 2011.

**References:**

National Audit Authority, Strategic Development Plan, 2007 to 2011.

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Chamroen Ouch, Programs Officer, ADB, September 8, 2:30 p.m., ADB Office.

**100:** Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

**75:**

**50:** In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

**25:**

**0:** Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

**References:**

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Chamroen Ouch, Programs Officer, ADB, September 8, 2:30 p.m., ADB Office.

**100:** The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

**75:**

**50:** The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

**25:**

**0:** The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

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## 60. Can citizens access reports of the supreme audit institution?

33

60a. In law, citizens can access reports of the audit agency.

YES | NO

**References:**

The Law on Audits, specifically Article 29 thereof, which provides that the reports issued by the Auditor General shall be deemed to be public documents, but with the exceptions provided under Article 37 of the Law on Audits — that the Auditor General must not include detailed information in a public report if he or she is of the opinion that such disclosure would be contrary to the public interest or in the event that the government has issued a certificate to the Auditor General stating that disclosure of the information would be contrary to the public interest. Information shall be considered as contrary to the public interest if it would prejudice the security, defense, integrity, or international relations of the Kingdom of Cambodia or it would unfairly prejudice the commercial interest of any legal entity or person.

**YES:** A YES score is earned if all supreme auditor reports are available to the general public.

**NO:** A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

As mentioned, the NAA only submits its reports to the legislature and such reports have never been made publicly available.

**References:**

National Audit Authority, Strategic Development Plan, 2007 to 2011.

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Chamroen Ouch, Programs Officer, ADB, September 8, 2:30 p.m., ADB Office.

Business Anti-Corruption Portal, Cambodia Country Profile, 2008.  
<http://www.business-anti-corruption.com/normal.asp?pageid=282>.

**100:** Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Reports take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

As mentioned, the NAA only submits its reports to the legislature and such reports have never been made publicly available

**References:**

National Audit Authority, Strategic Development Plan, 2007 to 2011.

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Interview, Chamroen Ouch, Programs Officer, ADB, September 8, 2:30 p.m., ADB Office.

Business Anti-Corruption Portal, Cambodia Country Profile, 2008.  
<http://www.business-anti-corruption.com/normal.asp?pageid=282>

**100:** Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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58. Is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

**Comments:**

Note that there are amendments to the Audit Law currently being proposed. These amendments seek to clarify further the roles and responsibilities of the NAA.

Note further that there are other bodies with financial-control duties, such as the Ministry of the National Assembly and Senate Relations and Inspection (MoNASRI) and the Department of Inspection within ministries. It has been expressed, however, that the inspection powers given to the MoNASRI seemed to have been meant to serve political ends. An interesting piece of information is that the procurement problems discovered in World Bank-financed projects in 2006 was investigated by the MoNASRI, not the NAA. It appears that there is resistance to strengthening the NAA, which is constitutionally mandated to be an independent institution.

**References:**

The Law on Audits, specifically Articles 1 and 2 thereof, which provides for the establishment of the National Audit Authority (NAA), the institution responsible for executing the external auditing function of the government. The jurisdiction of the NAA extends to all ministries, agencies, authorities of national treasury, public financial institutions, public finance joint-ventures, public enterprises, public establishments, municipalities, provincial and local government offices, contractors or suppliers of goods and services to the government under contracts and other organizations that have received financial assistance from the government.

National Audit Authority, Strategic Development Plan, 2007-2011.

Interview, Chamroen Ouch, Programs Officer, ADB, September 8, 2:30 p.m., ADB Office.

**YES:** A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

**NO:** A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

## 62. Is the tax collection agency effective?

63

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

### Comments:

Low technical capacity remains an issue. To eliminate this problem, which is used to explain the weak exercise of financial responsibility, and to recognize, as well, that the success of the implementation of the PFMRP depends on the capacity development of the officials under the MoEF, capacity building remains a core component of the PFMRP Stage Two. Corruption, as will be described below, also undermines professionalism of the staff.

### References:

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Royal Government of Cambodia, Public Financial Management Reform Program, Stage Two (Building on Improved Budget Credibility toward Achieving Better Financial Accountability), Revised Draft, May 20, 2008.

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

### Comments:

In terms of funding, there appear to have been no problems. However, as with any other institution in Cambodia, political considerations are a constant threat to regular funding.

### References:

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

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65. Is the customs and excise agency effective?

63

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

Low technical capacity remains or is still brought up as a remaining issue. To eliminate this problem, which is used to explain the weak exercise of financial responsibility, and to recognize, as well, that the success of the implementation of the PFMRP depends on the capacity development of the officials under the MoEF, capacity building remains a core component of the PFMRP Stage Two. Corruption, as will be described below, also undermines professionalism of the staff.

**References:**

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Royal Government of Cambodia, Public Financial Management Reform Program, Stage Two (Building on Improved Budget Credibility toward Achieving Better Financial Accountability), Revised Draft, May 20, 2008.

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

In terms of funding, there appear to have been no problems. However, as with any other institution in Cambodia, political considerations are a constant threat to regular funding.

**References:**

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

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## 61. Is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

### Comments:

Note that the Council for Development of Cambodia (CDC) is the country's approval body for foreign investment. The CDC acts as a one-stop-shop, facilitating direct investment and administering investment incentives.

### References:

The Law on Taxes, as amended, specifically Article 93 thereof, which identifies the Tax Department under the Ministry of Economy and Finance and other institutions of the Royal Government. The tax provisions have empowered the agencies responsible for the administration of these tax provisions.

**YES:** A YES score is earned if there is a national agency formally mandated to collect taxes.

**NO:** A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

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## 63. Are tax laws enforced uniformly and without discrimination?

50

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

### Comments:

It has been estimated that due to widespread and almost institutionalized corruption, Cambodia loses US\$400 million per year and that the Tax Department collects only 25 percent of potential tax revenues from the private sector. Apart from causes such as inefficiency of tax collection and tax non-compliance, the revenue loss has also been said to be mostly due to discriminatory implementation of tax laws, induced by corruption and use of connections and other influences. Tax exemptions have been said to be one instrument used to favor some entities.

Upon the recommendation of international financial institutions, changes to the tax system that aimed to scale back tax incentives and boost revenues were consequently instituted. The amendments to the Law on Investment, for instance, scrapped the special 9 percent corporate tax for all new investments and limited the entitlement to the special rate for investments made prior to the amendment to not more than five years. However, it has been noted that compared with other countries, some overly generous exemptions remain, such as a profit-tax exemption allocated automatically on the basis of activity. It has been expressed that the institutional and informal approval mechanisms that govern the administration of such exemptions, while legal, open the way for dubious activities. The term legal corruption comes to mind at this point as well as certain realities about the political economy of Cambodia. Tax evasion is another problem and in Cambodia, it is sustained by the culture of impunity. Political connections, preserving wealth and other influences have been said to be major factors breeding willful tax non-compliance.

Of course, corruption has been observed to be rampant in Cambodia and identified as one of the most serious deterrents to investment. It has been noted that for some investors, it unavoidably becomes part of the investment strategy. Some foreign businesses are thus placed at a disadvantage when competing with Cambodian or foreign firms that engage in acts of corruption, tax evasion or exploit Cambodia's poorly enforced laws and regulations.

Corruption has also been said to be the key reason underlying doubts about the integrity of the tax department. It is said to be rather a relatively common practice among collectors to extort money for bribes in order to avoid paying regular taxes. Direct contacts to authorities or middlemen are employed to facilitate these underhanded transactions. Corruption often arises during tax inspections, whose underlying guidelines have been said to not be clear enough. The pressure of paying periodic unofficial payments takes its toll on micro-, small- and medium-enterprise development.

Other tax reforms are underway to remedy the problems. A breakthrough in tax collection that aims to reduce the corruption by making the process easier is the increasing use of the banking system for tax payments.

**References:**

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Chan Vuthy, Senior Researcher, Private Sector Development, Economic Institute of Cambodia, September 9, 2008, 10:30 a.m., EIC office.

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

Business Anti-Corruption Portal, Cambodia Country Profile, 2008.  
<http://www.business-anti-corruption.com/normal.asp?pageid=282>.

U.S. Department of State, 2008, Investment Climate Statement, Cambodia.  
<http://www.state.gov/e/eeb/ifd/2008/103670.htm>.

Economics Today, Cambodia Economic Watch (Special Issue), Public Financial Management Reform: Government Improves Budgeting but More Work is Needed," July 2008.

The World Bank (Operations Policy and Country Services), Status of Projects in Execution FY07, Cambodia, October 10, 2007. <http://www1.worldbank.org/operations/disclosure/SOPE/FY07/EAP/Cambodia.pdf>.

**100:** Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

**75:**

**50:** Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

**25:**

**0:** Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

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64. Is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

**References:**

The Law on Customs, in particular Article 1 thereof, which identifies the Customs and Excise Department under the Ministry of Economy and Finance as the body responsible for the administration and enforcement of the customs provisions.

**YES:** A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

**NO:** A NO score is earned if that function is spread over several agencies, or does not exist.

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66. Are customs and excise laws enforced uniformly and without discrimination?

50

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

**Comments:**

The World Economic Forum's 2007 Competitiveness Survey ranked Cambodia 110 out of 131 countries. It has been expressed that the competitiveness of Cambodia is mainly compromised by enduring problems in its customs-policy administration. Four problems have been identified:

The first problem pertains to the legal and institutional framework. The passage of the Customs Law in July 2007 was, of course, highly commended, signaling as it does the commitment of the government to fulfill its obligations with the World Trade Organization (WTO) and reform its customs regime. However, there are major pieces of the puzzle that continue to be missing, including the Law on the Establishment of the Commercial Court. Since two paramount concerns of the private sector relate to contract enforcement and corruption within the judiciary in Cambodia, ensuring that a commercial court is established in accordance with international standards is crucial. The incomplete legal and institutional framework cannot go on because it has been open to abuse and indeed fuels the culture of impunity in Cambodia.

The next problem refers to the existence of exemptions that, although permissible under the law, still were said to have been arbitrarily exploited to benefit some entities over others. The realities of the political economy of Cambodia should be noted at this point. Compared with other countries, one exemption that has been considered overly generous is the 100 percent exemption from import duties for construction materials and production equipment for qualified investment projects (QIPs) or those that support QIPs. This customs-duty exemption can benefit the following activities: basic telecommunication services; exploration of gas and oil, including supply bases for gas and oil activities, mining and QIPs in designated special economic zones (SEZ).

The third and fourth problems are interconnected, namely, that the burdensome customs regime opens up more opportunities for corruption. Customs clearance remains highly problematic and thus has been cited as a major factor afflicting Cambodia's export competitiveness vis-a-vis its neighbors in the region. Doing Business 2008 ranked Cambodia 139 out of 178 countries for its Trading across Borders category (this takes into account the procedural requirements — documents, time and cost — for trading a standard shipment of goods by ocean). It has been expressed that customs clearance is, in practice, so arbitrary that companies use specialized agencies (registered offices that can complete the requirements on their behalf), middlemen, personal contacts and unofficial payments to facilitate matters. For firms that are averse to corruption or have less to offer, so to speak, this situation is certainly discriminatory. It has been noted that both local and foreign businesses have raised concerns that the Customs and Excise Department generally engages in practices that are nontransparent and arbitrary; they impose unnecessarily burdensome paperwork and formalities driven by excessively discretionary practices.

