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Rule of Law for Human Rights in the Asean Region: A Base-line Study



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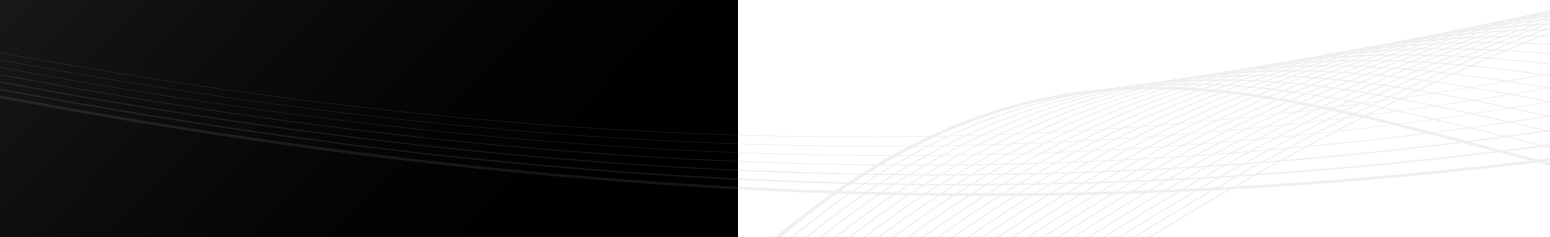


The Kingdom of Cambodia



Cambodiaⁱ

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Snapshot Boxⁱⁱ

Country Name:	Kingdom of Cambodia
Capital city	Phnom Penh
Independence	November 9, 1953
Historical Background	<p>Cambodian King accepted France as a protectorate government in 1863, and after the WWII ended in 1945, movement for independence got its momentum. Finally, Cambodia gained full independence from France in 1953. After the colonial period, Cambodia underwent fluctuations of relatively short regimes from Constitutional Monarchy (1953-1970) to Republic (1970-1975) to Communism/Dictatorship (1975-1979) to Communism/Socialism (1979-1989), before a Constitutional Monarchy regime was restored in 1993. In April 1975, after a five-year struggle, Communist Khmer Rouge forces captured Phnom Penh and evacuated all cities and towns. At least 1.5 million Cambodians died from execution, forced hardships, or starvation in between 1975-1979. In December 1978, Vietnamese troop toppled the regime, but Khmer Rouge forces still 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. UN-sponsored elections in 1993 helped restore some semblance of normalcy under a coalition government. Factional fighting in 1997 ended the first coalition government, but a second round of national elections in 1998 led to the formation of another coalition government and renewed political stability. The remaining elements of the Khmer Rouge surrendered in early 1999. Some of the surviving Khmer Rouge leaders are awaiting 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 between contending political parties 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. Local elections were held in Cambodia in April 2007, with little of the pre-election violence that preceded prior elections. National elections in July 2008 were relatively peaceful. The next election will be around mid 2013.</p>
Size	181,035 km ²
Land Boundaries	Laos (541 km), Thailand and Gulf of Thailand (803 km), Vietnam (1,228 km)
Population	14,453,680 (est. 2010); Growth Rate at 1.705% (2010 est.)
Demography	<p>0-14 years: 32.6% (male 2,388,922/female 2,336,439) 15-64 years: 63.8% (male 4,498,568/female 4,743,677) 65 years and over: 3.6% (male 197,649/female 329,038) Urban: 20% of total population (est. 2010)</p>
Ethnic Groups	Khmer 90%, Vietnamese 5%, Chinese 1%, other 4%
Languages	Khmer (official) 95%, French, English
Religion	Buddhist 96.4%, Muslim 2.1%, other 1.3%, unspecified 0.2% (1998 census)
Education and Literacy	Age 15 can read and write: 76.3% of Total Population (2007 est.)
Welfare	<p>Population below poverty line: 31% (2007 est.); One in five Cambodian lived under national food poverty line (2,100 calories/day); Life expectancy: 62.28yrs Social security regime provided for every citizen, the poor, disabled person, veteran, and workers and employees.</p>
Gross Domestic Product	\$29.46 billion (2010 est.)

Government Overview

- Executive Branch: Head of state is King Norodom Sihamoni (since 29 October 2004) whose role is ceremonial whereas the Head of Government is [Samdech Akkak Moha Sena Padei Techo] Prime Minister Hun Sen (since 14 January 1985) [co-prime minister from 1993 to 1997]. In other words, the executive power is vested in the Cabinet (Council of Ministers), which is named by the PM and appointed by the monarch upon approval from the National Assembly; After the election in 2008, there was an appointment of 10 Deputy Prime Ministers.
- Legislative Branch: Bicameral, consists of the Senate (61 seats; 2 members appointed by the monarch, 2 elected by the National Assembly, and 57 elected by parliamentarians and commune councils; members serve five-year terms) and the National Assembly (123 seats; members elected by popular vote to serve five-year terms)
- Judicial Branch: Courts at all levels exercise judicial power and hear all matters including administrative cases. In other words, courts are divided according to hierarchy (no specialised court), namely Supreme Court, Appeal Court, and First Instance Court. The first instance court consists of municipal, provincial, and military courts. There is one first-instance court in each province/municipality, except Kep, Oudor Meanchey, and Pailin. Military Courts hear cases concerning military discipline committed by members of the army or an offense that harm the property of military. Precisely, there are 21 First-Instance Courts, one Appeal Court, and one Supreme Court. However, judicial review is not vested with the courts, but the power to check constitutionality of a law or regulation is given to the Constitutional Council. The Supreme Council of the Magistracy (provided for in the constitution and formed in December 1997) is the body that oversees independence and appointments, and decides on disciplinary action against all judges and prosecutors.

Human Rights Issues

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, and prevailing impunity, arbitrary detention and torture; refugees and asylum seekers (threat of forced repatriation).

