Update on the Rule of Law for Human Rights in ASEAN: The Path to Integration
The Kingdom of Cambodia
# CAMBODIA

<table>
<thead>
<tr>
<th>TABLE 1</th>
<th>SNAPSHOT¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formal Name</td>
<td>Kingdom of Cambodia</td>
</tr>
<tr>
<td>Capital City</td>
<td>Phnom Penh</td>
</tr>
<tr>
<td>Independence</td>
<td>9 November 1953</td>
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</table>

### Historical Background²

Cambodia became a French protectorate in 1863 and a formal colony in 1884. After WWII ended in 1945, the movement for independence found its momentum. Cambodia gained full independence from France in 1953. Thereafter, it went through several relatively short regimes, from constitutional monarchy (1953-1970) to republic (1970-1975) to communism/dictatorship (1975-1979) to communism/socialism (1979-1991), before a constitutional monarchy was restored in 1993.

In April 1975, communist Khmer Rouge forces captured Phnom Penh. People were evacuated from the cities and forced to live in the countryside. At least 1.5 million Cambodians died from execution, forced labour, or starvation in between 1975-1979.³ In December 1978, Vietnamese troops toppled the regime, although Khmer Rouge forces maintained their strongholds in the north-eastern part of the country. The Vietnamese troops withdrew as a result of the 1991 Paris Peace Accords, which mandated democratic elections and a ceasefire (which was not fully respected by the Khmer Rouge).

In 1993, UN-sponsored elections led to the installation of a coalition government. Factional fighting in 1997 ended the coalition government; a second round of national elections in 1998 led to the formation of another coalition government. The remaining elements of the Khmer Rouge surrendered in early 1999. Some of the surviving Khmer Rouge leaders were brought to trial for crimes against humanity by a hybrid UN-Cambodian tribunal supported by international assistance. Elections in July 2003 were relatively peaceful, but it took one year of negotiations before a coalition government was formed. In October 2004, King Norodom Sihanouk abdicated the throne and his son, Prince Norodom Sihamoni, was selected to succeed him. The national election in July 2008 was also largely peaceful although there were accusations of widespread irregularities.

National elections in July 2013 were disputed, with the opposition—the Cambodian National Rescue Party (CNRP)—boycotting the National Assembly.⁴ The political impasse ended nearly a year later, with the CNRP agreeing to enter parliament in exchange for commitments from the ruling party, the Cambodian People’s Party (CPP), to undertake electoral and legislative reforms.

| Size | 181,035 sq. km |

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| Land Boundaries | Total Boundaries: 2,530 km  
|                | Laos (555 km), Thailand (817 km), Vietnam (1,158 km) |
| Population     | 15,708,756 (July 2015 est.); Growth Rate: 1.58% (2015 est.) |
| Demography     | 0-14 years: 31.43% (male 2,489,964/female 2,447,645)  
|                | 15-24 years: 19.71% (male 1,532,016/female 1,564,240)  
|                | 25-54 years: 39.61% (male 3,043,676/female 3,178,825)  
|                | 55-64 years: 5.2% (male 315,741/female 501,544)  
|                | 65 years and over: 4.04% (male 238,840/female 396,265) (2015 est.) |
| Ethnic Groups  | Khmer 90%, Vietnamese 5%, Chinese 1%, other 4% |
| Languages      | Khmer (official) 96.3% (2008 est.) |
| Religion       | Buddhist (96%), Muslim 2.5%, Bahai, Jewish, Vietnamese Cao Dai, and Christians 1.5% (2014 est.) |
| Adult Literacy | Definition: age 15 and over can read and write  
|                | Total population: 77.2%  
|                | Male: 84.5%  
|                | Female: 70.5% (2015 est.) |
| Gross Domestic Product | $54.17 billion (2015 est.)  
|                     | $50.65 billion (2014 est.)  
|                     | $47.34 billion (2013 est.)  
|                     | note: data are in 2015 US dollars |
| Government Overview | - Executive Branch: The Head of State is King Norodom Sihamoni (since 29 October 2004), whose role is ceremonial. The Head of Government is Prime Minister Hun Sen (Prime Minister since 14 January 1985; Co-Prime Minister from 1993 to 1998). The executive power is vested in the Council of Ministers, which is named by the Prime Minister and appointed by the monarch upon approval from the National Assembly.  
|                     | - Legislative Branch: The Cambodian legislature is bicameral, consisting of the Senate (61 seats, with members serving for a term of six-years) and the National Assembly (123 seats, with members elected by popular vote to serve a five-year term).  
|                     | - Judicial Branch: Courts at all levels exercise judicial power and hear all matters including administrative cases. Judicial power is vested in the Supreme Court, one Appeal Court, and 23 First Instance Courts (located in each province/municipality, except in Kep and Oddar Meanchey provinces). A Military Court hears cases concerning military discipline. An internationalised/hybrid court, the Extraordinary Chambers in the Courts of Cambodia (ECCC), was established in 2004 and adjudicates certain crimes committed between 1975-1979. Judicial review is not vested with the courts, but in the Constitutional Council of Cambodia. |

5 Two members were appointed by the Monarch, two elected by the National Assembly, and 57 elected by commune councils.  
### Human Rights Issues

Pressing human rights issues include: Freedom of expression, association, and assembly; human rights violations in connection with land disputes, including land and housing rights (land confiscation and forced eviction); lack of independence of the judiciary; judicial harassment (mostly against government dissidents); threats and attack against human rights defenders and on-going and prevailing impunity for perpetrators; arbitrary detention and torture; refugees and asylum seekers (threat of forced repatriation); issues concerning elections; right to highest attainable standard of health; and violence and sexual crimes against women and children.\(^8\)

### Membership in International Organizations

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<tr>
<th>Organization</th>
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<tr>
<td>ADB: Asian Development Bank</td>
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<td>ARF: ASEAN Regional Forum</td>
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<td>ASEAN: Association of Southeast Asian Nations</td>
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<td>CICA: Conference on Interaction and Confidence-Building Measures in Asia (observer)</td>
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<td>EAS: East Asia Summit</td>
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<td>FAO: Food and Agriculture Organization</td>
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<td>G-77: Group of 77</td>
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<td>IBRD: International Bank for Reconstruction and Development</td>
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<td>ICAO: International Civil Aviation Organization</td>
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<td>IDA: International Development Association</td>
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<td>ICRM: International Red Cross and Red Crescent</td>
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<td>IFAD: International Fund for Agriculture Development</td>
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<td>IFC: International Finance Corporation</td>
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<tr>
<td>IFRCS: Intl’ Federation of Red Cross &amp; Red Crescent Society</td>
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<td>ILO: International Labour Organisation</td>
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<td>IMF: International Monetary Fund</td>
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<td>Interpol: International Police Criminal Organisation</td>
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<td>IOC: International Olympic Committee</td>
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<td>IOM: International Organization for Migration</td>
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<td>IPU: Inter-Parliamentary Union</td>
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<td>ISO: International Organization for Standardisation</td>
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<td>ITU: International Telecommunication Union</td>
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<td>ITSO: International Telecommunication Satellite Organisation</td>
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<td>MIGA: Multilateral Investment Guarantee Agency</td>
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<td>NAM: Nonaligned Movement</td>
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<td>OIF: Organization International de la Francophonie</td>
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<td>OPCW: Organization for Prohibition of Chemical Weapon</td>
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<td>PCA: Permanent Court of Arbitration</td>
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<td>UN: United Nations</td>
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<td>UNCTAD: United Nations Conference on Trade and Development</td>
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<td>UNESCO: United Nations Educational, Scientific, and Cultural Organisation</td>
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<td>UNIDO: United Nations Industrial Development Organization</td>
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<td>UNIFIL: United Nations Interim Force in Lebanon</td>
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<td>UNMIS: United Nations Mission for Sudan</td>
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<td>UNTSO: United Nations Peace Force in Sudan</td>
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<td>UPU: Universal Postal Union</td>
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### Human Rights Treaty Commitments

In line with the 1991 Paris Peace Accords on the comprehensive political settlement of the Cambodian conflict, Cambodia agreed to have a UN-appointed independent expert to monitor and report on the human rights situation in Cambodia. Ms. Rhona Smith of United Kingdom was appointed Special Rapporteur in March 2015, succeeding Professor Surya P. Subedi.

Since the 2011 Rule of Law Baseline Study, Cambodia has ratified two more treaties, namely the Convention for the Protection of all Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities. Thus, Cambodia currently has ratified or acceded to eight of nine core UN human rights treaties.

**Core UN Human Rights Treaties:**

- **ICERD**: International Convention on Elimination of All Forms of Racial Discrimination (Ratification: 28 November 1983)
- **ICCPR**: International Covenant on Civil and Political Rights (Accession: 26 May 1992)
- **CEDAW**: Convention on the Elimination of all Forms of Discrimination Against Women (Accession: 15 October 1992)
- **CAT**: Convention Against Torture, and Other Cruel, Inhumane or Degrading Treatment or Punishment (Accession: 15 October 1992)
- **CED**: Convention for the Protection of all Persons from Enforced Disappearance (Accession: 27 June 2013)
- **CRPD**: Convention on the Rights of Persons with Disabilities (Ratification: 20 December 2012)

In relation to these treaties, Cambodia has ratified a number of optional protocols, including OP-CEDAW, OP-CAT, OP-CRC-AC (Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict), and OP-CRC-SC (Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography).

Cambodia has also signed the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families (CMW), but has, to date, not ratified the same.

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Other Relevant Human Rights Treaties:¹⁰
Other relevant human rights treaties that Cambodia has ratified are the following:
- Convention on the Prevention and Punishment of the Crime of Genocide (Accession: 14 October 1950);
- Convention relating to the Status of Refugees (Accession: 15 October 1992);
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Accession: 12 June 1957);
- Convention on the Suppression and Punishment of the Crime of Apartheid (Accession: 28 July 1981);
- Rome Statute of the International Criminal Court (Ratification: 11 April 2002);

I. INTRODUCTION

Cambodia is a constitutional monarchy that formally adopts liberal democracy and pluralism/multi-party system.¹¹ The Constitution specifies the political and economic systems, but does not specify the legal system.¹² Legal scholars argue that Cambodia, in practice, adopts a mixed legal system of both common law and civil law.¹³ The Constitution and various laws provide for government accountability as well as separation of powers of the three branches of government. However, past and contemporary reports point to the de facto influential power of the executive.¹⁴ Nevertheless, one member of the Supreme Council of Magistracy (SCM) has stated that “in democratic society, it is inevitable that every individual and entity at all levels collaborate and are interconnected. Therefore, there is often influence on one another. However, judges make decision without being due to order or command from ruling party or an influential person.”¹⁵

As a result of the 1991 Paris Peace Accords, there is a monitoring mechanism for the human rights situation in Cambodia, a mandate entrusted upon the Special Representative of the Secretary General for Human Rights Situation in Cambodia (SRSG) (later changed to “Special Rapporteur”). In the last five years, besides the annual reports on the general human rights situation in Cambodia, then Special Rapporteur Surya P. Subedi also submitted thematic reports on (i) economic and other land concessions and (ii) eviction and resettlement. Cambodia has undergone two Universal Periodic Review (UPR) processes. The report of the Human Rights Council on the first UPR was issued on 8 February 2011, while the report of the UN Working Group on the second UPR was issued on 27 March 2014.

¹² Chapter IV and V of the 1993 Constitution.
¹³ Supra note 7, pp. 8 & 22.
During the 2\textsuperscript{nd} cycle of the UPR, specifically on the rule of law, the Cambodian delegation stated that the government had adopted 416 laws\textsuperscript{16} to enhance the legal framework and strengthen the capacity, independence and impartiality of the judiciary. The authorities would continue to work hard on legal reforms and encourage the drafting of new laws, establish programmes to increase the awareness of laws, and conduct training for law enforcement officials at all levels. The delegation added that the government is determined to enact laws related to the judiciary.\textsuperscript{17}

Ironically, civil society and the general public have criticised the government for the shroud of secrecy over the law-making process concerning judicial and legal reforms. Three new laws concerning the judiciary have been much criticised for expanding the influence of the executive on the judiciary. Additionally, the government, also without holding meaningful consultations, passed laws containing repressive clauses, including the Law on the Election of Members of the National Assembly, the Law on Associations and NGOs, and the Telecommunications Law.