Let it be said at this point, however, that reforms are underway, generated by Cambodia's commitments to the WTO and the Trade and Investment Framework Agreement (TIFA) that the country signed with the United States in 2006. Samples of such reforms include: introduction of a joint inspection by CamControl and the Customs and Excise Department and the issuance of a common inspection report or single administrative document valid for both agencies (based on this document, the Ministry of Industry, Mining and Energy and the Ministry of Commerce will issue a Certificate of Processing (CP) and the Certificate of Origin (CO), respectively); major reductions of registration costs and of the time limit for approval of registration; and reduction of time required to acquire documents related to the CO and exports for inspection of goods. Difficulties, however, beset the implementation of the reforms. Corruption remains prevalent.

**References:**

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Chan Vuthy, Senior Researcher, Private Sector Development, Economic Institute of Cambodia, September 9, 2008, 10:30 a.m., EIC office.

Business Anti-Corruption Portal, Cambodia Country Profile, 2008.  
<http://www.business-anti-corruption.com/normal.asp?pageid=282>.

U.S. Department of State, 2008 Investment Climate Statement, Cambodia.  
<http://www.state.gov/e/eeb/ifid/2008/103670.htm>.

Office of the U.S. Trade Representative, 2008 National Trade Estimate Report on Foreign Trade Barriers. [http://www.ustr.gov/assets/Document\\_Library/Reports\\_Publications/2008/2008\\_NTE\\_Report/asset\\_upload\\_file915\\_14632.pdf](http://www.ustr.gov/assets/Document_Library/Reports_Publications/2008/2008_NTE_Report/asset_upload_file915_14632.pdf).

World Bank Group (Doing Business Project), Doing Business, 2008, Cambodia.  
[http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/02/06/000020953\\_20080206113648/Rendered/PDF/422450WP0Doing1080Cam](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/02/06/000020953_20080206113648/Rendered/PDF/422450WP0Doing1080Cam)

Economics Today, Cambodia Economic Watch (Special Issue), Public Financial Management Reform: Government Improves Budgeting but More Work is Needed," July 2008.

Economic Institute of Cambodia, Cambodia Economic Watch, Chapter 8, Trade Reform, October 2007, Issue 7.

**100:** Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

**75:**

**50:** Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

**25:**

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

## V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

35

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

### Comments:

It has been noted that all government institutions are not politically independent. There is a semblance of democracy, with little input from the opposition party, by sporadic official civic engagement in policymaking and cooperation with international institutions, but, in truth, the state has been captured by the ruling party. A small, politically elite cadre, governed by patron-client relationships, effectively runs government agencies.

### References:

The above agencies are all agencies of the executive branch, created by virtue of their respective laws/decrees/sub-decrees on the establishment and the sub-decree on the organization and functioning of ministries. The ministers, secretaries of state, and the Administrative Reform Council (whose members are the secretaries of state, as well, and whose chairman is the Senior Minister in Charge of the Council of Ministers) are all Council of Ministers members directly accountable to the Prime Minister, as provided in the Law on the Organization of the Council of Ministers and the Constitution. Their appointment, transfer or dismissal rests upon the recommendation of the Prime Minister. In accordance with the Constitution, the budget of each ministry is approved by the National Assembly, which is dominated by the ruling party.

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

**YES:** A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

### Comments:

Yes, the agencies have professional full-time staff, although, again, their technical capacity is generally low. Some top technocrats are highly skilled and experienced, but it has been noted that some are not. In the case of the Ministry of Economy and Finance, again, the Public Financial Management Reform Program (PFMRP) has targeted its line departments for capacity development.

Once again, the professionalism of government staff is said to be undermined by political loyalties and acts of corruption.

**References:**

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

**100:** The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

In terms of funding, there appear to have been no problems. However, political considerations do impact on decisions regarding budgets and disbursements.

**References:**

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

**100:** The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

The agencies do conduct investigations, but political and other influential interests get in the way.

**References:**

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

**75:**

**50:** The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

There is no effective punishment for offenders, primarily because there is no clear mechanism for investigating irregularities within public enterprises.

**References:**

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

**75:**

**50:** The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

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## 69. Can citizens access the financial records of state-owned companies?

10

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

**Comments:**

Again, the above-mentioned problem is linked to the overall problem regarding freedom of information and public access to information in Cambodia.

**References:**

By law, such citizen access is not provided. Under the Sub-decree on Public Enterprises, particularly Article 16 thereof, public enterprises are required to submit documents such as minutes of their meetings as well as activity, budgetary and audit reports to the Council of Ministers, the Ministry of Economics and Finance and the responsible ministry or authority, but there is no stipulation that such documents shall be made publicly available.

**YES:** A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

**NO:** A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

**Comments:**

Financial data is not publicly available. There is lack of transparency.

**References:**

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

**100:** State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

**75:**

**50:** State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

**25:**

**0:** Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

**Comments:**

As provided in the Law on Audits, the responsibilities of the National Audit Authority include audits of public enterprises. Given its current audit expertise and resources, however, the NAA has, so far, been able to cover only a small portion of its responsibilities. It cannot be confirmed if any of the public enterprises has been audited at all, but as far is known, some audits have been completed on the budget settlement statements, government ministries, government provincial offices and commune sangkats.

The quality of the NAA's audit work is low. The NAA has adopted the auditing standards issued by the International Organization of Supreme Audit Institutions (INTOSAI), but the problem is in their application. There are several reasons for this: First, because the internal auditing function in public institutions is still in the process of being strengthened, so most of the NAA's work has been said to be for compliance. Second, because the skill and practical auditing experience of NAA staff remains low. Third, because limited resources make it difficult, for instance, to generate updated audit manuals and to provide training.

The NAA Strategic Development Plan, 2007 to 2011, is seeking to address these problems. The biggest challenge to this undertaking is what has been expressed as resistance to strengthening the NAA, which is stipulated to act as an independent audit institution.

**References:**

National Audit Authority, Strategic Development Plan, 2007 to 2011.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Mr. Peter Murphy, Senior Public Sector Management Specialist, World Bank, August 26, 2006, 9:00 a.m., World Bank Office.

**100:** Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

**75:**

**50:** Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

**25:**

**0:** State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Simply put, in practice, accessing government-held documents is very difficult. Connections and unofficial payments have been said to be necessary to facilitate requests. On the matter of the financial records of public enterprises, these are known to not be available for the public to check. It has been noted that even parliamentarians, specifically those from the opposition, have requests for financial documents denied because such documents are deemed confidential.

**References:**

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Anonymous, Media, August 22, 2008, 10:00 a.m., Institution's office

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, August 19, 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Anonymous, Media, August 22, 2008, 8:00 a.m., Phnom Penh Center.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Ms. Thou Heng, Program Coordinator, Advocacy and Policy Institute (API), August 20, 2008, 3:00 p.m., API's office.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

**Comments:**

Again, in practice, accessing government-held documents is very difficult. Connections and unofficial payments have been said to be necessary to facilitate requests. On the matter of the financial records of public enterprises, these are known to not be available for the public to check. It has been noted that even parliamentarians, specifically those from the opposition, have their requests for financial documents denied because such documents are deemed confidential.

**References:**

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Anonymous, Media, August 22, 2008, 10:00 a.m., Institution's office

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, August 19, 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Mr. Moeun Chhean Nariddh, Director, Cambodia Institute for Media Studies, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Mr. Phann Ana, Assistant Journalism Advisor, Internews, August 22, 2008, 2:30 p.m., Internews Office.

Interview, Anonymous, Media, August 22, 2008, 8:00 a.m., Phnom Penh Center.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Ms. Thou Heng, Program Coordinator, Advocacy and Policy Institute (API), August 20, 2008, 3:00 p.m., API's office.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. Is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

**References:**

The Law on Public Enterprises, specifically Articles 20 to 22 thereof, which essentially provide that the responsible ministry or authority shall economically control the enterprise through its representative in the Council of Administration and that the Ministry of Economy and Finance, acting through the state controller, shall have control over the following: fulfillment by the enterprise of obligations stipulated by laws and regulations in effect; implementation of decisions by the Council of Administration; follow-up on the functioning and evolution of the enterprise; and regulation of activities that may affect the financial situation of the enterprise.

The Sub-decree on the Establishment of the Council of Administrative Reform, under the Office of the Council Ministers, a body responsible for assisting the Supreme Council of State Reform in the administration of administrative reforms.

The decree creating the Supreme Council of State Reform under the chairmanship of the Prime Minister.

**YES:** A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

**NO:** A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

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48  
V-5. Business Licensing and Regulation

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70. Are business licenses available to all citizens?

56

70a. In law, anyone may apply for a business license.

YES | NO

**References:**

The Law Bearing upon Commercial Regulations and the Commercial Registers, as amended, specifically Articles 1 to 13 thereof, which defines the merchants required to enroll with the Commercial Register under the jurisdiction of the Ministry of Commerce as people or legal entities conducting acts of commerce as their usual profession (with reasonable exceptions, such as minors or merchants who have exemptions from profit taxes).

**YES:** A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

**NO:** A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

**Comments:**

It needs to be noted at the outset that the licensing regime in Cambodia has experienced concrete improvements in the past years, helped by funding specifically from the Asian Development Bank (ADB) under its Small and Medium Enterprise (SME) Development project. An SME sub-committee was established to promote good governance and to develop an enabling business environment for the SME in Cambodia. One of the improvements set up by the SME sub-committee was the Business Licensing Complaints Hotline, which private-sector entities can call to report complaints and grievances regarding administrative decisions made in relation to business licensing. This was certainly a laudable step, though, admittedly, its effectiveness is yet to be seen. It has been expressed that a key hurdle to its effectiveness is the lack of information, not only about the hotline itself, but also the terms governing the processing of complaints. For information dissemination, efforts have included the publication of the Handbook on Commercial Registration and the creation of a one-stop information window available at the Cambodia Small and Medium Enterprise Information Portal at: <http://www.mime.gov.kh/sme/eng/index.php?page=home>.

Also, it has been said that complaints can be brought up with the Cambodian Government Private Sector Forum (G-PSF), a public-private consultation mechanism. The creation of this mechanism is commendable because public-private sector dialogue is needed to encourage laws and regulations that take into account the concerns of the business sector. However, it has been noted that this mechanism is yet to mature and to be fully open.

**References:**

Under the Law Bearing upon Commercial Regulations and the Commercial Register, there is no complaint mechanism provided in the event of the rejection of a business license. Articles 26, 29, and 45 of the law seek to discipline and punish registrars who issue false certificates, refuse to issue required certificates, or try to solicit or receive possessions or money by using their positions. However, it is not provided what official administrative procedure shall be followed in raising complaints against a registrar who commits any wrongdoing. Article 55 of the law provides that the lower courts shall be competent in all commercial

matters, but going to court is normally the last resort for those seeking remedy, especially for administrative matters such as appealing the rejection of a license. Moreover, lower courts in Cambodia cannot be said to be competent to handle commercial matters. A draft law on the Establishment of the Commercial Court has also been made as part of the obligations of Cambodia under the WTO, but remains a draft as of this time.