Membership in International Organisations

ADB, ARF, ASEAN, CICA (observer), EAS, FAO, G-77, IBRD, ICAO, ICC, ICRM, IDA, IFAD, IFC, IFRCS, ILO, IMF, IMO, Interpol, IOC, IOM, IPU, ISO (subscriber), ITU, MIGA, NAM, OIF, OPCW, PCA, UN, UNCTAD, UNESCO, UNIDO, UNIFIL, UNMIS, UNWTO, UPU, WCO, WFTU, WHO, WIPO, WMO, WTO

Human Rights Treaties
Ratified/
acceded/
succeeded (Selected)

- ICERD: International Convention on Elimination of All Forms of Racial Discrimination (7 March 1966) (Entry into Force 4 January 1969);
- ICCPR: International Covenant on Civil and Political Rights (16 December 1966) (Entry into force 23 March 1976);
- ICESCR: International Covenant on Economic Social and Cultural Rights (16 December 1966) (Entry into force 3 January 1976);
- CEDAW: Convention on Elimination of All Forms of Discrimination Against Women (18 December 1979) (Entry into force 3 September 1981);
- OP- CEDAW (6 October 1999) (Entry into force 22 December 2000);
- CAT: Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 December 1984) (Entry into force 26 Jun 1987);
- OP-CAT: (18 December 2002) (Entry into force 22 June 2006);
- CRC: Convention on the Right of the Child & Its amendment (20 November 1989) (Entry into force 2 September 1990);
- OP-CRC-AC: Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (25 May 2000) (Entry into force 12 February 2002);
- OP-CRC-SC: Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (25 May 2000) (Entry into force 18 January 2002);
- Convention on the Prevention and Punishment of the Crime of Genocide (9 December 1948) (Entry into force 12 January 1951) (Cambodia acceded 14 October 190);
- Convention relating to the Status of Refugees (25 July 1951) (Entry into force 22 April 1954) (Cambodia acceded 15 October 1992);
- Optional Protocol relating to the Status of Refugees (31 January 1967) (Entry into force 4 October 1967) (Cambodia acceded 15 October 1992);
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (7 September 1956) (Entry into force 30 April 1957) (Cambodia acceded 12 Jun 1957);
- Convention on the Suppression and Punishment of the Crime of Apartheid (30 November 1973) (entry into force 18 July 1976) (Cambodia acceded 28 Jul 1981);
- Rome Statute of the International Criminal Court (17 July 1998) (Entry into force 1 July 2002) (Cambodia ratified 11 April 2002);

United Nations Convention against Corruption (31 October 2003) (Entry into force 14 December 2005) (Cambodia acceded 5 September 2007).

Instruments Signed
(Selected)

- ICRMW: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (18 December 1990) (Entry into force 1 July 2003);
- OP-ICCPR (16 December 1966) (Entry into force 23 March 1976) (Cambodia signed 27 September 2004);
- Convention on the Political Rights of Women (31 March 1953) (Entry into force 7 July 1954) (Cambodia signed 11 November 2001);
- Convention on the Nationality of Married Women (20 February 1957) (Entry into force 11 August 1958) (Cambodia signed 11 November 2001);
- CRPD: Convention on the Rights of Person with Disabilities (13 December 2006) (Entry into force 3 May 2008);
- OP-CRPD (13 December 2006) (Entry into force 3 May 2008).

Not Signed (Selected)

- CPED: International Convention for Protection of all Persons from Enforced Disappearance (20 December 2006) (Entry into force 23 December 2010).

Overview

1. Key Rule of Law Structures

The Constitution of Cambodia stipulates various provisions that fit key indicators of the Rule of Law as laid down in Section D of this country report. Cambodia is a constitutional monarchy that adopts liberal democracy and pluralism.ⁱⁱⁱ Most importantly, Chapter III of the constitution proclaims a regime that recognises and respects human rights, for instance guarantees for equality before the law and rights of the accused, prohibits illegal detention and all kinds of discrimination, and provides for protection of the freedom of speech and expression, free movement, rights to form associations, to religion and beliefs, and to property and security.^{iv} In addition to national mechanism(s), Cambodia is also involved in the recognition and application of both regional (ASEAN)^v and international mechanisms (UN Charter, UDHR, ICCPR, ICESCR, CEDAW, CRC, etc.)^{vi} to ensure respect, promotion, and protection of Human Rights. Moreover, Cambodia has agreed with UN to allow an examination of its human rights situation through a report of the Special Rapporteur^{vii} (formerly referred to as Special Representative of the Secretary-General for human rights in Cambodia),^{viii} thematic reports, and other country report by OHCHR.^{ix} Most importantly, Cambodia expressed the importance of the Universal Periodic Review,^x and during a peer review concluded on 17 March 2010, Cambodia accepted all 91 recommendations.^{xi}

Last but not least, Article 51(4) of the Constitution provides for separation of powers among the three branches of the government, legislative, executive, and judiciary. The constitution and various legal provisions hold not only citizen but also government officials accountable for any violation of the law.^{xii}

2. Foundation & Evolution of Rule of Law

Cambodia's legal system suffered significant setbacks as a result of the Communist Party of Kampuchea's (CPK) policies during the 1975 to 1979 period. In constructing the state of Democratic Kampuchea (DK), the CPK abolished virtually all institutions and laws existing under Cambodia's previous regimes, including the courts. In place of the pre-existing legal system, the CPK imposed

a centralised dictatorial legal system, which exercised absolute power over the country and governed every aspect of its citizens' lives. Intellectuals were among those targeted by the regime for elimination, resulting in Cambodia losing the majority of its legal professionals in this period. Since the fall of the CPK and the end of the ensuing civil wars, there has been momentum for legal development.