The increasing discontent of the citizens in the ruling party became unequivocal in the most recent National Assembly elections. In the 2008 elections, the Cambodian People's Party won 90 of 123 seats. By the July 2013 elections, it was able to secure only 68 seats. Despite the CPP's reduced majority in the National Assembly, CNRP and their supporters still felt the election was fraught with irregularities and deeply biased in CPP's favour. Mass protests over the election results were held, resulting in violence and at least one death as government forces tried to suppress demonstrators. In protest of the election results, CNRP refused to attend sessions of the National Assembly until July 2014, when the two parties were able to agree on key reforms to be instituted.\textsuperscript{18}

In the first cabinet meeting in September 2013, the Prime Minister unveiled a five-year “Rectangular Strategy” (3\textsuperscript{rd} phase) and vowed to implement deeper reforms focusing on legal and judicial reforms, anti-corruption, good governance and forest management. The strategy intended to build Cambodian society by strengthening peace, stability and social order, promoting sustainable and equitable development, and entrenching democracy and respect for human rights and dignity. The reform was seen as a strategy to regain the confidence of the people and to avoid further loses in the 2018 national election. The Prime Minister also warned that there would be no tolerance for any minister abusing his or her power when dealing with lower-level officials and the citizenry.\textsuperscript{19} On 4 April 2016, the Prime Minister reshuffled the cabinet—an act that some commentators saw as implementation of reform efforts, but viewed by others as insignificant.\textsuperscript{20}

\textsuperscript{16} No timeframe was specified.


Cambodia has been ranked consistently low in the World Justice Project's rule of law index. It was 91st out of 99 countries in 2014. In 2015, Cambodia was ranked the lowest in the East Asia and Pacific region, and 99th out of 102 countries globally.

**Key Rule of Law Structures**

The key institutions in overseeing and implementing the rule of law in the country include the courts, Supreme Council of Magistracy, Constitutional Council of Cambodia, Ministry of Justice, Commissions within the National Assembly and Senate, Cambodian Human Rights Committee, Anti-Corruption Institution, Royal Academy for Judicial Professions, Prosecution Department, Judicial Police, and the National Election Committee.

**The Courts**

Judicial power is vested in the Supreme Court, Appeal Court, and First Instance Courts. There is also a Military Court, which hears cases concerning military discipline. An internationalised/hybrid court, the Extraordinary Chambers in the Courts of Cambodia (ECCC), was established in 2004 and adjudicates certain crimes committed between 1975-1979. Currently, there are three active cases against six accused. The subject matter jurisdiction of the ECCC includes genocide, crimes against humanity, grave breaches of the Geneva Conventions, destruction of cultural properties, crimes against internationally protected persons, and crimes penalised in the 1956 Penal Code of Cambodia.

Between 2011-2016, two new First Instance Courts were established in the newly-created provinces of Tbong Khmum (carved out of Kampong Cham province) and Pailin (carved from Battambang province). There is a long-awaited plan to create seven more regional Appeal Courts to ease complainants' expenses and reduce court backlog. Three out seven regional Appeal Courts are expected to be created by 2018.

On 16 July 2014, three laws pertaining to the judiciary were promulgated: 1) Law on Organisation of Courts, 2) Law on Statute of Judges and Prosecutors, and 3) Law on Organisation and Functioning of Supreme Council of Magistracy (SCM). These laws have been much criticized on the basis that they increased the government's control over the Supreme Council of Magistracy and weakened judicial independence.

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Supreme Council of Magistracy

The SCM is mandated to appoint and discipline judges and prosecutors throughout the country. The newly-enacted Law on the SCM increased the members of the council from eight to 11.25 Concerns over the new law as well as the two others that accompanied it have been raised, including that the executive government, through the Minister of Justice (who sits in the SCM), is given excessive influence over the appointment and promotion of judges and prosecutors.26

Constitutional Council of Cambodia

Judicial review is not vested with the courts, but the power to check the constitutionality of a law or executive regulation is vested in the nine-member Constitutional Council of Cambodia (CCC).27 The Council may review laws adopted by the legislature and executive regulations (Royal Decree, Sub-Decree, ministerial proclamation, order, circular, sub-national authorities’ order or bylaw).28 Three members of the Constitutional Council of Cambodia are appointed by the King; three members are elected by the National Assembly; and the other three members are elected by SCM. Members of the CCC are prohibited from serving other public functions as well as being president or vice-president of a political party.29

Ministry of Justice

Based on Article 3 of the Sub-Decree on the Organisation and Functioning of the Ministry of Justice No. 47 ANK/BK dated 11 May 2007, the Ministry of Justice is mandated to, among others, 1) participate in protecting the independence of judges, 2) organise and monitor the administrative process of courts and the prosecution offices at all levels, 3) ensure the smooth operation of the courts in all cases and levels, 4) monitor the implementation of laws and execution of judgements, 5) monitor penitentiaries and detention centres, 6) draft laws concerning the judicial sector, 7) research, educate, and disseminate laws concerning the judicial sector, and 8) maintain criminal records and issue abstracts thereof.

Commissions within the National Assembly and Senate

There are 10 commissions each within the National Assembly and Senate.30 There is a Human Rights and Complaints Commission in the National Assembly31 and a Human Rights and Complaints Commission

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25 Article 4 of Law on SCM.
29 Article 139 of the Constitution.
30 National Assembly’s decision No. 198.RS dated 14 August 2014.
31 National Assembly’s decision No. 001 RS dated 9 January 2014 on roles and responsibilities of committee on human rights, receipt of complaint, investigation, and senate-national assembly relation.
Cambodia

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in the Senate. Their duties consist of legislative initiatives, receipt of complaints, investigation, education, mainstreaming, and awareness-raising with regard to human rights.

As a result of political dealings between the two political parties after the 2013 election, Commissions on Investigation and Corruption were created within the National Assembly and the Senate. The Commissions are tasked with initiating laws or examining draft laws, monitoring implementation, consulting and meeting with stakeholders, researching and giving recommendations concerning anti-corruption.

Cambodian Human Rights Committee

The Cambodian Human Rights Committee, established in 1998, is under the Council of Ministers and is tasked to investigate, collect information relating to the enforcement of human rights, prepare the report to be submitted to relevant bodies of the United Nations, develop policies, and take action to enhance the implementation of human rights standards. Notably, the Cambodian Human Rights Committee encourages resolving disputes through mediation. This institution does not have judicial or quasi-judicial functions. As of January 2016, no institution in Cambodia has applied for accreditation in accordance with the Principles relating to the Status of National Institutions (The Paris Principles).

Anti-Corruption Institution

In 1999 and again in 2006, the Royal Government issued Sub-Decrees on the establishment of an Anti-Corruption Unit under the management of the Office of the Council of Ministers. On 17 April 2010, the Law on Anti-Corruption was promulgated, establishing the Anti-Corruption Institution (ACI) comprising of the Anti-Corruption Unit (ACU) and the National Council Against Corruption (NCAC). The ACU’s core mission is to spearhead initiatives against corruption in all forms, at all levels of society. It follows a three-pronged approach: public education, prevention, and enforcement of the Law on Anti-Corruption. It is empowered to receive complaints and investigate alleged incidents of corruption. The ACU has the privilege to, in cooperation with concerned authorities, suspend all functions of any individual who is substantially proven to be involved in corrupt offence as well as freeze assets. The NCAC acts as an

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32 Senate's decision no. 020/0912/BHS/SR dated 6 September 2012 on roles and responsibilities of committee on human rights, receipt of complaint and investigation.
33 National Assembly's decision No. 284/RS dated 14 November 2014 on role and responsibilities of commission on investigation and anti-corruption.
34 Senate's decision No. 116/0914/BHS/SR dated 25 September 2014 on role and responsibilities of commission on investigation and anti-corruption.
35 Article 6.1, Royal Decree No. NS/RKT/1213/1336 dated 9 December 2013 on Establishing Cambodian Human Rights Committee.
37 'Background on Establishment of ACU, Anti Corruption Unit, http://www.acu.gov.kh/index.php?4a8a08f09d37b73795649038408b5f33=%E1%9E%91%E1%9F%86%E1%9F%96%E1%9F%90%E1%9E%9A%E1%9E%8A%E1%9E%BE%E1%9E%98&03c7c0ace395d80182db07ae2c30f034=2 (accessed 7 April 2016).
38 Article 25 of Law on Anti-Corruption 2010.
40 Ibid, Article 28; See also Articles 13, 27 and 29.
oversight body, providing guidance and consultation to the ACU. The NCAC is also tasked with developing anti-corruption strategies and policies to be implemented by the ACU.\(^{41}\)

The ACI has several foundations in place to make it an effective mechanism against corruption. In particular, the legal framework provides for the independence of the institution's budget and autonomy over its accounting and auditing procedures. Nevertheless, its ability to independently function is tarnished by its closeness to the Prime Minister and the ruling party. The current Chairman of the ACU was former adviser to the Prime Minister. The Prime Minister appoints the Chairperson and Vice-Chairperson of ACU through sub-decree. As illustrated in the table below, the ACI has been described by Transparency International to be “weak” in terms of capacity, governance, and role (with the exception of education).\(^{42}\)

<table>
<thead>
<tr>
<th>Table 2</th>
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<tbody>
<tr>
<td>National Integrity System: Anti-Corruption Institution (ACI) TI Cambodia 2014 Assessment</td>
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<tr>
<th>PILLARS</th>
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<td>In Practice</td>
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<tr>
<td>Resources</td>
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<tr>
<td>Independence</td>
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<td>Governance</td>
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<td>Integrity Mechanism</td>
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<td>Role</td>
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<tr>
<td>Prevention</td>
<td>N/A</td>
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<tr>
<td>Education</td>
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<td>75</td>
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<tr>
<td>Investigation</td>
<td>N/A</td>
<td>25</td>
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</table>

**Royal Academy for Judicial Professions**

The Royal Academy for Judicial Professions (RAJP) is overseen by the Ministry of Justice. Previously, oversight was provided by the Council of Ministers.\(^{43}\) The RAJP consists of the Royal School for Judges, Resources 75 25
Independence 25 0
Governance
Transparency 25 25
Accountability 25 25
Integrity Mechanism 50 25
Role
Prevention N/A 25
Education N/A 75
Investigation N/A 25

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\(^{41}\) Ibid, Articles 5 and 10.


Royal School for Clerks, Royal School for Bailiffs, and Royal School for Notary. Cambodian judges can be categorised as trial judges, investigating judges, and prosecutors. They receive training from the Royal School for Judges, and choose their specialization in the last four months of their training.

The Lawyer Training Center is located within the compound of the RAJP, but is overseen by Bar Association of the Kingdom of Cambodia (BAKC).

**Prosecution Department**

The Prosecution Department files criminal charges with the courts, is responsible for the implementation of decisions on criminal offenses, and ensures that arrest warrants are disseminated. Prosecutors may also request investigating judges to conduct further investigations into a case, collecting both exculpatory and inculpatory evidence. In civil cases, public prosecutors may, where they deem it necessary for the public welfare, attend the proceedings of a civil action and present opinions.

**Judicial Police**

The Judicial Police acts as an auxiliary of the judiciary’s power and has the duty to identify and arrest offenders as well as collect evidence. It consists of 1) judicial police officers trained by the Police Academy of Cambodia and subordinated to the General Commissariat of the National Police, 2) judicial police agents, and 3) government officials and public agents who are authorized by law to monitor some offenses within their territorial authority. The General Prosecutor attached to the Appeal Court monitors and controls judicial police officers.

**National Election Committee**

The National Election Committee (NEC) was formed in 1997 with the official motto “Independence, Neutrality, Truthfulness, Justice, and Transparency.” Since 1998, every election organised by NEC has been plagued with accusations of irregularities. In the national election on 28 July 2013, the Cambodian People’s Party of the incumbent Prime Minister was declared the victor, securing 68 of 123 seats. The opposition contested the results and for months held demonstrations. After rounds of political negotiations,

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45 See Table 4: Administration of Justice Grid of this report for more information.
49 Article 56 of Cambodian Code of Criminal Procedure.
50 Articles 35, 37 and 56-60 of the Cambodian Code of Criminal Procedure.
an agreement between CPP and CNRP was reached in July 2014. Among the points agreed on was the incorporation of NEC into the Constitution and adoption of laws to ensure its independence.53

Foundation & Evolution of Rule of Law

During the Communist Party of Kampuchea’s (CPK) rule from 1975 to 1979, all institutions and laws existing under Cambodia’s previous regimes, including the courts, were abolished. Intellectuals, along with legal professionals, were among those targeted by the regime for elimination. The collapse of the Soviet Union in 1989 and Paris Peace Accords in 1991 allowed for democracy and rule of law in Cambodia to take hold after decades of Communist/Socialist regimes (the CPK’s Democratic Kampuchea in 1975-1979; the Salvation Front’s People’s Republic of Kampuchea [supported by Vietnamese military force and civilian advisory effort] in 1979-1989; and the State of Cambodia, with the same one-party rule and leadership structure as under the People’s Republic of Kampuchea, in 1989-1993).

