

Chapter 10

Legal and Judicial Reforms to Improve Governance

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“Actions have been taken to prevent our people’s security from being jeopardized by robberies and thefts. We have brought about numerous successes. But the achievement today is being discredited by a certain number of individuals in the court of justice – judges and/or prosecutors – by whose irresponsible actions more of our people’s blood continues to be spilt and their sufferings and property being robbed. Many Cambodians are left with broken families, but justice for them was never provided.”

Samdech Prime Minister Hun Sen, Selected Comments at the Opening of the 26th Health Conference, 03 March 05, Phnom Penh.⁵⁸

“On Legal and Judicial Reform and Governance, we find that most of the benchmarks were not met. Though the Strategy for Legal and Judicial Reform was completed in June 2003, the Supreme Council of Magistrates was not restructured. Nor were reported cases of corruption investigated and prosecuted. And the anti-corruption law has not been passed. On public procurement, competitive bidding was extended to all ministries, except the Royal Palace, and, though there are concerns about the quality and enforcement of the legal framework, the government clearly demonstrated some progress.” Concluding remarks by the **World Bank Country Director for Cambodia, Mr Ian C. Porter**, Co-Chair of the Consultative Group Meeting in Phnom Penh, December 6-7, 2004.

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The change of political and market systems requires reforms of the legal and judicial framework. Some existing laws needed to be adjusted while the Cambodian economy was integrated into the regional and global community. More new laws need also to be established to ensure credibility, predictability and transparency in the economic and social environment. The best legal and judicial framework requires a judicial system that is independent and where courts can interpret and apply laws and regulations in an impartial, predictable, efficient and transparent manner to ensure the rule of law.

The establishment of specialised courts may enhance the effectiveness of law implementation. It is imperative that legal and judicial

⁵⁸ More selected comments is available at <http://www.cnv.org.kh/>

reforms are critical components for improving good governance, which the government places at the heart of its third mandate political platform. Even though some progress has been impressive, critical issues remain to be tackled, and more effort needs to be made.

10.1. Legal Reforms

Some progress has been achieved over recent years (See Box 10.1 for recent developments). The Council of Legal and Judicial Reform was established and is responsible for coordinating reform efforts. Public procurement is competitively bid for all ministries except the Ministry of Royal Palace, and official gazettes are published weekly to inform people about new legislation and decisions. These instruments help to improve transparency. In mid-2003, the legal and judicial strategy and its action plan were completed.

This action plan is the key for enacting legal and judicial reforms in place. It sequenced the short and medium-term priorities and provided concrete timelines of implementation which would make the Council of Legal and Judicial Reform speed up the reform process. In terms of regional and global integration, the National Assembly ratified and adopted 14 out of 47 laws and regulations for compliance with WTO regulations, and signed a number of agreements within the ASEAN framework. Now, the National Assembly is in the intensive process of ratifying the rest of the laws and regulations.

Some critical reforms have not been made, namely the introduction of an anti-corruption law and fundamental legal framework. Corruption undermines political legitimacy and makes citizens distrust government. Many people in Cambodia agree that public service delivery is corrupt or perceived as corrupt. Indeed, corruption has been identified as the most important obstacle to private sector development.⁵⁹ The anti-corruption law, which will hopefully tackle this problem, is a long unmet commitment of the government since the Tokyo CG meeting in 2001. The draft anti-corruption law is awaiting comments and recommendation from other stakeholders and is not yet in the hands of the Council of Ministers.⁶⁰ The draft law has been criticised as not yet compliant with international standards. In this case, lack of political will has been a main constraint.

The fundamental codes are in a slow process and have not yet been submitted to the National Assembly. All these texts would be the basis for appropriate laws in Cambodia.

⁵⁹ World Bank, 2004. “ Seizing global opportunity: Investment Climate Assessment & Reform Strategy for Cambodia”

⁶⁰ Based on interview with government official on 11 February 2005.

It is noted that there was a delay and the reform agenda was not completed on time due to political deadlock and a lack of political will, technical competency and financial assistance. These reasons also seriously affect some issues still in today's reform agenda. For instance, the political deadlock and inactive legislature resulted in 42 draft laws being returned from the National Assembly to their respective ministries, including the draft law on anti-corruption.

