

# OVERVIEW OF THE CAMBODIAN LEGAL AND JUDICIAL SYSTEM

## and Recent Efforts at Legal and Judicial Reform

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### I. Abstract

This paper is intended as an overview of Cambodian law and the legal system as well as the Royal Government of Cambodia's efforts at legal and judicial reform.

## II. Cambodian Legal and Judicial System

### 1. Overview of the Cambodian Legal System

Like most countries in the region and the world, the Cambodian legal system has evolved from unwritten customary law to statutory law. Scholars have classified Cambodian legal development into two phases, namely ancient law and modern law.<sup>1</sup> The former refers to the unwritten customary law from the Funan Period to the Angkor Period,<sup>2</sup> whereas the latter refers to the codification of Cambodian laws from 1336 to the present.<sup>3</sup>

Before French colonization (1863), Cambodia was governed by customary rules<sup>4</sup> based on consensus. From 1863 to 1953, the Cambodian legal and judicial systems were based almost entirely on the French system. This system had a strong impact not merely on the law and legal education system but also on Cambodian lawyers, prosecutors, judges and bureaucrats until 1975. From April 1975 to December 1978, the dictatorial proletariat regime of the Khmer Rouge eradicated the entire legal system, existing laws, the judiciary,

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1 Royal University of Law and Economics and Cooperation and Cultural Activities of French Embassy, *Introduction Au Droit Cambodgien*, p.7

2 *Id*, pp.8-15

3 *Id*, pp.16-25

4 KONG Phallack, *Hok Sophea, Tep Navy, Oeurn Borarorth, The ASEAN Legal Systems*, Faculty of Law and Economics, Phnom Penh, 1998, p.12

and government institutions. Judges, lawyers and other legal professionals were the target of execution. Vietnamese troops<sup>5</sup> invaded Cambodia and started their occupation on January 7<sup>th</sup>, 1979. At that time the country faced a severe shortage of lawyers and laws. Michael Vickery<sup>6</sup> described this situation as a complete legal vacuum. The legal system that emerged during these years was heavily influenced by the Vietnamese system. Major legislation promulgated during this period included Cambodia's presently applicable contract law. During the period of the United Nations Transitional Authority in Cambodia (UNTAC) from 1991 to 1993, a number of laws – including a criminal law, a judicial law, and a press law – were enacted.<sup>7</sup> The current legal system is a hybrid legal system, which is an amalgamation of Cambodian customs, the French based legal system (an influence from French colonization), and the common law system, which is an influence arising from foreign aid assistance to legal and judicial reform in Cambodia. However, there must be a deep research to understand the entire legal structure, to understand elements of common law and civil law in the Cambodian legal system.<sup>8</sup>

## 2. Sources of Law in Cambodia

This section examines the sources of law in Cambodia. The word “sources” in this context means the origins of legal rules, including relevant Cambodian authorities and other sources of law recognized by the laws in force. The word “law” in the Cambodian context can mean both domestic law and international law according to a 2007 decision of the Constitutional Council.<sup>9</sup> In accordance with Cambodian laws and regulations, as well as the current practice, sources of law in Cambodia can be classified as either primary sources, which means all legal instruments of the competent authorities of the State,<sup>10</sup> or secondary sources, which means customs, traditions, conscience and equity, judicial deci-

5 Vietnam occupied Cambodia from 1979 to 1989

6 Michael Vickery, *Kampuchea: Politics, Economics and Society*, London, 1986. There were only ten law graduates including 5 judges remained in the country (Proclamation on January 10, 1979).

7 Under 1991 Paris Peace Agreement, UNTAC started its mission in Cambodia in order to help organize the general election and form a legitimate government. In cooperation with the Supreme National Council (SNC), a policy making body represents Cambodian four factions at home and abroad.

8 Development partners provide assistance to legal and judicial reform in Cambodia are AUSAID, ADB, CANADA, DANIDA, EU, Finland, FRANCE, ILO, JICA, GTZ, Netherland, OHCHR, SIDA, UNDP, UK, USAID, World Bank, (See Council for Legal and Judicial Reform, <http://www.cljr.gov.kh/>)

9 The Constitutional Council, CASE N°131/003/2007 Of June 26, 2007, Decision N° 092/003/2007 CC.D Of July 10, 2007

10 Constitution, article 91 (New) (1993 as amended in 1999), and Law on the Organization and Functioning of the Council of Ministers, Art 13, Art 28, Art.29 (1994), The Law on The Administration and Management of Commune/Sangkat, Art 48 (2001), and Law on Administrative Management of the Capital, Provinces, Municipalities, Districts, and Khans, Art 32 and Art 53- Art 61 (2008). Article 91 (new) of the constitution states: The members of the Senate, the members of the National Assembly, and the Prime Minister have the right to initiate legislation. The deputies shall have the right to propose any amendments to the laws, but the proposals shall be unacceptable if they aim at reducing public income or increasing the burden on the people.

sions, arbitral awards, and doctrines. In civil cases, when the law is not explicit, or when there is a gap in the law (for example where there are no provisions of law governing the circumstances in the case), the adjudicating court can proceed with the hearing and determine the case based on customs, traditions, conscience and equity.<sup>11</sup> Cambodian court judgments, other than those by the new hybrid court, the Extraordinary Chambers in the Courts of Cambodia,<sup>12</sup> do not often refer to precedents. However precedents for arbitral awards are well developed by the Arbitration Council, a quasi-judicial body that has jurisdiction over collective labor disputes.<sup>13</sup> Cambodian legal doctrines can often be traced to well-known publications by scholars of Cambodian law.