The collapse of Soviet Union in 1989 and Paris Agreement were two main historical factors that led to the implantation of seeds of democracy and Rule of Law in Cambodia after decades of Communist/Socialist regimes (1975-1979; 1979-1989; and 1989-1993).^{xiii} The current ruling government won the national election in 1998, 2003 and 2008. One of the main aims in its policy framework, based upon the triangular strategy (in 1998, focus more on internal peace and stability as well as sustainable development) and later on the rectangular strategy (1st step in 2004 and 2nd step in 2008) involved judicial, administrative, and legal reform.^{xiv} The judicial reform effort has seen the Supreme Council of Magistracy (SCM) come into operation in 2000^{xv} and the creation of the Council for Judicial and Legal Reform as well as the Council for Administrative Reform.^{xvi}

Yet, the country's legal institutions and judicial capacity are still in the process of transition, and various systemic weaknesses within the Cambodian judiciary dating to the DK period are still present today.¹⁷ Having to rebuild socio-political institutions in the aftermath of the Khmer Rouge regime has presented Cambodia with significant difficulties, including a lack of human, institutional and financial resources.

The UN Special Rapporteur for Human Rights in Cambodia (the SRHRC), Surya Subedi, visited Cambodia in June 2010 and issued a statement highlighting the major concerns surrounding the Cambodian Legal System: "A combination of a lack of adequate resources, organisational and institutional shortcomings, a lack of full awareness of the relevant human rights standards, and external interference, financial or otherwise, in the work of the judiciary, has resulted in an institution that does not command the confidence of people from many walks of life."^{xvii}

An important development in Cambodia's attempts to address these shortcomings and institute a culture of accountability and rule of law was the establishment of the Extraordinary Chambers in the Courts of Cambodia (ECCC) in early 2006. The ECCC was established as a hybrid court comprised of national and international judges and lawyers charged with prosecuting senior leaders of the Khmer Rouge and the most responsible persons who are alleged to have committed genocide, war crimes, and crimes against humanity.^{xix} [See section below on ECCC and the Rule of Law]

In addition, 4 main codes, namely, the Code of Civil Procedure, Code of Criminal Procedure, Civil Code, and Criminal Code were adopted in 2006, 2007, 2007 and 2009 respectively. Another new law that is closely related to good governance and the rule of law is the law on Administrative Management of Capital, Provinces, City, District, and Khan in 2008 which was followed by more detailed executive acts concerning organisation, functioning, powers as well as responsibility, disciplinary action, civil and/or criminal responsibility in 2009 and 2010. To combat corruption,^{xx} a new Law on Anti-Corruption was promulgated on 11 March 2010, and Anti Corruption Unit was created to investigate and take measures in accordance with Code of Criminal Procedures provisions against allegedly corrupt government officials.^{xxi} This law also requires public officials who are appointed by Royal state Decree and Sub-Decree to declare their assets and sources of revenue no later than March 2011.^{xxii} Other important laws for the judiciary are in the drafting process: the Law on Organisation and Functioning of Courts and the Law on the Status of Judges and Prosecutors.^{xxiii} Last but not least, there has been an increase in access to justice through alternatives to the court system such as justice centres at the local level to settle small cases effectively and efficiently.^{xxiv}

3. Human Rights Treaties:

Cambodia has ratified or acceded to many important UN human rights conventions. It has demonstrated a commitment to the localisation of international law through ratification of OP-CEDAW, for example, after recommendation from UPR 2009 review, and also shown the state's willingness to apply the principles of the conventions in the near future through its signature of ICRMW, CRPD, and OP-CRPD.

With regard to the relation of municipal and international law, Cambodia is a dualist country that requires a ratification of international law signed by the head of the government (or representative) through an adoption of law (Royal Kram) by the legislative branch to make it effective in Cambodia. There are variations in opinion with regard to the hierarchy of international and national law in Cambodia.^{xxv} The first one is that there is equal rank of the Constitution and international law as recognised by Article 31(1) of the Constitution,^{xxvi} and the Cambodia Constitutional Council also affirmed that in adjudicating a case, the court must not only look at national but also other international laws recognised by Cambodia.^{xxvii} The second variation is that international law is hierarchically lower than the constitution.^{xxviii} The third, in rare circumstances, international laws can fill in the gap of a national law as stipulated in Article 60 of the Trademark Law^{xxix} and Article 33(1) of the law on Establishment of ECCC.^{xxx}

Instrument (Entry into force)	Signature	Ratification/ Accession (a) or Succession (d)	Reservation	Recognition of Specific Competence Treaty Bodies
ICERD (4 Jan 1969)	12 Apr 1966	28 Nov 1983	No	No individual complaint
ICCPR (23 Mar 1976)	17 Oct 1980	26 May 1992 a	No	No inter-state complaint
ICESCR (23 Mar 1976)	17 Oct 1980	26 May 1992 a	No	N/A
CEDAW (3 Sep 1981)	17 Oct 1980	15 Oct 1992 a	No	N/A
OP-CEDAW (22 Dec 2000)	11 Nov 2001	13 Oct 2010	No	Individual Complaint Inquiry Procedure
CAT (26 Jun 1987)	N/A	15 Oct 1992 a	No	No individual complaint No inter-state complaint No inquiry procedure
OP-CAT (22 Jun 2006)	14 Sep 2005	30 Mar 2007	No	Individual Complaint Inquiry Procedure
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
ICRMW (1 Jul 2003)	27 Sep 2004	No	N/A	N/A
CRPD (3 May 2008)	1 Oct 2007	No	N/A	N/A
OP-CRPD (3 May 2008)	1 Oct 2007	No	N/A	N/A
CPED (23 Dec 2010)	No	No	N/A	N/A

4. Interpretation and Use of the 'Rule of Law'

The concept of the Rule of Law is no longer a stranger to Cambodia after the upheaval in the 1970s and 1980s, and as the Samdech Prime Minister Hun Sen stated, “[I]t is only a gradual process that Cambodia must respect fundamental and common principles in the era of globalisation and interdependency, which includes Rule of Law”. Mr. Tep Darong^{xxxii} was in concurrence with the PM that Rule of Law started to develop in Cambodia in 1993 and has then become more mature.^{xxxiii}