Between 1993-2002, after the UN-conducted general elections, Cambodia undertook legal and judicial reforms based on its own political platform and policies with the support of development partners based on their own policies and agenda. To harmonise and align the policies of the government and development partners, the Council of Ministers adopted two important documents—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 reform strategies were developed based on four basic concepts set out in the 1993 Constitution, namely (i) Liberal Democracy, (ii) Rule of Law, (iii) Separation of Powers and (iv) Individual Rights. “Rule of Law” comprises: (a) hierarchy of laws; (b) predictability; (c) transparency; (d) accountability; (e) due process; and (f) enforcement.54

The current ruling government, which won national elections in 1998, 2003, 2008 and 2013, continued legal and judicial reform efforts. It adopted the “Triangle Strategy” in 1998, which focused on internal peace and stability as well as sustainable development, and later the Rectangular Strategy (1st phase in 2004, 2nd phase in 2008, and 3rd phase in 2013), which is centred on good governance with key programs on (1) fighting corruption; (2) legal and judicial reform; (3) public administration reform; and (4) reform of armed forces.55

Four main codes, namely, the Code of Civil Procedure, Criminal Procedure Code, Civil Code, and Criminal Code were adopted in 2006, 2007, 2007, and 2009 respectively. Another law that is closely related to good governance and rule of law is the law on Administrative Management of Capital, Provinces, City, District, and Khan of 2008, which was followed by more detailed executive acts in 2009 and 2010. These three statutes eased access to justice through justice centres at commune levels.56

In the context of grave crimes committed during the Democratic Kampuchea, the ECCC also serves to strengthen rule of law by holding the most responsible leaders of the Khmer Rouge accountable through fair

54 Supra note 7, pp. 17-22.
56 Ibid, p. 56.
and open criminal trials, sending the message that impunity must be rejected and fought against.  

However, despite the government’s policy commitment on good governance, the government seems wary of opinions and activities that negatively affect the image or interests of the government as well as of entrepreneurs with close ties to the government.  The government keeps a close watch over civil society’s and the general public’s legal and peaceful exercise of fundamental rights, including the right to freedom of expression, freedom of assembly, and freedom of association. Restrictions are placed relative to a range of issues, including private development and land concessions causing forced eviction, labour rights, and deforestation and management of natural resources. Restrictions, including by making actions illegal or subject to prior permission, over the exercise of fundamental rights are made on the basis of public order, national security, and national interest. However, if the exercise of fundamental rights does not involve specific sensitive issues or the interests of the ruling party, activities are allowed to proceed smoothly without interruption and, sometimes, with the authority’s facilitation.

It is particularly interesting that Prime Minister Hun Sen, on the occasion of the UN International Day of Peace, 21 September 2015, stated, The Royal Government also has a strong commitment to crack down and prevent all activities and tricks under the auspices of democracy and human rights to serve individual political gain or handful of people.” In this regard, calls have been made for the government to cease its “clampdown on civil society, human rights defenders, parliamentarians and UN personnel.” In recent years, criminal charges, questioning, court proceedings and public statements against them have increased.

The most recent example involves the arrest of four senior staff of the Cambodian Human Rights and Development Association (ADHOC) for allegedly bribing a woman into denying that she has an extra-marital affair with an opposition parliamentarian.66

Human Rights Treaties

Chapter III of the Constitution states that “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.” With regard to the relation between municipal and international law, Cambodia is a dualist country that requires ratification of international laws signed by the head of the government (or his or her representative) through an adoption of law (Royal Kram) by the legislature to make them effective in Cambodia. Below is the status of Cambodia’s ratification as regards the core human rights treaties.

<table>
<thead>
<tr>
<th>Instrument (Entry into force)</th>
<th>Signature</th>
<th>Ratification or Accession (a)</th>
<th>Reservation</th>
<th>Acceptance of Specific Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>CERD (4 Jan 1969)</td>
<td>12 Apr 1966</td>
<td>28 Nov 1983</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>CCPR (23 Mar 1976)</td>
<td>17 Oct 1980</td>
<td>26 May 1992 (a)</td>
<td>No</td>
<td>No individual complaint procedures</td>
</tr>
<tr>
<td>CESC (23 Mar 1976)</td>
<td>17 Oct 1980</td>
<td>26 May 1992 (a)</td>
<td>No</td>
<td>No individual complaint procedures</td>
</tr>
<tr>
<td>CEDAW (3 Sep 1981)</td>
<td>17 Oct 1980</td>
<td>15 Oct 1992 (a)</td>
<td>No</td>
<td>N/A</td>
</tr>
</tbody>
</table>
| OP-CEDAW (22 Dec 2000)       | 11 Nov 2001 | 13 Oct 2010 | No | • Individual complaint procedures  
• Inquiry procedures |
| CAT (26 Jun 1987)            | N/A        | 15 Oct 1992 (a) | No | • Inquiry procedures |
| OP-CAT (22 Jun 2006)         | 14 Sep 2005 | 30 Mar 2007 | No | N/A |
| CRC and its amendment (2 Sep 1990) | N/A | 15 Oct 1992 (a) | No | N/A |
| Amendment of CRC, Art. 43(2) (18 Nov 2002) | N/A | 12 Aug 1997 (a) | No | N/A |
| OP-CRC-AC (12 Feb 2002)      | 27 Jun 2000 | 16 Jul 2004 | No | N/A |
| OP-CRC-SC (18 Jan 2002)      | 27 Jun 2000 | 30 May 2002 | No | N/A |


67 Supra note 9.
In general, Cambodian judges rarely invoke and apply international human rights provisions directly to domestic cases before national courts, referring instead to applicable domestic laws. This is despite the fact that the Constitutional Council of Cambodia has affirmed that, in adjudicating a case, the court must not only look at national but also other international laws recognized by Cambodia.68

**Interpretation and Use of the ‘Rule of Law’**

“Rule of law” has been in all three phases of the Rectangular Strategy. The cornerstone of the strategy is good governance, with a focus on fighting corruption, legal and judicial reform, public administration reform, and armed forces reform. A thorough search of “rule of law” in the speeches of the Prime Minister shows that “rule of law” is in at least 18 speeches between 2010 to March 2016.69 While the Prime Minister does not elaborate on the meaning of “rule of law” in his speeches, the government’s understanding of “rule of law” may be gleaned from the Rectangular Strategy, Phase III. According to the strategy, one achievement of the Fourth Legislature was as follows:

Peace, political stability, security, social order and the functioning of multiparty liberal democracy have been strengthened; along with the observance of the principles of “rule of law”, particularly the development of the legal framework, enhancement of effective law enforcement, and assurance of respect for freedom, dignity and human rights. In particular these achievements are reflected in: (1) the improvement of respect for exercise of political rights and freedom…; (2) the implementation of the “Safe Village/Commune” policy which contributed to substantial reduction in crime…; and (3) … reforms in key areas including the fight against corruption, and reform of the legal and judicial system, armed forces, public administration, and public financial management, which were aimed at promoting good governance so that all the operations and functions of state institutions at both national and sub-national levels would be conducted in a transparent, account-table, predictable, effective and efficient manner.70

Rule of law is thus understood as part of a cluster of other values and principles, including democracy, human rights, justice, good governance, social order and respect of the law.71

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70 Supra note 55, 3.

In Phase III, the government expresses continued commitment to the rule of law, although with the caveat that it will not allow acts that lead to political instability. Specifically, the government intends to focus on “Continued strengthening of the rule of law, democracy, culture of peace, morality in the society and respect for human rights and dignity, along with zero tolerance to provocative activities that lead to political instability and social unrest.”

### Table 4

**Administration of Justice Grid**

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Figure</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of judges in country</td>
<td>- Supreme Court: 23 Judges (3 female); 8 Prosecutors (1 female)</td>
</tr>
<tr>
<td>No. of lawyers in country (As of February 2016)</td>
<td>- Practicing lawyers: 816 (154 female)</td>
</tr>
<tr>
<td></td>
<td>- Trainee lawyers: 215 (49 female)</td>
</tr>
<tr>
<td></td>
<td>- Non-practicing lawyers due to professional incompatibility: 53 (6 female)</td>
</tr>
<tr>
<td></td>
<td>- Non-trainee lawyer: 1</td>
</tr>
<tr>
<td></td>
<td>- Non-practicing lawyers: 29 (7 female)</td>
</tr>
<tr>
<td></td>
<td>- Suspended lawyers: 4 (1 female)</td>
</tr>
<tr>
<td></td>
<td>- Disbarred lawyers: 53 (6 female)</td>
</tr>
<tr>
<td></td>
<td>Total: 1,171 (224 female) (from 751 lawyers, 127 of which were female, in February 2011)</td>
</tr>
<tr>
<td>Annual bar intake (including costs and fees)</td>
<td>Around 60 new lawyers are admitted to the Bar every year.</td>
</tr>
<tr>
<td></td>
<td>Currently the fee for training at the Lawyer Training Center is USD 2,000.</td>
</tr>
<tr>
<td></td>
<td>Annual intake of applicants at the Royal School of Judges is 55 per intake. Paid judges are public officials, so applicants who are accepted are not required to pay any money for the training, but receive a monthly salary of approximately USD 75.</td>
</tr>
</tbody>
</table>

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72 Supra note 55, 10.
### Standard length of time for training/qualification

Completion of the training at the Royal School of Judges (RSJ) is required to qualify as a judge. The entrance exam of the RSJ includes an oral exam on general knowledge about human rights, general concepts of rule of law and justice, and law and justice. The length of training is 24 months (in-class: 8 months, apprenticeship at courts: 12 months, and specialized training: 4 months).

To qualify as a registered lawyer, one must complete the training at the Lawyer Training Center or possess required experience. The training for lawyers at the Lawyer Training Center of the Bar Association started in October 2002. The training components are in-class training: 9 months; apprenticeship: 1 year; and special training: 3 months.

### Availability of post-qualification training

Currently, no continuing legal education is required of judges. Through cooperation with foreign entities, however, special trainings regarding the four major codes (Civil Code, Civil Procedure Code, Criminal Code and Criminal Procedure Code) have been conducted. There are also plans to include training on special laws such as administrative law, labour, and juvenile justice law.

Continuing legal education is also not required of lawyers. However, workshops and conferences are organized by the Bar Association in conjunction with various partners.

### Average length of time from arrest to trial (criminal cases)

Between 2-6 months. The Criminal Procedure Code sets maximum pre-trial detention periods, e.g., 18 months for felonies; 6 months for misdemeanour, 3 years for crimes against humanity, genocide or war crimes. The investigating judge at the closing of an investigation may keep the accused under pre-trial detention until the time he/she appears in court, which additional detention should not exceed 4 months.

More than one year for particular cases before ECCC (Case 001 and Case 002).

### Average length of trials (from opening to judgment)

Trials, particularly at First Instance Courts, are very hasty as they are usually concluded within one day, with the announcement of the judgment usually given on the same day as the trial.

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80 Article 31 of the Law on the Bar.

81 Ibid, Article 32.

82 Articles 208-214 of Criminal Procedure Code.

83 Ibid, Article 249.

84 Although provisional detention orders against the accused in Case 001 were issued in July 2007, the accused had been detained since 1999 by the Military Court. The first substantive hearing of Case 001 started in late March 2009. His sentence was reduced by five years as a remedy for his illegal detention by the Cambodian Military Court between 10 May 1999 and 30 July 2007. He also received credit for time already spent in detention under the authority of both the Cambodian Military Court and the ECCC. Defendants in Case 002 were arrested in between September-July 2010; after an initial hearing in June 2011, the first trial (Case 002/01) commenced on 21 November 2011. ‘Case 001,’ Extraordinary Chambers in the Courts of Cambodia, http://www.eccc.gov.kh/en/case/topic/1 (accessed 2 May 2016); ‘Case 002,’ Extraordinary Chambers in the Courts of Cambodia, http://www.eccc.gov.kh/en/case/topic/2 (accessed 2 May 2016).
| Accessibility of individual rulings to public | In the past, it was close to impossible to get a copy of the judgment of a case, as the judgment will be delivered only to parties to the case. However, a request can now be made, which will be forwarded by the registrar to the president of the court. If a copy of the judgment is given, the actual names or information identifying persons involved will be erased. Copying fees are required.