Ministry of Commerce/Asian Development Bank, A Handbook on Commercial Registration.  
<http://www.mime.gov.kh/sme/eng/Hanbook%20Commercial%20Registration.%20Eng.pdf>

Cambodia, Small and Medium Enterprise Information Portal, SME Sub-Committee and SME Secretariat.  
[http://www.mime.gov.kh/sme/eng/index.php?page=sme\\_sub\\_committee\\_secretariat](http://www.mime.gov.kh/sme/eng/index.php?page=sme_sub_committee_secretariat).

Interview, Mr. Vanddy Hem, Programs Officer, Economics and Finance, ADB, Cambodia Resident Mission, September 2, 2008, 9:00 a.m., ADB office.

Interview, Anonymous, Executive, 31 August 2008, 10:00 a.m., Residence.

**YES:** A YES score is earned if there is a formal process for appealing a rejected license.

**NO:** A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

As mentioned, the licensing regime in Cambodia has undergone commendable improvements over the years, which effectively has eased up the process of license acquisition for small, medium and large enterprises alike. The registration process has been simplified by streamlining the application requirements by reducing the paperwork. The need for statements of conformity and local government approvals were eliminated, as well as the requirement to publish an announcement of registration in a newspaper. The requirements for the Articles of Incorporation were likewise simplified, which was a big help in eliminating dependence on outside facilitators. Another welcome breakthrough was the decentralization of commercial registration so that entrepreneurs do not have to travel to Phnom Penh to register. Now Battambang has an operational commercial-registration branch and the same initiative is said to be planned for major provinces such as Siem Reap.

As a result of these and other steps, the registration period has decreased from 30 days to a little more than ten days, or less. More broadly, it has been noted that the registration process in Cambodia is now more in line with the best international practices in terms of paperwork requirements. This development can be credited for the remarkable increase in the average number of enterprises registered monthly — from 61 during the period of January 2003 to August 2004 to 238 during the year 2007. Since there is a normal lag between the institution of reforms and compliance as the public becomes aware of the changes, the full impact of the reforms is yet to be felt.

**References:**

Asian Development Bank, Progress Report on Tranche Release, Cambodia: Small and Medium Enterprise Development, July 2008.  
<http://www.adb.org/Documents/Tranche-Releases/CAM/36383-CAM-PRTR.pdf>.

Office of the U.S. Trade Representative, 2008 National Trade Estimate Report on Foreign Trade Barriers, interview with anonymous executive, August 31, 2008, 10:00 a.m., residence.  
[http://www.ustr.gov/assets/Document\\_Library/Reports\\_Publications/2008/2008\\_NTE\\_Report/asset\\_upload\\_file915\\_14632.pdf](http://www.ustr.gov/assets/Document_Library/Reports_Publications/2008/2008_NTE_Report/asset_upload_file915_14632.pdf).

U.S. Department of State, 2008, Investment Climate Statement, Cambodia. <http://www.state.gov/e/eeb/afd/2008/103670.htm>.

Interview, Mr. Vanddy Hem, Programs Officer, Economics and Finance, ADB, Cambodia Resident Mission, September 2, 2008, 9:00 a.m., ADB office.

**100:** Licenses are not required, or licenses can be obtained within roughly one week.

**75:**

**50:** Licensing is required and takes around one month. Some groups may be delayed up to a three months

**25:**

**0:** Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

**Comments:**

The cost of getting a license in Cambodia has reduced significantly, although the exchange of unofficial payments for the sake of facilitating registration still takes place. Official fees were reduced from US\$177 in August 2004 to US\$105 in August 2007. The unofficial fees must have also been reduced because the streamlining of registration procedures and requirements would have reduced the dependence on so-called facilitators, which businesses pay (not cheaply) to help them navigate through the former very complex and confusing licensing regime. Taking into account unofficial payments, it has been estimated that the total costs of incorporation have dropped from almost US\$1,000 before the reforms to approximately US\$500 after the reforms. When the impact of reforms is realized, it is hoped that these unofficial payments, and any form of corruption, can be fully or almost fully stamped out.

**References:**

Asian Development Bank, Progress Report on Tranche Release, Cambodia: Small and Medium Enterprise Development, July 2008.

<http://www.adb.org/Documents/Tranche-Releases/CAM/36383-CAM-PRTR.pdf>.

Office of the U.S. Trade Representative, 2008 National Trade Estimate Report on Foreign Trade Barriers, interview with anonymous executive, August 31, 2008, 10:00 a.m., residence. [http://www.ustr.gov/assets/Document\\_Library/Reports\\_Publications/2008/2008\\_NTE\\_Report/asset\\_upload\\_file915\\_14632.pdf](http://www.ustr.gov/assets/Document_Library/Reports_Publications/2008/2008_NTE_Report/asset_upload_file915_14632.pdf).

U.S. Department of State, 2008, Investment Climate Statement, Cambodia. <http://www.state.gov/e/eeb/afd/2008/103670.htm>.

Interview, Mr. Vandy Hem, Programs Officer, Economics and Finance, ADB, Cambodia Resident Mission, September 2, 2008, 9:00 a.m., ADB office.

**100:** Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

**75:**

**50:** Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

## 71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

**Comments:**

Note that the Law on Cambodian standards has been criticized for not being on par with international standards. Its passage, however, is duly acknowledged as a feat in itself.

**References:**

The Law on Cambodian Standards, specifically Articles 15 to 19 thereof, which provide that the Institute of Standards of Cambodia (ISC), the agency responsible for developing and certifying conformity to certain standards, shall publish a newspaper announcement of its intention to declare a standard and the summary content of such standard for the purpose of accommodating any potential protest against the prospective standard and that the Minister in Charge of Industry shall declare any standard finally approved by the Council by publishing it in the Royal Gazette.

**YES:** A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

**NO:** A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

**References:**

The Law on Cambodian Standards, specifically Articles 15 to 19 thereof, which provide that the Institute of Standards of Cambodia (ISC), the agency responsible for developing and certifying conformity to certain standards, shall publish a newspaper announcement of its intention to declare a standard and the summary content of such standard for the purpose of accommodating any potential protest against the prospective standard and that the Minister in Charge of Industry shall declare any standard finally approved by the Council by publishing it in the Royal Gazette.

**YES:** A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

**NO:** A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

**References:**

The Law on Cambodian Standards, specifically Articles 15 to 19 thereof, which provide that the Institute of Standards of Cambodia (ISC), the agency responsible for developing and certifying conformity to certain standards, shall publish a newspaper announcement of its intention to declare a standard and the summary content of such standard for the purpose of accommodating any potential protest against the prospective standard and that the Minister in Charge of Industry shall declare any standard finally approved by the Council by publishing it in the Royal Gazette.

**YES:** A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

**NO:** A NO score is earned if such requirements are not made public or are otherwise not transparent.

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## 72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

25

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

**Comments:**

It has been expressed that there have been improvements, but enforcement remains difficult, arbitrary and weak. Corruption and use of connections and other influences are commonly practiced to escape inspections or punishment for non-compliance or to extract other favorable treatment.

Yet, one has to understand that even if Cambodia has been a member of the International Organization for Standardization since 1995 and other institutions including ASEAN, which has its own harmonization initiatives, standardization in Cambodia is at an early stage. The relevant law was just passed last year and the Institute of Standards Council (ISC), which is under the Ministry of Industry, Mining and Energy (MIME) and functions as the Secretariat of the so-called National Standards Council, is just a new body in the process of building its capacity and clout. Other agencies remain at the forefront of regulating conformity to standards,

including the Ministry of Health, which has been in charge of prescribing standards, quality control, distribution and labeling requirement for medicines, while the Department of Inspection and Fraud Repression (CamControl) under the Ministry of Commerce, handles quality control of food, plants and animal products and is the national contact point for Codex Alimentarius. CamControl's primary responsibility is the enforcement of quality and safety of products and services relating to sanitary and phyto-sanitary (SPS) measures. There are technical committees currently operating as well (e.g., Food and Agriculture; Chemicals and Consumer Items).

To develop its capacity, note that the United Nations Industrial Development Organization (UNIDO) has been providing assistance to the ISC.

**References:**

Office of the U.S. Trade Representative, 2008 National Trade Estimate Report on Foreign Trade Barriers, interview with anonymous executive, August 31, 2008, 10:00 a.m., residence. [http://www.ustr.gov/assets/Document\\_Library/Reports\\_Publications/2008/2008\\_NTE\\_Report/asset\\_upload\\_file915\\_14632.pdf](http://www.ustr.gov/assets/Document_Library/Reports_Publications/2008/2008_NTE_Report/asset_upload_file915_14632.pdf).

U.S. Department of State, 2008, Investment Climate Statement, Cambodia. <http://www.state.gov/e/eeb/ifd/2008/103670.htm>.

Interview, Mr. Vanddy Hem, Programs Officer, Economics and Finance, ADB, Cambodia Resident Mission, September 2, 2008, 9:00 a.m., ADB office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

**100:** Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

**75:**

**50:** Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

**25:**

**0:** Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

**Comments:**

It has been expressed that enforcement of environmental standards remains to be difficult, arbitrary and very weak. Corruption and use of connections and other influences are commonly practiced to escape inspections or punishment for non-compliance or extract other favorable treatment. Operations are underway to get environmental and social-impact assessments, despite past failures.

**References:**

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

**100:** Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

**75:**

**50:** Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

**25:**

**0:** Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

**Comments:**

It has been expressed that enforcement of environmental standards remains to be difficult, arbitrary and very weak. Corruption and use of connections and other influences are commonly practiced to escape inspections or punishment for non-compliance or extract other favorable treatment.

Yet, one has to understand that standardization in Cambodia is still at an early stage. The relevant law was just passed last year and the ISC is still in the process of building up its capacity and clout. The ISC now has the responsibility of establishing industrial standards and has been assigned to be the inquiry point for technical barriers to trade (TBT).

**References:**

Office of the U.S. Trade Representative, 2008 National Trade Estimate Report on Foreign Trade Barriers, interview with anonymous executive, August 31, 2008, 10:00 a.m., residence. [http://www.ustr.gov/assets/Document\\_Library/Reports\\_Publications/2008/2008\\_NTE\\_Report/asset\\_upload\\_file915\\_14632.pdf](http://www.ustr.gov/assets/Document_Library/Reports_Publications/2008/2008_NTE_Report/asset_upload_file915_14632.pdf).

U.S. Department of State, 2008, Investment Climate Statement, Cambodia. <http://www.state.gov/e/eeb/ifd/2008/103670.htm>.

Interview, Mr. Vanddy Hem, Programs Officer, Economics and Finance, ADB, Cambodia Resident Mission, September 2, 2008, 9:00 a.m., ADB office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Anonymous executive, August 22, 2008, 4:00 p.m., office.

**100:** Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

**75:**

**50:** Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

**25:**

**0:** Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

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Category VI. Anti-Corruption and Rule of Law

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VI-1. <sup>63</sup>Anti-Corruption Law

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73. Is there legislation criminalizing corruption?

89

73a. In law, attempted corruption is illegal.