“Rule of Law is a set of practices and institution that bring order to our society for the better good of all citizens”, the Prime Minister stated. Moreover, the concept also involves an application that disciplines exercise of rights and obligations and the exercise of authority’s power, the PM additionally stated.^{xxxiii}

As indicated in one nationally representative survey in 2007, the support of the Rule of Law^{xxxiv} was remarkably widespread in Cambodia, especially on the eve of Trial of Khmer Rouge leaders.^{xxxv} A political culture in which respect for the rule of law is already fairly well established in Cambodia, the article claimed.^{xxxvi} “Most Cambodians seem to view [...] rule of law as a positive and desirable political value, irrespective of the realities of corruption and lawlessness in Cambodian society”, wrote Gibson.^{xxxvii} An aspect of the Rule of Law that Cambodians value is holding the leaders of the former regime accountable for human rights violations.^{xxxviii}

The position of the government in relation to the Rule of Law was clearly stated:

“By judging the criminals in fair and open trials and by punishing those most responsible, the trials will strengthen our rule of law and set an example to people who disobey the law in Cambodia and to cruel regimes worldwide.”^{xxxix}

In regard to the Cambodian government’s understanding of the Rule of Law, the Prime Minister and Mr. Darong similarly stated in a publication that there are 3 main elements of the Rule of Law:^{xl}

1. Codification of law and its clear hierarchical order^{xli} in order to ensure rights and obligation.
2. The law must be known, understood, and supported by the vast majority.
3. The application of the law must be fair, effective, equitable, and predictable. In addition, there is a need of enforcement mechanisms such as police, justice department, etc.

Furthermore, the bold strategy of legal and judicial reform^{xlii} is also important for the achievement of Rule of Law. According to the World Bank, Rule of Law is one of the foremost elements of building good governance for a country^{xliii}, and the PM asserted that all the effort put in to good governance leads to the improvement of rule of law.^{xliv} The achievement was impressive but it needed further improvement and it needed to be quick, the PM acknowledged.^{xlv} The PM affirmed clear political will for the actualisation of the rule of law in the conclusion of his article:

“The road is arduous but we have no other [effective mean] or course to follow [in order to achieve the well-being of the citizens]”. It is difficult road, but there is no other course. Regardless of the difficulty and lack of resources (capacity and finance), there is a clear and firm political resolve.^{xvi}

While the government affirms its commitment to a robust understanding of the Rule of Law, commentators such as H.E. Keo Puth Reasmey^{xvii} and the H.E. Son Soubert^{xviii} agreed that the perception of the vast majority toward the rule of law is that there are many good laws, but the practice is another matter.^{xix} The perception of cases of judgment favouring the rich and the powerful due to rampant corruption is one of the main factors that can undermine public confidence in the rule of law.^l One such account specified two features of the Rule of Law:^{li}

1. Rule according to the wishes of the majority with the respect of the minority.
2. Existence of structures to provide services (welfare, education, and research watchdog) to educate people and to ensure civic and ethical consciousness.

On this view, international communities, citizens, and human rights and related NGOs play an important role in improving the Rule of law as it can be achieved through the education of free and critical minds, assurance of separation of power, promotion of free press, and the advancement of economic, social, and cultural rights.^{lii}

Last but not least, the commitment of the government toward rule of law can be partly reflected by looking at the allocation of national budget 2011 for the Ministry of Justice (Approximately USD 9 million = 0.82% of the allocated budget).^{liii}

Administration of Justice Grid

Indicator	Figure
No. of judges in country	<ul style="list-style-type: none"> Supreme Court: 16 Judges (2 Female) and 7 Prosecutors (1 Female) Appeal Court: 16 Judges (2 Female) and 9 Prosecutors First Instance Courts: 161 Judges and 76 Prosecutors <p>* According to the website of the Royal Academy for Judicial Profession, the total number of Judges is 396 in year 2011</p>
No. of lawyers in country (As of February 2011)	<ul style="list-style-type: none"> Practicing Lawyer: 594 (104 Female) Trainee Lawyer: 55 (7 Female) Non-Practicing lawyer due to the professional incompatibility: 33 (2 Female) Suspended lawyer: 36 (8 Female) Disbarred lawyer: 33 (6 Female) <p>Total: 751 (Female 127)</p>
Annual bar intake? Costs / fees?	<ul style="list-style-type: none"> 30-45 Lawyers per intake (44 in 2010) <p>Fee for training at Lawyer Training Center USD 800-1,000 (10th and 11th batch)</p> <p>*Note: Annual intake of trainees for Royal School of Judge is 55 judges per intake. A Judge is a public official, so once the applicants are accepted, they are not required to pay any money for the training, but receive a monthly salary of approximately USD 75</p>
Standard length of time for training/qualification	<ul style="list-style-type: none"> Qualification for Judge shall be based on completion of training at Royal School of Judge (RSJ). One of the two components for entrance exam of the RSJ is oral exam which consist of general knowledge about human rights, general concept 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 specialised training for another 4 months). Qualification for a registered lawyer shall be based on training at Lawyer Training Center or experience. The training for lawyers (4th) at Lawyer Training Center of 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	<ul style="list-style-type: none"> Currently there is no required continuing legal education for judges, yet through cooperation with foreign entities special trainings regarding the four recently promulgated major codes (civil code and procedure and criminal code and procedure) have been conducted, and training (in the near future) for special laws such as administrative law, labour, and juvenile justice law will be offered as well. Continuing legal education is not required. However, it is made possible through either periodical or sporadic workshop/conferences organised by Bar Association in conjunction with various partners such JICA, IBJ, etc.
Average length of time from arrest to trial (criminal)	<ul style="list-style-type: none"> The length is between 2-6 months and does not exceed 18 months, since without any acceptable justification, prosecutor and/or judge face a possible disciplinary sanction if found, by the Supreme Council of Magistracy, in violation of procedural law. More than one year for particular cases before ECCC (Case 001 and Case 002).