The website of the Supreme Court contains copies of judgments issued from 1994 to 2006 for civil cases, and from 1995 to 2006 for criminal cases. There are categories for labour and commercial cases, however they do not contain any judgment. Thus, it appears that there is an ongoing effort to make judgments available electronically. |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Appeal structure</td>
<td>![Court Structure Diagram]</td>
</tr>
<tr>
<td>Cases before the National Human Rights Institution</td>
<td>N/A. Cambodia does not have an accredited NHRI.</td>
</tr>
<tr>
<td>Complaints filed against the police, the military, lawyers, judges/justices, prosecutors or other institutions (per year)</td>
<td>No sufficient data found. There is no comprehensive database for this information.</td>
</tr>
<tr>
<td>Complaints filed against other public officers and employees</td>
<td>No sufficient data found. There is no comprehensive database for this information.</td>
</tr>
</tbody>
</table>
II. COUNTRY PRACTICE
IN APPLYING THE CENTRAL PRINCIPLES OF RULE OF LAW
FOR HUMAN RIGHTS

A. On Central Principle 1
(Government and its officials and agents are accountable under the law)

Definition and Limitation of the Powers of Government in the Fundamental Law

There are separate chapters in the Constitution on the legislature (Chapters VII, VIII, IX), executive government (Chapter X), and the judiciary (Chapter XI). Each provides for the composition and functions of the different branches of government. Notably, the Constitution elaborates more lengthily on the powers of the legislature than it does on the other two branches of government. Further details on the organization and functioning of the legislature, executive, and judiciary are to be determined in Internal Rules of Procedure for the National Assembly and the Senate, and in laws with regard to functions of the Royal Government, the judiciary and the Congress of the National Assembly and Senate.85 Thus, there is the Law on Organization and Functioning of Council of Ministers (1994) and the Law on Organization of the Courts (1994 and 2014).

Article 51 of the Constitution specifies that “All powers belong to the people. The people exercise these powers through the National Assembly, the Royal Government and the Judiciary.” Further, it also establishes the principle of separation of powers. Some constitutional provisions on separation of powers include stipulations for the legislature’s autonomous budget,86 internal rules for organization and functioning of the legislative branch,87 and the procedure for stripping parliamentarian immunity.88 Nevertheless, as a country adopting a parliamentarian system, while members of the National Assembly are not allowed to serve in any constitutional organ, they may be required to serve in the executive branch.89 Some provisions, such as those relating to declarations of war and emergency,90 also provide for a system of checks-and-balances.

Regardless of constitutional safeguards, the executive government is said to interfere with the functions of the judiciary. For instance, the government has been vocal in opposing Cases 003 and 004 at the ECCC. Prime Minister Hun Sen has warned that trials beyond Case 002 risk plunging the country into civil war. Cases 003 and 004 have been the subject of investigation before the Co-Investigating Judges since September 2009. The judicial police had refused to arrest Meas Muth, who is charged in Case 003 for genocide, crimes against humanity, and war crimes—despite the issuance of a warrant of arrest in December 2014. The ECCC’s chief of security is reported to have said that officials would conduct public opinion surveys before taking action. Meas Muth presented himself to a judge in December 2015.91

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85 Articles 117 (New), 127, 116 of the Constitution.
86 Ibid, Articles 81 and 105.
87 Ibid, Articles 94, 95, 114, and 115.
88 Ibid, Articles 80 and 104.
89 Ibid, Article 79.
90 Ibid, Articles 22, 24, 86, 90, and 102.
Amendment or Suspension of the Fundamental Law

Article 151 of the Constitution enumerates the people who can initiate a revision or an amendment, namely the King, the Prime Minister, and the President of the National Assembly at the suggestion of ¼ of all the Assembly members. Moreover, revisions or amendments shall be enacted by a law passed by the National Assembly with a 2/3 majority vote of all members.92

Revisions or amendments are prohibited during a state of emergency. Amendments affecting the system of liberal and pluralistic democracy and the regime of constitutional monarchy are prohibited.

So far no emergency decree has been enacted for the purpose of suspending certain provisions of the Constitution. The Constitution does not describe the effects of a proclamation of state of emergency. Instead, it simply says that (i) when the nation faces danger, such a proclamation can be made by the King after agreement with the Prime Minister and the Presidents of the National Assembly and Senate;93 (ii) during a state of emergency, the National Assembly shall meet everyday, may not be dissolved, and has the right to terminate the state of emergency;94 (iii) if circumstances do not allow the National Assembly or the Senate to convene, the state of emergency is automatically extended;95 (iv) the Senate must meet everyday, may terminate the state of emergency, and, if circumstances make it impossible to conduct elections, may have its mandate extended once a year,96 and (v) the Constitution may not be amended or revised during a state of emergency.97

In October 2014, the National Assembly voted to amend the Constitution, making the National Election Committee a mandated “independent body.” The amendment requires the NEC’s Steering Committee to ensure the independence of the election body. Its nine members will have a five-year mandate and cannot be politically affiliated or be leaders of other organizations or unions. A lawmaker of the ruling Cambodian People’s Party noted that the session that passed the law demonstrated “a new culture” of cooperation between the CPP and CNRP.98

Laws Holding Public Officers and Employees Accountable

The Code of Criminal Procedure of 2007 stipulates that disciplinary sanctions are imposed on judicial police officers and prosecutors by the General Prosecutor attached to the Appeal Court.99 Additionally, the Ministry of Interior and Ministry of Defence may impose disciplinary sanctions on police personnel,100 while the Disciplinary Committee of the Supreme Council of Magistracy may impose sanctions on prosecutors and

92 Article 151(2) of the Constitution.
93 Ibid, Article 22 (New).
94 Ibid, Article 86.
95 Ibid, Articles 86 and 102 (New).
96 Ibid, Article 102.
97 Ibid, Article 152.
99 Articles 59 of the Code of Criminal Procedure.
100 Ibid, Articles 64, 65, 79, 80.
judges. Another disciplinary action against the police officials is removal from the post pending further investigation and court action. The Criminal Code 2009 also lists as aggravating circumstance the fact of the perpetrator being a public official.

The Anti-Corruption Law and some provisions of the Criminal Code penalise bribery, abuse of power by a public officer in order to take any illegal advantage, illicit enrichment and other related crimes. 102

Special Courts and Prosecutors of Public Officers and Employees

Article 39 of the Constitution lays down the right of Khmer citizens to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs committed during the course of their duties. The settlement of complaints and claims, according to this provision, shall be the competence of the courts.

Besides matters within the jurisdiction of the Military Court or the Anti Corruption Unit, investigations and proceedings against public officers and employees follow the same procedure as cases involving persons who are not employed with the government.

B. On Central Principle 2
    (Laws and procedures for arrest, detention and punishment are publicly available, lawful, and not arbitrary)

Publication of and Access to Criminal Laws and Procedures

Article 93 (New) of the Constitution states that:

Any law approved by the Senate and Assembly and signed by the King for its promulgation, shall go into effect in Phnom Penh 10 days after signing and throughout the country 20 days after its signing. However, laws that are stipulated as urgent shall take effect immediately throughout the country after the date of promulgation. All laws promulgated by the King shall be published in the Journal Official and published throughout the country in accordance with the above schedule.

The journal or official gazette is issued eight times a month and costs approximately USD 1.25 per issue. The journal is not always up-to-date, with some laws, sub-decrees, proclamations, and the like being published a month after they have been adopted. The language of the official gazette is Khmer.

Unofficial translations into English of some laws and regulations are usually done by development partners and civil society organisations, which are mostly available online. Some donor agencies also support hardcopy printing of important laws such as the Constitution, land law, and labour law. The websites of the legislature,

101 Article 23-26 of Law the on Supreme Council of Magistracy.
102 Articles 32-44 of Law on Anti-Corruption
executive government, and judiciary do not have a complete database of laws. However, laws are available through the website of various ministries, non-governmental entities and individuals (bloggers).

**Accessibility, Intelligibility, Non-retroactivity, Consistency, and Predictability of Criminal Laws**

Citizens have some access to laws through the official gazette and websites of NGOs and development partners. Part of the difficulty with regard to intelligibility is that, while laws are in Khmer, the root words are borrowed from Indian ancient languages such as Pali or Sanskrit. As the 2011 Rule of Law Baseline Study reported, the Council of Ministers made an effort to compile a Legal Lexicon and standardize legal terminology used in the Civil Code and Code of Civil Procedure. NGOs continue to contribute to raising legal awareness among professionals as well as lay people.

The principle of non-retroactivity and its exceptions are embodied in Articles 9 and 10 of the Criminal Code and Articles 610 and 612 of the Code of Criminal Procedure. The Criminal Code may be applied retroactively only when it provides for less severe sentences.

The Cambodian Center for Human Rights (CCHR), according to its latest trial monitoring report covering 1 January 2012 to 30 June 2012, found two cases where the Criminal Code was applied retrospectively. The Criminal Code did not come into effect until December 2010; the UNTAC Penal Code was in effect prior to the Criminal Code. In a case in Banteay Meanchey, the report indicated that “The Court imposed a lighter sentence.” In a case at the Phnom Penh Court, the Court imposed a heavier sentence by retroactively applying the Criminal Code.

**Detention Without Charge Outside or During an Emergency**

Provisions on preventive arbitrary detention are stipulated in the Criminal Procedure Code and Criminal Code, which include grounds and prescribed length of arrest, pre-trial detention, and imprisonment.

The police may detain a person suspected of a crime. They may also detain any person who may be able to provide relevant facts but refuses to provide such information, provided a prosecutor has given written authorization for such detention. Police custody may last up to 48 hours and can be extended for another 24 hours with the permission of a prosecutor. The period starts from the moment the suspect arrives at the police or military police station. A minor under 14 years old of age, however, cannot be placed under police custody.

Cambodian laws also authorize provisional detention or detention pending trial. However, time limits and reasons are provided for such detention. According to Article 205 of the Criminal Procedure Code, pre-trial detention may be imposed when the detention is necessary to:

103 See websites of National Assembly, Senate, and Council of Ministers.


105 Article 96 of the Criminal Procedure Code.
(i) Stop the offense or prevent the offense from happening again;
(ii) Prevent any interferences on witnesses/victims or prevent collusion between accused persons and accomplices;
(iii) Maintain evidence or material leads;
(iv) Ensure the accused is kept for the court;
(v) Protect the security of the accused; and
(vi) Maintain public order.

The maximum pre-trial detention period is 18 months for felonies; six months for misdemeanour, and three years for crimes against humanity, genocide or war crimes.\(^{106}\) For the same grounds stated above, the investigating judge at the closing of an investigation may keep the accused under pre-trial detention until the time he/she appears in court. However, if the accused person does not appear in the court within four months, “the accused person shall be automatically allowed to stay outside custody.”\(^{107}\)

The Constitution and Criminal Procedure Code do not provide for detention without charge or trial during or outside a genuine state of emergency.

The CCHR found that the prevalence of pre-trial detention was high; it was used in around 70 per cent of total cases observed from January to June 2012.\(^{108}\) The CCHR monitored 354 trials of 719 individuals accused of criminal offenses in Courts of First Instance in Phnom Penh, Banteay Meanchey, and Ratanakiri. CCHR’s trial monitors identified 16 cases of excessive and unlawful pre-trial detention. One pre-trial detention exceeded the maximum period allowed by law by seven months and 24 days.

**Rights of the Accused**

*Freedom from Arbitrary Arrest, Detention without Charge or Trial, Extra-legal Treatment or Punishment, and Extra-Judicial Killing*

As stated above, the Criminal Procedure Code provides the grounds for police custody and provisional detention. Persons under police custody shall be either released upon the expiration of the period for police custody or handed over to the prosecutor for prosecution.\(^{109}\) Persons under provisional detention are to be released when (i) there is no ground for detention, (ii) the period for provisional detention and its extension expires, and (iii) the accused posts bail.\(^{110}\) The Criminal Code also penalises illegal arrest, detention or confinement as well as refusal by a civil servant to release a person unlawfully detained or failure to request for intervention from competent authorities.\(^{111}\)

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106 Ibid, Articles 208-214.
107 Ibid, Article 249.
108 Supra note 104, pp. 18-21.
109 Article 103 of the Criminal Procedure Code.
110 Ibid, Articles 205-215.
111 Articles 253, 589-591 of the Criminal Code.
The term “habeas corpus” is not mentioned in civil or criminal procedural laws. However, Article 133 of the Criminal Procedure Code allows an accused to, at any time during an investigation, request the investigating judge to interview him or her and/or to hear the statement of the plaintiff, of a civil party or witness. If the investigating judge does not decide upon the request within one month, the accused person can file a complaint with the investigation chamber for it to decide on the matter. Decisions of investigating judges, including relative to pre-trial detention, may all be appealed to the Appeal Court’s investigation chamber. Additionally, Article 307 of the Code allows an accused under detention to request the court to release him or her; this can be made verbally by the lawyer during the trial or by a written letter submitted to the court clerk. The court shall decide on the matter (after hearing the accused, the lawyer and the prosecutor) not later than 10 days after receiving a verbal or written request.