YES | NO

**Comments:**

The current legislation criminalizing corruption is certainly viewed as inadequate. In the first place, the UNTAC law was intended to be a provisional law, only effective during the transition period. The draft Anti-Corruption Law is thus much anticipated, given the systematic and widespread corruption in Cambodia and the weakness of the institutions that are supposed to keep such problems in check as well as the integrity of high government officials. The draft, however, remains a draft since its inception in 1994. Although there has been a recent pronouncement that a draft has finally been completed and is intended to be submitted to the National Assembly after the latter approves the new penal code, the confidence that the draft will be passed is low. Another grave concern is that the draft in question may not be on par with international standards. Provisions on whistleblower protection may not be there or might not be strong enough. The independence of the Supreme National Council for Anti-Corruption may also not be guaranteed. Note that the civil society has not yet seen the latest draft of the law.

**References:**

UNTAC (United Nations Transitional Authority in Cambodia) or the provisional Criminal Law, specifically Article 38 thereof, which criminalizes attempted corruption, stating that any political official, civil servant, military personnel or official agent of any of the four Cambodian parties to the Paris Agreement, who, while performing official duties or tasks related to such duties, solicits or attempts to solicit or who receives or attempts to receive property, service, money, staff, professional position, document, authorization or any benefit in exchange for any one of these same elements is guilty of the felony of extortion and shall be subject to a punishment of three to seven years in prison.

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, 19 August 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Sebastian Strangio and Vong Sokheng, "Anti-Corruption Law to be Given to NA Next Month," Phnom Penh Post, August 27, 2008.  
[www.phnompenhpost.com/index.php/2008082721387/National-news/Anti-corruption-law-to-be-given-to-NA-next-month.html](http://www.phnompenhpost.com/index.php/2008082721387/National-news/Anti-corruption-law-to-be-given-to-NA-next-month.html)

**YES:** A YES score is earned if corruption laws include attempted acts.

**NO:** A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

**References:**

UNTAC (United Nations Transitional Authority in Cambodia) or the provisional Criminal Law, specifically Article 38 thereof, which criminalizes attempted corruption, stating that any political official, civil servant, military personnel or official agent of any of the four Cambodian parties to the Paris Agreement, who, while performing official duties or tasks related to such duties, solicits or attempts to solicit or who receives or attempts to receive property, service, money, staff, professional position, document, authorization or any benefit in exchange for any one of these same elements is guilty of the felony of extortion and shall be subject to a punishment of three to seven years in prison.

**YES:** A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

**NO:** A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

**References:**

UNTAC (United Nations Transitional Authority in Cambodia) or the provisional Criminal Law, specifically Article 38 thereof, which criminalizes attempted corruption, stating that any political official, civil servant, military personnel or official agent of any of the four Cambodian parties to the Paris Agreement, who, while performing official duties or tasks related to such duties, solicits or attempts to solicit or who receives or attempts to receive property, service, money, staff, professional position, document, authorization or any benefit in exchange for any one of these same elements is guilty of the felony of extortion and shall be subject to a punishment of three to seven years in prison.

**YES:** A YES score is earned if offering a bribe is illegal.

**NO:** A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

**YES** | NO

**References:**

UNTAC (United Nations Transitional Authority in Cambodia) or the provisional Criminal Law, specifically Article 38 thereof, which criminalizes attempted corruption, stating that any political official, civil servant, military personnel or official agent of any of the four Cambodian parties to the Paris Agreement, who, while performing official duties or tasks related to such duties, solicits or attempts to solicit or who receives or attempts to receive property, service, money, staff, professional position, document, authorization or any benefit in exchange for any one of these same elements is guilty of the felony of extortion and shall be subject to a punishment of three to seven years in prison.

**YES:** A YES score is earned if receiving a bribe is illegal.

**NO:** A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | **NO**

**References:**

No. Article 58 of the UNTAC Law only covers any person who corrupts or attempts to corrupt any elected official, civil servant, military personnel, or official agent of any of the four Cambodian parties to the Paris Agreement or of any registered political party.

**YES:** A YES score is earned if bribing a foreign official is illegal.

**NO:** A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

**YES** | NO

**References:**

The UNTAC Law, specifically Article 37 thereof, which provides that any elected official, civil servant, military personnel or official agent of any of the four Cambodian parties to the Paris Agreement, or any political official who, while performing official duties or tasks related to such duties, with a view to owning or using, misappropriates, sells, rents, embezzles for personal profit or for that of a third party, property, services, money, personnel, any advantage, document, authorization or any function belonging to any

public authority, is guilty of the felony of embezzlement of public property and shall be liable to imprisonment for a term of three to ten years.

**YES:** A YES score is earned if using public resources for private gain is illegal.

**NO:** A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

**References:**

The UNTAC Law, specifically Article 37 thereof, which provides that any elected official, civil servant, military personnel or official agent of any of the four Cambodian parties to the Paris Agreement, or any political official who, while performing official duties or tasks related to such duties, with a view to owning or using, misappropriates, sells, rents, embezzles for personal profit or for that of a third party, property, services, money, personnel, any advantage, document, authorization or any function belonging to any public authority, is guilty of the felony of embezzlement of public property and shall be liable to imprisonment for a term of three to ten years.

**YES:** A YES score is earned if using confidential state information for private gain is illegal.

**NO:** A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

**Comments:**

The Law on Anti-Money Laundering and Combating the Financing of Terrorism, which the king promulgated in June 2007, paved the way for the creation of the financial investigations unit (FIU) within the National Bank of Cambodia. While its adoption was considered an important step in thwarting attempts at money laundering and consequently improving the business climate in the country, note that the law has been criticized by some sectors as weak. This was mainly because the maximum penalty provided under the law is only one year in jail and a fine of 5 million riel (US\$1,250). The significance of the law has also been questioned, given that, in Cambodia, financial transactions are largely carried out in cash rather than through the banking system.

**References:**

The Law on Anti-Money Laundering and Combating the Financing of Terrorism, promulgated in June 2007.

Ministry of Interior, Country Report of the Kingdom of Cambodia, Eight Senior Officials Meeting on Transnational Crime, June 16 to June 20, 2008.

[http://www.interior.gov.kh/document/Cambodia\\_CT\\_in\\_KL.pdf](http://www.interior.gov.kh/document/Cambodia_CT_in_KL.pdf)

International Herald Tribune, Asia-Pacific (Associated Press), Cambodia's National Assembly Passes Law Against Money Laundering, Terrorist Financing," April 30, 2007. [http://www.ihf.com/articles/ap/2007/04/30/asia/AS-GEN-Cambodia\\_Counterterrorism.php](http://www.ihf.com/articles/ap/2007/04/30/asia/AS-GEN-Cambodia_Counterterrorism.php).

**YES:** A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

**NO:** A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

**References:**

The UNTAC Law, particularly Article 36 thereof, which provides that any individual who has taken part in a formal or informal association set up for the purpose of planning one or more felonies or misdemeanors against persons or property, or if specific acts of preparation of these offenses have taken place, shall be liable to a term of imprisonment of from three to 15 years.

**YES:** A YES score is earned if organized crime is illegal.

**NO:** A NO score is earned if this is not illegal.

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## VI-2. Anti-Corruption Agency

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### 75. Is the anti-corruption agency effective?

22

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | **NO**

**References:**

The sub-decree on the Creation of the Anti-Corruption Body, particularly Articles 1, 2 and 9 thereof, which places the ACB under the Council of the Ministers and appoints the advisers to the chief executive, the Council of Ministers, ministry officials, army and police officials as members of the ACB as well as places the budget of the ACB as part of the budget of the Council of Ministers.

The Law on the MoNASRI wherein MoNASRI is identified as a ministry within the executive branch.

The Internal Regulations of the National Assembly of the Kingdom of Cambodia, in particular Principle or Article 6 thereof which identifies the Commission on Interior, National Defense, Investigation, Anti-Corruption and Public Administration as one of the commissions of the National Assembly

**YES:** A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | **25** | 0

**Comments:**

It has been noted that in practice, the ACB, MoNASRI and Commission No. 4 are not protected from political interference, nor are they politically independent because they are executive and legislative agencies.

The ACB has been said to act directly on the orders of the chief executive who also must be checked for abuse of power. The ABC is chaired by advisers who do not have accountability to the people. Its members are ministry officials who, like the chief executive, must be monitored for any excesses. By virtue of its own membership, the integrity of the ACB has been said to be dubious. The enforcement of its mandate has been said to be at the discriminatory whim of the chief executive and his cohorts, rather than based on solid law under which everyone is equal. Political considerations certainly limit the scope, effectiveness and transparency of the workings of the body. The fact that the existence of the ACB is governed by a sub-decree implies that the body can be abolished anytime through the sole decision of the chief executive. This is why the draft Anti-Corruption Law, which sets out the creation of the independent Supreme National Council for Anti-Corruption, has been said to be extremely vital.

The MoNASRI is in the same boat. It has been said that this institution was created to serve political ends. It is not independent, nor does it have teeth and, in fact, has become largely inactive.

The Commission No. 4, even when it was chaired by an opposition parliamentary member, cannot likewise act independently because it is dominated by the ruling party members who, as noted, have political loyalty as their topmost consideration. Its hands are tied from the very outset.

**References:**

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, August 19, 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Clean Hand (produced by Center for Social Development), Our Country, Our Future, February 2007.

U.S. Department of State, 2008, Investment Climate Statement, Cambodia.  
<http://www.state.gov/e/eeb/ifd/2008/103670.htm>

**100:** This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

**75:**

**50:** This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

**25:**

**0:** This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

The Sub-decree on the Creation of the ACB does not provide fixed terms for its members, clear criteria or mechanisms for appointments and dismissals. Because it is governed by a sub-decree, the body can be abolished or replaced by a new one at any time. The Minister of the MoNASRI also answers directly to the chief executive and can be replaced at any time. The President of Commission No. 4 can be replaced via an election by the National Assembly.

**References:**

Interview, Anonymous, Executive, August 31, 2008, 10:00 a.m., residence.

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, 19 August 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

**100:** The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director(s) can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

**Comments:**

Members of the ACB are, in essence, political appointments. As has been noted, the criterion was more of the who-you-know, rather than the know-how. The same criterion has been said to be the paramount consideration for the selection of ministry officials, although some officials are indeed acknowledged to be highly skilled and experienced. Commission No. 4 members are, of course, elected officials with clear political loyalties.

**References:**

Interview, Anonymous, Executive, August 31, 2008, 10:00 a.m., residence.

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, 19 August 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

As mentioned before, the ACB has a full-time staff. Its structure includes a governing council and several units (investigation, legal/law enforcement promotion, finance, human resources, education and cooperation). Full-time civil servants run the administrative units.

However, the lawyers for the ACB have been said to be working only part-time. Further, investigative and overall capacity is low and there is the widely perceived politicization of the body. Such problems undermine the professionalism of ACB staff.

The MoNASRI also has a full-time staff, but their knowledge and experience have been said to be limited and its anti-corruption operations have been said to have been largely inactive.

Commission No. 4 also has full-time staff, but their technical capacity is likewise low and resources are insufficient. The body is also said to be partisan.

**References:**

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

World Bank, Country Assistance Strategy Progress Report, April 17, 2008.

