

Overall Score:

42 - Very Weak

Legal Framework Score:

60 - Weak

Actual Implementation Score:

23 - Very Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁸⁷ Anti-Corruption Non-Governmental Organizations

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

33

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes | No

Comments:

Article 42 provides that every Khmer citizen has rights to form association and political parties. These rights are protected by law. Khmer citizens can be part of civil organization for mutual support and national interests and social order.

Draft law on non-governmental organization and associations have been debated for more than a decade already, but it could not find way to reach the national assembly due to mistrust of international and national non-governmental organizations on the real intention of the Cambodian government toward civil society organizations. It is seen as a move toward suppressing human rights and democracy organizations who are very often vocal on government development policy and the government is notoriously known for its lack of political will to protect human rights.

References:

The Constitution of the Kingdom of Cambodia, 1993 and amended in 1994, 1999, 2001, 2005, 2006. Article 42.

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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

Comments:

There is no clear legal framework that govern NGO funding. The draft NGO law imposes restrictions on that. However, with mounting pressure from NGOs groups and international development partners, the government's attempt to get the the draft law passed was aborted.

Yes: A YES score is earned if anti-corruption/good governance NGOs 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 are any formal legal or regulatory bans on foreign or domestic funding sources for NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

Comments:

There is no legal framework that requires NGOs including anti-corruption/good governance NGOs to disclose their source of funding. There has been an attempt to promote transparency and good governance within the NGO sector, even though success has been minimal. The Cambodian Coordination Committee (CCC), a membership NGO, attempts to do that through its 'NGO Good Practice' by introducing a minimum standards on a voluntary basis for its members that include governance structure, transparency and accountability.

References:

Code of Ethical Principles and Minimum Standards for NGOs in Cambodia, available at http://www.ccc-cambodia.org/downloads/gpp/Code%20ENG%20Aug%202007%20_10.pdf accessed on 25 July 2012

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

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

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

33

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:

The creation of new anti-corruption/good governance organizations is under the discretion of the Ministry of Interior. Even though there has not yet been law governing the non-governmental organizations (NGOs) operating in Cambodia, local and international NGOs are required to register with the Ministry of Interior and sign a Memorandum of Understanding (MoU) with the Ministry of Foreign Affairs and International Relations, respectively.

Registration of new anti-corruption and good governance NGOs in 2011 and first semester of 2012 is undertaken within an environment of hot, sometimes confrontational, debate between the government and NGO community on the contentious draft law on non-governmental organizations and associations in Cambodia. While the government had a rush plan to have the draft law adopted, the NGO community and donors requested more consultation and consideration of the intention of the law. The latter saw the draft law as a step toward legalizing government's crackdown on NGOs at will. In the words of UN Special Rapporteur on the rights to freedom of peaceful assembly and of association Maina Kiai, "The current draft NGO law contains a set of problematic provisions, raising concerns over a potential negative impact on Cambodian citizens' democratic participation in furthering the development of their country." The controversy of the draft law centers around the requirement of mandatory registration, for the association with a requirement of minimum membership and by-laws, and government's direct role in overseeing the human and financial resource management. With mounting pressure from the NGOs and donor community, the draft law could not go beyond the fourth draft version before the Prime Minister pronounced his decision to hold it until an indefinite time.

However, without the passage of the draft law, new NGOs are required to register with the Ministry of Interior in order to become a legal entity and the process is not without problems especially for the anti-corruption and good governance NGOs. While the usual process for registration of NGOs working in social developments would be finished in the course of a few weeks, usually involved unofficial payments, the registration of anti-corruption and good governance NGOs would take much longer. For example, it took Transparency International Cambodia (TI Cambodia), a local NGO working to fight against corruption in Cambodia, around three months to register with the Ministry of Interior in 2010 and would have taken longer if there was no follow-up and strong commitment to get it done. Even though no clear reason was given as to the delay of the registration, it is obvious that the issue the NGO is to be working on is politically sensitive and put the government and the ruling party in the spotlight of the public.

References:

Zoe Daniel, New Cambodian law 'cracking down' on NGOs, Wed September 28, 2011, <http://www.abc.net.au/news/2011-09-28/cambodia-rail-displacing-poor/2956408> accessed on August 26, 2012

Siena Sofia Magdalena Anstis Cambodian Government Uses NGO Law to Silence Critics, 07 September 2011 <http://towardfreedom.com/asia/2532-cambodian-government-uses-ngo-law-to-silence-critics> accessed on August 26, 2012

Cambodia's draft law on NGOs deserves further review – UN expert, United Nations, September 28, 2011
[http://www.un.org/apps/news/story.asp?NewsID=39862&Cr=Cambodia&Cr1#](http://www.un.org/apps/news/story.asp?NewsID=39862&Cr=Cambodia&Cr1=) accessed on August 26, 2012

UN rights expert highlights challenges to democracy in Cambodia, United Nations, [http://www.un.org/apps/news/story.asp?NewsID=38631&Cr=cambodia&Cr1#](http://www.un.org/apps/news/story.asp?NewsID=38631&Cr=cambodia&Cr1=) accessed on August 26, 2012

Mark Tran, The Guardian, 26 August 2011, Donor governments asked to review Cambodia aid if NGO law is passed Human rights groups call on UK, US and Australia to apply pressure on Cambodia if severely restrictive draft law is adopted, <http://www.guardian.co.uk/global-development/2011/aug/26/donors-asked-to-review-cambodia-aid> accessed on August 26, 2012

Celeste Hicks, The Guardian, Human rights groups give short shrift to latest draft of Cambodia's NGO law NGOs and civil society groups veto planned consultation session on fourth incarnation of controversial draft law, Monday 19 December 2011, <http://www.guardian.co.uk/global-development/2011/dec/19/fourth-draft-cambodia-ngo-law?INTCMP=ILCNETXT3487>

Preap Kol, Executive director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia office, UN Office of the High Commissioner on Human Rights, "New Restrictions on NGOs are undermining Human Rights: Pillay," News Release (Geneva, April 25, 2012) available at http://cambodia.ohchr.org/WebDOCs/DocNewsIndex/2012/042012/New_restrictions_on_NGOs_are_undermining_human_rights_GVA_release.pdf accessed on August 29, 2012

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview on August 13, 2012, STAR Kampuchea office.

100: NGOs 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: NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

Since 1979, the number of NGOs has expanded drastically and the latest statistics in 2006 shows that its total number rose to more than one thousand including both local and international organizations. A small share of this, 8% of them are working in the field of democracy and human rights. This group of NGOs is seen as the one performing their work in a very confrontational or challenging environment as the government sees them mainly working against their policy and linkens them to the opposition party.

It should be noted that in a culture where civil society is weak and relation between the state and citizen is poor, NGOs have played an intermediary role to bridge the gap while in the meantime complements the government role in delivering services to the poor and needed. This group is most of the time considered as part of the civil society movement in the country even though debate has been ongoing as to whether these organizations who are mainly dependent on donors' funding deems a name as members of civil society. Most NGOs lack grassroots link and social embeddedness. It is dubbed as 'civil movement without citizens.' This characteristics has proved difficult for them to directly influence policy while in the meantime for the government to disengage them wherever possible from the policy debate platform. The World Bank's recent report (2010) said that "this disconnect from the masses and inability to demonstrate popular support undermines NGOs' credibility and influence and has caused government officials to question their legitimacy and representativity." It is very much Phnom Penh-based.

United Nations in Cambodia describes the relation between NGOs and the government, in its own words, that "at the national level, while modest attempts are being made to include civil society organizations (CSOs) in policy-making the culture of participation is still weak and there are few institutionalized mechanisms for the participation of civil society in decision-making." The relation can also be seen through the lens of recent confrontation and debates on the government's attempt to get the law on NGOs and associations passed even though it was rolled back only after the government was under mounting pressures from the local and international players in Cambodia's development.

In this environment, the NGOs have been successful in raising awareness and building knowledge within the public and target groups as they are active in promoting democratic principles and governance issues that are of currency for policy and political debates such as corruption and human rights. The NGOs are however seemingly divided into two different camps in terms of approach they adopt to achieve the mission. One camp applies 'soft' approach by collaborating with the government to implement governance project or demand for change in line with the democratic principles such as good governance, rule of law or anti-corruption. The other camp is seen as using 'hard' or 'confrontational' approach to advocate for changes in the policy and conduct of public affairs by using the media and applying legal methods to challenge the government policies they see as undemocratic and this group always finds its work challenging as the government views them as pro-opposition and thus creates barriers for them to implement development projects/programmes.

References:

Preap Kol, Executive director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia office

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea office.

WB, Linking Citizens and the State: An Assessment of Civil Society Contributions to Good Governance in Cambodia, (WB, 2009)

Kristen Rasmussen, NGO Contributions to Cambodia's Development 2004-2009: A Rapid Assessment (Phnom Penh: The Cooperation Committee for Cambodia, 2010)

Carlo Merla, Civil Society Empowerment and Democratic Governance in Cambodia (Phnom Penh: UNDP Cambodia, 2010)

United Nations in Cambodia, United Nations Development Assistance Framework 2011-2015 (Phnom Penh: Office of the United Nations Resident Coordinator in Cambodia, 2010)

AusAID, Australia's Strategic Approach to Aid in Cambodia 2010-2015 (Phnom Penh: AusAID, 2010)

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

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

Comments:

During the period under study, the case of two NGOs—Sahmakum Teang Tnaut (STT) and Bridges Across Border (BAB)—threatened to close down by the government surfaced when the debate about the draft NGO law was at its height.

It emerged in a June 2012 letter from the Minister of Economy and Finance to the Prime Minister that the former requested that “punitive action” be taken against the BAB and STT which have been advocating for residents who live along the railway which is now under renovation. Their project was funded by AusAID and the Asian Development Bank and run by Australian company Toll Holdings. STT was suspended in August 2011 after a written demand from the Ministry of Interior with a claim that STT has wrongfully incited people to protest in order to put the project on hold and in the meantime accused foreigners of the same misconduct. STT was supposed not to resume its operation until January 2012. There was no action against BAB, also accused of inciting the citizens. NGO Forum and Housing Rights Task Force (HRTF) who are also advocating for the respect of rights of the residents affected by the railway project were also threatened by the government, but demand for suspension was not imposed on them.

References:

Mark Tran, The Guardian, 26 August 2011, Donor governments asked to review Cambodia aid if NGO law is passed Human rights groups call on UK, US and Australia to apply pressure on Cambodia if severely restrictive draft law is adopted, <http://www.guardian.co.uk/global-development/2011/aug/26/donors-asked-to-review-cambodia-aid> accessed on August 26, 2012

Zoe Daniel, ABC News, New Cambodian law ‘cracking down’ on NGOs, Updated Wed Sep 28, 2011, <http://www.abc.net.au/news/2011-09-28/cambodia-rail-displacing-poor/2956408> accessed on August 26, 2012

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview on August 13, 2012, Star Kampuchea’s office.

Committee for Free and Fair Elections in Cambodia (COMFREL), 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comrel, 2012) available at http://www.comfreil.org/newcomfreil/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf accessed on 10 August 2012

Preap Kol, Executive director of Transparency International Cambodia, interview on August 20, 2012, TI Cambodia office

Human Rights Watch, World Report 2012: Cambodia available at http://www.hrw.org/sites/default/files/related_material/cambodia_2012.pdf accessed on August 18, 2012

Yes: A YES score is earned if there were no NGOs 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 NGO 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 NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO 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.

3. Are anti-corruption/good governance NGO activists safe when working on corruption issues?

100

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

Comments:

There was no report on imprisonment of any NGO activists working on anti-corruption related issues during the period under study.

References:

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview on August 13, 2012 at Star Kampuchea office.

Committee for Free and Fair Elections in Cambodia (COMFREL), 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comfre, 2012) available at http://www.comfre.org/newcomfre/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf accessed on 10 August 2012

Yes: A YES score is earned if there were no NGO 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.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | No

Comments:

No report of activist being physically harmed during the period under study.

References:

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview on August 13, 2012 at Star Kampuchea office.

Committee for Free and Fair Elections in Cambodia (COMFREL), 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comfre, 2012) available at http://www.comfre.org/newcomfre/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf accessed on 10 August 2012

Yes: A YES score is earned if there were no documented cases of NGO 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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

Comments:

No report of anti-corruption/governance NGO activist has been killed during the period under study.

References:

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview on August 13, 2012 at Star Kampuchea office.

Committee for Free and Fair Elections in Cambodia (COMFREL), 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comrel, 2012) available at http://www.comrel.org/newcomrel/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf accessed on 10 August 2012

Yes: A YES score is earned if there were no documented cases of NGO 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.

4. Can citizens organize into trade unions?

63

04a. In law, citizens have a right to organize into trade unions.

Yes | No

Comments:

Article 42 of the Constitution provides that every Khmer citizen has the rights to form association and political parties. This rights is protected by law. Article 266 of the Labour Law prescribes that without any discrimination and prior approval, both employers and employees have rights to form their professional organization to pursue their learning, interests, and rights, common and individuals for those covered by the statutes of the organization. This professional organisation of employees is called 'worker union' and the employers organisation is called 'employer union.'

Even though, as prescribed in the 1997 Labor Law, that both employers and employees have rights to form union, the same law (article 268) also provides that to become a legal entity that can benefit from the spirit of this law, a trade union is required to register at the Ministry in charge of the industrial sector.

References:

The Constitution of the Kingdom of Cambodia, 1993, as amended thereafter, Article 42.

The Labour Law, 1997, Article 266.

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.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Trade unions exist but unionists face a great deal of challenges at the workplace and dealing with the policy-making process. Lack of official database poses a great challenge to track the trend of unionization in Cambodia.

Civil servants and domestic workers are, however, not allowed in practice to form union. Last year when debate on the draft trade union law was under way, concerns over excluding these two groups from the law would perpetuate a violation to their rights to unionize. The denial of the rights of civil servants to form union can also be viewed from the government's position not to register the Cambodian Confederation of Unions twice (once in 2006 and 2012) for the simple reason that some of its affiliate labour unions are civil servants unions not officially recognized by the government.

In the meantime, the draft law was considered as a move to put labour unions under the control and mercy of the government. The draft law was however put on hold as pressure from local and international stakeholders was at its peak last year.

Within this political environment, forming a union remain a daunting task for workers in Cambodia. The International Trade Union Confederation (ITUC)'s 2012 annual survey of violations of trade union rights in Cambodia reported that workers at CINTRI [sic – not an acronym], a waste collection firm in Phnom Penh continued to threaten firing workers who dared to form union in the company.

Even though after the union is recognized by the government and employers, It is also a commonplace that unionists face discrimination and sometimes confrontation and competition from, in the words of ITUC, "yellow union," who are either formed by or put under the control of the government or employers in receiving the most representative status in order to be officially recognized as a legal party to negotiate with the employers to protect the workers' interest.

References:

Shane Worrel and Mom Kunthea, CCU denied recognition again, The Phnom Penh Post, June 22, 2012, available at <http://www.cita.org.kh/File/CCU-denied-recognition-again1.pdf> accessed on August 30, 2012

Veasna Nuon and Melisa Serrano, building trade unions in Cambodia: History, challenges and Strategies (Singapore: FES, 2010)

Phorn Bopha and Abby Seiff, Observers call for the Inclusion of Civil Servant in Union Law, October 25, 2011, available at <http://www.cita.org.kh/File/Rong%20Chhun%20News/25-10-2011%20Cambodia%20Daily.pdf> accessed on August 30, 2012

CCHR, Situation of Human Rights and State of Democracy, Cambodia 11 (Phnom Penh: CCHR, 2011) available at http://www.chrcambodia.org/admin/whatwedo/hrsc/Situation_of_Human_Rights_and_State_of_Democracy.pdf accessed on August 30, 2012

International Trade Union Confederation, 2012 Annual Survey of Violations of Trade Union Rights – Cambodia, 6 June 2012, available at: <http://www.unhcr.org/refworld/docid/4fd8895dc.html> [accessed 30 August 2012]

Committee for Free and Fair Elections in Cambodia (COMFREL), 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comfre, 2012) available at http://www.comfre.org/newcomfre/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf (accessed on 10 August 2012)

Human Rights Watch, World Report 2012: Cambodia available at http://www.hrw.org/sites/default/files/related_material/cambodia_2012.pdf accessed on August 18, 2012

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.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes | No

Comments:

Article 2 of the Press Law states that the press has the rights to keep their source as secret. Article 3 of the Press Law states that to ensure the independence of the press, censorship is prohibited.

However, Article 10 of the Press Law, prescribes that any individual can request the press to public a correction with 7 days if the information is seen as false or erroneous or can even sue the press for defamation, accusation or disinformation. For public figures, any argument or description the press publishes or republishes against that public figure without fact is an accusation that is punishable by law.

Article 11 provides that the press is not allowed to publish anything that would affect social order by directly citing someone or a group of people to commit a violent act, which is punishable by a fine of between one million riel to 5 million riel (one dollar=4100 riel; 25 July 2012).

Articles 12-14, and 17 are related.

References:

Press Law, 1995, Articles 2-3, 10-11.

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.

05b. In law, freedom of speech is guaranteed.

Yes | No

Comments:

Article 31 of the Constitution provides that the Kingdom of Cambodia recognises and respects human rights as enshrined in the Charter of the United Nations, the United Nations Declaration of Human Rights, International Covenants and Protocols related to human rights, rights of women and children.

Article 41 of the Constitution provides that Khmer citizens have rights to freedom of speech, press, publication, and assembly. No one can violate these rights in a way that causes damage to someone else's dignity, social tradition, order and national security. As mentioned, Article 41 also provides that freedom of speech is not to violate someone's rights to dignity, social tradition, order and national security. There is no legal framework that defines 'social tradition, order and national security', which usually leads to arbitrarily interpretation by people with authority.

References:

The Constitution of the Kingdom of Cambodia, 1993, Articles 31, 41

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.

6. Are citizens able to form print media entities?

31

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

While the 1995 Press Law does not introduce a complicated procedure for citizens to create print media entity, the practice is tainted with unofficial fees, especially, and long delay of response. However, if one compares the process of print media entity creation to the process to establish a radio or TV, the print media process is the easiest process.

References:

Mr. Pa Nguon Teang, Executive Director of Cambodian Center for Independent Media (CCIM), Interview on 10 August 2012 at CCIM Office

Mr. Puy Kea, Board Member of the Cambodian Club of Journalists (CCJ) and Correspondent for Kyodo News, 10 August 2012, InterContinental Hotel, Phnom Penh

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.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Comments:

Even though application to the Ministry of Information is required by law for any newspaper or print media before circulation, there is no provision that guarantees due process in case of rejection or denial from the Ministry.

Article 8 of the Press Law, 1995 states the process and requirements: it requires that before circulation, an employer or editor-in-chief of a newspaper must submit an application to the Ministry of Information, who after receiving all necessary documents will issue a receipt. Any employer or editor-in-chief that does not respect this article will be fined between 500,000 riel and 1,500,000 riel and repetitive breach of this law will result in double fine.

References:

The Press Law, 1995, Article 8.

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.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The time to get responses from the government is unpredictable as it is not required within the law. Moreover, the practice is very much influenced by unofficial fees. Usually the unofficial fees are not necessarily requested by the officials concerned, but without them (offers by the inquirer) the process is likely to be complicated. It wasn't possible to obtain concrete data on how many weeks or months these processes take.

References:

Mr. Pa Nguon Teang, Executive Director of Cambodian Center for Independent Media (CCIM), interview on 10 August 2012 at CCIM Office

Mr. Puy Kea, Board Member of the Cambodian Club of Journalists (CCJ) and Correspondent for Kyodo News, interview on 10 August 2012 at InterContinental Hotel, Phnom Penh

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.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Unofficial fees usually facilitate the registration process to get the license, and there is no standard for these unofficial fees. Even though there is no agreement on the amount of money involved in this process, it can range between \$100 riel, roughly a monthly salary for a local journalist working for local print media, to \$400 riel.

References:

Mr. Pa Nguon Teang, Executive Director of Cambodian Center for Independent Media (CCIM), interview on 10 August 2012 at CCIM Office

Mr. Puy Kea, Board Member of the Cambodian Club of Journalists (CCJ) and Correspondent for Kyodo News, interview on 10 August 2012 at InterContinental Hotel, Phnom Penh

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?

44

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

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

Comments:

Even though there is no law other than the 1995 Press Law that governs the media in Cambodia, in practice, there are lots of barriers for citizens to form broadcast (Radio and TV) entities in Cambodia. Unlike print media which is mainly serving its audience in the capital and urban cities, radio and TV serves a much wider audience around the country. The government is aware of this and thus creates barriers to those people who are known or believed to be democratic, human rights advocates or supporting the opposition party to form broadcast media entities. The common reason provided to reject a license is that there are no radio frequencies available.

Although businesses that are believed to be supporting the ruling party or the government can form broadcast media entities, it involves a big amount of unofficial fees in order to facilitate the grant of license.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM) on 10 August 2012 at CCIM office.

Interview with Puy Kea, Correspondent of Kyodo News, and Board Member of the Club of Cambodian Journalists, 10 August 2012, his office in Phnom Penh.

Interview with Kevin Doyle, Editor in chief of the Cambodia Daily, 16 August 2012, The Cambodia Daily office, Phnom Penh

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.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

There is no provision on appeal process if the application is denied or rejected by the Ministry.

The Press Law, 1995, Article 8 sets a process as follows: it requires that before circulation, employer or editor-in-chief of a newspaper must submit an application to the Ministry of Information, who after receiving all necessary documents will issue a receipt. The employer or editor-in-chief that does not respect this article shall be fined between 500,000 riel and 1,500,000 riel and repetitive breach of this law will result in double fine.

References:

The Press Law, 1995, Article 8.

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.

07c. 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:

It wasn't possible to obtain specific statistics on how long it takes but, even though there is no law other than the 1995 Press Law that governs the media in Cambodia, in practice, there are lots of barriers for citizens to form broadcast (Radio and TV) entities in Cambodia. Unlike print media which is mainly serving its audience in the capital and urban cities, radio and TV serves a much wider audience around the country and the government is aware of this and thus creates barriers to those people who are known or believed to be democratic, human rights advocates or supporting the opposition party to form broadcast media entities.

Their common reason provided to reject a license is that there is no radio frequencies available. And even though businesses that are believed to be supporting the ruling party or the government can form the broadcast media entities it involves a big amount of unofficial fees in order to facilitate the grant of license.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Puy Kea, Correspondent of Kyodo News, and Board Member of the Club of Cambodian Journalists, 10 August 2012, his office in Phnom Penh.

Interview with Kevin Doyle, Editor in chief of the Cambodia Daily, 16 August 2012, The Cambodia Daily office, Phnom Penh

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.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

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

Comments:

Even though there is no law other than the 1995 Press Law that governs the media in Cambodia, in practice, there are lots of barriers for citizens to form broadcast (Radio and TV) entities in Cambodia, which result in significant. Unlike print media that is mainly serving its audience in the capital and urban cities, radio and TV serves a much wider audience around the country and the government is aware of this and thus creates barriers to those people who are known or believed to be democratic, human rights advocates or supporting the opposition party to form broadcast media entities. Their common reason provided to reject a license is that there is no radio frequencies available. And even though businesses that are believed to be supporting the ruling party or the government can form the broadcast media entities it involves a big amount of unofficial fees in order to facilitate the grant of license.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Puy Kea, Correspondent of Kyodo News, and Board Member of the Club of Cambodian Journalists, 10 August 2012, his office in Phnom Penh.

Interview with Kevin Doyle, Editor in chief of the Cambodia Daily, 16 August 2012, The Cambodia Daily office, Phnom Penh

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:

8. Can citizens freely use the Internet?

0

08a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

Comments:

While the government has yet to have a clear legal framework to control online media content, in practice has been proving that the government tries to control the content. In particular, the government tries to control reporting information that is sensitive to the ruling party and the government, such as corruption, nepotism, poor natural resource management and violation of human rights and democratic principles.

For example, KI-Media.blogspot.com, a blog which is famous for its content covering all these politically sensitive issues, has been blocked by some internet service providers in Cambodia since 2010 until the time of writing this report. The government denies any role in limiting access to the blog, but leaked information received by the media and shared with the public shows the government's inability to tolerate criticisms. Though there is clear legal framework governing contents published on-line, and attempt to establish a centralised internet route failed, the government remains intolerable of contents that run counter to the government policies.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Puy Kea, Correspondent of Kyodo News, and Board Member of the Club of Cambodian Journalists, 10 August 2012, his office in Phnom Penh.

Interview with Kevin Doyle, Editor in chief of the Cambodia Daily, 16 August 2012, The Cambodia Daily office, Phnom Penh

Committee for Free and Fair Elections in Cambodia (COMFREL), 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comfre, 2012) available at http://www.comfre.org/newcomfre/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf(accessed on 10 August 2012)

Cambodian Center for Human Rights, Internet Censorship: The Ongoing Crackdown on Freedom of Expression in Cambodia, 2011, available at http://www.sithi.org/admin/upload/media/%5B2011-06-13%5DInternet/2011_06_13_Internet%20Censorship%20-%20Briefing%20Note_ENG.pdf
(accessed on Dec 8, 2012)

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.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

While the government doesn't have a clear legal framework about control of online media content, in practice the government tries to control the content. In particular, the government tries to control reporting information that is sensitive to the ruling party and the government, such as corruption, nepotism, poor natural resource management and violation of human rights and democratic principles. Limited space for free expression deters citizens to freely create content on-line. The government censors citizens either directly or indirectly as it does not have the ability to tolerate criticism or statements that run against their political ideology. In the run ups to the local elections in June 2012, two broadcasters were banned from reporting on the local elections by the Ministry of Information. Also, the block of access to KI-Media.blogspot.com, a blog which is famous for its content covering all these politically sensitive issues, by some internet service providers in Cambodia remains valid. The government denies any role in limiting access to the blog, but leaked information indicates that the government is behind the block of access.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Puy Kea, Correspondent of Kyodo News, and Board Member of the Club of Cambodian Journalists, 10 August 2012, his office in Phnom Penh.

Interview with Kevin Doyle, Editor in chief of the Cambodia Daily, 16 August 2012, The Cambodia Daily office, Phnom Penh

COMFREL, 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comfre, 2012) available at http://www.comfre.org/newcomfre/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf(accessed on 10 August 2012)

Cambodian Center for Human Rights, Internet Censorship: The Ongoing Crackdown on Freedom of Expression in Cambodia, 2011, available at http://www.sithi.org/admin/upload/media/%5B2011-06-13%5DInternet/2011_06_13_Internet%20Censorship%20Briefing%20Note_ENG.pdf
(accessed on Dec 8, 2012)

Broadcasters banned from reporting on Local ballots, 7 June 2011, available at http://en.rsf.org/cambodia-broadcasters-banned-from-reporting-07-06-2012_42742.html (accessed on Dec 8, 2012)

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.

9. Are the media able to report on corruption?

58

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes | No

Comments:

Article 4 of the Press Law, 1995 states: "Publication of official information such as statements, meetings, meeting minutes or reports etc. may not be penalized if such publication is fully true or an accurate summary of the truth."

Official information covered by this Article refers to "statements, meetings, meeting minutes or reports of the National Assembly including its committee and commissions, except if the National Assembly has a secret meeting as stipulated in Article 88 of the Constitution of the Kingdom of Cambodia; statements, meetings, meeting minutes or reports of the Executive branch, including statements of the Ministers and other officials... all aspects of the legal process, including judicial proceedings, except those proceedings: closed to the public by court order; regulated by Article 16 of this law, relating to privacy in legal proceedings; dossier of cases still under investigation of the court..."

However, Article 10 of the Press Law puts limits to the enforceability of Article 4. Article 10 provides that If any person who believes that any article or text, even if the meaning of the article or text is implied, or any picture, drawing or photograph of any press is false and harms his/her honor or dignity, that person has the right to demand a retraction from or the right to reply to the publisher of the statement and the rights to sue on charge of defamation, libel, or humiliation which harmed to his/her honor or dignity. A retraction or response shall be published within seven (7) days or in the next issue after receiving a demand of retraction or reply.

In the case of a public figure, all purports or false allegations which the journalist takes to publish itself or reproduces out of the truth, with malicious intent against such public figure, is such a libel which is prohibited by the law.

If following a complaint of the Plaintiff of the civil action the court found out that any publication is false, it then may order the press to publish a retraction, to pay a compensation, or to publish a retraction and pay a compensation.

A retraction that the press has obligation to publish must be on the same page and with the same size of typescripts with which of the text which is believed to have affected the honor or dignity of the person (who demands).

Additionally, the court may penalize to pay fine from 1,000,000 Riels to 5,000,000 Riels.

Moreover, in cases when a judgment is made on any act as stated in above paragraph, the court may order to post its decision at specific locations which will be indicated by the court at the expense which shall be born by the accused person; and the court may publish this judgement in article of one or more newspapers also at the costs of the accused person, which its maximum should not be exceeded 1,000,000 Riels.

In all cases, the owner, the editor and journalist shall be jointly liable for payment of damages to the victims.

References:

The Press Law, 1995

Article 4

Publication of official information such as statements, meetings, meeting minutes or reports etc. may not be penalized if such publication is fully true or an accurate summary of the truth.

Official information covered by this Article refers to:

statements, meetings, meeting minutes or reports of the National Assembly including its committee and commissions, except if the National Assembly has a secret meeting as stipulated in Article 88 of the Constitution of the Kingdom of Cambodia;
statements, meetings, meeting minutes or reports of the Executive branch, including statements of the Ministers and other officials;
all aspects of the legal process, including judicial proceedings, except those proceedings:
closed to the public by court order;
regulated by Article 16 of this law, relating to privacy in legal proceedings;
dossier of cases still under investigation of the court;

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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

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

Comments:

Self-censorship is widely practiced in Cambodia for various reasons. First, even though it is agreed that print media in Cambodia has a relatively much freedom to report, corruption or corruption-related issues are especially taboo for the local journalists to touch upon. Before they could be killed because of reporting corruption cases while now they could be sued if they do that.

Second, wide practice of corruption within the local media community itself does not allow corruption cases to find their way to the printing. Journalists might be bought in exchange for not reporting the case. Again, but the last reason is the fact that journalists do not believe in the court to deliver them justice if they find case against them being lodged at the court. Therefore it is better to take preventive measure by adopting self-censorship. Foreign journalist is a different issue as they have more freedom to write on corruption-related cases without any strong reason other than they are holders of foreign passports and get protection from the diplomatic mission in the country.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Puy Kea, Correspondent of Kyodo News, and Board Member of the Club of Cambodian Journalists, 10 August 2012, his office in Phnom Penh.

Interview with Kevin Doyle, Editor in chief of the Cambodia Daily, 16 August 2012, The Cambodia Daily office, Phnom Penh

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 distavored 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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

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

Comments:

Self-censorship is widely practiced in Cambodia for various reasons. Even though it is agreed that print media in Cambodia has a relatively much freedom to report, corruption or corruption-related issues are the taboo especially for the local journalists to touch upon. Attacks on journalists have decreased while legal intimidation gains its popularity. In October 2011 Pen Samithy, editor in chief of the local newspaper Reaksmei Kampuchea, was sued by the Siem Reap, provincial prosecutor, for reporting two articles on illegal logging in the province.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Puy Kea, Correspondent of Kyodo News, and Board Member of the Club of Cambodian Journalists, 10 August 2012, his office in Phnom Penh.

Cambodian Center for Human Rights, Internet Censorship: The Ongoing Crackdown on Freedom of Expression in Cambodia, 2011, available at http://www.sithi.org/admin/upload/media/%5B2011-06-13%5DInternet/2011_06_13_Internet%20Censorship%20-%20Briefing%20Note_ENG.pdf (accessed on Dec 8, 2012)

Interview with Kevin Doyle, Editor in chief of the Cambodia Daily, 16 August 2012, The Cambodia Daily office, Phnom Penh

Freedom House, Freedom of the Press 2012: Cambodia, available at <http://www.freedomhouse.org/report/freedom-press/2012/cambodia> (accessed on Dec 9, 2012)

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?

35

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

Yes | No

Comments:

Articles 8-9 of the 1995 Press Law requires the employers to disclose ownership of the media companies.

The Press Law, Article 8 provides:

"Before distribution, the press, employer or editor shall file an application with the Ministry of Information in order to identify itself. A receipt shall be issued to the press by this Ministry after receiving the whole file.

In case of director of publication is a member of the National Assembly or any institution which has immunity, that Press shall appoint a co-director of publication.

Employer or editor who publishes without respecting this procedure before hand, shall be penalized to pay fine from 500,000 to 1,500,000 Riels. In case if not giving up the offense, shall be penalized to pay in double the above original amount of fine."

Article 9 of the same law states:

"The formality which shall be completed by the employer or editor, shall primarily consist of: (i) identity of the Press, (ii) names and addresses of the employer and editor; (iii) name and address of the printing house; and (iv) certification of individual past criminal record of the employer and editor;

Any change of above information shall notify the Ministry of Information 5 days in advance, except for the case of force majeure."

References:

The Press Law, 1995, Article 8 and Article 9.

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.

Comments:

The Press Law covers all different types of press in Cambodia including print, radio and TV. Thus Articles 8-9 require disclosure of the company ownership.

The Press Law, 1995, Article 8 provides:

"Before distribution, the press, employer or editor shall file an application with the Ministry of Information in order to identify itself. A receipt shall be issued to the press by this Ministry after receiving the whole file."

In case of director of publication is a member of the National Assembly or any institution which has immunity, that Press shall appoint a co-director of publication.

Employer or editor who publishes without respecting this procedure before hand, shall be penalized to pay fine from 500,000 to 1,500,000 Riels. In case if not giving up the offense, shall be penalized to pay in double the above original amount of fine.

Article 9 states:

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Any change of above information shall notify the Ministry of Information 5 days in advance, except for the case of force majeure."

References:

The Press Law, 1995

Article 8 provides that:

Before distribution, the press, employer or editor shall file an application with the Ministry of Information in order to identify itself. A receipt shall be issued to the press by this Ministry after receiving the whole file.

In case of director of publication is a member of the National Assembly or any institution which has immunity, that Press shall appoint a co-director of publication.

Employer or editor who publishes without respecting this procedure before hand, shall be penalized to pay fine from 500,000 to 1,500,000 Riels. In case if not giving up the offense, shall be penalized to pay in double the above original amount of fine.

And the Article 9 states that

The formality which shall be completed by the employer or editor, shall primarily consist of: (i) identity of the Press, (ii) names and addresses of the employer and editor; (iii) name and address of the printing house; and (iv) certification of individual past criminal record of the employer and editor;

Any change of above information shall notify the Ministry of Information 5 days in advance, except for the case of force majeure.

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 types 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:

A common standard codes of conduct for journalists does not exist in Cambodia. Various media entities have developed their own codes of conducts for their affiliated journalists to abide by such as the ones developed by the Cambodian Center for Independent Media (CCIM) and the Club of Cambodian Journalists (CCJ). Journalists are known for their low payment and taking part in corruption. Foreign journalists are known for their high respect of professionalism and code of ethics and thus report reliable and independent information.

Media entities are believed to be divided into two different camps: one supporting the ruling party or the government and one siding with the opposition party. No one is in the middle even though this classification might fit well with the independent foreign media. Editors and journalists themselves are thus self-censored and biased to political affiliation.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Puy Kea, Correspondent of Kyodo News, and Board Member of the Club of Cambodian Journalists (CCJ), 10 August 2012, his office in Phnom Penh.

Interview with Kevin Doyle, Editor in chief of the Cambodia Daily, 16 August 2012, The Cambodia Daily office, Phnom Penh

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 last election of the commune/Sangkat councilors in June 2012 is seen as a worse case compared to the previous election with regards to equity coverage of all political parties. In addition to the pro-ruling party or pro-government private media entities that broadcast mainly in favor of the ruling party, the state-owned television and radio do not provide equitable coverage for all the parties registered for the contest. It is a violation of the media rules as set by the National Election Committee not to use the platform to attack one another and favor one party over another. It is also the first time that the Ministry of Information prevented several independent radio stations from broadcasting during the election days while the pro-ruling party radios still aired their programme in favor of the ruling party.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Committee for Free and Fair Elections in Cambodia (COMFREL), Press Release on the Final Result of the Election of the Commune/Sangkat Councils in June 2012, (Comfre, 20 June 2012) available

at http://www.comfre.org/newcomfre/components/com_mypublications/files/202011Press_Statement_Final_Assessment_Final_20_06_2012_.pdf accessed on 17 August 2012

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:

The issue of access to media for political parties and candidates during the 2012 commune/Sangkat elections remained a concern for young democracy in Cambodia. Tep Nitha, the Secretary General of the National Election Commission (NEC) told that on the part of NEC, there is an equality programme for political parties to air their policy platform in the state-owned TV, TVK, for free.

There is also ongoing 'Equity Program' supported by the UNDP and Ministry of Information, which features diverse views concerning issues of interests to the political parties and citizens. In his recent report, Subodi added, "Apart from this, ...extremely limited access to other television channels was provided to political parties for campaign purposes."

However, there is a consensus that the ruling party has maintained its strong control and patronage of the media outlets, TV and radio which is increasingly playing more important roles in access to information. This control has provided the party great advantage through airing the ruling party's political platforms and downplaying the role of the oppositions in the development of the country. On the election day of the 2012 commune/Sangkat election, broadcast of several radio stations known to be not supporting the ruling party was stopped by the Ministry of Information while the many radio stations that are known to favor the ruling parties continued to air their attack of the opposition parties. NEC, according to the election media policy, tried to talk with the media owners to stop violating the policy, while the Ministry of Information, in its response to the alleged violation, took excessive action to stop the airing.

References:

Kong Sothanarith, Media Access Uneven in Upcoming Campaign Period: Monitors, VOA Khmer, 17 May 2012, available at <http://www.voacambodia.com/content/media-access-uneven-in-upcoming-campaign-period-monitors-151929115/1360271.html> (accessed on September 25, 2012)

Roundtable discussion, 2012 Senate election, available at <http://www.youtube.com/watch?v=PIVZH8Ymahk> (accessed on September 25, 2012)

Irwin Loy, Observers: Cambodian Vote Improved but Problems Remain, VOA, June 04, 2012 available at <http://www.voanews.com/content/observers-cambodian-elections-improved-but-problems-remain/1146999.html> (accessed on September 25, 2012)

UN Human Rights Commission (HRC), Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, July 16, 2012.

Puthea Hang, executive director of the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), Interview by author, August 13, 2012, NICFEC office, digital recording

Tep Nitha, Secretary General of the National Election Committee, interview by author, September 20, 2012, NEC/Mol compound

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.

11. Are journalists safe when investigating corruption?

100

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

Yes | No

Comments:

No journalist reporting on corruption has been imprisoned during the last year.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Puy Kea, Correspondent of Kyodo News, and Board Member of the Club of Cambodian Journalists, 10 August 2012, his office in Phnom Penh.

Committee for Free and Fair Elections in Cambodia (COMFREL), 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comfre, 2012) available at http://www.comfre.org/newcomfre/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf (accessed on 10 August 2012)

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.

Comments:

No report of journalist physically harmed in relation reporting corruption.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Puy Kea, Correspondent of Kyodo News, and Board Member of the Club of Cambodian Journalists,

Committee for Free and Fair Elections in Cambodia (COMFREL), 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comfre, 2012) available at http://www.comfre.org/newcomfre/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf(accessed on 10 August 2012)

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.

Comments:

No report of journalist being killed in relation to reporting corruption.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Puy Kea, Correspondent of Kyodo News, and Board Member of the Club of Cambodian Journalists, 10 August 2012, his office in Phnom Penh.

Committee for Free and Fair Elections in Cambodia (COMFREL), 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comfre, 2012) available at http://www.comfre.org/newcomfre/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf(accessed on 10 August 2012)

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.

53
1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

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

Comments:

Article 5 of the Press does mention about the rights of the Press to request information held by government agencies but there is no mention whether individual person has the rights to do so.

In response, there have been attempts by the Sam Rainsy Party, the main opposition party in Cambodia and various national and international organizations in the country to bring about a legal framework or draft law on rights to access of information where individual and legal person has rights to access information by the government. Article 19 of the Cambodia: Draft Law (not passed into law) on Access to Information states:

"The Press has rights of access to information in government held records, except for any information that causes:
-harm to national security;
-harm to relations with other countries;
-invasion of the privacy rights of individuals, including personal files of officials, medical files, and confidential official files and materials;
-expose trade secrets, confidential financial information obtained from any individual or legal entity, and information related to the regulation and supervision of financial institutions;
-affect the rights of any person to a fair trial;
-danger to public officials carrying out the law or their duties.