Average length of trials (from opening to judgment)

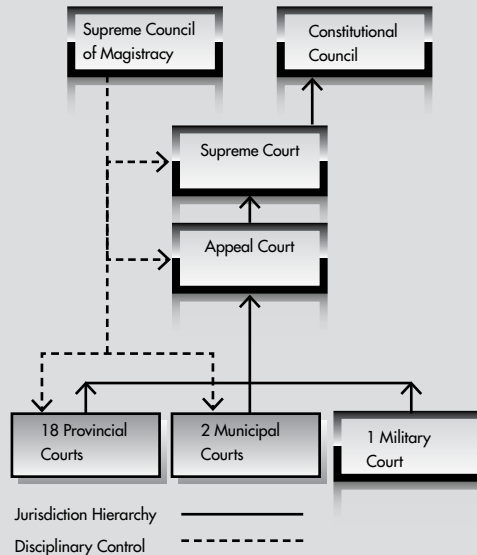
- The trial is very short as it is typically concluded within one day and the announcement of the judgment is on the same day of the trial. The average length varies according to the time limit for provisional detention.
- More than a year for cases before ECCC.

Accessibility of individual rulings to public

- In the past, it was close to impossible to get a copy of the judgment for a case, as the judgment would be delivered only to parties to the case. However, a request can be made, and the request will be forwarded by the registry to the president of the court. If a copy of judgment is given, the actual names or identity information will be erased. The copying fee is also an issue of access to court cases.
- The publication of judgments of the Supreme Court started in 2010 and is continuing in the year 2011. The system is still under development but the newly developed website of the Supreme Court manifests an intention to upload its decisions.

Appeals structure

(Source: ADB Judicial Independence Project, Court Organisational Charts, October 2003, p. 31. Note: As of 2011 there are 21 Provincial courts)



Cases before national human rights commission or other independent commissions (if applicable) NA

Complaints filed against police, judiciary or other state institutions (per year)? How many resolved? NA

A. Country's practice in applying 4 principles for rule of law for human rights

1. The government and its officials and agents are accountable under the law.

- a. Are the powers of the government defined and limited by a constitution or other fundamental law?

The power of the government, namely Legislative, Executive, and Judiciary are defined and limited by the Constitution. Article 51 clearly states the principle of separation of powers and the exercise of power by the people through the three branches of government.^{liv} Some examples of such principles would be autonomous budget,^{lv} internal rules for organisation and functioning of the legislative branch,^{lvi} stripping of parliamentary immunity,^{lvii} and declaration of war and emergency and its end.^{lviii} Nevertheless, as a country adopting a parliamentary system, members of the Cambodian parliament are not allowed to serve in any constitutional organ, except in the executive branch.^{lix} There are also some references to the check-and-balance principle in Chapter VII of the Constitution.^{lx}

However, only legislative branch's power^{lxi} is stipulated in detail whereas further details about the organisation and functioning of Executive^{lxii} and Judicial Powers^{lxiii} are stated in separate law. Furthermore, provisions regarding the judiciary deal with the roles and powers of the Judicial Branch (protection of rights and freedom of the citizen and exclusive power to adjudicate), basic principles (independence and Impartiality), empowerment of only the Supreme Council of Magistracy (SCM), to appoint, dismiss, take disciplinary actions against judges and prosecutors.

Although the provisions noted above establish the independence of the judiciary, in practice there have been a number of controversies over cases of alleged interference by the executive branch in the work of other branches.^{lxiv} One high-profile case where indirect interference was alleged involved the Prime Minister's disagreement toward further indictments beyond the 5 existing accused at the ECCC on the grounds of social stability.^{lxv} On the other hand there were also declarations of non-interference, for example during the past year when

the Prime Minister publicly announced that the government won't interfere in ongoing cases (e.g., Trial of Thais,^{lxvi} case against Mr. Hun Hean, former Anti-Narcotic Drug Police in Banteay Meanchey Province,^{lxvii} and case against leader of opposition party for uprooting markers along Vietnamese border and for posting a map on his party's website which the Supreme court says falsely alleges Vietnamese border encroachment^{lxviii}).

- b. Can the fundamental law may be amended or suspended only in accordance with the rules and procedures set forth in the fundamental law?

Revision or amendment of the Constitution can only be done in accordance with the rules and procedures set forth in the fundamental law. Chapter XV of the Constitution of the Kingdom of Cambodia prescribes rules governing effects, revisions, and amendments of the constitution. Particularly, Article 151(1) indicates who can initiate a revision or an amendment, and those people are the King, the Prime Minister, and the Chairman of the National Assembly at the suggestion of ¼ of all the assembly members. Moreover, revision or amendments shall be enacted by a Constitutional law passed by the National Assembly with a 2/3 majority vote^{lxix} and promulgated by the King after consultation with the Constitutional Council.^{lxx}

In addition to the strict rule of 2/3 majority vote, revisions or amendments are prohibited in cases such as during a state of emergency or amendments affecting the system of liberal, pluralistic democracy, and the regime of constitutional monarchy. No emergency decree has yet been enacted to waive or suspend provisions in the constitution. In contrast, in a state of emergency, the parliament cannot take a vacation but must meet every day continuously and can extend the mandate if such a state makes it impossible to hold election.^{lxxi} Most importantly, there is a prohibition against dissolving the national assembly during a state of emergency.^{lxxii}

In practice, however, there have been uncertainties over the amendment procedures, as where some commentators claimed that the constitutional law passed by national assembly in 2004 to promulgate the "Annex Constitution"^{lxxiii} violated the amendment procedure as it was not reviewed by the Constitutional Council.^{lxxiv} The Constitutional Council, on the other hand, declared itself

to be incompetent to review the law on the grounds that it was already adopted by the National Assembly^{lxv} and that the law on the "Annex Constitution" has an equal quality with the 1993 Constitution.^{lxvi}

- c. Are government officials and agents, including police and judicial officers, accountable under the law for official misconduct, including abuse of office for private gain, acts that exceed their authority, and violations of fundamental rights?

