



# Cambodia: Enhancing Governance for Sustainable Development

Working Paper 14

Toshiyasu Kato, Jeffrey A. Kaplan,  
Chan Sophal & Real Sopheap





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*Responsibility for the ideas, facts and opinions presented in this research paper rests solely with the authors. Their opinions and interpretations do not necessarily reflect the views of the Cambodia Development Resource Institute or the Asian Development Bank.*

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## **Abstract**

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Good governance is critical for Cambodia's future. Over the last decade, during transition toward liberal democracy and a market economy, Cambodia's policy-makers, donors and civil society have recognised that strengthening good governance is imperative if Cambodia is to sustain socio-economic development.

The current study, which was commissioned by the Asian Development Bank (ADB), considers how to promote good governance for sustainable development in Cambodia. The analysis and findings from the study aim to contribute insights for policy-making by the Royal Government of Cambodia. It also identifies some key areas and strategies of assistance for ADB and other donors to consider.

This independent study entailed extensive consultations and interviews with many people from the Royal Government of Cambodia, the National Assembly, the Senate, the Judiciary, the media, businesses, civil society organisations, and international donor agencies.

Governance is defined in this study as *the manner in which power is exercised in the management of a country's economic and social resources for development*. States with good governance exercise their powers through state institutions and organisations that are *accountable* and *transparent* to the general public. They also exercise powers based on the rule of law, which are therefore *predictable* to the public. Furthermore, states with good governance are adept at promoting people's *participation* in the development process and policymaking. Throughout the current Report, governance structures and key governance reforms are examined from the perspective of those four elements in governance – *accountability, transparency, predictability, and participation*.

This study covers three domains of governance structure: (i) the public sector; (ii) civil society; and (iii) the media. The broad scope of this study has at least two merits. First, it can help to articulate strategic programming at the project (or micro) level within the overall picture of governance. Second, the broad scope helps to analyse the interface between the public sector and civil society, a critical and often under-emphasised element in promoting good governance.





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## **List of Abbreviations**

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### **Acronyms**

ACLEDA	Association of Cambodian Local Economic Development
ADHOC	Cambodian Human Rights and Development Association
BLDP	Buddhist Liberal Democratic Party
CAR	Council of Administrative Reform
CARERE	Cambodia Area Rehabilitation and Regeneration
CCC	Cooperation Committee for Cambodia
CCI	Cambodia Communications Institute
CDC	Council for the Development of Cambodia
CDRI	Cambodia Development Resource Institute
CIB	Cambodia Investment Board
CIHR	Cambodian Institute of Human Rights
COFFEL	Coalition for Free and Fair Election
COMFREL	Committee for Free and Fair Elections in Cambodia
CPP	Cambodian People's Party
CSD	Centre for Social Development
CVAP	Cambodia Veterans Assistance Program
DK	Democratic Kampuchea
FUNCINPEC	National United Front for an Independent, Neutral, Peaceful and Co-Operative Cambodia
KPNLF	Khmer People's National Liberation Front
MAFF	Ministry of Agriculture, Fishery and Forestry
MEF	Ministry of Economy and Finance
MFAIC	Ministry of Foreign Affairs and International Cooperation
MLMUC	Ministry of Land Management, Urbanization and Construction
MoC	Ministry of Commerce
MoD	Ministry of National Defense
MoEYS	Ministry of Education, Youth and Sports
MoH	Ministry of Health
MoI	Ministry of Interior
MoJ	Ministry of Justice
MPRI	Ministry of Parliamentary Relations and Inspection
NAA	National Audit Authority
NBC	National Bank of Cambodia
NICFEC	Neutral and Impartial Committee for Free Election in Cambodia

PRK	People's Republic of Kampuchea
RCAF	Royal Cambodian Armed Forces
RGC	Royal Government of Cambodia
SCM	Supreme Council of Magistracy
SEILA	Social Economic Improvement Local Agency
SRP	Sam Rainsy Party
UNTAC	United Nations Transitional Authority in Cambodia

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## **Acknowledgements**

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This working paper has been drawn from a comprehensive study of governance in Cambodia which was commissioned by the Asian Development Bank (ADB) and carried out by the Cambodia Development Resource Institute (CDRI).

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This independent study entailed extensive consultations and interviews with many people from the Royal Government of Cambodia, the National Assembly, the Senate, the Judiciary, the media, businesses, civil society organisations, and international donor agencies. While it is not possible to name all of them here, we would like to thank all those who spared their precious time and shared with us insights and information which were critical for our study. Many of these institutions and individuals generously provided key documents that formed an important foundation for this study.

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Real Sopheap*

*Phnom Penh, May 2000*



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## **Executive Summary**

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Good governance is an increasingly important development issue in Cambodia. During the transition towards liberal democracy and a market economy over the last decade, Cambodia's policy-makers, donor agencies, and civil society have increasingly recognised that the governance system needs to be improved to match the changing role of the State. Good governance is emerging as one of the key strategies to sustain social and economic development in Cambodia.

The current study addresses how to promote good governance for sustainable development in Cambodia. It aims to provide insights for government policy-making on good governance, and also to provide information for the programming of assistance by the Asian Development Bank (ADB) and other interested donors. The study examines key issues and challenges related to governance structures, then reviews and analyses recent reforms from the perspective of good governance. It also assesses the long-term impact of those reforms on Cambodia's economy. Based on those findings, the study offers policy recommendations for the government and possible entry points for donors' assistance.

The study defines "governance" as the manner in which power is exercised in the management of a country's economic and social resources for development. States with good governance exercise powers through state institutions and organisations that are accountable and transparent to the general public. They also exercise powers based on the rule of law, which are therefore predictable to the public. Furthermore, states with good governance promote people's participation in the development process and policy-making. Throughout the current study, governance issues are examined with emphasis on those four elements in governance – accountability, transparency, predictability, and participation. Our study covers three domains of governance structure: (i) the public sector - the Legislature, Executive and Judiciary; (ii) civil society, particularly the private sector and NGOs; and (iii) the media.

### **Findings**

Cambodia's governance structure has been evolving since the promulgation of a new Constitution in 1993. The dynamic change has gained further momentum since the formation of a new government in late 1998. The new government has committed itself to major reforms in an effort to revive Cambodia's economy and reinvigorate its engagement with the donor community. As a demonstration of its political will to pursue reforms, the Prime Minister has said, "Reforms are a life-and-death issue for Cambodia."

The study examined the governance structure and five sectors that have implications for good governance and sustainable development: (1) public finance reform; (2) public administration reform for the civil service and armed forces; (3) decentralisation; (4) legal and judicial reforms; and (5) regional integration.

Three major challenges facing Cambodia to enhance good governance emerge from the study.

**Challenge 1: Strengthening accountability institutions in the public sector.** There has been too little attention, respect and resources given to accountability institutions in Cambodia. Accountability institutions need to be strengthened to hold public officials accountable and to operate in a transparent manner.

On-going judicial reforms are critical to developing a more independent and competent Judiciary. Without this, people will not accept the idea that paper (i.e., laws) has real power. Nor will they have confidence in the Rule of Law. The Supreme Council of Magistracy is one crucial focal point for such reforms.

Cambodia's public sector needs to build financial integrity as well. Equipping the National Assembly and Senate to carry out active financial monitoring can enhance accountability and transparency. A neutral National Audit Authority, acting as an independent, external audit agency, can also play a critical role.

Such reforms will replace suspicion of independent accountability institutions with a respect for the value of such institutions. This will narrow the scope for corruption in the public sector and increase confidence in the government's commitment to reforms and the Rule of Law. It will also create an environment more conducive to long-term private sector growth.

**Challenge 2: Building partnerships between government and non-government sectors.** At present, productive interactions between the government and non-government sectors are limited. It is vital that the government builds partnerships with non-government sectors, in particular the private sector and civil society, to broaden its ownership of reforms. Promoting stakeholders' participation and building broad-based partnerships takes time, but they will add great strength to reform efforts of the government. They also ensure that political support will not weaken once implementation begins and unpopular consequences become more visible.

The government has recently demonstrated political will to build partnerships with non-government sectors and a more open process in the drafting of a new land law. It deserves great credit for this. Continuing this partnership during the implementation process for a new land law will be critical. In this respect, land reform is a good example that should be replicated with other reforms.

The development of the private sector framework will also benefit from a greater partnership between the government and the private sector. Increasing transparency in existing laws and regulations provides a level playing field for all businesses and facilitates private sector development. More formal consultations on draft laws with affected businesses, prior to enactment, will increase the effectiveness of laws and support private sector growth. Organising forums with the private sector – large meetings, sector-specific dialogues, joint promotional events or research – increases the effectiveness of reforms by drawing on the considerable experience and skills of the private sector. A start has already been made on this. The government organised a large meeting with the private sector in December 1999. The creation of specialised courts such as a commercial court can help address the increasing volume of commercial cases, in addition to strengthening the Judiciary's capacity to handle commercial disputes.

**Challenge 3: Building government capacity for local governance.** Both public finance and public administrative reforms require the involvement of local (provincial and district) administration as an essential component of their implementation. Public expenditure reform envisages financial devolution to provincial administration. Current plans for demobilisation stress the role of to-be-created provincial veterans' offices in the reintegration of demobilised soldiers. The government's efforts towards decentralisation through commune elections will establish the first representative bodies at the local level.

The success of these reforms hinges on the managerial capacity of local government. A few key issues need to be addressed. First, greater legal clarity regarding the status and scope of authority of provinces, municipalities, districts and the to-be-created commune councils is needed.

Second, use of existing institutions and mechanisms at the local level should be maximised, rather than creating new entities. Demobilisation is a case in point. Lastly, building the capacity of local officials for financial management is critical to enhancing the financial integrity of local government.

## **Recommendations**

Capacity building for good governance should include both human resource development and institution building. Building human resources is the most pressing issue in Cambodia and applies to all sectors of reform. Early planning for massive, long-term training is needed to ensure that the development of human resources keeps pace with the implementation of governance reforms. Given the early stage of institutional reforms in Cambodia, the need for institution building is pressing as well. Developing sound management systems is critical to improving performance and the specific tasks and functions of public institutions.

Reforms for good governance would be most effective when the government demonstrates commitment to reform through concrete actions and donors respond with financial and technical support. This dynamic ensures that the government is driving the process by setting its own priorities for governance reforms, building political support for policies and demonstrating political will by taking initial, tangible steps for reforms.

The effectiveness of governance reforms depends also on the extent to which the participation of all concerned institutions are ensured from the outset of the programme. It is essential that both the policy-making of the government and the programming of assistance by donors are undertaken in a multi-institutional setting.

In addition to major reforms that require long-term efforts and substantial resources, the government is recommended to vigorously pursue specific, low-cost reforms that can have a tangible impact on good governance.

For instance, Cambodia's leaders have occasionally issued declarations to halt the non-transparent, illegal sale and leasing of public property. Actions by the government such as the publication of a list of state assets and the requirement of an open tendering system for sale/lease of state property could reduce such practices.

The absence of advance notice prior to enactment of new legislation was stressed as a key issue by the private sector. The government could require, by law, an official notice-and-comment period prior to approval of draft laws or regulations by the Council of Ministers or ministries. This will have a tangible positive impact on private sector development.

The reform of the Judiciary requires a step-by-step process to institutionalise the separation of powers and independence. The Supreme Council of Magistracy could be empowered by the removal of members from other branches, a requirement of full-time work, and a separation of its budget from the Ministry of Justice.

The ADB and other interested donors might consider the following areas and institutions as possible entry points to promote good governance in Cambodia. The design of a specific programme of support for each area or institution above will require a more detailed evaluation of needs and current capacity.

### ***Strengthening accountability institutions in the public sector***

- **Supreme Council of Magistracy and courts** – Raise the issue and encourage dialogues on reform; build the capacity of judges and prosecutors.
- **A commercial court** – Draft a law to establish a commercial court; provide intensive training to judges at the court.

- **National Audit Authority** – Build the institution, including training, provision of equipment, and the creation of international procedures and accountability rules.
- **Finance and banking commissions at the National Assembly and Senate** – Provide advice and formal training on finance, audit, banking and economic policy to enhance their monitoring capabilities.

***Building partnership between government and non-government sectors***

- **Land reform** – Ensure partnerships between the government and civil society organisations; strengthen the institutional capacity of provincial and municipal offices of the Ministry of Land Management, Urbanisation and Construction for implementation of the new law; provide support for the mapping and classification of Cambodia's land stock.
- **Public sector–private sector forums** – Play a catalytic role in increasing contacts between the public and private sectors; incorporate the private sector more explicitly as partners in studies and missions organised in Cambodia.

***Building the government capacity for local governance***

- **Provincial finance administration** – Assess financial management skills among current provincial officials; provide training for provincial finance officers.
- **Commune Councils** – Examine the proposed Law on Commune Administrative Management; evaluate the potential needs of the Councils once the law is enacted; assess the possibility of financing projects developed by Commune Councils.



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## **Cambodia: Enhancing Governance for Sustainable Development**

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*Reforms are a life and death issue for Cambodia.*

—Prime Minister Samdech Hun Sen

*In the conduct of government as of one's personal life,  
ponder untiringly over the plans and then  
conscientiously carry them out.*

—Confucius

Good governance is an increasingly important development issue in Cambodia. Some consider it the lifeblood of Cambodia's future development. During the transition towards liberal democracy and a market economy over the last decade, Cambodia's policy-makers, donors and civil society have recognised that the adjustment of the governance system has not matched the dramatic change in the role of the State. It is thus imperative to strengthen good governance if the State is to sustain Cambodia's socio-economic development.

The current study addresses how to promote good governance for sustainable development in Cambodia. It examines key issues related to governance structures and national reforms to enhance good governance. The analysis and findings from the study aim to contribute insights for policy-making by the Royal Government of Cambodia. Finally, the study identifies some key areas and strategies of assistance for the Asian Development Bank (ADB) and other donors to consider for improving good governance.

Governance is defined in our study as the manner in which power is exercised in the management of a country's economic and social resources for development.<sup>1</sup> States with good governance exercise their powers through state institutions and organisations that are accountable and transparent to the general public. They also exercise powers based on the rule of law, which are therefore predictable to the public. Furthermore, states with good governance are adept at promoting people's participation in the development process and policy-making. Throughout the current Report, governance structures and key governance reforms are examined from the perspective of those four elements in governance – accountability, transparency, predictability, and participation.

Our study covers three domains of governance structure: (i) the public sector; (ii) civil society; and (iii) the media. The public sector consists of the three branches of government – the

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<sup>1</sup> This definition was adopted by ADB (1995), *Governance: Sound Development Management* (Manila: Asian Development Bank, August).

Legislature, the Executive and the Judiciary. Some civil society organisations such as the private sector and NGOs are selected as critical domains of governance in Cambodia. The broad scope of our study has at least two merits. First, it can help articulate strategic programming at the project (or micro) level within the overall picture of governance. Second, the broad scope helps analyse the interface between the public sector and civil society, a critical and often under-emphasised element in promoting good governance.