Box 10.1: Recent Developments in Legal Reforms

Legal reforms	
Progress	Remained Issues
▪ Council of legal and judicial reform was established to coordinate reform efforts. In mid-2003, legal and judicial strategy and its action plan were completed. ▪ Public procurement is competitively bid for all ministries except for the Royal Palace. ▪ The National Assembly ratified and adopted fourteen laws and regulations for compliance with WTO regulations (Refer to Matrix A2.8 in appendix 2)	▪ 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 three laws and regulations need to be ratified and adopted for compliance with WTO regulation (Refer to Box 6.1)
Judicial Reforms and Law Enforcement	
▪ 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.	▪ 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 specialised court has been established and the municipal and provincial courts still overlap concerning dispute resolution in most areas.

Sources: Selected from matrix A2.14 & A2.15 in Appendix 2.

The lack of coordination between line ministries and other stakeholders prolongs the process. The consultation within and between ministries takes a relatively longer time and each individual ministry tends to protect its own interests. Some laws are noticeably not drawn up in full consultation. For example, the proposed anti-corruption law needs to be revised to comply with international best practices.

Concrete reforms should be implemented on time with the action plan of legal and judicial reform. As an urgent matter, the government should facilitate the passing of the anti-corruption law. Cases of corruption must be investigated and perpetrators must be brought before the courts. Consultation and coordination should be improved within line ministries and among the public. A member of the Council of Jurists should participate in drafting laws to obtain technical approval and thus speed up the law-making process. A compromise mechanism should be established for facilitating inter-ministerial consultation. The notification of new laws and regulations and public consultation should be promoted in a transparent manner.

10.2. Judicial Reform and Law Enforcement

There has been some remarkable progress in developing infrastructure for the judiciary (Box 10.1 for recent developments). The government established a pilot court in Kandal province in 2002, which is the first model court to introduce best practices. The Professional Training Centre for Lawyers and the Royal School of Magistracy (RSM) were established. These will provide highly competent and professional magistrates and lawyers, and thus 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 late 2002, the Permanent Coordination Body (PCB) was created to bring together key decision makers from relevant institutions. The Project Management Unit (PMU) was formed to strengthen the capacity of the Council of Legal and Judicial Reform. In 2003, the government started separating the budget of the judiciary from that of the Ministry of Justice; thus it would establish a genuine separation of power.

Recently, the government has announced an emergency campaign of judicial reform called “Iron Fist”, which aims to strengthen judicial integrity. With this campaign, 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 out of jail, judges and prosecutors. These examples highlight the impressive efforts of the government, which has promised, since the sixth CG meeting, to bring corruption cases for investigation and prosecution within the existing legal framework.

Even though there have been some impressive judicial reforms, they have been very slow compared to what has been promised, particularly in the last two years. No specialised court has been established so far. The municipal and provincial courts are still overloaded with dispute resolution

in almost all areas. It is noted that, as scheduled, the government is committed to establishing a commercial court by June 2005 for compliance with WTO regulations. The key reforms to enhance the judiciary's integrity have not been met since the supreme council of magistrates has not been restructured, and the law on the statute of magistrates (which is known as the Law on the Status of Judges and Prosecutors) has not been submitted to the National Assembly.

The Governance Action Plan (2001) highlighted the government's intention to create the action plan for asset declaration for magistrates and senior members of the judicial police.⁶¹ This measure would be very much useful in ensuring the integrity and independence of the judiciary and prosecution. But so far, no asset declaration has been made and its action plan has not been publicly issued.

The judicial reform is a time-consuming task and its obstacles are unpredictable. In recent decades following the war, the court system has been influenced by other branches of government. This inter-relationship has led to less transparent decision-making, corruption, an inequality of benefits for minorities and the emergence of privileged groups. Judicial reform is meant to break down this system. There are some serious obstacles to this and the intention of some to keep this influence still has great impact.

Noticeably, the public's mindset regarding the unreliability of laws and the courts is a significant issue in law enforcement. People often tend to solve problems or disputes in an informal way rather than formal way, particularly through seeking intervention from high ranking officials.

The reinforcement of the Supreme Council of Magistracy is crucial. Its independence will ensure the separation of powers and end the culture of interference in the judiciary by other branches of the government. In addition, the government must accelerate the draft law on the status of magistrates. A reliable, transparent and effective legal and judicial system would help to change the public's perception of unreliability and to address inequality. Without the mindset that due compliance with laws will provide both social and economic benefits for all socioeconomic agents in an equitable manner, the future of the rule of law in Cambodia is unforeseeable.

⁶¹ Available at : <http://www.car.gov.kh/project/project002.html>