Requests for information shall be made in writing and specify clearly of the information which is requested to the institutions.

Competent officials who govern such institution shall respond in writing to the request within 30 days. If the request is denied in whole or in part, reasons for such denial shall be indicated clearly in writing."

References:

The Press Law, 1995, Article 19, Cambodia: Draft Law on Access to Information, 2011 available
<http://www.article19.org/data/files/mediabinary/2739/11-09-20-Cambodia.pdf> accessed on 26 July 2012

Yes: A YES score is earned if there is a formal right to request 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 a request for a basic government record is denied.

Yes | No

Comments:

There is no legal framework that provides individual citizens has rights to request basic government information. No is there appeal procedure provided in case the request is denied or rejected. In the Draft Law on Access to information drafted by the Sam Rainsy Party, there is a provision (article 10) that individual has rights to complaint for failure on the government party to disclose information or provide information requested.

References:
N/A

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:

While article 5 of the 1995 Press Law provides that the Press has the rights to request information held by public body, individual person requests are not covered by this law. There is no legal framework that legally enables that individual can access information except in the Draft Law on Access to Information drafted by the Sam Rainsy Party.

References:
N/A

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.

13. Is the right to information requests effective?

4

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

100 | 75 | 50 | 25 | 0

Comments:

Citizen access to information is very limited. Access to information has been an issue for debate for quite some times in Cambodia society and politics. A draft law on access to information was submitted by the Sam Rainsy Party (SRP) to the National Assembly in October 2010. Even since as a response to mounting pressure from both the opposition party and donor community, the Ministry of National Assembly and Senate Relation and Inspection (MoNASRI) on behalf of the government has drafted a policy framework on access to information in close cooperation with the civil society organization and donor community.

However, the draft policy framework remains in the hand of the MoNASRI and has not found way to the National Assembly yet.

Citizens can still request to the government for information of their interest, however the government officials have all the discretion to give it or not. There is a general sense within the government that record or information they hold are their property and thus they have enough authority to make decision. It is usually used to extort or in exchange for money. Otherwise, it is almost impossible to get the information due to heavy bureaucracy or rejected on the basis of national security concerns. An advocate for the access to information law was quoted in the CCIM 2012 report as saying "...information is hard to find because of knowledge limitation and a lack of sharing information from the local authority."

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Cambodian Center for Independent Media (CCIM), Freedom of Information: Advancing Research and Actions, (Phnom Penh: CCIM, April 2012) available at http://www.ccimcambodia.org/report/FOI_survey_%2830_April_2012%29.pdf accessed on 10 August 2012

Interview with Kevin Doyle, Editor in chief of the Cambodia Daily, 16 August 2012, The Cambodia Daily office, Phnom Penh

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 information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizen access to information is very limited and has a significant impact on the cost of trying to access public information. Access to information has been an issue for debate for quite some times in Cambodia society and politics. A draft law on access to information was submitted by the Sam Rainsy Party (SRP) to the National Assembly in October 2010. Even since as a response to mounting pressure from both the opposition party and donor community, the Ministry of National Assembly and Senate Relation and Inspection (MoNASRI) on behalf of the government has drafted a policy framework on access to information in close cooperation with the civil society organization and donor community.

However, the draft policy framework remains in the hand of the MoNASRI and has not found way to the National Assembly yet.

Citizens can still request to the government for information of their interest, however the government officials have all the discretion to give it or not. There is a general sense within the government that record or information they hold are their property and thus they have enough authority to make decision. It is usually used to extort or in exchange for money. Otherwise, it is almost impossible to get the information due to heavy bureaucracy or rejected on the basis of national security concerns. An advocate for the access to information law was quoted in the CCIM 2012 report as saying "...information is hard to find because of knowledge limitation and a lack of sharing information from the local authority."

References:

Cambodian Center for Independent Media (CCIM), Freedom of Information: Advancing Research and Actions, (Phnom Penh: CCIM, April 2012) available at http://www.ccimcambodia.org/report/FOI_survey_%2830_April_2012%29.pdf accessed on 10 August 2012

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Puy Kea, Correspondent of Kyodo News, and Board Member of the Club of Cambodian Journalists, 10 August 2012, his office in Phnom Penh.

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 NGOs. 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 NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Citizen access to information is very limited and this has an impact on the quality of the information. Access to information has been an issue for debate for quite some times in Cambodia society and politics. A draft law on access to information was submitted by the Sam Rainsy Party (SRP) to the National Assembly in October 2010. Even since as a response to mounting pressure from both the opposition party and donor community, the Ministry of National Assembly and Senate Relation and Inspection (MoNASRI) on behalf of the government has drafted a policy framework on access to information in close cooperation with the civil society organization and donor community.

However, the draft policy framework remains in the hand of the MoNASRI and has not found way to the National Assembly yet.

Citizens can still request to the government for information of their interest, however, government officials have all the discretion to give it or not. There is a general sense within the government that record or information they hold are their property and thus they have enough authority to make decision. It is usually used to extort or in exchange for money. Otherwise, it is almost impossible to get the information due to heavy bureaucracy or rejected on the basis of national security concerns. An advocate for the access to information law was quoted in the CCIM 2012 report as saying "...information is hard to find because of knowledge limitation and a lack of sharing information from the local authority."

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office. CCIM, Freedom of Information: Advancing Research and Actions, (Phnom Penh: CCIM, April 2012) available at http://www.ccimcambodia.org/report/FOI_survey_%2830_April_2012%29.pdf accessed on 10 August 2012

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

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

100 | 75 | 50 | 25 | 0

Comments:

There is no appeal mechanism provided.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

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.

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

100 | 75 | 50 | 25 | 0

Comments:

No appeal mechanism is provided.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Cambodian Center for Independent Media (CCIM), Freedom of Information: Advancing Research and Actions, (Phnom Penh: CCIM, April 2012) available at http://www.ccimcambodia.org/report/FOI_survey_%2830_April_2012%29.pdf accessed on 10 August 2012

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.

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

100 | 75 | 50 | 25 | 0

Comments:

Often times information is rejected on the basis of national security and public order concerns. However, in fact, a bribe can help citizens to get access to information.

And it should be noted that access to information at the local level, say, the commune level that is the lowest tier of Cambodian administration is easier if it can be established that such information is necessary for citizens or civil society organizations to make decision on development in their community. On the way up to the national level, there are heavier bureaucratic procedures, and it can be rejected on the basis of security concerns or the non-existence of such information.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Puy Kea, Correspondent of Kyodo News, and Board Member of the Club of Cambodian Journalists, 10 August 2012, his office in Phnom Penh.

Cambodian Center for Independent Media (CCIM), Freedom of Information: Advancing Research and Actions, (Phnom Penh: CCIM, April 2012) available at http://www.ccimcambodia.org/report/FOI_survey_%2830_April_2012%29.pdf accessed on 10 August 2012

Interview with San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), 13 August 2012, Star Kampuchea office.

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.

Category 2. Elections

2.1. Voting and Party Formation

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:

Universal and adult suffrage is guaranteed by law. As mentioned in Article 34 of the Constitution, citizens of both sexes of at least eighteen years old have rights to vote and citizens of at least 25 years old can stand for election.

Article 31 provides:

"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. Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, colour, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status. The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with law."

Article 34 states:

"Khmer citizens of either sex shall enjoy the right to vote and to stand as candidates for the election. Citizens of either sex of at least eighteen years old, have the right to vote. Citizens of either sex of at least 25 years old, have the right to stand as candidates for the election. Provisions restricting the right to vote and to stand for the election shall be defined in the electoral for the election."

Article 35 states:

"Khmer citizens of either sex shall be given the right to participate actively in the political, economic, social and cultural life of the nation. Any suggestions from the people shall be given full consideration by the organs of the State."

References:

The Constitution of the Kingdom of Cambodia, 1993, Articles 31, 34, 35.

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.

Comments:

The law provides that elections of the Members of the National Assembly, the lower house in Cambodian Parliamentary system, shall be held every 5 years. The Senate, the upper house, is elected every 6 years.

Elections are also held for the local and sub-national councils. The province is the sub-national administration. The commune/Sangkat (Sangkat is a commune in urban area) is the lowest administrative tier in Cambodia's administrative structure and its council is elected every five years. District is the third tier in the four tier administrative structure in Cambodia. The commune/Sangkat councilors elect the councils at the district/Khan/municipality (municipality is district in urban area and Khan is a district in the capital) and the province and capital councils.

Article 2 of the Law on Election of Members of the National Assembly, 1997, as amended 2002, 2006 states:

"Election of Members of the National Assembly shall be held every five years. The date of polling shall be determined and announced by the Prime Minister upon the request of the Minister of Interior. Election of Members of the National Assembly shall be held only one day on Sunday except for the following circumstances:

- Force majeure, in which the Election Day shall be postponed;
- dissolution of the National Assembly before the end of its mandate; in this case the election shall be held within sixty (60) days of the dissolution of the National Assembly;
- Extension of the legislative term of the National Assembly pursuant to paragraph 5 of Article 78 of the Constitution."

Article 3 of the Law on the Administration and Management of Khum/Sangkat 2001, amended in 2006 (new) provides that elections of all communes shall be held every five years. Elections shall be held on the same day across the country and the election day shall be decided by the Prime Minister upon request from the Minister of Interior. The Prime Minister shall disclose the election date at least 9 days before the election day. Election shall be held on Sunday.

Article 7 of the Law on Elections of Members of the Senate, 2005 provides that elections of the Members of the Senate shall be held every 6 years on Sunday of the 8th week before the 6th year anniversary of the Senate except in case as provided in article 102 (new) of the Constitution.

Article 15 of the Law on the administration and Management of Capital, province, Municipality, Srok, Khan 2008 states:

"A council shall have a mandate of five (05) years, which shall end when the new council takes office.

The mandate of the council shall take effect from the day of the elections of the councils and shall end on the day of the next elections."

References:

Law on Election of Members of the National Assembly, 1997, as amended 2002, 2006, Article 3.

Law on the Administration and Management of Khum/Sangkat 2001, amended in 2006, Article 3.

Law on Elections of Members of the Senate, 2005, Article 7.

Law on the administration and Management of Capital, province, Municipality, Srok, Khan 2008, Article 15.

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.

**Comments:**

Election watchdogs such as Committee for Free and Fair Elections in Cambodia (COMFREL) and Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC) and other non-governmental organizations in Cambodia agree that there has been irregularities and technical difficulties in the voter registration process and it favors the ruling party. It is observed that 92 percent of voters use IDs to find themselves in the 2011 voter list even though it must be noted that not all Cambodians have IDs.

NICFEC's 2011 "Observation Report: Voter Registration and List Verification 2011" aimed to observe the registration for the 2012 Commune/Sangkat Election reveals a variety of irregularities such as registration without the presence of the person as required by law, rejection on the basis of ID expiry for which the government issued a sub-decree on 23 June 2011 to extend the validity of the IDs for the purpose of registration and voting, and office hours are not respected by the registration officers.

Between 2008 and 2011 there has been improvement as to respect of rights to vote of Cambodian people. Young people who just become eligible to vote for the first time are given more time to register and registration period has been increased from 90 to 120 days. The number of eligible voters increases from 8,543,283 in 2008 to 9,203,493 in 2011. Moreover, COMFREL's audit of 2011 voter list finds that 17.2 percent of registered voters could not find their names in the list, which is thus equal to 1.5 million registered voters though this figure decreases from 18.5 percent in 2008. In 2008, 440,000 of eligible voters could not cast their ballot due to inability to find their names or polling stations.

After the 2008 national assembly elections, COMFREL estimated that 440,000 voters could not exercise their voting right just because either they could not find their names in the voter list or could not find their polling station, and another voter registration audit conducted by COMFREL, NICFEC and Center for Advanced Studies (CAS) revealed that before the 2008 elections more than 57,000 voters (0.7 percent) were incorrectly removed from the voter list.

References:

Interview with Puthea Hang, executive director of the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), 13 August 2012, NICFEC office

Committee for Free and Fair Elections in Cambodia (COMFREL), 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comfrel, 2012) available at http://www.comfrel.org/newcomfrel/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf(accessed on 10 August 2012)

Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), Observation Report: Voter Registration and List Verification 2011 (Phnom Penh: NICFEC, 2011) available at <http://nicfec.files.wordpress.com/2011/12/report-vrm.pdf> accessed on 13 August 2012

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:

There has not been reports of abuses of the principle of the secret ballot. Even though there is perception of fear among general people due to violent environment prior to the election day, citizens do go to vote at the polling station. Tep Nitha claims that the National Election Committee (NEC) abides by the principle of secrecy of the ballots and puts efforts to work toward that including awareness raising and requesting cooperation from all stakeholders. In every election, around three percent are invalid ballots.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comfrel, 2012) available at http://www.comfrel.org/newcomfrel/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf(accessed on 10 August 2012)

Interview with Puthea Hang, executive director of the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), 13 August 2012, NICFEC office

Comfrel, Press Statement on the Evaluation and Final Result of the Election of the Commune/Sangkat Councils in 2012, 20 June 2012, available at http://www.comfrel.org/newcomfrel/components/com_mypublications/files/202011Press_Statement_Final_Assessment_Final_20_06_2012.pdfaccessed on 17 August 2012.

Tep Nitha, Secretary General of the National Election Committee, interview by author, September 20, 2012, NEC/Mol compound

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:

Elections are regularly held in Cambodia. The National Assembly Election, election of the members of the Senate, election of the commune/Sangkat Council have been held every five years. The first National Assembly Election was first held in 1993. The first

References:

Interview with Puy Kea, Correspondent of Kyodo News, and Board Member of the Club of Cambodian Journalists, 10 August 2012, his office in Phnom Penh.

Committee for Free and Fair Elections in Cambodia (COMFREL), 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comfrel, 2012) available at http://www.comfrel.org/newcomfrel/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf(accessed on 10 August 2012)

Interview with Puthea Hang, executive director of the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), 13 August 2012, his office;

Comfrel, Press Statement on the Evaluation and Final Result of the Election of the Commune/Sangkat Councils in 2012, 20 June 2012, available at http://www.comfrel.org/newcomfrel/components/com_mypublications/files/202011Press_Statement_Final_Assessment_Final_20_06_2012.pdfaccessed on 17 August 2012.

Tep Nitha, Secretary General of the National Election Committee, interview by author, September 20, 2012, NEC/Moi compound

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.

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

70

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

Yes | No

Comments:

The Law on Political Parties 1997 gives details on political parties, their rights and formation and responsibilities.

Article 31 states:

"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. Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status. The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law."

Article 42 states:

"Khmer Citizens shall have the right to establish associations and political parties. These rights shall be determined by law. Khmer citizens may take part in mass organizations for mutual benefit to protect national achievement and social order."

References:

Article 31:

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. Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status. The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law.

Article 42:

Khmer Citizens shall have the right to establish associations and political parties.

These rights shall be determined by law.

Khmer citizens may take part in mass organizations for mutual benefit to protect national achievement and social order.

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.

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

Yes | No

Comments:

Article 34 of the Constitution of the Kingdom of Cambodia, 1993 (and as amended) states:
"Khmer citizens of either sex shall enjoy the right to vote and to stand as candidates for the election. Khmer citizens of either sex at least eighteen years old have the right to vote. Citizens of either sex at least twenty-five years old, have the right to stand as candidates for the election. Citizens of either sex at least forty years old, have the right to stand as candidates for the election of senators. Provisions restricting the right to vote and the right to stand as candidates of the election shall be determined by law. Even though the Constitution guarantees the rights of the Khmer citizens to stand for election to political office, different criteria and qualifications are required for different political office."

The Law on Election of the Members of Senate, Article 17 provides that candidates must have, among others, age of at least 40 years to stand for election.

Law on Elections of Capital Council, Provincial Council Municipal Council, District Council and Khan Council, 2008

Article 15 states:

"Khmer citizens of both sexes who wish to stand for the council elections shall meet the conditions as prescribed in Article 21 of the Law on the Administrative Management of the Capital, Province, Municipality, District and Khan."

Article 16 states:

"Every person who wishes to stand for the council elections shall register his/her name on the candidate list of a political party. Each candidate list shall be prepared by political parties who have been properly registered in accordance with the conditions described in the Law on Political Parties. The candidate list of each political party shall contain the name of candidates in sequential order and shall ensure women candidates in their candidate list in appropriate order."

Article 17 states:

"The following persons are not eligible to be candidates for the council elections:

- Members of the National Assembly, members of the Senate, members of the Constitutional Council, members of the Royal Government and judges;
- Governors, deputy governors of the Capital, provinces, municipalities, district and Khan;
- Members of the Commune/Sangkat Councils;
- Members of the National Election Committee and officers and staff working for the Election Committees at all levels;
- Civil servants, court officials, members of the National Police and Royal Cambodian Armed Forces in office;
- Officials and personnel of the councils at all levels;
- Persons who have been punished and have revoked their right from participating in elections;
- Monks and priests."

Article 21 states:

"The candidate list of the political party shall contain standing and reserve candidates that are prepared in priority order from the highest to lowest with at least double (02) number of the number of council seats in which that political party wishes to compete."

Article 14 of the Law on The Administration and Management of Commune/Sangkat, 2001 states:

"Khmer citizens of both sexes who are eligible and intend to stand as a candidate for the election of Commune/Sangkat Council shall fulfill the following requirements:

- Khmer nationality at birth;
- Able to read and write Khmer script;
- Is registered in the list of voters in the commune/Sangkat where he/she stands as a candidate for the election;
- At least 25 years of age on the day of the election of Commune/Sangkat Council;
- Having sufficient qualifications as prescribed in the Law on Elections of Commune/Sangkat Councils."

References:

The Constitution of the Kingdom of Cambodia, 1993, Article 34, Articles 14, 16, and 17

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:

A political party is required to register at the Ministry of Interior and signatures of 4,000 party members must be submitted. Mr. Hang Puthea see this requirement as an obstacle towards forming a party, as it would be hard to mobilise this membership in an environment that almost all people eligible for vote is already voluntarily or forcefully a member of one existing party or another already. To succeed in that, there is a need to bribe those people to give their signature. Without it, it is hard to meet the requirement to register the party. Though this might be seen as a barrier, there has not been reports on party's failure to meet this requirement.

New developments related to party registration in Cambodia during the period under review are dominated by the changing of Norodom Ranariddh Party (NRP) to its original name the Nationalist Party and the attempt to merge the two main opposition parties (SRP and HRP) to

strengthen the opposition force in order to challenge the ruling party in the 2013 national assembly election. There are warnings that the two parties would suffer the loss of their seats at the National Assembly should they change their current party names, but the SRP and HRP address that legal challenge by find an approach of creating a new one.

References:

Gallup, Jeffrey, "Cambodia's Electoral System: A Window of Opportunity for Reform," in *Electoral Politics in Southeast and East Asia*, e.d. Crossant, Aurel (Singapore: Friedrich-Ebert-Stiftung, 2002), 25-73.
Puthea Hang, executive director of the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), Interview by author, August 13, 2012, NICFEC office, digital recording

Norodom Ranaridh Party change name, Xinhua News, August 13, 2012, http://www.chinadaily.com.cn/xinhua/2012-08-13/content_6708902.html accessed on August 26, 2012.

Cambodia's Prince Ranariddh officially restarts political career, Xinhua News, Dec 11, 2012
http://news.xinhuanet.com/english2010/world/2010-12/11/c_13645011.htm accessed on August 26, 2012

Vong Sokheng and Bridget Di Certo, Parties to form Cambodia Democratic Movement of National Rescue, The Phnom Penh Post, 17 July 2012 available at <http://www.phnompenhpost.com/index.php/2012071757467/National-news/srp-hrp-announce-political-merger.html> accessed on August 26, 2012

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:

Even though it is free for a person to run for political office, there must be affiliation with political party. The proportional electoral system applicable in Cambodia for the legislature requires that the political party decides on the candidates to be put in the list. S/he therefore needs to have political affiliation.

References:

US Department of State, Country Reports on Human Rights Practices for 2011, Cambodia, available at <http://www.state.gov/j/drl/rls/hrpt/humanrightsreport/index.htm#wrapper> (accessed on 23 August 2012)

Puthea Hang, executive director of the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), Interview on August 13, 2012, NICFEC office, digital recording

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:

The last national election of the members of Parliament was in 2008, when there were five political parties winning seats at the national assembly. Of the 123 seats, the Cambodian People's Party won 90, the Sam Rainsy Party (SRP) 26, Human Rights Party (HRP) 3, FUNCINPEC 2, and Norodom Ranaridh Party (NRP) 2. During this 4th mandate of the National Assembly, the CPP put an end to the practice that all political parties in the Assembly each is given a chairmanship of one of the nine specialised commissions. In protesting this reform, the SRP and HRP do not agree to take any membership of the committees. Only NRP is represented by an MP in the 'Commission on Interior, National Defense, Investigation, Anti-corruption, and Civil Service Administration' and FUNCINPEC has one MP as member of the 'Commission on public works, transport, post, telecommunication, Industry, Mines, Energy, Commerce, Land Management, Urban Planning, and Construction.' The Permanent Committee of the National Assembly, composed of heads of all the commissions and tasked with preparing agenda for the Plenary Sessions is solely occupied by the CPP. With the 90 MP from its party, more than two thirds of votes as required by the law make decision, CP can decide on any laws without a need of support from the opposition.

References:

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

COMFREL, 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comfre, 2012) available at http://www.comfre.org/newcomfre/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf(accessed on 10 August 2012)

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.

2.2. Election Integrity

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

100

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

Yes | No

Comments:

The National Election Committee is the national body that has the authority to organize, management and ensure the smooth operation of the elections.

Article 11 of the Law on the Election of the Members of the National Assembly, 1997 provides that the election of the members of the National Assembly shall be supervised by the National Election Committee (NEC). Article 12 provides that the NEC is an independent and impartial entity in the execution of their authority.

Article 22 of the Law on the Elections of the Members of the Senate, 2005 provides that the management of the elections of the Members of the Senate is the authority of the National Election Committee (NEC).

Article 9 of the Law on Elections of Capital Council, Provincial Council Municipal Council, District Council and Khan Council, 2008 states that the management of the council elections as provided in this law shall be under the authority of the National Election Committee (NEC).

Article 10 of the Provisions of Chapter 3 states that except Articles 14, 20 and 21 of the Law on the Election of Members of the National Assembly shall be applied for the management of council elections. Article 11 states that in necessary cases, the NEC may establish an election committee for the Capital or province or municipality or district or Khan. Article 12 states that the NEC shall issue regulations and procedures relating to the dministration of council elections in accordance with the principles of this law and the Law on the Election of Members of the National Assembly.

Article 7 of the Law on the Elections of Commune/Sangkat Council 2001 provides that the organization and management of the list of voters and of the election of the commune/sangkat councils shall be under the authority of the National Election Committee (NEC) established by the Law on the Elections of the Members of the National Assembly.

Article 8 provides that all members and staffs of the national election committee, provincial election committee and commune/sangkat committee, voter registration offices and polling stations shall maintain their independence, impartiality, and honesty in the execution of their power, functions and roles.

The laws on elections of the members of the legislative bodies at different levels within the Cambodian administrative system provide that the National Election Committee is the national body that has the authority to organize, management and ensure the smooth operation of the elections. However, the Committee does not report impartiality and integrity of the election by itself. Rather it is the organization that adjudicate complaints of such irregularities from political parties.

References:

The Law on the Election of the Members of the National Assembly, 1997

Article 11 provides that the election of the members of the National Assembly shall be supervised by the National Election Committee (NEC). And Article 12 provides that the NEC is an independent and impartial entity in the execution of their authority.

Law on the Elections of the Members of the Senate, 2005

Article 22 provides that the management of the elections of the Members of the Senate is the authority of the National Election Committee (NEC).

Law on Elections of Capital Council, Provincial Council Municipal Council, District Council and Khan Council, 2008

Article 9

The management of the council elections as provided in this law shall be under the authority of the National Election Committee (NEC).

Article 10

Provisions of Chapter 3, except Articles 14, 20 and 21 of the Law on the Election of Members of the National Assembly shall be applied for the management of council elections.

Article 11

In necessary cases, the NEC may establish an election committee for the Capital or province or municipality or district or Khan.

Article 12

The NEC shall issue regulations and procedures relating to the administration of council elections in accordance with the principles of this law and the Law on the Election of Members of the National Assembly.

The Law on the Elections of Commune/Sangkat Council 2001

Article 7 provides that the organization and management of the list of voters and of the election of the commune/sangkat councils shall be under the authority of the National Election Committee (NEC) established by the Law on the Elections of the Members of the National Assembly.

Article 8 provides that all members and staffs of the national election committee, provincial election committee and commune/sangkat committee, voter registration offices and polling stations shall maintain their independence, impartiality, and honesty in the execution of their power, functions and roles.

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.

18. Is the election monitoring agency effective?

35

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

Yes | No

Comments:

The appointment of the head of the National Election Committee (NEC) by the government that is dominated by the ruling party for so long time that society is widely politicized.

The Law on the Election of the National Assembly, Article 12, 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. 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 have a constitutional mandate.

The Law on Commune Council Elections, Article 8 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).

References:

The Law on the Election of the National Assembly, Article 12 and Article 121

The Law on Commune Council Elections, Article 8.

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:

The nine members of the National Election Committee (NEC) are appointed along their political party affiliations, but after the appointment they are required to disown their party membership. Five are from CPP while SRP and FUNCINPEC each has two.

Appointment of the staffs at the provincial level (Provincial Electoral Committees—PEC) are not based on the qualifications but mainly those provincial staffs who are under the political influence.

There is an allegation that the NEC appointing those was biased in the previous elections. The commune/Sangkat clerks who are appointed by the Ministry of Interior serve at the NEC staffs after the election of the commune/Sangkat council in 2002. They are mainly tasked with voter registration and squarely known for their political discrimination. Also, the commune/Sangkat election committees, especially after the 2007 local elections when the CPP won the landslide election, are run by the councilors who are themselves CPP local party leaders.

References:

Vong Sokheng and Bridget Di Certo, Parties to form Cambodia Democratic Movement of National Rescue, The Phnom Penh Post, 17 July 2012 available at <http://www.phnompenhpost.com/index.php/2012071757467/National-news/srp-hrp-announce-political-merger.html> accessed on August 26, 2012

The Asian Network for Free Elections (ANFREL), Report on the International Election Observation Mission: Cambodia National Assembly Election 27th July 2008, (Bangkok: ANFREL, 2008)

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at http://www.comfre.org/newcomfre/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf(accessed on 10 August 2012)

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:

The National Election Committee (NEC) has its professional and full-time staff serving in its secretariat and its six departments. The Provincial Election Commissions (PEC) and the Commune/Sangkat Election Commissions (CEC) are staffed with former civil servants from various provincial departments and commune councilors respectively. They are known for their political bias in favor of the CPP.

The number of staff can be differentiated during the election period and in the transitional period. During the transitional period, the number of staff is big in order to staff the Secretariat in Phnom Penh, at the provincial and capital level, at the commune level and the polling stations. Tep Nitha told that for 2012 election, the total number of staff was 117,967. During the transitional period, there are 280 full-time staffs at the national level and 60 staffs to run the provincial election committees.

Quality of staffs remains a challenge as the pay is low. NEC's big share of positions is the IT department and it is mostly dominated by young students who are first time in their employment career and thus the annual turn over is as 80 percent as high. Trainers' turnover is about 20 percent. During the election days, the polling stations are mainly staffed with teachers and retirees.

References:

The Asian Network for Free Elections (ANFREL), Report on the International Election Observation Mission: Cambodia National Assembly Election 27th July 2008, (Bangkok: ANFREL, 2008)

Committee for Free and Fair Elections in Cambodia (COMFREL), Final Assessment and Report on the 2008 National Assembly Elections (Phnom Penh: Comfre, 2008)

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Gallup, Jeffrey, "Cambodia's Electoral System: A Window of Opportunity for Reform," in *Electoral Politics in Southeast and East Asia*, e.d. Crossant, Aurel (Singapore: Friedrich-Ebert-Stiftung, 2002), 25-73.

Tep Nitha, Secretary General of the National Election Committee, interview on September 20, 2012, NEC/Moi compound

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 claim to the contrary has been reported in the latest elections of the commune/Sangkat councils in 2012 and the 2008 election of the National Assembly. However, detailed information such as database of the registration is not accessible. This researcher used to ask for a copy from the National Election Commission but failed to receive it as the heavy bureaucratic procedure and probably lack of political intention to share made it impossible to access the data. The result of the election is however publicized in a matter of a few weeks after the election and it can still be accessible at the NEC website.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Final Assessment and Report on the 2008 National Assembly Elections (Phnom Penh: Comfre, 2008)

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Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfre.org/newcomfre/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

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.

Comments:

Lack of separation of power between the election administration role of the National Election Committee (NEC) and its judiciary role in adjudicating the offenders of the election law and rules has been haunting the independence and neutrality – and ability to issue penalties. During the 2012 election of the commune councils, 80 percent of the total 100 complaints, most of which are against the commune councilors, were rejected and denied referral to the NEC with reasons that there are not enough supporting documents and evidence.

However, there were a few radio stations who programs were cut off air after the NEC requested them not to violate the election rules when the Ministry of Information intervened to penalize. Though NEC saw the “cut-off” as over-reaction by the Ministry of Information; it remains to be the Ministry’s authority and responsibility.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Final Assessment and Report on the 2008 National Assembly Elections (Phnom Penh: Comfre, 2008)

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfre.org/newcomfre/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

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NICFEC, Observation Report: Voter Registration and List Verification 2011 (Phnom Penh: NICFEC, 2011) available at <http://nicfec.files.wordpress.com/2011/12/report-vrm.pdf> accessed on 13 August 2012

Tep Nitha, Secretary General of the National Election Committee, interview by author, September 20, 2012, NEC/Moi compound

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?

75

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

Comments:

The voter registration system in Cambodia puts burden on the citizens to check and verify their name in the voter list. Every year, the National Election Committee (NEC) is required from October 1st to December 31st to conduct and implement the actual registration work and voter list update. Twenty days, from October 1st to 20th, are the actual registration days. Even though there have been attempts to improve the registration, NEC is not free from allegations of political bias and discrimination.

Local officials including commune councilors and commune clerks who serve as local agents for NEC to register the voters are known for their political bias and discrimination and attitudinal discrimination against disabled, women and those who they believe as not supporting the ruling party. Sometimes even though citizens known to be supporters of opposition party, they later know that their identities are not correct and could not vote. Comfre's study of the 2008 National Assembly elections finds that an estimate of 440,000 voters could not vote during the election due to the disappearance of their names from the list, erroneous information about their identity or changed to different polling stations.

For the 2012 commune/Sangkat election, the number of voters on the list reviewed in 2011 was 9,203,493, which is equal to 4 percent higher than the actual eligible voters nationwide. Comfre's statistical survey found that 17 percent, accounting for 1.5 million eligible voters could not find their names or had had their names changed on the lists. The issue of double entry remains a challenge for the NEC in addition to the misuse of registration form such as form 1018 for those who do not have ID card issued by the Ministry of Interior in favor of the ruling party.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Final Assessment and Report on the 2008 National Assembly Elections (Phnom Penh: Comfre, 2008)

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Council_Election_2012_Eng.pdf accessed on August 26, 2012

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Committee for Free and Fair Elections in Cambodia (COMFREL), Voter Registration and the Voter List Are Still a Challenge in Cambodia, Neak Kloam Meul N. 90 (Khmer article on December 13, 2010), available at http://www.comfre.org/eng/components/com_mypublications/files/228878Voter_Registration_2010_COMFREL_Eng.pdf accessed on August 23, 2012

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:

The contesting parties can appeal to the Constitutional Council – which has its own constitutional mandate and, just to note, is not a tribunal – once claims of electoral fraud are rejected at the National Election Committee (NEC) level. The Constitution, Article 136, identifies the Constitutional Council as the supreme institution that has 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.

Contest of election results of the Senates adopts the same procedures as the elections of the members of the National Assembly (Articles 28, 29, 30 of the Law on the Elections of the Members of the Senate, 2005).

Note that for the Commune Council elections and Capital Council, Provincial Council Municipal Council, District Council and Khan Council, the NEC has the final decision over election complaints.

References:

The Constitution, Article 136.

The Law on the Election of the National Assembly, as amended, in Articles 73, 114 and 117.

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.

Comments:

One of the reasons disastrous to the National Election Committee's (NEC) credibility, neutrality and independence to the eyes of the opposition parties and the public is the judiciary's role bestowed to them under the existing legal framework. In addition to its role in administering the election, the NEC is tasked with a role to make decision on electoral complaints ranging from complaints related to voter registration to complaints on election results.

The appeal mechanism in this regard is bestowed to the Constitutional Council whose main role is to decide on the constitutionality of the law. Both are known for their bias toward the CPP. In the wake of the announcement of the temporary result of the 2008 election, three political parties, namely SRP, HRP and NRP filed complaints to NEC separately rejecting the election result nationwide, two reorganise election in a province and to protest the irregularities during the registration and voting days.

The law requires NEC to decide on cases within 48 hours. Accordingly, NEC held an internal meeting right away, one day after the receipt of the complaints and rejected the complaints squarely on the basis that the complaints do not have enough evidence to support or cases are not to be solved during the announcement of the result period. SRP and HRP appealed it to the Constitutional Council, who according to the law has the maximum of 20 days to decide on the cases.

Within a week, the Constitutional Council after summoning party representative and NEC and the hearing, decided that the NEC decisions prevailed and rejected the complaints. It should be noted that the legal framework itself creates an environment where no time or clear procedure is allowed the NEC and Constitutional Council to fully investigate the cases before verdict is delivered.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comfrel, 2012) available at http://www.comfrel.org/newcomfrel/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf(accessed on 10 August 2012)

Puthea Hang, executive director of the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), Interview by author, August 13, 2012, NICFEC office, digital recording

Gallup, Jeffrey, "Cambodia's Electoral System: A Window of Opportunity for Reform," in *Electoral Politics in Southeast and East Asia*, e.d. Crossant, Aurel (Singapore: Friedrich-Ebert-Stiftung, 2002), 25-73

Committee for Free and Fair Elections in Cambodia (COMFREL), Final Assessment and Report on the 2008 National Assembly Elections (Phnom Penh: Comfrel, 2008)

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfrel.org/newcomfrel/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdfaccessed on August 26, 2012

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.

Comments:

Military, security forces and local authorities are influential and threatening during the election. They are biased to the ruling parties. During the 2012 commune election, Committee for Free and Fair Elections in Cambodia (COMFREL) found that there are some 3,127 irregularities cases of which 0.64 percent involves 20 cases of armed forces wearing uniforms and carrying weapons and using harsh and threatening words inside and outside polling stations in Phnom Penh, Battambang, Kampot, Kandal, Prey Veng, Takeo, Kep and Pailin.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfrel.org/newcomfrel/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdfaccessed on August 26, 2012

Puthea Hang, executive director of the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), Interview on August 13, 2012, NICFEC office, digital recording

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 overtly 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**

Comments:

The law on the Election of the Members of the National Assembly, as amended, Articles 26 to 28, 102 and 108, 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 National Election Committee (NEC).

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

References:

Law on the Election of the Members of the National Assembly, as amended, Articles 26 to 28, 102 and 108.

Law on Commune Council Elections, as amended, Articles 88-110.

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:

According to Tep Nitha, the Secretary General of the National Election Committee (NEC), there are different kinds of observers allowed during registration and election day. These are party observers, national and international observers. Party observers are registered in the commune/Sangkat they wish to monitor and observe during registration and election day.

National and international observers are required to register at the NEC and with NEC approval, and they would be stationed in the province. Usually they are allowed to move around within the province and if necessary they are granted a privilege to move across the provinces.

Subodi's report shows that "as at 31 May 2012, the National Election Committee had acknowledged 14,886 national and international election observers from 40 non-governmental organizations and associations and 22 special guests from the delegation of the European Union to Cambodia and the embassies of France and Germany in Phnom Penh. It had also accredited 512 national and international journalists from 53 media houses to observe the elections." Observers do play very important role in monitoring the registration and reporting any regularities during the election day and thus inform policy as to the standard of election being held in the country.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL) Observation Activities during Voter List Revision and Registration, PRESS RELEASE, Phnom Penh, 14 September 2011- available at http://www.comfreli.org/eng/components/com_mypublications/files/163122COMFREL_Voter_Registration_Activity_COMFREL_2011_Final_Eng.pdf (accessed on September 25, 2012)

Press Statement On Final Assessment and Findings of 2012 Commune Council Elections http://www.comfreli.org/eng/components/com_mypublications/files/340543Press_Statement_Final_Assessment_Eng_Final.pdf (accessed on September 25, 2012)

UN Human Rights Commission, Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, July 16, 2012.

Tep Nitha, Secretary General of the National Election Committee, interview by author, September 20, 2012, NEC/Mol compound

Glyn Ford, Parliamentary Elections in Cambodia: Election Observation Delegation, 24 – 29 July 2008, available at http://www.europarl.europa.eu/intcoop/election_observation/missions/2004-2009/20080727cambodiareport.pdf (accessed on September 25,

International Foundation for Electoral Systems, Voter Registration and Elections in Cambodia: Key Findings from an IFES Public Opinion Survey, June 2012 available at http://www.ifes.org/-/media/Files/Publications/Survey/2012/Voter_Registration_and_Elections_in_Cambodia_2012.pdf accessed on August 23, 2012

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.

70 2.3. Political Financing Transparency

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

0

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

Yes | No

Comments:

No such legislation exist.

References:

The Political Party Law, 1997

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.

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

Yes | No

Comments:

The Political Party Law, 1997, Articles 27,28,29 covers provisions related to finances of the Political Parties, but do not impose any limits on corporate donations to political parties except those corporates are foreign-owned.

References:

No, there is no such limits on the law.

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.

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

Yes | No

Comments:

There is no such limits imposed on political party expenditures.

References:

The Law on Political Parties, 1997

Yes: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

No: A NO score is earned if there are no limits on political party expenditures during an election. 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 requirements for the disclosure of donations to political parties.

Yes | No

Comments:

No, by law, there are no such limits.

References:

The Law on Political Parties, 1997

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

Yes | No

Comments:

By law, there are no such limits.

References:

The Law on Political Parties, 1997

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. 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 when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

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

Yes | No

Comments:

By law, there is no such entity that monitors the financing of the political parties even though as provided in the Law on the Elections of the Members of the National Assembly, 1997 and as amended thereafter, in Article 82 that each political party registered for the election is required to have an account book to register income, sources of income and expenditure and the National Election Committee, when necessary, may monitor the book. However, the National Election Committee is not formally assigned to monitor and enforce laws and regulations around the financing of political parties.

References:

The Law on Political Parties, 1997

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. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

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

0

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

Yes | No

Comments:

By law, there are no such limits.

References:

The Law on Political Parties, 1997

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.

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

Yes | No

Comments:

By law, there are no such limits.

References:

The Law on Political Parties, 1997

The Law on Elections of the Members of the National Assembly, 1997 and as amended.

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.

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

Yes | No

Comments:

By law, there are no such requirements.

References:

The Law on the Political Parties, 1997

The Law on the Elections of the Members of the National Assembly, 1997 and as amended

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes | No

Comments:

By law, there is no such requirement for auditing.

Somewhat related laws are found in Article 81 of the Law on the Elections of the Members of the National Assembly provides that expenses of the campaign are the sole responsibility of the Party and candidates concerned, and Article 83 of the same law provides that all donations to the party should go into a bank account and any expense incurred should come from the same account.

References:

The Law on Political Parties, 1997

The Law on the Elections of the Members of the National Assembly, 1997 and as amended

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 when financial irregularities are uncovered. 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 when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

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

Yes | No

Comments:

By law, there is no entity that monitors financing of individual political candidate's campaign.

References:

The Law on Political Parties, 1997

The Law on the Elections of the Members of the National Assembly, 1997 and as amended

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. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

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

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

Comments:

In an environment where there is an absence of legal framework to regulate financial contribution to political parties or political party's campaign finance, NGOs began to discuss the issue and has been advocating for a law on campaign financing.

Prior to the 2012 commune election, a group of NGOs managed to convince the SRP, HRP, FUNCINPEC and the Democratic Movement Party (DMP) political parties to agree to disclose information of incomes and financial outflows during the election campaigns. During the 2012 commune election campaign, Comfreli deployed its observers to collect information and learn that spending per commune is about 9,000 US dollars for CPP, 1,500 US dollars for SRP, 300 US dollars for HRP and 200 US dollars for FUNCINPEC and NRP.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfreli.org/newcomfreli/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

Bridget Di Certo and Chhay Channyda, Campaign Spending in NGOs' Sights, the Phnom Penh Post, Tuesday, August 14, 2012, 1,6.