In our study, various documents related to governance in Cambodia were critically reviewed, and some statistical information was analysed. In addition, interviews and group meetings with key informants in the public sector, civil society, and the media provided experts' views on specific issues. Case studies in governance reforms comprise an essential component of our study. Five sectors that have direct implications for good governance and sustainable development were selected for the case studies. Results of a recent study to quantify the long-term impact of governance reforms are also reported to highlight their economic implications.

## 1. Key Issues of Governance Structure

Cambodia experienced frequent, unusually dramatic changes in its political and economic regimes since its independence in 1953 (Table 1). In many ways the establishment of the Democratic Kampuchea (1975-79) led by the Khmer Rouge was a watershed in Cambodia's modern history of governance. By implementing an extreme, Maoist-communist ideology, the Khmer Rouge regime brought massive destruction not only of previous political and economic systems, but also of physical, human, social and institutional resources.<sup>2</sup> This and the subsequent international isolation of Cambodia during the 1980s had a devastating impact on Cambodia's reconstruction and development.<sup>3</sup>

The promulgation of a new Constitution in 1993 laid the foundation for the development of Cambodia's new governance system.<sup>4</sup> The Constitution declares liberal democracy and a multi-party system as the foundations of the political regime of the Kingdom of Cambodia. It stipulates that Cambodian citizens exercise their powers through three separate branches: the Legislature, the Executive, and the Judiciary (Figure 1). The Constitution also defines a market economy as the foundation of Cambodia's economic system. Ownership of private property such as land is guaranteed under the Constitution.

The Cambodian government has made tremendous efforts to adjust and reform the governance structure towards liberal democracy and a market economy since 1993. New laws were enacted, and a large number of administrative orders were issued to implement these laws. New institutions and organisations were created to carry out important responsibilities in the public sector. Given the enormity of the challenges, Cambodian authorities deserve credit for their efforts and leadership in carrying out the reforms.

Yet, there remains a wide scope for improvement to strengthen good governance if Cambodia is to sustain equitable growth and development. In this section, key issues and challenges are

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<sup>2</sup> For more detailed descriptions of Cambodia's history, see Chandler, David P. (1991), *The Tragedy of Cambodian History* (New Haven: Yale University Press), and Chandler, David P. (1993), *A History of Cambodia*, 2<sup>nd</sup> Edition, ed. (Boulder, Colorado: Westview Press).

<sup>3</sup> One of few studies that documents the situations of Cambodia in the 1980s is Mysliwiec, Eva (1988), *Punishing the Poor: The International Isolation of Kampuchea* (Oxford: OXFAM).

<sup>4</sup> The Preamble of the Constitution succinctly presents Cambodia's vision of itself as a sovereign nation: "We, the people of Cambodia, . . . , stood up with a resolute determination, . . . , to restore Cambodia into an "Island of Peace" based on a multi-party liberal democratic regime guaranteeing human rights and the respect of law, and responsible for the destiny of the nation always evolving towards progress, development, prosperity, and glory."

critically examined to take account of four elements of governance: (i) accountability; (ii) participation; (iii) predictability; and (iv) transparency.<sup>5</sup>

**Table 1. Transition of Political, Legal and Economic Systems in Cambodia**

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

Source: Compiled from Chandler (1991) and Cambodia Investment Guide (May 1999).

**Accountability is the extent to which public officials are answerable for government behaviour.** In a country with good governance, public officials are responsive to the entity from which they receive their authority; in democratic societies, that is ultimately the people in the country. Accountability also means that public institutions are held responsible for actions that damage the nation or individuals or violate laws. Bad governance means that public officials do not answer to the people for decisions made or actions taken.

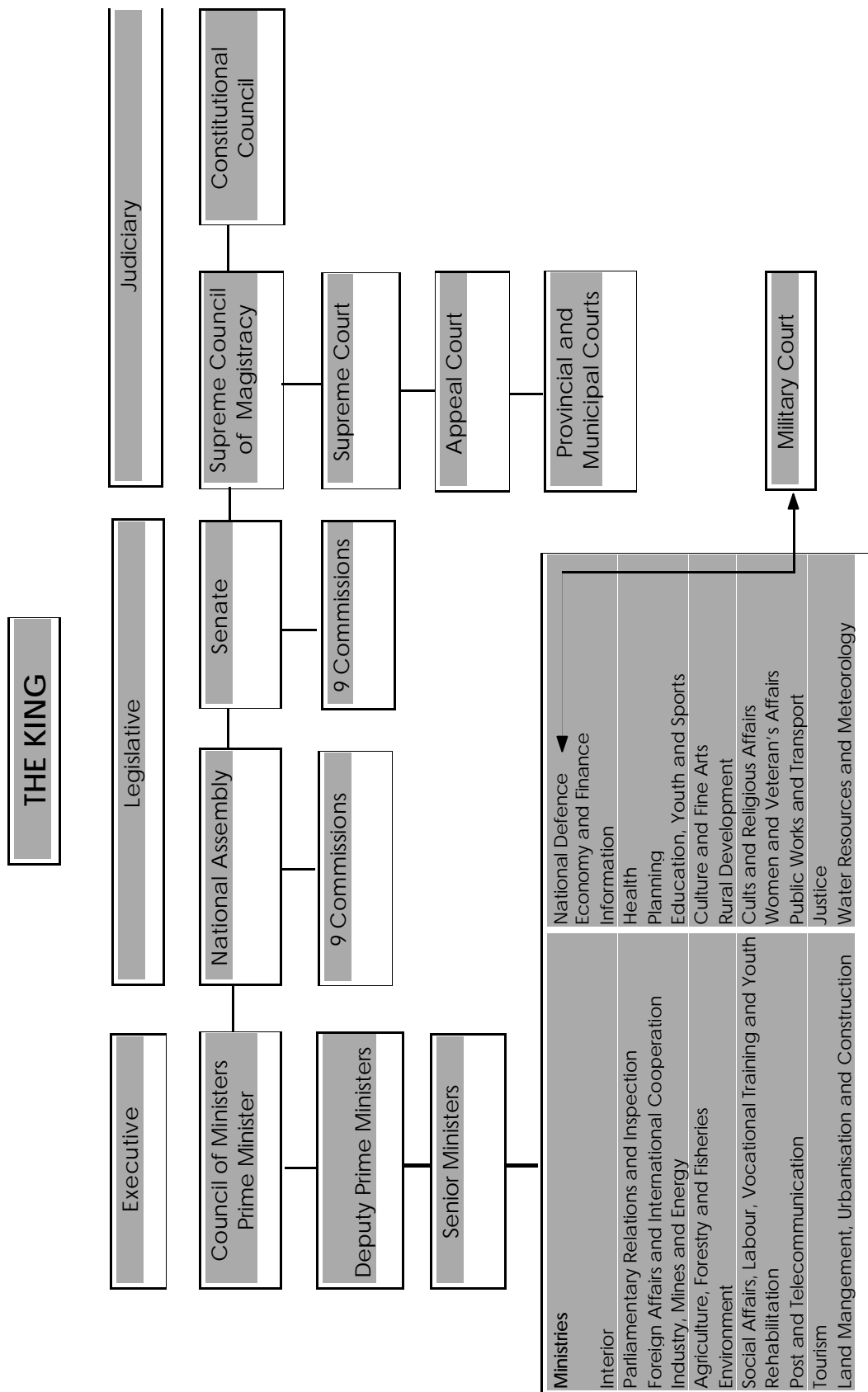
**Participation is the extent to which people are involved in the policy-making and development process.** Good governance implies that public officials facilitate and promote an environment in which people can participate meaningfully in the development process. Bad governance means that public authority excludes people from decision-making in the development process.

**Predictability is the extent to which a rule-based decision-making system operates.** Establishing the Rule of Law is a critical element to enhancing predictability. Operationally, this implies that new laws, regulations and policies are consistent with the rules and procedures stipulated in existing laws and the Constitution; are made available to people in a transparent and simple way; and are applied fairly and consistently for all people.

**Transparency is the extent to which information on public sector decision-making, policies, actions and performance is available to people.** In states with good governance, rules and regulations are accessible to all people. This includes not only laws, but also the schedule of fees for public services, inventory of public property, rules for public procurement, and statistical data about the economy and society collected by the public sector. New laws, regulations, and policies are announced publicly so that people are aware of their existence.

<sup>5</sup> ADB (1995), *ibid.*

Figure 1: Governance Structure of the Public Sector in Cambodia, 1999



<b>Ministries</b>	National Defence
Interior	Economy and Finance
Parliamentary Relations and Inspection	Information
Foreign Affairs and International Cooperation	Health
Industry, Mines and Energy	Planning
Agriculture, Forestry and Fisheries	Education, Youth and Sports
Environment	Culture and Fine Arts
Social Affairs, Labour, Vocational Training and Youth Rehabilitation	Rural Development
Post and Telecommunication	Cults and Religious Affairs
Tourism	Women and Veteran's Affairs
Land Mangement, Urbanisation and Construction	Public Works and Transport
	Justice
	Water Resources and Meteorology

The key issues in each domain of governance structure are now examined in turn.

## **1.1. Public Sector**

### **1.1.1. The Legislature**

The National Assembly holds primary legislative power. It currently consists of 122 elected members serving for five-year terms. The Permanent Committee of the Assembly calls extraordinary sessions and manages the work of the Assembly between ordinary sessions. In addition, the nine standing commissions of the Assembly examine draft laws and submit their views to plenary sessions of the full Assembly.<sup>6</sup> The Constitution was amended in March 1999 to effectuate a political compromise between Cambodia's two main political parties after the 1998 elections. This led to the creation of a second legislative body, the Senate.<sup>7</sup> The Senate's main role is to review draft laws approved by the National Assembly. The Senate in effect acts as a filter, with the power to review legislation and compel reconsideration by the Assembly before its promulgation.

The National Assembly has become more active and dynamic since the formation of a new coalition government in late 1998. It has debated and enacted several new laws that are critical for the improvement of governance, such as a *Financial Institutions Law* and an *Audit Law*. It is worth noting that TV broadcasts of debates at the Assembly have increased the transparency of the legislative process to the general public. The Senate is playing a responsible role. In addition to investigating complaints about illegal confiscation of land, it has acted to ensure its ability to contribute meaningfully to the legislative process. It rejected a draft law on financial institutions complaining that the five days allotted for review of "urgent" legislation were not enough to consider such complex and important legislation. Instead, the Senate recommended amending the Constitution to ensure adequate time for its review of laws. The Senate also rejected a law requiring the Minister of Women's Affairs to be a woman (a violation of the Constitution's provision on equal rights).

### Issues

**Limited role in legislative process.** The power to initiate legislation in Cambodia rests jointly with members of the Assembly, the Senate and the Prime Minister. So far, the National Assembly and Senate have played a limited role in legislative drafting. The vast majority of draft legislation originates with the government. The Assembly's role in the legislative process has been to review and enact bills drafted by the government. In the review process the Assembly considers draft laws often without sufficient time (*e.g.*, for review of the annual budget law) and without adequate expertise to support their work. Also the Legislature rarely if ever receives copies of regulations or

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<sup>6</sup> Each standing commission consists of at least seven members (currently nine), with a chairman, vice-chairman and secretary elected by members of the commission. The main political parties negotiate the allocation of commission chairs and vice-chairs based on party affiliation. The nine commissions currently in operation are: (1) Commission on Protection of Human Rights and Reception of Complaints; (2) Commission on Finance and Banking; (3) Commission on Economy, Planning, Investment, Agriculture, Rural Development and Environment; (4) Commission on Foreign Affairs, International Cooperation, Information, and Media; (5) Commission on Legislation; (6) Commission on Education, Religion, Culture, and Tourism; (7) Commission on Health, Social, and Women's Affairs; (8) Commission on Interior, National Defence, Investigation, and Anti-Corruption; and (9) Commission on Public Works, Transport, Telecommunications, Post Office, Industry, Energy, Mines, and Commerce.

<sup>7</sup> The Senate currently consists of 61 members serving for six-year terms. Senators were appointed by the King and the three political parties represented in the National Assembly—Cambodia People's Party (CPP), National United Front for an Independent, Neutral, Peaceful and Co-Operative Cambodia (FUNCINPEC), and Sam Rainsy Party (SRP)—as follows: the King appointed 2 senators, CPP appointed 31, FUNCINPEC appointed 21 and SRP appointed 7. The organisation of the Senate parallels that of the National Assembly. A Permanent Committee, nine standing commissions, and a Secretariat were established to play the roles of their counterparts at the National Assembly. According to the Constitution, an election of the Senate for the next term is to be held in 2005, although the organisation of and procedures for such an election have yet to be legislated.

decisions by the government or ministries related to laws they have enacted. This contributes to the imbalance in the system of checks-and-balances. Donors' reduced engagement—assistance, policy dialogues, information-sharing—with the Legislature tends to reinforce this imbalance as well.

**Shortage of financial and human resources.** This imbalance is in part associated with the shortage of financial and human resources available for the National Assembly and Senate. The shortage of these resources compared to the government are particularly noticeable with respect to technical and complex financial subjects, such as the national budget, where expertise and experience are key to playing a meaningful, active role in reviewing draft legislation and monitoring government performance. Currently the Assembly and Senate receive little technical assistance from donors compared with the government. This has contributed to the imbalance of capacity between the Assembly and the government. Ultimately, this tends to undermine the development of good governance in Cambodia.

### 1.1.2. The Executive

The Royal Government of Cambodia holds the executive power, and consists of civil administration and the armed forces. The Council of Ministers (CoM) is the Royal Government of Cambodia. There are currently 24 line ministries under the Council of Ministers. Cambodia's territory consists of 20 provinces and 4 municipalities whose governors are appointed by the government. Each province is further divided into districts (*srok*) and each district into communes (*khum*). Similarly, each municipality is divided into sections (*khan*), each section into quarters (*sangkat*).

In 1999, the total number of civil servants reached 163,000 employees, or 1.4 civil servants per hundred population (Table 2). In addition, in 1998, there were some 21,000 employees classified as "special status"—such as commune personnel and village chiefs—on the payroll of the government (Table 3). The Ministry of Education, Youth and Sports (MoEYS) is the largest ministry in terms of staff, accounting for nearly 50 percent of total civil servants in the country, followed by the Ministry of Agriculture and the Ministry of Interior. Around 20 percent of total civil servants work in central administration (Table 2). The same figure increases significantly to 37 percent, however, if MoEYS personnel are excluded from the total number of civil servants. A large proportion of civil servants posted in the provinces are located in the provincial capitals.

The government also maintains large defence and security forces. Military personnel totalled 143,000 in 1998, or 12.5 per thousand populations (Table 4). This figure is much higher than those of ASEAN and neighbouring countries such as Vietnam (7.5) and Lao PDR (10.2) which also experienced long periods of armed conflict (Table 5). The number of regular staff for public security was 66,000 in 1998 (Table 4). In addition, special status staff—military and commune militia—stood at 40,000 in 1998 (Table 4). Nearly 50 percent of the government-funded budget was spent on the military and security in recent years (Table 6). Defence and security spending crowded out social and economic expenditures that are vital for socio-economic development in Cambodia. In 1997, nearly 70 percent of Cambodia's total non-defence and security public expenditures were funded by external assistance, through overseas development assistance (ODA) and non-government organisations (NGOs) (Table 6). Military reforms, mainly demobilisation, are currently being pursued.