Article 38 of Constitution states that:

Coercion, physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited. Persons who commit, participate or conspire in such acts shall be punished according to the law. Confessions obtained by physical or mental force shall not be admissible as evidence of guilt.

Evidence obtained through physical or mental duress and evidence emanating from communication between the accused and his lawyer have no evidentiary value or are inadmissible. The Criminal Procedure Code also safeguards the accused persons’ right to remain silent at the investigation and trial stages.

Article 210 of the Criminal Code punishes torture, while Article 213 provides for a heavier penalty if the crime is committed by a government official in carrying out his/her functions or during the performance of his/her functions. The law also includes torture as one of the acts that may constitute crimes against humanity and war crimes. The law however does not provide a definition of torture.

Despite these provisions, reports have alleged that torture continues to occur with impunity. For example, between January 2008 to June 2014, the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) reported that it received more than 500 allegations of torture or ill-treatment by Cambodian police and prison officials. Just in the first four months of 2014, LICADHO received 49 allegations of torture or ill-treatment during arrest or in police custody. Among the primary purposes of abuse was the forced extraction of confessions or money.

LICADHO stated that it is not aware of any successful prosecution of law enforcement officials for torture-related crimes in recent years; the numbers of administrative complaints and investigations is also low. This is attributed to the absence of an independent body that can receive complaints against law enforcement personnel. Prisoners fear that they will be subjected to further abuse if they make a complaint.

112 Articles 55, 257, 266-277 of the Criminal Procedure Code.
113 Ibid, Article 321.
114 Ibid, Articles 143 and 318.
115 Articles 188 and 193 of the Criminal Code.
117 Ibid, 19.
Although Cambodia ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in March 2007, until now the required independent National Preventative Mechanism (NPM) has yet to be established. Instead, an inter-ministerial committee composed of various government officials was created. “This body is neither independent nor capable of performing the functions of an effective NPM. Moreover, since its establishment in 2009, it has done very little of actual substance.”118

**Presumption of Innocence**

Article 38 of the Constitution mandates that an accused be considered innocent until proven guilty by a court of law; any case of doubt shall be decided by the judge in favour of the accused.

**Legal Counsel and Assistance**

The Constitution states that “Every citizen shall enjoy the right to defense through judicial recourse.”119 The Criminal Procedure Code also stipulates the various stages and situations when the accused is informed of the right to legal assistance,120 and when presence of legal counsel is a prerequisite before any action can be taken by judicial officials, including police, prosecutors, and judges.121 However, a suspect has right to counsel only 24 hours after the police custody.122

In Cambodia, it is not mandatory to be legally represented when appearing before a court if accused of a misdemeanour offense (unless a juvenile).123 Individuals facing misdemeanour charges may however still choose to retain a lawyer. From January to June 2012, CCHR’s trial monitors identified four out of 244 felony trials (where legal counsel is mandatory) where the accused was not assisted by counsel. For misdemeanour cases, the accused was not represented by a lawyer in 61.5 per cent of the trials observed.124

**Knowing the Nature and Cause of the Accusation**

Accused persons have the right to be informed of the precise charge against them in the language that they understand.125 Accused persons who are represented by a lawyer are given five days in advance to examine case files before actual interrogation by the investigating judge.126 Moreover, an accused is entitled to be informed by the court of first instance that he has time to prepare for his defence before commencement of trial.127 According to Article 292 of the Criminal Procedure Code, in setting the date for trial, the president of the court shall consider the time limits provided in Article 457 (Time Limits to be followed between...

118 Ibid, 1.
119 Article 38 of the Constitution.
120 Articles 98, 143, 304(2) of the Criminal Procedure Code.
121 Ibid, Articles 46, 48, 97, 98, 143, 145, 149, 167, 170, 300, 301, 304, 426 and 510.
122 Ibid, Article 98.
123 Ibid, 301.
124 Supra note 104, 29.
125 Articles 48, 97, 325, and 330 of the Criminal Procedure Code.
126 Ibid, Article 145.
127 Ibid, Articles 48, 304.
Summon, Order for Direct Hearing and Citation) and Article 466 (Time Limits to be followed between Summons and Citation).  

Other provisions in the Criminal Procedure Code that aim to ensure that an accused is informed of the nature and cause of accusation and is able to prepare his defence are Article 319 on access to examine case file before the trial; Article 428 on access of lawyers to case files for them to copy at their own cost; and Article 149 on free communications between the accused person and legal counsel, without being listened or recorded by others.

The CCHR, in their trial monitoring report covering January to June 2012, found that judges stated the criminal charge in 97.7 per cent of cases observed; details such as the relevant law, the date of the offense, or the location of the offense were however not as frequently announced.  

Guarantees during Trial

In cases that fall under the procedure for immediate appearance, Articles 303 and 304 of the Criminal Procedure Code require judgment on the merits to be announced no later than two weeks from the date the accused appeared in court. A pre-trial detention shall be terminated at the expiration of the two-week period. A prosecutor may order the accused's immediate appearance before a court of first instance when a person is caught in flagrante delicto of an offense that carries a sentence of imprisonment for not less than one year and not more than five years. In cases filed by a referral order of the investigating judge or referral judgment of the Investigation Chamber, a judgment on the merits shall be made “within a reasonable time period.”

According to Article 326 of the Criminal Procedure Code, the chairman of the hearing shall allow prosecutors, lawyers and parties to ask questions relative to statements of civil parties, victims, witnesses and experts. During confrontations, the chairman of the hearing is tasked to “guarantee the free exercise of the rights to defense.” Before the hearing, lawyers can examine the dossiers in the court clerk's office and copy documents.

In case the trial was conducted without the accused person’s presence, the Criminal Procedure Code allows the accused to file an opposition against a judgment declared in his or her absence.

128 Fifteen days if the accused person lives in the territorial jurisdiction of the court of first instance; 20 days if the accused person lives in other places of national territory; two months if the accused person lives in a country bordering the Kingdom of Cambodia; three months if the accused person lives in other places. If the accused person is in detention, no duration of time is required.

129 Supra note 104, 22-25.

130 Ibid, 28.

131 Article 47 of the Criminal Procedure Code.

132 Ibid, Article 305.

133 Ibid, Article 318.

134 Ibid, Article 319.

135 See ibid, Articles 365-372, and 409-416.
Appeal

Appeals can be made to the Appeal Court and Supreme Court.136 The statute of limitation is one to three months for appeals to the Appeal Court, and one month for appeals to the Supreme Court.137 Final judgments which have the effect of res judicata may be challenged through a Motion for Review with the Supreme Court.138 Such a motion may be filed where (i) after sentencing for murder, it appears that the victim is still alive; (ii) two accused persons are sentenced for the same crime with inconsistent sentences; (iii) any witness was sentenced for giving false testimony against the accused person; or (iv) new facts, documents, or other new evidence is discovered which leads to reasonable doubt of the guilt of a convicted person.

Currently, there is only one Appeal Court, which is located in Phnom Penh. This makes all appeal cases delayed, with the court unable to review all complaints equally thoroughly. Appellants can wait up to five years or more before their cases are heard due to backlog. Further, it has been difficult for prisoners in more remote provinces to participate in their appeal hearings. It is reported that 69 per cent of cases at the court are heard in absentia because prisoners are unable to travel to the capital when summonsed.139 In what is viewed as a positively development, the recently passed Law on the Organization of the Courts provides for regional Appeal Courts.140 The determination of the territorial jurisdiction of the regional Appeal Courts shall be made by a Royal Decree. The Ministry of Justice has announced that three out seven regional courts are expected to be created by 2018. Each regional Appeal Court is expected to cover three or four of Cambodia’s 24 provinces.141

Freedom from Double Jeopardy

The Criminal Procedure Code clearly forbids trying or punishing a person for an offence for which he or she has already been finally convicted or acquitted.142 An exception to double jeopardy is in the case of a Motion for Review, as described above. It should be noted that general amnesty or pardon is not an obstacle for trying a person for matters within the jurisdiction of the ECCC. The law establishing the ECCC states that “The scope of any amnesty or pardon that may have been granted prior to the enactment of this Law is a matter to be decided by the Extraordinary Chambers.”143

Remedy before a Court for Violations of Fundamental Rights

The ECCC adjudicates certain crimes committed between 1975-1979. These crimes include genocide, crimes against humanity, grave breaches of the Geneva Conventions, destruction of cultural properties, crimes

136 See ibid, Articles 417-442.
137 Ibid, Articles 381-383 and 373-408.
138 Ibid, Articles 443-455.
142 Articles 7,12, 264, and 439 of the Criminal Procedure Code.
143 Article 40 new of Law on the Establishment of the Extraordinary Chambers.
against internationally protected persons, and crimes penalised in the 1956 Penal Code of Cambodia. Other
than matters falling within the ECCC’s jurisdiction, complaints relative to violations of fundamental rights
may be brought before the regular courts, applying the Criminal Code or other penal laws. Cases involving
military personnel may be brought before the Military Court.

C. On Central Principle 3:
(The process by which the laws are enacted and enforced is accessible, fair, efficient and equally applied)

Law Enactment

Openness and Timeliness of Release of Record of Legislative Proceedings

Articles 88 and 111 of the Constitution require legislative proceedings or sessions to be held in public unless
requested otherwise by (i) the President of the National Assembly or Senate, (ii) at least 1/10 of the members
of the National Assembly or Senate, (iii) the King, or (iv) the Prime Minister. The sessions are conducted
twice a year with a period of three months for each session, and extraordinary sessions can also be convened.
The agenda and dates for extraordinary sessions at the National Assembly are to be made known to the
public.144

A 12 September 2014 circular issued by National Assembly President Heng Samrin has been criticised by civil
society for being counter to the principle of transparency and violating people’s right to access information.
Under the circular, commissions of the National Assembly are not allowed to invite civil society or the
public to attend its meetings.145 The circular indicates that “Every invitation to the public, civil society or
other experts who are not [the] National Assembly’s experts, including guests invited by lawmakers and
commissions, in order to get inside the National Assembly compound shall ask for permission and get
approval in advance from the president of the National Assembly.”146

The opposition party had expressed the intention of bringing more transparency and allowing for more
public consultation. CNRP lawmaker Ke Sovannaroth said that “It’s very hard to do our job when they
draw circles around our work because we cannot get a broad range of ideas.”147 On 17 September 2014, nine
representatives from national and international organisations invited by the Commission on Education,
Youth, Sports, Religious Affairs, Culture and Tourism to participate and observe a hearing on the situation
of the education sector were barred from attending.148

144 Article 83 of the Constitution.
145 ‘Joint Statement on National Assembly President’s Circular Not Following the Framework of Law and Principles of Effectiveness,
net/pdf-viewer/?pdf=files_mf/1413456662Joint_statement_on_National_Assembly_president_circular_Eng.pdf (accessed 3 May
2016).
147 Ibid.
148 Supra note 145.
Timeliness of Release and Availability of Legislative Materials

Concerns regarding lack of consultation and transparency continue to be raised. According to Principle 18 of the National Assembly's Internal Regulation, all records and documents of the National Assembly must be kept in the General Secretariat and must not be circulated to the public without permission from the President of the National Assembly.