NGO Working Group on Political Finance, Statement to Appeal for Establishment of a Campaign Finance Law in Cambodia, the Phnom Penh Post, Tuesday, August 14, 2012.

Puthea Hang, executive director of the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), Interview by author, August 13, 2012, NICFEC office, digital recording

Committee for Free and Fair Elections in Cambodia (COMFREL), Political Campaign Finance, (Phnom Penh: Comfreli, 2010)

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.

100 | 75 | 50 | 25 | 0

Comments:

It is an environment where there is an absence of legal framework or limits to regulate financial contribution to political parties or political party's campaign finance. NGOs began to discuss the issue and has been advocating for a law on campaign financing. Prior to the 2012 commune election, a group of NGOs managed to convince the SRP, HRP, FUNCINPEC and the Democratic Movement Party (DMP) to agree to disclose information of incomes and financial outflows during the election campaigns. During the 2012 commune election campaign, Comfreli deployed its observers to collect information and learn that spending per commune is about 9,000 US dollars for CPP, 1,500 US dollars for SRP, 300 US dollars for HRP and 200 US dollars for FUNCINPEC and NRP.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfreli.org/newcomfreli/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

Bridget Di Certo and Chhay Channyda, Campaign Spending in NGOs' Sights, the Phnom Penh Post, Tuesday, August 14, 2012, 1,6.

NGO Working Group on Political Finance, Statement to Appeal for Establishment of a Campaign Finance Law in Cambodia, the Phnom Penh Post, Tuesday, August 14, 2012.

Committee for Free and Fair Elections in Cambodia (COMFREL), Political Campaign Finance, (Phnom Penh: Comfre, 2010)

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.

100 | 75 | 50 | 25 | 0

Comments:

It is an environment where there is an absence of legal framework to regulate financial contribution to political parties or political party's campaign finance. NGOs began to discuss the issue and has been advocating for a law on campaign financing. Prior to the 2012 commune election, a group of NGOs managed to convince the SRP, HRP, FUNCINPEC and the Democratic Movement Party (DMP) to agree to disclose information of incomes and financial outflows during the election campaigns.

During the 2012 commune election campaign, Committee for Free and Fair Elections in Cambodia (COMFREL) deployed its observers to collect information and learn that spending per commune is about 9,000 US dollars for CPP, 1,500 US dollars for SRP, 300 US dollars for HRP and 200 US dollars for FUNCINPEC and NRP.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfre.org/newcomfre/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

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Puthea Hang, executive director of the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), Interview by author, August 13, 2012, NICFEC office, digital recording

Committee for Free and Fair Elections in Cambodia (COMFREL), Political Campaign Finance, (Phnom Penh: Comfre, 2010)

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.

Comments:

With the legal framework, the National Election Committee (NEC) is tasked with the job to initiate investigations into the financing of political party, should there be irregularities observed.

In reality, the NEC has never done that for various reasons. One political reason that we can see is that NEC itself is very much under the political influence of the ruling party, who has enjoyed the privilege of financial contribution from various sources. In this regard, NEC cannot set the precedent in monitoring the financing of political parties.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfrel.org/newcomfrel/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

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Puthea Hang, executive director of the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), Interview by author, August 13, 2012, NICFEC office, digital recording

Committee for Free and Fair Elections in Cambodia (COMFREL), Political Campaign Finance, (Phnom Penh: Comfrel, 2010)

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. 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, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. 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, is uncooperative with other agencies, 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.

Comments:

No claim of investigating and monitoring of financing of political parties has been reported and no penalty has been reported.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfrel.org/newcomfrel/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

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Committee for Free and Fair Elections in Cambodia (COMFREL), Political Campaign Finance, (Phnom Penh: Comfrel, 2010)

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

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, reluctant to cooperate with other agencies, 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 and may refuse cooperation with other agencies.

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

100 | 75 | 50 | 25 | 0

Comments:

No audit has been conducted.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfre.org/newcomfre/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

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Committee for Free and Fair Elections in Cambodia (COMFREL), Political Campaign Finance, (Phnom Penh: Comfre, 2010)

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing 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.

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:

It is an environment where there is an absence of legal framework to regulate financial contribution to political parties or political party's campaign finance. NGOs began to discuss the issue and has been advocating for a law on campaign financing. Prior to the 2012 commune election, a group of NGOs managed to convince the SRP, HRP, FUNCINPEC and the Democratic Movement Party (DMP) to agree to disclose information of incomes and financial outflows during the election campaigns.

During the 2012 commune election campaign, Comfre deployed its observers to collect information and learn that spending per commune is about 9,000 US dollars for CPP, 1,500 US dollars for SRP, 300 US dollars for HRP and 200 US dollars for FUNCINPEC and NRP.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfre.org/newcomfre/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

Bridget Di Certo and Chhay Channyda, Campaign Spending in NGOs' Sights, the Phnom Penh Post, Tuesday, August 14, 2012, 1,6.

NGO Working Group on Political Finance, Statement to Appeal for Establishment of a Campaign Finance Law in Cambodia, the Phnom Penh Post, Tuesday, August 14, 2012.

Committee for Free and Fair Elections in Cambodia (COMFREL), Political Campaign Finance, (Phnom Penh: Comfre, 2010)

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:

It is an environment where there is an absence of legal framework to regulate financial contribution to political parties or political party's campaign finance. NGOs began to discuss the issue and has been advocating for a law on campaign financing. Prior to the 2012 commune election, a group of NGOs managed to convince the SRP, HRP, FUNCINPEC and the Democratic Movement Party (DMP) to agree to disclose information of incomes and financial outflows during the election campaigns.

During the 2012 commune election campaign, Comfre deployed its observers to collect information and learn that spending per commune is about 9,000 US dollars for CPP, 1,500 US dollars for SRP, 300 US dollars for HRP and 200 US dollars for FUNCINPEC and NRP.

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Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfre.org/newcomfre/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

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Puthea Hang, executive director of the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), Interview by author, August 13, 2012, NICFEC office, digital recording

Committee for Free and Fair Elections in Cambodia (COMFREL), Political Campaign Finance, (Phnom Penh: Comfre, 2010)

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.

Comments:

No investigation has been conducted.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfrel.org/newcomfrel/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

Bridget Di Certo and Chhay Channyda, Campaign Spending in NGOs' Sights, the Phnom Penh Post, Tuesday, August 14, 2012, 1,6.

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Puthea Hang, executive director of the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), Interview by author, August 13, 2012, NICFEC office, digital recording

Committee for Free and Fair Elections in Cambodia (COMFREL), Political Campaign Finance, (Phnom Penh: Comfrel, 2010)

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. 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, thought limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

Comments:

No investigation has been conducted; nor penalty imposed.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfrel.org/newcomfrel/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

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Puthea Hang, executive director of the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), Interview by author, August 13, 2012, NICFEC office, digital recording

Committee for Free and Fair Elections in Cambodia (COMFREL), Political Campaign Finance, (Phnom Penh: Comfrel, 2010)

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

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, reluctant to cooperate with other agencies, 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 or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

No auditing has been conducted.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfrel.org/newcomfrel/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

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Puthea Hang, executive director of the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), Interview by author, August 13, 2012, NICFEC office, digital recording

Committee for Free and Fair Elections in Cambodia (COMFREL), Political Campaign Finance, (Phnom Penh: Comfrel, 2010)

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

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.

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:

As there is no legal requirement to disclose financial data related to incomes and expenditure of a political party, no such practice has been reported. In recent election in 2012, a group of NGOs convinced several political parties to disclose their incomes and financial outflows during the campaign and they agreed.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfrel.org/newcomfrel/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

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Puthea Hang, executive director of the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), Interview by author, August 13, 2012, NICFEC office, digital recording

Committee for Free and Fair Elections in Cambodia (COMFREL), Political Campaign Finance, (Phnom Penh: Comfrel, 2010)

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 regularly 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:

No access is allowed for citizens to learn about the financial records of political parties.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfrel.org/newcomfrel/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

Bridget Di Certo and Chhay Channyda, Campaign Spending in NGOs' Sights, the Phnom Penh Post, Tuesday, August 14, 2012, 1,6.

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Puthea Hang, executive director of the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), Interview by author, August 13, 2012, NICFEC office, digital recording

Committee for Free and Fair Elections in Cambodia (COMFREL), Political Campaign Finance, (Phnom Penh: Comfrel, 2010)

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:

No access is granted to citizens to financial records of political parties.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfrel.org/newcomfrel/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

Bridget Di Certo and Chhay Channyda, Campaign Spending in NGOs' Sights, the Phnom Penh Post, Tuesday, August 14, 2012, 1,6.

NGO Working Group on Political Finance, Statement to Appeal for Establishment of a Campaign Finance Law in Cambodia, the Phnom Penh Post, Tuesday, August 14, 2012.

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 NGOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Financial records of political parties are not available to the public. They are strictly the property of the party.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfrel.org/newcomfrel/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

Bridget Di Certo and Chhay Channyda, Campaign Spending in NGOs' Sights, the Phnom Penh Post, Tuesday, August 14, 2012, 1,6.

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Puthea Hang, executive director of the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), Interview by author, August 13, 2012, NICFEC office, digital recording

Committee for Free and Fair Elections in Cambodia (COMFREL), Political Campaign Finance, (Phnom Penh: Comfre, 2010)

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

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:

No such disclosure has been done.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfrel.org/newcomfrel/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

Bridget Di Certo and Chhay Channyda, Campaign Spending in NGOs' Sights, the Phnom Penh Post, Tuesday, August 14, 2012, 1,6.

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Committee for Free and Fair Elections in Cambodia (COMFREL), Political Campaign Finance, (Phnom Penh: Comfre, 2010)

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 regularly 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

Comments:

No such access is granted to citizens.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfre.org/newcomfre/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

Bridget Di Certo and Chhay Channyda, Campaign Spending in NGOs' Sights, the Phnom Penh Post, Tuesday, August 14, 2012, 1,6.

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Committee for Free and Fair Elections in Cambodia (COMFREL), Political Campaign Finance, (Phnom Penh: Comfre, 2010)

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

Comments:

No such access is granted.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfre.org/newcomfre/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

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Committee for Free and Fair Elections in Cambodia (COMFREL), Political Campaign Finance, (Phnom Penh: Comfre, 2010)

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 NGOs. 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 NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

No such record is made available to the public.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), Summary Findings on the Commune Council Elections 2012, http://www.comfre.org/newcomfre/components/com_mypublications/files/967225Summary_Finding_Commune_Council_Election_2012_Eng.pdf accessed on August 26, 2012

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Puthea Hang, executive director of the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC), Interview by author, August 13, 2012, NICFEC office, digital recording

Committee for Free and Fair Elections in Cambodia (COMFREL), Political Campaign Finance, (Phnom Penh: Comfre, 2010)

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category 3. Government Conflicts of Interest Safeguards & Checks and Balances

3.1. Conflicts of Interest Safeguards & Checks and Balances:
Executive Branch

26. In law, can citizens sue the government for infringement of their civil rights?

100

26a. In law, can citizens sue the government for infringement of their civil rights?

Comments:

The Constitution, 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; the settlement of these complaints shall be the purview of the courts.

References:

Constitution, Article 39.

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.

27. Can the chief executive be held accountable for his/her actions?

31

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

In Cambodia, it is known that the checks and balances within the government is very weak with the executive monopolizing decision making power on issues of national interests. It is said in Committee for Free and Fair Elections in Cambodia (COMFREL)'s 2011 report that "when the legislative and judiciary cannot act independently from the executive, the executive only can control itself." It goes on to say that "the self-control of the executive does not fulfill the promise of accountability and transparency."

Also, there remains a lack of clear legal framework and practices of access to information especially when it comes to the high leadership of the country. There is thus a lack of mechanism as to how and when the chief executive is to give reasons behind his policy decisions. The common practice is government's monopoly and ownership of the information and it is shared only if it is in the interest of the person or political party. There is no such regular audio or video broadcast made by the chief executive to explain reasons behind the policies he has made.

Questions over the government dealing with the border issues with Vietnam is a case in point. The border issue is known for its popularity in nationalistic politics in Cambodia and it has been a hot issue that each party claims to have a high stake in politics. Recently, the opposition has been questioning on the government dealing with the issue accusing the latter of dealing with the Vietnamese government secretly at the disadvantages of Cambodia. In response, the Prime Minister himself agreed to answer the questions in the plenary session of the National Assembly. He did that on August 8, 2012. This live televised response found civil servants being forced to watch and people encouraged by the government to watch or listen. His five-hour-and-20-minute long speech that ran without a question session is then shared in soft copy online. He was the only one who spoke and is mainly considered as an attack to the opposition party. Or in an analyst's word, he took such a long time to finish the speech just because it has been such a long time that he had not shared and answered questions."

References:

Kheang Un, Cambodia in 2011: A Thin Veneer of Change, Asian Survey, Vol. 52, Number 1, pp. 2002-209, 2012
 Committee for Free and Fair Elections in Cambodia (COMFREL), 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comfre, 2012) available at http://www.comfre.org/newcomfre/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf(accessed on 10 August 2012)

Hun Sen To Explain Vietnam Border Agreement To Lawmakers, Voice of America Radio, 7 August 2012, available at <http://www.voacambodia.com/content/hun-sen-to-explain-vietnam-border-agreement-to-lawmakers/1474954.html> (accessed on September 8, 2012)

Vong Sokheng and Meas Sokchea, Prime Minister Hun Sen to address the border issue, The Phnom Penh Post, Thursday, 02 August 2012, available at <http://www.phnompenhpost.com/index.php/2012080257780/National-news/pm-to-address-border-issues.html> (accessed on September 8, 2012)

Cambodian leader's five-hour speech 'sets personal record', The Guardian, Thursday 9 August 2012, available at <http://www.guardian.co.uk/world/2012/aug/09/cambodia-five-hour-speech-record> (accessed on September 8, 2012)

Kheang Un, Cambodia: Moving Away from Democracy?, International Political Science Review, 32(5) 546-562, Sage, 2011.

Interview with Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues 2000 Nansen Medal on August 11, 2012, Restaurant (Phnom Penh)

Pak, Kimchouen, et al. Accountability and Neo-patrimonialism in Cambodia: A Critical Literature Review, Working Paper 34, Phnom Penh: Cambodia Development Resource Institute, 2007

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**

Comments:

The Constitution, Article 39, provides: Khmer citizens 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, 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, 1998, 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."

References:

The Constitution, Article 39.

The Law on the Organization and Functioning of the Constitutional Council, 1998, Article 19.

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:

Judiciary in Cambodia is weak and reactive and plays a subordinate role vis-a-vis the executive. Its main mandate is to adjudicate acts or omission violating laws. The supreme authority of the judiciary rests with the Constitutional Council, of which three members are appointed by the King, 3 are elected by the Supreme Council of Magistracy (but no election has been held until now), and 3 are elected by the National Assembly. It is seen as subordinate to the ruling party. The Constitutional Council's main role is to interpret laws and decide on the constitutionality of the laws. However, it has been criticized for its failure to take into account reviewing the constitutionality of the executive orders.

References:

Committee for Free and Fair Elections in Cambodia (COMFREL), 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comfre, 2012) available at http://www.comfre.org/newcomfre/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf (accessed on 10 August 2012)

Rebecca Gidley, The Extraordinary Chambers in the Court of Cambodia and the Responsibility to Protect, Working Paper No.1, University of Queensland, 2010.

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage, 2011.

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:

Mr. Hun Sen, head of the executive, is seen as a strongman that culture affects on the way law and decision is made. Although the Parliament retains its law-making mandate, there is a lot of room for the executive to wield its power through issuance of policy by Prakas or sub-decree. There have been questions about the constitutionality of such widely used executive orders.

Legal framework that allows the Parliament to summon the executive leadership to answer questions in the national interests related to their implementation of the law or policies has rarely been implemented. In fact, the recent appearance of the Prime Minister before the Parliament in response to the request by the Opposition party lawmakers to answer questions concerning the border issues with Vietnam is seen as the first time the head of the executive accepted the legislature request. But, in reality, it allowed the Prime Minister to voice his political rhetoric during the five hour straight talk without a question and answer session.

Cambodia is characterised by weak checks and balances in the government, and a weak legislature. In Daniel's words "Unlike many civil law countries where comprehensive codes are enacted, most Cambodian laws provide only a framework of policies and principles which leave the detailed law making to be completed by executive regulations. These regulations may be made either by the Royal Government (Anukret) or by individual ministries (Prakas), but in either case there is no requirement that such regulation be submitted to or approved by parliament. This leads to competition between regulatory and administrative bodies each of which will try to assert its authority over a field of law. Taking an example from the Cambodian Labour Law, Chapter VIII places a broad duty on employers to maintain a healthy and safe workforce, but provides few further details. Executive regulations which impact on workplace health and safety are issued by bodies including, The Council of Ministers, The Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, The Ministry of Health, The Ministry of Environment, and The Ministry of Industry."

Political culture of personalisation of power and patronage set limits to the strengthening of the legislature and perpetual exertion of power on the part of the executive and head of the executive.

References:

David Craig and Pak Kimchoeun, "Party Financing of Local Investment Projects: Elite and Mass Patronage," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 219-244. Copenhagen: NIAS Press, 2011.

Pak, Kimchoeun, et al. Accountability and Neo-patrimonialism in Cambodia: A Critical Literature Review, Working Paper 34, Phnom Penh: Cambodia Development Resource Institute, 2007

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

Hun Sen To Explain Vietnam Border Agreement To Lawmakers, Voice of America Radio, 7 August 2012, available at <http://www.voacambodia.com/content/hun-sen-to-explain-vietnam-border-agreement-to-lawmakers/1474954.html> (accessed on September 8, 2012)

Cambodian leader's five-hour speech 'sets personal record', The Guardian, Thursday 9 August 2012, available at <http://www.guardian.co.uk/world/2012/aug/09/cambodia-five-hour-speech-record> (accessed on September 8, 2012)

IBA, Safeguarding Judicial Independence in Mixed Tribunals: Lessons from the ECCC and Best Practices for the Future, London: IBA, 2011, available at www.ibanet.org (accessed on September 1, 2012).

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Committee for Free and Fair Elections in Cambodia (COMFREL), 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comfre, 2012) available at http://www.comfre.org/newcomfre/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf (accessed on 10 August 2012)

Daniel Adler, 'Access to Legal Information in Cambodia: Initial Steps, Future Possibilities', 2005 (2) The Journal of Information, Law and Technology (JILT).
<http://www2.warwick.ac.uk/fac/soc/law/jilt/2005_2/adler/> (accessed on September 22, 2012)

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.

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**

Comments:

The heads of state and government can be prosecuted for crimes they commit according to the following laws.

The Constitution, Article 31, states that every Khmer citizen shall be equal before the law. Article 39 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 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.

Article 4 of the Anti-Corruption Law, 2010, provides definition of "Public official" as any person holding office in legislative, executive institutions, or judicial institution, who is appointed by legal letter, whether permanent or temporary, whether paid or unpaid, regardless of his or her status or age, and other persons holding a public office, including public agency or public enterprise as well as other public institutions as stated in the law of the Kingdom of Cambodia.

References:

The Constitution, Article 31, Article 39, and Article 126.

Article 4 of the Anti-Corruption Law, 2010.

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**

Comments:

Ministerial-level officials can be prosecuted for crimes they commit by the following laws. Article 31 of the Constitution states that every Khmer citizen shall be equal before the law. Article 39 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 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.

Article 3 of the New Criminal Procedure Code 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.

References:

The Constitution, Article 31, Article 39 and Article 126.

New Criminal Procedure Code, Article 3.

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.

29. Are there regulations governing conflicts of interest by the executive branch?

25

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

Yes | No

Comments:

The Anti-Corruption Law, 2010, Article 17 provides that upon taking and leaving offices, the following persons shall, in writing or electronic form, declare their assets and liabilities, regardless of whether those assets are inside or outside the country, and shall submit, in person, to Anti-corruption Unit.

1. Members of Senate, members of National Assembly, and Members of the Royal Government
2. Appointed public officials with a specific mandate
3. Members of the National Council Against corruption, chairperson, vice-chairpersons and all officials of the Anti-corruption Unit
4. Civil servants, police, military personnel and other public servants appointed by Royal Decrees or Sub-decrees
5. Other officials appointed by Prakas and decided by Anti-corruption Unit's list of declaration on assets and liabilities, after the consultation with National Council Against corruption
6. Trial judges, prosecutors, notary public, court clerks and bailiff.
7. Leaders of civil society.

Article 18 provides that Officials listed in Article 17 (Persons required to declare assets and liabilities) shall declare their assets and liabilities every two years, in early January and no later than the thirty-first of January. The declaration of assets and liabilities shall be done within 30 days after taking office. The second declaration shall be made in January of the third year and the last declaration of assets and liabilities shall be made within 30 days before leaving the office. In case the declaration cannot be made before leaving the office due to removal from office, declaration shall be made within 30 days after leaving the office.

Officials listed in Article 17 (Persons required to declare assets and liabilities), who are in office, shall declare their assets and liabilities first within 60 days after the anti-corruption institution is established as stipulated in Article 54 (The organization and functioning of National Council Against corruption and Anti-corruption Unit) of this law. The formalities and procedures for declaration of assets and Liabilities shall be determined by the decision of the Anti-corruption Unit.

References:

The Anti-Corruption Law, 2010, Article 17 and Article 18.

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:

The Anti-Corruption Law, 2010, Article 17 provides that upon taking and leaving offices, the following persons shall, in writing or electronic form, declare their assets and liabilities, regardless of whether those assets are inside or outside the country, and shall submit, in person, to Anti-corruption Unit.

1. Members of Senate, members of National Assembly, and Members of the Royal Government
2. Appointed public officials with a specific mandate
3. Members of the National Council Against corruption, chairperson, vice-chairpersons and all officials of the Anti-corruption Unit
4. Civil servants, police, military personnel and other public servants appointed by Royal Decrees or Sub-decrees
5. Other officials appointed by Prakas and decided by Anti-corruption Unit's list of declaration on assets and liabilities, after the consultation with National Council Against corruption
6. Trial judges, prosecutors, notary public, court clerks and bailiff.
7. Leaders of civil society.

Article 18 provides that Officials listed in Article 17 (Persons required to declare assets and liabilities) shall declare their assets and liabilities every two years, in early January and no later than the thirty-first of January. The declaration of assets and liabilities shall be done within 30 days after taking office. The second declaration shall be made in January of the third year and the last declaration of assets and liabilities shall be made within 30 days before leaving the office. In case the declaration cannot be made before leaving the office due to removal from office, declaration shall be made within 30 days after leaving the office.

Officials listed in Article 17 (Persons required to declare assets and liabilities), who are in office, shall declare their assets and liabilities first within 60 days after the anti-corruption institution is established as stipulated in Article 54 (The organization and functioning of National Council Against corruption and Anti-corruption Unit) of this law. The formalities and procedures for declaration of assets and Liabilities shall be determined by the decision of the Anti-corruption Unit.

References:

The Anti-Corruption Law, 2010, Articles 17 and 18.

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:

Although no law specifically regulates gifts and hospitality, laws mention crimes related to bribes, embezzlement, favoritism, and the likes punishable by law.

As stipulated in the Criminal Code and Article 32 of the Anti-corruption law these crimes include the offenses in article 278 (bribe taking by employees), article 279 (bribe offered to employees), article 280 (bribe taking by governor), article 283 (Criminal responsibility by legal entity), article 387 (improper bidding), article 404 (definition of money laundering), article 405 (sentence to be served), article 406 (aggravating circumstance), article 409 (Criminal responsibility by legal entity), article 517 (bribe taking by judges), article 518 (bribe offered to judges), article 519 (Criminal responsibility by legal entity), article 547 (bribe taking by witnesses for false testimony), article 548 (bribe offered to witnesses), article 553 (bribe taking by interpreter), article 554 (bribe offered to interpreter), article 555 (bribe taking by experts), article 556 (bribe offered to experts), article 559 (criminal responsibility by legal entity) , article 592 (definition of misappropriation), article 593 (sentence to be served) , article 594 (bribe taking) , article 595 (definition of passive business influence) , article 597 (definition of embezzlement) , article 598 (sentence to be served), article 599 (definition of favoritism), article 600 (sentence to be served) , article 601 (intentional destruction and dishonest embezzlement) , article 605 (bribe offering) , article 606 (active business influence) , article 607 (extortion) , article 608 (destruction and embezzlement), article 625 (criminal responsibility by legal entity) , article 637 (bribe offered to person who has competence to issue false certificate) , article 639 (bribe taking by member of professional board of medicine to issue false certificate) , article 640 (bribe offered to member of professional board of medicine to issue false certificate) , article 641 (execution of misdemeanor of articles 639 and 640 for all medical professions) , article 644 (criminal responsibility by legal entity), of the Criminal Code are corruption offenses to be implemented as part of this law.

References:

The Anti-Corruption Law, 2010.

The Criminal Code, 2010.

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:

By law, there is no such requirements.

References:

The Anti-Corruption Law, 2010.

The Criminal Code, 2010.

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.

Comments:
By law, there is no such restriction.

References:
The Anti-Corruption Law, 2010.

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:

While no regulations restrict post-government private sector employment for heads of state and government and ministers, there is evidence of government's senior officials who are involved in lucrative businesses even while they are in office.

Ear's 2011 study of the garment and rice sectors in Cambodia reveals that senior government officials who are known for their involvement in lucrative businesses do not involve themselves much in the garment and possibly in the rice sectors because these two requires on the one hand skills to run and on the other they expose to international regulatory standards, which makes the industries less attractive to government officials. There are other sectors that can make them rich quicker and easier.

Although from 2009, the Global Witness report reveals that the senior government elites including military personnel are involved in the lucrative extractive business and timber and the monopoly of this sector is in the hand of a whole patronage network of the high leadership of the government.

References:

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview on August 13, 2012, STAR Kampuchea office.

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview on August 11, 2012, Restaurant (Phnom Penh).

Preap Kol, Executive Director of Transparency International Cambodia, interview on August 20, 2012, TI Cambodia office.

Sopheal Ear, "Growth in the Rice and Garment Sectors," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 70-93. Copenhagen: NIAS Press, 2011.

Global Witness, Country for Sale: How Cambodia's elite has captured the country's extractive industries, London: Global Witness, 2009.

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. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

Comments:

Although the new penal code and recent anti-corruption law (The Anti-Corruption Law, 2010, and The Criminal Code, 2010) are aimed to address the issues of bribery and anti-corruption among members of the executive and government as a whole, there is still a long way to go to address and deal with the issues deeply embedded in tradition and culture. Recent arrests and charge of high profile people such as the prosecutor in Pursat province in late 2010 and former chief of the anti-drug unit in early 2011, seem to set lessons for others, but there are doubts on the political will of the top leadership to address this issue within their own patronage network. Hearing for both cases run into 2011 and the time this report is being written.

While the law itself remains vague and is thus to be interpreted in favor of those in authority, tradition and culture of gift giving and hospitality is still beyond the reach of the law. The law fails to stipulate the value of gift that is to be punished by law. In Cambodia, senior government officials are notoriously known for their expected of gift, of any size dependent on the perspective and status of the givers, during national holiday such as new year and some religious days. Within the culture of patronage, their subordinates would have no choice but to fulfill their superior's expectation in the hope to receive protection and benefit of their relation in the future. The 2011 drop of charge against senior officials at the Ministry of Land Management, Urbanization and Construction found of embezzling of up to five millions US dollars shows a sign of discriminatory implementation of the anti-corruption law.

Some functions such as private wedding and reception are the opportunities where the show of gift and contribution from people in the government or the business community to the one in authority in exchange for protection and assistance in their business in the future. The legal framework remains in limbo whether it would address the blurred line between gift and hospitality and corruption and whether exchange of material wealth or promises during such private event of top government officials renders the act illegal.

References:

Sopheal Ear, "Growth in the Rice and Garment Sectors," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 70-93. Copenhagen: NIAS Press, 2011.

Preap Kol, Executive director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia office

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea office.

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

BBC News, Cambodian former anti-drug chief jailed for trafficking, January 5, 2012, available at <http://www.bbc.co.uk/news/world-asia-16422520> accessed on September 5, 2012

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.

Comments:

No auditing is conducted. The disclosure is made in a sealed envelope, and it is opened only when there is a case against the person concerned.

References:

Preap Kol, Executive Director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia office

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea 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:

By law, there is no such access allowed.

References:

The Anti-Corruption Law, 2010

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:

No access is allowed.

References:

Preap Kol, Executive director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia office

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea 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.

Comments:
No access is allowed.

References:
Preap Kol, Executive Director of Transparency International Cambodia, interview on August 20, 2012, TI Cambodia office

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview on August 11, 2012, Restaurant (Phnom Penh)

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview on August 13, 2012, STAR Kampuchea 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 NGOs. 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 NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

Comments:
No access is allowed and it is not publicly announced. Thus the quality remains in doubt and mysterious.

References:
Preap Kol, Executive Director of Transparency International Cambodia, interview on August 20, 2012, TI Cambodia office

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview on August 11, 2012, Restaurant (Phnom Penh)

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview on August 13, 2012, STAR Kampuchea office.

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

31a. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

Comments:

In Pak's words, "in Cambodia, political power leads to economic power, as political strength is the backbone of patronage and so it is a powerful determinant of state activities. Patronage with strong political backup influences the very political institutions of democracy, since in all three government branches, loyalty to political leaders and party networks and hierarchies overrides loyalty to constituencies as informal political connections allow the executive branches and prominent political parties to dominate the legislative and judiciary," (Pak et al, 2007:59).

The ruling party has a strong patronage system from the national down to the local level. Through its Working Group system, structured in parallel with the administrative division of the country and each level usually headed by either senior political figures who are at the same time assuming the administrative position, the party can amass supports from both the public and bureaucrats at every level. In this patronage system, the latter are forced to be part of the party and thus contribute to the Working Group so that their prospective career advancement and wealth are more assured.

During election campaign, the party can mobilize financial contribution and participation from the state officials from all levels of the administration. As reported by election observers, in 2008 for example, the ruling party could use government offices, car and human resource to campaign for the party. This practice is not really a surprise in the culture of personalised politics and patronage system like Cambodia.

References:

David Craig and Pak Kimchouen, "Party Financing of Local Investment Projects: Elite and Mass Patronage," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 219-244. Copenhagen: NIAS Press, 2011.

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview on August 11, 2012, Restaurant (Phnom Penh)

Pak, Kimchouen, et al. Accountability and Neo-patrimonialism in Cambodia: A Critical Literature Review, Working Paper 34, Phnom Penh: Cambodia Development Resource Institute, 2007

EUEOM, FINAL REPORT: National Assembly Elections, 27 July 2008, 2008 available at <http://aceproject.org/ero-en/regions/asia/KH/cambodia-final-report-national-assembly-elections> accessed on August 23, 2012

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 principle, 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.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

32. Can members of the legislature be held accountable for their actions?

42

32a. In law, the judiciary can review laws passed by the legislature.

Yes | **No**

Comments:

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.

References:

The Constitution, Articles 92, 136, 140 and 141.

The Law on the Organization and Functioning of the Constitutional Council, Article 15.

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 is open to review laws passed by the National Assembly upon request by the latter, but it is rare. For example, in the case of the Anti-Corruption Law that was adopted by the National Assembly on March 11, 2010, it was submitted by the President of the National Assembly to the Constitutional Council for decision on the constitutionality of the law. It was then decided by the latter that there is nothing in the law that is in violation of the Constitution and thus declared in conformity with the Constitution. No such cases were found within the period of study.

References:

Decision N° 110/003/2010 CC.D of April 01, 2010 : Letter N° 194 NA of Samdech Akka Maha Ponhea Chakrei Heng Samrin, President of the National Assembly, requesting the Constitutional Council to examine the constitutionality of Anti-Corruption Law, available at http://www.ccc.gov.kh/english/dec/2010/dec_003.html (accessed on September 8, 2012)

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview on August 11, 2012, Restaurant (Phnom Penh)

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:

The Law on the Statutes of the Members of the National Assembly, 2006, Article 7 provides that members of the National Assembly who have committed crime shall not be subject to accusation, arrest or detention except his/her parliamentarian privilege has been lifted.

Article 12 provides that any members of the National Assembly caught in the act of committing crime can be accused, arrested or detained by concerned authority who in turn reports to the National Assembly or the Permanent Committee of the National Assembly immediately between its session for decision.

References:

The Law on the Statutes of the Members of the National Assembly, 2006, Article 7 and Article 12.

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.

33a. In law, members of the national legislature are required to file an asset disclosure form.

Yes | **No**

Comments:

The Anti-Corruption Law, 2010, article 17 thereof provides that upon taking and leaving offices, the following persons shall, in writing or electronic form, declare their assets and liabilities, regardless of whether those assets are inside or outside the country, and shall submit, in person, to Anti-corruption Unit.

1. Members of Senate, members of National Assembly, and Members of the Royal Government
2. Appointed public officials with a specific mandate
3. Members of the National Council Against corruption, chairperson, vice-chairpersons and all officials of the Anti-corruption Unit
4. Civil servants, police, military personnel and other public servants appointed by Royal Decrees or Sub-decrees
5. Other officials appointed by Prakas and decided by Anti-corruption Unit's list of declaration on assets and liabilities, after the consultation with National Council Against corruption
6. Trial judges, prosecutors, notary public, court clerks and bailiff.
7. Leaders of civil society.

References:

The Anti-Corruption Law, 2010, Article 17.

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:

By law, there is no such restriction.

References:

The Anti-Corruption Law, 2010.

The Law on the Statutes of the Members of the National Assembly, 2006.

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:

Although no law specifically regulates gifts and hospitality, laws mention crimes related to bribes, embezzlement, favoritism, and the likes punishable by law.

As stipulated in the Criminal Code and Article 32 of the Anti-corruption law these crimes include the offenses in article 278 (bribe taking by employees), article 279 (bribe offered to employees), article 280 (bribe taking by governor), article 283 (Criminal responsibility by legal entity), article 387 (improper bidding), article 404 (definition of money laundering), article 405 (sentence to be served), article 406 (aggravating circumstance), article 409 (Criminal responsibility by legal entity), article 517 (bribe taking by judges), article 518 (bribe offered to judges), article 519 (Criminal responsibility by legal entity), article 547 (bribe taking by witnesses for false testimony), article 548 (bribe offered to witnesses), article 553 (bribe taking by interpreter), article 554 (bribe offered to interpreter), article 555 (bribe taking by experts), article 556 (bribe offered to experts), article 559 (criminal responsibility by legal entity), article 592 (definition of misappropriation), article 593 (sentence to

be served) , article 594 (bribe taking) , article 595 (definition of passive business influence) , article 597 (definition of embezzlement) , article 598 (sentence to be served) , article 599 (definition of favoritism) , article 600 (sentence to be served) , article 601 (intentional destruction and dishonest embezzlement) , article 605 (bribe offering) , article 606 (active business influence) , article 607 (extortion) , article 608 (destruction and embezzlement) , article 625 (criminal responsibility by legal entity) , article 637 (bribe offered to person who has competence to issue false certificate) , article 639 (bribe taking by member of professional board of medicine to issue false certificate) , article 640 (bribe offered to member of professional board of medicine to issue false certificate) , article 641 (execution of misdemeanor of articles 639 and 640 for all medical professions) , article 644 (criminal responsibility by legal entity), of the Criminal Code are corruption offenses to be implemented as part of this law.

References:
The Criminal Code, 2010.

The Anti-Corruption Law 2010.

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

Comments:
By law, there is no such requirement.

References:
The Anti-Corruption Law, 2010.

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 is no such legal framework prohibiting post-government private sector employment for legislators in Cambodia. Legislators of the both houses—lower house and upper house—are accustomed to running big businesses even while they are in office. For example, several ruling party's affiliated prominent business tycoons such as Mong Rithy, deceased Men Sarun, and Ly Yong Phat are serving as senators. At the lower house, the self-reporting biography published by Committee for Free and Fair Elections in Cambodia (COMFREL) reveals that Members of Parliament from both the ruling and opposition parties are running businesses while they are serving as legislators. The patronage system works well for the interest of the political elites and their business involvement while in office is a testament to the fact that integrity of the government remains very low.

References:
Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview on August 11, 2012, Restaurant (Phnom Penh)

Preap Kol, Executive Director of Transparency International Cambodia, interview on August 20, 2012, TI Cambodia office

Committee for Free and Fair Elections in Cambodia (COMFREL), Biography of Members of the Parliament during the 4th Mandate, 2008-2013, Phnom Penh: Comfre, 2009 [Khmer version].

Khnerization, Tycoon Men Sarun Dies, December 2011. available at <http://khmerization.blogspot.com/2011/12/tycoon-men-sarun-dies.html> accessed on September 6, 2012

Families Call for Boycott of Senator's 'Blood Sugar', July 4, 2012 [Reflects reporting period] available at <http://www.opendevlopmentcambodia.net/news-source/the-cambodia-daily/families-call-for-boycott-of-senators-blood-sugar/> accessed on September 6, 2012

Sell-Off of Wildlife Areas Faster than Believed, July 11, 2011 [Reflects reporting period] available at <http://www.opendevlopmentcambodia.net/agriculture/sell-off-of-wildlife-areas-faster-than-believed/> accessed on September 6, 2012

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. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Even though the 2010 penal (criminal) code and recent anti-corruption law are aimed to address the issues of bribery and corruption among members of the executive and government as a whole, there still be a long way to go to address and deal with the issues deeply embedded in tradition and culture. Recent arrests and charge of high profile people such as the prosecutor in Pursat province and former chief of the anti-drug unit seem to set lessons for others, but there are doubts on the political will of the top leadership to address this issue within their own patronage network.

While the law itself remains vague and is thus to be interpreted in favor of those in authority, tradition and culture of gift giving and hospitality is still beyond the reach of the law. The law fails to stipulate the value of gift that is to be punished by law. In Cambodia, senior government officials are notoriously known for their expected of gift, of any size dependent on the perspective and status of the givers, during national holiday such as new year and some religious days. Within the culture of patronage, their subordinates would have no choice but to fulfill their superior's expectation in the hope to receive protection and benefit of their relation in the future.

Some functions such as private wedding and reception are the opportunities where the show of gift and contribution from people in the government or the business community to the one in authority in exchange for protection and assistance in their business in the future. The legal framework remains in limbo whether it would address the blurred line between gift and hospitality and corruption and whether exchange of material wealth or promises during such private event of top government officials renders the act illegal.

References:

Sopheap Ear, "Growth in the Rice and Garment Sectors," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 70-93. Copenhagen: NIAS Press, 2011.

Preap Kol, Executive Director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia office

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea office.

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

BBC News, Cambodian former anti-drug chief jailed for trafficking, January 5, 2012, available at <http://www.bbc.co.uk/news/world-asia-16422520> accessed on September 5, 2012

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 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.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

No auditing is conducted for the disclosure as it is made in a sealed envelope and not opened unless there is a case against the person concerned.

References:

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea office.

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Preap Kol, Executive Director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia 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: 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.

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

Comments:

There is no such access allowed by law.

References:

The Anti-Corruption Law, 2010.

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, non-governmental 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:

No such access is allowed by the legal framework. In practice the asset disclosure is made in sealed envelope and not opened unless there is a court case against the person concerned. The disclosure is confidential.

References:

Vong Sokheng and Chhay Channya, Lack of disclosure criticised in assets, the Phnom Penh Post, Monday, 04 April 2011, available at <http://camwatchblogs.blogspot.com/2011/04/lack-of-disclosure-criticised-in-assets.html> accessed on September 6, 2012

Preap Kol, Executive director of Transparency International Cambodia, interview on August 20, 2012, TI Cambodia office

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview on August 11, 2012, Restaurant (Phnom Penh)

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 is no such access allowed by the legal framework. In practice the asset disclosure is made in sealed envelope and not opened unless there is a court case against the person concerned. The disclosure is confidential.

References:

Vong Sokheng and Chhay Channyda, Lack of disclosure criticised in assets, the Phnom Penh Post, Monday, 04 April 2011, available at <http://camwatchblogs.blogspot.com/2011/04/lack-of-disclosure-criticised-in-assets.html> accessed on September 6, 2012

Preap Kol, Executive Director of Transparency International Cambodia, interview on August 20, 2012, TI Cambodia office

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview on August 11, 2012, Restaurant (Phnom Penh)

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea 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 NGOs. 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 NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

There is no such access allowed by the legal framework. In practice the asset disclosure is made in sealed envelope and not opened unless there is a court case against the person concerned. The disclosure is confidential. Thus, its quality remains mysterious and a topic for discussion of the integrity and transparency of the anti-corruption mechanism in Cambodia.