**Table 2. The Number of Central and Provincial Civil Servants by Ministry**

(August 1999)

	Total civil servants		Central administration		Municipal and provincial administration		% of central administration in total civil servants
	Number	%	Number	%	Number	%	
	<b>1. General Administration</b>						
Royal Palace	268	0.2	268	0.8	-	-	100.0
National Assembly(Gen. Secretariat)	234	0.1	234	0.7	-	-	100.0
Senate(General Secretariat)	187	0.1	187	0.6	-	-	100.0
Council of Ministers	931	0.6	931	2.8	-	-	100.0
State Secretariat of Public Function	112	0.1	112	0.3	-	-	100.0
M. of Foreign Affairs	749	0.5	749	2.2	-	-	100.0
M. of Interior	9,514	5.8	492	1.5	9,022	6.9	5.2
M. of Economy and Finance	5,389	3.3	4,313	12.8	1,076	0.8	80.0
M. of Justice	1,225	0.7	476	1.4	749	0.6	38.9
Supreme Court	87	0.1	87	0.3	-	-	100.0
M. of Planning	1,682	1.0	642	1.9	1,040	0.8	38.2
M. of Parliamentary Relations and Inspection	117	0.1	117	0.3	-	-	100.0
<b>2. Social Sector</b>							
M. of Education	80,816	49.4	3,057	9.1	77,759	59.8	3.8
M. of Health	18,853	11.5	4,104	12.2	14,749	11.4	21.8
M. of Culture and Fine Arts	3,655	2.2	1,731	5.2	1,924	1.5	47.4
M. of Religious Affairs	714	0.4	182	0.5	532	0.4	25.5
M. of Information	2,614	1.6	1,374	4.1	1,240	1.0	52.6
M. of Social Affairs	1,822	1.1	668	2.0	1,154	0.9	36.7
M. of Environment	1,227	0.8	412	1.2	815	0.6	33.6
M. of Women and Veteran's Affairs	1,324	0.8	211	0.6	1,113	0.9	15.9
<b>3. Economic Sector</b>							
M. of Agriculture	10,995	6.7	4,273	12.7	6,722	5.2	38.9
M. of Rural Development	2,311	1.4	608	1.8	1,703	1.3	26.3
M. of Public Works	5,784	3.5	2,050	6.1	3,734	2.9	35.4
State Secretariat of Civil Aviation	636	0.4	636	1.9	-	-	100.0
M. of Industry, Energy and Mines	2,699	1.7	943	2.8	1,756	1.4	34.9
M. of Post and Telecommunication	2,114	1.3	1,391	4.1	723	0.6	65.8
M. of Commerce	2,297	1.4	1,355	4.0	942	0.7	59.0
M. of Tourism	1,025	0.6	534	1.6	491	0.4	52.1
M. of Urbanization	2,466	1.5	655	1.9	1,811	1.4	26.6
M. of Water Resources	1,682	1.0	801	2.4	881	0.7	47.6
<b>Total</b>	<b>163,529</b>	<b>100.0</b>	<b>33,593</b>	<b>100.0</b>	<b>129,936</b>	<b>100.0</b>	<b>20.5</b>
<b>Total (excl. MoEYS)</b>	<b>82,713</b>		<b>30,536</b>		<b>52,177</b>		<b>36.9</b>
<b>Total(excl. MoEYS and Mol)</b>	<b>73,199</b>		<b>30,044</b>		<b>43,155</b>		<b>41.0</b>
Reference:							
Total population	11,437,656		11,437,656		11,437,656		
Civil servants per hundred population	1.43		0.29		1.14		

Source: Council of Ministers

Table 3. Recent Trends in the Civil Service: Numbers and Wages 1995-1998

Number ('000 persons)	1995	1996	1997	1998	per hundred population 1998
I. Regular Staff	143.9	147.1	153.4	151.6	1.3
Civil servants (not teachers)	88.9	91.1	97.4	94.6	0.8
Teachers	55.0	56.0	56.0	57.0	0.5
II. Special Status	21.0	21.0	21.0	21.0	0.2
Communal personnel	7.9	7.9	7.9	7.9	0.1
Village chiefs	13.1	13.1	13.1	13.1	0.1
TOTAL (I + II)	164.9	168.1	174.4	172.6	1.5
					% relative to GDP 1998
Wage (million USD)					
I. Regular Staff	47.3	46.0	44.5	40.3	1.3
Civil servants (not teachers)	29.4	29.6	28.6	26.0	0.9
Teachers	17.9	16.4	15.9	14.3	0.5
II. Special Status	2.4	2.3	2.1	1.9	0.1
Communal personnel	1.0	1.0	0.9	0.8	0.0
Village chiefs	1.4	1.3	1.2	1.1	0.0
III. TOTAL (I + II)	49.7	48.3	46.6	42.2	1.4
Average wage per month (USD)					
I. Regular Staff	27.4	26.1	24.2	22.2	
Civil servants (not teachers)	27.6	27.1	24.5	22.9	
Teachers	27.1	24.4	23.7	20.9	
II. Special Status	9.5	9.1	8.3	7.5	
Communal personnel	10.5	10.5	9.5	8.4	
Village chiefs	8.9	8.3	7.6	7.0	
III. Average wage (I + II)	25.1	23.9	22.3	20.4	

Source: Ministry of Economy and Finance

The government has undertaken several key reforms of public finance and public administration since 1993. The government launched a major public finance reform through an *Organic Budget Law* (1993) to fight inflation and establish macroeconomic stability. The *Law*, which imposed stringent fiscal discipline, proved effective in fighting inflation. Its effectiveness in containing inflation was proven after mid-1997 when twin shocks hit Cambodia's economy: political conflict in July 1997 and the Asian financial crisis. The government also has been implementing a *Law on Taxation* (1997) to improve the weak revenue-raising capacity of the government. The government also attempted to carry out administrative reform between 1993 and 1997 with support from UNDP and the EU. With the launch of a new government in late 1998, reform initiatives re-gained momentum in 1999. The government's new reform programmes have begun to address a number of key issues to improve governance in Cambodia.

### Issues

**Low salaries in the public sector.** This is perhaps the most fundamental structural problem in Cambodia.<sup>8</sup> This has direct implications for the accountability and transparency (or lack thereof) of

<sup>8</sup> Between 1995 and 1998, average wages of civil servants declined from \$25 to \$20 per month, due primarily to the depreciation of the riel (Table 3). Similarly, average wages for armed forces personnel (including both military and public security) declined from \$30 in 1995 to \$26 per month in 1998 (Table 4). A majority of public officials, including judges and prosecutors, receive wages far below subsistence levels.



the public sector. Likewise, it has serious implications for ongoing public sector reforms. If the low salary issue is not addressed in the overall reform process, there is a high risk that this will remain a major obstacle to all governance reforms.

Table 4. Recent Trend in the Armed Forces: Numbers and Wages 1995-1998

Number ('000 persons)	1995	1996	1997	1998	per hundred
					population
					1998
I. Regular staff	206.7	191.1	190.9	209.0	1.8
National Defence Force	138.7	122.8	123.1	143.3	1.3
Public Security Force	68.0	68.3	67.8	65.7	0.6
II. Special status staff	57.8	57.8	59.4	39.6	0.3
Military Militia	23.0	23.0	27.9	7.5	0.1
Commune Militia	34.8	34.8	31.5	32.1	0.3
III. Total (I+II)	264.5	248.9	250.3	248.6	2.2
					% relative to
					GDP 1998
<b>Wage (million USD)</b>					
I. Regular staff	86.0	77.5	77.5	74.7	1.3
National Defence Force	70.4	62.1	60.0	54.7	0.9
Public Security Force	15.6	15.4	17.5	20.0	0.5
II. Special status staff	7.2	6.7	6.5	2.8	0.1
Military Militia	4.9	4.5	4.8	1.2	0.0
Commune Militia	2.3	2.2	1.7	1.6	0.0
III. Total (I+II)	93.2	84.2	84.0	77.5	1.4
<b>Average wage per month (USD)</b>					
I. Regular staff	34.7	33.8	33.8	29.8	
National Defence Force	42.3	42.1	40.6	31.8	
Public Security Force	19.1	18.8	21.5	25.4	
II. Special status staff	10.4	9.7	9.1	5.9	
Military Militia	17.8	16.3	14.3	13.3	
Commune Militia	5.5	5.3	4.5	4.2	
III. Total (I+II)	29.4	28.2	28.0	26.0	

Source: Ministry of Economy and Finance

**Weak revenue-raising capacity.** This issue is closely related to the challenge of low salaries. Total public revenues remained between 8 to 10 percent of GDP between 1994 and 1998. Cambodia ranks as one of the lowest in terms of public revenues relative to GDP among countries in the region.<sup>9</sup> In addition, the source of public revenues has been heavily dependent on customs duties, ranging from 3 to 5 percent of GDP during the same period. In 1999 the introduction of value-added taxes (VAT) lowered this percentage significantly.

**Inefficient management of public expenditure.** This has been a long-standing challenge for the government. The government had intended the 1999 national budget to shift expenditures away from the military and security towards social and economic development. Despite substantial increases in planned budget allocations, money has not reached local public offices such as hospitals, health centres and rural development projects. The government aims to address this issue through primarily three policy instruments under public finance reform: an *Accelerated District Development* (ADD) system, the *Priority Action Programme* (PAP) and the *Law on*

<sup>9</sup> World Bank (1999), *Cambodia Public Expenditure Review* (Washington D.C.: World Bank). This study identifies the various causes of weak revenue-raising capacity as of 1998: (1) inadequate implementation of the *Law on Taxation* and delays in introducing a VAT; (2) generous tax exemptions granted under the *Law on Investment*; (3) *ad hoc* tax and customs duty exemptions, often associated with unwarranted political interference; (4) weak capture of forestry revenues; and (5) limited capacity in tax and customs administration.

the *Financial Regime and Provincial and Municipal Property*.<sup>10</sup> In the health sector, problems with disbursements remain critical. In general, the system is not equipped to send money to the right place at the right time.

Table 5. Military Forces in ASEAN and Other Countries, 1995

	Military expenditure		Armed forces personnel <sup>(1)</sup>	
	% of GNP	% of central government expenditure	Total thousands	per thousand population
<b>I. ASEAN</b>				
Cambodia	3.1	..	143	12.5
Indonesia	1.8	8.9	280	1.4
Lao PDR	4.2	22.3	50	10.2
Malaysia	3.0	12.4	122	6.1
Philippines	9.5	8.5	110	1.6
Singapore	4.7	24.0	60	20.1
Thailand	2.5	15.2	288	4.9
Vietnam	2.6	10.9	550	7.5
<b>II. East Asia</b>				
China	2.3	18.5	2930	2.4
North Korea	28.6	..	1040	43.6
Mongolia	2.4	7.0	21	8.5
South Korea	3.4	13.6	655	14.6
Japan	1.0	4.2	240	1.9
<b>III. Pacific</b>				
Australia	2.5	8.8	58	3.2
New Zealand	1.3	3.3	10	2.8
<b>IV. North America</b>				
Canada	1.7	7.1	70	2.4
United States	3.8	17.4	1620	6.2

(1) Cambodia: 1998 data for armed forces personnel provided from Ministry of Economy and Finance. Total population data was used from NIS (1999), *General Population of Cambodia 1998*. Source: World Bank, *World Development Indicators 1997 and 1998*.

<sup>10</sup> An *Accelerated District Development* (ADD) system was introduced in 1996 for the health sector. It gives programme managers at rural public hospitals and health centres greater certainty in the availability of funds and greater flexibility in the use of funds. Programme managers receive a fixed cash advance from the Ministry of Economy & Finance (via the Ministry of Health) for operational costs (called "Chapter 13"), from which they have discretion to allocate funds for pre-determined, specific purposes such as patient food, emergency patient transport and building maintenance. The ADD system operates in 22 districts covering 3 million people in rural areas. The *Priority Action Programme* (PAP) is an instrument to ensure the disbursement of budget to priority sectors (health, education, agriculture and rural development) in the face of revenue shortfalls. The PAP is assigned a special budget chapter in the annual Finance Act so that it will not be affected by any across-the-board budget cuts for line ministries. The *Law on the Financial Regime and Provincial and Municipal Property*, promulgated in February 1998, gives provincial and municipal authorities limited autonomy to collect revenues and disburse expenditures out of their own budgets. In the 1999 national budget, 35 billion riels were earmarked for spending by provincial and municipal administration, among which provinces were expected to raise 20 billion riels through their own revenue collection.

Table 6. Public Expenditure by sector, 1997 (billion riels)

	1.		2.		3.		4.		5.	
	Government-funded Budget		ODA		NGO*		All Sources (1+2+3)		% of external assistance in all sources (2+3)/4	
	Amount	% in total	Amount	Amount	Amount	Amount	%	%		
<b>I. Civil Administration</b>										
1. General Administration	147,603	15.9	111,053	2,302	260,974	12.9	43.4			
Royal Palace	16,640	1.8	..	..	16,642	0.8	..			
National Assembly	10,818	1.2	..	..	10,819	0.5	..			
Council of Ministers (PM Office)	36,831	4.0	..	..	36,835	1.8	..			
M. of Foreign Affairs	20,563	2.2	..	..	20,565	1.0	..			
M. of Interior (general administration)	27,392	3.0	..	..	27,395	1.4	..			
M. of Economy and Finance	31,214	3.4	..	..	31,217	1.5	..			
M. of Justice	2,507	0.3	..	2,302	4,809	0.2	47.9			
M. of Planning	1,638	0.2	..	..	1,638	0.1	..			
<b>2. Social Sector</b>	<b>204,237</b>	<b>22.1</b>	<b>343,367</b>	<b>101,029</b>	<b>648,655</b>	<b>32.1</b>	<b>68.5</b>			
M. of Education	86,261	9.3	166,475	47,095	299,840	14.8	71.2			
M. of Health	54,689	5.9	95,729	31,498	181,922	9.0	69.9			
M. of Culture and Fine Arts	4,046	0.4	..	..	4,046	0.2	..			
M. of Cults and Religion	1,316	0.1	..	..	1,316	0.1	..			
M. of Information	4,821	0.5	..	..	4,822	0.2	..			
M. of Social Affairs	50,525	5.5	81,163	15,979	147,672	7.3	65.8			
M. of Environment	1,551	0.2	..	3,931	5,482	0.3	71.7			
M. of Women and Veteran's Affairs	1,028	0.1	..	2,526	3,554	0.2	71.1			
<b>3. Economic Sector</b>	<b>133,583</b>	<b>14.4</b>	<b>493,219</b>	<b>45,753</b>	<b>672,569</b>	<b>33.3</b>	<b>80.1</b>			
M. of Agriculture, Forestry, and Fishery	24,105	2.6	53,838	14,727	92,673	4.6	74.0			
M. of Rural Development	3,686	0.4	203,007	31,026	237,719	11.8	98.4			
M. of Public Works and Transportation	24,134	2.6	108,552	..	132,689	6.6	81.8			
State Secretariat of Water Supply	..	..	741	..	741	0.0	100.0			
State Secretariat of Civil Aviation	13,985	1.5	2,750	..	16,737	0.8	16.4			
M. of Industry, Mines, and Energy	6,850	0.7	51,817	..	58,668	2.9	88.3			
M. of Post and Telecommunication	53,431	5.8	50,102	..	103,539	5.1	48.4			
M. of Commerce	5,641	0.6	22,412	..	28,054	1.4	79.9			
M. of Tourism	1,751	0.2	..	..	1,751	0.1	..			
<b>Sub-total Civil Administration (1+2+3)</b>	<b>485,423</b>	<b>52.4</b>	<b>947,639</b>	<b>149,084</b>	<b>1,582,198</b>	<b>78.2</b>	<b>69.3</b>			
<b>II. Defence and Security</b>	<b>440,477</b>	<b>47.6</b>	<b>-</b>	<b>-</b>	<b>440,525</b>	<b>21.8</b>	<b>0.0</b>			
1. M. of National Defence	304,744	32.9	-	-	304,744	15.1	..			
2. Public Security	135,733	14.7	-	-	135,733	6.7	..			
<b>Grand Total</b>	<b>925,900</b>	<b>100.0</b>	<b>947,639</b>	<b>149,084</b>	<b>2,022,723</b>	<b>100.0</b>	<b>54.2</b>			
Percentage in all sources	45.8		46.8	7.4	100.0					

\* NGOs' own budget. Assistance provided by bilateral and multilateral donors through NGOs is included in ODA.

