

Chapter 10

Legal and Judicial Reforms to Improve Governance

In the Cambodian context where “the rule of law” has been set as the country’s basis, legal and judicial reforms appear to be fundamental to the reestablishment of the country toward a real democratic and free-market economy regime. A “credible, predictable and transparent legal framework” together with “an independent and capable judiciary” will help the Cambodian democracy-based government to successfully achieve its other reform agendas in the right direction for poverty reduction and sustainable economic growth.

In these reform areas, critical issues remain to be tackled and more efforts need to be made though some positive results have been achieved.

10.1. Legal Reforms

In the legal reform process, the government has made notable progress in the area of reform policy and strategy. In mid-2002, a specialized Council for Legal and Judicial Reform (CLJR) was established to initiate, encourage and coordinate the reform process. In June 2003, the legal and judicial strategy was completed and followed by a draft action plan of July 2003, the official paper of which was recently adopted in April 2005. Through priorities and timelines provided in these instructive instruments, some positive results have been achieved over recent years (See box 10.1 for recent development). Importantly, all laws and regulations are regularly published in the official gazette and public procurement is competitively bid for by all ministries except the Ministry of Royal Palace.

In terms of regional and global integration, the Parliament has ratified and adopted 16 out of 47 laws and regulations for compliance with WTO regulations, and signed a number of agreements within the ASEAN framework. Presently, further trade-related laws are submitted for adoption before the National Assembly such as the law on commercial arbitration, the amendment of the law for the chamber of commerce, etc.

Despite this partial progress, the achievement made is generally marked by a relative tardiness and leaves some critical actions to repeatedly remain within the reform agenda if compared to what has been promised. This is the reason why priority for the period of 2005-2006 is currently given to the adoption of eight draft laws, most of which are the long unmet commitment of the government since the Tokyo CG meeting in 2001.

These texts include four drafts of basic codes in the civil and criminal areas, the anti-corruption draft law and three judiciary-related draft laws, pertaining to the organization and functioning of the courts, the amendment of the Supreme Council of Magistracy, and the status of judges and prosecutors.

In the area of the fundamental legal framework, only the civil procedure draft law is, up to mid-September 2005, reported to have been sent to the National Assembly while the penal procedure is left for more discussion within the Council of Ministers, and the other two within the line ministry. The failure to adopt these basic codes on time derives from the underestimation of timeframe on account of their complexity and dimension and the necessity of making them all coherent, especially while the drafting of these codes was originally entrusted to different foreign legal experts.

Nonetheless, much concern is expressed over the adoption of the anti-corruption law since it has been criticised as not yet compliant with international standards and international good practices and a number of terminologies used therein are subject to further reviews³⁸. During a launching workshop on “Cambodia’s Draft Law on Anti-Corruption and International Standards” organised in mid-August 2005, concerns were focused over the method of asset declarations and principally over the independence of the future anti-corruption body.

Particularly raised during the workshop, it was suggested to include a representative from civil society within the structure of the future Supreme National Council for Anti-Corruption (SNCAC) and having advisory committees of members of the public within each anti-corruption body, to provide a more diversified mix of people. It was also recommended that the council’s investigators should not be placed under the authority of the court prosecutor for search and seizures as this would restrain their independence.

³⁸ As observed within a launching workshop on ‘*Anti-Corruption Law and International Standards*’, organized by the Ministry of National Assembly and Senate Relation and Inspection, 17-18 August 2005 and Cambodia Daily ‘*Criticisms of Anti-Corruption Law Discussed*’, 19 August 2005

Table 10.1: Legal and Judicial Reforms

Legal Reform	
Progress	Remained Issues
▪ Council of legal and judicial reform was established to coordinate reform efforts. In mid-2003, legal and judicial strategy was completed, followed by a draft action plan thereof; the official action plan for implementing the legal and judicial reform strategy was adopted in April 2005. ▪ Public procurement is competitively bid for all ministries except for the Royal Palace. ▪ The National Assembly ratified and adopted sixteen laws and regulations for compliance with WTO regulations, the most recent of which are the law on business enterprises and negotiable and payment transaction law.	▪ Failure to adopt anti-corruption law. It is long unmet pledge since Tokyo CG meeting in 2001. ▪ Fundamental legal framework such as civil code, code of civil procedures, penal code and code of penal procedures has not submitted yet to the National Assembly. ▪ Thirty one laws and regulations need to be ratified and adopted for compliance with WTO regulation.
Judicial Reform	
Progress	Remained Issues
▪ Establishment of Professional Training Centre for Lawyers and Royal School of Magistracy (RSM). ▪ Separation of budget of judiciary from that of Ministry of Justice. ▪ Recently emergency campaign “Iron Fist” to strengthen judicial integrity. ▪ Removal of the Secretariat of the Supreme Council of Magistracy by Sub-decree dated May 05, 2005.	▪ The law on the statute of judges and prosecutors has not been submitted yet to the National Assembly. ▪ The law on the Organization and Functioning of Supreme Council of Magistracy (SCM) has not passed; hence the SCM has not been restructured. ▪ No specialized court has been established and the municipal and provincial courts still overlap concerning dispute resolution in most areas.