References:

Vong Sokheng and Chhay Channyda, Lack of disclosure criticised in assets, the Phnom Penh Post, Monday, 04 April 2011, available at <http://camwatchblogs.blogspot.com/2011/04/lack-of-disclosure-criticised-in-assets.html> accessed on September 6, 2012

Preap Kol, Executive director of Transparency International Cambodia, interview on August 20, 2012, TI Cambodia office

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview on August 11, 2012, Restaurant (Phnom Penh)

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

42

35a. In law, citizens can access records of legislative processes and documents.

Yes | No

Comments:

Article 88, of the Constitution 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, guarantees the right of the press to access information in government-held records, with several exceptions.

The National Archives Law 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, Article or Principle 18, 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 provides that the minutes and other documents of the Senate can be disclosed to the public with the written approval of the Senate President.

References:

Article 88, of the Constitution.

The Press Law, Article 19.

The National Archives Law.

The Internal Regulations of the National Assembly for the Third Mandate, Article or Principle 18.

The Internal Regulations of the Senate, Article 20.

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 are 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:

As there is not even a clear legal framework to make information accessible to the public mandatory, the disclosure of information is always the exception rather than the rule. The government shares some information to the public when it meets it is already a public concern, when it is only to avoid an eventual social unrest, or when it does not pose a threat to the power and interests of the ruling elites. For example, information on flooding, spread of disease and other natural disasters is shared on time and quickly, while information related to land concessions, its social and economic impact, and political struggle is not made available in the public domain.

Legislation for public access to information has been in the pipeline for almost a decade already. And the achievement of collaboration between civil society organizations and government under the support of international donor community has been no more than producing a policy framework for access to information and it has been shelved for years at the Ministry of National Assembly and Senate Relations and Inspection, the government agency working on this issue. In late 2010, the Sam Rainsy Party (SRP), the main opposition in Cambodia, submitted its own draft law on access to information to the National Assembly, but it was rejected right away without letting it see the light of the plenary session hall. In March 2012, it was submitted it by the SRP with the latter requesting that at least the National Assembly can debate it before rejecting it outright.

In this regards, it can be viewed that the National Assembly itself does not have the tendency to consider the importance of the law and thus its role in legislating it even though the API's Workshop in late 2010 reported that some representatives of the legislature and government views the issue as important for the national interest and advancement of democracy. Access to information held by the National Assembly itself is hard and it needs to go through a democratic process. While laws are available for download on the website of the Senate and other ministries, some are still missing. Attempt to access the website of the National Assembly for this GI assignment fails. However, other than laws, the National Assembly holds a lot more records of the debates and other discussions in the functioning of its mandate, which are not made available.

On the one hand, authority including the legislature does view that the information is their property and it is their right to withhold under the excuse of national interest and does not think it would make a difference if it is made available to the people. In this patriarchal tradition, the government is seen as parents of the society and people and it is thus the sole power and responsibility of the parents to deal with the business of the country. In the same vein, people who always show deference to authority and politics do not see there is a need to request for information nor doing so is their rights. Rather, it would be considered as challenging the authority and thus may be victimised. On the other hand, there is a lot to hide from the public as the government is known for its patronage based rule and its close link with the businesses, corruption, and discrimination.

References:

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), interview by author, August 10, 2012, CCIM office.

Cambodian Center for Independent Media , Freedom of Information: Advancing Research and Actions, (Phnom Penh: CCIM, April 2012) available at http://www.ccimcambodia.org/report/FOI_survey_%2830_April_2012%29.pdf accessed on 10 August 2012

Kevin Doyle, Editor in chief of the Cambodia Daily, interview by author, August 16, 2012, The Cambodia Daily office, Phnom Penh

Cambodian Center for Human Rights, Freedom of Information in Cambodia: A right to know or a culture of secrecy, May 2012, available at http://www.sithi.org/admin/upload/media/%5B2012-05-04%5D%20right%20to%20know%20or%20a%20culture%20of%20secrecy/2012_05_04_CCHR_A%20right%20to%20know%20or%20a%20culture%20of%20secrecy.pdf (accessed on September 8, 2012)

Catherine Cecile, Access to Information and the Cambodian Parliament: An Assessment, 2010, available at <http://www.apiiinstitute.org/images/a2iandcambodianparliament.pdf> (accessed on September 9, 2012)

The Access Initiative Cambodia (TAI), Cambodia Assessment Report: Access to Information, Public Participation, and Access to Justice, Phnom Penh: API, 2010 available at <http://www.apiiinstitute.org/images/tai%20cambodia-first%20assessment%20report%20final-2010.pdf> (accessed on September 9, 2012)

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:

As there is not even a clear legal framework to make information accessible to the public mandatory, the disclosure of information is always an exception rather than the rule and this can result in significant costs. In the Access Initiative Cambodia's assessment report it rightly says that the government would share information to the public as long as it meets some criteria: it is already a public concern, only to avoid an eventual social unrest, and it does not pose a threat to the power and interests of the ruling elites. In this regards, it is more likely that information on flooding, spread of disease and other natural disasters is shared on time and quickly while information related to land concessions, its social and economic impact, and political struggle is not made available in the public domain.

Such legislation has been in the pipeline for almost a decade already. And the achievement of collaboration between civil society organizations and government under the support of international donor community has been no more than producing a policy framework for access to information and it has been shelved for years at the Ministry of National Assembly and Senate Relations and Inspection, the government agency working on this issue. In late 2010, the Sam Rainsy Party (SRP), the main opposition in Cambodia, submitted its own draft law on access to information to the National Assembly, but it was rejected right away without letting it see the light of the plenary session hall. In March 2012, it was submitted it by the SRP with the latter requesting that at least the National Assembly can debate it before rejecting it outright.

In this regards, it can be viewed that the National Assembly itself does not have the tendency to consider the importance of the law and thus its role in legislating it even though the API's Workshop in late 2010 reported that some representatives of the legislature and government

views the issue as important for the national interest and advancement of democracy. Access to information held by the National Assembly itself is hard and it needs to go through a democratic process. While laws are available for download on the website of the Senate and other ministries, some are still missing. Attempt to access the website of the National Assembly for this GI assignment fails. However, other than laws, the National Assembly holds a lot more records of the debates and other discussions in the functioning of its mandate, which are not made available.

On the one hand, authority including the legislature does view that the information is their property and it is their right to withhold under the excuse of national interest and does not think it would make a difference if it is made available to the people. In this patriarchal tradition, the government is seen as parents of the society and people and it is thus the sole power and responsibility of the parents to deal with the business of the country. In the same vein, people who always show deference to authority and politics do not see there is a need to request for information nor doing so is their rights. Rather, it would be considered as challenging the authority and thus may be victimised. On the other hand, there is a lot to hide from the public as the government is known for its patronage based rule and its close link with the businesses, corruption, and discrimination.

References:

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), interview by author, August 10, 2012, CCIM office.

Cambodian Center for Independent Media (CCIM), Freedom of Information: Advancing Research and Actions, (Phnom Penh: CCIM, April 2012) available at http://www.ccimcambodia.org/report/FoI_survey_%2830_April_2012%29.pdf accessed on 10 August 2012
Kevin Doyle, Editor in chief of the Cambodia Daily, interviewed by author, August 16, 2012, The Cambodia Daily office, Phnom Penh

Cambodia Center for Human Rights, Freedom of Information in Cambodia: A right to know or a culture of secrecy, 2012, available at http://www.sithi.org/admin/upload/media/%5B2012-05-04%5D%20right%20to%20know%20or%20a%20culture%20of%20secrecy/2012_05_04_CCHR_A%20right%20to%20know%20on%20September%208,%202012

Catherine Cecile, Access to Information and the Cambodian Parliament: An Assessment, 2010, available at <http://www.apinstitute.org/images/a2iandcambodianparliament.pdf> (accessed on September 9, 2012)

The Access Initiative Cambodia (TAI), Cambodia Assessment Report: Access to Information, Public Participation, and Access to Justice, Phnom Penh: API, 2010 available at <http://www.apinstitute.org/images/taic%20cambodia-first%20assessment%20report%20final-2010.pdf> (accessed on September 9, 2012).

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 NGOs. 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 NGOs trying to access this information.

²⁵ 3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

36. Are judges appointed fairly?

8

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes | No

Comments:

No, the procedure for selecting national-level judges is not transparently open to the public, although there is a formal process by law. Further, in practice, at times, selection processes are 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.

References:

Constitution, Article 34.

The Law on the Organization and Functioning of the SCM, Article 11.

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:

The weakness in the judiciary is both due to the past violence and structural and institutional flaws. There is nearly a consensus that judges and prosecutors are disqualified, subject to political influence and prone to corruption. The appointment is thus conducted within the context of strong executive and ruling party and political patronage.

Capacity building for judges, both current and new recruits, is seen as important to strengthen the justice system in the country. It is led by the Royal Academy for Judicial Professions. However, the institution itself is tainted with corruption and patronage. Even though new students are supposed to be recruited based on qualifications, some seats (it is reported five) are reserved, in principle, for current government officials, but in practice all are taken by children of senior government officials. There are reports of wide corruption. Students pay for the enrollment and exams and it is a big money as the return rate after they are appointed would be very high. The Asian Human Rights Commission (AHRC) wrote that "Outside the tribunal, in courts across the country, the best posts cost the most money, students said. Phnom Penh and Kandal provincial seats, for example, cost between \$70,000 and \$150,000. The Phnom Penh court receives two judges and one deputy prosecutors from the academy each year."

In the case of appointment of judges at the Extraordinary Chambers in the Court of Cambodia (ECCC), known as the Khmer Rouge Tribunal, where cases against the former Khmer Rouge leaders accused of committing crimes during their reign in the late 1970s are being adjudicated, the picture is also grim as the appointment is mainly based on the power and influence of the executive or the ruling party.

In fact, it should be noted that the hybrid nature of the court itself reflects the mistrust in the justice system in Cambodia. In one instance, the IBA (2011) reports that "on 8 May 2006, the Cambodian Supreme Council of Magistracy selected 17 judges and prosecutors to serve in the court. Despite calls from a number of non-governmental organisations advocating for the selection of judges according to professional criteria, the government of Cambodia did not select candidates on professional criteria alone. It has been widely reported by international observers that some of the Cambodian judges on the Court have only the equivalent of a high school certificate. Tellingly, many of the individuals appointed by the domestic authorities had poor track records in terms of judicial independence and legal competence, while some lacked the necessary qualifications or experience to effectively carry out their duties." The Cambodian League for the Promotion and Defense of Human Rights (LICADHO) said, "It is a matter of grave concern that, before a single suspect has been brought to trial, the ECCC was already tarnished by ...the assignment of Cambodian judges with track records of serious political bias. Far from being a role model, it appears that the tribunal is so far serving to reinforce and reward the every worst aspects of the Cambodian judicial system."

References:

IBA, Safeguarding Judicial Independence in Mixed Tribunals: Lessons from the ECCC and Best Practices for the Future, London: IBA, 2011, available at www.ibanet.org (accessed on September 1, 2012).

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Kheang Un, Cambodia in 2011: A Thin Veneer of Change, Asian Survey, Vol. 52, Number 1, pp. 2002-209, 2012
Rebecca Gidley, The Extraordinary Chambers in the Court of Cambodia and the Responsibility to Protect, Working Paper No.1, University of Queensland, 2010.

CAMBODIA: To Be a Judge, Be Ready To Bribe: Students, 11 May 2009, available at <http://www.humanrights.asia/news/forwarded-news/AHRC-FAT-004-2009/?searchterm=%> (accessed on September 1, 2012).

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.

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

Comments:

By law, there is no such confirmation required.

References:

N/A

Yes: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity 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 the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

42

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes | No

Comments:

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.

References:

The New Law on Criminal Procedure, adopted by the National Assembly in June 2007.

The Code of Civil Procedure, Article 189.

Internal Rules of the Extraordinary Chambers in the Courts of Cambodia, Rule 101.

The Law on the Organization of the Courts, Article 9.

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.

Comments:

Judicial judgments are supposed to follow written laws, and it is the right of the judges to justify their decisions. Even though in practice judges are seen as establishing reasons, the reasons are too much under the influence of politics rather than legal and professional reasons. It is too often seen that the national judges decide to refer cases back to the Appeal for retrial only if they are under enough political pressure from people or influential actors such as high ranking politicians or donor community.

Recent release of the 13 Boeng Kok residents was made on June 27, 2011 only after there had been mounting pressure from people and international community and after the judges had decided to decrease the sentence to exactly the time they had served in the prison. However, release of the four officials from the Ministry of Land Management, Urbanization and Construction on August 14, 2012 after they were arrested for alleged embezzlement of the Ministry budget was made by the judge without an explanation.

In the patronage setting where appointment to the judiciary is made based on political consideration and nepotism, judges are constrained from practicing professional integrity and impartiality. Decision is influenced by political pressure and corruption. Legacy of poor judiciary, low education among judges, and neo-patrimonial political culture of the country perpetuates the limits to which judges can make independent decision with legal and rational explanation.

References:

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Heng Reaksmei, Court Releases Four Ministry Officials Facing Embezzlement Charges, VOA Khmer, 14 August 2012, available at <http://www.voacambodia.com/content/court-releases-four-ministry-officials-facing-embezzlement-charges/1485863.html>

Cambodian League for the Promotion and Defense of Human Rights (LICADHO), In Absentia 2012: An update on Cambodia's Inmate Transportation Crisis & the Right to Appeal, A Licadho Briefing Paper, 2012, Phnom Penh: Licadho

Cambodia Center for Human Rights (CCHR), Situation of Human Rights and State of Democracy, Cambodia 11 (Phnom Penh: CCHR, 2011) available at http://www.cchrcambodia.org/admin/whatwedo/hrc/Situation_of_Human_Rights_and_State_of_Democracy.pdf accessed on August 30, 2012

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L.H, Justice in Cambodia: The Boeung Kak 13, Jun 27th 2012, the Economist, available at <http://www.economist.com/blogs/banyan/2012/06/justice-cambodia> (accessed on September 22, 2012)

Cambodian Center for Human Rights / International Freedom of Expression Exchange (CCHR/IFEX), Release of Boeung Kak lake activists overshadowed by failure to achieve justice and further violence against peaceful demonstrators, 27 June 2012 http://www.ifex.org/cambodia/2012/07/10/activists_released/

Anonymous Human rights lawyer, interview by author, September 10, 2012, restaurant

Alex Bates, Transitional Justice in Cambodia: Analytical Report, 2010, available at http://projetatlas.univ-paris1.fr/IMG/pdf/ATLAS_Cambodia_Report_FINAL_EDITS_Feb2011.pdf (accessed on September 22, 2012)

Cambodian Center for Human Rights (CCHR), Efforts to Seek Suspension of Judges for Alleged Procedural Failings Obscures Flaws in the Law, Media Comment, 5 January 2012, available at http://www.cchrcambodia.org/admin/media/press_release/press_release/english/CCHR%20Media%20Comment%20%20%28ENG%29.pdf (accessed on September 24, 2012)

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

Comments:

Articles 33 and 134 of the Constitution, state that the Supreme Council of the Magistracy (SCM) shall decide on disciplinary actions against any delinquent judges or prosecutors.

Articles 11 to 16 of the Law on the Organization and Functioning of the SCM, 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

References:

The Constitution, in particular Articles 33 and 134.

The Law on the Organization and Functioning of the SCM, Articles 11 to 16.

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. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to 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:

No, the Supreme Council of the Magistracy (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.

References:

Article 2 of the Law on the Establishment of the SCM.

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 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:

Cambodian judiciary is characterized by its lack of independence, under-resourced and low capacity among judges and prosecutors. The same is true for the Supreme Council of Magistracy (SCM) serving as an independent body to oversee the conduct of justice within the judiciary due to the fact that its membership is composed of Minister of Justice, Supreme and Appeal Courts chief judges and prosecutors, three judges to be elected by judges. It is chaired by the King. SCM's disciplinary commission is authorized to execute investigation and punishment measures such as removal, transfer and suspension should judges and prosecutors be found violating of judicial regulations. However, the practice lacks transparency and little is known about their conduct, decision and decision procedure.

The long pending Statutes of Judges and Prosecutors pose legal challenge as under what legal framework the issue of retirement, promotion, and punishment for judges and prosecutors should fall. While some judges did retire, though their actual at the time of retire is not known, some judges and prosecutors who reach the expected age of retirement as required by the Common Statutes for Civil Servants (aged 60) do remain in performing their profession. A recent article by the Phnom Penh Post indicates that at least 24 judges and 6 prosecutors have reached their retirement age but they are still allowed to remain in their position. In this regard, the government spokesman told that it is only because there is a lack of judges in the country.

However, it should be noted that judge did retire even though real reason is unknown. In the case of judge Thor Saran, who was in charge of a long standing dispute between Keat Kolney, a sister of the Minister of Economy and Finance and ethnic people in Ratanakiri province over ownership of 200 hectares of land which the latter claimed had been wrongfully taken away from them. The judge was petitioned by the civil society organizations for his failure to show his independence and competence in handling the cases and his alleged request for bribery. He was then transferred and soon afterward put to retire by a royal decree in 2009.

As long as the secrecy is the rule for decision making at the SCM, little is known about the real reason behind the retirement of judge Thor Saran and the decision to allow other judges and prosecutors to continue to perform their profession even after they have reached the age of retirement. What is known is the perpetual political influence in the judiciary and the lack of commitment to pass the long pending Statutes for Judges and Prosecutors.

References:

Cambodian Center for Human Rights (CCHR), Efforts to Seek Suspension of Judges for Alleged Procedural Failings Obscures Flaws in the Law, Media Comment, 5 January 2012, available at http://www.cchr cambodia.org/admin/media/press_release/press_release/english/CCHR%20Media%20Comment%20%28ENG%29.pdf (accessed on September 24, 2012)

Fact Sheet: Law on the Organization and Functioning of the Supreme Council of Magistracy, Cambodian Center for Human Rights (CCHR) Law Review Series, Feb 2012, available at http://www.sithi.org/admin/upload/media/%5B2012-02-03%5DFact/CCHR_Law_Classification_Series_Factsheet_The_Law_on_the_Supreme_Council_of_Magistracy_ENG.pdf (Accessed on September 25, 2012)

Alex Bates, Transitional Justice in Cambodia: Analytical Report, 2010, available at http://projetatlas.univ-paris1.fr/IMG/pdf/ATLAS_Cambodia_Report_FINAL_EDITS_Feb2011.pdf (accessed on September 22, 2012)

International Bar Association (IBA), Safeguarding Judicial Independence in Mixed Tribunals: Lessons from the ECCC and Best Practices for the Future, London: IBA, 2011, available at www.ibanet.org (accessed on September 1, 2012).

Meas Sokchea, Phnom Penh Post, At least 30 Cambodian judges past retirement age, the Phnom Penh Post, July 5, 2012, available at <http://www.phnompenhpost.com/index.php/2012070557226/National-news/judges-past-retirement-age.html> (Accessed on September 25, 2012)

Kuch Nareth, Activists, Journalist summoned over incitement, The Cambodia Daily, September 6, 2011, available at http://www.sithi.org/admin/upload/media/%5B2011-09-06%5DActivists%20Journalist%20Summoned%20Over%20Incitement/2011_09_06_Cam_Activists_Journalist%20Summoned%20Over%20Incitement.pdf (Accessed on September 25, 2012)

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:

Cambodian judiciary is characterized by its lack of independence, under-resourced and low capacity among judges and prosecutors. The same is true for the Supreme Council of Magistracy (SCM) serving as an independent body to oversee the conduct of justice within the judiciary. SCM is under the influence of the executive due to the fact that its membership is composed of Minister of Justice, Supreme and Appeal Courts chief judges and prosecutors, three judges to be elected by judges. It is chaired by the King. SCM's disciplinary commission is authorized to execute investigation and punishment measures such as removal, transfer and suspension should judges and prosecutors be found violating of judicial regulations. However, the practice lacks transparency and little is known about their conduct, decision and decision procedure.

The judicial system is well under political influence. Coughlan et al (2012) claims that "A system of patronage exists in Cambodia in which judges align themselves closely to politicians with the power to influence judicial appointments from whom judges require ongoing support to ensure career advancement. Patronage adversely affects the rule of law as prosecutors and judges do not operate according to the law but at the whim of their 'patron'. If judges do not act according to their patrons' wishes, they risk displeasing them and could easily find their careers stagnating or even lose their position."

References:

Cambodian Center for Human Rights (CCHR), Efforts to Seek Suspension of Judges for Alleged Procedural Failings Obscures Flaws in the Law, Media Comment, 5 January 2012, available at http://www.cchrcambodia.org/admin/media/press_release/press_release/english/CCHR%20Media%20Comment%20%20%28ENG%29.pdf (accessed on September 24, 2012)

Cambodia: Legal foundation and framework for the country's judiciary required, August 31, 2009, available at http://www.alrc.net/doc/mainfile.php/alrc_st2009/574/ (Accessed on September 25, 2012)

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Alex Bates, Transitional Justice in Cambodia: Analytical Report, 2010, published February 2011, available at http://projetatlas.univ-paris1.fr/IMG/pdf/ATLAS_Cambodia_Report_FINAL_EDITS_Feb2011.pdf (accessed on September 22, 2012)

IBA, Safeguarding Judicial Independence in Mixed Tribunals: Lessons from the ECCC and Best Practices for the Future, London: IBA, 2011, available at www.ibanet.org (accessed on September 1, 2012).

Meas Sokchea, At least 30 Cambodian judges past retirement age, the Phnom Penh Post, July 5, 2012, available at <http://www.phnompenhpost.com/index.php/2012070557226/National-news/judges-past-retirement-age.html> (Accessed on September 25, 2012)

John Coughlan, Sana Ghouse and Richard Smith, The Legacy of the Khmer Rouge Tribunal: Maintaining the Status Quo of Cambodia's Legal and Judicial System, Amsterdam Law Review, Vol.4:2, 2012,pp.16-35, available at <http://www.google.com/url?sa=&rct=j&q=&esrc=s&source=web&cd=3&ved=0CGMQFjAJOBQ&url=http%3A%2F%2Fois.ubvu.vu.nl%2Faf%2Farticle%2Fdownload%2F270%2F450&ei=HfHsUJLBkjcg15ioKDwU71k9wk8sw&bvm=bv.1357316858,d.aGc&cad=rja> (accessed on January 9, 2013)

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?

32

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | No

Comments:

The Anti-Corruption Law, 2010, especially article 17 thereof provides that upon taking and leaving offices, the following persons shall, in writing or electronic form, declare their assets and liabilities, regardless of whether those assets are inside or outside the country, and shall submit, in person, to Anti-corruption Unit.

1. Members of Senate, members of National Assembly, and Members of the Royal Government
2. Appointed public officials with a specific mandate
3. Members of the National Council Against corruption, chairperson, vice-chairpersons and all officials of the Anti-corruption Unit
4. Civil servants, police, military personnel and other public servants appointed by Royal Decrees or Sub-decrees
5. Other officials appointed by Prakas and decided by Anti-corruption Unit's list of declaration on assets and liabilities, after the consultation with National Council Against corruption
6. Trial judges, prosecutors, notary public, court clerks and bailiff.
7. Leaders of civil society.

References:

The Anti-Corruption Law, 2010, Article 17.

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:

The Criminal Code, 2010, Article 517 provides that bribe taken by a judge is a crime punishable by prison terms of between 7 and 15 years. Article 518 of the same law provides that those persons who give bribe to judge shall be imprisoned of between 5 and 10 years. Article 605 provides that providing gifts, donations or promise to do something or interests to public officials or those who have public mandate as elected by law in return for their delivering services or not delivering services shall be imprisoned between 5 and 10 years.

The Anti-Corruption Law, 2010, especially article 32 thereof reiterates among others these crimes punishable by law.

References:

The Criminal Code, 2010, Article 517 and Article 605.

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

Comments:

By law, there are no such requirements.

References:

The Anti-Corruption Law, 2010.

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

Comments:

By law, there are no such restrictions imposed.

References:

The Anti-Corruption Law, 2010.

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

Comments:

There is no such restriction.

References:

Preap Kol, Executive Director of Transparency International Cambodia, interview on August 20, 2012, TI Cambodia office

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview on August 13, 2012, STAR Kampuchea office.

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview on August 11, 2012, Restaurant (Phnom Penh)

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. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

Even though the new penal code (Criminal Code of 2010) and recent anti-corruption law (Anti-Corruption Law of 2010) are aimed to address the issues of graft, hospitality and gifts giving to members of the executive and government as a whole, there still be a long way to go to address and deal with the issues deeply embedded in tradition and culture. Recent arrests and charges of high-profile people such as the prosecutor in Pursat province and former chief of the anti-drug unit seem to set lessons for others, but there are doubts on the political will of the top leadership to address this issue within their own patronage network.

While the law itself remains vague and is thus to be interpreted in favor of those in authority, tradition and culture of gift giving and hospitality is still beyond the reach of the law. The law fails to stipulate the value of gift that is to be punished by law. In Cambodia, senior government officials are notoriously known for their expected of gift, of any size dependent on the perspective and status of the givers, during national holiday such as new year and some religious days. Within the culture of patronage, their subordinates would have no choice but to fulfill their superior's expectation in the hope to receive protection and benefit of their relation in the future.

Some functions such as private wedding and reception are the opportunities where the show of gift and contribution from people in the government or the business community to the one in authority in exchange for protection and assistance in their business in the future. The legal framework remains in limbo whether it would address the blurred line between gift and hospitality and corruption and whether exchange of material wealth or promises during such private event of top government officials renders the act illegal.

It should be noted that study on people's perception of corruption in Cambodia reveals that justice system is believed to be the most corrupt and the least integrity and honesty.

References:

Sopheal Ear, "Growth in the Rice and Garment Sectors," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 70-93. Copenhagen: NIAS Press, 2011.

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San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea office.

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BBC News, Cambodian former anti-drug chief jailed for trafficking, January 5, 2012, available at <http://www.bbc.co.uk/news/world-asia-16422520> accessed on September 5, 2012

Nissen, Christine J., Living under the Rule of Corruption: An Analysis of Everyday forms of Corrupt Practices in Cambodia, Report on Qualitative Research Component, Phnom Penh: Center for Social Development, 2005, available at http://www.csdcambodia.org/living_under_corruption/living_under_the_rule_corup_eng.pdf accessed on September 6, 2012

Economic Institute of Cambodia (EIC), Assessment of Corruption in Cambodia's Private Sector, Phnom Penh: EIC, 2006, available at http://www.pactcambodia.org/Publications/Anti_Corruption/CAPS_Report_English.pdf, accessed on September 6, 2012

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 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.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosure is made in a sealed envelope and not opened unless there is a court case against the person concerned. It is confidential.

References:

Preap Kol, Executive Director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia office

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea office.

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Vong Sokheng and Chhay Channyda, Lack of disclosure criticised in assets, the Phnom Penh Post, Monday, 04 April 2011, available at <http://camwatchblogs.blogspot.com/2011/04/lack-of-disclosure-criticised-in-assets.html> accessed on September 6, 2012

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: 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.

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

Comments:

By law, there is no such access allowed.

References:

The Anti-Corruption Law, 2010.

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

Comments:

There is no such access allowed by the legal framework. In practice the asset disclosure is made in sealed envelope and not opened unless there is a court case against the person concerned. The disclosure is confidential.

References:

Vong Sokheng and Chhay Channyda, Lack of disclosure criticised in assets, the Phnom Penh Post, Monday, 04 April 2011, available at <http://camwatchblogs.blogspot.com/2011/04/lack-of-disclosure-criticised-in-assets.html> accessed on September 6, 2012

Preap Kol, Executive Director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia office

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea 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.

**Comments:**

There is no such access allowed by the legal framework. In practice the asset disclosure is made in sealed envelope and not opened unless there is a court case against the person concerned. The disclosure is confidential.

References:

Vong Sokheng and Chhay Channyda, Lack of disclosure criticised in assets, the Phnom Penh Post, Monday, 04 April 2011, available at <http://camwatchblogs.blogspot.com/2011/04/lack-of-disclosure-criticised-in-assets.html> accessed on September 6, 2012

Preap Kol, Executive Director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia office

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea 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 NGOs. 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 NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

**Comments:**

There is no such access allowed by the legal framework. In practice the asset disclosure is made in sealed envelope and would not opened unless there is a court case against the person concerned. The disclosure is confidential. Its quality remains mysterious and topic of debate on the integrity and transparency of the anti-corruption mechanism in the country.

References:

Vong Sokheng and Chhay Channyda, Lack of disclosure criticised in assets, the Phnom Penh Post, Monday, 04 April 2011, available at <http://camwatchblogs.blogspot.com/2011/04/lack-of-disclosure-criticised-in-assets.html> accessed on September 6, 2012

Preap Kol, Executive Director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia office

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea office.

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

3.4. Budget Process Oversight & Transparency

40. Can the legislature provide input to the national budget?

67

40a. In law, the legislature can amend the budget.

Yes | No

Comments:

The Constitution, Articles 90, 91 and 113 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 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.

References:

The Constitution, Articles 90, 91 and 113

The Internal Regulations of the National Assembly (NA), as amended in 2006, Principle or Article 26.

The Internal Regulations of the Senate, Article 28.

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.

Comments:

As stipulated in the Constitution of the Kingdom of Cambodia, Article 90, "the National Assembly shall approve the national budget, state planning, loans, financial contracts, and the creation, modification and annulment of tax."

In practice, the legislature has the power to approve and play an oversight role of the national budget and budget implementation. The national budget consists of public revenues and public expenditures reflecting the government policy priorities and fiscal target. Even though it is known that the Parliament, both the lower and upper houses, have limited experience and capacity to perform this Constitutional power, they do perform this role regularly. The National Budget is to be approved by the Parliament on a yearly basis.

The executive branch of the government is tasked with the role to prepare the national budget with the Ministry of Economy and Finance (MEF) playing a coordinating and leading role. After the draft budget law is finalized by the MEF, the latter will submit it to the Council of Ministers for approval before it is submitted to the National Assembly for review. The draft will then be debated and legislated by the plenary session of the National Assembly. The next step is to be submitted to the Senate for their comments and approval. The final step is that the draft budget law is to be sent to the King for his signature and promulgated as law for the government to implement.

It should also be noted that the Parliament encounters a number of challenges in conducting meaningful debates on the budget law. In addition to the limited capacity of the parliament and the Members of the Parliament themselves, the time they have from the day they receive the draft law and the deadline to pass the law is too short (less than one month). Sending back and forth of the draft law between the lower house and upper house of the Parliament for debates and comments is made during a period of less than 10 days.

Also, as the law is only made available for the government's internal use and debates, there has been limited or even absence of participation from the citizens and civil society on this national budget issue.

References:

Pak Kimchouen and David Craig, Accountability and Public Expenditure Management in Decentralised Cambodia, Working Paper 38, Phnom Penh: CDRI, 2008

IBP and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

Anonymous budget expert, Interview on 25 August 2012, Restaurant [Phnom Penh]

EIC, The Role of Parliament in Budgetary Oversight, Phnom Penh: EIC, 2007 available at http://www.parlcent.org/en/wp-content/uploads/2011/04/handbooks_and_guides/Budgetary_Oversight_Guidelines_EN.pdf (accessed on August 21, 2012)

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

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.

Comments:

The legislators suffered from the lack of capacity and constitutional barrier to perform their role to legislate and oversee the implementation of the budget. The words of EIC (2007) still ring true, "Parliamentary budget oversight is little known in Cambodia and thus remains weak. This is in part because parliamentarians have little experience and knowledge regarding their budget oversight functions."

On the one hand, the specialized commission at the National Assembly, Commission on Economy, Finance, Banking and Auditing, is the main body responsible for reviewing the draft budget law, conduct necessary inquiries with the MEF, and provide necessary technical comments to the draft law before submitting to the National Assembly for debates during the full plenary session of the assembly. It is observed that no substantial comments and suggestions for changes to the draft budget law have been made other than those related to wording and clarification.

There are so-called 'advisor' employed by the government. Although it is known, no exact figure can be obtained, listed in the government payroll, their actual contributions to technical debates on policies such as the budget is unknown or even non-existent. In Ear (2011)'s report it is believed that "the Senate President, Chea Sim, has more than a hundred [advisors] while the Prime Minister Hun Sen has more than a thousand." However, the appointment is not necessarily based on their expertise and expected roles to assist the government in formulating policies.

Moreover, the Parliament is suffered from the lack of time as provided in the Constitution. For individual Members of Parliament (MP), it is noted that in 2011, they received the copy of the draft budget law seven days before the debate in the plenary sessions, an increase of three days in 2010. For the whole process, they have less than one month to legislate and pass the law. Within this allocated time, there is less than 10 days allocated for the communicating of the draft law between the lower and upper houses of the Parliament. Participation from civil society organizations and citizens has never been taken seriously by the Parliament itself. Also considered as lacking is limited access to information about the government budget and income prior to the receiving of the draft budget law.

References:

International Budget Partnership (IBP) and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

NGO Forum and EIC, Guide to the National Budget, Phnom Penh: NGO Forum, 2007

Anonymous budget expert, Interview on 25 August 2012, Restaurant [Phnom Penh]

Economic Institute of Cambodia (EIC), The Role of Parliament in Budgetary Oversight, Phnom Penh: EIC, 2007 available at http://www.parlcent.org/en/wp-content/uploads/2011/04/handbooks_and_guides/Budgetary_Oversight_Guidelines_EN.pdf (accessed on August 21, 2012)

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Sopheal Ear, "Growth in the Rice and Garment Sectors," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 70-93. Copenhagen: NIAS Press, 2011.

Committee for Free and Fair Elections in Cambodia (COMFREL), 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comfre, 2012) available at http://www.comfre.org/newcomfre/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf (accessed on 10 August 2012)

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.

41. Can citizens access the national budgetary process?

17

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:

International Budget Partnership's assessment of Cambodia's budget transparency for 2010 and updated it in mid-2012 shows that the country's performance has been improving. Although it has received improved scores, the report continues to say that "the score indicates that the government provides the public with scant information on the central government's budget and financial activities. This makes it difficult for citizens to hold the government accountable for its management of public monies."

Cambodia makes four of the seven key budget documents available to the public in the public domain. These four documents that are of importance for the public to hold the government accountable and contribute to the debate about national budget are (1) pre-budget statement, (2) enacted budget, (3) in-year report and (4) year-end report. Like many countries in Southeast Asia, Cambodia does not produce the citizen budget and the report by the National Audit Institution (National Audit Authority–NAA) is made available relatively late by international good practices standard.

References:

International Budget Partnership and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

NGO Forum and EIC, Guide to the National Budget, Phnom Penh: NGO Forum, 2007

Anonymous budget expert, Interview on 25 August 2012, Restaurant [Phnom Penh]

Economic Institute of Cambodia (EIC), The Role of Parliament in Budgetary Oversight, Phnom Penh: EIC, 2007 available at http://www.parlcent.org/en/wp-content/uploads/2011/04/handbooks_and_guides/Budgetary_Oversight_Guidelines_EN.pdf (accessed on August 21, 2012)

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:

The draft budget law or executive's budget proposal is produced for internal use only and its accessibility to the public is highly uneven. In November 2010, for example, the draft budget law was released to the NGO Forum on Cambodia upon its request. It is however no longer the case for the 2012 draft budget law. Citizens budget, a non-technical presentation of the government budget aimed to enable wider public understanding and participation in the budget process, has never been produced and the auditing report produced and made by the National Audit Authority, if it is even produced, has never been made available to the public on time. IBP's updated Transparency Brief goes on to say that "in Cambodia, like Indonesia and Malaysia, budget discussion is almost closed by international best practice with no public hearings."

In Economic Institute of Cambodia (EIC)'s (2007) paper on the role of parliament in budgetary oversight, it argues that "until recently, public participation in the budget process in Cambodia was limited. In addition, there is no formal process of consultation between the Parliament and the Government, particularly with the Ministry of Economy and Finance, prior to submission of the draft budget law to the Parliament." It was seen as improvement precisely because of the fact that in December 2006, the Parliament conducted its first time ever consultation conference on the national budget with a number of civil society organizations.

The practice is however uneven. As IBP's report points out, four of the seven key budget documents are made public by the Cambodian government.

References:

International Budget Partnership and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

Anonymous budget expert, Interview by author, 25 August 2012, Restaurant [Phnom Penh]

Economic Institute of Cambodia (EIC), The Role of Parliament in Budgetary Oversight, Phnom Penh: EIC, 2007 available at http://www.parlcent.org/en/wp-content/uploads/2011/04/handbooks_and_guides/Budgetary_Oversight_Guidelines_EN.pdf (accessed on August 21, 2012)

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview on August 11, 2012, Restaurant (Phnom Penh)

NGO Forum and Economic Institute of Cambodia (EIC), Guide to the National Budget, Phnom Penh: NGO Forum, 2007

100: Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs 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:

After the Executive Budget Proposal is passed by the Parliament, it becomes law or national budget law (the International Budget Partnership calls this the enacted budget). It is made available to the public in the government official gazette but note that this document does not contain program level details for expenditure.

The law is also available on the National Assembly website (www.national-assembly.gov.kh) and also the website of the Senate (www.senate.gov.kh) even though the laws passed during the fourth mandate (2008-2013) are not made available yet.

It is also observed that a fair number of laws promulgated during the period from 1994 to 2009 are downloadable from the website of the Tax General Department of the MEF (www.tax.gov.kh/taxtypes.php). It should also be noted that the national budget law does not give details of budget allocation. It is basically informative of the allocation to each ministry and sector level. No detail on the program or activity level is provided.

References:

International Budge Partnership and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

NGO Forum and Economic Institute of Cambodia (EIC), Guide to the National Budget, Phnom Penh: NGO Forum, 2007
Anonymous budget expert, Interview on 25 August 2012, Restaurant [Phnom Penh]

Economic Institute of Cambodia (EIC), The Role of Parliament in Budgetary Oversight, Phnom Penh: EIC, 2007 available at http://www.parlcent.org/en/wp-content/uploads/2011/04/handbooks_and_guides/Budgetary_Oversight_Guidelines_EN.pdf (accessed on August 21, 2012)

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Anonymous budget expert, Interview on 25 August 2012, Restaurant [Phnom Penh]

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs 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.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes | No

Comments:

The Internal Regulations of the National Assembly of the Kingdom of Cambodia, Principle or Article 6, 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, Article 6 identifies the Committee on Finance, Banking and Audit as one of the committees of the senate.

References:

The Internal Regulations of the National Assembly of the Kingdom of Cambodia, Principle or Article 6.

The Internal Regulations of the Senate of the Kingdom of Cambodia, Article 6.

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).

43. Is the legislative committee overseeing the expenditure of public funds effective?

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

Mid-year review report of the budget implementation is submitted to the Commission on Economy, Finance, Banking and Auditing of the National Assembly. However, this is the responsibility of the Ministry of Economy, not that of individual ministries. The latter reports to the MEF.

It should also be noted that the disclosure of this mid-year review is highly unpredictable under the sole discretion of the government. In September 2010, the government made public a mid-year review of 2010 budget law implementation along with the Cambodia Marcoeconomics Framework 2000-2011 on the MEF website. However, as of September 2012, the mid-year review of the 2011 budget law implementation had not been published yet.

References:

International Budget Partnership and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

NGO Forum and Economic Institute of Cambodia (EIC), Guide to the National Budget, Phnom Penh: NGO Foru, 2007

Anonymous budget expert, Interview on 25 August 2012, Restaurant [Phnom Penh]

Economic Institute of Cambodia (EIC), The Role of Parliament in Budgetary Oversight, Phnom Penh: EIC, 2007 available at http://www.parlcent.org/en/wp-content/uploads/2011/04/handbooks_and_guides/Budgetary_Oversight_Guidelines_EN.pdf (accessed on August 21, 2012)

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview on August 11, 2012, Restaurant (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.

100 | 75 | 50 | 25 | 0

Comments:

During the fourth mandate of the government (2008-2013), all seven members including the chair of the commission of the National Assembly's Commission on Economy, Finance, Banking and Auditing are from the ruling party (Cambodian's People Party-CPP). During this mandate, the MPs from the opposition parties are either barred or do not wish to join any of the National Assembly's Commissions because the chairman is no longer allocated for the opposition parties.

The current political environment under the shadow of dominant party state, the strong patronage system nurtured by the ruling party and weak legislature and low capacity of the legislators, it is fair to say that the Commission would act in favor of the political party.

References:

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Anonymous budget expert, Interview on 25 August 2012, Restaurant [Phnom Penh]

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Pak Kimchouen and David Craig, Accountability and Public Expenditure Management in Decentralised Cambodia, Working Paper 38, Phnom Penh: CDRI, 2008

Committee for Free and Fair Elections in Cambodia (COMFREL), 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comfre, 2012) available

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage, 2011.