Source: World Bank (1999), Cambodia: Public Expenditure Review (Washington D.C.: World Bank, January).

**The lack of independent accountability institutions.** At present, the government has two levels of accountability institutions for audits: (1) a newly established Ministry of Parliamentary Relations and Inspection; and (2) inspection departments within each ministry. Despite their important functions, these institutions have no real independence from the Executive branch. The National Assembly recently passed an *Audit Law* to establish an independent audit authority with power to carry out external audits.

***The lack of organisational structures conducive to effective and efficient service delivery.*** In the area of public administration, this is a major structural issue. In addition to raising salaries of civil servants, civil administration needs sound organisational structures and institutional arrangements if its service delivery is to be more effective and efficient. The government's civil administrative reform under the Council of Administrative Reforms (CAR) has initiated some important steps to address this issue. A civil service census and a functional analysis are underway. The reform envisages the implementation of several other important measures such as the establishment of a computerised Human Resource Management Information System, the creation of "core groups" of civil servants to lead reforms, and the reintegration of "excess" civil servants into the private sector.

***The government's highly centralised administrative structure.*** The current centralised civil administration has serious deficiencies from a governance point of view. Local authorities are given too little autonomy or flexibility in expenditure disbursements to meet local needs. The system does not meet acceptable standards of fiscal accountability and transparency, as the problem of leakage of public funds in the expenditure process indicates. Also the local administration and citizens have too few opportunities to participate in policy formulation and decision-making that directly affects them. The government partially addresses this issue by the public finance (expenditure) reform discussed above. The CAR identified de-concentration as an objective of public administrative reform. Decentralisation is planned through commune elections and the establishment of commune councils.

***Transforming Cambodia's huge defence and security forces into ones suitable for a post-conflict society.*** Downsizing is without doubt an urgent issue. This requires a new vision and new policies for the armed forces and police. However, the ideal size of staffing and budgets is difficult to assess without first determining their roles and responsibilities in post-conflict Cambodia. That vision remains missing at the moment. Military and security agencies need to promote professionalism. Carrying out new missions requires training staff to observe new codes of conduct and develop relevant skills. Reassessing the roles of the military and police is now underway. At present, the Council of Armed Forces Demobilisation and Council of Reform of the Royal Armed Forces coordinate the government's reforms of the military.

### *1.1.3. The Judiciary*

The Judiciary is established as an independent branch of government under the Constitution. The Constitution identifies four distinct components of the Judiciary: (1) the Constitutional Council; (2) Supreme Council of Magistracy (SCM); (3) the courts; and (4) the prosecutors.

The Constitutional Council was formed in early 1998. The Council holds the duty to safeguard respect for the Constitution. It is also empowered to decide cases involving the election of Assembly and Senate members. The SCM was established (on paper) in 1994 as the prime guardian of the Judiciary's independence, though its first meeting only took place in 1998. Only the SCM is empowered to discipline and appoint judges and prosecutors. The SCM is comprised of the King, acting as chairman, and seven members, including the Minister of Justice. In the King's absence, the President of the Senate chairs the SCM. A Supreme Court and an Appeals Court are located in Phnom Penh; lower courts are located in each province and municipality. There is also a military court under the jurisdiction of the Ministry of National Defence. As of 1999, there were a total of 117 judges and 54 prosecutors in Cambodia (Table 7).

The government is currently pursuing a number of judicial reforms. These include the drafting of key laws defining courts and plans to expand or rehabilitate selected court facilities. In addition, as part of its effort to coordinate and effectuate court reform, the government plans to establish an inter-ministerial Council on Judicial Reform.

## Issues

An independent, capable, and uncorrupted Judiciary is the foundation of the Rule of Law and underpins the development of a market economy. Unfortunately, the Cambodian Judiciary does not yet meet acceptable standards of independence, capability or integrity (*i.e.*, lack of corruption). The decimation of the legal sector by the Khmer Rouge in the 1970s and the socialist legal principles and processes instituted in 1980s still strongly influence the judicial/ legal system in Cambodia today.

***Incomplete separation of powers in the public sector.*** Intrusions by other branches into the Judiciary are a pattern of governance. Although the Constitution offers a vision of an independent Judiciary, the gap between this vision and reality remains large. From a governance point of view, an independent Judiciary is vital to a working system of “checks and balances” among government branches. Without this, the Legislature and the Executive in particular are left unchecked, and are unlikely to be accountable to people.

***The lack of both human and financial resources.*** This also plagues the Cambodian Judiciary. For instance, among 171 judges and prosecutors in the whole nation, only 33 percent have received any formal legal education (Table 7). Regarding financial resources, the Ministry of Justice received only 0.3 percent of total government-funded budget in 1997, out of which only a small portion was allocated for the Judiciary (Table 6). Judges, like all civil servants, receive a salary that falls below a living wage. It is thus not surprising that Cambodia’s court system is widely perceived as being riddled with corruption.

***The procedures for forwarding draft laws to the Constitutional Council do not appear to be applied consistently.*** Only organic laws are consistently sent to the Council for review. Other laws are sometimes forwarded directly to the King for promulgation without prior Council review, contrary to the clear constitutional requirement. Many parliamentarians are unclear about who is responsible for forwarding newly approved laws to the Council.

***Rules governing judges, prosecutors, and the functioning of the Judiciary are not yet effected.*** Although the Constitution says that such rules shall be defined in specific laws, no such laws have been enacted thus far. A law on the courts passed under the State of Cambodia in 1993 prior to the promulgation of the Constitution is still in effect. This law, however, left many issues of jurisdiction among courts unsettled, and provides no standard for resolving jurisdictional disputes. The SCM recently considered a draft law on magistrates.

## **1.2. Civil Society**

### **1.2.1. Private sector**

The government has vigorously promoted the transition to a market economy and the development of a private sector framework since 1993. A series of important laws regulating the private sector were enacted. Among the most important were a *Law on Investment* (1994), a *Law on Organisation and Functioning of Council for Development in Cambodia and Cambodia Investment Board* (1995) and a *Law on Taxation* (1997). New institutions were created to enforce these laws. For example, the Cambodia Investment Board under the Council for Development in Cambodia, has authority to grant tax incentives contained in the *Law on Investment* for investment projects carried out by the private sector.

The development of the private sector framework is back on track since the formation of a coalition government in November 1998. A series of draft laws related to the private sector were submitted to the National Assembly and the Senate in the second half of 1999. The economy also started to recover, and its growth rate was estimated around 4 percent in 1999. While the government’s efforts thus far deserve credit, there remain some challenges facing Cambodia if the current momentum for private sector development is to be sustained. The private sector, for example, has raised serious complaints about corruption and arbitrary decisions by public institutions inconsistent with existing laws. It should be noted that high levels of corruption

correspond with low levels of private investment, under-investment in human resources, fewer social services for the poor, higher tax burdens (mostly “informal” taxes) and more limited ability for small and medium-size businesses to grow.<sup>11</sup>

**Table 7. Educational levels of the Judiciary, 1999**

Level of Education:	Provincial/ Municipal Judges**	Appeal Court Judges	Supreme Court Judges	Prosecutors	Total	Percentage
Bachelor's Degree in Law (4 years)	11	6	1	5	23	13
Bachelor's Degree in Law (incomplete -- 3 years)	1				1	1
Diploma in Law (2 years)	11			6	17	10
1998 Appointee (Bachelor's Degree or Diploma in Law)	11			4	15	9
Diploma in Law (incomplete --1 year)	3		2	1	6	4
Bachelor's Degree (non-Law)	3	1	1	1	6	4
High School	36	1	2	14	53	31
Secondary School	7		1	10	18	11
Primary School	7	1		6	14	8
Teacher's Certificate			1	1	2	1
Bachelor's Degree (Incomplete)	2			4	6	4
Buddhist Education	5			2	7	4
Ecole Royal d'Administration (ERA)			1		1	1
Education Unknown	2				2	1
<b>TOTAL Number:</b>	<b>99</b>	<b>9</b>	<b>9</b>	<b>54</b>	<b>171</b>	<b>100</b>

\*\* Includes 8 judges in the Ministry of Justice

Source: MoJ

### Issues

**Land disputes** represent one of the most pressing governance issues in Cambodia. The huge increase in land disputes has a devastating impact on the functioning of a market economy, particularly on investment, as well as on Cambodia's poor.<sup>12</sup> The lack of a clear legal framework

<sup>11</sup> See United Nations Development Programme (1997), *Corruption and Good Governance: Discussion Paper 3*, (New York: UNDP, July).

<sup>12</sup> For example, roughly half the 262 complaints to the National Assembly's Human Rights Commission in the first six months of 1999 involved land disputes (*Land-Grab Victims Waiting for Resolution*, CAMBODIA DAILY, 4 October 1999, p. 10). Government officials in the provinces and Phnom Penh, and even the Prime Minister, have publicly acknowledged the scale of the problem. In September 1999, the Prime Minister issued an eleven point order to halt “anarchical” land grabbing. Information from NGOs paints a similar picture. Of the 663 civil cases handled by the Cambodian Defenders Project (CDP) from 1996 to 1999, over 60 per cent have been land disputes. Moreover, both the frequency and volume of land dispute cases has increased. During the first 8 months of 1999, land cases represented almost 75 percent of all CDP's civil cases. A second legal services organisation, Legal Aid of Cambodia, reports that it currently represents some 16,500 clients in land dispute cases.

and weak institutional capability to enforce existing laws are major obstacles to private sector development and contribute to increasing landlessness of poor people.<sup>13</sup>

***A more complete legal framework for the private sector.*** Although the development of a private sector framework has been vigorously pursued, more work is needed. Businesses need clear rules that, for instance, guarantee property rights, resolve commercial disputes, regulate anti-competitive conduct and limit State interference. However, the private sector has expressed the view that new laws and regulations are merely treated by officials as new opportunities to extract rents from businesses. Such comments highlight the private sector's depth of frustration with corruption in Cambodia.

***Promoting fair and consistent application and enforcement of laws.*** Laws positively impact private sector development only if they are applied and enforced. New laws and regulations tend to ignore the implementation capabilities of enforcement agencies and weaknesses in inter-ministerial coordination. It may be useful to set up monitoring systems for enforcement of laws and regulations and to strengthen enforcement capacities of relevant agencies.

***Transparency in laws and regulations remains weak.*** Increasing transparency greatly reduces transaction costs for business, provides a level playing field for all players, including small business, and facilitates private sector development. Cambodia's private sector encounters major difficulties in acquiring laws and regulations, particularly administrative orders (sub-decrees, decisions, and circulars) issued by the government. Indeed, most regulations are issued without prior notice to the public.

### 1.2.2. NGOs

NGOs operating in Cambodia increased dramatically after the Paris Peace Accords in 1991. Around 300 international and Cambodian NGOs officially reported to the CDC in 1998, and were involved in more than 500 projects.<sup>14</sup> The actual number of NGOs may far exceed this number.<sup>15</sup> The presence of NGOs is also substantial in financial terms. In 1998, total disbursements by NGOs accounted for 83 million US dollars, of which 10.6 million US dollars were distributed by Cambodian NGOs.<sup>16</sup> The approach of the government towards NGOs has been liberal since the expansion of NGOs after 1991. Currently, there is no law that specifically regulates NGOs.

Other civil society organisations have also emerged. Establishment of the Cambodian Bar Association in 1995 was a notable development. The Bar, currently with 261 lawyers as members, has been increasingly involved in legal and judicial reform. For example, it took the initiative to convene the first meeting of the NGO/IO Land Law Working Group.

### Issues

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<sup>13</sup> In terms of its connection with rural poverty, the importance of land in a country where most of the population are rural farmers cannot be overstated. One recent case study found that incidences of landlessness and extreme poverty have a high degree of correlation (*Approaches to Reducing Landlessness: Workshop Report*, organised by Cambodia Land Study Project and Community Aid Abroad (CAA), 15 March 1999). It should also be noted that the majority of people filing land dispute complaints are poor farmers (Shaun Williams, "Land Disputes in Cambodia," *National Workshop on Institutional Cooperation about Resolving Land Disputes in Cambodia*, organised by Oxfam GB-ADHOC, 15-16 July 1999).

<sup>14</sup> Royal Government of Cambodia (1998), *Non-Government Organisations in Cambodia, 1998* (Phnom Penh: Council for Development of Cambodia, June).

<sup>15</sup> A recent study by a local NGO reported that 595 Cambodian NGOs were registered at the Ministry of Interior, although it is not clear whether all of them are currently operational. For more details see Khus, Thida (1999), *Country Study: Non Governmental Organisations in Cambodia* (Phnom Penh: SILAKA).

<sup>16</sup> Ponlok (1999), *Cambodian NGOs Resource Directory* (Phnom Penh: Ponlok).

**Emerging role of civil society.** The role and composition of civil society have changed over the last two decades. Among civil society organisations, the financial position of Cambodian NGOs is generally weak, and highly dependent on foreign sources of funding. Financial sustainability is a question for most Cambodian NGOs. Some Cambodian NGOs appear to be under the strong influence of political parties, whereas some reportedly abuse their NGO status for profit-seeking purposes. However, many others are providing much needed development services and are appreciated in the communities where they work.