Cambodian legal scholars identify the following legal rules deriving from competent authorities in Cambodia as primary sources of law:

### **The Constitution**

The Constitution is the supreme law of the Kingdom of Cambodia. All laws and decisions made by state institutions must be in strict conformity with the Constitution.<sup>14</sup>

### **Laws (*Chbab*)**

A law is adopted by the National Assembly and the Senate, and promulgated by the King or the acting Head of State.<sup>15</sup>

### **Royal Decrees (*Preah Reach Kret*)**

A Royal decree is an executive regulation proposed by the Council of Ministers and signed by the King or the acting Head of State.<sup>16</sup>

### **Sub-Decrees (*Anu-Kret*)**

A sub-decree is an executive regulation usually prepared by relevant ministries, adopted by the Council of Ministers and signed by the Prime Minister.<sup>17</sup>

### **Proclamations (*Prakas*)**

A proclamation is an executive regulation made at the ministerial level. It is prepared by the relevant ministries and signed by the relevant minister(s).<sup>18</sup>

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11 Law on Court Organization, Art 4 (1993)

12 See details about ECCC at <http://www.eccc.gov.kh>

13 Arbitration Council, <http://www.arbitrationcouncil.org>

14 Constitution, Art 150–new (1993 as amended in 1999)

15 Constitution, Art 28–new (1993 as amended in 1994 and 1999)

16 Constitution, Art 28–new (1993 as amended in 1994 and 1999)

17 Law on the Organization and Functioning of the Council of Ministers, Art 13 (1994)

18 Law on the Organization and Functioning of the Council of Ministers, Art 28 and Art 29 (1994)

### **Decision** (*Sech Kdei Samrach*)

A decision is an executive regulation made by the Prime Minister, and relevant ministers.<sup>19</sup> Decisions are referred to in Article 150 of the Constitution. However, the term “decision” is not defined by law. In practice, there are different types of decisions: a decision made by the Constitutional Council, a decision made by the Prime Minister, a decision made by relevant ministers and so on. A decision of the Constitutional Council is considered final and binding. It has supremacy within the legal system, meaning that all laws and regulations must strictly conform with a decision of the Constitutional Council.

### **Circular** (*Sarachor*)

A circular is an administrative instruction which is used to clarify the works and affairs of government ministries. It is signed by the Prime Minister and relevant ministers.<sup>20</sup>

### **Bylaw** (*Deika*)

A bylaw is a legal rule approved by Councils at sub-national level. The term “Council at sub-national level” in this text means the Capital Council, Provincial Councils, Municipal Councils, Districts Councils, Khans Councils, Sangkat Councils and Commune Councils. These Councils have legislative power to issue bylaws (*deikas*).<sup>21</sup>

## **International law**

According to a 2007 decision of the Constitutional Council<sup>22</sup> international law is considered a source of Cambodian law. All international treaties and conventions can become Cambodian law after a vote of approval by the National Assembly and the Senate and signature and ratification from the King.<sup>23</sup> Based on this text, one can argue that Cambodia adopts a dualist approach<sup>24</sup> because all international treaties and conventions require approval from the Cambodian Parliament. However, Article 31 of the Constitution states the Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights.<sup>25</sup> Based on this text,

19 Law on the Organization and Functioning of the Council of Ministers, Art 13 (1994), See also Sub-decrees on Organizations and Functioning of Ministries.

20 Law on the Organization and Functioning of the Council of Ministers, Art 13 (1994)

21 The Law on The Administration and Management of Commune/Sangkat, Art 48 (2001), and Law on Administrative Management of the Capital, Provinces, Municipalities, Districts, and Khans, Art 32 and Art 53–Art 61 (2008)

22 The Constitutional Council, CASE N°131/003/2007 Of June 26, 2007, Decision N° 092/003/2007 CC.D Of July 10, 2007

23 Constitution, art 26–new (1993)

24 Rebecca M.M. Wallace, M.A., LL.B., Ph.D. International Law, London. Sweet & Maxwell.200, p.36. According to the book, if a state is dualistic, international law will only become part of its municipal law if it has been expressly adopted as such by a way of legislative act.

25 Constitution, art 31 (1993)

it seems that Cambodia adopts a monist approach<sup>26</sup> because the Constitution recognizes all these international instruments.

### 3. Overview of Cambodian Judicial System

At present, the Cambodian judiciary consists of the Supreme Court, the Appellate Court,<sup>27</sup> the Provincial/Municipal Courts and the Military Court<sup>28</sup> as well as the hybrid court which is known as the Extraordinary Chambers in the Courts of Cambodia.<sup>29</sup>

The Appellate Court reviews both *Ang Het* (matters of fact) and *Ang Chbab* (matters of law).<sup>30</sup> The Supreme Court hears only *Ang Chbab* (matters of law)<sup>31</sup> except in the case of a joint trial of the second grievance complaint the Supreme Court may render a final decision on both law and facts.<sup>32</sup> The Military Court<sup>33</sup> has jurisdiction only over military offenses. Military offenses are those involving military personnel, whether enlisted or conscripted, and which concern discipline within the armed forces or harm to military property.<sup>34</sup> All ordinary offenses committed by military personnel are tried in ordinary courts (provincial/municipal courts).<sup>35</sup> The Commercial Court<sup>36</sup> and Labor Court<sup>37</sup> have not yet been established.