Committee for Free and Fair Elections in Cambodia (COMFREL), Biography of Members of the Parliament during the 4th Mandate, 2008-2013, Phnom Penh: Comfre, 2009 [Khmer version].

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.

100 | 75 | 50 | 25 | 0

Comments:

The legislature is known for its weaknesses, lack of financial and human resource and capacity to perform its constitutional mandate. Cambodia has been ruled by the dominant party for more than two decades, and the CPP ruling party has nurtured a strong political patronage from top to the bottom of the society and horizontally across all government institutions.

The legislature has an important role to play in the oversight and monitoring of the budget implementation by the executive. However, there is a consensus that it remains weak and lack of technical, financial and human resource. In Kheang (2011)'s words, "in addition to the right to initiate legislation, the parliament also has 'investigative' and 'quasi-judicial' functions through which it can file charges against government officials who commit serious crimes and call on government officials to testify on matters of importance to the nation. In reality the parliament plays a reactive and subordinate role." It is thus hard for the National Assembly's Commission to initiate independent investigations on financial irregularities conducted by the executive.

Economic Institute of Cambodia's (EIC) 2007 report still rings true when it says "in practice, national budgets are not always implemented in the exact form in which they were approved by the Parliament. Allocated funds are not disbursed on time and some institutions spend over the allocated budget. Some allocated funds are not used in the intended purposes of the budget law." It also raised the important role of the National Audit Institutions in legislative oversight of the national budget with the example that "the first Auditor General's report on the Draft law on the national budget settlement for 2004 highlighted some irregularities regarding public revenue management, public expenditure management, management of revenue and expenditure of commune/Sangkats, provinces and municipalities and management of public assets, etc." However, no report on the Commission's investigation has been made and published in the public domain.

References:

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Anonymous budget expert, Interview by author, 25 August 2012, Restaurant [Phnom Penh]

International Budget Partnership and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

Pak Kimchouen and David Craig, Accountability and Public Expenditure Management in Decentralised Cambodia, Working Paper 38, Phnom Penh: CDRI, 2008

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Committee for Free and Fair Elections in Cambodia (COMFREL), Biography of Members of the Parliament during the 4th Mandate, 2008-2013, Phnom Penh: Comfre, 2009 [Khmer version].

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:

Category 4. Public Administration and Professionalism

4.1. Civil Service: Conflicts of Interest Safeguards and Political Independence ²⁴

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

Comments:

The Law on the Common Statute of Civil Servants, in particular the following articles, mandate:
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.

References:

The Law on the Common Statute of Civil Servants, Article 37, 38, 35, 33.

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

Comments:

The relevant law is the Law on the Common Statute of Civil Servants, 1994, 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.

References:

Law on the Common Statute of Civil Servants, 1994, Articles 13, 16, 20, 35, 39-48.

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

Comments:

The Law on the Common Statute of Civil Servants, specifically the following articles, are relevant:
Article 58 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 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.

References:

The Law on the Common Statute of Civil Servants, Article 58 and Article 59.

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, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

Yes | No

Comments:

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 Anti-corruption Law, 2010 especially Article 45, stipulates that in addition to felony or misdemeanor punishment stated in this law, the accessory penalty may be, among others, (1) Deprivation of certain civic rights, either permanently or for a certain period, not exceeding five (5) years and (2). Disbarring from profession, either permanently or for a certain period, not exceeding five (5) years when this offence is committed in the conduct of his or her profession or during the conduct of his or her profession.

References:

The Law on the Common Statute of Civil Servants.

The Anti-corruption Law, 2010, Article 45.

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.

45. Is the law governing the administration and civil service effective?

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

Comments:

To quote Un (2011), professional expertise in the government has increased over time, the expertise that "was lacking in the 1990s and early 2000s, as a new generation of educated young professionals enters public service. Therefore, currently, the ineffectiveness of some Cambodian state institutions is not so much a matter of technical incapacity as it is a matter of political calculation."

In neo-patrimonial societies like Cambodia, civil service is overwhelmed by political and personal interest and influence. On the one hand, the patron-client mode of relation in Cambodia has penetrated the civil service for such a long time that it is entrenched and thus hard to challenge. On the other, this patron is always affiliated with political party, especially the ruling party in order to extract rents from the position and the network. The ruling party creates any environment where individual civil servants have no choice but to be member of the party and act in the party's interest should they wish to be promoted and provided protection and economic rents. David and Kimchoeun (2011)'s account of how the ruling party organize themselves from top to bottom, from the Ministry level to the local level, in the form of working group, membership of which are civil servants in order to consolidate power and win support during the elections.

Moreover, incentives and rewards are provided by individuals and patrons along the party line rather than merit or qualifications. The practice is facilitated and promotes centralization of civil service management. Recruitment, promotion and incentives are to be decided by the central government represented by the line ministries even though department head is ostensibly in charge of performance appraisal and assessment of individual staffs. The Eang (2009) report on human resource management in the public sector still rings true: department heads in the province does not have the privilege to recruit staffs in response to real needs; nor can he fire staff who commit misconduct. Some staff could even utilise their personal link with political figure at the leadership of the ministry to protect themselves and perpetuate their defiance of authority and roles.

References:

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Sopheal Ear, "Growth in the Rice and Garment Sectors," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 70-93. Copenhagen: NIAS Press, 2011.

David Craig and Pak Kimchoeun, "Party Financing of Local Investment Projects: Elite and Mass Patronage," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 219-244. Copenhagen: NIAS Press, 2011.

Pak, Kimchoeun, et al. Accountability and Neo-patrimonialism in Cambodia: A Critical Literature Review, Working Paper 34, Phnom Penh: Cambodia Development Resource Institute, 2007

Eng Netra and Ros Bandeth, Cambodian Civil Service: Transforming form an "Administrator" into a "Service Provider," paper presented at the ASEAN-Rok Forum 2010, May 24-26, 2010, Yonsei University, Korea

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

Eng Netra and David Craig, Accountability and Human Resource Management in Decentralised Cambodia, Working Paper No. 40, 2009, Phnom Penh: CDRI

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.

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

Comments:

Appointment and evaluation of civil servants are fundamentally based on political and personal loyalty rather than professionalism and qualifications. Cambodian society is characterised by the patron-clientelism and political penetration into the public sector. Long tradition of personalization of power has facilitated a strong man leadership and thus a dominant ruling party. Recently, in 2008 with the landslide victory in the parliamentary election, the Cambodia's People Party (CPP) who has governed the country since 1993 has achieved its consolidation of power. The party has a reach from the ministry down to the local level. Civil service is politicised in a way that appointment, assessment of

Only a few better cases can be mentioned. Kheang (2011) raises the case of human resource management at the Phnom Penh Water Supply Authority (PPWSA) as a successful and model case where employment is based on qualifications even though there is a minimal number of exceptions where political pressure has led to recruit of children of political figures after personal introduction from their seniors or parents. However, it should be noted that even in the latter case, minimum qualifications are required. PPWSA is considered as a model case which hopefully can be replicated within the wider administrative reform.

References:

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Preap Kol, Executive Director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia office

David Craig and Pak Kimchouen, "Party Financing of Local Investment Projects: Elite and Mass Patronage," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 219-244. Copenhagen: NIAS Press, 2011.

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Kheang Un and Caroline Hughes, The Political Economy of "Good Governance" Reform, in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 199-218. Copenhagen: NIAS Press, 2011.

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:

Cambodian society is characterised by the patronage system where exchange of social and economic interests between patron and clients is always the mode of relationship. Even though there was a break in recent history, in the late 1970s where social fabric and structure is believed to be destroyed along with the annihilation of millions of people who were believed to be capitalists and enemy of the people, the patronage system did not die out. Rather, after the war, it was nurtured and adapted into new forms and political and economic context. This patronage has inflicted into civil service and politics. The ruling party, CPP, has achieved its political dominance from the top to the bottom of the public administrative structure. Heads of Ministries are political figures appointed by the Parliament and head of departments across the civil service are appointed along political party line and they are also heads and active leaders in the party's working groups, who play very important role in maintaining political support and party legitimacy at the grassroots level. Down to the technical and supporting staffs, patronage, nepotism and cronyism dictate the decision of the administrators and recruitment.

Eng (2009) details the recruitment process centralized at the Ministry level, which creates loopholes for corruption, nepotism and favoritism. While the advertisement, if it even happens, biases toward the urban candidates, the process does not guarantee fairness and quality. Rather, it is opportunity for the administrators to solicit bribes and put their relatives into the pay roll of the public service. Eng's quote of an interview with a department head deserves attention here. "In my position as director of department, my most challenging task is to say no to someone who wants to have their families or friends working in the department. In most cases, I have to accept them because my boss at the centre [ministry] gives me a call [usually to give command and threat if doing otherwise]. Other 10 spots for new recruits, more than half are already secured for relatives, friends...before the exam. Others have to pay \$3000 to pass the exam." This quote is indicative of the fact that the human resource management system is restrained by the practice of patronage, nepotism, favoritism and corruption.

References:

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Preap Kol, Executive director of Transparency International Cambodia, interview on August 20, 2012, TI Cambodia office

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Eng Netra and Ros Bandeth, Cambodian Civil Service: Transforming form an "Administrator" into a "Service Provider," paper presented at the ASEAN-Rok Forum 2010, May 24-26, 2010, Yonsei University, Korea

Eng Netra and David Craig, Accountability and Human Resource Management in Decentralised Cambodia, Working Paper No. 40, 2009, Phnom Penh: CDRI

Kheang Un and Caroline Hughes, The Political Economy of "Good Governance" Reform, in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 199-218. Copenhagen: NIAS Press, 2011.

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:

Civil servants do not have job descriptions for them to follow during their assignment to the public services. Civil servants acknowledge that their responsibilities are solely based on their relationship with their superior and trust that the latter has in them. The more trust they gain from their superior, the more jobs they are asked to perform—in the current system, the more jobs means more opportunity to collect rents. In other words, responsibilities for persons holding the same position varies according to personal relationship, trust and political affiliation. It is very much reflective of the patronage system practiced within the society and conduct of politics within the country. Part of the objectives of the Public Administrative Reform is to develop and implement a Performance Management and Accountability System (PMAS) whereby a clear position descriptions are to be elaborated. However, this aim is still far away from being developed and implemented.

References:

David Craig and Pak Kimchoeun, "Party Financing of Local Investment Projects: Elite and Mass Patronage," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 219-244. Copenhagen: NIAS Press, 2011.

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Eng Netra and David Craig, Accountability and Human Resource Management in Decentralised Cambodia, Working Paper No. 40, 2009, Phnom Penh: CDRI

Kheang Un and Caroline Hughes, The Political Economy of "Good Governance" Reform, in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 199-218. Copenhagen: NIAS Press, 2011.

Anonymous Civil servant, interview by author, residence, September 13, 2012

Anonymous Civil servant, interview by author, residence, September 14, 2012

RGC, Handbook for Civil Servants, 2010, Phnom Penh: CAR

Thor Sethana, Director General, State Secretariat for Civil Service and Iem Sarom, deputy secretary of state in charge of general affairs, interview by author, September 28, 2012, State Secretariat for Civil Service

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:

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.



Comments:

In Cambodia, low pay for civil servants is seen as an obstacle toward developing efficient and effective delivery of services to local people and in development project. A 2012 report shows that civil servants, excluding soldiers, earn roughly \$48 dollars per month with minimal allowance and over time pay. With low budget, the government has put an effort to commit to the annual 15-20% salary increase for civil servants. The share of wage for civil administrative wage, excluding defense /security wage to the GDP was 1.4 percent in 2001 and this has increased to 2.1 and 2.5 percent for 2008 and 2009 respectively.

The off-budget incentive [bonus] payment scheme, known as the Merit-based Pay Initiative—MBPI, jointly financed by donors and government covers 2 percent of permanent civil servants at the time of its termination at the end of 2009. The average top-up salary supplement under this scheme is 300 US dollars for regular staff, but can be as high as a few thousand dollars per month for high skilled recipients holding doctorate degree. It is estimated that the donor-financed salary supplement expenditure in 2011 is around 20 million dollars a year.

References:

Khorm Ribuon, The Relationship between Pay and Performance in the Cambodian Civil Service, A thesis submitted for the Professional Doctoral Degree in Public Administration, University of Canberra, 2011, available http://www.canberra.edu.au/researchrepository/file/5aea8cba-27ff-e2e7-d368-62bedc4f79bb/1/full_text.pdf (accessed on September 11, 2012)

World Bank, Cambodia: More Efficient Government Spending for Strong and Inclusive Growth—Integrated Fiduciary Assessment and Public Expenditure Review (IFAPER), Washington D.C.: WB, 2011

For Most Civil Servants, Moonlighting Is a Must, June 21, 2011, Equity Program, available at <http://www.equitycam.tv/index.php/component/content/article/41-top-headlines/915-for-most-civil-servants-moonlighting-is-a-must.html>(accessed on September 23, 2012)

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David Boyle and Phak Seangly, Civil servants' union dilemma, the Phnom Penh Post, October 30, 2012 available at <http://www.phnompenhpost.com/index.php/2012103059469/National-news/civil-servants-union-dilemma.html> (accessed on December 5, 2012)

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.



Comments:

The government never publishes the list of authorized government positions while advertising for new recruits to fill the vacancies. It should be noted that one reason for not doing that can be simply because there is no such list existing. The government is known for its poor human resource management and lack of capacity and system to achieve it to a higher standard. The State Secretariat of Public Functions (SSPF), the body in charge of human resource management in the public sector does not have a strong centralized database system to management civil servants. Even the number of civil servants held by Ministries does not match the number held by the SSPF. There is a lack of incentives to strengthen this as it is seen as a means to extract rent from the public coffer for either personal or political party interest.

References:

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh).

Thor Sethana, Director General, State Secretariat for Civil Service and Iem Sarom, deputy secretary of state in charge of general affairs, interview by author, September 28, 2012, State Secretariat for Civil Service.

Eng Netra and Ros Bandeth, Cambodian Civil Service: Transforming form an "Administrator" into a "Service Provider," paper presented at the ASEAN-Rok Forum 2010, May 24-26, 2010, Yonsei University, Korea.

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:

Mr. Thor Sethana, Director General of the State Secretariat for Civil Service (SSCS) said that there is a legal and conflict resolution department within the SSCS that is tasked to deal with conflicts within the civil service. It is composed of representatives from various ministries including the Ministry of Interior, Ministry of Economy and Finance and Ministry of Social Affairs.

However, not many cases have reached the SSCS, as they are usually dealt with within the line ministry concerned should there be conflicts. In 2011, there were exactly two cases.

References:

Eng Netra and David Craig, Accountability and Human Resource Management in Decentralised Cambodia, Working Paper No. 40, 2009, Phnom Penh: CDRI

Eng Netra and Ros Bandeth, Cambodian Civil Service: Transforming form an "Administrator" into a "Service Provider," paper presented at the ASEAN-Rok Forum 2010, May 24-26, 2010, Yonsei University, Korea

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Thor Sethana, Director General, State Secretariat for Civil Service and Iem Sarom, deputy secretary of state in charge of general affairs, interview by author, September 28, 2012, State Secretariat for Civil Service

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:

The payment has been improved over the years. It is informed that during the last few years when the country was affected by the global financial crisis, payment was late, sometimes up to 30 days late. Until the time of assessing this integrity report, the situation had improved.

However, there is no uniformity across the Ministries and provincial payments. For example, those working at the Ministry of Economy and Finance may have been paid earlier than those working at other ministries and provincial departments who would experience between 10 and 20 days late payment. This is partly due to the bureaucratic procedures required to get the disbursement approval and low capacity among staffs performing the task. Late payment and low salary forces many civil servants to perform moonlighting job in order to cover their living expense.

References:

Anonymous Civil servant, interview by author, residence, September 13, 2012

Anonymous Civil servant, interview by author, residence, September 14, 2012

For Most Civil Servants, Moonlighting Is a Must, June 21, 2011, Equity Program, available at <http://www.equitycam.tv/index.php/component/content/article/41-top-headlines/915-for-most-civil-servants-moonlighting-is-a-must.html>(accessed on September 23, 2012)

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:

Recent measures taken by the Anti-Corruption Unit (ACU) to bring those committed crime of corruption to justice has been praised and watched carefully by local people and national and international observers. Suspicion remains as the crackdown seems to happen only along political faction while corruption is known to be widespread among the patronage base of the ruling party. Moreover, the charge of embezzlement of some 5 million US dollars by the Ministry of Social Affairs, revealed in mid 2011 is not brought to court as the senior leadership prefers to 'educate' those people only. The latest move to arrest four officials at the Ministry of Land Management, Urbanization and Construction, alleged of embezzlement of the budget for land concession project in August 2012 and the news that those officials were released on bail by the court judge in a matter of a week after the arrest and charge without justification.

All these recent moves put together only guarantee an argument that enforcement of the law is done in a very discriminatory manner and critiques are accusing the government of using it as a political tool to suppress opponents. Those officials who remain loyal to the party and have strong connections and patrons in the government can still be freed from charges and would again appear in their officials.

References:

U4 Expert Answer, Overview of Corruption in Cambodia, March 23, 2010 available at
Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

Case on tax official overcharged property tax in Russeikeo, 291211, available at http://www.acu.gov.kh/kh_event_all_detail.php?4a8a08f09d37b73795649038408b5f33=7 (accessed on September 12, 2012)

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Sebastian Strangio Potemkin, Graft Crackdown in Cambodia, Asia Times, Jun 11, 2011 http://www.atimes.com/atimes/Southeast_Asia/MF11Ae01.html (accessed on September 18, 2012)

Neou Cannarin, Corrupt Officials to Be 'Educated,' Says Minister, The Cambodia Daily, Tuesday, 19 July 2011 available at http://saatsaam.info/en/index.php?option=com_content&task=view&id=1802&Itemid=42 (accessed on September 18, 2012)

Stuart Alan Becker, Payments illegal, says ACU chief, The Phnom Penh Post, July 31, 2012, p. 7

Heng Reaksmei, Court Releases Four Ministry Officials Facing Embezzlement Charges, VOA Khmer, 14 August 2012, available at <http://www.voacambodia.com/content/court-releases-four-ministry-officials-facing-embezzlement-charges/1485863.html>

Pak, Kimchoeun, et al. Accountability and Neo-patrimonialism in Cambodia: A Critical Literature Review, Working Paper 34, Phnom Penh: Cambodia Development Resource Institute, 2007

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?

25

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | **No**

Comments:

The Anti-Corruption Law, 2010 especially article 17 thereof provides that upon taking and leaving offices, the following persons shall, in writing or electronic form, declare their assets and liabilities, regardless of whether those assets are inside or outside the country, and shall submit, in person, to Anti-corruption Unit.

1. Members of Senate, members of National Assembly, and Members of the Royal Government
2. Appointed public officials with a specific mandate
3. Members of the National Council Against corruption, chairperson, vice-chairpersons and all officials of the Anti-corruption Unit
4. Civil servants, police, military personnel and other public servants appointed by Royal Decrees or Sub-decrees
5. Other officials appointed by Prakas and decided by Anti-corruption Unit's list of declaration on assets and liabilities, after the consultation with National Council Against corruption
6. Trial judges, prosecutors, notary public, court clerks and bailiff.
7. Leaders of civil society.

Article 18: Regime of Declaration of Assets

References:

The Anti-Corruption Law, 2010, Article 17.

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**

Comments:

By law, there are no such requirements.

References:

N/A

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**

Comments:

By law, there are no such restrictions.

References:

N/A

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.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

Yes | **No**

Comments:

The Criminal Code, 2010, Article 605, provides that those illegitimately directly or indirectly offer gifts, donations, promise or provision of interest to public servants or those invested in public mandate through elections in return for those persons to perform their functions or facilitate through their functions or not perform their functions or facilitate through not performing their functions shall be punishable of between 5 and 10 years.

This article is reiterated in the anti-corruption law, 2010, in Article 32.

References:

The Criminal Code, 2010, Article 605 .

Anti-corruption Law, 2010, Article 32.

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**

Comments:

By law, there are no such requirements.

References:

The Anti-Corruption Law, 2010.

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:

There is no such 'cooling off' period imposed on post-government involvement in private sector for civil servants in Cambodia. Rather, civil servants involvement in private business even during their tenure in the government payroll is a common practice in order to generate additional income and return in the face of low payment provided by the government. Within the existing patronage and network within the public sector, civil servants can rather exploit their position to create rents for personal pocket or contribute to enhancing the financial might of the ruling party.

References:

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Preap Kol, Executive director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia office

Sopheal Ear, "Growth in the Rice and Garment Sectors," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 70-93. Copenhagen: NIAS Press, 2011.

Pak, Kimchoeun, et al. Accountability and Neo-patrimonialism in Cambodia: A Critical Literature Review, Working Paper 34, Phnom Penh: Cambodia Development Resource Institute, 2007

Eng Netra and David Craig, Accountability and Human Resource Management in Decentralised Cambodia, Working Paper No. 40, 2009, Phnom Penh: CDRI

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:

Even though there is no denial that the 2010 anti-corruption law was passed in the aim to challenge the practice of gift and hospitality giving and taking in Cambodia and the resultant anti-corruption unit has taken measures and concrete actions toward achieving the aim, it remains to be seen how this legal framework will deal with civil servants taking gift and hospitality as the practice does not seem to abate.

Giving gift and hospitality is a culture in Cambodia and taking it is also a culture in Cambodia. Even though there is loophole in the previous and current legal framework such as the UNTAC penal code and anti-corruption law as to what extent and how big the amount of gift and hospitality are considered outlawed, such act that would affect the integrity and impartiality of civil servants is punishable by law. Past and recent surveys show that corruption in its broad terms remains widely practiced by civil servants. It does pose a great challenge for the government to achieve its goal of fighting corruption in an environment that legal framework has its own weaknesses while the culture of gift and hospitality giving and taking is hard to challenge in the current economic and political situation.

References:

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview on August 11, 2012, Restaurant (Phnom Penh)

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview on August 13, 2012, STAR Kampuchea office.

Preap Kol, Executive Director of Transparency International Cambodia, interview on August 20, 2012, TI Cambodia office

Sopheal Ear, "Growth in the Rice and Garment Sectors," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 70-93. Copenhagen: NIAS Press, 2011.

David Craig and Pak Kimchoeun, "Party Financing of Local Investment Projects: Elite and Mass Patronage," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 219-244. Copenhagen: NIAS Press, 2011.

Pak, Kimchoeun, et al. Accountability and Neo-patrimonialism in Cambodia: A Critical Literature Review, Working Paper 34, Phnom Penh: Cambodia Development Resource Institute, 2007

Nissen, Christine J., Living under the Rule of Corruption: An Analysis of Everyday forms of Corrupt Practices in Cambodia, Report on Qualitative Research Component, Phnom Penh: Center for Social Development, 2005, available at http://www.csdcambodia.org/living_under_corruption/living_under_the_rule_corup_eng.pdf accessed on September 6, 2012

Economic Institute of Cambodia (EIC), Local Public Services: Performance and Unofficial Fees, Phnom Penh: EIC, 2006, available at http://www.pactcambodia.org/Publications/Anti_Corruption/Local_Public_Services-Performance_and_Unofficial_Fees_ENG.pdf accessed on September 2006

Economic Institute of Cambodia (EIC), Assessment of Corruption in Cambodia's Private Sector, Phnom Penh: EIC, 2006, available at http://www.pactcambodia.org/Publications/Anti_Corruption/CAPS_Report_English.pdf, accessed on September 6, 2012

Eng Netra and Ros Bandeth, Cambodian Civil Service: Transforming form an "Administrator" into a "Service Provider," paper presented at the ASEAN-Rok Forum 2010, May 24-26, 2010, Yonsei University, Korea

Eng Netra and David Craig, Accountability and Human Resource Management in Decentralised Cambodia, Working Paper No. 40, 2009, Phnom Penh: CDRI

Southeast Asia Globe, Foreign Business Leaders Survey: Perceptions about the Cambodian Business Environment 2011, Phnom Penh: Southeast Asia Globe, 2011.

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:

In Cambodia's context where social relations and political decision is made fundamentally based on the principle of patronage system and weak institution, there is little, if any, consciousness of conflict of interest within civil service decision making and even decision at the higher echelons of the state apparatus. Senators, law makers and executive leaders are running their own businesses while holding position in within the government.

Awareness of the integrity system such as absence of corruption, honest in implementing the procurement, and free from conflict of interest remains very low among citizens. For example, a survey of 396 people in 2011 reveals that 65% of them 'never heard the word procurement.' Decision-making within the government is very often conducted in a 'secret' manner and thus could avoid scrutiny by the public.

The legal framework, such as the 2012 Law on Public Procurement, encourages conflict of interest rather than put efforts to discourage it. As long as accountability line is not clear and whatever your superior says rules, conflict of interest in decision making in the civil service is just a means toward extracting rent to be shared within the peers, who assist in perpetuating the practice for additional income in face of low pay provided by the government.

References:

World Bank, Cambodia: Country Procurement Assessment Report, 2004

David S. Jones, Public Procurement in Southeast Asia: Challenge and reform, Journal of Public Procurement, Volume 7, Issue 1, 3-33
2007 http://www.ippa.ws/IPC2/JOPP7_1/Article_1_JONES.pdf

Sok Sam Oeun, Research Finding on Public Procurement Systems in Cambodia (Public Works and Transportation, and Public Health Sector), Phnom Penh: CISA, 2011

World Bank, Cambodia: More Efficient Government Spending for Strong and Inclusive Growth—Integrated Fiduciary Assessment and Public Expenditure Review (IFAPER), Washington D.C.: WB, 2011

International Monetary Fund, 2010, Cambodia Article IV Consultations Reports, Washington D.C.: IMF, available at <http://www.imf.org/external/pubs/ft/scr/2011/cr1145.pdf>

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011

Families Call for Boycott of Senator's 'Blood Sugar', available at <http://www.opendevelopmentcambodia.net/news-source/the-cambodia-daily/families-call-for-boycott-of-senators-blood-sugar/> accessed on September 6, 2012

Tycoon Men Sarun Dies, available at <http://khmerization.blogspot.com/2011/12/tycoon-men-sarun-dies.html> accessed on September 6, 2012

Comfreli, Biography of Members of the Parliament during the 4th Mandate, 2008-2013, Phnom Penh: Comfreli, 2009 [Khmer version].

Anonymous budget expert, Interview on 25 August 2012, Restaurant [Phnom Penh]

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.

Comments:

Asset disclosure is made in sealed envelope, and it is not opened unless there is a case against the person concerned. The procedure is criticised for its lack of transparency, and it is not audited.

References:

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea office.

Preap Kol, Executive Director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia office

Vong Sokheng and Chhay Channyda, Lack of Disclosure Criticised in Assets, the Phnom Penh Post, Monday, 04 April 2011, available at <http://camwatchblogs.blogspot.com/2011/04/lack-of-disclosure-criticised-in-assets.html> accessed on September 6, 2012

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.

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

Comments:

By law, there is no such access allowed. Article 20 of the Anti-corruption law stipulates that the opening of the asset document is made only for investigation purpose and its confidentiality is highly protected.

References:

Article 20 of the Anti-Corruption Law

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.

Comments:

Access to the asset disclosure of senior civil servants is not granted to the public. No access is allowed as the disclosure is made in a sealed envelope and it is not audited or opened unless there is a case against the person concerned.

References:

Vong Sokheng and Chhay Channyda, Lack of Disclosure Criticised in Assets, the Phnom Penh Post, Monday, 04 April 2011, available at <http://camwatchblogs.blogspot.com/2011/04/lack-of-disclosure-criticised-in-assets.html> accessed on September 6, 2012

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea office.

Preap Kol, Executive Director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia 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.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

**Comments:**

Citizens are not granted access to the asset disclosure.

References:

Vong Sokheng and Chhay Channyda, Lack of disclosure criticised in assets, the Phnom Penh Post, Monday, 04 April 2011, available at <http://camwatchblogs.blogspot.com/2011/04/lack-of-disclosure-criticised-in-assets.html> accessed on September 6, 2012

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea office.

Preap Kol, Executive Director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia 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 NGOs. 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 NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

**Comments:**

No information about the quality of asset disclosure is available as it is made in a sealed envelope and it is not opened unless there is a case against the person concerned.

References:

Vong Sokheng and Chhay Channyda, Lack of disclosure criticised in assets, the Phnom Penh Post, Monday, 04 April 2011, available at <http://camwatchblogs.blogspot.com/2011/04/lack-of-disclosure-criticised-in-assets.html>, accessed on September 6, 2012

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea office.

Preap Kol, Executive Director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia office

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

0

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:

The Anti-Corruption Law, 2010, especially article 41 thereof provides that Defamation or disinformation complaints on corruption lodged with the Anti-corruption Unit or judges, which lead to useless inquiry, shall be punishable by imprisonment from one (1) month to six (6) months and fine from one million Riel (1000,000) to ten million Riel (10,000,000).

References:

The Anti-Corruption Law, 2010, Article 41.

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:

The Anti-Corruption Law passed in 2010 is criticised for its lack of provision on whistleblower protection, which is a problem. For example, the arrest and immediate charge of Phay Bunthoeun on September 7, 2012 with conspiracy with his little known newspaper publisher who had been charged for defamation after having submitted documents to ACU, Ministry of Information, of Interior and municipal courts, alleging corruption among senior officials at those institutions might be viewed as the negative consequences of sharing information about corruption.

References:

Aun Pheap, Second Man Charged in Case Against Publisher, the Cambodia Daily, September 10, 2012, p. 18
Anonymous Civil servant, interview by author, residence, September 13, 2012

Preap Kol, Executive Director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia office

Southeast Asia Globe, Foreign Business Leaders Survey: Perceptions about the Cambodian Business Environment 2011, Phnom Penh: Southeast Asia Globe, 2011.

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

Kheang Un and Caroline Hughes, The Political Economy of "Good Governance" Reform, in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 199-218. Copenhagen: NIAS Press, 2011.

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea office.

Neou Cannarin, Corrupt Officials to Be 'Educated,' Says Minister, The Cambodia Daily, Tuesday, 19 July 2011 available at http://saatsaam.info/en/index.php?option=com_content&task=view&id=1802&Itemid=42 (accessed on September 18, 2012)

Nissen, Christine J., Living under the Rule of Corruption: An Analysis of Everyday forms of Corrupt Practices in Cambodia, Report on Qualitative Research Component, Phnom Penh: Center for Social Development, 2005, available at http://www.csdcambodia.org/living_under_corruption/living_under_the_rule_corup_eng.pdf accessed on September 6, 2012

Economic Institute of Cambodia (EIC), Local Public Services: Performance and Unofficial Fees, Phnom Penh: EIC, 2006, available at http://www.pactcambodia.org/Publications/Anti_Corruption/Local_Public_Services-Performance_and_Unofficial_Fees_ENG.pdf accessed on September 2006

Danida, Human Rights and Good Governance Programme (2011 – 2012), Cambodia Programme Document, 2010, available at <http://cambodja.um.dk/dal/~media/Cambodia/Documents/MRD/HRDGGprogdoc20112012Dec2010pdf.ashx> (accessed on September 20, 2012)

Economic Institute of Cambodia (EIC), Assessment of Corruption in Cambodia's Private Sector, Phnom Penh: EIC, 2006, available at http://www.pactcambodia.org/Publications/Anti_Corruption/CAPS_Report_English.pdf, accessed on September 6, 2012

2011 Corruption Perceptions Index (2011 CPI), available at <http://www.ticambodia.org/2011%20corruption%20perceptions%20index.php> (accessed on September 23, 2012)

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

Comments:

The Anti-Corruption Law, 2010, Article 41 thereof provides that defamation or disinformation complaints on corruption lodged with the Anti-corruption Unit or judges, which lead to useless inquiry, shall be punishable by imprisonment from one (1) month to six (6) months and fine from one million Riel (1000,000) to ten million Riel (10,000,000).

References:

No law exists.

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.

100 | 75 | 50 | 25 | 0

Comments:

The Anti-Corruption Law passed in 2010 is criticised for its lack of provision on whistleblower protection, which is problematic. For example, the arrest and immediate charge of Phay Bunthoeun on September 7, 2012 with conspiracy with his little known newspaper publisher who had been charged for defamation after having submitted documents to Anti-Corruption Unit, Ministry of Information, of Interior and municipal courts, alleging corruption among senior officials at those institutions might be viewed as the negative consequences of sharing information about corruption.

Businesses see corruption as the biggest obstacle for them to run businesses in the country and citizens experience it every day from paying fines for violation of traffic law, to basic services, and solving disputes at the court. Though there is no report of incidents where private sector employees who report corruption case are protected or punished, the question should be looked at from a bigger context, the context where whistleblower protection is not present in Cambodia.

References:

Aun Pheap, Second Man Charged in Case Against Publisher, the Cambodia Daily, September 10, 2012, p. 18
Preap Kol, Executive director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia office

Southeast Asia Globe, Foreign Business Leaders Survey: Perceptions about the Cambodian Business Environment 2011, Phnom Penh: Southeast Asia Globe, 2011.

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

Kheang Un and Caroline Hughes, The Political Economy of "Good Governance" Reform, in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 199-218. Copenhagen: NIAS Press, 2011.

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea office.

Neou Cannarin, Corrupt Officials to Be 'Educated,' Says Minister, The Cambodia Daily, Tuesday, 19 July 2011 available at http://saatsaam.info/en/index.php?option=com_content&task=view&id=1802&Itemid=42 (accessed on September 18, 2012)

Nissen, Christine J., Living under the Rule of Corruption: An Analysis of Everyday forms of Corrupt Practices in Cambodia, Report on Qualitative Research Component, Phnom Penh: Center for Social Development, 2005, available at http://www.csdcambodia.org/living_under_corruption/living_under_the_rule_corup_eng.pdf accessed on September 6, 2012

Economic Institute of Cambodia (EIC), Local Public Services: Performance and Unofficial Fees, Phnom Penh: EIC, 2006, available at http://www.pactcambodia.org/Publications/Anti_Corruption/Local_Public_Services-Performance_and_Unofficial_Fees_ENG.pdf accessed on September 2006

Danida, Human Rights and Good Governance Programme (2011 – 2012), Cambodia Programme Document, 2010, available at <http://camodia.um.dk/da/~media/Cambodia/Documents/MRD/HRDGGprogdoc20112012Dec2010pdf.ashx> (accessed on September 20, 2012)

Economic Institute of Cambodia (EIC), Assessment of Corruption in Cambodia's Private Sector, Phnom Penh: EIC, 2006, available at http://www.pactcambodia.org/Publications/Anti_Corruption/CAPS_Report_English.pdf, accessed on September 6, 2012

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.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

49a. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

Comments:

By law, there is no such internal mechanism existed. However, on the Anti-Corruption Unit (ACU) website, www.acu.gov.kh, there is contact information for everyone, including civil servants, to report corruption cases.

References:

The Anti-Corruption Law, 2010.

The Law on the Common Statutes of the Civil Servants, 1994.

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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

0

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

In the Anti-Corruption Unit's (ACU) Anti-corruption Action Plan for 2011-2015, under the protection section, there is commitment to strengthen the internal reporting and partnership within line Ministries in order to develop and implement the internal anti-corruption action plan for each Ministry. In this regard, Danida, one of ACU partners, is also committed to assisting in this specific task in order to improve transparency and accountability of the anti-corruption mechanism within the public sector. There has not been much update on this aspect however. At the State Secretariat for Civil Services (SSCS), the anti-corruption focal groups, established on the request from the Anti-corruption Unit, is composed of a few senior leaders of the entity and a few supporting staffs and its mandate is to make sure that corruption is curbed within the institution. It is not a full-time assignment.

The internal mechanism has yet to take roots in all departments across the public functions. Interviews with civil servants reveal that they are not aware of the internal anti-corruption mechanism other than the existing internal audit and inspection mechanism. Also, there are expressions that internal mechanism might be helpful in disseminating anti-corruption law and policies, and they wonder if it will help curb corruption as it is already institutionalised and the focal group is also party of the institution.

References:

Anti-Corruption Unit, Anti-corruption Action Plan, 2011-2015, 2010

Danida, Human Rights and Good Governance Programme (2011 – 2012), Cambodia Programme Document, 2010, available at <http://cambodia.um.dk/dal/~media/Cambodia/Documents/MRD/HRDGGprogdoc20112012Dec2010pdf.ashx> (accessed on September 20, 2012)

Anonymous Civil servant, interview by author, residence, September 13, 2012

Anonymous Civil servant, interview by author, residence, September 14, 2012

Thor Sethana, Director General, State Secretariat for Civil Service and Iem Sarom, deputy secretary of state in charge of general affairs, interview by author, September 28, 2012, State Secretariat for Civil Service

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.

Comments:

Not much is known as to how the internal anti-corruption mechanism within public institutions is funded and staffed, although the ACU and Danida are committed to develop and implement it. According to anecdotal experience, no funding is allocated to the functioning of the anti-corruption focal group established within every government department.

References:

Anti-Corruption Unit, Anti-Corruption Action Plan, 2011-2015, 2010

Danida, Human Rights and Good Governance Programme (2011 – 2012), Cambodia Programme Document, 2010, available at <http://cambodia.um.dk/da/~media/Cambodia/Documents/MRD/HRDGGprogdoc20112012Dec2010pdf.ashx> (accessed on September 20, 2012)

Anonymous Civil servant, interview by author, residence, September 13, 2012

Anonymous Civil servant, interview by author, residence, September 14, 2012

Thor Sethana, Director General, State Secretariat for Civil Service and Iem Sarom, deputy secretary of state in charge of general affairs, interview by author, September 28, 2012, State Secretariat for Civil Service

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.

Comments:

It remains to be seen how the internal mechanism is functioning. As of September 2012, there was too little information on the implementation of the ACU and Danida's commitment to develop and implement it. For example, at the State Secretariat for Civil Services, the anti-corruption focal points are composed of senior leadership of the body. Interviews with civil servants reveal that there are doubts among civil servants that such mechanism, if staffed with internal civil servants, would be effective in reporting or dealing with complaints as corruption is widespread and entrenched and institutionalised.

References:

Anti-Corruption Unit, Anti-corruption Action Plan, 2011-2015, 2010

Danida, Human Rights and Good Governance Programme (2011 – 2012), Cambodia Programme Document, 2010, available at <http://cambodia.um.dk/da/~media/Cambodia/Documents/MRD/HRDGGprogdoc20112012Dec2010pdf.ashx> (accessed on September 20, 2012)

Anonymous Civil servant, interview by author, residence, September 13, 2012

Anonymous Civil servant, interview by author, residence, September 14, 2012

Thor Sethana, Director General, State Secretariat for Civil Service and Iem Sarom, Deputy Secretary of State in Charge of General Affairs, interview on September 28, 2012, State Secretariat for Civil Service

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:

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

It remains to be seen what functions and responsibilities will be bestowed to the internal anti-corruption mechanism. The Anti-Corruption Unit and Danida are committed to develop and implement the internal anti-corruption mechanism within line ministries; however, the development is not yet known to the public.

References:

Anti-Corruption Unit, Anti-corruption Action Plan, 2011-2015, 2010

Danida, Human Rights and Good Governance Programme (2011 – 2012), Cambodia Programme Document, 2010, available at <http://cambodia.um.dk/da/~/media/Cambodia/Documents/MRD/HRDGGprogdoc20112012Dec2010pdf.ashx> (accessed on September 20, 2012)

Anonymous Civil servant, interview by author, residence, September 13, 2012

Anonymous Civil servant, interview by author, residence, September 14, 2012

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.

0

4.3. Government Procurement: Transparency, Fairness, and Conflicts of Interest Safeguards

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:

By law, there are no such regulations.

Article 9 of the Law does stipulate that the government body executing procurement shall establish a procurement commission and staffed with qualified persons and equipped with enough authority to execute the procurement tasks. The procurement entity is led by a chief who does not have a role or position in the financial tasks of the department. However, Article 8 of the same law, which stipulates that the chief of the department is automatically the chief of the procurement commission, raises concerns about conflict of interests issues.

References:

Law on Public Procurement, 2012.

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:

By law, there is no such mandatory professional training provided, despite the fact that Article 8 of the same law stipulates that the procurement commission is to be staffed with civil servants specialised in procurement.

References:

Law on Public Procurement, 2012

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:

There are no procurement conflict of interest regulations.