[http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/04/30/000020953\\_20080430114456/Rendered/PDF/433300CASP0IDA1R200810](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/04/30/000020953_20080430114456/Rendered/PDF/433300CASP0IDA1R200810)

U.S. Department of State, 2008, Investment Climate Statement, Cambodia.

<http://www.state.gov/e/eeb/ifd/2008/103670.htm>

**100:** The agency (or agencies) has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

**25:**

**0:** The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

Again, in terms of funding for the offices mentioned before, it has been mentioned that there appear to have been no problems. Note that an analysis of the 2007 budget implementation concluded that for 2007, the government's management of its recurrent budget items can be considered good because most ministries receive their allocated funds. External technical assistance tended to fill the funding deficits or supplement funding for anti-corruption-related initiatives.

Still, political considerations do affect agency funding. The ACB, for instance, is not financially independent because its budget is part of the budget of the Council of Ministers, as provided under the relevant sub-decree.

**References:**

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 a.m., restaurant.

NGO Forum on Cambodia, Analysis of the Implementation of the 2007 Budget and the 2008 Budget Law," January 2008.

<http://www.ngoforum.org.kh/Development/Docs/Budget/Budget%20Law%202008%20-%20English.pdf>

**100:** The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

**Comments:**

As far as is known, there are no such reports that have been made available to the public.

**References:**

Interview, Anonymous, Executive, August 31, 2008, 10:00 a.m., residence.

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, 19 August 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

**100:** The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

**75:**

**50:** The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

**25:**

**0:** The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

**Comments:**

The ACB does not have sufficient powers to carry out its mandate. To begin with, it is created by virtue of a sub-decree and, hence, its existence is at the hands of the chief executive. Second, it is not independent. Its membership is composed of people whom it is supposed to check as well as people who do not have accountability under the law. Third, it does not have financial autonomy because its budget is tied up with the budget of the Council of Ministers. Fourth, there are no clear criteria or mechanisms to ensure recruitment of staff with relevant skill and experience. Fifth, it is not given the power to do the following: conduct its own independent investigation of complaints, including the power to search and interview suspects; arrest suspects in accordance with criminal procedures; seize exhibits against suspects; request search warrants to check bank accounts; extend protection to whistleblowers; temporarily suspend or request disciplinary action against those involved in corruption; or request extradition for suspects who have fled the country (the sub-decree on ACB just gives it the power to cooperate with the competent authority in conducting investigations and formally referring the case to the court) .

The MoNASRI, likewise, is not given the powers mentioned above. Its lack of independence also undermines its ability to carry out its mandate. According to the law establishing it, it shall submit its cases to the head of the government and ask for the government's consent to prosecute any person or legal entity involved in corruption.

The Commission No.4 does not also have the above-mentioned powers. It has been expressed that it has neither independence nor teeth. It passes on the complaints it receives to the appropriate ministries.

**References:**

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, 19 August 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Clean Hand (produced by Center for Social Development), Our Country, Our Future," February 2007.

U.S. Department of State, 2008 Investment Climate Statement, Cambodia.  
<http://www.state.gov/e/eeb/ifd/2008/103670.htm>

**100:** The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

**75:**

**50:** The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

**25:**

**0:** The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

As has been mentioned, the ACB does initiate investigations. Currently, it has cases under trial, however, again, this unit is said to not be independent from politics and other influences. Therefore, its workings are believed to be compromised.

Likewise, it has been said that Commission No. 4 has indeed reviewed complaints but it does not have teeth, nor is it independent. The MoNASRI's anti-corruption operations have been said to be largely inactive.

**References:**

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 a.m., restaurant.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, 19 August 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Clean Hand (produced by Center for Social Development), Our Country, Our Future," February 2007.

U.S. Department of State, 2008 Investment Climate Statement, Cambodia.  
<http://www.state.gov/e/eeb/ifd/2008/103670.htm>

**100:** When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

**75:**

**50:** The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

## 76. Can citizens access the anti-corruption agency?

13

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

### Comments:

As mentioned before, it depends on the case for ACB; some are ultimately brought to court for trial, but it could take a long time for a decision. There is no definite time limit, although some of the accused have already been put in pre-trial detention and some have been released on bail.

The MoNASRI is known to submit its findings to the head of the government. On the other hand, the Commission on Interior, National Defense, Investigation, Anti-Corruption and Public Service Administration passes complaints it receives to the appropriate ministries. The performance of said institutions is to be hindered by partisanship and political considerations. The process takes a long time. Actions are belated, if taken at all.

### References:

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 a.m., restaurant.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, 19 August 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

**100:** The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

### Comments:

First of all, there is no whistleblower protection under the law. This is the main deterrent to a citizen's readiness to report corruption.

In addition, as mentioned before, the complaint mechanisms (hotline, complaint box, direct complaint to the staff) under the ACB are not really being used for three reasons: one, because many people are not aware of their existence; two, because the people who do know about them are afraid to use them because there is no whistleblower protection provided under the law and even if there is, in principle, there is lack of trust that such a law would be implemented satisfactorily and; three, because many believe that the body is not impartial and they might risk their jobs or their lives for possibly nothing in the end.

The ACU, however, is said to have received anonymous complaints by some means. It also acts on cases authorized or given on the direct order of the Prime Minister.

As for the Commission on Interior, National Defense, Investigation, Anti-Corruption and Public Service Administration within the National Assembly, this commission was once chaired by an opposition MP. It has been said that the opposition MP actually encouraged people to report any corruption they witness. By virtue of these efforts, the commission received complaints but, unfortunately, people fear retribution and the commission does not have teeth or political independence.

Finally, the MoNASRI is believed to not be politically independent and has been said to have been largely inactive.

**References:**

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, 19 August 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Clean Hand (produced by Center for Social Development), "Our Country, Our Future," February 2007.

U.S. Department of State, 2008 Investment Climate Statement, Cambodia.  
<http://www.state.gov/e/eeb/ifd/2008/103670.htm>.

**100:** Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

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74. Is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

**References:**

Sub-decree on the Creation of the Anti-Corruption Body (ACB), Articles 1 and 3, stating that the Anti-Corruption body is created under the Council of Ministers to focus on preventing corruption, strengthening law enforcement and enhancing public support for combating or eliminating corruption.

The Law on the Establishment and Functioning of the Ministry of National Assembly and Senate Relations and Inspection (MoNASRI), which provides that the MoNASRI shall have the power to enforce measures against public wrongdoing and corruption by public officials, army officials and national police whose actions negatively affect the development of the nation.

The Internal Regulations of the National Assembly of the Kingdom of Cambodia, in particular Principle or Article 6 thereof, which identify the Commission on Interior, National Defense, Investigation, Anti-Corruption and Public Administration as one of the commissions of the National Assembly.

**YES:** A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

**NO:** A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

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45  
VI-3. Rule of Law

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77. Is there an appeals mechanism for challenging criminal judgments?

58

77a. In law, there is a general right of appeal.

YES | NO

**Comments:**

Note that while the passage of the new Criminal Code Procedure in 2007 has been widely commended, grave concerns over some of its provisions have been raised because they have been said to undermine the basic elements of the rights to fair trial.

Of greatest concern is the increased period for pre-trial detention to a maximum of 18 months for felonies. While judges are required to justify their decisions regarding pre-trial detention, that this shall be followed in practice any more than the old provision has been is doubtful. The welfare of minors is especially at risk. At least 17 minors were reported to have been in detention at Correctional Center Two prison beyond the legal limit of one month for misdemeanors and two months for felonies.

Another serious concern is the lack of a time limit on the resolution of appeals. Combined with this concern is the formalization under the new Criminal Code Procedure of what has been considered the lamentable practice of continuing to hold detainees while appeals remain pending. Because of this requirement, detainees who have been acquitted, or convicted prisoners who have already served their prison sentences, can remain in prison for years while they await appeal hearings.

Another provision that is problematic is the new requirement that three judges hear each felony case, which is difficult to achieve in certain provinces given the lack of judges. Borrowing a judge from another province is not easy, given that many judges are busy and there is lack of funds for transportation. Hence, the new requirement shall most likely lead to delays and extended pre-trial detentions.

The passage of the new criminal code has been acclaimed as a huge achievement of the government for its legal and judicial reform programs. The fact, however, that some of its provisions have worsened, rather than improved, the terms ensuring fair-trial rights for the accused and that this has happened under the noses of foreign donors who provided considerable assistance to the preparation of the new code, caused some to underplay the achievement in this development.

**References:**

The Constitution, specifically Article 31 thereof, which provides that the Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women s and children s rights.

The ICCPR, specifically Article 15 (5) thereof, which provides that everyone convicted of a crime shall have the right for his or her conviction and sentence to be reviewed by a higher tribunal.

The Code of Civil Procedure, specifically Article 259 thereof, which states that a decision that has not yet become final and binding may be appealed to a higher court

The Code of Criminal Procedure, specifically Article 373 thereof, which provides that the criminal chamber of the Court of Appeals shall review lower-court decisions, within its scope of jurisdiction for criminal cases.

The Law on the Organization of the Courts, specifically Article 10 thereof, which states that the Appeals Court shall hear appeals on complaints against judgments of the provincial, municipal and military courts by providing access for grievance complaints.

**YES:** A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

**NO:** A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

**Comments:**

As mentioned, even under the new criminal and civil code procedures, there is no time limit imposed on the resolution of appeals. This is one of the major concerns raised regarding the new laws. It is a violation of the right of the appellant to the resolution of his or her appeal within a reasonable period of time and it also provides the room for more corruption because bribes may be viewed as necessary to prod the process. In practice, it has been expressed that money, connections and other influences do work in the case of the appeal process. For the poor and those without influence, it has been said that the appeals process takes a long time. As noted, some cases have gone on for two, five and even 10 years. There are other reasons, apart from corruption, that can explain the extraordinarily lengthy process of appeals resolution in Cambodia. Five reasons have been singled out: low public education about the appeals process; lack of judges; mediocre skills and shortage of lawyers; existence of only one Appeals Court, which is located in Phnom Penh; and incidents of intimidation and threats.

**References:**

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous, NGO, August 23, 2008, 11:30 a.m., restaurant.

Interview, Mr. Uch Kimy, Campaign Program Officer, The Cambodian Human Rights and Development Association (ADHOC), August 25, 2008, 8:45 a.m., ADHOC office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

Interview, Anonymous executive, September 9, 2008, 2:45 p.m., Office, The Cambodian Human Rights and Development Association, Human Rights Situation 2007, 2008.

**100:** Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

**75:**

**50:** Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

**25:**

**0:** Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

**Comments:**

For criminal cases, the court fees shall be the responsibility of the state, as provided under Article 533 of the Criminal Code Procedure.

For civil cases, the fee for filing appeal may be twice, or another predetermined proportion, depending on the type of the appeal, of the fee determined by formulas determined by Article 61 of the Code of Civil Procedure, which considers the value of the subject matter of the action. There are also court costs other than filing fees determined by Articles 62 and 63 of the said code.