26 Rebecca M.M. Wallace, M.A., LL.B., Ph.D. International Law, London. Sweet & Maxwell.200, p.36. According to the book, if a state is monistic, if it accepts international law automatically as part of its municipal law and does not demand an express act of legislature.

27 Law on the Organization and Activities of the Tribunal of the State of Cambodia (LOAT), art.3, § 1, (1993): LOAT states the Appellate court and Supreme Court which are higher courts, they are located in Phnom Penh

28 LOAT, art.2, § 1. LOAT states the Provincial/Municipal Courts, and Military Court are inferior courts

29 Law on the Establishment of the Extra Ordinary Chambers within the Court of Cambodia (2004)

30 Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia During the Transitional Period was known as UNTAC Criminal Code, art.4, § 5 (1992): UNTAC Criminal Code states the Appellate Courts judge both law and fact

31 LOAT, art.14, § 1; see also UNTAC Criminal Code, art.5, § a

32 LOAT, art.14, § 2; see also UNTAC Criminal Code, art.5, § c

33 KOY Neam, Introduction to The Cambodian Judicial Process, the Asia Foundation, 1998, p.17. The Military Court located in Phnom Penh is administratively, financially and logistically under the Ministry of National Defense. All activities carried out by the court such as statistics of investigations and trial activities must be reported to this Ministry

34 UNTAC Criminal Code, art. 11; see also LOAT, art.9, § 2

35 LOAT, art.9, § 3; see also UNTAC Criminal code, art.11. The Military Court consists of Department of Prosecution, Department of a Chief Clerk, Department of Investigation, Department of Trial Judges, and a Secretariat (administrative office). All its staff are military personnel such as a President, three Vice Presidents, member judges who are appointed by the Ministry of National Defense, and military defenders are appointed by the President of the Court after finishing training at the Ministry of Justice. The President and Vice Presidents of the Military Court as well as representatives of the military prosecutors are appointed by the Ministry of National Defense

36 Law on the Commercial Regulations and the Commercial Register, art.55, (1995). This law states during the period in which the Kingdom of Cambodia has no Commercial Court, the ordinary courts of the Kingdom of Cambodia shall be competent in all commercial matters

37 CLL, art.389. CLL states that pending the creation of the Labor Courts for the time being disputes related to the application of this law shall be referred to common courts.

In addition to these courts, there is a Constitutional Council (CC),<sup>38</sup> which has a duty to safeguard respect for the Constitution, interpret the Constitution and laws adopted by the National Assembly (and reviewed completely by the Senate), and has the right to receive and decide on disputes concerning the election of members of the National Assembly and election of members of the Senate.<sup>39</sup> There is also a Supreme Council of Magistracy, which is a judicial organ ensuring the smooth functioning and the independence of the judiciary in Cambodia.<sup>40</sup> It has a duty to decide and make proposals to the King on the appointment, transfer, leave of absence, delineation of duties, promotion and dismissal of judges and prosecutors at all courts<sup>41</sup> and takes disciplinary action against delinquent judges.<sup>42</sup> Despite having different responsibilities, Cambodian judges and public prosecutors are both categorized as *Chaokrom* (magistrates).<sup>43</sup> *Chaokrom* in its general sense is a title in the Cambodian judicial system that refers not only to judges who sit at trial but also to those who hold the position of public prosecutors. A judge involved in a trial or investigation is called *Chaokrom Angkuy* (sitting judge). A judge holding a position in the prosecutor department (*Ayakar*) is called *Chaokrom Chhor* (standing judge).<sup>44</sup>

## 4. Overview of Cambodian alternative dispute resolution system

The resolution of conflict outside the judicial system, which is known as alternative dispute resolution (ADR), is not new in Cambodia. Cambodian people have long been solv-

38 See Constitutional Council of Cambodia at <http://www.ccc.gov.kh>

39 Cambodia. Const. art.136; art.137, § 1; art.141. The Constitution states CC consists of nine members with a nine-year mandate. 3 members appointed by the King; 3 members by the National Assembly and 3 others appointed by SCM. After promulgation of any law, the king, the President of the Senate, the President of the National Assembly, the Prime Minister, 1/4 of members of the Senate, 1/10 of members of the National Assembly or the courts may request CC to review the constitutionality of that law. Khmer citizens shall have the right to appeal against the constitutionality of any law through their representative or President of National Assembly or member of the Senate or President of the Senate

40 Cambodia. Const. art.132; LOFSCM, art.1, art.2. LOFSCM states SCM consist of (i) The King as Chairman; (ii) The Minister of Justice as member; (iii) The President of the Supreme Court as member; (iv) The General Prosecutor to the Supreme Court as member; (v) The President of the Appellate Court as member; (vi) The General Prosecutor to the Appellate Court as member; (vii) Three judges elected by judges as members and three alternate judges are elected to replace an absent elected judge. In the event there is incompatibility of function of the Minister of Justice he shall be replaced by a senior official from the MOJ