References:

Law on Public Procurement, 2012

Anonymous budget expert, Interview on 25 August 2012, Restaurant [Phnom Penh]

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

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

Comments:

By law, there is no such mechanism exists to monitor asset disclosures, despite the fact that the Law on Anti-corruption adopted in 2010 requires civil servants, appointed and elected, and according to the law, including the head of procurement commission, to disclose their asset at the Anti-Corruption Unit. The disclosure is made in sealed envelope. It is not opened until there is a case against the person concerned. It is not like 'lifestyle check.'

References:
Law on Public Procurement, 2012.

Law on Anti-Corruption, 2010.

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:

By law, Article 11 requires competitive bidding for major projects open to both international and national entities. However, the law does not provide the detail on volume of project as greater than 0.5 percent of the GDP as such.

References:

Law on Public Procurement 2012, Article 11.

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**

Comments:

Article 13 of the law stipulates conditions required for the sole sourcing. They must be approved by the Ministry of Economy and Finance. The conditions include sole source for the service, the first competition fails, procurement for same service executed through bidding, as well as the requirement to contract with state specialized entities that are equipped with enough materials and people to perform the tasks. They must be able to encourage the community to use their resources for the development of community.

References:

Law on Public Procurement, 2012, Article 13.

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:

Articles 62 and 63 of the Law on Public Procurement provides that the department executing the procurement must receive and adjudicate on any complaints during the procurement process. In cases where parties does not accept the department's solution, the appeal can then be lodged to the Ministry of Economy and Finance. Finally, the case can be lodged to the court if the claimant does not accept the Ministry of Economy and Finance's solution.

References:

Law on Public Procurement, 2012.

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**

Comments:

Article 63 of the law provides that complainant can challenge the decision of the Ministry of Economy and Finance on their complaint at the court of the Kingdom of Cambodia.

References:

Law on Public Procurement, 2012, Article 63.

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 Law on Public Procurement, 2012, Article 66 provides that bidders and suppliers who are found involved in corruption, falsification, collusion, and coercion during the procurement process or provides false or incorrect evidence in their complaints during the procurement process, shall be immediately excluded from the public procurement process or contract being immediately cancelled and listed in the blacklist.

Also, the Anti-Corruption Law, 2010, Article 46 stipulates that the legal Entity that commits corruption as stated in article 37 (corruption proceeds offence) of this law shall be subject to a fine of ten million Riel (10,000,000) to one hundred million Riel (100,000,000) and face accessory penalties including expulsion from public procurement.

As acts such as bribery are criminalized in the Criminal Code, 2010 and the Anti-Corruption Law, 2010, legal entities including private companies involved are punishable, under the latter law. Part of this punishment includes expulsion from public procurement. The laws, however, do not provide details on how long the blacklist would take effect.

References:

The Law on Public Procurement, 2012, especially article 66 thereof, provides that bidders and suppliers who are found involved in corruption, falsification, collusion, and coercion during the procurement process or provides false or incorrect evidence in their complaints during the procurement process, shall be immediately excluded from the public procurement process or contract being immediately cancelled and listed in the blacklist.

Also, the Anti-Corruption law, 2010, especially article 46 thereof stipulates that the legal Entity that commits corruption as stated in article 37 (corruption proceeds offence) of this law shall be subject to a fine of ten million Riel (10,000,000) to one hundred million Riel (100,000,000) and face accessory penalties including expulsion from public procurement.

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:

There is a lack of strong legal framework to bar companies violating procurement regulations, such as bribery, from future procurement and eventually being awarded of projects. There is no mention of punishment in the Law on Public Procurement for crime like corruption and

However, as law enforcement is weak, and there is low awareness among people and civil servants of conflict of interest within the political patron-client setting, such law can be considered alien in practice. The situation is even exacerbated by the fact that the authority in charge of procurement is suffered from poor record keeping; and thus faced difficulties tracking companies violation of procurement regulations.

References:

World Bank, Cambodia: Country Procurement Assessment Report, 2004

World Bank, Cambodia: More Efficient Government Spending for Strong and Inclusive Growth—Integrated Fiduciary Assessment and Public Expenditure Review (IFAPER), Washington D.C.: WB, 2011

Law on Public Procurements, 2012

Anonymous budget expert, Interview by author, 25 August 2012, Restaurant [Phnom Penh]

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

Pak, Kimchouen, et al. Accountability and Neo-patrimonialism in Cambodia: A Critical Literature Review, Working Paper 34, Phnom Penh: Cambodia Development Resource Institute, 2007

Caroline Hughes, Countries at the Crossroad: Cambodia 2012, Freedom House Report, available at www.freedomhouse.org (accessed on September 24, 2012)

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.

52. Can citizens access the public procurement process?

42

52a. In law, citizens can access public procurement regulations.

Yes | No

Comments:

Even though the relevant legal framework related to public procurement do not clearly mention citizens' ability to have access to regulations concerned, it is the rights of the citizens as enshrined in the Constitution that they can access to regulations and laws of their interest including regulations related to public procurements. Though it is not to deny that in practice there are lots of challenges for citizens to have access to regulations.

References:

The Law on Public Procurement, 2012

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

Comments:

The Sub-Decree on Public Procurement, Article 36 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.

References:

The Sub-Decree on Public Procurement, Article 36.

Procurement Manual on Externally-Financed Projects/Programs.

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:

Access to records held by the government or any state body is hardly an easy task. Nor is accessibility to rules and regulations on public procurement an easy job. On the website of the Ministry of Economy and Finance, especially the section on rule and laws related to public procurement (<http://www.mef.gov.kh/laws-and-regulation/procurement.html>), there is no link to the recently passed law on public procurement (2012). There are three regulations related to public procurements—one on the update information on requirement of publishing procurement project on the website of MEF, and the other two on decision to use the book on rules and regulations on public procurement and on procurement of foreign grants.

Nor is the law on public procurement available at the websites of the Senate (<http://senate.gov.kh/law/bymandate.php#>) and that of the National Assembly (http://www.national-assembly.org.kh/index.php?option=com_hwvideo&Itemid=25).

Access to information held by the government remains the challenges for the public and civil society organizations. And initiative to debate and get the draft law on access to information has been shelved at the Ministry of National Assembly and Senate Relations and Inspection for half a decade already. There is no hope to get the law passed in any near future.

References:

Ministry of Economy and Finance of Cambodia (MEF)'s website on rule and laws related to public procurement, <http://www.mef.gov.kh/laws-and-regulation/procurement.html> (accessed on September 15, 2012)

Sok Sam Oeun, Research Finding on Public Procurement Systems in Cambodia (Public Works and Transportation, and Public Health Sector), Phnom Penh: CISA, 2011

Anonymous budget expert, Interview on 25 August 2012, Restaurant [Phnom Penh]

International Budget Partnership (IBP) and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

Cambodian Center for Human Rights (CCHR), Freedom of Information in Cambodia: A right to know or a culture of secrecy, 2012, available at http://www.sithi.org/admin/upload/media/%5B2012-05-04%5D%20right%20to%20know%20or%20a%20culture%20of%20secrecy/2012_05_04_CCHR_A%20right%20to%20know%20or%20a%20culture%20of%20secrecy (on September 8, 2012)

Senate, <http://senate.gov.kh/law/bymandate.php#>

National Assembly, http://www.national-assembly.org.kh/index.php?option=com_hwvideo&Itemid=25

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.

Comments:

Given the absence of law on access to information and patronage mentality held by the government and government officials, the government is the sole authority of information and legal documents and citizens are not in the position to acquire it or use it. Access to legal documents such as the ones related to public procurement remains a big challenge. A review of the websites of the Ministry of Economy and Finance of Cambodia (MEF), National Assembly, and Senates, the recently passed law on public procurement is not available.

References:

Ministry of Economy and Finance of Cambodia (MEF)'s website on rule and laws related to public procurement, <http://www.mef.gov.kh/laws-and-regulation/procurement.html> (accessed on September 15, 2012)

Sok Sam Oeun, Research Finding on Public Procurement Systems in Cambodia (Public Works and Transportation, and Public Health Sector), Phnom Penh: CISA, 2011

Anonymous budget expert, Interview by author, 25 August 2012, Restaurant [Phnom Penh]

International Budget Partnership and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

Cambodian Center for Human Rights (CCHR), Freedom of Information in Cambodia: A right to know or a culture of secrecy, 2012, available at http://www.sithi.org/admin/upload/media/%5B2012-05-04%5D%20right%20to%20know%20or%20a%20culture%20of%20secrecy/2012_05_04_CCHR_A%20right%20to%20know%20or%20a%20culture%20of%20secrecy.c on September 8, 2012)

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 NGOs. 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 NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

Comments:

According to the directive by the Ministry of Economy and Finance of Cambodia (MEF) dated 18 January 2011, any public procurement is to be advertised, in addition to the practice to publicise them in the local newspapers and radios, on the MEF's website on procurement (<http://www.mef.gov.kh/old/procurement/bid-advertisement.php>), mainly in Khmer language. It is seen as an improvement.

However, there is doubts on legal loopholes on allowing too much weights on sole sourcing and some infrastructure projects usually commissioned to public entities, especially the Civil Engineering Group under the control of the military known to be under the ruling party. According to an anonymous expert on public procurement, there has never been announcement of bidding on such infrastructure projects and it is observed that product is most often below standards.

Moreover, the practice of patronage system where the political elites and their crony can make decisions on such development projects assures valid doubts on the transparency and accountability of the public procurement system. To quote a World Bank report (2011: 14), "stringent rule-based procurement activities should be enhanced as over 60 percent of contracts above the competitive bidding threshold escaping competitive bidding through regulatory loopholes." In the health sector, it finds that a review of a sample of the Central Medical Store invoices suggests that the Ministry of Health paid on average six times the international reference prices for essential drugs. More efficient purchases of pharmaceuticals and medical supplies could generate savings equal to a third of the 2010 health budget or nearly 0.4 percent of GDP. Improving procurement will help.

References:

Ministry of Economy and Finance of Cambodia (MEF) website on rule and laws related to public procurement, <http://www.mef.gov.kh/laws-and-regulation/procurement.html> (accessed on September 15, 2012)

Sok Sam Oeun, Research Finding on Public Procurement Systems in Cambodia (Public Works and Transportation, and Public Health Sector), Phnom Penh: CISA, 2011

Anonymous budget expert, Interview by author, 25 August 2012, Restaurant [Phnom Penh]

International Budget Partnership and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

Cambodian Center for Human Rights (CCHR), Freedom of Information in Cambodia: A right to know or a culture of secrecy, 2012, available at http://www.sithi.org/admin/upload/media/%5B2012-05-04%5D%20right%20to%20know%20or%20a%20culture%20of%20secrecy/2012_05_04_CCHR_A%20right%20to%20know%20or%20a%20culture%20of%20secrecy.c

World Bank, Cambodia: More Efficient Government Spending for Strong and Inclusive Growth—Integrated Fiduciary Assessment and Public Expenditure Review (IFAPER), Washington D.C.: WB, 2011

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 advertisements 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:

On the website of the Ministry of Economy and Finance of Cambodia (MEF)'s procurements (<http://www.mef.gov.kh/old/procurement/bid-advertisement.php?p=1&cid=2>), there is no announcement of the result. Across the government, the practice is not open and transparent to an extent that there is valid doubt about integrity of the procurement process.

A study on public procurements involving small projects under the authority of the Ministry of Transports and Public Works and Ministry of Health, confirms this. It shows that there is very low awareness among people about public procurement and what their role is in such an unknown process. The study involved 396 ordinary people across a Sangkat in Phnom Penh and other four provinces spread across the country. The findings show that 65 percent of the people have never heard of the term "procurement" while another 17 percent does not understand it.

References:

Ministry of Economy and Finance of Cambodia (MEF)'s website on projects under procurement, <http://www.mef.gov.kh/old/procurement/bid-advertisement.php?p=1&cid=2> (accessed on September 15, 2012)

Sok Sam Oeun, Research Finding on Public Procurement Systems in Cambodia (Public Works and Transportation, and Public Health Sector), Phnom Penh: CISA, 2011

Anonymous budget expert, Interview on 25 August 2012, Restaurant [Phnom Penh]

International Budget Partnership and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

Cambodian Center for Human Rights (CCHR), Freedom of Information in Cambodia: A right to know or a culture of secrecy, 2012, available at http://www.sithi.org/admin/upload/media/%5B2012-05-04%5D%20right%20to%20know%20or%20a%20culture%20of%20secrecy/2012_05_04_CCHR_A%20right%20to%20know%20or%20a%20culture%20of%20secrecy on September 8, 2012)

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.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes | **No**

Comments:

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.

References:

Privatization, 1995 sub-decree, Article 11.

Law on Investment of Cambodia.

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**

Comments:

By law, there are no such regulations. The 1995 sub-decree seems even to encourage conflict of interest to happen in the privatization process. Article 18 of the sub-decree provides, "Special privilege may be given to employees and personnel who purchase their own enterprise or some part of their own enterprise's tangible properties. This special privilege, which includes the rights to acquisition of the enterprise or its tangible properties, tolerable price, and the term of payment, shall be approved by the Council of Ministers following a proposal of the committee of privatization of public enterprise."

References:

1995 sub-decree, Article 18.

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:

Privatization lacks of transparency and governance. It is not advertised for competitive bidding as required by the law, and the price is seen as below the market price.

References:

Margaret Slocomb, "The Privatization of Cambodia's Rubber Industry," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 94-109. Copenhagen: NIAS Press, 2011.

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?

0

54a. In law, citizens can access privatization regulations.

Yes | No

Comments:

The 1995 Sub-Decree on Procure for the Privatization of Public Enterprises, Article 14 provides that "All operations relating to the privatization ranging from the evaluation of the enterprise to the conclusion of a selling contract shall be done following top-confidential criteria. The person involved in the process shall maintain this confidentiality, or will be punished according to the law in force."

References:

The 1995 sub-decree on Procure for the Privatization of Public Enterprises, Article 14.

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:

Privatization of public enterprises in Cambodia is almost a 'secret process.' Margaret's 2011 study of privatization of rubber plantations shows that the process is mainly done in secrecy. The deal is brokered without the knowledge of even the workers working in the plantation. In her words, "More importantly, the process has been conducted if not in secrecy then certainly without sufficient regard for public scrutiny that might satisfy criteria for transparency ...[and]...civil society, particularly the local media, paid almost no attention to the ambiguous proprietary status of the rubber plantations or the uncertain future of thousands of rubber workers, their families and other plantation employees." While Chup rubber plantation is considered to be the biggest and most important and well-known among the seven plantations privatized during the course of 2000s, she said, 'What is publicly known about the privatization of the Chup rubber company is so slight as to be almost meaningless.'

Recent privatization of state-owned land is not known to the public and what can be reported in the media is only possible with personal connection with the persons in charge of the process or regular monitoring of the royal gazette in which decisions by the head of the government and head of state are made with their signatures.

References:

Margaret Slocomb, "The Privatization of Cambodia's Rubber Industry," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 94-109. Copenhagen: NIAS Press, 2011.

Van Roeun, Gov't Continues to Privatize State Properties, the Cambodia Daily, June 21, 2012, p. 19. available at <http://trustbuilding.files.wordpress.com/2012/06/privatization-tcd-21-06-12.jpg> (accessed on September 12, 12) and <http://trustbuilding.wordpress.com/2012/06/21/cambodian-ways-of-privatization-the-state-property/>

Van Roeun, Journalist, Interview by phone, September 16, 2012

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**

Comments:

The 1995 Sub-Decree on the Procedure for Privatization of Public Enterprises, Article 14 provides, "All operations relating to the privatization ranging from the evaluation of the enterprise to the conclusion of a selling contract shall be done following top-confidential criteria. The person involved in the process shall maintain this confidentiality, or will be punished according to the law in force."

References:

The 1995 Sub-decree on the Procedure for Privatization of Public Enterprises, Article 14.

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:

Access to regulations and information held by the government remains a challenge for the Cambodian citizens. The practice of patronage system, the close link between the government leadership and business community, and low aware of the people to hold the government accountable through access to information, and combination of all create an environment where the government does not adopt a rule of sharing information. Regulations related to the privatization are only accessible through personal connection and bribery or if it involves sign-off by the Prime Minister and the King, it is available in the Royal Gazette.

References:

Margaret Slocomb, "The Privatization of Cambodia's Rubber Industry," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 94-109. Copenhagen: NIAS Press, 2011.

Van Roeun, Gov't Continues to Privatize State Properties, The Cambodia Daily, June 21, 2012, p. 19. available at <http://trustbuilding.files.wordpress.com/2012/06/privatization-tcd-21-06-12.jpg> (accessed on September 12, 12) and <http://trustbuilding.wordpress.com/2012/06/21/cambodian-ways-of-privatization-the-state-property/>

Cambodian Center for Human Rights (CCHR), Freedom of Information in Cambodia: A right to know or a culture of secrecy, 2012, available at http://www.sithi.org/admin/upload/media/5B2012-05-04%5DA%20right%20to%20know%20or%20a%20culture%20of%20secrecy/2012_05_04_CCHR_A%20right%20to%20know%20or%20a%20culture%20of%20secrecy.pdf on September 8, 2012)

Van Roeun, Journalist, Interview by author, on the phone, September 16, 2012

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:

Access to regulations and information held by the government remains a challenge for the Cambodian citizens. The practice of patronage system, the close link between the government leadership and business community, and low aware of the people to hold the government accountable through access to information, and combination of all create an environment where the government does not adopt a rule of sharing information. Regulations related to the privatization are only accessible through personal connection and bribery or if it involves sign-off by the Prime Minister and the King, it is available in the Royal Gazette.

References:

Margaret Slocomb, "The Privatization of Cambodia's Rubber Industry," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 94-109. Copenhagen: NIAS Press, 2011.

Van Roeun, Gov't Continues to Privatize State Properties, the Cambodia Daily, June 21, 2012, p. 19. available at http://trustbuilding_files.wordpress.com/2012/06/privatization-tcd-21-06-12.jpg (accessed on September 12, 12) and <http://trustbuilding.wordpress.com/2012/06/21/cambodian-ways-of-privatization-the-state-property/>

Cambodian Center for Human Rights (CCHR), Freedom of Information in Cambodia: A right to know or a culture of secrecy, 2012, available at http://www.sithi.org/admin/upload/media/%5B2012-05-04%5D%20right%20to%20know%20or%20a%20culture%20of%20secrecy/2012_05_04_CCHR_A%20right%20to%20know%20or%20a%20culture%20of%20secrecy.pdf (on September 8, 2012)

Van Roeun, Journalist, Interview by author, on the phone, September 16, 2012

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 NGOs. 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 NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

0

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes | No

Comments:

By law, there is no such national level ombudsman.

There is ombudsman at the district/city level. The first two were established in the provincial towns of Battambang and Siem Reap where the One Window Services Offices (OWSO) were initiated in order provide better, more accountable and transparent and corruption-free services to the local people. The ombudsman is supposed to be established in the other provincial towns along with the OWSO during the second phase of the OWSO reform, 2008-2013.

References:

Council for Legal and Judicial Reform (CLJR), Pre-Assessment on Ombudsman and other Complaint Systems in Cambodia, Phnom Penh:

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.

56. Is the national ombudsman effective?

0

56a. In law, the ombudsman is protected from political interference.

Yes | No

Comments:

By law, there is no such national ombudsman.

Even though there is a lack of legal framework to establish a national ombudsman, the recent decentralization and de-concentration reform framework has brought about ombudsman at the city/district level where one window services offices (OWSO) are open in the aim to strengthen the effectiveness and efficiency of service delivery.

The first two ombudsman offices were established in Battambang and Siem Reap provincial towns in 2005 in order to facilitate citizens complaints about irregularities of the services provided by the One Window Services Offices. There is no equivalent terminology in Khmer; the ombudsman is rather known as Citizens Office. The Office is meant to be independent as some members of the council are appointed by the people and there are a few representatives of the NGOs as well. However, several shortfalls of the district/province ombudsman include low awareness among the people, its location within the district administration and no clear signposting about the existence of the office. During its first three year existence, exactly two cases were registered and solved by the ombudsman in Battambang and Siem Reap.

References:

Council for Legal and Judicial Reform (CLJR), Pre-Assessment on Ombudsman and other Complaint Systems in Cambodia, Phnom Penh: Council for Legal and Judicial Reform, 2009

Mol, Project Proposal for One Window Services Office, 2008 available at <http://www.dfggmoi.gov.kh/documents/OWSO-Project-Proposal.pdf>(accessed on September 30, 2012)

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:

There is no national ombudsman in Cambodia. For the district/city ombudsman, there is no report of the capture by political forces. The ombudsman is suffered from its lack of awareness among the people, lack of own location independent of the district/city administration, and its novelty in the Cambodian context. However, it should be noted that the head of the district/city ombudsman is the deputy district/city governor, who is appointed by the Prime Minister.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, 11 August 2012, Restaurant (Phnom Penh)

Mol, Project Proposal for One Window Services Office, 2008 available at <http://www.dfggmoi.gov.kh/documents/OWSO-Project-Proposal.pdf>(accessed on September 30, 2012)

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

Comments:

There is no national ombudsman in Cambodia. At the district ombudsman, as the head is appointed by the government and he is known for his political loyalty to the ruling party, there is little chance that he can be independent. And any eventual removal may need political consideration indeed.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, 11 August 2012, Restaurant (Phnom Penh)

CLJR, Pre-Assessment on Ombudsman and other Complaint Systems in Cambodia, Phnom Penh: Council for Legal and Judicial Reform, 2009

Mol, Project Proposal for One Window Services Office, 2008 available at <http://www.dfggmoi.gov.kh/documents/OWSO-Project-Proposal.pdf>(accessed on September 30, 2012)

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

Comments:

There is no national ombudsman in Cambodia. At the district/city level where there is district/city ombudsman, it is led by an ombudsman elected by an ad hoc district election council. He is expected to be present at the OWSO for at least 12 hours each week and assisted by a secretary who is a full time district/city administration staff with the approval of the district/city governor and appointment by the Ministry of Interior.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Council for Legal and Judicial Reform (CLJR), Pre-Assessment on Ombudsman and other Complaint Systems in Cambodia, Phnom Penh: Council for Legal and Judicial Reform, 2009

Mol, Project Proposal for One Window Services Office, 2008 available at <http://www.dfggmoi.gov.kh/documents/OWSO-Project-Proposal.pdf>(accessed on September 30, 2012)

Prakas 927 on the Establishment and Functioning of the District Ombudsman, 12 March 2009

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

Comments:

There is no national ombudsman in Cambodia. The appointment of the ombudsman at the district/city level is to ensure the independence of the body. It is too early however to evaluate the practice.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, 11 August 2012, Restaurant (Phnom Penh)

Council for Legal and Judicial Reform (CLJR), Pre-Assessment on Ombudsman and other Complaint Systems in Cambodia, Phnom Penh: Council for Legal and Judicial Reform, 2009

Mol, Project Proposal for One Window Services Office, 2008 available at <http://www.dfggmoi.gov.kh/documents/OWSO-Project-Proposal.pdf>(accessed on September 30, 2012)

Prakas 927 on the Establishment and Functioning of the District Ombudsman, 12 March 2009

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

Comments:

There is no national ombudsman in Cambodia. At the district/city level, there is no funding allocated to the ombudsman. It is only for the salary of the ombudsman who works under the service contract with the government.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, 11 August 2012, Restaurant (Phnom Penh)

Council for Legal and Judicial Reform (CLJR), Pre-Assessment on Ombudsman and other Complaint Systems in Cambodia, Phnom Penh: Council for Legal and Judicial Reform, 2009

Mol, Project Proposal for One Window Services Office, 2008 available at <http://www.dfggmoi.gov.kh/documents/OWSO-Project-Proposal.pdf>(accessed on September 30, 2012)

Prakas 927 on the Establishment and Functioning of the District Ombudsman, 12 March 2009

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

Comments:

There is no national ombudsman in Cambodia.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, 11 August 2012, Restaurant (Phnom Penh)

Council for Legal and Judicial Reform (CLJR), Pre-Assessment on Ombudsman and other Complaint Systems in Cambodia, Phnom Penh: Council for Legal and Judicial Reform, 2009

Mol, Project Proposal for One Window Services Office, 2008 available at <http://www.dfggmoi.gov.kh/documents/OWSO-Project-Proposal.pdf>(accessed on September 30, 2012)

Prakas 927 on the Establishment and Functioning of the District Ombudsman, 12 March 2009

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

Comments:

There is no national ombudsman in Cambodia. For the district/city ombudsman during the first threes of their existence in Battambang and Siem Reap, they have registered and solved exactly two cases.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, 11 August 2012, Restaurant (Phnom Penh)

Council for Legal and Judicial Reform (CLJR), Pre-Assessment on Ombudsman and other Complaint Systems in Cambodia, Phnom Penh: Council for Legal and Judicial Reform, 2009

Mol, Project Proposal for One Window Services Office, 2008 available at <http://www.dfggmoi.gov.kh/documents/OWSO-Project-Proposal.pdf>(accessed on September 30, 2012)

Prakas 927 on the Establishment and Functioning of the District Ombudsman, 12 March 2009

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

Comments:

There is no national ombudsman in Cambodia.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, 11 August 2012, Restaurant (Phnom Penh)

Council for Legal and Judicial Reform (CLJR), Pre-Assessment on Ombudsman and other Complaint Systems in Cambodia, Phnom Penh: Council for Legal and Judicial Reform, 2009

Mol, Project Proposal for One Window Services Office, 2008 available at <http://www.dfggmoi.gov.kh/documents/OWSO-Project-Proposal.pdf>(accessed on September 30, 2012)

Prakas 927 on the Establishment and Functioning of the District Ombudsman, 12 March 2009

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).

Comments:

There is no national ombudsman in Cambodia.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, 11 August 2012, Restaurant (Phnom Penh)

Council for Legal and Judicial Reform (CLJR), Pre-Assessment on Ombudsman and other Complaint Systems in Cambodia, Phnom Penh: Council for Legal and Judicial Reform, 2009

Mol, Project Proposal for One Window Services Office, 2008 available at <http://www.dfggmoi.gov.kh/documents/OWSO-Project-Proposal.pdf>(accessed on September 30, 2012)

Prakas 927 on the Establishment and Functioning of the District Ombudsman, 12 March 2009

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.

Comments:

There is no national ombudsman in Cambodia.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, 11 August 2012, Restaurant (Phnom Penh)

Council for Legal and Judicial Reform (CLJR), Pre-Assessment on Ombudsman and other Complaint Systems in Cambodia, Phnom Penh: Council for Legal and Judicial Reform, 2009

Mol, Project Proposal for One Window Services Office, 2008 available at <http://www.dfggmoi.gov.kh/documents/OWSO-Project-Proposal.pdf>(accessed on September 30, 2012)

Prakas 927 on the Establishment and Functioning of the District Ombudsman, 12 March 2009

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.

57a. In law, citizens can access reports of the ombudsman(s).

Yes | No

Comments:

In law, there is no such ombudsman.

References:

The Constitution of the Kingdom of Cambodia, 1993

Interview with Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, 11 August 2012, Restaurant (Phnom Penh).

Council for Legal and Judicial Reform (CLJR), Pre-Assessment on Ombudsman and other Complaint Systems in Cambodia, Phnom Penh: Council for Legal and Judicial Reform, 2009

Mol, Project Proposal for One Window Services Office, 2008 available at <http://www.dfggmoi.gov.kh/documents/OWSO-Project-Proposal.pdf>(accessed on September 30, 2012)

Prakas 927 on the Establishment and Functioning of the District Ombudsman, 12 March 2009

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

Comments:

There is no national ombudsman in Cambodia.

References:

Interview with Pa Nguon Teang, Director of the Cambodian Center for Independent Media (CCIM), 10 August 2012, CCIM office.

Interview with Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, 11 August 2012, Restaurant (Phnom Penh)

Council for Legal and Judicial Reform (CLJR), Pre-Assessment on Ombudsman and other Complaint Systems in Cambodia, Phnom Penh: Council for Legal and Judicial Reform, 2009

Mol, Project Proposal for One Window Services Office, 2008 available at <http://www.dfggmoi.gov.kh/documents/OWSO-Project-Proposal.pdf>(accessed on September 30, 2012)

Prakas 927 on the Establishment and Functioning of the District Ombudsman, 12 March 2009

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.

Comments:

There is no national ombudsman in Cambodia.

References:

Interview with Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, 11 August 2012, Restaurant (Phnom Penh)

Interview with Puy Kea, Correspondent of Kyodo News, and Board Member of the Club of Cambodian Journalists, 10 August 2012, his office in Phnom Penh.

Council for Legal and Judicial Reform (CLJR), Pre-Assessment on Ombudsman and other Complaint Systems in Cambodia, Phnom Penh: Council for Legal and Judicial Reform, 2009

Mol, Project Proposal for One Window Services Office, 2008 available at <http://www.dfggmoi.gov.kh/documents/OWSO-Project-Proposal.pdf> (accessed on September 30, 2012)

Prakas 927 on the Establishment and Functioning of the District Ombudsman, 12 March 2009

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 NGOs. 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 NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | No

Comments:

The Law on Audits, 2000, 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.

References:

The Law on Audits, 2000, Articles 1 and 2.

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.

59. Is the supreme audit institution effective?

50

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

Comments:

The Law on Audits, 2000, Article 14 states that the NAA is an independent public entity and reports directly to the National Assembly and Senate. Its report to the government is for reference purpose. Article 17 provides that NAA has a separate budget under the national budget and the management of income and expenditure of NAA is subject to the law on financial system.

References:

The Law on Audits, 2000, Article 14 and Article 17.

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:

The head of the Supreme Audit Institution (SAI), the National Audit Authority (NAA), is appointed by the National Assembly upon proposal from the Prime Minister and can be re-elected for the second term. Since 2001, NAA has two Auditors General. Auditor General, Uth Chhorn, has served for two terms from 2001 to 2011. The third term is now headed by another Auditor General Som Kim Sour. There has not yet been any intention to remove her from the position for any reason.

References:

National Audit Authority (NAA), 10 Year Achievements, 2001-2011, Phnom Penh: NAA, 2011, available at http://www.naa.gov.kh/images/naa/publication/10_years_achievement_report_2001_2011_kh.pdf (accessed on September 14, 2012)

Anonymous budget expert, Interview by on 25 August 2012, Restaurant [Phnom Penh]

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:

Even though National Audit Authority (NAA) is weak due partly to its lack of financial and human resources to meaningfully fulfill its mandate, it does have full-time staff to implement their functions and the number is increasing over time. According to its 2011 report of its 10 year achievements, the number of staff increased from six in 2011 to 221 in 2008, before it decreased to 201 in 2011. Of the staff in 2011, 3 auditor general and deputy auditors general, four secretary general and deputy secretary generals, five department heads, twenty four deputy department heads, 26 office heads, 68 deputy heads of offices, and 71 general staffs.

However, it is acknowledged that staff is constrained by limited skills and incentives in order to produce quality audit reports. Low salary, a chronic challenge as in the rest of public sector in the country, has proven destructive to the institution as those staffs who have gained more experiences and skills would prefer to move to the private sector where incentives and salary are much higher. As for the capacity, there is constant need of support as the institution enters into the regional and international professional groupings. Currently, German agency Gesellschaft für Internationale Zusammenarbeit (GIZ) is supporting the training on report writing, for example.

References:

Anonymous budget expert, Interview by author, 25 August 2012, Restaurant [Phnom Penh]

International Budget Partnership and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

National Audit Authority (NAA), 10 Year Achievements, 2001-2011, Phnom Penh: NAA, 2011, available at http://www.naa.gov.kh/images/naa/publication/10_years_achievement_report_2001_2011_kh.pdf (accessed on September 14, 2012)

Ouk Saravudh, Secretary General of National Audit Authority (NAA), interview by author, September 21, 2012, NAA office

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:

Audit agency appointments that support the independence of the agency remains a challenge for the whole public sector with very few exceptions where appointments of officials to the position is mainly based on political consideration, patronage, favoritism and corruption rather than professionalism and skills. While it is recognized that the salary is low in the public sector as compared to the private one, the National Audit Authority (NAA) faces a real challenge to attract professional staff. According to the NAA's report of its 10 year achievement, the staff that are qualified enough to earn more in the private sector would leave to a higher return over there. Also, political consideration has been given too much weight in the appointment and advancement of staff in their career.

References:

Anonymous budget expert, Interview by author, 25 August 2012, Restaurant [Phnom Penh]

International Budget Partnership and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

Eng Netra and Ros Bandeth, Cambodian Civil Service: Transforming from an "Administrator" into a "Service Provider," paper presented at the ASEAN-Rok Forum 2010, May 24-26, 2010, Yonsei University, Korea

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

Eng Netra and David Craig, Accountability and Human Resource Management in Decentralised Cambodia, Working Paper No. 40, 2009, Phnom Penh: CDRI

David Craig and Pak Kimchouen, "Party Financing of Local Investment Projects: Elite and Mass Patronage," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 219-244. Copenhagen: NIAS Press, 2011.

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.

Comments:

The National Audit Authority (NAA) is weak due partly to its financial and human resource constraints. However, it has its regular budget approved by the National Assembly in the National Budget Law. In the 2012 Budget Law, the NAA is allocated 6,948 millions riel (1 US dollar=4000 riel) compared to the budget of 6,458.4 million riel for the 2011 expenses. Political consideration has been very often factored in decisions such as the one related to budget allocation for state departments.

References:

Anonymous budget expert, Interview by author, 25 August 2012, Restaurant [Phnom Penh]

International Budget Partnership and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

National Audit Authority (NAA), 10 Year Achievements, 2001-2011, Phnom Penh: NAA, 2011, available at http://www.naa.gov.kh/images/naa/publication/10_years_achievement_report_2001_2011_kh.pdf (accessed on September 14, 2012)

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

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.

Comments:

The International Budget Partnership's latest Budget Transparency Brief on Cambodia (updated mid-2012) says that the National Audit Authority (NAA), also referred to as SAI, published an audit report on 2006 Public Financial Management (budget implementation) in September 2009 (almost 3 years after the fiscal year), and another one on 2007 Public Financial Management in October 2011 (almost 4 years after the fiscal year). Mr. Ouk Saravudh, Secretary General of NAA told that the two reports were made public only after adequate consultation with the legislature and executive in order to avoid any unnecessary negative effect resulted from the release.

However, this late publication of its audit report attracts suspicion of its meaningful role in guaranteeing integrity of using the public monies in the country and its independence from the executive and political party. In its recent report, NAA does indicate that it has regularly implemented annual audit of the public financial management since its establishment in 2000. It is not accessible and available in its website nor anywhere else.

Mr. Ouk Saravudh confirmed the limited access to the financial audits undertaken by the NAA, but he expressed that NAA only acts in accordance with the legal framework provided in the 2000 Law on Audit especially articles 37, 38, and 39 thereof that provide that the reports would not be made public unless the NAA is of the view that they would not affect national security, defense and territorial integrity and economic interest of the individuals and companies concerned. On the other hand, he admitted that NAA is constrained by its limited capacity to produce a quality report, the skill that is now strengthened under the support of a German Development Institute, GIZ.

References:

Website of the National Audit Authority, <http://www.naa.gov.kh/index.php/en/publication.html> (accessed on September 15, 2012)

Anonymous budget expert, Interview by author, 25 August 2012, Restaurant [Phnom Penh]

International Budget Partnership and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

National Audit Authority (NAA), 10 Year Achievements, 2001-2011, Phnom Penh: NAA, 2011, available at http://www.naa.gov.kh/images/naa/publication/10_years_achievement_report_2001_2011_kh.pdf (accessed on September 14, 2012)

Ouk Saravudh, Secretary General of National Audit Authority (NAA), interview on September 21, 2012, NAA office

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.

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

Comments:

Given the lack of checks and balance among branches of government with power concentrated in the Executive, it is hard to see the implementation of recommendations made by the National Audit Authority (NAA) in its regular audit report. Strong political influence across the public sector linking one institution to another under the dominant power of the ruling party creates a structural challenge in having the government act on independent audit report recommendations. Action is very much dependent on the political tide.

It is recognized however that the National Assembly faces its own capacity challenges and lack of political will to act upon the report. In its report of the achievements during the last ten years, NAA assesses that some of its recommendations in the audit reports have actually been accepted and acted upon by the government institutions, especially b the Ministry of Economy and Finance.

The NAA indeed conducts regular auditing for the other years since 2002 and make them available for the National Assembly and government institutions. However, the NAA only made two audit reports of the budget implementation for 2006 and 2007 available to the public.

References:

International Budget Partnership and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

Anonymous budget expert, Interview by author,25 August 2012, Restaurant [Phnom Penh]

National Audit Authority (NAA), 10 Year Achievements, 2001-2011, Phnom Penh: NAA, 2011, available at http://www.naa.gov.kh/images/naa/publication/10_years_achievement_report_2001_2011_kh.pdf (accessed on September 14, 2012)

COMFREL, 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comfre, 2012) available at http://www.comfre.org/newcomfre/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf(accessed on 10 August 2012)

Kheang Un, Cambodia in 2011: A Thin Veneer of Change, Asian Survey, Vol. 52, Number 1, 202-209, University of California Press, 2012

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.

100 | 75 | 50 | 25 | 0

Comments:

Financial and human resource constraint, as well as the politically dependent nature of the National Audit Authority (NAA), do not allow the institution to be able to initiate its own investigation. Even though the number of staff holding leadership, managerial and professional positions has increased during the last decade of its existence, NAA still faces human resource constraint such as lack of staffs and skills. Staff with good training would prefer working in the private sector where they can earn much more as compared to the low pay by the government. Also, it should be noted that the political influence on the institution would pose constraints on its independence, and in combination with the lack of financial and human resources, even exacerbating the chance of initiating its own investigation.

Mr. Ouk Saravudh, Secretary General of National Audit Authority (NAA), explained that financial constraint is another challenge for NAA to perform any investigation. For example, the audit of the commune/Sangkat fund in some communes across the country in 2003 and 2004 would not have been possible without the financial support from the United Nations Development Program (UNDP).

References:

Anonymous budget expert, Interview on 25 August 2012, Restaurant [Phnom Penh]

International Budget Partnership and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

Kheang Un, Cambodia in 2011: A Thin Veneer of Change, Asian Survey, Vol. 52, Number 1, 202-209, University of California Press, 2012

Ouk Saravudh, Secretary General of National Audit Authority (NAA), interview by author, September 21, 2012, NAA 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.

60. Can citizens access reports of the supreme audit institution?

33

60a. In law, citizens can access reports of the audit agency.

Yes | No

Comments:

The Law on Audits, 2000, Article 29, 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.

Article 38 provides that 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.

References:

The Law on Audits, 2000, Article 29 and Article 38.

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:

The State Audit Institution (SAI)'s one main task is to audit the implementation of the annual budget law approved on the annual basis by the National Assembly. Even though it is produced regularly, the annual audit report of the budget implementation is not made accessible to the public. Whenever it is, it takes more than 3 years to have it. The political will to share information and the legal loopholes that put constraints on the institution to share with the public facilitate lack of availability of reports produced by the SAI.

References:

Anonymous budget expert, Interview by author, 25 August 2012, Restaurant [Phnom Penh]

International Budget Partnership and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

National Audit Authority (NAA), 10 Year Achievements, 2001-2011, Phnom Penh: NAA, 2011, available at http://www.naa.gov.kh/images/naa/publication/10_years_achievement_report_2001_2011_kh.pdf (accessed on September 14, 2012)

Website of the National Audit Authority (NAA), <http://www.naa.gov.kh/index.php/en/publication.html>

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:

There is an absence of accessibility of the report produced by the National Audit Authority (NAA). In the words of the International Budget Partnership, the rule adopted by the NAA is "to produce, but not make it public." During its 10 years existence, the NAA has made available only two annual audit reports of the budget implementation laws, and it took between 3 and 4 years after the report had been produced for the public to access the reports.

References:

Anonymous budget expert, Interview by author, 25 August 2012, Restaurant [Phnom Penh]

International Budget Partnership and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

National Audit Authority (NAA), 10 Year Achievements, 2001-2011, Phnom Penh: NAA, 2011, available at http://www.naa.gov.kh/images/naa/publication/10_years_achievement_report_2001_2011_kh.pdf (accessed on September 14, 2012)

Website of the National Audit Authority (NAA), <http://www.naa.gov.kh/index.php/en/publication.html>

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 NGOs. 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 NGOs trying to access this information.

61

5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

Comments:

The Law on Taxes, 1997, as amended, Article 93, identifies the Tax Department under the Ministry of Economy and Finance and other institutions designated by the Royal Government. The tax provisions have empowered the agencies responsible for the administration of these tax provisions.

References:

The Law on Taxes, 1997, as amended, Article 93.

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.