Between 2011-2016, especially after the 2013 national election, several laws were adopted and promulgated despite protests and pleas from civil society and the general public for meaningful consultation and amendment to the draft laws.149 One critique is that draft laws are generally kept confidential and only become available to a limited public when there is a “leak.” For example, the draft of the Law on Trade Union which leaked in 2010 was met with much protest as to its substance. It suddenly resurfaced in 2014. The law was adopted by the National Assembly with little stakeholder consultation on 4 April 2016,150 and is awaiting review by the Senate. In its current form, the draft makes it difficult for workers to exercise their right to organise, right to strike and right to bargain collectively.151

Local and international organisations also protested the process by which the Law on Associations and NGOs (LANGO) was adopted. A statement issued by over 60 CSOs in July 2015 said that the drafting and adoption process was marred by a lack of transparency and meaningful consultations after 2011:

Two consultations were conducted by the Ministry of Interior in 2011 with few inputs and concerns taken into consideration in the 4th version. Since then, the Royal Government of Cambodia refused to make the new draft law public and consult with CSOs. The 5th and final version of the LANGO, yet to be officially released despite the adoption by the National Assembly, added further controversial provisions. The workshop conducted by the National Assembly with CSOs on 8 July 2015, just few days before the scheduled vote meeting, was a nominal consultation in terms of time and process. Many questions and concerns from CSOs remained unanswered.152

The public was also kept in the dark with regard to three laws pertaining to the judiciary passed in July 2014, namely (i) Law on Organisation of Courts, (ii) Law on Statute of Judges and Prosecutors, and (iii) Law on Organisation and Functioning of Supreme Council of Magistracy. Although work on the three laws started sometime in 2005, no consultation was ever held on the drafts and the authorities did not publically share them until the day before the National Assembly started examining them.153

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In view of criticisms over the approval of the draft laws on the judiciary by the Council of Ministers in April 2014—without consultation and without releasing the texts of the legislation—Prime Minister Hun Sen said that draft laws need not be reviewed by anyone besides those who compose the laws before they are forwarded to the Council of Ministers and the National Assembly. “Don't demand things beyond what's within your rights. You should be ashamed of yourselves, and just enjoy the rights that are given to you as NGOs.”

In 2016, the Acting President of the National Assembly assured the Special Rapporteur that all drafts are uploaded to the Assembly website upon receipt from the Council of Ministers.

Equality before the Law

The laws provide for equal protection, with Article 31 of the Constitution stating as follows:

Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, colour, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status.

While the Constitution guarantees equal protection, there are issues in regards selective enforcement of laws. (See Equal Protection of the Law and Non-Discrimination below). Recently, the Special Rapporteur called attention to recent legislative developments including the Law on the Election of Members of the National Assembly, the Law on Associations and NGOs, and the Telecommunications Law. She noted stakeholders have highlighted “a claimed politicisation in the implementation of these and other laws of the Kingdom of Cambodia.”

Reparation for Crimes and Human Rights Violations’ Victims/Survivors

The Human Rights and Complaints Commissions of the National Assembly and Senate as well as the executive branch’s Cambodian Human Rights Committee are empowered to conduct investigations into human right violations. Aside from reparations for crimes within the jurisdiction of the ECCC, there is no special law that governs reparation for crimes and human rights violations. Instead, redress may be sought with the courts when acts violating human rights are also addressed under criminal and civil laws of Cambodia.

Article 22 of the Criminal Code allows civil actions to either be brought in conjunction with a criminal action before a criminal court, or brought separately before a civil court. In case of the latter, the civil action is suspended until the final decision on the criminal action has been made.

Article 2 explains that the purpose of the civil action “is to provide compensation to victims of an offense and to allow victims to receive sufficient damages corresponding to the injuries they suffered.” An injury can


156 Ibid.
be a property, physical or emotional damage. Compensation can be made by paying damages, by returning the property that was taken or by restoring the damaged or destroyed property to its original state. The damages must be proportionate to the injury suffered.\textsuperscript{157}

\textbf{Law Enforcement}

\textit{Equal Protection of the Law and Non-Discrimination}

Despite the guaranty to equality before the law in the Constitution, concerns have been raised with regard to unequal enforcement of laws regarding assembly, public demonstrations and defamation, depending on the political orientation of the demonstrators or the sector they represent.

For instance, Article 3(3) of the Law on Peaceful Demonstration exempts “gatherings for the purposes of serving religion, art, culture, national customs and tradition and educational dissemination activities for social interests” from its scope. The Special Rapporteur however noted, “That direction is not being consistently applied, with educational activities generally, and community meetings on resolution of land issues in particular, all too often being restricted.” In fact, a commune police officer tried to stop the Special Rapporteur’s meeting with indigenous Kui groups in Preah Vihear Province.\textsuperscript{158}

The security forces have used excessive force in suppressing protests. For example, on 2 January 2014, military soldiers guarding the Yakjin factory indiscriminately beat workers demonstrating outside the factory. The following day, military police fired live ammunition when a demonstration on the outskirts of Phnom Penh turned violent, killing four and injuring many more.\textsuperscript{159} The lack of action against security officers who opened fire on the crowds or otherwise committed acts of violence contrasts with the speed of criminal proceedings against individuals who are not members of security forces.\textsuperscript{160}

Human Rights Watch said, in 2014, the police, prosecutors, and judges pursued “at least 87 trumped-up cases” against CNRP leaders and activists, members of other opposition political groups, prominent trade union figures, urban civil society organizers, and ordinary workers. For example, there are charges of incitement to violence and other crimes against six union leaders in connection with a general strike in December 2013-January 2014.\textsuperscript{161} On 21 July 2015, 11 CNRP organizers were convicted on charges of leading or participating in an anti-government “insurrection,” after the court found them responsible for crowd violence that erupted when security forces broke up a peaceful CNRP-led demonstration calling for the reopening of Phnom Penh’s “Freedom Park” on 15 July 2014.\textsuperscript{162}

\begin{footnotesize}
\begin{enumerate}
\item[(157)] Articles 13 and 14 of the Criminal Code.
\item[(159)] Supra note 140, pars 14-16.
\item[(160)] Ibid, par. 20.
\end{enumerate}
\end{footnotesize}
Opposition leader Sam Rainsy has been in a self-imposed exile since November 2015, after the Supreme Court issued a warrant for his arrest over a defamation and incitement complaint lodged by Foreign Minister Hor Namhong in 2008. Sam Rainsy had said that Hor Namhong ran the Boeung Trabek prison under the Khmer Rouge.163 Sam Rainsy was found guilty in 2011, but his conviction was presumed to have been expunged as part of a royal pardon he received in July 2013, which allowed him to return to Cambodia. Three days after the issuance of his warrant of arrest, Sam Rainsy was unanimously removed from the National Assembly by the CPP on the basis of his prior conviction for defamation.164

In December 2015, National Assembly President Heng Samrin filed a defamation complaint against Sam Rainsy for a statement on Facebook which stated that “the regime born on 7 January 1979 used their court [system] to sentence [late] King Norodom Sihanouk to death on the accusation of being a traitor.” 165 Heng Samrin was President of Cambodia from 1979 to 1992. More recently in March 2016, Sam Rainsy incurred another defamation suit after he posted on his Facebook a message that allegedly originated from Sam Soeun, a CPP cabinet member, telling CPP members to promote the Prime Minister’s Facebook page and to organise “technical working groups” to create accounts to “like” Hun Sen.166

Other CNRP lawmakers have been arrested for posts on Facebook that showed an allegedly fabricated map showing that the government had ceded territory to Vietnam, and for posting a fake government pledge to dissolve Cambodia’s border with Vietnam.167

Special Rapporteur Professor Rhona Smith issued a statement on 31 March 2016 saying that “The political situation which includes renewed threats, judicial proceedings and even physical beatings of members of the opposition, is worrying.”168

D. On Central Principle 4:
(Justice is administered by competent, impartial, and independent judiciary and justice institutions)

Appointment and Other Personnel Actions in the Judiciary and among Prosecutors

Judges and prosecutors in all courts are appointed through decrees (Kret) issued by the King upon the proposal of the Supreme Council of Magistracy. The SCM also takes disciplinary actions against delinquent judges and proposes the transfer or removal of judges to the King.169

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168 Supra note 155.
169 Articles 133 and 134 of the Constitution.
On 16 July 2014, three laws pertaining to the judiciary were promulgated. These laws give the Minister of Justice undue influence over the court system and the judiciary. Particularly, the Law on Organisation and Functioning of Supreme Council of Magistracy includes members of the executive government (particularly the Minister of Justice) and the National Assembly in the Council. Considering that the Council is charged with assisting the King in guaranteeing judicial independence, the role of the executive in their functions has been criticised. The law establishes a Disciplinary Council, which has jurisdiction over penal matters related to judges and prosecutors. The Law on the SCM provides that all complaints regarding judicial conduct must first go to the Minister. Only those complaints that the Minister have approved may be submitted to the Disciplinary Council for investigation and action. Where the Disciplinary Council finds “gaps of judges in fulfilling their profession, the harmfulness to honour, good morals and dignity,” it will recommend a disciplinary sanction against the judge or prosecutor to the SCM. These range from verbal reprimands for minor violations, to removal or revocation of status as a judge for major ones.

The Law on Judges and Prosecutors grants the Minister of Justice a seat on the Commission on Promotion in Grade and Rank (CPRG), the body responsible for appointing and promoting judges. Further, Article 67 allows the Minister to submit a report to the SCM if the Minister believes that a judge can no longer carry out his/her duty for reasons of mental or physical disability. The SCM will then consider the case and, if appropriate, recommend forced retirement. If this decision is taken by the SCM, the Minister must prepare the decree in question and submit it to the King. The Law on Organisation of Courts grants the Minister a great deal of power over the courts’ budget as well as administrative matters relating to the courts.

In regard to these laws, the International Bar Association’s Human Rights Institute (IBAHRI) stated as follows:

[T]here is a pressing need for greater transparency in the area of judicial appointments and promotions. Although the fact of the Minister sitting on the CPRG and the SCM, while undesirable, does not in itself necessarily breach international standards, there is evidently a strong perception among Cambodians that the Minister, acting on behalf of the executive, has abused his position to appoint party officials and government loyalists to key positions in the judiciary.

Training, Resources, and Compensation

Beginning 2003, after the Royal School of Judges was established, all judges and prosecutors have been required to undergo training. Candidates are required to possess a degree in Bachelor of Laws, be a Cambodian citizen, and pass the oral and written admission exams. Trainees receive two years of training comprised of eight months of classroom instruction; one year practical judicial traineeship; and four

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170 Ibid, Article 132.
171 See supra note 140, pars 34-39.
174 Ibid, 27.
months legal specialization.\textsuperscript{175} Further in-service training for judicial officials is provided by government entities in cooperation with various donor agencies; the degree of regularity of such trainings is however unknown. An important knowledge and capacity transfer occurs through the involvement of junior and senior Cambodian judicial professionals at the ECCC. This capacity-building process is an explicit goal of the ECCC’s legacy activities.\textsuperscript{176}

Recently, the government has issued Sub-Decree No.39.RNKr.KB dated 09 March 2016 on Remuneration for Judges and Prosecutors at all court levels. It aims to ensure the effectiveness and productivity in the justice system as well as guarantee equity and brotherliness in the salaries of the judicial officers. This Sub-Decree creates seven monthly remuneration brackets based on the rank of judges and prosecutors:

1) President and General Prosecutor of Supreme Court: 10,000,000.00 Riels (around USD2,500.00);
2) Vice President of Supreme Court, President of Supreme Court Chamber, Deputy General Prosecutor of Supreme Court, President of Appeal Court, and General Prosecutor of Appeal Court: 4,500,000.00 Riels (around USD1,125.00);
3) Judge and Prosecutor of Supreme Court, Vice President of Appeal Court, President of Appeal Court Chamber, Deputy General Prosecutor of Appeal Court: 4,000,000.00 Riels (around USD1,000.00);
4) Judge of Appeal Court, President of Court of First Instance, Prosecutor of Appeal Court, Prosecutor of Court of First Instance, and Prosecutor serving at Ministry of Justice: 3,500,000.00 Riels (around USD875.00);
5) Vice President of Court of First Instance, President of Specialized Court of Court of First Instance, and Deputy Prosecutor of Court of First Instance: 3,200,000.00 Riels (around USD800.00);
6) Judge of Court of First Instance: 3,000,000.00 Riels (around USD750.00); and
7) Training Judge and Training Deputy Prosecutor: 1,500,000.00 Riels (around USD 375.00).