41 Cambodia. Const. art 134; LOFSCM, art.11

42 Cambodia. Const. art. 133:

43 UNTAC Criminal Code, art. 2 This code states judges and prosecutors both are magistrates. Only judges may adjudicate. Prosecutors are responsible for penal actions, which only they may initiate. They file indictments in court and in all other for a provided for in this text. The Attorney General pleads before the Supreme Court in the interest of the law, reviews the legality of indictments by provincial prosecutors, and organize and supervises their work

44 KOY Neam, *supra* note 33, at 24

ing their disputes outside the court.<sup>45</sup> William R. Wiebe, Esq. stated that ADR has a long tradition in Cambodia.<sup>46</sup> Reconciliation is not only part of current procedure,<sup>47</sup> but it also existed in the old judicial system before 1970.<sup>48</sup>

In principle, and according to current practice, dispute resolution outside court litigation in Cambodia is conducted based on the following methods:

## Negotiation

Negotiation is the most common form of ADR in Cambodia and is used by parties to resolve disputes directly through compromise, without the assistance of a third party. Negotiation is allowed under Cambodian law, for example, under Article 20 of the above-mentioned Cambodian Investment Law provides for the use of negotiation when investment disputes happen.

## Conciliation

Conciliation or mediation is part of the Cambodian culture and traditional legal system. Conciliation is traditionally conducted by a third party, namely a monk, an *Achar* (knowledgeable expert), a prominent person the parties trust, or the King,<sup>49</sup> and formally it is conducted by a public officer appointed by the government and the judge. In practice, the settlement of disputes through conciliation is conducted as part of daily life and

45 Carmen Maria Lopez Vasquez, Pre-Trial Dispute Resolution Process, 20 March, 1996, The Cambodian Development Research Institute (CDRI), p.9

46 William R. Wiebe, Esq, *supra* note 29, at 2.

47 KOY Neam, *supra* note 33, at 47. There is a disagreement on reconciliation whether it is a part of current procedure or not. According to KOY Neam judges at the provincial court said it is mandatory for the court proceeding whereas the Appellate Court's judges said it is not a necessary part of the court procedures.

48 Siphana Sok, J.D, Denora Sarin, J.D, *supra* note 27, at 65; KONG Phallack, Hok Sophea, Tep Navy, Oeum Borarorth, *supra* note 79, at 42; KOY Neam, *supra* note 31, at 48. Reconciliation has existed in Cambodia long time ago. Cambodian Civil Procedure Code, art. 35, (1963) provides that reconciliation is allowed if the dispute does not involve or affect the public order, customs or civil status.

49 The Conciliation conducted by the King is called *Preab Reach Savnakar* (The Royal Hearing). *The Preab Reach Savnakar* was applied before 1970. It is an extra-judicial forum or method of reconciliation by the king where citizens can submit their civil disputes to him for settlement. The Royal Hearing was revived in 1994 and was conducted every ten days. From early April 1994 to the end of May 1994 there were 133 cases lodged for the Royal Hearing, but only 40 cases had been heard. Due to the King's illness or for other unexplained reasons this method has been suspended. In the Royal Hearing method the king cannot make any decision. The Commission for Receiving Complaints for the Royal Hearing (CRCRH) is set up to receive complaints from various sources: (i) A complaint lodged directly with CRCRH by one or more parties whose dispute was settled by local authorities; (ii) A complaint forwarded by the National Assembly Commission or members; (iii) A complaint not processed by the court; (iv) A case already settled by the court; (v) A case finally settled by the court but for which authorities failed to execute the judgment. After receiving a case CRCRH sends investigators to the place where the dispute arose or settled to collect information. The investigation report must be forwarded to the King's advisors for screening. During the Royal Hearing session the King hears a complete report read by a high ranking official, then he gives his opinion on the dispute to the parties how to get along together without causing prejudice to either of the parties or to authorities concerned for consideration. His opinion is not binding.

people never think of disputes as “criminal” or “civil” cases. If a dispute is not severe enough to significantly harm their interests, people often prefer compromise to bringing cases to the authorities or the courts. According to the Cambodian legal framework, conciliation is permitted, and it is provided for in various laws, including the Law on Family and Marriage (family disputes),<sup>50</sup> the Labor Law (labor disputes),<sup>51</sup> the Land Law and Regulations (land disputes),<sup>52</sup> and the Code of Civil Procedure (civil cases).<sup>53</sup>

## Arbitration

Arbitration has been recently developed in Cambodia, in particular labor arbitration.<sup>54</sup> Cambodian labor arbitration is a tripartite system and the award is usually non-binding. A binding award can happen only when parties agree for the decision to be binding prior to the arbitration or when there is no opposition to the arbitral award after eight days.<sup>55</sup> Commercial arbitration is not yet taking place, though the Law on Commercial Arbitration was promulgated in 2006. At the time of writing, the National Arbitration Center had not yet been established, but the first controversial batch of trainees to be future commercial arbitrators were selected, obtained training and are pending for the examination to be arbitrators. In relation to the enforcement of arbitral awards, the Cambodian Code of Civil Procedure provides enforcement of both domestic and foreign arbitral awards. Cambodia has been a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 1960, but it is unknown if dispute resolution through international arbitration and enforcement of arbitral awards has ever occurred in Cambodia. According to the Ministry of Commerce,<sup>56</sup> Cambodia acceded on January 5<sup>th</sup>, 1960 to the New York Convention and is obligated by the terms of the Convention.<sup>57</sup> Cambodia also signed the Convention on the Settlement of Investment Disputes (ICSID)<sup>58</sup> on November 5, 1993, but it has not been ratified by the Parliament yet. If it is approved, ICSID arbitral awards can be enforced in Cambodia.