**Limited interface between the public sector and civil society.** Developing mechanisms for more consistent, productive interactions with civil society is one critical responsibility of the public sector. The participation of civil society promotes accountability and transparency in the public sector. It also gives people opportunities to voice opinions, and provides important sources of skills and knowledge for policy-making. The emergence of civil society appears to be gradually influencing the dynamics of decision-making in the public sector. Although more needs to be done, there are some good examples of recent positive change.<sup>17</sup>

**Debates on the need for a legal framework for NGOs.** No consensus has emerged on this. The lack of a law may allow some NGOs to abuse their status, or give government officials discretion to issue arbitrary decisions on the status of NGOs.<sup>18</sup> However, NGOs in general appear to maintain a notable level of public confidence and trust.<sup>19</sup> Some contend that there are more pressing issues for the public sector to worry about than the regulation of NGOs.

### 1.3. Media

Cambodia's media underwent a major transformation before and after the UNTAC period. In the 1980s media organisations were used for political party propaganda. No privately-owned media existed. The *Media Charter* drafted by UNTAC set out a framework for a free press regime. At present, there are more than 200 newspapers and magazines, including several foreign language newspapers. A number of TV and radio stations operate in Phnom Penh and provincial capitals. The legal framework for the media consists of the Constitution and the *Law on Press Regime*

<sup>17</sup> For instance, the recent draft of a land law emerged from collaborations, negotiations, and dialogues among the government and NGOs in consultation with the donor community. NGO efforts to raise awareness about land grabbing motivated the government to address this issue at the national level. NGOs working on advocacy and education in human rights, in collaboration with the international community, have had a positive impact on the awareness not only of private citizens but also of government officials. Public awareness of social issues such as HIV/AIDS would not have emerged without NGO advocacy. NGOs also played an important role in observing the 1998 national elections. Some NGOs have been directly involved in promoting good governance in Cambodia. For instance, during the last two years, the Cambodian Institute for Human Rights (CIHR) provided a series of training courses/workshops on good governance to provincial and district officials. The Centre for Social Development (CSD) has been actively involved in research and advocacy on good governance and anti-corruption in the public sector. CSD published Cambodia's first survey on public attitudes towards corruption in 1998 [CSD (1998), *National Survey on Public Attitudes Towards Corruption: Summary Report* (Phnom Penh: Centre for Social Development, August)].

<sup>18</sup> Although several versions of an NGO law have been drafted at the Ministry of Interior and Council of Ministers, no present law specifically governs the activities of NGOs in Cambodia. As a recent statement by NGOs themselves said, "without this (clear guidelines for NGO operations), NGOs may make decisions in a vacuum, or government officials may give discretionary interpretations of the status or standing of NGOs." [Medicam, NGO Forum Cambodia, and Cooperation Committee for Cambodia (1999), *NGO Statement to the 1999 Consultative Group Meeting on Cambodia*, 25-26 February, 1999.]

<sup>19</sup> An NGO commentator said, "If a pot is not cracked, why is it necessary to fix it? NGOs are subject to all laws generally applicable to all citizens in Cambodia. NGOs are required to register at relevant authorities in the government. NGO staff are subject to income taxes. NGOs and their employees can be prosecuted for criminal acts. NGOs will comply with the *Law on Audit* when it is passed."



(1995). The Constitution guarantees the freedom of expression, press and publication. The *Press Law* creates a legal framework meant to conform to the Constitution.

### Issues

**Vagueness of the Press Law.** The *Law on Press Regime* guarantees more freedom than equivalent laws in other countries in Southeast Asia.<sup>20</sup> Journalists and others, however, raise concerns about Articles 12 and 13 of the *Press Law* for their failure to define terms such as “national security and political stability” or “humiliate the national organs.” Journalists are concerned that those vague terms could be used as excuses to suppress the freedom of the press.<sup>21</sup>

**Need for clear rules and regulations for broadcast media.** Cambodia’s Legislature has not passed any laws to regulate TV and radio stations. The need for such regulations will increase as more organisations enter Cambodia’s media market. From the perspective of good governance, a good broadcast law can set clear rules that will contribute to the promotion of free and balanced broadcast media. It will also help curb the pressure and influence of political parties on the media during political events such as elections. This will promote political stability and provide an enabling environment for long-term investment.

**Promoting professionalism and ethics among journalists.** Many, if not most, journalists reportedly lack professional skills. Nor do they appear to follow any code of ethics set by the journalist associations.<sup>22</sup> Accepting bribes appears to be a common and widely tolerated practice. Positive changes were observed, however. Media have increasingly featured similar news coverage, regardless of their political background.<sup>23</sup> They have also broadened their coverage beyond the exclusively political towards more social and developmental issues. In recent years, journalists have had more opportunities to receive professional training. The Cambodia Communications Institute (CCI) offers training courses for working journalists.

## **2. Key Issues in Governance Reforms**

Following Cambodia’s second national elections in 1998, the coalition government was formed late in the year. In an effort to revive Cambodia’s economy and reinvigorate Cambodia’s engagement with the donor community, the government committed to reforms in a number of key sectors. The

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<sup>20</sup> This seems to reflect experts’ view on Cambodia’s *Press Law*. For example, the Law prohibits censorship by the authorities prior to publication (*i.e.*, no prior restraint) in order to maintain the independence of the press. Press organisations have the right to protect the confidentiality of sources of information used for their publications. Furthermore, the *Press Law* makes no reference to jail terms, only to the imposition of fines, the confiscation of offending newspapers or the suspension of publication for no more than 30 days. Finally, the establishment of press organisations does not require *ex ante* permission. The only requirement is to notify the Ministry of Information of establishment by submitting certain information such as the identity of the press, names and addresses of the employer and editor, name and address of the printing house, and certification of past criminal record of the employer and editor. For more details, see Mehta, Harish, C., *Cambodia Silenced: The Press under Six Regimes* (Bangkok: White Lotus Co., 1997).

<sup>21</sup> For instance, see Kanter, James (1997), *The Future of the Media in Peace Building in Cambodia* (Phnom Penh: Cambodian Institute for Co-operation and Peace), CICP Distinguished Lecture Series Report, Issue No.13.

<sup>22</sup> Two journalists’ associations were established in 1993 and 1994. Codes of ethics set by those associations, however, have no binding force and carry no disciplinary provisions such as the suspension of reporters. Unfortunately, the one journalist association still in existence suffers from a lack of funding due to the withdrawal of some foreign donors after the July events in 1997.

<sup>23</sup> For instance, a Khmer-language newspaper was the first to report the incident of the dumping of 3,000 tons of mercury-laden toxic waste at Sihanoukville in December 1998. A number of other press and broadcast media reported the story with little political slant. Here, Cambodia’s media played an important role in bringing the incident to the attention of the public in the whole country.

new government set out to demonstrate its political will to pursue difficult reforms. As the Prime Minister said recently, “Reforms are a life-and-death issue for Cambodia.”

In this section we examine the following key sectors of reform that relate directly to the issue of governance: (1) public finance; (2) public administration and armed forces; (3) decentralisation; (4) legal and judicial systems, including strengthening accountability institutions and the legal framework for the private sector; and (5) regional integration, in particular Cambodia’s preparations for membership in ASEAN.

## **2.1. Public finance reform**

### *Achievements*

Since 1993, the government has made serious efforts to tackle public finance problems. Public finance reform regained momentum in 1999. Beginning in 1999, the government implemented a value-added tax (VAT) that has generated significant revenues in its first year of implementation and reduced Cambodia's reliance on trade tariffs (Table 8). The Ministry of Economy & Finance (MEF) added additional tax officials to its Department of Taxation to strengthen collection efforts. The government is also making efforts to reduce the granting of *ad hoc* tax exemptions and recover arrears from taxpayers. As part of its effort to increase trade and reform the tax system, the government is implementing tariff reductions in the context of the ASEAN Free Trade Area.

Regarding non-tax revenues, the government has ensured the full transfer of fees from the auction of garment quotas, raised the rates of timber royalties, and taken steps to collect monies owed under contracts for the lease of state assets since 1993, and for telecommunications fees.

These reforms, together with serious efforts to maintain fiscal and monetary discipline, have enabled the government to keep both the exchange rate and inflation stable, as well as enhance macroeconomic stability. The government deserves great credit for these achievements which covered not only the recent period of improved stability but also difficult periods of regional crisis and domestic transition.

### *Issues*

***Building human resources to carry out financial devolution.*** To be more effective and efficient, public finance ought to shift from a pre-audit to a post-audit system with more responsibilities devolving to spending units. Important preconditions for success are the capability of human resources in spending units and audit authorities (both internal and external) to carry out sound financial management and willingness to ensure accountability. To maintain fiscal discipline, the development of human resources must keep pace with financial devolution.

***The need for political commitment to boost customs and non-tax revenues.*** Despite serious efforts by MEF, revenue-enhancing measures for customs and non-tax revenues have not produced major results. To improve performance, MEF needs further collaboration with other ministries and public institutions to collect revenues. A firm political commitment at the highest level of government to tackle powerful vested interests is a critical precondition.

***Government coordination of external assistance.*** To help rationalise public expenditures, the government is building institutional and human resource capacities to link medium-term development plans to annual budgets. This should enable the government to prioritise donor-funded projects within national budgets. The government's initiative to coordinate external assistance is critical to shifting from donor-driven towards Cambodian-driven development activities. This may help rationalise public expenditures, particularly capital expenditures that have been driven primarily by donor assistance. However, a government-driven process of reform will only be effective to the extent that the government is able to change its current governance practices to be more transparent, accountable and open to participation from non-government sectors.

**Table 8.**

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## **2.2. Public administration reform**

### **2.2.1. Civil Administrative Reform**

#### *Achievements*

The government has expressed its firm commitment to reform public administration in Cambodia in both the civilian and military sectors. In addition to drafting a comprehensive public administrative reform programme, the government formed a high-level Council of Administrative Reform (CAR), together with a Secretariat General. It is currently making efforts to strengthen their institutional capacities.

The government has also begun work on the key activities of its administrative reform programme, the civil service census and functional analysis. The government has wisely stressed these two activities as the foundation for the entire administrative reform effort; they are the critical activities upon which all else must rest. The government must be credited with pushing ahead with the civil service census and other technical activities without the benefit of substantial financial support from donors. The civil service census includes several levels of controls which if implemented strictly will add significant integrity to the computerised payroll system and personnel database to be established. In addition, the government has reported progress in its efforts to downsize the civil service by enforcing its mandatory retirement age of 55 and by reducing the civil service by some 2,000 personnel in 1999.

#### *Issues*

***Broadening ownership of reforms.*** The current programme includes a large array of activities and may be difficult to grasp fully, both conceptually and operationally for many public officials. To build up genuine ownership of the reform outside the small group of experienced, senior officials managing the programme, greater awareness of the programme and its implications within the public sector and among the public will be needed. Largely due to the size of the tasks involved and absence of substantial donor support, there has been only modest progress with the reform programme. Major work that is difficult and potentially unpopular lies ahead. If the plan's implications for government operations are not adequately understood, there is a risk that the political support that appears to exist today may weaken once implementation begins and consequences become more visible.

***A difference in priority between the government and some donors concerning the downsizing of the civil service.*** Downsizing of the civil service appears to be uppermost in the minds of some donors, but some government officials do not view this as the top priority. Our study suggests that civil servant density in Cambodia is low compared to those in neighbouring countries. The number of civil servants may not exceed the needs of the public sector. Rather, certain ministries may have surplus staff relative to their functions, while other institutions, both existing and to-be-created, require increased staff with more specialised skills. The inefficiency of Cambodian civil service may have more to do with other factors such as the lack of meritocracy (as opposed to the existing patronage system), low salaries, entrenched attitudes and unqualified staff.

***The excessive proliferation of committees.*** As part of the reform process, the government has established a wide variety of new, inter-ministerial bodies to manage various aspects of reform. This has been a pattern in recent years. On the one hand, inter-ministerial bodies lend authority to coordinate cross-sectoral interests and strategies. Another advantage may be that they promote the participation and ownership of concerned ministries in decision-making. However, the proliferation of committees may in fact undermine reforms. This practice increases the likelihood of overlapping authority among ministries already tasked to implement reforms in a given sector and facilitates re-concentration of power. It taxes human resources that are already thinly stretched. New committees also divert scarce financial resources away from existing institutions responsible for implementing reforms. Dissolving committees, once they have achieved their mandate would partially help to contain the excessive proliferation of committees. The functional analysis should include a critical examination of all inter-ministerial committees.

**Complementarity between administrative reform and decentralisation efforts.** Current administrative reforms need to pay more attention to this issue. Commune elections may involve financial and administrative decentralisation, although it is not certain to what degree. A clear consensus is needed from the government on the specific structure, functions, lines of authority and responsibility, budgets and staffs of different levels of government and different institutions. This should be a key aspect of any functional review of the public sector. It will be equally important to strengthen local capacity to manage needed responsibilities.

### 2.2.2. Reform of the Military *Achievements*

The government, in partnership with key donors, is pursuing demobilisation of its armed forces as part of the larger reform of Cambodia's public sector. Two high-level councils have been established to coordinate the efforts on demobilisation and military reform, respectively. The government presented a comprehensive draft of the Cambodia Veterans Assistance Programme (CVAP) to the donor community in February 1999.

To initiate the demobilisation process, the government began the first phase involving registration and data collection for all military personnel. It is also creating a computerised personnel database based on the registration exercise. The government is currently working with donors to design pilot demobilisation projects in selected provinces to gain experience with demobilisation, reinsertion and reintegration before general implementation nationwide. At the same time, the government with assistance from the Government of Australia, is working on a Defence White Paper to consider the question of the military's future function and duties.

#### Issues

**The sequencing of policy planning.** The demobilisation process began before any coherent vision for the military's future structure and responsibilities was developed. Without the vision, an informed and rational discussion of troop (and budget) reductions cannot occur. There would be greater credibility, donor support, and likelihood of success if, before demobilisation began, there was consensus within the armed forces and between the government and donors on a concrete vision and overall policies for the future of the military. Rushing to implementation—which both the government and donors are pressured to do—before fundamental policies are in place raises the risk of failure in reforms.

**Transparency of the military's role in demobilisation.** Coordination in demobilisation between the two concerned Councils is essential. Yet, there are no identifiable mechanisms to ensure transparency of the activities of the Council of Reform of the Royal Armed Forces. Information on the registration process, for instance, has not been made readily available to the donor working group on demobilisation. None of the relevant military bodies communicate directly to donors through the quarterly Donor Monitoring Meetings or donor working groups. In general, the military seems strangely absent from the dialogue on demobilisation. The large information and communication gap has impacted confidence in the integrity of the demobilisation process and cost the government financial and technical support.

**Preparedness in the provinces for demobilisation.** Current plans for demobilisation stress the role of to-be-created provincial veterans' offices in the reintegration of demobilised soldiers. Provincial committees will supervise the reintegration process. Thus, implementation will largely rely upon the capacity of provincial government to manage major elements of the programme. At the moment, provincial authorities are not well informed of their future role and lack human resources to handle it. It is essential for the programme to concentrate heavily during the preparatory stage on strengthening the preparedness and human resources of provincial officials. It is also highly advisable to include broader participation of local administration, donors and NGOs in the provinces to tap their expertise, experience, and information in the planning and project design process.