62. Is the tax collection agency effective?

50

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The tax collection agency, like the rest of the public sector with few exception, suffered from lack of financial and human resource, although there is consensus that the staff capacity has been improved since the early 2000s. As a post-conflict country, Cambodia has benefited from technical assistance provided by international organizations such as the International Monetary Fund (IMF), an approach aimed to strengthen the capacity and skills of the local staffs over the long run.

However, until 2012, the tax collection agency remains constrained by human resource and governance. According to Mr. Um Seiha (2012), the total number of tax officials is 1,290 persons serving in the seven departments and 24 provincial and municipal tax branches of the General Department of Taxation of the Ministry of Economy and Finance. The staffs are suffered from limited capacity and low salary and between 50 and 70 officials retire every year.

References:

Um Seiha, Cambodia: Tax Revenue Reform: Issues, Further Reforms, paper presented at IMF-High Level Tax Conference for Asian and Pacific Countries, 31 January-03 February 2012, Tokyo, available at <http://www.imf.org/external/np/seminars/eng/2012/asiatax/> (accessed on September 10, 2012)

International Monetary Fund (IMF), 2010, Cambodia Article IV Consultations Reports, Washington D.C.: IMF, available at <http://www.imf.org/external/pubs/ft/scr/2011/cr1145.pdf>

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

International Monetary Fund (IMF), 2011, Cambodia Article IV Consultation, Washington DC.: IMF, 2012.

International Monetary Fund (IMF), Rebuilding Fiscal Institutions in Post-Conflict Countries, Washington D.C.: IMF, 2004.

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:

Tax agency receives regular funding under the budget line of the Ministry of Economy and Finance. For 2011, MEF receives a budget of 87,813.2 million riel and this increases to 124,706.5 million riel in 2012. There is no details as to allocation to its departments such as the General Department of Taxation (GDT). It should also be noted that GDT has suffered from limited human resource, lack of skills and technical capacity and financial shortage and poor governance and political consideration reigns in when it comes to decisions such as budget allocation across the government and within the government institution.

References:

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

Um Seiha, Cambodia: Tax Revenue Reform: Issues, Further Reforms, paper presented at IMF-High Level Tax Conference for Asian and Pacific Countries, 31 January-03 February 2012, Tokyo, available at <http://www.imf.org/external/np/seminars/eng/2012/asiatax/> (accessed on September 10, 2012)

International Monetary Fund (IMF), 2010, Cambodia Article IV Consultations Reports, Washington D.C.: IMF, available at <http://www.imf.org/external/pubs/ft/scr/2011/cr1145.pdf>

International Monetary Fund (IMF), 2011, Cambodia Article IV Consultation, Washington DC.: IMF, 2012.

International Monetary Fund (IMF), Rebuilding Fiscal Institutions in Post-Conflict Countries, Washington D.C.: IMF, 2004.

Budget law, 2012 available at <http://www.cambodianbudget.org/userfiles/file/Budget%20Law%202012-Khmer.pdf> (accessed on September 10, 2012)

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.

63. In practice, are tax laws enforced uniformly and without discrimination?

75

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The tax administration is constrained by its financial and human resource in order to improve service to taxpayers so that the latter can gain a better understanding of their tax obligation and thus reduce non-compliance and auditors lack the skills to perform efficient and effective tax audit in order to deter non-compliance. Low salary among the tax official is also considered as a challenge for the officials to perform their mandate effectively.

Cambodia's tax revenue ratio to the GDP is low as compared to other developing countries. During the four year period between 2008 and 2011, the revenue is stable at around 10% of the GDP (2008, 10.7%, 2009, 9.8%, 2010, 10.2% and 2011, 10.1%) even though it is observed to be doubled since the mid-1990s. The revenue-to-GDP ratio is about 5-7 percent below its potential and it is recognized that the shortfall is attributable to weak administration, including risk-based tax audits to ensure taxpayer compliance. IMF's report on the financial performance for 2012 reveals that stable, low tax-to-GDP ratio is mainly resulted from weak tax administration. And to improve and make it self-sustaining, the report continues "Cambodia's revenue mobilization should rely on a three-pronged strategy: improving revenue administration, implementing fair and efficient tax policies, and strengthening governance. Simultaneous reforms in these three areas are critical because good progress in one area would create positive feedback to the others, making revenue mobilization more effective and self sustaining. For example, reforming tax administration focusing on good taxpayer services and collecting tax arrears would make the tax system de facto more efficient and fairer while at the same time improve compliance and reduce the incentives for corruption and evasion. Successful tax reforms in many developing countries have relied on an integrated approach where strengthening revenue administration and reforming tax policy, supported by strong political will and technical capacity, play a critical role in enhancing revenue collection."

Sacombank reported in early 2012 that tax intake increased by 12% year-on-year in 2011. However, the opposition party Member of Parliament, Son Chhay, claims it did not reach its potential due to, in his words, "hasty methods and inaccurate reports." He also added that "powerful officials often pay less in taxes than others, and encouraged them to be more transparent with the taxes they pay." There is no evidence to support the accusation. However, the entrenched political patronage within the system, coupled with weak administration and weak governance, might lend supports to the likelihood of tax evasion, collusion and corruption.

References:

Um Seiha, Cambodia: Tax Revenue Reform: Issues, Further Reforms, paper presented at IMF-High Level Tax Conference for Asian and Pacific Countries, 31 January-03 February 2012, Tokyo, available at <http://www.imf.org/external/np/seminars/eng/2012/asiatax/> (accessed on September 10, 2012)

International Monetary Fund (IMF), 2010, Cambodia Article IV Consultations Reports, Washington D.C.: IMF, available at <http://www.imf.org/external/pubs/ft/scr/2011/cr1145.pdf>

International Monetary Fund (IMF), 2011, Cambodia Article IV Consultation, Washington DC.: IMF, 2012.

International Monetary Fund (IMF), Rebuilding Fiscal Institutions in Post-Conflict Countries, Washington D.C.: IMF, 2004.
Sacombank, Tax intake rises but Opposition Claims Losses, Feb 17, 2012 available
at <http://www.sacombank.com.kh/cambodia/en/news/Pages/tax.aspx> (accessed on Dec 10, 2012)

International Monetary Fund (IMF), 2012, Cambodia Article IV Consultation, Washington DC.: IMF, 2013.

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.

64. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes | **No**

Comments:

The Law on Customs, 2007, Article 1, 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.

References:

The Law on Customs, 2007, Article 1.

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.

65. Is the customs and excise agency effective?

50

65a. In practice, the customs and excise agency has a professional, full-time staff.

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

Comments:

The Customs and Excise Agency has professional and full-time staffs to implement their works. As of 2010, there are 1,208 officials serving in its eight departments, 20 customs branches and 69 customs sub-branches across the country. Just like other public institutions, staffs' capacity remains a huge challenge for the agency to fulfill their tasks effectively and efficiently and thus constant training is necessary to improve their capacity. This challenge is to be addressed along with the issue of recruitment, appointment based on political consideration, nepotism, favoritism and patronage and low salary. No information was found for 2011 or 2012.

References:

Chhoeuy Davy, Custom Reform in Cambodia, 2010 (National Audit Authority), available at http://210.101.116.28/W_ksi1/01307200_pv.pdf(accessed on September 9, 2012)

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

Um Seiha, Cambodia: Tax Revenue Reform: Issues, Further Reforms, paper presented at the International Monetary Fund (IMF)-High Level Tax Conference for Asian and Pacific Countries, 31 January-03 February 2012, Tokyo, available at <http://www.imf.org/external/np/seminars/eng/2012/asiatax/> (accessed on September 10, 2012)

International Monetary Fund (IMF), 2010, Cambodia Article IV Consultations Reports, Washington D.C.: IMF, available at <http://www.imf.org/external/pubs/ft/scr/2011/cr1145.pdf>

International Monetary Fund (IMF), 2011, Cambodia Article IV Consultation, Washington DC.: IMF, 2012.

International Monetary Fund (IMF), Rebuilding Fiscal Institutions in Post-Conflict Countries, Washington D.C.: IMF, 2004.

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:

Regular funding is allocated for each department under the leadership of the Ministry of Economy and Finance even though it is not detailed in the Budget Law annually approved by the National Assembly. For 2011, MEF received a budget of 87,813.2 million riel and this increased to 124,706.5 million riel in 2012.

It should also be noted that in the current political culture where patronage and political party influence in political and economic decisions of the country, decision on allocation of budget for public institutions remains tainted with political decision and not necessarily reflect the real needs and demands of the institution. The General Department of Customs and Excise (GDCE) still suffers from human resource constraints, low capacity, and poor governance.

References:

Chhoeuy Davy, Custom Reform in Cambodia, 2010 (National Audit Authority), available at http://210.101.116.28/W_ksi1/01307200_pv.pdf (accessed on September 9, 2012)

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

Um Seiha, Cambodia: Tax Revenue Reform: Issues, Further Reforms, paper presented at International Monetary Fund (IMF)-High Level Tax Conference for Asian and Pacific Countries, 31 January-03 February 2012, Tokyo, available at <http://www.imf.org/external/np/seminars/eng/2012/asiatax/> (accessed on September 10, 2012)

International Monetary Fund (IMF), 2010, Cambodia Article IV Consultations Reports, Washington D.C.: IMF, available at <http://www.imf.org/external/pubs/ft/scr/2011/cr1145.pdf>

International Monetary Fund (IMF), 2011, Cambodia Article IV Consultation, Washington DC.: IMF, 2012.

International Monetary Fund (IMF), Rebuilding Fiscal Institutions in Post-Conflict Countries, Washington D.C.: IMF, 2004.

Budget law, 2012 available at <http://www.cambodianbudget.org/userfiles/file/Budget%20Law%202012-Khmer.pdf> (accessed on September 10, 2012)

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.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

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

Comments:

While revenue collection has improved over time and capacity of the revenue agencies have been strengthened, it remains a challenge to upgrade their skills up to standards and catch up with economic changes in order to perform more efficient and effective revenue collections.

Low salary among officials has encouraged dishonest and widespread corruption among tax and customs officials and corruption remains top challenge for investment.

In Sacombank's article in February 2012, it reported that according to the data from the Ministry of Economy and Finance, the tax collection rose by 12 percent. However, Son Chhay, a Member of Parliament from the Sam Rainsy Party, claimed "Cambodia loses millions each year on negligent tax and excise revenue collection." "Powerful officials often pay less taxes than others," he added.

References:

Chhoeuy Davy, Custom Reform in Cambodia, 2010 (National Audit Authority), available at http://210.101.116.28/W_ksi1/01307200_pv.pdf(accessed on September 9, 2012)

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

WB, Cambodia, Sustaining Rapid Growth in a Challenging Environment: Country Economic Memorandum, 2009, Washington DC. WB.
Um Seiha, Cambodia: Tax Revenue Reform: Issues, Further Reforms, paper presented at International Monetary Fund (IMF)-High Level Tax Conference for Asian and Pacific Countries, 31 January-03 February 2012, Tokyo, available at <http://www.imf.org/external/np/seminars/eng/2012/asiatax/> (accessed on September 10, 2012)

International Monetary Fund (IMF), 2010, Cambodia Article IV Consultations Reports, Washington D.C.: IMF, available at <http://www.imf.org/external/pubs/ft/scr/2011/cr1145.pdf>

International Monetary Fund (IMF), 2011, Cambodia Article IV Consultation, Washington DC.: IMF, 2012.

International Monetary Fund (IMF), Rebuilding Fiscal Institutions in Post-Conflict Countries, Washington D.C.: IMF, 2004.

Sacombank, Tax intake rises but Opposition Claims Losses, Feb 17, 2012 available at <http://www.sacombank.com.kh/cambodia/en/news/Pages/tax.aspx> (accessed on Dec 10, 2012)

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.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes | No

Comments:

The Law on General Statutes of Public Enterprises, 1996, Article 6 provides that public enterprises shall be put under technical guardianship of Public Ministries or authority dependent on the types of activities of the enterprises. Articles 9 to 15 provide that public enterprise is operated under the guidance of and direction set by a Board of Governors who in turn delegate power and authority to the President or Governor to oversee day-to-day operation of the enterprise. Articles 20 to 22 essentially provide that the responsible ministry or authority shall economically control the enterprise through its representative in the Board of Governors 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 Board; follow-up on the functioning and evolution of the enterprise; and regulation of activities that may affect the financial situation of the enterprise.

References:

The Law on General Statutes of Public Enterprises, 1996, Article 6, Articles 9 to 15, Articles 20 to 22.

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

No: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

15

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | No

Comments:

The Law on General Statutes of Public Enterprises, 1996, Article 16 provides that public enterprises is required to submit minutes of meeting of the Board of Governors, budget for operation and investment, report of activities, balance sheet and accounting management along with necessary appendices, and report on financial audit and other necessary documents to the Council of Ministers, Ministry of Economy and Finance and its parent Ministry or Authority. The latter has a period of one month to reject if necessary and the board of governors will respond to the rejection.

References:

The Law on General Statutes of Public Enterprises, 1996, Article 16.

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:

Public sector in Cambodia suffers human resource capacity and its commitment to professionalism and appreciation of skills. The culture of patronage and politicization of the bureaucracy is the norms in society and thus the civil servants submit themselves for personal enrichment and career advancement. State-owned companies are under the oversight of the line ministry or line authority where political decision and personal interests rule decisions. There is a few exception where skills and merits are appreciated such in the Phnom Penh Water Authority (PPWA), where the governance structure is the best and meritocratic human resource management is applied. PPWA is now in the newly established bourse, the first and only company trades there.

References:

Margaret Slocomb, "The Privatization of Cambodia's Rubber Industry," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 94-109. Copenhagen: NIAS Press, 2011.

Van Roeun, Gov't Continues to Privatize State Properties, the Cambodia Daily, June 21, 2012, p. 19. available at <http://trustbuilding.files.wordpress.com/2012/06/privatization-tcd-21-06-12.jpg> (accessed on September 12, 12) and <http://trustbuilding.wordpress.com/2012/06/21/cambodian-ways-of-privatization-the-state-property/>

Van Roeun, Journalist, Interview by phone, September 16, 2012

Ngov Penghuy, ASEAN Economic Integration and Cambodia's Industrial Policies, Ritsumeikan International Affairs vol.10, pp.67-94 (2011), available at http://www.ritsumei.ac.jp/acd/re/k-rsc/ras/04_publications/ria_en/10_05.pdf (Accessed on September 15, 2012)

Ek Sonn Chan, Bringing Safe Water to Phnom Penh's City, International Journal of Water Resources Development, 25:4, 597-609

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

Hang, Chuon Naron Cambodian Economy, Charting the Course of a Brighter Future: A survey of Progress, Problems and Prospects, Phnom Penh: Preah Vihear, 2009.

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

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:

Regular funding is allocated for each department in the line Ministry or state authority in Cambodia as stipulated in the budget law annually adopted by the National Assembly. However, it should be noted that political consideration is to be factored in for the allocation as the patronage political system has been consolidated and strengthened its grip over state resource.

References:

Margaret Slocomb, "The Privatization of Cambodia's Rubber Industry," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 94-109. Copenhagen: NIAS Press, 2011.

Van Roeun, Gov't Continues to Privatize State Properties, the Cambodia Daily, June 21, 2012, p. 19. available at <http://trustbuilding.files.wordpress.com/2012/06/privatization-tcd-21-06-12.jpg> (accessed on September 12, 12) and <http://trustbuilding.wordpress.com/2012/06/21/cambodian-ways-of-privatization-the-state-property/>

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Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

Hang, Chuon Naron Cambodian Economy, Charting the Course of a Brighter Future: A survey of Progress, Problems and Prospects, Phnom Penh: Preah Vihear, 2009.

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:

Patronage politics in Cambodia has been consolidated and political figures leading line ministries and state authority are in the position to make political decisions that are in the interest of the party and individuals.

References:

Margaret Slocomb, "The Privatization of Cambodia's Rubber Industry," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 94-109. Copenhagen: NIAS Press, 2011.

Van Roeun, Gov't Continues to Privatize State Properties, the Cambodia Daily, June 21, 2012, p. 19. available at <http://trustbuilding.files.wordpress.com/2012/06/privatization-tcd-21-06-12.jpg> (accessed on September 12, 12) and <http://trustbuilding.wordpress.com/2012/06/21/cambodian-ways-of-privatization-the-state-property/>

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Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

Hang, Chuon Naron, Cambodian Economy, Charting the Course of a Brighter Future: A survey of Progress, Problems and Prospects, Phnom Penh: Preah Vihear, 2009.

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:

Political decision dictates the behaviour of those who oversee the operation and management of the state-owned companies and within the patron-client tradition practiced in the country, penalties on the political cronies are rare or absent. It should also be noted that in line with the promotion of private sector involvement in business development and strengthen the productivity and efficiency in the competitive market, more state-owned companies have been privatized and transferred into the hand of private entities. The number of state-owned companies was reduced to 13 in 2008.

References:

Margaret Slocomb, "The Privatization of Cambodia's Rubber Industry," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 94-109. Copenhagen: NIAS Press, 2011.

Van Roeun, Gov't Continues to Privatize State Properties, the Cambodia Daily, June 21, 2012, p. 19. available at <http://trustbuilding.files.wordpress.com/2012/06/privatization-tcd-21-06-12.jpg> (accessed on September 12, 12) and <http://trustbuilding.wordpress.com/2012/06/21/cambodian-ways-of-privatization-the-state-property/>

Van Roeun, Journalist, Interview by author, on the phone, September 16, 2012

Ngov Penghuy, ASEAN Economic Integration and Cambodia's Industrial Policies, Ritsumeikan International Affairs vol.10, pp.67-94 (2011), available at http://www.ritsumei.ac.jp/acd/re/k-rsc/ras/04_publications/ria_en/10_05.pdf (Accessed on September 15, 2012)

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Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

Hang, Chuon Naron, Cambodian Economy, Charting the Course of a Brighter Future: A survey of Progress, Problems and Prospects, Phnom Penh: Preah Vihear, 2009.

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.

69. Can citizens access the financial records of state-owned companies?

Yes | **No**

Comments:

Comments:
By law, there is no such access allowed.

References:

The Law on General Statutes of the Public Enterprises, 1996

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:

The access-to-information regime in Cambodia is very weak. The government prefers to adopt a policy of 'secrecy' rather than sharing information. Nor is there a legal requirement for the state-owned companies to share regular update of its financial conditions. Access to information held by the government entities is merely made as exception rather than the rule. There are some reports such as media reports and academic studies that present some financial figures of state-owned companies, but this does not mean that there is a regular disclosure of information.

References:

Margaret Slocomb, "The Privatization of Cambodia's Rubber Industry," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 94-109. Copenhagen: NIAS Press, 2011.

Van Roeun, Gov't Continues to Privatize State Properties, the Cambodia Daily, June 21, 2012, p. 19. available at <http://trustbuilding.files.wordpress.com/2012/06/privatization-tcd-21-06-12.jpg> (accessed on September 12, 12) and <http://trustbuilding.wordpress.com/2012/06/21/cambodian-ways-of-privatization-the-state-property/>

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Hang, Choun Naron Cambodian Economy, Charting the Course of a Brighter Future: A survey of Progress, Problems and Prospects, Phnom Penh: Preah Vihear, 2009.

¹⁰ Cambodian State-owned telecom firm sees 5% revenue drop in H1, Xinhua news, 17 August 2012, available at http://english.cnn.com/business/2012/08/17/cambodia_revenue.html (accessed on September 17, 2012).

100: State-owned companies always publicly disclose financial data, which is generally accurate and up-to-date.

二

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.

^{69c} In practice, the financial records of state-owned companies are audited according to international accounting standards.

Comments:

According to the report of the National Audit Authority's (NAA) 10 year achievements, since its operation in 2002, there have been 30 audits of public enterprises—on average 3 audits a year. However, NAA's professionalism and independence from politics is still weak and the adoptions of its findings by the government is rare. Therefore, even though some audits were conducted, they were few and there remains questions as to their quality and effectiveness in strengthening the enterprises.

References:

International Budget Partnership and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

National Audit Authority (NAA), 10 Year Achievements, 2001-2011, Phnom Penh: NAA, 2011, available at http://www.naa.gov.kh/images/naa/publication/10_years_achievement_report_2001_2011_kh.pdf (accessed on September 14, 2012)

Anonymous budget expert, Interview on 25 August 2012, Restaurant [Phnom Penh]

Ek Sonn Chan, Bringing Safe Water to Phnom Penh's City, International Journal of Water Resources Development, 25:4, 597-609

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

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.

Comments:

Access to information held by the government is always a nightmare if not impossible. No regulation requires public officials to disclose information such as financial records of the state-owned companies. The lack of awareness among people as to the importance of information and results in low demand for it. Further, the mentality of the public officials who are influenced by the patronage system, and in a system where state is the sole entity to make decision, access to information for any citizen is close to an impossible task.

References:

Margaret Slocomb, "The Privatization of Cambodia's Rubber Industry," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 94-109. Copenhagen: NIAS Press, 2011.

Van Roeun, Gov't Continues to Privatize State Properties, the Cambodia Daily, June 21, 2012, p. 19. available at <http://trustbuilding.files.wordpress.com/2012/06/privatization-tcd-21-06-12.jpg> (accessed on September 12, 12) and <http://trustbuilding.wordpress.com/2012/06/21/cambodian-ways-of-privatization-the-state-property/>

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International Budget Partnership and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

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Cambodian Center for Human Rights (CCHR), Freedom of Information in Cambodia: A right to know or a culture of secrecy, 2012, available at http://www.sithi.org/admin/upload/media/%5B2012-05-04%5D%DA%20right%20to%20know%20or%20a%20culture%20of%20secrecy/2012_05_04_CCHR_A%20right%20to%20know%20or%20a%20culture%20of%20secrecy.pdf on September 8, 2012)

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.

100 | 75 | 50 | 25 | 0

Comments:

Access to information held by the government is always a nightmare if not impossible. There is a lack of regulation requiring public officials to disclose information such as financial records of the state-owned companies. The lack of awareness among people as to the importance of information; and thus there is low demand for it. Public official mentality is influenced by the patronage system where the state is the sole entity to make decision. This renders access to information by any citizen close to an impossible task.

References:

Margaret Slocomb, "The Privatization of Cambodia's Rubber Industry," in Cambodia's Economic Transformation, ed. Caroline Hughes and Kheang Un, 94-109. Copenhagen: NIAS Press, 2011.

Van Roeun, Gov't Continues to Privatize State Properties, the Cambodia Daily, June 21, 2012, p. 19. available at <http://trustbuilding.files.wordpress.com/2012/06/privatization-tcd-21-06-12.jpg> (accessed on September 12, 12) and <http://trustbuilding.wordpress.com/2012/06/21/cambodian-ways-of-privatization-the-state-property/>

Van Roeun, Journalist, Interview by author, on the phone, September 16, 2012

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Anonymous budget expert, Interview by author, 25 August 2012, Restaurant [Phnom Penh]

Cambodian Center for Human Rights (CCHR), Freedom of Information in Cambodia: A right to know or a culture of secrecy, 2012, available at http://www.sithi.org/admin/upload/media/%5B2012-05-04%5D%20right%20to%20know%20or%20a%20culture%20of%20secrecy/2012_05_04_CCHR_A%20right%20to%20know%20or%20a%20culture%20of%20secrecy_S.htm (Accessed on September 8, 2012)

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 NGOs. 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 NGOs trying to access this information.

40

5.5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

70a. In law, anyone may apply for a business license.

Yes | **No**

Comments:

The Law Bearing Upon Commercial Regulations and the Commercial Registers, 1995, 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).

References:

The Law Bearing Upon Commercial Regulations and the Commercial Registers, 1995, Articles 1 to 13.

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:

By law, no such mechanism exists.

References:

The Law Bearing Upon Commercial Regulations and Commercial Registers, 1995 as amended thereafter.

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:

According to the World Bank's 2012 Doing Business, Cambodia stands at 171 in the ranking of 183 economies on the ease of starting a business. There are nine procedures that take 85 days and cost 109.7 percent of income per capita. The paid-in minimum capital is 31.3 percent of the income per capita. As corruption is prevalent in the country's public sector, it would add more opportunity cost of the business to get their company registered.

References:

Economic Institute of Cambodia (EIC), Assessment of Corruption in Cambodia's Private Sector, Phnom Penh: EIC, 2006, available at http://www.pactcambodia.org/Publications/Anti_Corruption/CAPS_Report_English.pdf, accessed on September 6, 2012

World Bank, Doing Business 2012, Cambodia, Washington DC: WB, 2012

Martin Hutchinson, BreakingViews, Tiger or Dog, April 23, 2012, <http://www.breakingviews.com/cambodia-must-solve-two-big-problems-for-takeoff/21013422.article>

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:

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

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

Comments:

According to World Bank's 2012 Doing Business, Cambodia stands at 171 in the ranking of 183 economies on the ease of starting a business. There are nine procedures that take 85 days and costs 109.7 percent of income per capita. The paid-in minimum capital is 31.3 percent of the income per capita. As corruption is prevalent in the country's public sector, it would add more opportunity cost of the business to get their company registered.

References:

Martin Hutchinson, BreakingViews, Tiger or Dog, April 23, 2012, <http://www.breakingviews.com/cambodia-must-solve-two-big-problems-for-takeoff/21013422.article>

Economic Institute of Cambodia, Assessment of Corruption in Cambodia's Private Sector, Phnom Penh: EIC, 2006, available at http://www.pactcambodia.org/Publications/Anti_Corruption/CAPS_Report_English.pdf, accessed on September 6, 2012

WB, Doing Business 2012, Cambodia, Washington DC: WB, 2012

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:

The Law on Cambodian Standards, 2007, Articles 15 to 19, 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.

References:

The Law on Cambodian Standards, 2007, Articles 15 to 19.

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

Comments:

The Law on Cambodian Standards, 2007, Articles 15 to 19, 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.

References:

The Law on Cambodian Standards, 2007, Articles 15 to 19.

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

Comments:

The Law on Cambodian Standards, 2007, 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.

References:

The Law on Cambodian Standards, 2007, Articles 15 to 19.

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.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

0

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Business inspections by government officials for health, safety and environmental protection are done in a very ad hoc and arbitrary manner and mainly for the purpose of extracting payment. On the one hand, there is low awareness on the part of entrepreneurs and company management on inspection procedures. On the other, inspection is not conducted in a transparent manner.

A 2011 report by the Department of Health and Safety of the Ministry of Labour and Vocational Training reveals that the ratio of number of annual inspection to the enterprise increased from 1 to 1 in 2001 to 2 to 1 in 2006. Low pay among civil servants and weak law enforcement encourage inspectors to extract unofficial payments from the businesses, amounting to 2.8% of the private sector's annual turnover or equal to US\$ 330 million in 2005.

References:

International Finance Corporation, Handbook for Food and Beverage Enterprise Inspection in Cambodia, IFC, 2010, available at [http://www.ifc.org/ifcext/mekongpsdf.nsf/AttachmentsByTitle/Food-Manual-Inspection-Report/\\$FILE/Food-Manual-Inspection-Report.pdf](http://www.ifc.org/ifcext/mekongpsdf.nsf/AttachmentsByTitle/Food-Manual-Inspection-Report/$FILE/Food-Manual-Inspection-Report.pdf) (accessed on September 2012)

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International Labor Organization, Department of Occupational and Health Safety, The Overview of Occupational Safety and Health in Cambodia, Phnom Penh: Ministry of Labour and Vocational Training, 2011, available at http://www.ilo.org/wcmsp5/groups/public/-ed_protect/-protrav/-safework/documents/policy/wcms_187746.pdf (accessed on September 24, 2012)

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:

Business inspections by government officials for health, safety and environmental protection are done in a very ad hoc and arbitrary manner and mainly for the purpose of extracting payment. One the one hand, there is low awareness on the part of entrepreneurs and company management on inspection procedures. On the other, inspection is not conducted in a transparent manner. EIC's survey in 2006 reveals that as the country does not have clear inspection policy regarding frequency, time and purpose, "inspections are just pretexts to ask for money by different agencies. Small and medium size businesses businesses face several kinds of inspections for their day-to-day operations.... Inspections are made by tax authorities, police, local authorities, fire and building safety, environment, standard inspection, labour and social security, etc." A report by the Department of Health and Safety of the Ministry of Labour and Vocational Training reveals that the ratio of number of annual inspection to the enterprise increased from 1 to 1 in 2001 to 2 to 1 in 2006. Low pay among civil servants and weak law enforcement encourage inspectors to extract unofficial payments from the businesses, amounting to 2.8% of the private sector's annual turnover or equal to US\$330 million in 2005.

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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:

Business inspections by government officials for health, safety and environmental protection are done in a very ad hoc and arbitrary manner and mainly for the purpose of extracting payment. One the one hand, there is low awareness on the part of entrepreneurs and company management on inspection procedures. On the other, inspection is not conducted in a transparent manner. EIC's survey in 2006 reveals that as the country does not have clear inspection policy regarding frequency, time and purpose, "inspections are just pretexts to ask for money by different agencies. Small and medium size businesses businesses face several kinds of inspections for their day-to-day operations.... Inspections are made by tax authorities, police, local authorities, fire and building safety, environment, standard inspection, labour and social security, etc." A report by the Department of Health and Safety of the Ministry of Labour and Vocational Training reveals that the ratio of number of annual inspection to the enterprise increased from 1 to 1 in 2001 to 2 to 1 in 2006. Low pay among civil servants and weak law enforcement encourage inspectors to extract unofficial payments from the businesses, amounting to 2.8% of the private sector's annual turnover or equal to US\$330 million in 2005.

References:

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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.

Category 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ⁵⁹Anti-Corruption Law

73. Is there legislation criminalizing corruption?

89

73a. In law, attempted corruption is illegal.

Yes | No

Comments:

The Anti-Corruption Law, 2010, Article 44 provides that attempt to commit corrupt acts defined in the following articles are misdemeanors; thus attempted corruption is a crime, too: Article 278 (bribe taking by employees), Article 279 (bribe offered to employees) Article 387 (improper bidding), Article 404 (definition of money laundry), Article 405 (sentence to be served), article 406 (aggravating circumstance), Article 592 (definition of misappropriation), Article 593 (sentence to be served), Article 597 (definition of embezzlement), Article 598 (sentence to be served), Article 599 (definition of favoritism), Article 600 (sentence to be served), Article 638 (bribe offered to person who has competence to issue a fake document), Article 640 (bribe offered to member of medical board to issue a fake document) of the criminal code, Article 35 (power abuse) and Article 40 (Obstruction or Interference in the work of the Anti-Corruption Unit) of this law, shall face the same punishment as a misdemeanor.

References:

The Anti-Corruption Law, 2010, Article 44.

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

Comments:

The Criminal Code, 2010, Article 507, provides that extortion is a crime punishable by 2 to 5 year imprisonment and a fine of between 4 and 10 million rials. It is also a corruption offense as stipulated in Article 32 of the Anti-Corruption Law, 2010.

References:

The Criminal Code, 2010, Article 507.

The Anti-Corruption Law, 2010, Article 32.

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**

Comments:

In the Criminal Code, and the Anti-Corruption Law, 2010, offering a bribe is a crime. In the Criminal Code, offering a bribe includes bribes offered to employees (Article 279), bribes offered to judges (Article 518), bribes offered to witnesses (Article 548), bribes offered to interpreters (Article 554), bribes offered to experts (Article 556), bribes offering (Article 605), bribes offered to a person who has competence to issue false certificates (Article 637), and bribes offered to member of professional board of medicine to issue false certificates (Article 640). All these offenses are corruption offenses as stipulated in Article 32 of the Anti-Corruption Law.

References:

Criminal Code, Article 279, Article 518, Article 548, Article 554, Article 556, Article 605, Article 637, and Article 640.

Article 32 of the Anti-Corruption Law.

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**

Comments:

In the Criminal Code, and the Anti-Corruption Law, 2010, offering a bribe is a crime. In the Criminal Code, offering a bribe includes bribes offered to employees (Article 279), bribes offered to judges (Article 518), bribes offered to witnesses (Article 548), bribes offered to interpreters (Article 554), bribes offered to experts (Article 556), bribes offering (Article 605), bribes offered to a person who has competence to issue false certificates (Article 637), and bribes offered to member of professional board of medicine to issue false certificates (Article 640). All these offenses are corruption offenses as stipulated in Article 32 of the Anti-Corruption Law.

References:

Criminal Code, Article 279, Article 518, Article 548, Article 554, Article 556, Article 605, Article 637, and Article 640.

Article 32 of the Anti-Corruption Law.

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**

Comments:

The Anti-Corruption Law, 2010, Article 34 provides that any person shall be sentenced from five (5) to ten (10) years if he/she unrightfully, directly or indirectly, offers gift or donation or promise or any benefit to foreign public officials or officials of public international organization, in order that the officials:

1. Either perform his/her duty or be facilitated by his or her function; Or
2. Refrain from performing his or her duty or being facilitated by his or her function.

References:

The Anti-Corruption Law, 2010, Article 34.

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**

Comments:

The Criminal Code, 2010, Article 597 provides that embezzlement is referred to an act committed by public officials or people invested in public mandate through election to acquire or keep directly or indirectly benefits in an institutions or operations s/he is in charge of. Article 598 provides that embezzlement is a crime punishable by between 2 and 5 years and a fine of between 4 and 10 million rials. This crime is a corruption offense as stipulated in the Anti-Corruption Law, 2010, Article 32.

References:

The Criminal Code, 2010, Article 597 and Article 598.

Anti-Corruption Law, 2010, Article 32.

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**

Comments:

By law, there is no such provision.

References:

N/A

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, 2007; the law criminalizes money laundering and financing of terrorism in Cambodia.

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**

Comments:

Penal Code, 2010, Article 453 provides that conspiracy, defined as a plan by a group of people to inflict physical harm including death to someone as evident in action(s) is punishable by imprisonment of between 5 to ten years and the punishment is doubled if the perpetrator is a civil servant.

References:

Penal Code, 2010, Article 453.

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes | **No**

Comments:

The Anti-Corruption Law, 2010, Articles 2 provide that the law has an objective to combat corruption through education, prevention, and law enforcement with public participation and support and international cooperation.

Article 3 provides that this law is applicable to all forms of corruption in all sections and at all levels throughout the Kingdom of Cambodia, which occurs after the law comes into effect.

Article 5 provides that the National Council Against Corruption and the Anti-Corruption Unit were established under this law in order to fight corruption.

References:

The Anti-Corruption Law, 2010, Article 2, Article 3 and Article 5.

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.

75. Is the anti-corruption agency effective?

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | No

Comments:

The Anti-Corruption Law, 2010, Article 11 thereof stipulates that the Anti-corruption Unit is established to independently undertake its duties. The Anti-corruption Unit is led by one chairperson with the rank of senior minister, and a number of vice-chairpersons with the rank of minister as his assistants. The chairman and vice-chairman are appointed by the Royal decree at the request of the Prime Minister. The organization and function of the Anti-corruption Unit is defined by sub-decree. Article 16 provides that The Anti-corruption Institution has a separate budget package for its operation approved by the National Assembly.

References:

The Anti-Corruption Law, 2010, Articles 11

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:

Cambodia is too politicized and it would not be a surprise to learn that the state institutions such as the Anti-Corruption Unit (ACU) is not independent from political influence. Even though there have been serious actions against high profile people in the government and judiciary on corruption charges brought about the ACU, there remains doubt as to its independence. In January 2011, Mr. Sereivuth was joined by Mr. Moek Dara, secretary general of the National Authority for Combating Drugs (NACD) for his alleged involvement in corruption and bribery. More cases have brought to court. For example, in 2010 Mr. Top Chansereivuth, then prosecutor at the Pursat provincial court was arrested and then prosecuted for his corruption charge.

However, in 2011, officials at the Ministry of Social Affairs were found embezzling more than 5 million UD dollars as claimed by the Minister of Economy and Finance (MEF) were let go and, as the Minister said, would only be required to undergo "educational measures." The case raises questions about the culture of impunity in the country, the independence of the ACU and the use of the anti-corruption mechanism against those who are in a different political faction.

References:

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Sebastian Strangio Potemkin, Graft Crackdown in Cambodia, Asia Times, Jun 11, 2011 http://www.atimes.com/atimes/Southeast_Asia/MF11Ae01.html (accessed on September 18, 2012)

Neou Cannarin, Corrupt Officials to Be 'Educated,' Says Minister, The Cambodia Daily, Tuesday, 19 July 2011 available at http://saatsam.info/en/index.php?option=com_content&task=view&id=1802&Itemid=42 (accessed on September 18, 2012)

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:

As party is dominant in the political and social life of the country, political consideration remains the main factor behind the reshuffle of state institutions such as the ACU in the country. ACU's lack of independence from political influence poses a great challenge for the stability of its leadership and effectiveness in fighting against grand corruption.

However, because no head has been removed, it remains to be seen how the institution would develop in the long run and move toward an independent ground so that any potential removal of its head would be justified beyond the political reasoning.

References:

Caroline Hughes, Cambodia in 2009: The Party's Not Over Yet, Southeast Asian Affairs, 85-99, 2010

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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.

Comments:

It remains to be seen how the public sector reform will work out and merit-based appointment and recruitment will be integrated into the public sector employment such as staffs at the ACU. Fourteen members of the ACU were sworn on August 3, 2010 as investigators. At the ceremony, Prosecutor General of the Appeals Court, Mr. Uk Savuth mentioned that while the ACU is now empowered to arrest lawbreakers, there is a real need for the institution to build up their legal capacity and knowledge in order to catch up with new legal frameworks adopted by the legislature.

As the sworn in was under way, there are accusations of their lack of political independence and would in the future serve the interest of the ruling party rather than the public interest. The employment at the public sector is known for its lack of transparency, political discrimination and biases, patronage, and bribery. The question about the independence of the ACU guarantees a valid charge of their recruitment and commitment to skills and professionalism of the staffs. As the ruling party has consolidated power in the country, there might be no doubt that the party has a reach to every public institutions and corner of the country. The ACU might be an exception.

References:

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Eng Netra and Ros Bandeth, Cambodian Civil Service: Transforming from an "Administrator" into a "Service Provider," paper presented at the ASEAN-Rok Forum 2010, May 24-26, 2010, Yonsei University, Korea

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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.

Comments:

In 2012, the first time it has its own budget allocation from the national budget after there was an amendment to the Law on Anti-Corruption, the Anti-Corruption Unit (ACU) budget is 22,145.0 million Riel (appr. 5.5 million US dollars). Just like other public institutions, given low budget and salary for public civil service, it is almost impossible to attract people with high skills and professions. A small budget does not allow much room for the anti-corruption body to reach its full capacity to tackle corruption.

The ACU remains in its infancy in fighting corruption and strengthening their own capacity to fulfill its mandate. They have their full-time staffs to implement their mandate. In 2010, fourteen investigators were sworn in as the first contingent of investigators to assist the institution in fighting corruption. Mr. Sar Sambath, permanent member of the ACU, informed the Government Development Partner Coordination Committee in 2010 that the second contingent would be organized by the end of the year. More recruitment was in the pipeline while efforts to seek further assistance as to strengthen their capacity were to be sustained. Under the funding of the United States Agency for International Development (USAID), PACT provided assistance on the capacity building for the ACU staffs on key areas such as dealing with governance resources, investigation, law enforcement and financial controls. It should also be noted that more recruitment was in the pipeline.

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Chun Sakada, Groups Prepare Complaints for New Corruption Investigators, VOA Khmer, September 3, 2010, available
at <http://www.voacambodia.com/> (accessed on July 20, 2012).

Eng Netra and Ros Bandeth, Cambodian Civil Service: Transforming form an "Administrator" into a "Service Provider," paper presented at the ASEAN-Rok Forum 2010, May 24-26, 2010, Yonsei University, Korea

Eng Netra and David Craig, Accountability and Human Resource Management in Decentralised Cambodia, Working Paper No. 40, 2009,
Phnom Penh: CDRI

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:

Before 2012, the Anti-Corruption Unit (ACU) budget was under the budget of the Office of the Council of Ministers. After the amendment to the Law on Anti-corruption in 2011, its budget is allocated in the national budget law. According to the National Budget Law 2012, the ACU budget is 22,145 million Riels (Appr. 5.5 million US dollars).

Given the political culture and current politicised environment of Cambodia, political consideration continues to dictate such decisions as budget for public institutions. Low budget in the anti-corruption institution will continue to paralyse its potential to tackle corruption, both petty and grand corruption. Patron-client network in the politics remains the dominant force in political decision and dictate conducts of budget allocation at the national level. In the meantime, given the reality of Cambodia, the legal framework allows the ACU to seek any funding from outside as long as there are not any conflict of interest.