Various provisions of the Code of Criminal Procedure of 2007 stipulate that violating the procedures (search, seizure, arrest, investigation, provision of legal aid, adjudication, etc.), renders null and void of evidence collected or the judgment render against the procedures.^{lxvii} Further disciplinary sanctions are imposed on judicial police and prosecutors by the general prosecutor attached to the court of appeal,^{lxviii} and additionally there is imposition of disciplinary sanction against police, prosecutors, and judges by the Ministry of Interior and Ministry of Defense^{lxix} and Disciplinary Committee of Supreme Council of Magistracy^{lxx} respectively. Recently there has been a re-emphasis on dismissal in cases where a police official is involved in drug trafficking, possession of illegal weapons or "anarchically" firing military-issue weapons.^{lxxi} Another disciplinary action against the police official is removal from the post pending further investigation and court action.^{lxxii}

Furthermore, provisions of the Criminal Code 2009 list various aggravating circumstances, one of which is the circumstances of the perpetrator. If the perpetrator is a public official, the punishment to be imposed is higher than that of ordinary person. In addition to embezzlement and corruption, provisions apply to public officials and citizens entrusted with the Public Mandate through Elections who commit homicide, violence (assault and battery), rape, etc.^{lxxiii} As defined in Article 30 of the Code, they are punished regardless of the government entities they are working for, or their rank, remuneration, and age.^{lxxiv}

Since the establishment of the Anti-Corruption Unit, there has been a series of prosecutions against police, prosecutors, and other public servants leading to considerable public interest in the outcome of the hearing or trial.^{lxxv} The Anti-

Corruption Unit made its first arrest of a Pursat Provincial Court Prosecutor on 29 November 2010. He was charged with corruption, illegal detention of people, and extortion.^{lxxvi} Following that there were many incidents of complaints lodged such as corruption charges levelled against 30 Tax agents,^{lxxvii} accusations against commune officials of marriage graft,^{lxxviii} provincial officials in Kampong Thom province accused of taking bribes from illegal logging trade,^{lxxix} and corruption charges against a former Banteay Meanchey Provincial Police Chief who was allegedly involved in a drug trafficking case.^{xc}

2. Laws and procedure for arrest, detention and punishment are publicly available, lawful and not arbitrary; and preserve the fundamental rights to physical integrity, liberty and security of persons, and procedural fairness in law.

Although Cambodian laws, and especially Code of Criminal Procedure, do not devote a Chapter to enumerate the rights of accused persons are entitled to, they do specify provisions and procedures for arrest, detention, and punishment that seek to preserve fundamental rights to physical integrity, liberty, and security of person and procedural fairness.

- a. Are the criminal laws and procedures, including administrative rules that provide for preventative detention or otherwise have penal effect, published and widely accessible in a form that is up to date and available in all official languages?

Provisions against arbitrary detention are stipulated in the Code of Criminal Procedures and Criminal Code which include grounds for and prescribed length of arrest, pre-trial detention, and imprisonment.^{xci} In addition, legal aid provisions, in part, act against arbitrary detention.^{xcii} A legislative act will become effective in the capital city and the whole country. This code and other laws are published in an official gazette which is issued 8 times a month, and cost USD 1.25 (Approx.) per issue. The language of the official gazette is Khmer, and unofficial translation of some laws and regulations into English is usually done by development partners and civil society organisation, and is available on websites or in soft copy. Some donor agencies also support hardcopy printing of important laws such as the Constitution, land law, labour law, etc.^{xciii} The websites

of the legislative, executive, and judicial branches do not have a “complete database of laws”,^{xciv} Yet now there is a momentum to make related laws and other information public through various ministries and other public entities’ websites. The law compilation and dissemination effort is also undertaken by non-governmental entities (such as Bar Association of Cambodia, OHCHR, GTZ, etc.)^{xcv} and individuals (bloggers). All this effort has made previously inaccessible documents, including laws, more available in electronic/digital format.

- b. Are these laws accessible, understandable, non-retroactive, applied in a consistent and predictable way to everyone equally, including the government authorities, and consistent with the other applicable law?

In principles, the answer to these questions would be yes.^{xcvi} Citizens have limited access to law through the above mentioned sources (official gazette^{xcvii} and websites) but there are a number of initiatives underway to increase the accessibility of the law to the Cambodian public. Part of the difficulty for ordinary citizens to understand legal terminology is that although the laws are written in Khmer the root word is borrowed from Indian ancient languages such as Pali or Sanskrit. In response, there is an effort of the Council of Minister to compile a Legal Lexicon and to standardise legal terminology used in the Civil Code and Code of Civil Procedure.^{xcviii} Further there are a number of law talk shows hosted by both private and public TV stations.^{xcix} Moreover, NGOs contribute to raising legal awareness among professional as well as lay people, focusing on issues other than criminal law/deprivation of liberty such as land law, labour law, family and marriage, and other development issues.^c

The principle of non-retroactivity and its exceptions are embodied in the Criminal Code and Code of Criminal Procedure,^{ci} and like the international criminal law standards, there are provisions that allow retroactive application of law such as the application of new procedures for incidents occurring before the entry into force of the codes and the application of new criminal punishments that favours defendant.^{cii} The CCHR report in 2010 showed very good signs of non-retrospective application of law.^{ciii}

Some evaluations have argued that there is little transparency, accountability or even predictability in the functioning of the Cambodian legal system.^{civ} Although equality before the law is established in the law,^{cv} there are incidents of the contrary.^{cv} For example, it has been argued that the law regarding defamation and disinformation has been used selectively and in a biased manner against journalists, human rights activists and political leaders. One controversial case involved the lifting of the parliamentary immunity of three members of parliament from opposition parties so criminal charges could be brought against them for defamation and/or disinformation.^{cvi} Other sources have argued that legal provisions such as the Law on Anti-Trafficking and Draft Law on Drug Control have often been used to prosecute sex workers instead of traffickers and the drug dependent instead of drug dealers.^{cviii}

- c. Do these laws authorise administrative/preventative detention without charge or trial during or outside a genuine state of emergency?