William R. Wiebe, Esq, commented that Cambodian judges seem reluctant to enforce foreign arbitration awards because (i) the judges may be unfamiliar with international arbitration and with their responsibilities under the New York Convention; (ii) they may

<sup>50</sup> Law on Family and Marriage, Art 42 (1989)

<sup>51</sup> Labor Law, Art.300-301, and 303 (1997)

<sup>52</sup> Su-decree on the Organization and Functioning of the Cadastral Commission, Art 7-11 (2002), and Royal Decree on the Establishment of the National Authority of Land Dispute Resolution, Art 3 and Article 15 (2006)

<sup>53</sup> Code of Civil Procedures, Article 97 O

<sup>54</sup> Cambodian Labor Law, Art 309 (1997), and Prakas 099 on Arbitration Council dated 21 April 2004

<sup>55</sup> See KONG Phallack, Labor Arbitration Council in Cambodia: Law and Practice: Cambodian Comparative Law, Year Book (first Publication), 2009, pp 163-171

<sup>56</sup> The Reemergence of New Opportunities- Business & Investment Handbook, published in 1996 by the Ministry of Commerce

<sup>57</sup> If the confirmation is true, the Convention is in effect in Cambodia under article 158 of the Cambodian Constitution

<sup>58</sup> The World Bank Group, <http://www.worldbank.org/icsid/constate/c-states-en.htm>



feel that it is unfair to enforce a foreign arbitration award in Cambodia (especially if the award is against a Cambodian business or national); (iii) they may believe that the dispute should have been brought to the Cambodian courts, and they may not want to enforce the award in order to penalize the party for not coming to the Cambodian courts first, instead of arbitrating the dispute abroad; and (iv) they may be uncertain of the authenticity of the award and may think that it was obtained by persuading the party through fraud or corruption even when there is no evidence of this.<sup>59</sup> Consequently, in current practice there are no statistics of arbitral awards enforced by the Cambodian courts.

## 5. The Cambodian Legal Profession

The Cambodian legal profession officially came into existence in 1932 through the Royal Declaration No.32 dated March 15, 1932 and Royal Kram No. 648 dated March 30, 1951<sup>60</sup>. Traditionally, people who practiced laws were called “*Sma-Kdey*” or “*Neak Thak Nay Kdey*”<sup>61</sup> which means lawyers in present day language.

The current legal profession is a product of the country’s turbulent history and it is an independent and autonomous profession involved in serving justice. The legal profession may only be pursued from within the framework of the Bar Association of the Kingdom of Cambodia (the BAKC).<sup>62</sup> The BAKC was established in 1995 and its governing body is called the Bar Council which is composed of a president and members and assisted by the secretariat. The president is elected for a term of two years. The members of the Bar Council are elected by registered lawyers for a term of three years.<sup>63</sup>

The Law on the Bar Association provides two gateways<sup>64</sup> to enter the legal profession in Cambodia, one through the training at the Lawyer’s Training Center<sup>65</sup> and the other through two years of working experience in the legal field.<sup>66</sup>

<sup>59</sup> William R. Wiebe, Esq, *supra* note 29, at 36

<sup>60</sup> Bar Association of the Kingdom of Cambodia, Legal Profession in Cambodia, 2005, p.14

<sup>61</sup> *id*, p.14

<sup>62</sup> Law on the Bar Association of the Kingdom of Cambodia, art 1 (1995)

<sup>63</sup> Bar Association of the Kingdom of Cambodia, *supra* note 60, Ch.5, pp.71-84

<sup>64</sup> Bar Association of the Kingdom of Cambodia, *supra* note 60, Ch.4, pp.55-70

<sup>65</sup> Law on the Bar Association of the Kingdom of Cambodia, art 31 (1995). Article 31 of the Law on the Bar states: A person may engage in the profession as a lawyer, provided that he or she has fulfilled the conditions hereunder:

1. Shall have Khmer nationality.
2. Shall have a Bachelor of Law degree (Licence en Droit) or a law degree declared equivalent.
3. Shall have a Certificate of Lawyer’s Professional Skill. This Certificate of Lawyer’s Professional Skill shall be issued by a Center for Training of the Legal Profession. The organization and the functioning of this center shall be determined by sub-decree.
4. Shall never have been convicted of any misdemeanor or felony, nor received any disciplinary action or administrative penalty, such as removal from any function, or dismissal for any act contrary to honor or any act of moral turpitude. Shall not have been declared personally bankrupt by a court.