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at http://www.acu.gov.kh/kh_sub_index.php?4a8a08f09d37b73795649038408b5f33=1&03c7c0ace395d80182db07ae2c30f034=4&9e3669d19b675bd57058fd4664205d2a=19 [Khmer version] (accessed on September 18, 2012)

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The 17th GDCC Meeting, Government Palace (CDC), 18th October, 2010 http://www.cdc-crbdb.gov.kh/cdc/gdcc/seventeenth/acu_present.htm(accessed on September 18, 2012)

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Preap Kol, Executive director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia office

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

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:

The Anti-Corruption Unit (ACU) has made information on their activities available to the public at least through its website www.acu.gov.kh including awareness raising, legal framework, its strategic plan, partnership with NGOs and cases they have engaged in in the fight against corruption.

However, there is no access to its annual report or related to human resource management.

In the context of political culture in Cambodia where secrecy is the norms for the government and information should merely belong to the government, there seems to be no surprise that limited information is available to the public related to the work of ACU. Political consideration also rein in when decision is to be made on information to be released or kept secret. As accountability line is dictated by the patron-client culture, lack of access to information on the citizen part would not necessarily affect the conduct of politics of the state and government.

References:

Anti-Corruption Unit (ACU) website, <http://www.acu.gov.kh>

Cambodian Center for Human Rights (CCHR), Freedom of Information in Cambodia: A right to know or a culture of secrecy, 2012, available at http://www.sithi.org/admin/upload/media/%5B2012-05-04%5D%20right%20to%20know%20or%20a%20culture%20of%20secrecy/2012_05_04_CCHR_A%20right%20to%20know%20or%20a%20culture%20of%20secrecy.pdf on September 8, 2012)

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International Budget Partnership (IBP) and NGO Forum, Open Budget Index 2010: Cambodia, Budget Transparency Brief No. 03, updated June 2012.

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

Kheang Un, Cambodia in 2011: A Thin Veneer of Change, Asian Survey, Vol. 52, Number 1, pp. 2002-209, 2012

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:

On July 31, 2012 at an event in Phnom Penh organized by the Cambodian Federation of Business Associations (CAMFEBA) attended by business leaders, Mr. Orm Yentieng, Chief of the Anti-Corruption Unit (ACU), said that "the ACU had been given special powers to record conversation and take photographs." "If people from the private sector ask permission from the ACU, you can take pictures and make recordings...The ACU needs to find new proof and evidence to present in court," he added.

The ACU has the power to investigate and bring suspects to court. The ACU has brought Mr. Top Chansereivuth, prosecutor of the Pursat provincial court and Mr. Moek Dara, Secretary General of the National Authority for Combating Drugs (NACD) to justice by its own investigators who are granted with the privilege of the judicial police. It remains to be seen however of its independence and real power to

References:

Stuart Alan Becker, Payments illegal, says ACU chief, the Phnom Penh Post, July 31, 2012, p. 7

Chun Sakada, Anti-corruption Unit Sworn In as Investigators, VOA Khmer, 31, 8, 2010 available at <http://khmernz.blogspot.com/2010/09/anti-corruption-unit-sworn-in-as.html> (accessed on September 18, 2012)

Neou Cannarin, Corrupt Officials to Be 'Educated,' Says Minister, The Cambodia Daily, Tuesday, 19 July 2011 available at http://saatsam.info/en/index.php?option=com_content&task=view&id=1802&Itemid=42 (accessed on September 18, 2012)

Sebastian Strangio Potemkin, Graft Crackdown in Cambodia, Asia Times, Jun 11, 2011 http://www.atimes.com/atimes/Southeast_Asia/MF11Ae01.html (accessed on September 18, 2012)

Sar Sambath, REPORT ON IMPLEMENTATION OF THE ANTI-CORRUPTION LAW, PRESENTED to The 17th GDCC Meeting, Government Palace (CDC), 18th October, 2010 http://www.cdc-crdb.gov.kh/cdcc/seventeenth/acu_present.htm (accessed on September 18, 2012)

Vong Sokheng and Bridget Di Certo, ACU takes aim at bribes [really?!], the Phnom Penh Post, Wednesday, 09 May 2012, available at <http://www.cam111.com/photonews/2012/05/10/143478.html> (accessed on September 18, 2012)

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San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea office.

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Kheang Un, Cambodia in 2011: A Thin Veneer of Change, Asian Survey, Vol. 52, Number 1, 202-209, University of California Press, 2012

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:

While the Anti-Corruption Unit (ACU) is seen as having enough power to bring about complaints against a person accused of engaging in corrupt acts, the practice looks unstable as in some cases it is very much dependent on complaint from the third person for the ACU to react and initiate investigation. In the embezzlement case involved officials from the Ministry of Social Affairs, causing the loss of the national budget of as much as 5 million dollars, in response to a question raised by a journalist whether corruption charge would be brought against those officials, H.E. Keat Chhon is quoted as saying "it is depending on the ACU whether they want to sue or not."

However, the main mechanism of this institute is to use the educational measures first." No charge has been brought against those officials. Other cases that involved tax collection officials, the ACU did not pose charge or sue those alleged suspects but rather began by information the line Ministry or authority concerned to take administrative actions. In a letter to the tax department on the case of overcharge on the property tax, the ACU warns that remedial actions must be taken as soon as possible before a formal complaint is made by the victims and the ACU starts the investigation in response. Then it would be too late for the tax department to do that part to remedy the situation.

Also, it should be noted that lack of independence of the institution would raise concerns as to what extent they can abide by the principle of impartiality to decide on cases to investigate.

References:

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

Caroline Hughes, Cambodia in 2009: The Party's Not Over Yet, Southeast Asian Affairs, 85-99, 2010

Preap Kol, Executive director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia office

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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?

25

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The Anti-Corruption Unit (ACU) has encouraged participation from people and business owners, NGOs and political parties to cooperate and work together to curb corruption in the country. Part of this effort is to request their participation in reporting corrupt acts and lodge complaints against corrupt officials. In 2010, 90 complaints were lodged to the ACU accusing irregularities observed during the annual collection of transport tax across the country. Even though those are not official lawsuits against the tax officials who demanded overcharge, the ACU's response was to a large extent satisfactory by requesting to the Ministry of Economy and Finance to take necessary actions against those tax officials. It was later learned that the MEF had taken some administrative actions against at least officials in Phnom Penh. It happened within a matter of 10 days.

Another case where involves overcharge of property tax committed by tax officials in Phnom Penh the ACU received, the latter on its part wrote a letter to the tax department to look at the issue and provide remedial actions in a matter of two months after the date of tax payment. The date of filing complaint is however unknown. These two cases have been attended to in a short period of times after they had been filed at the ACU even though they cannot be claimed to be the standards of how all complaints are processed in general.

References:

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea office.

Anti-Corruption Unit (ACU), Five Year Strategic Plan, 2011-2012, Phnom Penh: ACI/NCAC, available at http://www.acu.gov.kh/kh_sub_index.php?4a8a08f09d37b73795649038408b5f33=1&03c7c0ace395d80182db07ae2c30f034=4&9e3669d19b675bd57058fd4664205d2a=19 [Khmer version] (accessed on September 18, 2012)

Chun Sakada, Groups Prepare Complaints for New Corruption Investigators, VOA Khmer, September 3, 2010, available at <http://www.voacambodia.com/> (accessed on July 20, 2012).

Anti-Corruption Unit (ACU), Case on tax official overcharged property tax in Russeikeo, 291211, available at http://www.acu.gov.kh/kh_event_all_detail.php?4a8a08f09d37b73795649038408b5f33=7 (accessed on September 12, 2012)

Preap Kol, Executive director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia office

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:

There have been criticisms as to the lack of legal framework to ensure whistle-blower protection in the fight against corruption in Cambodia. As provided under the Anti-corruption Law, complaints that are deemed to lead to waste of time for investigation or without strong evidence to support against a person can lead to prosecution of the complainant on criminal charge of defamation or disinformation.

However, there have been reports of people involvement in lodging complaints to the Anti-Corruption Unit (ACU), and some of them dare even to tell in public (via radio talk show) that they had filed complaints against corrupt acts at the ACU. We do not know how much damage would eventually cause to these persons if charged under this act until a case is brought against the complainant.

For example, a recent report by the Cambodia Daily seems to guarantee the fear of lacking legal protection for the whistle-blower. A man was charged by the Municipal Court of conspiracy in defamation case that his newspaper publisher had been brought against for lodging complaints to various places including the ACU and it raises concerns about the impact of the lack of whistle-blower protection mechanism in the Anti-corruption Law in the country.

References:

San Chey, Network Fellow for Cambodia, Affiliated Network for Social Accountability in East Asia and the Pacific Connecting Citizens to Improve Governance (ANSA East Asia and Pacific), interview by author, August 13, 2012, STAR Kampuchea office.

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Preap Kol, Executive director of Transparency International Cambodia, interview by author, August 20, 2012, TI Cambodia office

Aun Pheap, Second Man Charged in Case Against Publisher, the Cambodia Daily, September 10, 2012, p. 18

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.

56

6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

50

77a. In law, there is a general right of appeal.

Comments:

The Code of Civil Procedure, Article 259, states that a decision that has not yet become final and binding may be appealed to a higher court.

The Code of Criminal Procedure, Article 373 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, Article 10 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.

References:

The Code of Civil Procedure, Article 259.

The Code of Criminal Procedure, Article 373.

The Law on the Organization of the Courts, Article 10.

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.

100 | 75 | 50 | 25 | 0

Comments:

The Appeal system is in crisis as the number of inmates awaiting their trial and attending the trial is high. There is only one Appeal Court in Cambodia that sits in the capital city of the country, Phnom Penh. Financial constraint the justice system faces has negative effect on the rights of the inmates to defend their rights to Appeal and fair trial at the Appeal Court.

A survey in 2010 shows that defendants were absent from 69% of the cases heard at the Appeal Court, 70% of the in absentia appeal hearing featured without defend lawyer and 90% of both trials and appeals took less than 30 minutes. Licadho's statistics shows that in 2010, 540 inmates (17.7 percent of the total inmates of 3,051 in seven provinces) have appeals pending, as compared to the 15.4 percent of the 797 inmates of 11 provinces having their appeal pending in 2012. The pending is caused mainly by lack of transport provided by the government and, in a minority, communication deficit between the Appeal Courts and the provincial prison directors.

References:

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Licadho, In Absentia 2012: An update on Cambodia's Inmate Transportation Crisis & the Right to Appeal, A Licadho Briefing Paper, 2012, Phnom Penh: Licadho

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.

100 | 75 | 50 | 25 | 0

Comments:

In most cases, the appeal mechanism is not affordable to inmates. As there is only one Appeal Court that sits in the capital city of Phnom Penh and government's limited budget to support transfer costs, most inmates could not see the light of the Appeal Court room. In survey in 2010,

References:

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Licadho, In Absentia 2012: An update on Cambodia's Inmate Transportation Crisis & the Right to Appeal, A Licadho Briefing Paper, 2012, Phnom Penh: Licadho

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney 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. Attorney 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. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

25

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Judgment in the criminal system in Cambodia follows written law; There are penal codes and penal procedural code in place. However, lack of independence in the judiciary poses a great threat to the supremacy of the law and subject it to political manipulation under the influence of power and money.

Judgments on several cases that have been widely criticised by national and international human rights communities would shed light on the judicial independence and commitment to follow the written law of the country. In early 2004, Chea Vichea, then prominent worker unionist in the country was gun down in broad daylight and in a matter of weeks, two people, Born Samnang and Sok Sam Oeun were arrested and charged for the crime. They were convicted for the crime even though there were strong evidence to prove their innocence. The decision was upheld by the Appeal Court. However, when it was appealed to the Supreme Court, the latter decided to release them on bail and refer the case to the Appeal for retrial. It is not decided until now.

Another case involved the arrest and conviction of a human rights activist, Leang Sokchouen, by the provincial court for charge of disinformation and then upheld by the Appeal court on a different charge of incitement. He was arrested in 2010 on charge of production and distribution of leaflets against the government in Takeo province. Human rights organizations in the country see he was wrongly arrested and convicted. The different charges he was convicted for by the provincial and appeal courts pose a strain on the professionalism and rule of the law in the country. Brad Adam, Asia Director for the Human Rights Watch said that "the politicization and incompetence of Cambodia's courts are on full display in this case, in which an activist has been imprisoned simply for criticizing the government". "Sokchouen should never have been charged in the first place, but to have the charges changed on appeal with no opportunity to challenge them sets a new standard for arbitrariness. The government should immediately drop the charges and release him."

Another case involved 13 women being arrested and convicted to two and a half year in jail in the three hour long hearing in May 2012 for illegally occupying the land from which they had been evicted to pave the way for development in the Bengkok area. The area is to be developed by a company partly owned by a senator from the ruling party, CPP. After mounting criticisms and continued protests, the presiding judge at the Appeal decided to reduce the sentence to one month and three days, exactly the time they served.

The three cases show that though judgment is to follow the written law, in most of the cases, political consideration reigns in and law itself is manipulated by the power and money.

References:

Human Rights Watch, Cambodia: Free Human Rights Worker [1] Donors Should Press Government to Stop Harassing Rights Groups July 14, 2011

<http://www.hrw.org/print/news/2011/07/14/cambodia-free-human-rights-worker>

Buth Reaksmei Kongkea, New Charge, Same verdict for Activist, Phnom Penh Post, 28 May 2012 <http://www.dailymerpost.com/2012/05/new-charge-same-verdict-for-activist.html>

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US Department of State, Country Reports on Human Rights Practices for 2011, Cambodia available at <http://www.state.gov/documents/organization/186476.pdf> accessed on August 18, 2012

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International Bar Association, Safeguarding Judicial Independence in Mixed Tribunals: Lessons from the ECCC and Best Practices for the Future, London: IBA, 2011, available at www.ibanet.org (accessed on September 1, 2012).

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.

79. In practice, are judicial decisions enforced by the state?

50

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

Justice system in Cambodia is characterized by its lack of dependence, low capacity, under-resourced, and corruption. Judges, prosecutors and other legal professionals work in cramped conditions, with heavy caseloads and a lack of basic necessities. Prosecutor may buy his own printer, papers and photocopy machine and desk. Surveys have shown that the court is the most corrupt and least trusted institution in the country. Political patronage has infiltrated the institution.

With in this context, judgment enforcement remains constrained by both structural and political problems. Lack of resource on the part of the court to enforce judgment remains an issue and it is even exacerbated by corruption practiced by low paid police officers and court officials. Also, widespread use of cash for business transaction does not allow court to have leverage in enforcing their judgment. The World Bank's 2012 Doing Business Survey for Cambodia shows that Cambodia stands at 142 in the ranking of 183 economies on the ease of enforcing contracts. It requires 44 procedures, takes 401 days and costs 103.4% of the value of the claim. This has not changed for the last decade. Political considerations may also influence in the enforcement.

References:

UNDP, United Nations Development Assistance Framework, 2011-2015, Phnom Penh: United Nations Cambodia, 2010.

The World Bank, Cambodia Sharing Growth, Equity and Development Report 2007, Phnom Penh: WB, 2007

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

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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**

Comments:

The Constitution, Article 128, provides that the judiciary shall be an independent power and The Judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens. The Judiciary shall cover all lawsuits including administrative ones.

The authority of the Judiciary shall be granted to the Supreme Court and to the lower courts of all sectors and levels; 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.

The Law on the Organization and Functioning of the Supreme Council of Magistrate, 1995 Article 1 provides that the establishment of the Supreme Council of the Magistrates is to assist His Majesty the King to guarantee the independence of the judiciary.

References:

The Constitution, Article 128 and Article 31.

The Law on the Organization and Functioning of the Supreme Council of Magistrate, 1995, Article 1.

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 includes 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:

Recently legal and judicial professionals has steadily increased. Capacity development support has been provided to, among others, the Royal Academy for Judicial Professions. However, the level of understanding of the new laws and policies is still low. The courts are still characterized by lengthy delays, a shortage of legal aid and difficulty in enforcing judgments."

It should be added that corruption and political influence are also defining the justice system in the country as well. Recent observation of the conduct of the current, high profile Khmer Rouge Tribunal (ECCC) has concluded that top political figures in the executive have wielded influence on appointment of the judges and decision on the cases to investigate. Kickback is practiced on the Cambodian side of the court; and even the hybrid nature of the court itself is also partly supported by the argument that Cambodia's justice system is lacking capacity, integrity, and subject to the political influence. Even the school that is supposed to train judges are tainted with corruption and patronage.

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L.H, Justice in Cambodia: The Boeung Kak 13, Jun 27th 2012, the Economist, available at <http://www.economist.com/blogs/banyan/2012/06/justice-cambodia> (accessed on September 22, 2012)

Cambodian Center for Human Rights/International Freedom Exchange, Release of Boeung Kak lake activists overshadowed by failure to achieve justice and further violence against peaceful demonstrators, 27 June 2012
http://www.ifex.org/cambodia/2012/07/10/activists_released/

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The World Bank, Cambodia Sharing Growth, Equity and Development Report 2007, Phnom Penh: WB, 2007
CAMBODIA: To Be a Judge, Be Ready To Bribe: Students, 11 May 2009, available at <http://www.humanrights.asia/news/forwarded-news/AHRC-FAT-004-2009/?searchterm=> (accessed on September 1, 2012).

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

Comments:

The Code of Civil Procedure, specifically Articles 26 and 27 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.

References:

The Code of Civil Procedure, Articles 26 and 27.

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.

Comments:

The Constitution, in particular Articles 133 and 134 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.

References:

The Constitution, Articles 133 and 134.

The Law on the Organization and Functioning of the Supreme Council of Magistracy, Articles 11 and 12.

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.

Comments:

No judge has been assaulted because of adjudicating corruption cases.

References:

US Department of State, Country Reports on Human Rights Practices for 2011, Cambodia, available at <http://www.state.gov/j/drl/rls/hrpt/humanrightsreport/index.htm#wrapper> (accessed on 23 August 2012)

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International Trade Union Confederation, 2012 Annual Survey of Violations of Trade Union Rights – Cambodia, 6 June 2012, available at <http://www.unhcr.org/refworld/docid/4fd8895dc.html> [accessed 30 August 2012]

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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.

Comments:

No judge has been killed because of adjudicating corruption cases.

References:

US Department of State, Country Reports on Human Rights Practices for 2011, Cambodia, available at <http://www.state.gov/j/drl/rls/hrpt/humanrightsreport/index.htm#wrapper> (accessed on 23 August 2012)

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Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

Committee for Free and Fair Elections in Cambodia (COMFREL), 2011 Report on Democracy, Election and Reform in Cambodia, (Phnom Penh: Comfre, 2012) available at http://www.comfre.org/newcomfre/components/com_mypublications/files/522802141255Democracy_Election_and_Reform_in_Cambodia_FN.pdf (accessed on 10 August 2012)

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?

25

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

On the one hand, the country justice system is tainted with low capacity, under-funded, corruption, and political patronage. On the other, the system is not strong enough to provide fair treatment to different groups of people in society. The court is seen as the most corrupt institution in the country and it is the least trusted by citizens. In UNDP's 2010 programme assistance document, it is seen that alternative dispute resolutions mechanism is recommended as a response to widespread corruption and lack of trust in the formal court system.

Some of the justice system remains in its infancy and thus would not function well. Juvenile system, for example, remains in its infancy as debates about rights to fair trial for child remains to be discussed. And even though the juvenile justice system professional has increased in number, the court has yet to be adjusted in order to respond to that. Also, traditional denial of women in education and public involvement remains a challenge for them to demand for fair trial from the formal court as they have too low awareness of the justice system and lack of access to the court. Under-resourced court denies inmates from fair trial at the Appeal and Supreme Courts that sits only in the capital city.

References:

Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

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International Bar Association, Safeguarding Judicial Independence in Mixed Tribunals: Lessons from the ECCC and Best Practices for the Future, London: IBA, 2011, available at www.ibanet.org (accessed on September 1, 2012).

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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:

In Cambodia, according the latest census in 2008, women makes up 51.36 percent of the whole population. Even though there has been great progress as to the enrollment of girls in the primary and lower secondary levels, the dropout rate is high among girls and as it comes to the upper secondary schools and higher education, the gender gap is greater. According to the government report to the UN CEDAW committee, the dropout rate for female students decreased from 23.50 percent in 2004/05 to 22.3 percent in 2007/08. While the gender assessment by the Ministry of Women Affairs in 2008 was well aware of the progress that has been made by the government, the report also admits some challenges that lie ahead on the way toward gender equality in the country, by pointing out that "overall mean levels of education remain low for women. Forty percent of women age 25-44 are illiterate (vs. 22 percent of men). Although improving in younger age groups, 23 percent of young women age 15-24 are illiterate (vs. 16 percent of young men). An additional 35 percent of women age 25-44 and 33 percent of women age 15-24 have less than a primary school education."

Low education among girls and women in the country has a strong correlation with the economic situation of the family and traditional preference of sending boy to school. There is a clear evidence that women who could make their way to higher education are mainly from the well-off families. Faced by economic constraints, family prefers to send their adult boys to school at the expense of their female daughter. As economic growth in the country has expanded and women are lagging behind in the economic activities, they are easy prey to injustice and abandonment from the justice system altogether.

Women from the poor family are not preferred to be sent to school but rather they are expected to perform some income generating activities to support their family and sometimes even for schooling of their male siblings. Employment at the garment factories, growing entertainment industry and prostitution are usually the destination for illiterate girls who do not have skills to sell but their beauty and bodies. These people are easy prey to abuse by law enforcement authorities such as police, park guards, and even government officials who in practice are usually immune from criminal prosecution. A report by the Human Rights Watch in 2010 shows that sex workers and female victims of trafficking are frequently abused and raped by the police and rehabilitation centers run by the government. The perpetrator has never been brought to justice.

Low education among women in the country and culture prejudice against women make the women susceptible to discrimination and abandonment by the justice system, which is seen as the most corrupt and least trusted public institution in the country. Also, under-funded judiciary could not provide enough legal counsel to poor and women and thus the later need to seek counselors from non-governmental organizations.

References:

CEDAW, Consideration of reports submitted by States parties under article 18 of the Convention on Elimination of All Forms of Discrimination against Women: Combined fourth and fifth periodic reports of States parties, Cambodia, 2011, available at http://www.bayefsky.com/docs.php/area/reports/treaty/cedaw/opt/0/state/29/node/4/filename/cambodia_cedaw_c_khm_4_5_2011 (accessed on September 24, 2012)

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Human Rights Watch, Off the Streets: Arbitrary Detention and Other Abuses against Sex Workers in Cambodia, New York: Human Rights Watch, 2010

MoWoA, A fair share for women: gender assessment, Executive Summary, 2008, http://www.un.org.kh/index.php?option=com_jdownloads&Itemid=65&view=finish&cid=6&catid=4

Licadho, Prison Conditions in Cambodia 2008: Women in Prison <http://www.licadho-cambodia.org/reports.php?perm=129>

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.

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

Comments:

The Constitution, Article 38, provides that every citizen shall enjoy the right to defense through judicial recourse.

The Criminal Procedure Code of the Kingdom of Cambodia, 2008, Article 48 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, Articles 29 and 30 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.

References:

The Constitution, Article 38.

The Criminal Procedure Code of the Kingdom of Cambodia, 2008, Article 48 and Article 301

The Law on the Bar, Articles 29 and 30.

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:

Bates reports that in 2007 Cambodia had 142 judges, 72 prosecutors, and 601 court clerks serving 23 courts including the Appeal and Supreme Courts across the country. They are working in a cramped condition. Many cases were pending due to the shortage of judges and courtrooms. Under-resourced judiciary fails to provide legal counsel as required by law to a defendant who cannot afford one. Most of those people thus sought assistance from NGOs or went without legal representation. Cross-examination, especially in cases that is political or involved high ranking people is rare. According to the bar association, "approximately 30 percent of the country's 751 lawyers provided pro bono legal counsel to poor people, which was inadequate to cover the basic legal rights of all of the country's poor." Cambodian Center for Human Rights (CCHR)'s monitoring of court trials in 2010 shows that 88 percent of the trials monitored the defendant had been put in pretrial detention and 32 percent of the defendants appeared in court without representation.

In his 2011 comparative study of access to legal counsel in Asia, Aurora comes to a conclusion that even after more than twenty years after the destruction of the human resource and infrastructure by the Khmer Rouge, the number of trained legal professionals remain grossly inadequate. Suspects face lengthy detention and, in his words, he said "Not only is it difficult for indigent detainees to obtain counsel, but bail opportunities for those without access to counsel are particularly slim. It is said that "[s]ometimes suspects who have no legal representation are simply forgotten." Poverty and lack of support from the state has forced people to turn to legal counseling provided by NGOs, most of the time, without fee charge.

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Cambodian Center for Human Rights (CCHR), Human Rights, Democracy and Civil Society in Cambodia in 2010: Situation of Human Rights, CCHR, 2010.

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:

Judicial system in Cambodia is characterised by low capacity, under-resourced and corruption. It is also known for its subject to the political patronage. Court is seen as the most corrupt public institution and least trusted. The UNDP's Programme Assistance Document for 2011-2015 explains that given the widespread corruption in the justice system and low trust in the formal court system, its initiative is to promote the alternative dispute resolutions for the Cambodian people. Even for middle income earner, resolving disputes at the court is a remote decision believing that every party will lose in the court.

Shortage of judges and courtrooms means more cases pending trials. Bates reports that in 2007 there were only 142 judges, 72 prosecutors, and 601 court clerks serving the Appeals and Supreme Courts. They work in a cramped condition with heavy caseloads and a lack of basic necessities. As long as the case reaches the Appeal Court that sits in the capital, under-resourced court rarely affords transporting defendants to appear in the court and thus hear the cases in absentia. Those defendants who can afford the transport cost by themselves or their family members may still need to corrupt the prison officials to facilitate their transport. Lack of independence of the court creates another layer of obstacles for the access to the court. WB's 2012 Doing Business in Cambodia reveals that Cambodia stands at 142 in the ranking of 183 economies on the ease of enforcing contracts. It requires 44 procedures, takes 401 days and costs 103.4 percent of the claim to enforce the contract.

References:

Kheang Un, Cambodia in 2011: A Thin Veneer of Change, Asian Survey, Vol. 52, Number 1, pp. 2002-209, 2012

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http://projetatlas.univ-paris1.fr/IMG/pdf/ATLAS_Cambodia_Report_FINAL_EDITs_Feb2011.pdf (accessed on September 22, 2012)

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney 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. Attorney 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. Attorney 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:

Judicial system in Cambodia is characterised by low capacity, under-resourced and corruption. It is also known for being subject to political patronage. The Court is seen as the most corrupt public institution and least trusted. The UNDP's Programme Assistance Document for 2011-2015 explains that given the widespread corruption in the justice system and low trust in the formal court system, its initiative is to promote the alternative dispute resolutions for the Cambodian people. Even for a middle income earner, resolving disputes at the court is a remote decision believing that every party will lose in the court.

World Bank's 2012 Doing Business in Cambodia reveals that Cambodia stands at 142 in the ranking of 183 economies on the ease of enforcing contracts. It requires 44 procedures, takes 401 days and costs 103.4 percent of the claim to enforce the contract.

Shortage of judges and courtrooms means more cases pending trials. Bates reports that in 2007 there were only 142 judges, 72 prosecutors, and 601 court clerks serving the Appeals and Supreme Courts. They work in a cramped condition with heavy caseloads and a lack of basic necessities. As long as the case reaches the Appeal Court that sits in the capital, under-resourced court rarely affords transporting defendants to appear in the court and thus hear the cases in absentia. Those defendants who can afford the transport cost by themselves or their family members may still need to corrupt the prison officials to facilitate their transport. Lack of independence of the court creates another layer of obstacles for the access to the court.

References:

Alex Bates, Transitional Justice in Cambodia: Analytical Report, 2010, available at http://projetatlas.univ-paris1.fr/IMG/pdf/ATLAS_Cambodia_Report_FINAL_EDITS_Feb2011.pdf (accessed on September 22, 2012)

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World Bank, Doing Business 2012, Cambodia, Washington DC: WB, 2012

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. Attorney 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. Attorney 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.

Comments:

Cambodia has a three-level court system. The first instance court sits in the town of each province and capital city. Only one appeal court exists in the country and it sits in the capital city. The same is true for the Supreme Court. After the war ended in late 1990s, Cambodia is characterised by, among others, poor transport facilities across the country. While the national roads linking the capital to all provincial towns across the countries and secondary and tertiary roads within provinces remains in poor conditions and improvement has been slow due to limited capital investment budget the government faces. The distance from the capital to provincial town can be as far as 588 kilometers and can take seven to eight hours by bus.

The existence of only one Appeal and Supreme Courts in the capital poses a great challenge for travel and access to the court. Licadho's report of the trial at the appeal courts reveals that due to the fact that under-resourced court could not afford transport inmates from the provincial prison centers to the Appeal Court, the hearings are very often proceeded in *absentia*. Those inmates who could afford the transport cost by themselves could see the light of the appeal court room in the capital. It is just enough to say that the same is true for the Supreme Court.

Moreover, low trust among Cambodian citizens in the court, high corruption among judicial officials, and its subject to political influence would join the list of challenges that bar citizens from access to the justice system. Court is seen as the least trusted and most corrupt public institution in the country and captured by the political elites and interest.

References:

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<http://www.phnompenh.gov.kh/phnom-penh-city-distances-from-phnom-penh-to-other-provinces-342.html> (accessed on Dec 8, 2012)

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.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

17

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

Comments:

Appointment to the law enforcement agency has been made within the context of policed environment in the country after the civil war ended in the 1990s. Judicial police, prosecutors and judges who are the main actors in the law enforcement agency in the country have been selected and appointed along the political patronage practices in the country and has been influenced by the past tragic political development in the country. Political settlement in the post-communist Cambodia in the 1990s among armed factions has resulted in integrating different armed forces, who had no-to-little knowledge of the law enforcement roles and functions into the police structure. Loyalty to political faction was the only criteria for appointment and advancement in their career. After the Cambodian's People Party (CPP), the current ruling party, has consolidated its power in the 2000s, appointment is decided by its loyalty to the ruling party. Lack of checks and balances in government and the executive's influence on the judiciary has resulted in the appointment to the law enforcement agency, just like appointment to the whole civil services in the country, along the line of political affiliation rather than professionalism and qualifications.

The report by the International Bar Association in late 2011 on the independence and integrity of the Extra-Ordinary Chambers in the Court of Cambodia (ECCC), known as Khmer Rouge Trial, reveals that judges who have been appointed to the position at the court are mainly based on political loyalty to the government, especially ruling party and very much at the discretion of the executive or the Prime Minister himself. The traditional lack of checks and balances among the various branches of government leads to the appointment of judges more on the basis of political affiliation, bribery, or patronage rather than qualifications and integrity.

References:

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Danish Center for Human Rights, Police in Cambodia: Project Assessment Report, Cambodia, 2001, available at <http://www.humanrights.dk/files/pdf/Publikationer/eandr21.pdf> (accessed on September 20, 2012)

Licadho, Independent Police Complaint Body, 2005, available at http://www.lcadho-cambodia.org/press/files/89_LCADHOPRTorture2005.pdf (accessed on September 20, 2012)

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.

**Comments:**

The law enforcement agencies has suffered from limited budget for the operation of their mandate. The main agencies are the police department of the Ministry of Interior and the Ministry of Justice through its court system. According the budget laws, in 2011 the budget for public security under the Ministry of Interior received 0.91 percent of the GDP and in 2012 it is increased to 0.95 percent assuming the GDP sees an increase of 7 percent. For the Ministry of Justice, its annual budget is 0.08 percent and 0.07 percent of the GDP for 2011 and 2012 respectively.

The police officers in the local level do not have enough budget even for transport to places where incidents of violations are reported to take place. Therefore, they are prone to corruption or fail to perform their roles. The courts do not have enough budget for transporting inmates from the provinces to the appeal court rooms.

References:

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Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

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Licadho, In Absentia 2012: An update on Cambodia's Inmate Transportation Crisis & the Right to Appeal, A Licadho Briefing Paper, 2012, Phnom Penh: Licadho

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.

100 | 75 | 50 | 25 | 0

Comments:

Cambodia is characterised by the neo-patrimonial political system where power is personalised and relationship is determined by patron-client exchange in which patron is expected to provide protection to the clients who in turn offers their supports and assistance whenever there is a call from the patron. Just like other public institutions in the country, law enforcement agency is plagued by political patronage and influence and political party has exerted their patronage in the conduct of the law enforcement agency and actors. The police forces are under the supervision and control of the Ministry of Interior and prosecutors and judges are under the Ministry of Justice. Various oversight mechanisms in the conduct of the justice system such as the Supreme Council of Magistracy is under the influence of the Ministry of Justice and the ruling party. Loyalty to political party is determinant of survival and advancement in the career of the law enforcement actors. Legacy from the past political development and patronage system have sustained the influence of the political leadership and party in the public sector including the law enforcement agency. Example of the appointment of judges to the Extra-Ordinary Chambers in the Court of Cambodia (ECCC) is a case in point. There have been enough evidence that shows appointment is fundamentally dependent on political loyalty, bribery, and patronage and the executive branch of government maintain a heavy hand in appointment to such a high position.

References:

Kheang Un, Cambodia: Moving away from democracy?, International Political Science Review, 32(5) 546-562, Sage Publication, 2011.

NGOs Demand End to Torture, Radio Free Asia, 2012-06-26, available at <http://www.rfa.org/english/news/cambodia/torture-06262012164438.html> (accessed on September 22, 2012)

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Pak Kimchoeun and David Craig, Accountability and Public Expenditure Management in Decentralised Cambodia, Working Paper 38, Phnom Penh: CDRI, 2008

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.

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?

58

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | **No**

Comments:

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 or 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 (MoI), which bestows upon the General Inspector the control over the officials under the supervision of the MoI, including the police.

References:

The Constitution, Article 39.

The Criminal Code Procedure, in particular Articles 59, 64 and 79.

The Sub-decree on the General Inspector under the Ministry of Interior (MoI).

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:

Law enforcement agents, especially the police forces, have been characterised by abuse of power. The culture of police and other law enforcement agents in extracting confessions from criminal suspects through torture has perpetuated until today. This practice is even strengthened by an under-resourced court who is rarely able to conduct their own investigation and allows cross-examinations of evidence, but rather relies most of the time solely on the police report to convict the suspects. Abuse of power such as torture committed by law, though acknowledged by the court, is rarely prosecuted by the court that is known for its lack of independence and subject to political influence.

In the face of widespread torture, mainly committed by police force, during their interrogation to extract confession from criminal suspect, Licadho in its 2005 report called for the establishment of an independent body to address complaints against police's abuse of power. By September 2012, nothing had happened.

Again, in mid-2012, a number of NGOs called for end of torture in the country and appealed the government to take action against such act. Given the lack of independence in the court system of the country, considered as the most corrupt and least trusted public institution, an appeal to establishing an independent complaint mechanism to tackle abuse of power by the law enforcement agents has surfaced for the past decade and altogether ignored by the government.

References:

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Dr. Lao Monghai, former visiting professor, University of Toronto; former senior researcher at the Asian Human Rights Commission; currently independent analyst on Cambodian politics and human rights issues; Nansen Medal 2000, interview by author, August 11, 2012, Restaurant (Phnom Penh)

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

Comments:

The Anti-Corruption Law, 2010, Article 21 thereof provides that procedure for corruption offences which is stated in the penal code and corruption offences which is stated in this law, shall be implemented as stated in the penal procedure code if there is no separate procedure in this law. Article 21 provides that The Chairman, deputy chairpersons and officials of the Anti-corruption Unit who gain an advantage as judicial police official are empowered to investigate corruption offenses that are stipulated in this law and those in the penal code.

Other units that are aware of corruption offenses as stipulated in this law and corruption offenses stated in the penal code shall make corruption complaints to the Anti-Corruption Unit or its branch offices in the Capital or provinces, and Article 23 provides that the Chairman and deputy chairpersons of Anti-corruption Unit are legally entitled to a status as judicial police officials in order to perform their duties. Officials of Anti-Corruption Unit may be entitled to status as judicial police officials in accordance with the provisions in the penal procedure code. The Chairman of Anti-corruption Unit takes charge of preparing list of officials of Anti-corruption who are entitled to status as judicial police officials through Prakas of the Minister of Justice, and Article 15 provides that Officials of Anti-corruption Unit who are appointed as judicial police take charge of investigating corruption offences. If during the course of a corruption offence investigation different offenses are found whose facts are related to the offence being investigated by Anti-corruption Unit, officials of Anti-Corruption Unit can continue the investigation of the offences to the final stage.

Article 31 provides that with regards to the criminal case related to corruption offence, the judge, after receiving the complaint, shall open the trial as soon as possible.

References:

The Anti-Corruption Law, 2010, Article 21, Article 23, Article 15, Article 31.

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:

Corruption is widespread in Cambodia and according to public surveys the court is perceived as the most corrupt and least trusted public institution. Corruption within the police is also widespread even though it is seen merely as for survival. Traffic wards are known for their dairy patrol of the streets in the capital to extract money from those who violate traffic rules. People in the court experience corruption in their daily interaction with public service providers from civil registration at the commune council to the school enrollment for their children and to the registration of a court case.

Recent arrests and charges against court prosecutor and judge are signs of improvement in the campaign against corruption within the law enforcement agencies. For example, Judge Hout Heang, who served in Kandal provincial court, was arrested and charged in early 2012 for bribery. Even though some positive measures have been taken by the government to bring corrupt judges and prosecutors to justice, skepticism remains as to the real political will of the government to tackle widespread corruption with the judiciary and the independence of the ACU.

References:

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Caroline Hughes, Countries at the Crossroad: Cambodia 2012, Freedom House Report, available at www.freedomhouse.org (accessed on September 24, 2012)

Kheang Un, Cambodia in 2011: A Thin Veneer of Change, Asian Survey, Vol. 52, Number 1, pp. 2002-209, 2012

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**

Comments:

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 New Criminal Procedure Code, 2008, Article 3 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.

Offenses stipulated in the Anti-Corruption Law, 2010 are applied to all public officials including enforcement officials.

References:

The Constitution, Article 31 and Article 39.

The New Criminal Procedure Code, 2008, Article 3.

Anti-Corruption Law, 2010.

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.

Comments:

Law enforcement agencies in the country is notoriously recognised for their widespread use of violence, abuse of power, and corruption. The police tortures criminal suspects during interrogation. The U.S. Department of State's report on Human Rights Situation in Cambodia in 2011 explains that "...military and civilian police officials used physical and psychological torture and on occasion severely beat criminal detainees, particularly during interrogation. As of November [2011] NGOs reported that authorities tortured at least 129 prisoners, 124 in police custody and five in a prison. Kicking, punching, and pistol whipping were the most common methods of physical abuse reported, but electric shock, suffocation, caning, and whipping with wires were also used. NGOs reported that it was not uncommon for police to torture detained suspects until they confessed to a crime. Courts used forced confessions as legal evidence during trial, despite admissibility prohibitions under the law." Arbitrary arrest is also well recognized within the law enforcement agencies.

Human Rights Watch reports that sex workers were abused by the police and security guards on the street and in their custody and even by the government social workers when they are caught and sent to the government-run rehabilitation centers.

In the US.. Department of State report it goes on to say that "NGOs maintained that police officials committed abuses with impunity, and in most cases the government took little or no action. The law requires police, prosecutors, and judges to investigate all complaints, including those of police abuses; however, in practice judges and prosecutors rarely conducted an independent investigation as part of a public trial. Presiding judges usually passed down verdicts based only on written reports from police and witness testimonies. In general police received little professional training."

Widespread torture practiced by the police during interrogation poses a great concern to the justice system and human rights defenders. In 2005, Licadho called for an establishment of an independent complaint mechanism to address the widespread tortures practiced by the police. Nothing has happened and in 2012 a group of human rights NGOs appealed to the Cambodian government to pay attention to the issue again.

Corruption within the court is also widespread and people have very low trust on the court. Recent actions taken by the government to tackle corruption within the court is a positive sign of progress. The ACU has investigated several corruption charges against prosecutors and judges. Top Chansereivuth case is the first high profile corruption case the ACU brought against the former provincial prosecutor. The arrest of Kandal provincial judge Hout Heang who was then charged for bribery in early 2012 is another case that the ACU took against the widespread corruption within the court in Cambodia. Even though these cases might be seen as a real sign of government intention to fight against corruption within the justice system, some skepticism remains as to their commitment to strike against those corrupt high ranking officials in the country known for its widespread corruption in a fair manner.

References:

Human Rights Watch, World Report 2012: Cambodia available at http://www.hrw.org/sites/default/files/related_material/cambodia_2012.pdf accessed on August 18, 2012

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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.