The maximum time allowed for the police custody is up to 48 hours and can be extended only for another 24 hours upon a request to the prosecutor. The period starts from the moment when the suspect arrives at the police or military police station. An exception is applied, as a minor under 14 years old of age cannot be placed in police custody.^{cx} Cambodian laws also authorise extension of provisional detention or detention pending trial. However, there are time limits and reasons for such detention. Expiration of the time limit for provisional detention or failure by the investigating judge to substantiate grounds for detention will result in release of the charged person.^{cx} Articles in both Constitution and Code of Criminal Procedure re-emphasise the ICCPR principle for a speedy trial^{cx} and the regulations do not provide for any allowance for detention without charge or trial during or outside a genuine state of emergency. Instead, criminal action will be extinct at the expiration of statute of limitation of offense.^{cxii}

Contrarily, incidents of excessive detention have been reported, leading to over-crowding in the prison (See indicator III). For example, the CDP stated in a report that in some cases accused persons might be detained for a month more awaiting appeal by prosecutor after the time limit for pre-trial detention had expired and after being found not guilty [by the court of first instance].^{cxiii}

- d. Do these laws protect accused persons from arbitrary or extra-legal treatment or punishment, including inhumane treatment, torture, arbitrary arrest, detention without charge or trial and extra-judicial killing by the State? Is the right to habeas corpus limited in any circumstance?

Cambodia has ratified CAT, but has yet to establish the required independent national preventative mechanism.^{cxiv} In principle, Article 38(4) of Cambodian Constitution provides protection of accused persons from physical ill treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner. The perpetrator of such an act, regardless of being a public official, shall be punished according the current Criminal Code.^{cxv} Moreover, evidence extracted from illegal mean such as physical or mental force shall be nullified.^{cxvi} Furthermore, the Constitution instructs that any prosecution, arrest, or detention of any person may not be done except in accordance with the law.^{cxvii} Persons under police custody shall be either released by the Prosecutor upon expiration of the period of police custody or handed over to the prosecutor for any further prosecution.^{cxviii} A detainee may be released when there is no ground for detention, at the expiration of period of provisional detention and its extension, and upon request by charged person.^{cxix} Like any other rights stated in Articles 31-50 of the Constitution, the right to habeas corpus is limited in accordance with the law, but it is not clear whether a state of emergency can be a limitation since no emergency law or decree has been issued since the adoption of the Constitution in 1993 (even during more than one year of political deadlock from July 2003 – June 2004^{cx}).

While the laws prohibit the use of torture by the police to secure confessions from criminal suspects, some NGOs have reported that torture is widely practiced, and the CDP noted other instances of physical or mental tortures that are not perceived as torture.^{cxxi}

- e. Do these laws provide for the presumption of innocence?

The law presumes an accused innocent until proven guilty by the court of law and also provides that any doubt shall be decided by the judge in favour of the accused.^{cxii} One of the examples that the law presumes accused

persons innocent is the principle of provisional detention whereby only in exceptional case and in accordance with certain conditions where the charged person may be provisionally detained.^{cxiii} However, courts ordered provisional detention in 176 out of 199 cases, reported by CCHR.^{cxiv} The CCHR also reported judge's statements about accused could be perceived as indicating a presumption of guilt before the verdict was announced.^{cxv}

- f. Do all accused persons have prompt and regular access to legal counsel of their choosing and the right to be represented by such counsel at each significant stage of the proceedings, with the court assigning competent representation for accused persons who cannot afford to pay? Are accused persons informed, if they do not have legal assistance, of these rights?

The first source of legal assistance is the Cambodian Constitution, which states that "Every citizen shall enjoy the right to defense through judicial recourse".^{cxvi} The second source is the Code of Criminal Procedure which stipulates various stage and situations where the accused is informed of the right to legal assistance and where the presence of legal counsel is a prerequisite before any action taken by judicial officials (polices, prosecutors, and judges). Judicial officials are required^{cxvii} to inform the defendants of the right to counsel.^{cxviii} However, a suspect has right to counsel only 24 hours after being taken into police custody.^{cxix} While the law provides for the right to counsel, the CDP noted that no accused has access to legal counsel immediately after arrest, and that no private room is provided for a lawyer to meet the client.^{cxx} The CCHR tabled 64 out of 199 trials where there was no legal representation, including 5 out of 105 felony trials where legal representation is compulsory, that were not attended by any lawyers.^{cxxi}

The third source of the right to legal assistance is the Law on the Bar Association^{cxxii} and its Internal Regulations.^{cxxiii} Under these provisions all lawyers are obliged to provide legal aid.^{cxxiv} In addition, the poor^{cxxv} are entitled to free legal aid^{cxxvi} through funding, partially mobilised by a compulsory lawyers' membership fee.^{cxxvii} Defense lawyers are paid by the fund of the Bar Association of Cambodia according to specified procedures and at a rate determined on a year basis by the Bar Association

Council. Most importantly, there is a possible disciplinary proceeding against legal aid lawyers when they do not provide diligent services.^{cxviii}

A study in 2006 recognised those currently providing legal aid services in Cambodia consist entirely of lawyers working at NGOs, with the exception of services by BACK and pro bono initiatives by private lawyers.^{cxvix} In late 2006, a survey showed that Cambodians have limited knowledge of legal aid services and where to obtain them. They obtain referral legal aid services through local authorities. On the one hand, clients had financial difficulties to travel to and from legal aid's office to communicate physically with the lawyer. Furthermore, limited knowledge of the law hampers timely and effective legal aid intervention. On the other hand, legal aid service providers also face certain challenges in term of human resources, budget and financing for salaries and investigation expenses, as well as other trivial but important issues, such as IT-related equipment and texts of currently enforced laws.^{cxl} Due to the financial crisis, some branches of these NGOs have been closed or have had to move the offices as they cannot afford the rental fee.^{cxli} Relocation made it difficult for indigent clients to access legal aid services. Underfunding is one obstacle to effective legal aid, because it forces lawyers to generate more income to support their lives and families rather than focusing on the public defender job. The competence and professionalism of lawyers has also been questioned as contributing to ineffective legal aid in Cambodia.