<sup>66</sup> Law on the Bar Association of the Kingdom of Cambodia, art 32 (1995). Article 32 of the Law on the Bar states that: Neither the Certificate of Lawyer’s Professional Skill nor the Bachelor of Law degree (Licence en Droit) shall be required for:

According to the Law on the Bar, apart from those lawyers who are members of the BAKC, no one may perform this profession, provide legal consultation, or prepare legal documents for compensation, except when such legal consultation or preparation of documents is an ancillary job to their profession or is a function permitted by law.<sup>67</sup>

Foreign lawyers can practice law in Cambodia only with authorization from the Bar Council. This authorization will depend on the sufficiency of the qualifications of the foreign lawyer and will only be granted when the country of origin of the foreign lawyer provides this same possibility to Cambodian lawyers. This authorization may be withdrawn if there is malpractice during the practice of the legal profession in the territory of Cambodia.<sup>68</sup>

The structure of legal practice in Cambodia can be classified into solo law practice (sole proprietorship) and group practice (partnership).<sup>69</sup> According to the Law on the Bar, a Cambodian law firm must have the character of a civil company in which all of its members are lawyers.<sup>70</sup> However, the term “civil company” is not defined by law. Lawyers’ offices are referred to as a “law office, law firm, or law group”. Individuals or entities other than lawyers are not permitted to use the terms “law office”, “law firm” or “law group”.<sup>71</sup> The legal professions of other countries in the region have undergone structural changes in recent years as a part of the liberalization of legal services. When comparing the legal profession in Cambodia to the legal profession in other countries in the region it becomes apparent that there is an urgent need to amend the Cambodian Law on the Bar to meet and reflect the changes and requirements of the World Trade Organization. For instance, in Singapore, law firms which were traditionally operating in a sole proprietorship or general partnerships were allowed to practice as limited liability partnerships and limited liability companies.<sup>72</sup>

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– judges who have served their profession for over 5 years and former judges who have a Secondary Certificate in Law (Certificate de la Capacité en Droit) and have served their profession for over 2 years.

The Certificate of Lawyer’s Professional Skill shall not be required for:

- those who have received a Bachelor of Law degree (Licence en Droit) and who have been working in the legal or judiciary field for over 2 years.
- those lawyers who originally had Khmer nationality and who have been registered in the Bar of a foreign country.
- those who have received a Doctorate of Law degree.

67 Law on the Bar Association of the Kingdom of Cambodia, art 4 (1995)

68 Law on the Bar Association of the Kingdom of Cambodia, art 6 (1995)

69 Law on the Bar Association of the Kingdom of Cambodia, art 46.1 (1995). Article 46 states Lawyers may practice their profession individually or within the context of a group of a Law Firm which is lawfully established.

70 Law on the Bar Association of the Kingdom of Cambodia, art 46.2 (1995)

71 Bar Association of the Kingdom of Cambodia, *supra* note 60, Ch.6, pp.85-96

72 Charles Lim Aeng Cheng, *Secretary – General, Asean Law Association (2003-2006)*, Legal Systems In Asean – Singapore Chapter 6 - The Legal Profession, (see [http://www.aseanlawassociation.org/papers/sing\\_chp6.pdf](http://www.aseanlawassociation.org/papers/sing_chp6.pdf))

### III. Recent effort at legal and judicial reform

There have been initiatives for legal and judicial reform in Cambodia by the Royal Government of Cambodia (RGC) and development partners since a government was formed in 1993. From 1993 to 2002, the RGC set up the Council for State Reform under which a Council for Legal Reform and a Council for Judicial Reform were established.<sup>73</sup> During this period, the RGC has conducted its legal and judicial reform based on its own political platform and policies whereas development partners provided support to legal and judicial reform based on their own policies and agenda. Therefore, the legal and judicial reform was not well organized because the RGC and development partners had different policies. However, there was an effort to harmonize the RGC and development partners' policies through the Harmonization and Alignment Policy.

Between 2003 and 2005 the Council of Ministers adopted two main documents, namely the Legal and Judicial Reform Strategy in 2003, and the Plan of Action for the Implementation of the Legal and Judicial Reform Strategy in 2005 (the Plan of Action).<sup>74</sup> The purpose of adopting these two main documents was to harmonize and align the policies of the RGC and its development partners in relation to legal and judicial reform in order to ensure the consistency of law and prevent the overlapping of resources, as well as improving cooperation and information sharing between the RGC and development partners. Through this effort, the policies of the RGC and its development partners have been integrated. Thus the following sections explain the methodologies of formulation for the legal and judicial reform strategies, its implementation, achievement and its associated monitoring system.

#### 1. Methodologies for the formulation of legal and judicial reform strategies

The legal and judicial reform strategies in Cambodia were developed based on four basic concepts set out in the 1993 Constitution<sup>75</sup> as agreed during a participatory process involving the RGC and the Danish Institute for Human Rights (DIHR).<sup>76</sup> This method allowed government agencies and justice sector stakeholders (donors and civil society) to work together to develop a Values Document for the Justice Sector in Cambodia (the

<sup>73</sup> See Royal Decree On the Establishment of the Supreme Council of State Reform, 1999 and Royal Decree on the Establishment of the Council of Judicial Reform, 2000

<sup>74</sup> The Council of Ministers approved the Legal and Judicial Reform Strategies on June 20, 2003 and the Plan for Action for the Implementation of Legal and Judicial Reform on April 29, 2005

<sup>75</sup> Council for Legal and Judicial Reform, Legal and Judicial Reform Strategies, 2003, p.7. The four basic concepts/principles from the 1993 constitution namely: (i) Liberal Democracy; (ii) Rule of Law; (iii) Separation of Powers; and (iv) Individual Rights.