It has been noted that the costs under the new code have increased significantly, enough to possibly create a barrier to the access of justice of many Cambodians who can barely sustain a living on a day-to-day basis. However, it can be noted that under the new code, the court costs may be waived for a person unable to pay. More specifically, Article 69 of the new Civil Code Procedure provides that the court may, upon a motion, order in forma pauperis (aid in litigation) for a person who lacks the means to pay costs necessary for the preparation and maintenance of an action, or for a person who will face extreme hardship by paying such costs.

The implementation of the new procedure codes has been said to be underway. Given the option of waiving fees for those who cannot afford them, ideally, it can be said that the appeals mechanism is affordable to the citizens. In reality however, there are complications. First, what is the determination of who is deemed poor or unable to pay. Second, there is only one Court of Appeals, requiring travel for those in the provinces and therefore incurrence of transportation costs which the poor cannot afford. Third, is the burden of paying unofficial fees. Given that there is no timeframe for the resolution of appeals, payment of unofficial

fees may be advised or initiated to hasten the process. Taking into account these complications, the cost of the appeals mechanism has been said to have been much more than what is officially determined by law.

**References:**

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous, NGO, August 23, 2008, 11:30 a.m., restaurant.

Interview, Mr. Uch Kimy, Campaign Program Officer, The Cambodian Human Rights and Development Association (ADHOC), August 25, 2008, 8:45 a.m., ADHOC office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

Interview, Anonymous executive, September 9, 2008, 2:45 p.m., Office,

The Cambodian Human Rights and Development Association, Human Rights Situation 2007, 2008.

**100:** In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees are not a barrier to appeals.

**75:**

**50:** In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees present somewhat of a barrier to pursuing appeal.

**25:**

**0:** The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorneys fees greatly discourage the use of the appeals process.

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## 78. Do judgments in the criminal system follow written law?

50

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

**Comments:**

It depends on the case. It has been said that for cases related to politics, the judges follow the party line. The law becomes an instrument to protect the interests of the powerful and the wealthy and discriminate against the enemies. For politically tainted cases, the following saying has been said to have been the rule of thumb: For my friends, everything they want. For my enemies, the law.

As for corruption, yes, it is rampant within the judiciary, so much so that it has become a culture. Even some judges readily admit this. Some practices, such as the provision of gifts and food and offers of money post-judgment, were defended, however, because they are considered given in gratitude. It was also asserted that such offers do not necessarily influence the decision of the judges. Even if they do influence the decision, the guilty would still be held accountable, only the punishment would be reduced. For misdemeanors, the influence has been said to be greater, given the lesser gravity of the acts. The low salary of the judges, despite the raises implemented, have also been used to justify the corruption and the consequent performance of judges.

**References:**

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Anonymous, August 23, 2008, 11:30 a.m., restaurant.

Interview, Mr. Uch Kimy, Campaign Program Officer, The Cambodian Human Rights and Development Association (ADHOC), 25 August 2008, 8:45 a.m., ADHOC office

Interview, Anonymous, Executive, September 9, 2008, 2:45 p.m., office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

**100:** Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

**75:**

**50:** Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

**25:**

**0:** Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

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## 79. Are judicial decisions enforced by the state?

50

79. In practice, are judicial decisions enforced by the state?

100 | 75 | **50** | 25 | 0

### Comments:

Again, it depends on the case. It has been said that if the case involves the powerful and the wealthy in Cambodia, the verdict is not enforced or not enforced fully. As noted, enforcement of the decisions has, at times, also been complicated by conflict between the judges and the police.

### References:

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Anonymous, August 23, 2008, 11:30 a.m., restaurant.

Interview, Mr. Uch Kimy, Campaign Program Officer, The Cambodian Human Rights and Development Association (ADHOC), 25 August 2008, 8:45 a.m., ADHOC office

Interview, Anonymous, Executive, September 9, 2008, 2:45 p.m., office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

**100:** Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

**75:**

**50:** Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

**25:**

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

## 80. Is the judiciary able to act independently?

75

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

### References:

The Constitution, specifically Article 128 thereof, which provides that the judiciary shall be an independent power and Article 31 thereof, which states that the Kingdom of Cambodia shall recognize and respect human rights, as stipulated in the United Nations Charter, the Universal Declaration of Human rights, and the covenants and conventions related to human, women's and children's rights

Article 10 of the Universal Declaration of Human Rights, which states the right of any citizen to a fair and public hearing by an independent and impartial tribunal.

Article 14 (1) of the ICCPR, which, likewise, ensures everyone, in the determination of any criminal charges, the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.

The UNTAC Law, in particular Article 1 thereof, which provides that the independence of the judiciary must be guaranteed in accordance with the Basic Principles on the Independence of the Judiciary, adopted by the United Nations and that the judiciary must be independent of the executive and legislative authorities of any political party.

**YES:** A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts ).

**NO:** A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

### Comments:

The judiciary is not independent in Cambodia. Executive control through the party line is tight and very much real. To begin with, nomination of judges have been said to be essentially political appointments. Under the law, the Supreme Council of Magistracy is responsible for proposing judicial appointments, but, as has been said, this institution has not been observed to act independently; it cannot fully exercise its powers because of executive interference. Proof was the replacement of the Court of Appeals President and appointment of the new members of the SCM in August 2007 by what seemed to be only upon the request of the executive. The selection criteria for national-level judges have also not been clear. It has been expressed that the ushering in of new government in Cambodia normally means negotiating for and even buying posts, including judicial positions. Once in the post, judges do not want to lose their position, allegedly wanting to recoup their investments; therefore, they are afraid of sanctions should they break from the party line. This is why, as mentioned, in cases that are politically related, judges have tended to interpret and enforce the law in a manner biased towards the politically powerful and wealthy and against the so-called enemies or those who have fallen out of the graces of those in power. Now that ruling party has won 90 seats in the National Assembly, it is the prognosis that the problem of lack of independence of the judiciary will be worse.

Overall, it has been said that 80 to 100 percent of the judges in Cambodia are politically biased.

### References:

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Anonymous, August 23, 2008, 11:30 a.m., restaurant.

Interview, Mr. Uch Kimy, Campaign Program Officer, The Cambodian Human Rights and Development Association (ADHOC), 25 August 2008, 8:45 a.m., ADHOC office

Interview, Anonymous, Executive, September 9, 2008, 2:45 p.m., office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

LICADHO, Cambodian League for the Promotion and Defense of Human Rights, Charade of Justice," December 2007. <http://www.licadho.org/reports/files/113LICADHOReportCharadeJustice07.pdf>.

**100:** National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

**75:**

**50:** National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

**25:**

**0:** National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

**References:**

The Code of Civil Procedure, specifically Articles 26 and 27 thereof, which provides that cases shall be distributed automatically to each judge, pursuant to an order determined each year by the court president, subject to some exceptions under which a judge can be excluded.

The Code of Criminal Procedure, which, as indicated in several articles, shall provide that the court president is responsible for determining the order of distributing cases to judges.

**YES:** A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

**NO:** A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

**References:**

The Constitution, in particular Articles 133 and 134 thereof, which provide that the judges shall not be dismissed and that the Supreme Council of Magistracy (SCM) shall decide on disciplinary actions against delinquent judges.

The Law on the Organization and Functioning of the Supreme Council of Magistracy, specifically Articles 11 and 12 thereof, which provide that the SCM shall meet in the form of a Disciplinary Council to decide on disciplinary actions against judges and such Council shall examine all documents related to the alleged delinquent judge.

**YES:** A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

**NO:** A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

## 81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

### Comments:

As far as is known, no judge has been reported to have been physically harmed or killed from June last year. It has been expressed, however, that the fact that no judge has been harmed or murdered does not mean that judges are safe in Cambodia. First of all, very few corruption cases are known to have reached the court because those cases referred by the Anti-Corruption Body, which, as mentioned beforehand, is under the Office of the Council of Ministers, have been said to be receiving direct orders from the chief executive. There is no direct threat against judges who handle such corruption cases because it has been said that such cases do not bear upon the interests, if not actually in the interests, of those in power. Second, it has been noted that the obligation to obey the party line is already embedded in judges, so there is no need to remind them. There is a general understanding that those who transgress shall pay the price for doing so. Third, for those who have strayed, the sanction has been reassignment to another province or to an executive agency. Reassignment to another province is considered a punishment because the province involved is usually where there are fewer opportunities for corruption.

### References:

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous, August 23, 2008, 11:30 a.m., restaurant.

Interview, Mr. Uch Kimy, Campaign Program Officer, The Cambodian Human Rights and Development Association (ADHOC), 25 August 2008, 8:45 a.m., ADHOC office

Interview, Anonymous, Executive, September 9, 2008, 2:45 p.m., office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

Interview, Anonymous executive, September 9, 2008, 2:45 p.m., office media reports.

**YES:** A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

**NO:** A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

### References:

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous, August 23, 2008, 11:30 a.m., restaurant.

Interview, Mr. Uch Kimy, Campaign Program Officer, The Cambodian Human Rights and Development Association (ADHOC), 25 August 2008, 8:45 a.m., ADHOC office

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

Interview, Anonymous executive, September 9, 2008, 2:45 p.m., office media reports.

**YES:** A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

**NO:** A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

## 82. Do citizens have equal access to the justice system?

54

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

### Comments:

It has been expressed that judicial decisions are not affected by racial or ethnic bias. However, indigenous people in Cambodia are poor and lack influential. Judicial decisions have been said to be certainly biased in favor of the powerful and the wealthy. Indigenous groups are vulnerable groups that simply cannot be said to have the same level of access to the justice system as other groups. This is so because of their lack of awareness of their legal rights and the workings of the judicial system as a whole. Such groups have been so used to other modes of dispute resolution that the whole institution of the judiciary has been said to be alien to them. Thus, it has been proposed that to enhance the access of such groups to the judiciary, the first thing that needs to be done is to de-mystify the notion of judiciary to them and educate them about their legal rights.

Many indigenous groups in Cambodia are now caught up in land disputes with powerful people. These disputes are intense because, on the one hand, local communities struggle to fight for the land on which their livelihoods have been based for a long time, but, on the other hand, powerful people want more of this physical capital which is expected to become more valuable as Cambodia progresses. It has been noted that land ownership continues to shrink under illegal land deals and the grant of economic land concessions.

Apparently, there is poor compliance with the Land law and the Sub-decree on Economic Land Concessions but, even worse is that, as noted, the relevant authorities and the judicial system that were supposed to afford the indigenous groups equal protection have instead turned in favor of the powerful and wealthy parties (including military), leaving such vulnerable groups with no recourse except to seek the aid of human rights NGOs. But the space for human-rights activists to fight for the land rights of local communities has also been shrinking as they have been consistently intimidated, threatened, obstructed, and some have even been charged with criminal offenses under the Land Law, such as infringement of private property, even though the legal possession of the land has not been determined.

It is remarkable how community activists in land disputes can be charged with such crimes and not the other parties who have influential connections. Indigenous people and activists who have fought forced evictions have been slapped with and convicted for criminal charges, such as battery and damage to private property, even without concrete evidence. Meanwhile, no charges have been made against the police who have used excessive force. There are current initiatives that seek to partly address problems, such as the completion of the Sub-Decree on the Indigenous Communal Land Titles and the grant of land concessions to the poor, but progress has been said to be so slow that the victims and the civil society have become dubious of the commitment of the government. Owing to their frustrations, people have chosen to protest in front of the prime minister's house, rather than go through the formal mechanisms to seek remedy.

