

Chapter 10

Legal and Judicial Reforms to Improve Governance

It is imperative that Cambodia continue its process to rebuild its legal infrastructure in order to aid its transformation into a democratic and free-market economic system. Many laws adopted in the previous regimes have proven to be obsolete and inadequate to respond to increasingly complicated social and economic relations. The government has rightfully committed to re-establishing “a credible, predictable and transparent legal framework and an independent and capable judiciary that are the foundation of the rule of law and underpin the development of democracy, market economy, and social justice” stated in its GAP.

10.1. Legal Reforms

The Cambodian government established a Council for Judicial Reform to lead the implementation of legal reforms. Long consultations with stakeholders have resulted in the preparation of civil and penal codes, and civil and penal procedure codes, which are awaiting cabinet approval. These two fundamental laws are crucial to ensure rights and justice in forming the type of social order which will lead to improved society and will in particular help create a viable business atmosphere.

In response to private sector needs, seven draft laws on commercial and business related regulations are awaiting National Assembly approval, and 3 sub-decrees were adopted⁶² in 2003. As noted above, other laws and regulations on Natural Resources Management were adopted and some others are under preparation or waiting for approval. To meet part of the requirements of the WTO, Cambodia needs to finalize 46 pieces of legislation. Both in law-making processes and disseminations, the government has been working widely with the private sector and other non-governmental organizations through workshops and public consultations to get comments and inputs, and to raise public awareness in strengthening effective law enforcement, *see matrix 10.1 for recent developments*.

Nonetheless, the legal reforms process has been progressing slowly due to certain limitations in legislative capacities of the National Assembly, Senate and line ministries. Lack of expertise is one of the main obstacles. Not many parliamentarians have legal backgrounds. In the face of receiving only a low allowance from the government, most lawyers

⁶² See Ministry of Commerce (2004): Annual Report of 2003 and Action Plan for 2004.

prefer practicing law for private law firms. As a result, there are very few legal experts working for the government and many of them are engaged in policy, not in a technical level. Relying on foreign legal experts is an alternative option, but which perhaps retards the completion process.

Matrix 10.1: Legal and Judicial Reforms

Reforms Agenda ^(a)	Measures Taken ^(b)
- Improving the legislative process	- Public consultations with civil society on the formulation of laws and regulations.
- Promoting wide dissemination of laws and regulations	- Implemented through medias, publication, and NGO networks.
- Completing gaps in legislation and developing a legal framework for private sector	- Draft civil code, draft code of civil procedure, draft penal code, draft code of penal procedure submitted to council of ministers. - 7 laws on commercial and business related regulations are lining at National Assembly for approval, and 3 sub-decrees were adopted in 2003.

Source: ^(a) Selected from Governance Action Plan (GAP) 2001.

^(b) EIC compiled from WB, IMF and Government Sources.

The government should avail itself of international assistance to strengthen its legal capacity in its line ministries. It is impossible to have a good law-making process when every ministry legal department has few or no staff with legal backgrounds. The National Assembly should recruit more young Cambodian lawyers to work permanently at the National Assembly rather than increase its administrative staff. Specialized legal departments at the National Assembly should be established where parliamentarians could seek legal support regardless of party affiliations.

10.2. Law Enforcement

The essence of “the rule of law” does not stop at building comprehensive legal infrastructure, but extends to due compliance and enforcement. It is apparent that poor law enforcement is detrimental to economic welfare. The fallout from the failure to deter illegal activity includes tax evasion, corruption, hindrance to private sector development, and the more intangible effects of “social injustice”, including distress and a sense of insecurity. Both in economic terms and in social values, the costs of weak law enforcement are enormous, *see matrix 10.2 for recent developments*.

The government has made progress in strengthening law enforcement by trying to enhance integrity of the courts and to improve the capacity of enforcement institutions. Many draft laws were prepared, such as to delegate and empower the Supreme Council of Magistrate to

appoint and oversight performance of judges. Laws on special Statute of Judges and Court Clerks are under preparation to clarify their role and responsibility in the execution of laws. Arbitration as an alternative method of dispute settlement has been in practice especially in labor disputes, and draft law on Commercial Arbitration is pending at the National Assembly that will provide a foundation to settle complex commercial disputes. The Royal School of Magistracy was established to train judges and prosecutors to strengthen their capacities to ensure proper interpretation of laws and justice.

Matrix 10.2: Strengthening of the Judiciary and law enforcement

Reforms Agenda^(a)	Measures Taken^(b)
- Developing human resources and infrastructure for the judiciary	- Establishment of Royal School of Magistracy in 2002.
- Enhancing the integrity of the Judiciary	- Establishment and strengthening of Council of Judicial Reforms, and Supreme Council of the Magistracy. - Preparing Laws of special Statute of Judges and Court Clerks.
- Meeting the private needs for the arbitration of commercial disputes	- Practices of arbitration as alternative dispute settlements, especially in labor disputes. Draft Law on Commercial Arbitration is pending at NA.

Source: ^(a) Selected from Governance Action Plan (GAP) 2001.

^(b) EIC compiled from WB, IMF and Government Sources.

However, both inadequate legal structure and enforcement mechanisms plus slow adjustment of people's mindsets towards responsibilities and professionalism will make the sense of "social justice" a long journey. Equally important is that corruption is seen by the public as a way of life, because it continues to go unpunished and leads observers to see a "culture of impunity". Many of Cambodian socioeconomic agents (state, private, individuals, groups) feel emboldened to seize economic benefits by any means, including, for example, illicit rent-seeking, and do not act with a sense of moral and social responsibility.

To move forward, the state needs to provide incentives for law enforcement. Without providing the message that due compliance with laws will provide both social and economic benefits for all socioeconomic agents, the rule of law is unforeseeable. The benefits to be gained from law adherence must surpass the benefits currently gained from law violations. For instance, until the government convinces its tax collectors and custom officials, and other squanderers of the national budget, that the best mobilization of national revenues and lawful use of the national budget is of optimal value to them, then one cannot expect change in their behavior.