<sup>76</sup> *id*, p.3. The Council for Legal and Judicial Reform approved the first draft of legal and judicial reform strategies on January 27, 2003 and the Consultative Workshop with all stakeholders was held on February 12, 2003

Values Document), which serves as the basis or guiding principle for the formulation of strategies for legal and judicial reform.

The legal and judicial reform strategies were developed by a planning base team which was composed of a Danish legal advisor from the DIHR, and two Cambodian jurists from the Council of Jurists of the Council of Ministers (Mr KONG Phallack and Mr Thong Chenda) in cooperation with the a legal and judicial reform team of the Council of Ministers led by the late H.E Sum Manit, Secretary of State for the Council of Ministers and advisor to the RGC. When the first draft of the Legal and Judicial Reform Strategy was completed and supported by the Council of Ministers, the RGC decided to establish an institution in charge of legal and judicial reform. Consequently, three levels of institutions were established in 2002 under the umbrella of the Council of Ministers. These institutions were the Council for Legal and Judicial Reform (CLJR),<sup>77</sup> the Permanent Coordinating Body,<sup>78</sup> and the Project Management Unit (29).<sup>79</sup> Following the establishment of these institutions, the Legal and Judicial Reform Strategy was approved by the Council of Ministers on June 20 2003,<sup>80</sup> and the Plan of Action was also approved by the Council of Ministers some years later on April 29, 2005.<sup>81</sup>

## 2. The Values Document

The Values Document, which informs the legal reform process, is based on four basic concepts and principles from the 1993 Constitution, namely: (i) liberal democracy; (ii) rule of law; (iii) separation of powers; and (iv) individual rights.<sup>82</sup> The concept of liberal democracy in the Values Document was designed based on the values of: (a) representation; (b) decentralization of powers; (c) promoting a free market economy; and (d) provision of public services.<sup>83</sup> The concept of rule of law in the Values Document is determined based on the values of: (a) the hierarchy of laws; (b) predictability; (c) transparency; (d) accountability; (e) due process; and (f) enforcement.<sup>84</sup> The concept of separation of powers in the Values Document is based on the values of: (a) division of functions between the three branches of government; (b) checks and balances; and (c) the independence of

77 Royal Decree No. NS/RKT/0602/158 Of June 19, 2002 on the Establishment of the Council for Legal and Judicial Reform; and Sub-Decree No. 87/ANK/BK Of August 21, 2002 on the Organization and Functioning of the Council for Legal and Judicial Reform

78 Sub-Decree No. 87/ANK/BK Of August 21, 2002 on the Establishment of the Permanent Coordination Body of the Council for Legal and Judicial Reform

79 Sub-Decree No. 128/ANK/BK Of December 26, 2002 on the Establishment of the Project Management Unit of the Council for Legal and Judicial Reform

80 Council for Legal and Judicial Reform, the Legal and Judicial Reform Strategies on June 20, 2003

81 Council for Legal and Judicial Reform, the Plan for Action for the Implementation of Legal and Judicial Reform on April 29, 2005

82 Council for Legal and Judicial Reform, *supra* note 75, p.7

83 Council for Legal and Judicial Reform, *supra* note 75, pp.13-14

84 Council for Legal and Judicial Reform, *supra* note 75, pp. 15-17

the judiciary.<sup>85</sup> The concept of rights of the individual in the Values Document is based on the values of: (a) personal freedoms and rights; (b) property rights; (c) participation; (d) access to justice and the right of appeal; and (e) access to information.<sup>86</sup>

### 3. Vision statement for the legal and judicial sector

In order to achieve the above mentioned basic concepts and values responding to each concept, vision statements<sup>87</sup> for legal and judicial reform were determined as follows:

- secures the personal freedom and rights, including property rights, of all individuals throughout country through the timely, effective and fair delivery of justice;
- protects the existence of a liberal democracy within the sovereign Kingdom of Cambodia;
- ensures a credible and stable legal and judicial framework within a system of separation of powers, including an independent and capable judiciary;
- upholds the rule of law in a market-based economy;
- relies on institutions that uphold principles of good governance;
- ensures effective access to justice for all in the due process of law before a court or other conflict resolution mechanisms in all settlement of disputes between the State and individuals and between individuals;
- ensures the timely and impartial enforcement of all legal decisions;
- is transparent and promotes awareness by citizens of their rights and obligations;
- the judiciary earns the confidence and respect of the citizens and is held to high standards of professionalism, ethics and accountability.

### 4. Interventions for legal and judicial reform

In order to achieve the above mentioned basic concepts and values responding to each concept, 63 interventions<sup>88</sup> were determined responding to each concept and values. The 63 interventions can be sub-divided roughly into nine component areas such as:

- a legal reform programme;
- laws pertaining to the functions of the justice sector;
- implementation of certain laws pertaining to the functions of justice sector institutions;
- implementation of certain laws pertaining to the independence of the judiciary;
- implementation of certain laws pertaining to the administration of justice;

<sup>85</sup> Council for Legal and Judicial Reform, *supra* note 75, p.15

<sup>86</sup> Council for Legal and Judicial Reform, *supra* note 75, pp.12-13

<sup>87</sup> Council for Legal and Judicial Reform, *supra* note 75, p.7

<sup>88</sup> Council for Legal and Judicial Reform, *supra* note 75, pp.18-20

- implementation of certain laws pertaining to enforcement;
- implementation of certain laws pertaining to accountability;
- legal education and training; and
- transparency and information.