With the land disputes a case in point, it is apparent how indigenous groups cannot be said to have equal access to the justice system as, say, the influential and the wealthy in Cambodia. The bias in judicial decisions may not be traced to ethnicity per se, but can definitely be traced to the lack of influence and poverty of vulnerable groups.

### References:

Annual Report of the United Nations High Commissioner for Human Rights and Reports from the Office of the High Commissioner and the

Secretary General, February 11, 2008.  
[http://cambodia.ohchr.org/webdocuments/reports/SRSG\\_HR\\_rpt/SRSG\\_HR13022008E.pdf](http://cambodia.ohchr.org/webdocuments/reports/SRSG_HR_rpt/SRSG_HR13022008E.pdf).

The Cambodian Human Rights and Development Association, Human Rights Situation 2007, February 2008.

LICADHO, Cambodian League for the Promotion and Defense of Human Rights, Charade of Justice, December 2007. <http://www.licadho.org/reports/files/113LICADHOReportCharadeJustice07.pdf>.

NGO Committee for the Monitoring of CDCF Indicators, NGO Statement on Monitoring of CDCG Indicators, March 4, 2008.  
[http://www.ngoforum.org.kh/Development/Docs/Statement%202008/NGO%20Statement%20on%20the%20Monitoring%20of%20CDCF%20Indicators\\_Mi](http://www.ngoforum.org.kh/Development/Docs/Statement%202008/NGO%20Statement%20on%20the%20Monitoring%20of%20CDCF%20Indicators_Mi)

Interview, Ms. Theary Seng, Executive Director, Center for Social Development, September 17, 2008, 11:30 a.m., restaurant.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous, August 23, 2008, 11:30 a.m., restaurant.

Interview, Mr. Uch Kimy, Campaign Program Officer, The Cambodian Human Rights and Development Association (ADHOC), 25 August 2008, 8:45 a.m., ADHOC office

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

Interview, Anonymous executive, September 9, 2008, 2:45 p.m., office.

**100:** Judicial decisions are not affected by racial or ethnic bias.

**75:**

**50:** Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

**25:**

**0:** Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

**Comments:**

Yes, women can access the judicial system, but there are at least two things to consider: First, they lack knowledge of their legal rights and the judicial system as a whole. Second, especially for issues that affect their private lives, such as domestic violence, they prefer alternative means of dispute resolution such as via the village chief. They also often seek the help of NGOs.

**References:**

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous, August 23, 2008, 11:30 a.m., restaurant.

Interview, Mr. Uch Kimy, Campaign Program Officer, The Cambodian Human Rights and Development Association (ADHOC), 25 August 2008, 8:45 a.m., ADHOC office

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

**100:** Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

**75:**

**50:** Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

**25:**

**0:** Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

**References:**

The Constitution, specifically Article 38 thereof, which provides that every citizen shall enjoy the right to defense through judicial recourse.

Article 14(3) (d) of the ICCPR, which provides that in the determination of any criminal charge, everyone shall be entitled, in full equality, to have legal assistance assigned to him or her without payment if there are insufficient means to pay for it.

The Criminal Procedure Code of the Kingdom of Cambodia, particularly Article 48 thereof, which provides the right of the accused to a lawyer that he or she chooses or a lawyer appointed in accordance with the Law on the Bar, as well as Article 301 thereof, which stipulates that the assistance of a lawyer is compulsory when the case is a felony or when the accused in a criminal offense is a minor and that if the accused has not selected a lawyer, a lawyer shall be appointed upon the initiative of the court president in accordance with the Law on the Bar.

The Law on the Bar, specifically Articles 29 and 30 thereof, which state that all lawyers are obligated to defend the poor according to the same procedures and internal rules and in the same manner as for the defense of their own clients and that the poor are defined as those persons who have no property, no income, or who receive insufficient income to support a living.

**YES:** A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

**NO:** A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

**Comments:**

A significant number of people charged with criminal acts in Cambodia have not received legal assistance, despite a legal requirement. Fifty percent of those charged, at least in 2006, were estimated to have been without legal representation and the recent statistic might not be too far from this number. For the period October 2006 to September 2007, it has been noted that only 15 percent of the defendants whose cases were monitored by the Center for Social Development (CSD) under its Court Watch Project were represented during trials and investigations. In felony trials, where the presence of the defense counsel is imperative, 30 percent were not represented. For juvenile defendants, where legal representation is likewise mandatory, around 30 percent were not represented during trials and more than 70 percent were not represented during investigations.

There are several reasons for the above-mentioned problems:

First, is the lack of knowledge of the right to legal assistance. Clerks are supposed to inform the accused of such rights, but, as noted, this does not always happen. Some defendants may have also agreed to proceed without a defense counsel because they were afraid to spend additional time in pre-trial detention while a lawyer was being sought for them. Note that concerns over pre-

trial detention have intensified because the new criminal code procedure increased the pre-trial detention limit to a maximum of 18 months.

Second, is the shortage of lawyers in Cambodia. As of 2007, there are around 500 practicing and trainee lawyers and most of them are based in Phnom Penh. NGOs, which provide legal assistance, also have few lawyers. Compounding this problem is the lack of time that these lawyers normally have in preparing a defense for their clients. It has been noted that in Cambodia it is not uncommon for a lawyer to meet his or her client for the first time on the day of the trial. The poor quality of the lawyers has also been said to be a problem.

Third, is the insufficient funding of the bar, which has the responsibility of providing free legal assistance to the poor and providing training for its registered lawyers.

**References:**

Center for Social Development, Annual Report, The Court Watch Project (October 2006 to September 2007), March 2, 2008.  
<http://www.csdcambodia.org/pdf/2008/Annual%20Report%202007.pdf>.

The Bar Association of the Kingdom of Cambodia, Directory of Lawyers, 2007.  
The Cambodian Human Rights and Development Association, Human Rights Situation 2007, February 2008.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), 28 August 2008, 11:00 a.m., CDP office

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

Interview, Anonymous, Executive, September 9, 2008, 2:45 p.m., office.

Interview, Anonymous lawyer, September 20, 2008, 6:00 p.m., residence.

**100:** State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

**75:**

**50:** State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

**25:**

**0:** State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

**Comments:**

It has been expressed that insofar as official fees are concerned, yes, they can afford to do so, but the pressure to pay unofficial payments may have ultimately put a burden on their financial capacity and deterred some from filing a suit with the courts.

**References:**

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

Interview, Anonymous, Executive, September 9, 2008, 2:45 p.m., office.

**100:** In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorneys fees do not represent a major cost to citizens.

**75:**

**50:** In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

**25:**

**0:** The cost of engaging the legal system prevents middle class citizens from filing suits. Attorneys fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

**Comments:**

It has been expressed that insofar as official fees are concerned, yes, they can afford to do so, but the pressure to pay unofficial payments may have ultimately put a burden on their financial capacity and deterred some from filing a suit with the courts.

**References:**

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), 28 August 2008, 11:00 a.m., CDP office

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

Interview, Mr. Uch Kimy, Campaign Program Officer, The Cambodian Human Rights and Development Association (ADHOC), August 25, 2008, 8:45 a.m., ADHOC office.

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

Interview, Anonymous, Executive, September 9, 2008, 2:45 p.m., office.

**100:** In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

**75:**

**50:** In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

**25:**

**0:** The cost of engaging the legal system prevents small businesses from filing suits. Attorneys fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

**Comments:**

There are provinces in Cambodia that do not have provincial courts, namely Oddor Mencheay, Pailin and Kep. People in these provinces go to Battambang, Siem Reap and Kampot to access the courts. It has been heard that a court is under construction in Pailin.

There is also just one Court of Appeals, based in Phnom Penh. Part of the legal and judicial reform program of the government has been said to be the establishment of regional courts of appeals.

**References:**

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), 28 August 2008, 11:00 a.m., CDP office

Interview, Anonymous, Judiciary, August 29, 2008, 5:30 p.m., restaurant.

Interview, Mr. Uch Kimy, Campaign Program Officer, The Cambodian Human Rights and Development Association (ADHOC), August 25, 2008, 8:45 a.m., ADHOC office.

Interview, Anonymous, Judiciary, September 1, 2008, 9:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 10:00 .a.m.

Interview, Anonymous, Judiciary, September 1, 2008, 11:00 .a.m.

Interview, Anonymous, Executive, September 9, 2008, 2:45 p.m., office.

Interview, Anonymous, Lawyer, September 20, 2008, 6:00 p.m., residence.

**100:** Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

**75:**

**50:** Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

**25:**

**0:** Courts are unavailable to some regions without significant travel on the part of citizens.

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## VI-4. Law Enforcement

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### 83. Is the law enforcement agency (i.e. the police) effective?

42

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

**Comments:**

It has been noted that the Cambodia National Police (CNP) have no standardized recruitment criteria and that political affiliation, instead of merit, is the overriding consideration for selection. It seems to be public knowledge that police officers in Cambodia have clear political loyalties and are highly politicized. High-ranking policemen have been said to be political appointees and that, as in judicial and civil servant posts, it is believed that appointments to the top posts are the subject of negotiations and cajoling and those with the most influence, better connections, and more money get the coveted positions. It is said that there are quotas for posts negotiated among the favored political parties. Now that the Cambodia People's Party has a clear majority in the National Assembly and exclusive control over the formation of the government, it is feared that CNP will be the ruling party in all aspects, pure and simple.

In terms of capacity, it has been noted that many police officers are unskilled and inexperienced. There has been no standardized training curriculum and programs to address these inadequacies.

However, the Royal Police Academy, as well as regional schools, tap expert and top-ranking police officers as teachers. Moreover, CNP is currently undergoing organizational restructuring and strengthening with support from foreign donors, including the Australian Agency for International Development (AUSAID). Its human resource management system is being reviewed and capacity development, especially in the technical areas like forensic evidence, is integrated into the reform program.

Note further that a police legislation act is in the process of being drafted. The preparation of this law was initiated by the CNP with the intention expanding the Ministry of Interior and clarifying the roles and responsibilities of the agencies involved. As of this time, it has been said that only the skeleton of the CNP legislation is in place.

**References:**

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous, August 23, 2008, 11:30 a.m., restaurant.

Interview, Mr. Larry Proud, Australian Team Leader, Cambodian Criminal Justice Assistance Project, September 11, 2008, 3:00 p.m.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Anonymous, NGO, August 23, 2008, 11:30 a.m., restaurant.

Australian Agency for International Development (AUSAID), Cambodia Criminal Justice Assistance Project (CCPAJ), Annual Report and Forward Plan 2008-2009, March 2008.

<http://www.ccjap.org.kh/download/080332%20-%20CCJAP%20III%20-%20Main%20AP%20Report%20V2.1.pdf>.

Southeast Asia Investigations into Social and Humanitarian Activities (SISHA), Newsletter, November 2007.

<http://www.sisha.org/aboutus.html>.

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

**Comments:**

It has been said that in terms of funding, there has been no problem. The problems, as noted, lie in the overspending of the agency beyond its programmed budget and in the disbursement of funds to its local units. Foreign financing has tended to fill in the agency's funding deficit or to supplement funding, most specifically for the organization's restructuring and strengthening.