**Using existing mechanisms at the local level.** Demobilisation is an untested variable that needs adjustment and refinement. It is thus important to tailor reintegration to fit existing service delivery institutions and mechanisms, not the other way around. Given the range of local development programmes supported by the government, donors and NGOs, there should be numerous options for reintegrating demobilised soldiers using such programmes. Where insufficient local mechanisms exist, some thought should be given to sequencing demobilisation with the expansion of existing local institutions and programmes.

### 2.3. Decentralisation

#### *Achievements*

The government's SEILA Programme for promoting rural development represents the most ambitious and advanced decentralisation initiative implemented to date. It has resulted in the creation of development committees in over 1000 villages and over 100 communes, and local planning in most of them. Substantial training and infrastructure work have formed a part of SEILA's programme. The government, drawing on its experiences with SEILA, is planning the election of commune councils which will represent a major decentralisation reform. Laws on commune administration and the commune elections are being drafted. To begin the process of decentralising finance, the National Assembly adopted a *Law on Financial Procedures and Provincial-Municipal Properties* that will begin implementation in 2000.

#### *Issues*

**“Top down” approach to planning and instructions.** The absence of legal clarity regarding the status and scope of authority of provinces, municipalities and districts, reinforced by long-standing practices, enables command decision-making to persist. The prevalence of such attitudes is a serious constraint to decentralisation. SEILA demonstrates the difficulty in breaking the cycle of decision-making by small groups of powerful people and establishing more participatory governance. It also highlights the unwillingness of some lower or mid-level officials to take responsibility. Village, commune and province finance officers, for example, sometimes hesitate to sign off on financial reports for fear of the consequences of making mistakes.

**Weak human resources.** Capacities for financial monitoring, accounting, contracting, regulatory roles, reporting, project appraisal and technical expertise raise questions about the ability to implement decentralisation in the short to medium term. Decentralisation is vital for sustainable rural development. Yet, there is a risk that implementation of decentralisation initiatives will outpace the implementation of training programmes for officials, *e.g.* with respect to commune elections. This carries enormous implications for the effectiveness of all local governance reforms, and highlights the need for massive, long-term training at the local level.

**Matching financial resources with reform planning.** SEILA has demonstrated problems that arise when planning is not sufficiently linked with financing. The usefulness of decentralised planning and local support for projects tend to diminish when financing later proves unavailable. Ensuring resources are available is critical if decentralisation initiatives are to be sustainable. Thus far the government allocates few funds for provincial development. The long-term success of local governance reforms will rest on the government's ability to generate revenues and finance local development initiatives.

**Commune administration reforms.** The SEILA experience also influenced the government's efforts to reform local governance through the commune elections expected in late 2000 or 2001. The elections will create Commune Councils elected every four to five years to replace the current system of appointed commune chiefs in Cambodia's 1,600 communes. A draft *Law on Commune Administrative Management* leaves unclear how much decentralisation will actually occur through the elections. It fails to clarify the political and administrative powers attached to the Councils and the division of authority between different levels of government. The Councils' financial basis and powers are also undefined. Decentralisation without devolution of

authority to budget, raise revenues and manage expenditures is an empty form of decentralisation. National dialogues including provincial officials and civil society, in collaboration with the international community, are highly recommended to tackle these issues. Such dialogues have yet to occur with the main stakeholders in commune reforms.

## **2.4. Judicial and legal reform**

### **2.4.1. Judicial reform**

#### *Achievements*

The government is in the process of creating a high-level, inter-ministerial Council on Judicial Reform to coordinate its efforts to reform the Judiciary. At the same time, the Ministry of Justice is busy drafting a number of key laws including a new Penal Code and laws on criminal and civil procedures. The Supreme Council of Magistracy has also met recently to review a draft *Statute on Magistrates*, while MoJ continues drafting work on a *Law on Court Clerks* and a law to establish specialised courts. There has also been a highly publicised investigation into corruption within the Phnom Penh courts that has resulted in the re-arrest of persons previously released in criminal cases and the replacement of the Chief Judge and Chief Prosecutor of the Phnom Penh Municipal Court.

#### *Issues*

**The impunity of public officials.** This is a critical element – the most serious weakness according to many – in the operation of Cambodia’s judicial system today. It is also an indication of the public sector’s lack of accountability. As an initial step to address this issue, Article 51 of the *Law on Civil Servants*, which enshrined the impunity of public officials, was amended in September 1999, to require notification to department heads three days prior to the arrest of public officials. The government intends this to send a signal to government officials (civil servants, police and military) who have enjoyed an effective immunity from criminal prosecution. The amendment of Article 51 is a positive step, but it is the enforcement of laws against public officials that will change the pattern of impunity. This relates to the larger issue of the State’s inability or unwillingness to hold itself and its officials accountable for wrongdoing, or even satisfactory job performance. The private sector named corruption as the most serious obstacle to business development in Cambodia. Public statements by senior officials and administrative discipline, usually a re-shuffling of positions, are no substitute for criminal penalties for serious wrongdoing such as corruption. The government has yet to prove its readiness to prosecute corrupt officials. In the absence of an administrative law, non-state parties have no effective legal recourse against the State for any violation of law or breaches in commercial dealings.

**Interference in the Judiciary** by other branches persists despite the Constitution’s declaration of separation of powers. Given the early stage of development of the separation of powers, some confusion and reliance on past practices is to be expected. Judicial reforms and development of an independent Judiciary are not events, but rather a long-term process. It is imperative that concrete measures are taken and enforced to produce a more professional, independent Judiciary that functions within an accountable, transparent system of governance.

**The absence of transparency at critical points in the criminal process.** At present, there is no effective mechanism or guarantees of transparency in the collection and weighing of evidence undertaken by investigating judges. It is important to increase the transparency of the process, particularly when a case is before an investigating judge. The mandatory presence of a lawyer for the accused and proceedings open to the public are two necessary reforms that could have immediate, positive impact. Furthermore, another measure to increase transparency in the criminal process is forbidding trial judges from reviewing evidence prior to trial. The present system allows or even encourages trial judges to review evidence (contained in the case file received from the investigating judge) prior to trial, outside the view of the defence attorney. It is essential that all decision-making by judges be made more transparent, especially to the accused and his/her lawyer.

**Improvement of financial and human resources.** This is key for judicial reform. Separation of the Judiciary's budget from the budget of the Ministry of Justice (MoJ) is needed to establish a genuine separation of powers. Equally important are improved human resources. Given the low levels of education among judges and prosecutors, major, long-term legal training is needed to improve the performance of the courts. This might be effectively undertaken in connection with the appointment of new judges. A striking weakness in human resources with regard to commercial cases may call for intensive training in commercial and business-related law for judges and prosecutors. The establishment of institutions for judicial training, such as a judicial training centre, might be an important responsibility of the MoJ.

**Developing a new vision of the Ministry of Justice's mission.** The new vision should remove MoJ from the business of managing the Judiciary and towards a new mandate that strengthens good governance and a separation of powers. The new mandate might include: (i) drafting laws; (ii) development of data/information on the criminal system; (iii) organisation of a judicial training center; (iv) enforcement of judgements, in collaboration with prosecutors; (v) planning and maintenance of court facilities; and (vi) supervision of court administrative personnel to ensure MoJ collects data on the criminal and civil justice system.

#### 2.4.2. Legal reform Achievements

The government is currently drafting a large number of important laws, including a new land law, forestry law and law on evidence, as well as civil and commercial codes. The government deserves credit for facilitating a more open process for developing a new land law in genuine partnership with civil society organisations and donors. A *Labor Law* and *Law on Taxation* were enacted in 1997, and more recently the National Assembly approved a *Law on Quality of Goods and Services* as well as amendments to the *Law on Commercial Registration*.

With regard to the creation of accountability institutions, the National Assembly has approved a *Law on Audit* that will hopefully result in the creation of an independent National Audit Authority led by a neutral, non-political, competent Auditor General. In addition, the Ministry of Parliament Relations and Inspection was upgraded from a state secretariat and is pursuing an anti-corruption action plan and drafting anti-corruption legislation.

#### Issues

The absence of a notice-and-comment period prior to the approval of a law or regulation has significantly reduced the ability of the public, in particular the private sector, to provide input into the legislative process. The absence of a formal mechanism for informing and consulting with the private sector and public about proposed legislation also severely reduces the transparency of the legislative process. In particular, the absence of consultation between the government and private sector results in less effective laws or laws that actually inhibit rather than support private sector growth in Cambodia. The lack of formal notification in advance of new laws and regulations coming into effect has also impacted business operations, and left businesses unprepared for internalising new legal requirements.

**Improvement in the implementation and enforcement of laws.** Private sector development not only requires the presence of laws, but also the respect for and enforcement of such laws. Lack of respect for laws and difficulties in enforcement are not simply matters of ill-motivation, bad practices or political infighting. They are largely connected to the lack of human and financial resources of the people who manage and work within the legal system. As more new laws and regulations are legislated, the need for qualified and competent judges and lawyers increases. Human resource development and legal reform must go hand in hand.

**Over-reliance on sub-decrees.** In Cambodia, implementation of a law often requires the subsequent enactment of sub-decrees. Laws frequently include only general statements of principles while lacking provisions defining key terms and powers. Crucial issues are often left to



sub-decrees issued later by the government. This practice risks leaving ministries too much discretion and unaccountable for decisions. The draft *Law on Commune Administrative Management* is a good example of this problem. One way to address the issue is to require that draft laws forwarded to the National Assembly must be accompanied by drafts of any implementing regulations called for in the law. This has several merits: (i) eliminating time lags between promulgation and enforcement; (ii) minimising discretion; (iii) improving confidence in the government's commitment to the Rule of Law; and (iv) improving checks and balances.

***The idea that paper (i.e., laws) has real power.*** This idea is little accepted in Cambodia today. The public's perception of the unreliability of laws and the courts bolsters the existing tendency to seek high officials to intervene and solve disputes or problems. Procedures set out on paper (e.g., in laws) are often ignored or avoided in favour of more informal, less transparent decision-making. A new perspective on the power of laws will only emerge over time as people see a reliable, transparent, effective legal system operating and respected by all levels of society.

## 2.5. Regional integration

### *Achievements*

After several years of preparations and challenges, Cambodia was admitted into the Association of Southeast Asian Nations (ASEAN) in April 1999. As part of the preparation process, the government—led by three ministries in particular, the Ministry of Foreign Affairs and International Cooperation, the Ministry of Economy and Finance and the Ministry of Commerce—organised numerous trainings, disseminated important information and policies on ASEAN integration and completed the preparation of an initial package of tariff reduction schedules to implement the ASEAN Free Trade Area and services concessions for the *ASEAN Framework Agreement on Services*, as well as a new ASEAN-consistent tariff nomenclature and draft *Customs Code*. These ASEAN preparations also serve as important steps in Cambodia's eventual admission to the World Trade Organization.

### *Issues*

***Small number of officials with expertise, language skills, and experience.*** Too few officials possess the level of skills necessary to handle the intensive, technical preparations for ASEAN economic initiatives. This small group has carried the vast majority of the workload associated with Cambodia's preparations for ASEAN, leaving them severely overworked. As a new full member of the ASEAN, the government will face enormous tasks, particularly in the first few years, to implement most ASEAN economic agreements. Cambodia's limited availability of human resources, especially for highly technical matters, will be a major constraint to carrying out such work.

***Greater inter-ministerial coordination.*** While essential for implementing ASEAN economic agreements, inter-ministerial mechanisms remain weak. Significant external assistance in institutional capacity building is needed. Assistance related to ASEAN economic cooperation for ministries such as the Ministry of Commerce, the Ministry of Agriculture, the Customs Department at the Ministry of Economy and Finance, as well as newly formed working groups is absent, yet clearly needed. For the most part, they are currently ill-equipped to develop policies, prepare necessary legal instruments and monitor implementation. Developing a core group of officials to lead ASEAN-related reforms would fit well into the scheme of public administration reform.

***Unclear or ill-defined authority for policy-making.*** Cambodia's policy-making on ASEAN economic cooperation illustrates this cross-cutting issue of governance. The absence of a clear legal framework is a source for confusion for the key ministries responsible for ASEAN. The existence of a non-functional Internal Coordination Network (ICN) has only further confused procedures and re-opened inter-ministry competition. The ICN has met only twice in the three

years since its establishment. Given that the Council of Ministers handles all policy-making with respect to ASEAN, the ICN's continued existence is highly questionable.

***The politicisation of technical policy-making.*** The inability to establish a National Committee on ASEAN Economic Cooperation, a technical body responsible for ASEAN economic initiatives, shows how technical matters are easily politicised. Establishment of the Committee was stalled by a dispute over appointments of senior officials. This issue relates to Cambodia's administrative reforms. Effective governance requires that technical bodies comprised of competent staff with appropriate expertise can carry out their work without political interference. Cambodia does not have the luxury of an oversupply of human resources that would allow it to mismatch responsibilities and expertise.

### 3. Economic Implications of Reform <sup>24</sup>

The government has taken important steps to implement priority reforms. The potential impact of reforms on Cambodia's economy is of great interest to policy-makers, donors and those involved in Cambodia's development. A recent study attempts to address this issue by carrying out a long-term projection to the year 2020 using a newly developed macroeconomic model and database. The projection includes two hypothetical scenarios: a *Reform Scenario* and a *No Reform Scenario*. It estimates the impact of reforms by comparing the results of the two scenarios. It should be noted that the current scenarios do not necessarily reflect the entire spectrum of the government's on-going reforms. They use only some aspects of these reforms primarily for technical reasons. Also the assumptions made under each scenario may not precisely match the government's plans for implementation.

The Reform Scenario assumes that the government vigorously implements reforms in the coming five to seven years (Table 9). In public finance, revenue-enhancing measures increase the efficiency of tax collection. This enables the government to increase actual revenues from various sources close to their potential levels. The government's reforms of civil administration and military forces comprise many components of programmes. For these scenarios, only three components of reform programmes are selected: (i) the demobilisation of soldiers and security officers; (ii) the rationalisation of civil administration; (iii) an increase of average monthly salaries of public officials. Forestry sector reform increases the government's managerial capacity to control the volume of logging. This enables the forestry sector to be sustainable and bring long-term revenues to the national Treasury. Judicial and legal reforms and the development of the private sector framework provide businesses with an enabling environment for long-term, large-scale investment. These reforms also create a level playing field for domestic and foreign investors. Foreign direct investment expands rapidly, financial markets are established and portfolio investment flows in. The strong commitment of the government to reforms sends positive signals to foreign donors and aid agencies. This enables Cambodia to access official grants and loans necessary to carry out various reforms and development programmes.

Under the No Reform scenario, the government is assumed to be unable to translate reform programmes into actions. The structural problems of governance continue to prevail over the coming two decades until the year 2020.

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<sup>24</sup> The authors are grateful to Sok Hach, CDRI Economist, for providing the content for this section.