## 5. The Legal and Judicial Reform Strategy

The goal of the Legal and Judicial Reform Strategy is “the establishment of a credible and stable legal and judicial sector upholding the principles of the rights of the individual, the rule of law and the separation of powers in a liberal democracy fostering private sector led economic growth”. In order to achieve this goal, seven strategic objectives<sup>89</sup> were determined as follows:

- Strategic objective 1: Improve the protection of personal rights and freedoms.
- Strategic objective 2: Modernization of the legislative framework.
- Strategic objective 3: Provide better access to legal and judicial information.
- Strategic objective 4: Enhance quality of legal processes and related services.
- Strategic objective 5: Strengthen judicial services i.e. the judicial power and prosecutorial services.
- Strategic objective 6: Introduce alternative dispute resolution methods.
- Strategic objective 7: Strengthen legal and judicial sector institutions to fulfill their mandates.

In addition to the vision set out by the Constitutional principles, an overall strategy for legal and judicial reform in Cambodia needed to exist within the framework of the Governance Action Plan and be in compliance with and complemented by the overall country development strategies, including the National Poverty Reduction Strategy (NPRS). Extensive work was therefore carried out to complement the shared justice sector vision with the overall country development strategies and align it with the Governance Action Plan.

## 6. Development of the Plan of Action for Reform

The Plan of Action which was formally adopted by the Council of Ministers on 29 April 2005 is the document describing how to implement the Legal and Judicial Reform Strategy and comprises 97 priority actions and corresponding interventions for each of the strategies defined for the achievement of the seven strategic objectives in the Legal and Judicial Reform Strategy. For each of the seven objectives, the strategies and their corresponding priority actions describe how to achieve the strategic objectives. They are clustered into short, medium and long-term priorities, creating a complex but logical hierarchy of plans

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<sup>89</sup> Council for Legal and Judicial Reform, *supra* note 75, pp.21-31

for legal and judicial reform. As has been detailed above, the reform process, with its various plans and strategies, is detailed but somewhat complex.

The Permanent Coordination Body and the Project Management Unit of the CLJR were the two main players in developing the Action Plan. The Action Plan was the product of a national workshop held in December 2003 organized by the Permanent Coordination Body.<sup>90</sup>

## 7. Implementation of the legal and judicial reform strategy

Legal and judicial reform is currently in the implementation phase.<sup>91</sup> The Secretariat of the Council for Legal and Judicial Reforms (GS-CLJR) has played a key role in developing, facilitating and supporting the implementation of legal and judicial reform. Furthermore, the GS-CLJR is responsible for monitoring the implementation of the reforms, including all projects related to the Action Plan.<sup>92</sup> Each project or action of the reform is implemented by the specific legal and judicial sector agency (relevant ministries) and respective development partner.<sup>93</sup> The Technical Working Group on Legal and Judicial Reform (TWG-LJR) is another forum used for the mobilization of partnerships (Partnership Groups) and funds required for the implementation of projects and it is also an information sharing forum on legal and judicial reform.

Based on the chart of the status of the implementation of the Action Plan, there has been no progress in the implementation of the Action Plan.<sup>94</sup> However, it is hard to see changes in the legal and judicial sector because the reform is often intangible. Therefore, the RGC, especially the GS-CLJR should promote awareness programs on legal and judicial reform to inform the public about the government efforts and commitment in building a strong and credible legal and judicial system.

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90 The Permanent Coordination Body was designated by the Council for Legal and Judicial Reform to make the Strategy mentioned above operational by developing an action plan whose implementation would lead to the achievement of the Strategy. A national workshop was conducted in December 2003 with the participation of the relevant authorities, national and international civil society organizations, and international donor and technical assistance agencies, at which the Strategy was presented. On the basis of this workshop, five working groups with participation from all these groups were established to work on plans for the implementation of the seven strategic objectives, securing a participatory process and the necessary coordination and support.

91 Implementation phase of the legal and judicial reform started from 2005 to present.

92 The General Secretariat of the Council for Legal and Judicial Reform (GS-CLJR) was established by Sub-decree No. 52 ANK/BK Of April 6, 2009. GS-CLJR is the successor of PCB and PMU because PCB and PMU were dissolved by Sub-decree No. 52 ANK/BK Of April 6, 2009

93 See Council for Legal and Judicial Reform, the Plan for Action for the Implementation of Legal and Judicial Reform on April 29, 2005

94 Council for Legal and Judicial Reform, Chart of the Status of the Implementation of Legal and Judicial Reform Strategies in Cambodia, 2009

In conclusion, the legal and judicial system in Cambodia is at the crossroads because different legal cultures have been integrated, transplanted and transformed into the Cambodian legal and judicial system, which can be called a hybrid legal system. Therefore, there is a need to conduct a baseline study on the current legal and judicial system in Cambodia to identify, gaps, strength, weaknesses, and errors arising from the current amalgamation of different systems in order to ensure a sound legal and judicial system. This baseline study can be included in the legal and judicial reform of the RGC, especially the CLJR. However, this issue is not primarily addressed in the Legal and Judicial Reform Strategy and the Action Plan outlined by the RGC.