As in any other institution in Cambodia, political considerations do impact on decisions about the agency's budget.

**References:**

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous police, September 5, 2008, 6:00 p.m., restaurant.

Interview, Mr. Larry Proud, Australian Team Leader, Cambodian Criminal Justice Assistance Project, September 11, 2008, 3:00 p.m.

Interview, Anonymous, NGO, August 23, 2008, 11:30 a.m., restaurant.

**100:** The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

**75:**

**50:** The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

**25:**

**0:** The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

**Comments:**

Like the other government branches and agencies, the law-enforcement agency in Cambodia is not politically independent. Its leadership is noted to be a product of political negotiations and a marriage of interests, so its enforcement of the CNP's mandate has been in a manner that does not harm the interests that put it in place. It also appears to be public knowledge that ordinary police officers have clear political loyalties and conduct their roles in consideration of such. For politically-related cases, the enforcement of the laws by the CNP has been known to follow the party line.

**References:**

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Anonymous police, September 5, 2008, 6:00 p.m., restaurant.

Interview, Mr. Larry Proud, Australian Team Leader, Cambodian Criminal Justice Assistance Project, September 11, 2008, 3:00 p.m.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Anonymous, NGO, August 23, 2008, 11:30 a.m., restaurant.

**100:** The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

**75:**

**50:** The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

**25:**

**0:** The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

## 84. Can law enforcement officials be held accountable for their actions?

63

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

**Comments:**

In practice, the above-mentioned complaint mechanisms are not really independent or fully accessible to the public because of fear of recrimination. As mentioned before, the judiciary in Cambodia is not independent from politics or any other influence. There is a certain distrust by the public of the integrity of the courts and lack of confidence that complaints about government agents will be heard impartially and without inviting harm to themselves. The complaint and disciplinary processes involving judicial police are not well laid-out. Transparency is also a concern because of the specific role that the Ministry of Interior should play. Implementation of the new code is in its infancy stage and whether it can be enforced fairly is suspect in light of Cambodia's political and social realities.

The General Inspector, under the Ministry of Interior, though helped by assistance provided by international agencies such as the Program on Rights and Justice of the East-West Management Institute, has also been said to not be independent from politics and the influence of corruption. It has also been noted that the General Inspector works more as the Alternative Dispute Resolution Bureau, by investigating disputes and then trying to work with the parties to find a mutually acceptable resolution.

In practice, then, the complaint mechanism against police actions is very ad hoc and simply consists of reporting complaints to the police commander. It has been said that sometimes the commander investigates the complaints, but sometimes they just go through the motions and do not care. Police officers, as mentioned already, are not impartial and corruption within the police department has been said to be rampant. What makes things difficult is still the lack of a police legislation act. While there is a Code of Conduct for law-enforcement officials, this code is not enforceable and, hence, commonly violated.

The absence of an independent and transparent mechanism that Cambodian citizens can trust and access free of fear is very unfortunate because police misconduct has been said to be common in the country. Out of the 180 cases of physical assaults recorded by the NGO, Cambodian Human Rights and Development Association (ADHOC), in 2007, 53 percent were committed

by policemen and military police. Out of 100 cases of illegal detention and arrests recorded, 61 percent were committed by the police. Police officers are believed to be commonly involved in incidents of extortion and bribery as well. In Transparency International's Global Corruption Barometer, 2007, the police have been ranked as the second most corrupt institution.

**References:**

The Constitution, in particular Article 39 thereof, which provides that Khmer citizens shall have the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs during the course of their duties and that the settlement of such complaints and claims shall be the responsibility of the courts.

The Criminal Code Procedure, in particular Articles 59, 64 and 79 thereof, which provide that in case a judicial police officer or agent has committed misconduct during the performance of his or her duty, the prosecutor or investigating judge must report it to the general prosecutor of the Court of Appeal, which is empowered to take disciplinary actions against judicial police (prohibition from performance of his or her duties up to five years and prohibition from performance of his or her duties as judicial police indefinitely), and then, depending on the circumstances of the misconduct, the general prosecutor of the Court of Appeal may notify the Minister of Interior or the Minister of National Defense in order to take disciplinary action.

The Sub-decree on the General Inspector under the Ministry of Interior (Mol), which bestows upon the General Inspector the control over the officials under the supervision of the Mol, including the police.

Interview, Anonymous police, September 5, 2008, 6:00 p.m., restaurant.

Interview, Mr. Larry Proud, Australian Team Leader, Cambodian Criminal Justice Assistance Project, September 11, 2008, 3:00 p.m.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Anonymous, NGO, August 23, 2008, 11:30 a.m., restaurant.

East-West Management Institute, Program on Rights and Justice, Ministry of Interior, <http://www.ewmi-praj.org/moi/moi.htm>.

The Cambodian Human Rights and Development Association, Human Rights Situation, 2007, February 2008.

Transparency International, Global Corruption Barometer 2007. [http://www.transparency.org/content/download/27256/410704/file/GCB\\_2007\\_report\\_en\\_02-12-2007.pdf](http://www.transparency.org/content/download/27256/410704/file/GCB_2007_report_en_02-12-2007.pdf).

Business Anti-Corruption Portal, Cambodia Country Profile, 2008. <http://www.business-anti-corruption.com/normal.asp?pageid=282>.

**YES:** A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

**NO:** A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

As mentioned, in practice, the complaint mechanism against police action in Cambodia is very ad hoc. The pace of the resolution of the complaints normally depends on the police commander. If one is connected to the police commander or a high-ranking police official, then the complaint may be investigated, but if there is no such connection, then it has been said that one must abandon hope of getting a complaint satisfactorily resolved.

**References:**

Interview, Anonymous police, September 5, 2008, 6:00 p.m., restaurant.

Interview, Mr. Larry Proud, Australian Team Leader, Cambodian Criminal Justice Assistance Project, September 11, 2008, 3:00 p.m.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Anonymous, NGO, August 23, 2008, 11:30 a.m., restaurant.

**100:** The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

**References:**

The Sub-Decree on the Creation of the Anti-Corruption Body (ACB), Articles 1 and 3, stating that an Anti-Corruption body is created under the Council of Ministers with the role of monitoring, investigating, and conducting research related to crimes of corruption at the ministries, public institutions, public administrative establishments, public enterprises, state-owned enterprises, and local authorities of provincial and municipal offices.

The Law on the Establishment and Functioning of the Ministry of the National Assembly and Senate Relations and Inspection (MoNASRI), which provides that the MoNASRI shall have the power to enforce measures against public wrongdoing and corruption by public officials, army officials and national police whose actions negatively affect the development of the nation.

The Internal Regulations of the National Assembly of the Kingdom of Cambodia, in particular Principle or Article 6 thereof, which identifies the Commission on Interior, National Defense, Investigation, Anti-Corruption and Public Administration as one of the commissions of the National Assembly.

**YES:** A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

**NO:** A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

**Comments:**

The ACU does initiate investigations, although it cannot be confirmed if any of the existing cases pertain to allegations of corruption by a law enforcement official. Currently, the ACB has cases under trial. However, this unit is said to not be independent from politics and other influences so its workings are believed to be compromised.

Likewise, it has been said that the Commission on Interior, National Defense, Investigation, Anti-Corruption and Public Service Administration has indeed reviewed complaints (cannot be confirmed if any of these are related to corruption by the police) but it does not have teeth, nor is it independent.

The MoNASRI's anti-corruption operations have been said to be largely inactive.

**References:**

Interview, Anonymous executive, September 5, 2008, 9:00 a.m., outside office.

Interview, Anonymous executive, August 31, 2008, 10:00 a.m., residence.

Interview, Anonymous judiciary, August 29, 2008, 5:30 a.m., restaurant.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Mr. Pok Leaksmy, Senior Program Officer, Mainstreaming Anti-Corruption for Equity Program, Pact Cambodia, August 19, 2008, 9:00 a.m., Pact Cambodia's office.

Interview, Ms. Mu Sochua, Deputy Secretary General and Former National Assembly (NA) member, Sam Rainsy Party (SRP), August 27, 2008, 9:00 a.m., SRP Headquarters in Phnom Penh.

Clean Hand (produced by Center for Social Development), Our Country, Our Future, February 2007.

U.S. Department of State, 2008 Investment Climate Statement, Cambodia. <http://www.state.gov/e/eeb/ifd/2008/103670.htm>.

**100:** When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

**75:**

**50:** The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

**References:**

The Constitution, with the following articles:

Article 31, which states that every Khmer citizen shall be equal before the law.

Article 39, which provides Khmer citizens the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs during the course of their duties.

The UNTAC Law, which describes the principle of equality under the penal law, as particularly mentioned in Article 66 thereof as well as Articles 37, 38, 49 and 57, which cite embezzlement, corruption, forgery of public documents and infringement of individual rights as felony acts in which elected officials, public officials, civil servants and security forces can be charged.

The New Criminal Procedure Code, in particular Article 3 thereof, which states that criminal actions can apply to all persons or legal entities, regardless of race, nationality, color, sex, language, creed, religion, political tendency, national origin, social status, resources or other situations

**YES:** A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

**NO:** A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, it has been noted that only law-enforcement officials who have turned against the interests of those in power have been charged with criminal acts so far. A case in point is the story of the former superintendent of Phnom Penh, who is in prison for murder and other serious charges. This former superintendent was arrested in 2004 following an interview in which he stated his belief that the two men arrested for the murder of trade union leader Chea Vichea were innocent. In a court appearance in July 2007, he repeated his statement about the innocence of the two men.

Cover-ups have also been observed in cases involving police brutality, violence and even murder. Out of the 53 murder cases recorded in 2007 by ADHOC, 14 were committed by the police while on duty, particularly when they have been said to be on call to protect fishing lots or rubber plantations owned by private companies. Legal procedures were not enforced in some of these killings by the police. Rather, it has been noted that compensation were used to resolve the situation.

Hence, there is no equality of the law among the police. As noted, those who dare go against those in power find themselves facing legal consequences, while those who serve the interests of the powerful and the influential are protected by a culture of impunity.

**References:**

Interview, Anonymous police, September 5, 2008, 6:00 p.m., restaurant.

Interview, Mr. Sok San Oeun, Executive Director, Cambodia Defenders Project (CDP), August 28, 2008, 11:00 a.m., CDP office.

Interview, Mr. Im Sophea, Assistant Executive Director, Center for Social Development, September 19, 2008, 3:45 p.m., CSD office.

Interview, Anonymous, NGO, August 23, 2008, 11:30 a.m., restaurant.

The Observatory for the Protection of Human Rights Defenders, Defending Economic and Social Rights in Cambodia: A High-Risk Activity," February 2008. [www.omct.org/pdf/Observatory/2008/Cambodia\\_Mission\\_Report\\_200208\\_ENG.pdf](http://www.omct.org/pdf/Observatory/2008/Cambodia_Mission_Report_200208_ENG.pdf)

The Cambodian Human Rights and Development Association, Human Rights Situation, 2007, February 2008.

**100:** Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

**75:**

**50:** Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

**25:**

**0:** Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.