Table 9. Assumptions of Two Scenarios: Reform and No Reform

National Reforms	Policy measures	Assumptions of Reform Scenario	Assumptions of No Reform Scenario
Public finance reform	Enhance revenue-raising capacity; increasing the efficiency of tax collection	<ul style="list-style-type: none"> <li>• Increase the ratio of actual-potential tax revenues:</li> <li>• Direct tax: increase from 16% in 2000 to 40% in 2005, and slowly to 50% from 2006 to 2020.</li> <li>• Indirect tax: increase from 28% in 2000 to 60% in 2020</li> <li>• Customs duties: increase from 55% in 2000 to 95% in 2020</li> </ul>	<ul style="list-style-type: none"> <li>• Increase the ratio of actual-potential tax revenues:</li> <li>• Direct tax: increase from 16% in 2000 to 36% in 2020.</li> <li>• Indirect tax: increase from 28% in 2000 to 48% in 2020</li> <li>• Customs duties: increase from 55% in 2000 to 75% in 2020</li> </ul>
Public administration reform (affecting public expenditures)	Demobilize soldiers and Rationalize civil administration  Average monthly wage rates of public officials	<ul style="list-style-type: none"> <li>• Decrease the number of armed forces (police and army) from 200,000 in 2000 to 100,000 in 2007; civil servants from 150,000 to 100,000 in 2007;</li> <li>• Keep same number for the armed forces up to 2020, while number of civil servant will increase by the rates of population growth between 2009 and 2020 (2.5% pa)</li> <li>• Increase from \$35 in 2000 to \$150 in 2007;</li> <li>• Increase at the rates of GDP growth from 2008 to 2020</li> </ul>	<ul style="list-style-type: none"> <li>• Increase the total number of public officials (armed forces and civil servants) at population growth rates between 2000 and 2020</li> <li>• Increase by the growth rates of GDP from 2000 to 2020</li> </ul>
Forestry reform	Control the volume of logging	<ul style="list-style-type: none"> <li>• Reduce from 800,000m<sup>3</sup> in 2000 to 600,000m<sup>3</sup> in 2005;</li> <li>• Continue 600,000m<sup>3</sup> from 2006 to 2020</li> </ul>	<ul style="list-style-type: none"> <li>• Increase from 800,000m<sup>3</sup> in 2000 to 1,600,000m<sup>3</sup> in 2005;</li> <li>• Decline rapidly to 75,000m<sup>3</sup> in 2010 and then keep flat up to 2020</li> </ul>
Official Development Assistance (affected by national reforms)	Official grants  Official loans (net)	<ul style="list-style-type: none"> <li>• Increase from \$215 million in 2000 to \$220 million in 2005;</li> <li>• Continue at \$170 million from 2006 to 2020</li> <li>• Increase from \$96 million in 2000 to \$296 million in 2005;</li> <li>• Increase at slower rates from \$296 million in 2005 to \$876 million in 2020.</li> </ul>	<ul style="list-style-type: none"> <li>• Decline from \$215 million in 2000 to \$140 million in 2005;</li> <li>• Decline to \$70 million from 2006 to 2020</li> <li>• Decrease from \$96 million in 2000 to \$63 million in 2005;</li> <li>• Decrease at faster rates from \$63 million in 2005 to \$1 million in 2020</li> </ul>
Foreign Private Investment (affected by national reforms)	FDI  Portfolio investment	<ul style="list-style-type: none"> <li>• Increase from \$180 million in 2000 to \$780 million in 2020</li> <li>• Establish financial markets in 2003;</li> <li>• Increase from \$200 million in 2005 to \$950 million in 2020</li> </ul>	<ul style="list-style-type: none"> <li>• Remain flat at \$160 million from 2000 to 2020</li> <li>• Fail to establish financial markets (zero portfolio investment from 2000 to 2020)</li> </ul>

A comparison of the two scenarios reveals the impact of reforms on Cambodia's economy in the long run. An overall conclusion drawn from the scenario work is that the government's reform programmes, if fully implemented, will have a major positive impact on Cambodia's economy in the coming two decades.

If the reform programmes are fully implemented in the coming five to seven years, the real GDP growth rate will accelerate from 4.3 percent in 2000 to 7.7 percent in 2005, and will be maintained around an annual average of 7 percent from 2005 to 2020 (Table 10). This contrasts sharply with the No Reform scenario in which the growth of real GDP will stagnate. Without reforms, the real GDP growth rate will decline from 4.1 percent in 2000 to 2.8 percent in 2005, and will be stagnant at a low level around an annual average of 2 percent until 2020.

High economic growth stimulated by reforms has major implications for the level of income per population. Nominal GDP per capita will rise from \$274 in 2000 to \$1,522 in 2020, a more than 500 percent increase in 20 years. Even factoring in inflation, real GDP per capita in 2020 will be 2.5 times higher than that in 2000. This would have dramatic, positive impact on poverty reduction, assuming measures to ensure income equity such as rural development or social welfare programmes are implemented. By contrast, the picture is gloomy without reforms. With stagnant economic growth, nominal GDP per capita will be \$272 in 2000, and remain within the range of \$260 - \$290 between 2000 and 2020. No significant changes will occur in income in real terms. Progress in poverty alleviation would be minimal.

#### 4. External Assistance for Governance Reforms

The current section draws implications from our study for external assistance to promote governance reforms.

##### 4.1. Key issues for donor assistance in governance

**A new dynamic in the interactions between the government and donors on promoting reform.** The most effective dynamic for reform would exist when government demonstrates commitment by taking concrete actions (as opposed to only plans and stated intentions) and donors respond with financial and technical support. This would ensure that the government is driving the process by setting its own priorities for reform, building political support for policies and demonstrating political will by taking initial, tangible steps of reforms. There are many indications that this dynamic has yet to be developed in Cambodia. Thus, the following recommendation is offered: prior, concrete reforms by government that improve governance should be a pre-condition to assistance for a given sector or institution.

**Multi-institutional policy-making and assistance.** Both the policy-making process and assistance should be inclusive, meaning they ensure the participation of all concerned institutions needed to implement reforms from the outset of the programme. A multi-institutional approach is an essential factor common among successful reforms. Yet, this has not been practised well in some reforms. Multi-institutional assistance does not mean that support should target centralised, ministerial-level committees or councils. Rather, the focus should be strengthening institutions with direct responsibility for implementing reforms.

**Building financial integrity.** This should be both a key objective of the government's reforms and a key criteria for donor assistance. As an essential first step, accountability institutions necessary for good governance need financial autonomy and sufficient funds to carry out their mandates. Key accountability institutions include the courts, Supreme Council of Magistracy, legislative commissions, Ministry of Parliamentary Affairs and Inspection, Ministry of Justice, and new institutions such as a National Audit Authority. The government is recommended to take initial, concrete reforms prior to seeking donor assistance.

**Fulfilling requirements for loan approvals.** Article 90 of Cambodia's Constitution requires that all borrowings by the government be approved by the National Assembly. The Constitution does not authorise the Assembly to delegate this power to the government or any individual ministry. In practice, not all loans signed by the government have been approved by the National Assembly. It is highly recommended that the legal requirements for loan approvals be followed. Although the government bears the primary responsibility for ensuring that domestic legal procedures are followed, it is incumbent upon lenders, as part of their due diligence, to both understand the legal requirements in effect and insist on the borrower's compliance with them.

Table 10. Impact of Reform on Cambodia's Economy: A Comparison of Two Scenarios

Year	Reform Scenario						No Reform Scenario					
	1995	2000	2005	2010	2015	2020	1995	2000	2005	2010	2015	2020

GDP (current price; Million US\$)	2923	3302	5713	10263	17631	28718	2903	3275	3867	3966	4402	4953
GDP per capita (current price; US\$)	284	274	420	671	1034	1522	284	272	284	259	258	262
GDP per capita (1993 price; US\$)	212	215	267	350	447	542	212	213	230	213	214	219
Real GDP growth (%)	7.6	4.3	7.7	8.4	6.8	5.5	7.6	3.4	2.8	1.2	2.3	2.6
Inflation (final quarter basis; %)	3.5	4.1	3.6	3.4	3.5	3.8	3.5	4.1	11.1	11.9	11.6	11.6
Exchange rate (Riel/US\$; end of period)	2560	3975	4000	4000	4000	4000	2560	3975	7992	16071	32321	65007
Public revenue (% of GDP)	8.9	11.3	14.0	15.4	16.6	17.5	8.9	11.4	12.2	12.9	13.8	14.8
Public expenditure (% of GDP)	16.7	15.7	18.6	18.8	19.0	19.2	16.7	15.8	14.8	14.4	14.1	14.8
Current public deficit (% of GDP)	-0.8	1.3	2.5	4.4	5.1	5.2	-0.8	1.3	1.1	1.4	2.2	3.1
Overall public deficit (% of GDP)	-7.7	-4.4	-4.6	-3.5	-2.4	-1.6	-7.7	-4.4	-2.6	-1.5	-0.3	-0.1
Exports of goods (% of GDP)	12.0	20.0	22.2	29.9	39.2	45.7	12.0	20.2	25.8	20.8	21.4	21.2
Imports of goods (% of GDP)	23.9	34.1	38.2	39.7	41.1	41.3	23.9	33.9	32.7	34.1	33.8	34.2
Trade balance (% of GDP)	-12.0	-14.1	-16.0	-9.8	-2.0	4.4	-12.0	-13.8	-6.9	-13.3	-12.4	-13.0
Current account balance (% of GDP)	-12.9	-12.7	-13.6	-6.6	-1.2	5.3	-12.9	-12.3	-4.1	-8.2	-5.9	-4.5
External contribution to the economy (% of GDP)	21.0	15.7	15.4	11.7	9.1	7.0	21.0	15.2	9.6	8.1	6.8	6.1
Total savings (% of GDP)	21.0	21.5	27.2	29.6	28.7	26.8	21.0	21.0	17.7	16.6	15.3	15.7
External debts (% of GDP)	4.0	14.0	37.0	42.0	42.0	40.0	4.0	14.0	36.0	42.0	40.0	36.0
Population (million)	10.3	12.0	13.6	15.3	17.1	18.9	10.3	12.0	13.6	15.3	17.1	18.9
Unemployment (% of labour force)	1.7	4.2	5.5	4.8	4.1	3.8	1.7	4.3	6.2	8.8	11.2	13.4

Source: CDRI.

***The need for greater donor coordination.*** Both officials within the government and donors recognise this need. In the area of governance, one useful strategy may be for the donors present in Cambodia to jointly develop a set of specific governance-related criteria and performance indicators for programme planning and monitoring. Major multilateral institutions such as the ADB and the World Bank have been developing such assessment tools. If the results of their efforts were shared with donors in Cambodia, it might expedite donor coordination and the mainstreaming of governance into programmes of assistance.

#### **4.2. Recommended actions by the government**

Major structural reforms in governance require long-term efforts, substantial resources and political will. There should be sensitivity with regard to the resource requirements and current availability of resources in Cambodia. This does not mean, however, that all important, high-impact reforms in governance require more money. Indeed, numerous specific reforms can have tangible impact on good governance without injections of more money. The list of recommended actions summarised in Table 11 is not meant to be exhaustive, but to illustrate examples of low-cost, governance-promoting actions that the government could undertake.

The following are three initial actions that would significantly improve good governance and demonstrate the government's resolve to reform the public sector.

The first good example of low-cost governance reform is concerned with state asset management. The non-transparent, illegal sale and leasing of public property has been a serious problem since the formation of the government in 1993. On several occasions Cambodia's leaders have issued declarations to halt such practices. In this context, the following actions are recommended for consideration by the government: (i) publish a list of state assets held since 1993—in particular real estate held by each ministry and government agency; (ii) review major contracts involving the sale/lease of state property; (iii) require an open tendering system for the

sale/lease of state property; and (iv) immediately freeze new sales/leases of state assets until a public tendering system is established.

Compiling and publishing a list of state properties held since 1993 is not difficult. Records already exist in the Domain Department of the MEF and the accounting departments of each ministry. Reviewing major contracts would require some financial resources and expertise, although seeking donor support should not be difficult. Requiring an open tendering system will contribute significantly to improving transparency and accountability, without involving more money. All government contracts and concessions should also require an open and transparent tendering system.

Another example of low-cost governance reform is related to advance notice-and-comment periods prior to approval of new laws and regulations. As discussed above, the absence of a period during which the public or interested parties can offer comments on draft laws and regulations before their approval was pointed out as a key issue by the private sector. Thus the government is recommended to introduce, by law, a requirement that there must be a 60-day comment period prior to approval of all laws and regulations. In addition, the private sector also urged the government to publish a public notification that a new law or regulation will come into effect on a given date (*e.g.*, 30 days after the public announcement is made).

Consultation with non-government sectors prior to approval by the Council of Ministers (for draft laws and sub-decrees) or an individual ministry (for prakas or other regulations) should be strengthened. A notice-and-comment period and a practice of consultation will open up opportunities for interested parties and the public to provide input into proposed legislation before it is approved. This practice will help ensure transparency, predictability and greater public participation. Those reforms will have tangible positive impact particularly on private sector development, while incurring little extra cost for the government.

At present, there is little effective separation between the Executive, Legislative and Judicial branches of government in Cambodia. The result is the absence of checks and balances within Cambodia's system of governance. One powerful reform that would signal the government's commitment to Judicial reform would be amending the Law on the Organisation and Functioning of the Supreme Council of Magistracy (SCM).

To establish a de-politicised SCM as the independent guarantor of judicial independence, the following amendments to the *Law* are needed: (i) remove any members of the SCM who currently hold posts in either the Executive or Legislative branches; (ii) require all members of the SCM to assume no other official position (*i.e.*, full-time job); and (iii) create a separate budget line and secretariat for the SCM and courts under the national budget.

These reforms cost no money, only real political will. The drafting of such an amendment is not difficult because it would only require minor revisions to the *SCM Law*. Senior court officials have publicly endorsed such amendments. This reform will instil greater confidence in the public sector among investors, donors and the Cambodian public.