**State’s Budget Allocation for the Judiciary and Other Principal Justice Institutions**

The government approved a budget amounting to $4.3 billion for 2016. The budget allocates a total of 96,162.9 million Riels (around USD23,679,610) to the Ministry of Justice. Under this category, there is an entry for “Justice,” which could refer to the operations of the Ministry of Justice itself, for 33,885.8 million Riels (around USD8,344,200). Still under the budget for Ministry of Justice, 5,346.6 million Riels (around USD1,316,570) is allocated to the Supreme Court; 6,180.2 million Riels (around USD1,521,840) to the Appeal Court; and 4,539.6 million Riel (around USD1,117,850) to the Supreme Council of Magistracy. “Departments of expertise attached to Capital and Provinces” is given 44,287.1 million Riel (around USD10,905,465), while “Public investment by foreign loan” is allotted 1,923.6 million Riels (around USD473,675).\textsuperscript{177}

\textsuperscript{176} Ibid.
Impartiality and Independence of Judicial Proceedings

The Constitution provides for the independence of the judiciary; judicial power should not be given to the legislature or executive government. The impartiality and independence of the judiciary is guaranteed by the King with assistance from the Supreme Council of Magistracy.\textsuperscript{178}

It has been alleged that the judiciary is unduly influenced by the executive government. Reports also indicate that corruption is widespread. The IBAHRI reports that “cases in which the authorities have an interest are consistently resolved in their favour and in other cases, the party able to offer the largest bribe to a judge or clerk will almost certainly win the case, regardless of the merits.”\textsuperscript{179} As example, the former Special Rapporteur points to the case of the seven CNRP Members of Parliament and one supporter who were arrested in relation to a protest on 15 July 2014, during which event security forces were beaten severely by protesters. “[T]he lack of material evidence needed for their arrests on very serious charges and their speedy release on the evening of the successful negotiations between the two parties on 22 July clearly reveal the extent to which the judiciary continues to be influenced by the executive.”\textsuperscript{180}

Corruption is also an issue. A group of lawyers who met with IBAHRI in 2015 were convinced that 90 per cent of cases heard by the courts involve payment of bribes in one form or another, either to judges or to judicial clerks. They revealed that less than five per cent of cases with which they have been involved in did not involve payment.\textsuperscript{181}

 Provision of Competent Lawyers or Representatives by the Court to Witnesses and Victims/Survivors

To become a lawyer, Article 31 of the Law on the Bar requires one to be of Khmer nationality, have a Bachelor of Laws degree and have never been convicted of a crime. One of the following two other conditions must also be met: (i) A certificate from the Lawyer Training Center, which requires aspirants to pass an entrance exam and follow a training of one year and an internship of one year; or (ii) Two years of legal work experience.

The Law on the Bar and the Internal Regulations of the Bar Association of the Kingdom of Cambodia oblige all lawyers to provide legal aid to the poor.\textsuperscript{182} The Law defines “poor people” as “those people who have no property, no income, or who receive insufficient income to support their living. The determination of ‘poverty’ shall be accomplished by the Chief Judge of the Courts and the Chiefs of the Court Clerks following an on-site investigation.”

After the Chief Judge or the Chief Clerk has established insufficiency of resources, the beneficiary of legal assistance transmits to the President of the Association a request for legal assistance. Within a period of 15 days, the President is to designate a volunteer to render legal assistance.

\textsuperscript{178} Articles 128, 130 and 132 of the Constitution.
\textsuperscript{179} Supra note 172, p. 7.
\textsuperscript{180} Supra note 140, par 28.
\textsuperscript{181} Supra note 172, 29.
\textsuperscript{182} Article 29(3) of Law on Bar.
Lawyers designated to provide legal assistance are to receive a monthly compensation from the Bar Fund, of an amount that is determined each year by the Council of the Bar Association. The Bar Fund is derived from dues paid by all members and donations from organisations or foreign governments. The monthly remuneration is independent of the number of cases handled. There is a possible disciplinary proceeding against legal aid lawyers when they do not provide diligent services.183

Despite these provisions, the Bar Association is nowhere close to meeting the high demand for legal assistance. In 2013, Bar Association President Bun Honn said the Association's legal aid department had 48 legal aid lawyers, with a budget of about $50,000 per year.184 From January to October 2013, the Bar Association received requests for free legal aid in 798 cases involving 1,169 clients, 88 of whom were minors; assistance could only be provided in 95 of these cases. Bun Honn said that data gathered by BAKC in 2013 showed that legal aid is needed in 54 per cent of all criminal cases in the country. An official at the Ministry of Justice said that the cost of legal aid could not be borne by the government alone.

Aside from financial constraints, a report notes that the practice of limiting the number of lawyers in the country restricts access to lawyers and access to justice.185 The country currently has 816 practicing lawyers to serve its population of 15,708,756 (July 2015 estimate), or one lawyer for every 19,250 persons—a ratio that is very far behind compared to other countries. The report attributes this low number to the “artificial yearly cap” on membership to the BAKC.186 There are many Cambodians who meet the qualifications to become lawyers, however only around 60 new lawyers are admitted to the Bar per year. The entrance exam given by the Lawyer Training Center is difficult to pass. In 2013, only 59 or eight per cent of 700 applicants passed. Corruption has been reported in the admission process, with candidates allegedly “invited” to pay USD 10,000-15,000 for admission. To qualify as a member of the Bar on the basis of two year’s legal work experience, it is said that the unofficial fee amounts to around USD 20,000.187

(See also discussion below on Available and Fair Legal Aid to All Entitled.)

Safety and Security of the Judiciary, Prosecutors, Litigants, Witnesses, and Affected Public

Safety and security for accused persons, prosecutors, judges, and judicial officers are well provided in the cases before the ECCC. There is a Supplementary Agreement on Safety and Security which outlines the separate areas of responsibility of the United Nations and Cambodian government to ensure that all aspects of security and safety are covered.188

There is, on the other hand, no comprehensive mechanism provided in special law to ensure protection of judicial officers, litigants, witnesses, and the public in the regular courts. Instead, there are provisions in the Criminal Code that punish perpetrators who cause inconvenience, intimidation or retaliation to

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183 See Article 7 of Internal Regulation of Bar Association of Cambodia.
184 Lauren Crothers, ‘Lack of Legal Aid in Cambodia Puts Children, Poor at Risk,’ The Cambodia Daily, 30 November 2013.
185 Supra note 77.
186 Ibid, 3.
witnesses, victims or civil parties before and after a proceeding. Further, courts may use court screens and courtroom TV-linked testimonies for children and vulnerable victims testifying in criminal cases. In practice, controversial hearings are heavily guarded by security personnel, with the police at times blocking roads and setting up barricades to keep protesters from getting anywhere near the courthouses.

(See also discussion below on Measures to Minimize Inconvenience to Litigants and Witnesses, and their Families, Protect their Privacy, and Ensure Safety from Intimidation/Retaliation.)

Specific, Non-Discriminatory, and Unduly Restrictive Thresholds for Legal Standing

Standing before the law, especially in criminal proceedings is clearly defined. Criminal actions are initiated by prosecutors; victims of an offense can file a complaint as plaintiffs of a civil action before the investigating judge. The Criminal Procedure Code allows some associations to assist victims in filing a complaint. The victim’s successor (in case of death) or legal representative (in case of a minor or adult under legal guardianship) can represent the victim.

Article 141 of the Constitution also mentions standing before the Constitutional Council, stating that, after a law is promulgated, the King, the President of the Senate, the President of the Assembly, the Prime Minister, 1/10 of the Senate members, 1/10 of the Assembly members or the courts, may ask the Constitutional Council to examine the constitutionality of that law. Citizens have the right to appeal against the constitutionality of laws through members of parliament.

Publication of and Access to Judicial Hearings and Decisions

According to the Criminal Procedure Code, trial hearings must be conducted in public except when the court determines otherwise on grounds of public morals or public order. The Code requires the chairman of the hearing to inform the parties of the date of the announcement of the judgment, unless the announcement is made at the same session in which parties held a confrontation. Announcement of the judgment must be in public, and the ruling must be read aloud by the presiding judge. In practice, trials are being conducted openly and publicly.

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189 Prakas on the Use of Court Screen and Courtroom TV-Linked Testimony from Child/Vulnerable Victims or Witnesses, Ministry of Justice No: 62/08, 06 October 2008.
191 Articles 4-6 of Criminal Procedure Code.
192 These associations are Associations for Eliminating All Forms of Sexual Violence, Domestic Violence or Violence against Children, Association of Elimination All Forms of Kidnapping, Human Trafficking and Commercial Sexual Exploitation, and Association for Eliminating All Forms of Racism and Discrimination. Ibid, Articles 17-20.
193 Ibid, Articles 15, 16 and 22.
194 Ibid, Articles 316, 392, and 434.
196 Supra note 104, 16.
Additionally, the Supreme Court launched its own website in 2011 so that people would be able to access the Supreme Court’s judgment database from 1996 onwards. Judgments until 2006 are now accessible online. While the database is still not up-to-date, this represents a positive development that should be pursued. Generally, only the lawyers or the parties themselves could easily obtain copies of judgments. For others, it is still difficult to obtain copies of judgments and access case files.

**Reasonable Fees and Non-arbitrary Administrative Obstacles to Judicial Institutions**

The victim in a criminal case is not required to pay any fee, as “court fees [are] the responsibility of the state.” Convicted persons, however, are required to pay all procedural taxes to the state, in an amount that is determined by a ministerial proclamation (Prakas). In civil disputes, the plaintiff must pay the filing fee. If the defendant loses, the defendant shall be responsible for the court fee, paying the plaintiff a lump sum to cover the filing fee. The filing fee is calculated based on the value of the subject matter of the complaint.

Bribery is however reportedly widespread. Lawyers reported that payments are made not only for decision-making in a case, but are frequently demanded by judges and clerks for “follow-up” work, i.e. to simply track the progress of a case. Some lawyers reported that, if they refuse to pay such fees, court staff would neither let them have any information about their clients nor give them access to their clients (where clients were held in prison cells).

**Assistance for Persons Seeking Access to Justice**

Persons, especially members of grassroots communities, seeking to access justice through the court system have reported significant challenges. Grassroots communities have to weigh the urgency of seeking access to justice while supporting the basic needs of their families. In cases of forced evictions, families are often left without access to basic needs like food and shelter.

Free legal representation in Cambodia is limited, with the country’s legal aid budget insufficient to provide adequate legal assistance to those who need it. Further, the BAKC, which is expected to provide legal assistance, is viewed as too politicised and closely allied with the government. NGOs are the main source of free legal aid in Cambodia, but fear of reprisals and desire for more stable and lucrative employment cause many lawyers working for NGOs to resign and move into private practice. Finally, even if persons have access to legal representation, “they are still faced with a corrupt and arbitrary institution directly under the control of the government.”

197 Article 553 of the Criminal Procedure Code.
198 Ibid, Article 554.
200 Supra note 172, 29.
201 Ibid, 8.
203 Ibid, 15. See also supra note 172, 7.
Measures to Minimize Inconvenience to Litigants and Witnesses and their Families, Protect their Privacy, and Ensure Safety from Intimidation/Retaliation

So far there is no special law that provides a comprehensive mechanism to ensure protection of and minimise inconvenience to litigants, witnesses, and their families. Instead, provisions in the Criminal Code that punish perpetrators who cause inconvenience, intimidation or retaliation to witnesses, victims or civil parties before and after a proceeding may be applied. Examples of such provisions are Article 546 on Intimidation Against a Witness, Article 548 on Bribery Given to a Witness, and Article 549 on Publication Aiming at Putting Pressure on a Witness.

Committing specific crimes against victims, civil parties or witnesses may be considered an aggravating circumstance. Higher penalties are imposed on perpetrators of Murder (Article 203), Torture and Barbarous Acts (Article 212), Intentional Violence (Article 220), and Acts of Threat (Article 231-234) when the same is committed on (i) a victim or civil party to prevent him or her from denouncing the offence or demanding reparation, or because he or she has made such denouncement or demand, or (ii) a witness to prevent him or her from becoming a witness, or because he or she has given testimony. These articles impose greater penalty on crimes that target victims and witnesses, but not their family.

Protective measures at the ECCC are more elaborate. The Law on the Establishment of the ECCC states that the Court shall provide for the protection of victims and witnesses. Protective measures are regulated in Internal Rule 29 and Practice Direction on Protective Measures. Protective measures may be ordered by the Co-Investigating Judges or the Chambers to protect victims, as complainants or civil parties, and witnesses.

To protect the identity of witnesses, Internal Rule 29(4) includes the following measures:

a) Declaring their contact address to be that of their lawyers or their Victims’ Association, as appropriate, or of the ECCC;

b) Using a pseudonym when referring to the protected person;

c) Authorising recording of the person’s statements without his or her identity appearing in the case file;

d) Where a Charged Person or Accused requests to be confronted with such a person, technical means may be used that allow remote participation or distortion of the person’s voice and or physical features;

e) As an exception to the principle of public hearings, the Chambers may conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means.