Source: EIC, compiled from various government sources, IMF, World Bank, and interviews.

On all of these issues, discussion was mainly focused on whether the draft anti-corruption law is compliant enough with the international standards and good practices while the issues of whether the law would be realistically appropriate to the Cambodian corrupt practices seemed to be

modest. Rightfully based on international standards and good practices, the government together with donor countries would profitably need to do more impact studies within the law-making process in order to let those good practices fit well with the Cambodian environment.

Though a great delay has already been made in the drafting process of this anti-corruption law, the final text should not be the result of rushed work. Focus should continue to improve the independence of the SNCAC from other political powers and, once this anti-corruption body is independently empowered, legal obligations of those who exercise this autonomous function need to be firmly and clearly set up to help the judiciary to transparently intervene when abuse of power takes place.

In the above context, the independence of the SNCAC deals closely to that of the judicial power. However, the three basic draft laws relative to the functioning and organisation of the judicial system have not yet been in the hands of the Council of Ministers. The failure to adopt these legal texts on time does not reflect tardiness in the legal reform process alone but especially the reform in the judiciary area since these laws appear to be quite fundamental to the early stage of the judicial reform process.

In the legal process as a whole, it is particularly noted that there was a delay due to the recent political deadlock and a lack of political will, technical competency and financial assistance. The consultation within and between ministries takes a relatively longer time and each individual ministry tends to protect its own interests³⁹. A broad picture of the reform process showed that progress had been notably slow where conflict of interests between state institutions exists. Up to the present however, no law on a specialized court, the drafting of which generally needs the participation from the Ministry of Justice and other specialized ministries involved, has been passed while the adoption of other WTO-related laws and regulations have seen considerable progress.

Furthermore, the absence of an official guideline clearly determining procedures at every stage of the law-making process presents a big constraint on the progression of legal reform. Despite the fact that the significance of public consultation in the law-making area is repeatedly recognized by the government's strategic policy, this necessity has not yet been officially incorporated within any positive rules. As revealed by the CLJR however, a kind of guideline for legal act-making process is being prepared by the government with the intention to ensure participation and transparency. It would be beneficial if a participatory stage is provided within the guideline preparation process before its enactment.

³⁹ Economic Institute of Cambodia (EIC) 2005. *Cambodia Economic Watch*, April 2005, p. 75

Concrete action should be appropriately taken in accordance with what has been scheduled, especially relating to the eight foremost priorities of the current reform agenda. Without the passing of these basic legal instruments, other reform agendas, principally the judicial, would inevitably meet obstacles.

10.2. Judicial Reforms and Law Enforcement

Over recent years, some improvement has been made in the judicial infrastructure. The Professional Training Centre for Lawyers and the Royal School of Magistracy (RSM) were established and a pilot court in Kandal province was set up in order to introduce better practices in handling cases and upgrading the court. These would provide highly competent and professional magistrates and lawyers, and thereby strengthen the judiciary system. However, the transparent selection and recruitment of students are pre-requisites for this achievement.

The integrity of the judiciary is being enhanced. In 2003, the government started separating the budget of the judiciary from that of the Ministry of Justice; this presents a remarkable step towards a genuine separation of power. However, deficiency in the legal framework together with slowness of the legal reform in the judicial area unavoidably leaves the government to directly intervene in the judicial reform process.

With an emergency campaign called “Iron Fist”, the government vows to re-arrest armed robbers who are not in prison as a result of bribery, and to arrest corrupt judges and prosecutors. The Ministry of Justice has just created a committee for investigating cases of convicts who remain out of jail, judges and prosecutors. Recently in July 2005, the Supreme Council of Magistracy (SCM) imposed sanctions on a number of judges and prosecutors involved, some of whom were to be removed from duty. It should be particularly noted that the Secretariat of the SCM was recently removed by the government’s sub-decree dated May 05, 2005.

However, a large part of this improvement may just be occasional measures while the reform of core and supplementary legal instruments relating to the organisation and functioning of the judicial system is currently blocked by the tardiness of the legal reform. In reply to this tardiness, no specialized court has been established so far and the municipal and provincial courts are still overloaded with dispute resolutions in almost all areas. The Supreme Council of Magistracy has not been restructured and thereby key reforms to enhance the judiciary’s integrity have not been met.

At this early stage of reform, priority given in the current legal reform agenda appears to be a pre-condition for real judicial reform to get started. Without an appropriate legislative framework, occasional actions may form a kind of discretionary power and thus restrict the essence of the rule of law. But attentive actions undertaken with full spirit of the rule of law would be, where legally appropriate, very beneficial to this transition period to avoid that the slowness of the legal framework reform.

Once the core legal framework has been completed, actions need to be firmly taken recognizing in particular that corruption and interference from other state powers in the judicial branch are seen as the main obstacle to this law enforcement mechanism.