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Table 11. Low Cost Reforms for Good Governance

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Sector	Transparency	Accountability	Greater Participation	More Informed	Predictability
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## Policy-making

<b>Policy-making on Governance</b>	Issue yearly list of priority reforms		
<b>Public Finance</b>	publish list of garment companies with COs, their local address and place of business	publish list of taxpayers in arrears more than \$5000	ensure annual budget laws reach Assembly for review by start of October
	public notice of commercial banks in technical insolvency	enact and strictly enforce the <i>Law on Budget Discipline</i> with prosecutions in court	
	public release of monthly prakas on budget allocations	freeze on all sale/leases of state property	
	no sale/lease of state property or any government contract without public tender		
<b>Decentralisation</b>	public release of monthly expenditures by each provincial govt.		public release of draft <i>Commune Admin. Law</i> when sent to National Assembly
<b>Civil Admin. Reform:</b>		revise <i>Law on Civil Servants</i> abolish Art. 51	develop policy and projected timetable for increase in civil service salaries
<b>Military/Security Reform</b>		establish forum for input from civil society on reintegration programme	issue official policy on military reform  issue official policy on reform of security agencies
<b>Judiciary</b>	release info on legal education, experience of all judicial appointments prior to nomination	establish separate budget lines in nat'l budget for SCM and the courts revise <i>SCMLaw</i> to remove the Executive and Legislative branch officials	automatic dismissal of crim. cases if no charge within 24 hours of arrest  military courts only hear cases of soldiers violating military law/regs
	require courts to provide copies of all court decisions to parties	require accused to have lawyer when case before investigating	immediate transfer of cases involving non-RCAF persons to civilian court

judge

Table 11. continued

Sector	Transparency	Accountability	Greater Participation	More Informed Policy-making	Predictability
Legal System	law requiring ministries to send copy of all regs to National Assembly and Senate	enact sub-decree requiring draft regulations accompany all laws sent to National Assembly  allow cases by private persons/companies against ministries that violate or do not properly apply laws	require by law 60-day advance notice and comment period for all laws, anu-kret, prakas		at start of each year, gov. issues list of priority laws and regulations to be drafted each year
Accountability Institutions	appoint Auditor General using open nomination and selection process	enact law on declaration of assets by public officials  start prosecuting officials for criminal violations			
Private Sector Framework	require official translations into English of all laws/regulations		establish regular forum for private sector to RGC contacts		
Regional Integration		abolish ICN and clarify duties of ASEAN-related institutions		establish Nat'l Committee on ASEAN Econ. Cooperation	

### 4.3. Recommendations for donors' programming on governance

Based on the above analysis, this Report recommends the ADB and other interested donors to consider the following areas and institutions as possible entry points to promote good governance in Cambodia (Table 12). Designing a specific programme of support for each area or institution requires a detailed evaluation of needs and current capacity. In most cases, such evaluations and project formulation should await concrete actions and/or reforms by the government before proceeding with programming.

#### 4.3.1. Land reform

Land is arguably the most critical development issue in Cambodia. The challenge of implementing a new land law will be enormous. Given its leading role in the land reform process thus far, it is recommended that the ADB be a partner in the implementation process, in close collaboration with other donors and civil society that have already been involved in land reform. The new *Land Law*



will likely establish some form of cadastral-based titling system. Significant support in the form of loans and technical assistance will be needed to establish the system and strengthen the institutions that will administer it.

Implementation of a new land law will involve action by land titling offices at the national, provincial and local levels. In particular, provincial and municipal offices of the Ministry of Land Management, Urbanisation and Construction will require support for the strengthening of institutional capacity to handle the regulatory, administrative and registry demands associated with implementing a new law. The ADB or other donors should consider providing assistance in drafting regulations needed to implement a new land law.

Another critical issue on which ADB and other donors may consider offering support is the mapping and classification of Cambodia's land stock. This is absolutely crucial to implementing the *Land Law* and for enabling the poor to secure good title to the land they occupy. The ADB, other donors, the government and civil society groups could begin immediate discussions on this with the objective of putting together an appropriate assistance programme, including training of surveyors in both the public and private sectors.

**Table 12. Matrix of Entry Points for Assistance**

Sector	Institutional Entry Point	Recommended Prior Government Reform	Governance Element Promoted	Objective of Assistance	Activity Supported
Public Finance	Provincial Finance Officials	enact regulations for <i>Provincial Budget Law</i> ; public release of monthly <i>prakas</i> on budget allocations; monthly release of expenditures by each province	Transparency	more open expenditure process	train provincial officials in financial management
	National Assembly and Senate Finance & Banking Commissions		Accountability Better Policy-making	ensure commissions are able to more actively participate in law-making and monitoring	train staff in financial management
Decentralisation	Commune Councils	enact Commune Administration Law that gives Councils clear powers, adequate budgets and strictly defines relationship with higher government	Accountability Greater Participation	more decentralised, effective local government and development planning	capacity-building of Commune Councils
Public Admin. Reform:	Council on Demobilisation Ministry of Defence	develop reintegration programme for implementation by existing institutions in provinces	Greater Participation	build links between demobilisation and local rural development	support design and implementation of reintegration, including pilot demobilisation
		issue written policy on military reform	Better policy-making	better sequencing of reforms	
Judiciary	Supreme Council of Magistracy	(1) amend SCM Law to remove Executive and Legislative branch officials from SCM (2) establish separate budget line for SCM/courts	Independence of Judiciary	promote judicial independence	capacity-building of SCM
	MoJ, Courts	publish list of all judges and prosecutors (and all judicial appointments prior to nomination) with basic info on education, legal experience	Independence of Judiciary Transparency	promote judicial independence provide more info to public on courts and more open judicial appointment process	training programme for judges
Accountability Institutions	National Audit Authority	establish NAA; appoint Auditor General by a transparent, open selection process among qualified, neutral candidates; adequate, indep. Budget	Transparency Accountability	ensure open process for appointments for accountability institutions	capacity-building of NAA
Private Sector Framework	MLMUC	enact Land Law that enables poor families and communities to gain secure title to land through transparent process	Transparency Accountability	create land titling system that is transparent, efficient and	capacity-building for institutions that implement Land

				ensures poor title to their land	Law; support mapping and training for mapping support for public-private sector forums
	Council of Ministers	establish regular forum for private sector to directly meet senior RGC officials	Greater Participation	increase participation of private sector in policy-making	
	MoJ; MoC	establish commercial court; enact commercial arbitration law	Accountability	improve effectiveness of Judiciary; increase private sector confidence	capacity-building and infrastructure for new commercial court
Regional Integration	National Committee on ASEAN Econ. Cooperation	establish National Committee on ASEAN Economic Cooperation led by chair/vice chair from economic ministries	Predictability Better Policy-making	improve policy-making by ensuring technical bodies are led by proper institutions	capacity-building for policy-making body

Another critical issue on which ADB and other donors may consider offering support is the mapping and classification of Cambodia's land stock. This is absolutely crucial to implementing the *Land Law* and for enabling the poor to secure good title to the land they occupy. The ADB, other donors, the government and civil society groups could begin immediate discussions on this with the objective of putting together an appropriate assistance programme, including training of surveyors in both the public and private sectors.

#### 4.3.2. National Audit Authority

Recent efforts to establish a new accountability institution—a National Audit Authority (NAA)—through the approval of an *Audit Law* are an important step. This represents an initial step of commitment by the government to enhance good governance.

Provided that a neutral, apolitical Auditor General (AG) is appointed, the ADB and other donors should consider assistance to the NAA. It will require substantial institution-building including training and creation of internal procedures, accountability rules and reporting mechanisms. It will be extremely important for the NAA to establish its ability and readiness to conduct its own thorough, independent audits of public institutions.

The initial phase of NAA operations is critical; it sets the precedent for all future activities and sends a message regarding how serious Cambodia is about improving the accountability of the public sector.

#### 4.3.3. A Commercial Court

The creation of specialised courts such as a commercial court is one way to address the problem of the Judiciary in terms of its independence (or lack thereof) and competence. While the government develops a plan to overhaul the Judiciary generally, it could proceed with the drafting of a law to establish a commercial court. This reform has been planned for some time. The primary advantage of establishing a commercial court is that its focused nature would enable the government to develop a court with a clear jurisdiction, set procedures, adequate resources, more highly trained judges and as yet untainted corruption. If handled properly from the outset, a commercial court may enable a limited form of judicial reform to start with a "clean slate."

If a law establishing a commercial court were enacted, experienced commercial lawyers were appointed as judges, and sufficient government-funded budgets were allocated, the ADB and other donors should seriously consider assistance. The provision of intensive training to a relatively small number of judges in advance of a court opening is both feasible and efficient. One more immediate form of assistance, if the government requested such support, could be a short-term expert to help the government finalise a draft law to establish a commercial court. This might be a powerful confidence-building measure for the private sector, especially if a new law on commercial

arbitration is likewise enacted in the short term. A targeted training programme for all new judges might also be considered. The ADB and other donors should pursue further discussions on this matter with the Ministry of Commerce, the Ministry of Justice, concerned civil society groups such as the Cambodian Bar Association and the private sector.

#### 4.3.4. Commune Councils

The election of Commune Councils, expected to occur sometime in the year 2000 or 2001, will represent potentially one of the most significant political reforms undertaken in Cambodia. With adequate skills in management, planning and finance, these Councils might bring major changes in governance to Cambodia and represent the most responsive, representative and effective vehicle for rural development planning and poverty alleviation. The task of strengthening the Commune Councils will be enormous. There will be 1,600 Commune Councils elected, each with between 5 and 11 members. Literally thousands of people, many of them first-time public officeholders, will require training and information.

First, donors and civil society groups should be much more engaged in examining the proposed Law on Commune Administrative Management and later sub-decrees to ensure that the Commune Councils have a legal environment that facilitates local development. Second, to facilitate support to the Commune Councils, it will be necessary for the government, donors and civil society groups to evaluate the potential needs of the Councils once the Law is enacted. This is something the ADB, in cooperation with other interested donors, might pursue as an initial activity. Third, the ADB might also evaluate the possibility of (co-)financing a rural credit programme and commercial co-financing of private sector projects that are specifically linked to the development plans created by Commune Councils. Promoting such linkages may represent a potential source of growth and empowerment that would bolster good governance and contribute tangibly to poverty alleviation. The donor's informal contact group on Governance may consider beginning discussions and monitoring of the commune election laws immediately.

#### 4.3.5. Supreme Council of Magistracy and Courts

Reforming Cambodia's Judiciary is no small task. It requires addressing a host of systemic problems including low human resources, endemic corruption, persistent political interference and the absence of basic laws. It is also difficult to imagine major progress in judicial reform without major reforms in the structure and working of the Supreme Council of Magistracy, which has not yet proven its effectiveness.

If the government exercised the political will and sound judgement to reform the SCM—by eliminating all Executive and Legislative Branch officials, disallowing members to be active judges and providing an autonomous budget—the ADB and interested donors should assist in strengthening the institution. Although criticism of the SCM's current makeup has been common, there has been little discussion of its reform. It should be noted that the new President of the Appeal Court called for such reforms. The ADB and other donors should raise the issue of SCM reform with the government and concerned civil society groups such as the Bar Association. It is important to develop a consensus on what structure and role the SCM should have and what assistance might be available if reforms were undertaken.

To raise the capacity of Cambodian judges more generally to handle commercial cases, the ADB might consider developing a training programme, perhaps focused on new judicial appointees, drawing on resources available at the Cambodian Bar Association and legal training programmes such as the Community Legal Education Centre based at Regent College.

#### 4.3.6. Provincial Finance Administration

One potentially important reform relates to the decentralisation of fiscal/financial powers. The two key initiatives in this area are the *Law on Financial Procedures and Provincial-Municipal Properties* and reforms in disbursements in the health sector. Implementation of such

decentralising measures will depend upon the financial management capacities of provincial administration. At the moment, such capacities are exceedingly low. Thus it is vital that a core set of provincial officials gain sufficient skills in financial management, budgeting and reporting in order to ensure that reforms in public finance are successful.

An initial step might be to assess the financial management skills of current provincial officials and also to create an inventory of the training that has been provided. Such information could form the basis for a broad training programme on financial management for core provincial staff. It might be useful to design such a programme with specific reference to implementation of the decentralised health disbursement system, which still experiences critical problems in disbursement efficiency. Such a programme should include training relevant to implementation of the *Law on Financial Procedures and Provincial-Municipal Properties*. The Economics and Finance Institute at MEF is a possible venue for such training.

#### *4.3.7. Finance and Banking Commissions at the National Assembly and Senate*

The weaknesses of the Assembly and Senate are striking with respect to financial issues where expertise and experience are key to playing a meaningful, active role in reviewing draft legislation and monitoring government performance. Technical assistance heavily concentrates on ministries and agencies such as MEF and the National Bank. Clearly, these bodies are crucial to the development of financial policies and the banking sector. However, a legislature equipped to play an active monitoring role adds accountability and transparency, particularly when these other institutions prove to be less than transparent and accountable. Experiences with the financial crisis in the region demonstrated this point in recent years.

To play such a role more effectively, key commissions of both the National Assembly and the Senate require institutional strengthening. Among other things, this means training and early participation in the legislative process. Training should focus on the Finance and Banking Commissions, in particular selected permanent staff of the two legislative bodies. Technical assistance to these commissions, especially to enhance monitoring capabilities, should form part of the assistance provided to Cambodia in finance and banking. This might include the provision of experts in finance, auditing, banking and economic policy to provide both substantive advice and formal training.

#### *4.3.8. Public Sector – Private Sector Forums*

Policy-making related to economic development and the creation of a market economy occurs mainly within a very small circle of senior officials and technocrats. There is little contact with the private sector to seek input on economic reforms, legislative initiatives or problems with implementation.

The government has taken encouraging steps in promoting public-to-private sector contacts. A major meeting between the government and private sector was held in December 1999. Building on this example, the public sector needs to develop more regular, organised and systematic contacts with the private sector. A variety of forums—large meetings, sector-specific dialogues, joint promotional events or studies—should be explored. This will increase the effectiveness of reforms by drawing on the considerable experience and skills of the private sector—which are in short supply within the public sector—and providing valuable insight into the impact of reforms on private sector growth. This would allow for more realistic policies and more effective laws that promote business and private sector growth.

ADB or other donors can serve as a catalyst for the development of increased contacts between the public and private sectors. When providing technical assistance for drafting laws or regulations related to economic reform, the ADB should insist that meetings with the private sector be organised to discuss drafts. Another possibility is to organise a set of thematic roundtables between government and the private sector on key economic issues such as banking, land reform, the Judiciary, auditing, corruption, the national budget, customs and tax reform. Countries within the region such as Malaysia and Singapore use such forums to build effective channels for

information-sharing and policy dialogue between the public and private sectors. Donors are recommended to incorporate the private sector more explicitly as partners in economic studies and missions organised in Cambodia. This not only generates important, practical information but ensures that studies will be useful for the government and private sector. In general, the private sector has a greater ability to act on information, *e.g.* for business development, than the public sector. Such strengths should be promoted to the maximum extent possible by both the government and donors.

## **5. Concluding Remarks**

The current study has highlighted some of the critical issues of governance that can positively or negatively impact the process of development in Cambodia. It also underlines the fact that reform is a long-term process that requires setting achievable goals, producing tangible results and mobilising sources of consistent support. While many challenges of good governance lie ahead, the commitment to the reform process demonstrated by the government and the achievements made to date are heartening and can serve as the foundation for managing the tasks ahead.



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## **CDRI Working Papers**

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## **Cambodia: Enhancing Governance for Sustainable Development**

Good governance is critical for Cambodia's future. Over the last decade, during transition towards liberal democracy and a market economy, Cambodia's policy makers, donors and civil society have recognised that strengthening good governance is imperative if Cambodia is to sustain socio-economic development.

The current study, which was commissioned by the Asian Development Bank (ADB), considers how to promote good governance for sustainable development in Cambodia. The analysis and findings from the study aim to contribute insights for policy-making by the Royal Government of Cambodia and to identify key areas and strategies of assistance for ADB and other donors to consider.

This independent study entailed extensive consultations and interviews with many people from the Royal Government of Cambodia, the National Assembly, the Senate, the Judiciary, the media, businesses, civil society organisations, and international donor agencies.

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