The Practice Direction lists more protective measures, including (i) ordering written records or the record of specific parts of the proceedings to be placed under seal; (ii) forbidding public access to specific material from the case file or classified register which identifies the protected person; (iii) ordering measures aimed at physically protecting the protected person, in particular by providing a safe residence inside or outside Cambodia; and (iv) redacting from the record all information that could reveal the identify or location of the protected person.

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204 No conviction may be pronounced against the Accused on the sole basis of statements taken under the conditions set out in sub-rule 29(4)(c). Internal Rule 29(6) of the Extraordinary Chambers in the Courts of Cambodia.
Available and Fair Legal Aid to All Entitled

As stated above, the Bar Association has a department that provides free legal assistance, however its resources are very limited. There are several NGOs that also provide such assistance; prominent among them are Legal Aid Cambodia (LAC) and Cambodian Defenders Project. Other organizations with smaller legal aid capacities include Legal Support for Children and Women, Protection of Juvenile Justice, Cambodian Women Crisis Center, International Bridges to Justice, and the Cambodian League for the Promotion and Defense of Human Rights. Despite these efforts, there is no substantial legal aid presence outside of Phnom Penh. Organizations such as LAC have been pushing BAKC to review legal aid requirements for the legal community to improve overall service coverage.205

In November 2013, it was reported that there were only 76 free legal aid lawyers in the country (from 119 in 2010). In several provinces, there were no legal aid lawyers at all. “Access to lawyers in police stations is extremely limited, especially in rural areas. The provision of legal aid services in the country is neither effective, nor sustainable. For many Cambodians, justice is a luxury that they cannot afford,” Wan-Hea Lee of OHCHR Cambodia said.206

Legal aid providers in Cambodia face financial hurdles as well as constraints due to the lack of lawyers in the country, especially outside the capital. LAC, the largest legal aid NGO in Cambodia, reported in its 2014 annual report that it is difficult to retain experienced and skilled staff and lawyers for a long period because it does not have guaranteed funding to ensure that services will remain the same from year to year.207 This insecurity results in lawyers and staff looking for alternative jobs. Additionally, although LAC has seven branch or satellite offices besides its head office in Phnom Penh,208 it is hard to recruit lawyers to work in provinces. Lawyers prefer to stay in Phnom Penh where there are more potential clients. Further, majority of BAKC-approved lawyers are working for private law firms, which pay salaries that legal aid organizations cannot afford. Thus the number of lawyers who want to work for an NGO is very restricted.

General Public Awareness of Pro Bono Initiatives and Legal Aid or Assistance

There is no comprehensive data to show the level of awareness of the general public with regards pro bono initiatives. However, as legal aid providers are concentrated in Phnom Penh, it is likely that awareness of legal aid services is low in some provinces.


206 Supra note 184.


III. INTEGRATING INTO A RULES-BASED ASEAN

Progress towards Achieving a Rules-Based ASEAN Community

On Mutual Support and Assistance on the Rule of Law

Cambodia is a signatory to the ASEAN Mutual Legal Assistance in Criminal Matters Treaty (AMLAT), which it ratified in 2010. It also has existing extradition agreements with Thailand, Lao PDR and Vietnam. In 2011, to implement the process for mutual legal assistance in criminal matters, as well as in civil matters, extradition, and transfer of prisoners, the Cambodian government established a Central Authority within the Ministry of Justice.\(^\text{209}\)

In 2013, Cambodia and Vietnam agreed to provide mutual judicial assistance in civil matters—which provides for copies of judicial documents, taking and transferring of evidence, summoning of witnesses and experts, recognition and enforcement of court judgments and decisions, and exchange of legal information and documents.\(^\text{210}\)

The country has also signed separate bilateral Memorandums of Understanding and Cooperation with Lao PDR and with Vietnam for information exchange and capacity building among legal staff, judges and prosecutors.\(^\text{211}\) In addition, participants from Cambodia have also taken part in Court Excellence and Judicial Cooperation Forums between judiciaries of ASEAN Member States to share best practices and exchange views on common concerns and interests in anticipation of the ASEAN Community in 2015 and beyond.\(^\text{212}\)

Aside from formal mechanisms, informal cooperation (such as “police to police” or “agency to agency” assistance) facilitates a wide measure of information sharing between law enforcement agencies of different countries.\(^\text{213}\)

On Legislative and Substantive Changes Promoting the Rule of Law

There appears to be no new law that the government enacted specifically to promote rule of law at a regional level.

On Enactment of Laws relating to the ASEAN Community Blueprints and Similar Plans

Cambodia’s National Assembly approved amendments to its customs laws in 2014 as part of its preparation for the AEC and following its signing of the ASEAN Customs Agreement in 2012. The amendments concern the synchronisation of Cambodia’s customs procedures with international standards and the management of customs after the realization of the AEC in 2015. The changes include measures intended to simplify cross-border exchange and facilitate trade between ASEAN countries, such as reducing paperwork, modernizing


\(^{210}\) Ibid.

\(^{211}\) Ibid.

\(^{212}\) Joint Communiqué of the Ninth ASEAN Law Ministers Meeting (ALAWMM), 22 October 2015. Available at: http://www.asean.org/storage/images/2015/October/statement-and-communique/ADOPTED%20Joint%20Communique%20of%20the%20Ninth%20ASEAN%20Law%20Ministers%20Meeting%20as%20of%20October%202015%20CLEAN-revised.pdf

\(^{213}\) Supra note 209.
procedures, and stricter clauses regarding the prevention of terrorism and smuggling.\textsuperscript{214}

In compliance with its commitment under the ASEAN Trade in Goods Agreement, Ministry of Economy and Finance Prakas 288 dated 31 March 2011 was issued, promulgating the schedule of Cambodia for Reduction/Elimination of Import Duties under the ASEAN Trade in Goods Agreement. Under this Prakas, tariff for ASEAN goods was reduced from 2009 and import duties eliminated by 2015, with flexibility on some duties until 2018.\textsuperscript{215}

\textbf{On Integration as Encouraging Steps toward Building the Rule of Law}

While Cambodia’s efforts appear to mostly concentrate on the economic aspect of ASEAN integration, integration has nonetheless encouraged the government to introduce improvements in its policies, laws and procedures that contribute to the country’s rule of law. As an example, the amendment of customs laws to comply with ASEAN standards is expected to strengthen control on imports, exports, crossings, and goods trafficking, helping to combat smuggling and prevent terrorism.\textsuperscript{216}

The launch of the National Trade Repository (NTR) website in 2015, on the other hand, promotes transparency and openness in dealing with relevant government offices for import and export businesses. The website provides access to all necessary trade information, including registration for importers and exporters, list of prohibited and restricted goods, customs permits and duties, as well as ASEAN-specific trade regulations.\textsuperscript{217}

\textbf{On the Contribution of ASEAN Integration to the Building of Stronger State Institutions}

Integration has impressed upon the government the necessity of building stronger state institutions. In the Rectangular Strategy, Phase III, the government indicated that regional and global integration, including participating in the AEC and meeting the obligations of the World Trade Organization, “requires better coordination and stronger human and institutional capacity as well as effective and timely internal reforms, to ensure that Cambodia will benefit from the integration.”\textsuperscript{218} The Rectangular Strategy recognises that good governance is needed to create an environment attractive to investors and conducive to economic growth. Thus, for example, one priority involves:

\begin{quote}
Further strengthening favorable investment and business climate through improvement in regulatory framework, rationalization of incentives for investment projects, and improvements in good governance and efficiency of public institutions...
\end{quote}\textsuperscript{219}


\textsuperscript{216} Supra note 214.


\textsuperscript{218} Supra note 55, 6.

\textsuperscript{219} Ibid, 28.
Prospects and Challenges

Challenges to a Strengthened Commitment to the Rule of Law

Cambodia continues to face challenges in its efforts to strengthen the rule of law in the country. The Office of the United Nations High Commissioner for Human Rights for Cambodia has stated that, “the Ministry of Justice and the courts continued to suffer from serious lack of resources. Respect for the rule of law was also hampered by ongoing credible allegations of interference by the executive in the court system, and of widespread corruption. As a result, impunity continued and public confidence in the criminal justice system is not improving.”

Concerns have also been raised on access to justice, especially for the poor and other vulnerable groups. Legal aid services continue to suffer from lack of funding and legal representation for juveniles and persons charged with felonies are not always available.

Commitments and Plans/Initiatives in relation to ASEAN-wide Commitments and Declarations on Human Rights

The Cambodian government states that it continues to work with its fellow ASEAN members to achieve further progress on human rights through the ASEAN Intergovernmental Commission of Human Rights and other related bodies. Confirming its commitment with other ASEAN member states to a stronger regional cooperation against trafficking in persons, Cambodia signed the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) during the 27th ASEAN Summit in November 2015, and promptly deposited the instrument of ratification with the ASEAN Secretary-General in January 2016.

IV. CONCLUSION

Nexus of the Changes to the Overall State of the Rule of Law for Human Rights

The current ruling government, which has dominated elections since 1998, has been implementing key reforms that have shaped the country’s rule of law regime. The Rectangular Strategy, with its focus on good governance, is particularly relevant. Important laws have been adopted, not least of which are the Code of Civil Procedure (2006), Criminal Procedure Code (2007), Civil Code (2007), and Criminal Code (2009). In

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220 UN Human Rights Council, Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: Cambodia, A/HRC/WG.6/18/KHM/2, 7 November 2013, par. 29.

221 Ibid, par. 31.


224 Supra note 55, pp 13-14.
2007, the Supreme Council of Magistracy approved the Code of Ethics for Judges. Currently there are plans to create regional Appeal Courts to reduce backlog and to make the court more accessible to appellants. Thus, it can be said that the country has been successful in laying the foundation needed to advance rule of law in the country.

Despite significant progress made, some recent laws and actual practices of the government show that the legal framework surrounding rule of law needs to be improved. The lack of measures to ensure that civil society is involved in legislation-making has resulted in laws that have been criticised for being repressive and that fail to meet the needs of society. Equal enforcement of the law remains an issue, with rights pertaining to peaceful assembly and expression of specific groups particularly being suppressed. This includes groups advocating for land and housing rights, workers’ rights and management of natural resources. For these groups as well as others with meagre economic means, accessing justice is very challenging.

Finally, the lack of confidence in the judiciary on the part of the citizenry is a grave concern. The judiciary lacks independence, both in law and in practice. Laws concerning the administration and organisation of the judiciary, which for years had been awaited by former Special Rapporteurs on the human rights situation in Cambodia, were finally adopted in July 2014. However, these laws, instead of securing judicial independence, have entrenched the executive government’s control over the affairs of the judiciary. In practice, interference from executive officers and corruption undermines judicial integrity.

**Contributing Factors**

Emerging from the Khmer Rouge regime, Cambodia has had to build its rule of law infrastructure from zero. There were no laws to implement and no institution to administer them had there been any. The lack of academics and legal professionals, resulting from the policy of the CPK to target intellectuals for execution, made it particularly challenging to rebuild the country. On the liberation of Phnom Penh in January 1979, one source has estimated that there were only ten individuals with any kind of legal education in the whole of Cambodia.

The dominance of the ruling party for many years has also meant that it has been able to set the direction of legal and institutional reform and act without effective checks within the country. Nonetheless, it should be recognised that there is now a robust civil society in Cambodia, which, together with pressure from foreign organisations and governments, has been able to draw greater attention on the need for meaningful reforms and capacity-building.

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Role of the ASEAN Declaration on Human Rights in Strengthening Rule of Law for Human Rights

The ASEAN Human Rights Declaration was adopted in Phnom Penh during Cambodia’s chairmanship of the ASEAN in 2012. However, so far, it has not visibly played a key role in strengthening rule of law and human rights in the country. Cambodia has been undergoing major legal and institutional transformations since it signed the Paris Peace Accords in 1991. Until now, the state of human rights in the country is being observed by a Special Rapporteur and the country continues to receive recommendations on how its policies and practices relative to human rights may be improved. In this context of protracted on-going reforms, it is difficult to assess the influence of the ASEAN Human Rights Declaration on recent developments in the country. At any rate, some legal developments in Cambodia after the adoption of the Declaration, such as the laws pertaining to the judiciary, need to be reviewed in order to further strengthen the rule of law for human rights.
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