- g. Do these laws guarantee accused persons the right to be informed of the precise charges against them in a timely manner, adequate time to prepare their defense and communicate with their legal counsel?

Accused persons have the right to be informed of the precise charge against them in the language that they understand.^{cxlii} Accused persons that are represented by lawyer are given 5 days in advance to examine case files before actual interrogation by investigating judge.^{cxliii} Moreover the accused is entitled to have a period of time to prepare for his defense.^{cxliv} Article 457 and 466 of Criminal Procedure stipulate a particularly adequate time that accused need to prepare for the case, which depends on the whereabouts of the accused.^{cxlv} Other provisions

regarding adequate time to prepare for defense are Article 304 (Procedure of immediate appearance before the court), Article 319 (Access to examine case file before the trail)^{cxlvi}; Article 322 (Placing witness outside the court room before testifying; Article 428 (Presentation of case file for examination which provides for free access to case file by lawyer); and Article 429 – Extension of time limit for writing brief).

In practice, virtually all of the accused persons were informed of the charges against them, as noted by CCHR.^{cxlvii} Some commentators have questioned whether all accused persons have enough time to prepare for defense as they or their lawyers received short notice for hearing (especially in substantive hearing of the merits).^{cxlviii} Last but not least, the guarantee for free communication between accused persons and legal counsel (without being listened to or recorded by others) is stipulated in Article 149 (Right of defense – during pre-trial detention).

- h. Do these laws guarantee accused persons the right to be tried without undue delay, tried in their presence, and to defend themselves in person and examine, or have their counsel examine, the witnesses and evidence against them?

Although without using the exact wording of “trial without undue delay”, the Code of Criminal Procedure empowers the Investigating Chamber to ensure that there is no undue delay in the implementation of any proceedings.^{cxlv} To emphasise a prohibition of undue delay, various provisions of the procedure use words “...without delay”, “...unnecessarily delay”, or “...immediately”. In an immediate proceeding, the criminal code instructs an announcement of judgment within 2 weeks of the accused person's appearance in court.^{cxli} In case the prosecutor orders an investigation instead of immediately proceeding, there is no time specification, but “within reasonable time”, set for the announcement of judgment.^{cxli}

Pre-trial/provisional detention provisions also guarantee principle of trial without undue delay. The duration and number of extensions of detention are specified according to types of crime and the age of the charged person.^{cxlii} Article 294 of the Code of Criminal Procedure also provides for an additional four months of detention in anticipation of a trial following the closing of an

investigation. 8 of 199 incidents monitored by CCHR were in violation of the procedure. Significantly, the majority of the cases enumerated by the CCHR as exceeding pre-trial detention, the term of detention surpassed the eventual length of sentence from less than a week to a year or even 2 years.^{cliii}

With regard to right of accused persons to examine witnesses and evidence against them, the Code of Criminal Procedure states that the Prosecutor summons the witnesses. However, the defense may also present to the hearing any witnesses who were not summoned by the Prosecutor and may request that the court hear them in the capacity of witnesses.^{cliv} In cases where the trial is conducted without the accused persons' presence, the Code allows opposition to a default judgment issued as result of trial in absentia.^{clv}

In practice, a court monitoring effort illustrated that almost all accused persons were given the opportunity to present evidence and examine evidence against them. The monitoring reports also noted, however, that witnesses were present in the courtroom even before testifying.^{clvi}

- i. Do these laws adequately provide for the right to appeal against conviction and/or sentence to a higher court according to law?

Appeals can be lodged, within the prescribed time, at the Court of Appeal^{clvii} and Supreme Court^{clviii} according to statutory procedures.^{clix} In a form of challenge to final judgment of court, which has the *res judicata* effect, the Code of Criminal Procedure also allows a Motion for Review to be lodged at Supreme Court in a plenary hearing.^{clx} The new Code of Criminal Procedure does not only provide a possibility to challenge the judgment of the trial judge but also decisions of investigating judges, i.e. provisional detention.^{clxi}

There may, however, raises practical obstacles to the exercise of the right of appeal. In February 2010, LICADHO issued a briefing paper about obstacles for appeal which include, *inter alia*, prison's means of transportation for long-distance travel to the only Appeal Court in Cambodia, lack of expenses for travel such as petroleum, lack of staff, lodging and other expenses for staff, etc.^{clxii} As a result, 540 inmates with appeal pending

in seven provincial prisons were at risk of not being able to attend the appeal, appeal in absentia.^{clxiii} These obstacles could also lead to ineffective defense and/or adequate time for preparation of the case as the accused might be transferred to the Court of Appeal on the day of the hearing,^{clxiv} the paper continued.^{clxv}

- j. Do these laws prohibit the use of coerced confessions as a form of evidence and do they guarantee the accused person's right to remain silent?

The Cambodian Constitution prohibits the use of coerced confessions as a form of evidence.^{clxvi} Additionally, provisions of the Rules of Evidence are included in the new Code of Criminal Procedure (2007). It presumes all evidence as admissible and the trial judges as the person who considers the value of the evidence following his intimate conviction.^{clxvii} However, certain types of evidences have no evidentiary value or are inadmissible. This includes evidence obtained through physical or mental duress and evidence emanating from communication between the accused and his lawyer.^{clxviii} The Code of Criminal Procedure also safeguards the accused persons' right to remain silent at the investigation and trial stage.^{clxix} Challenges remain in fully implementing these recent provisions. For example, a court monitoring effort by CCHR in 2010 suggested signs of extraction of confession through either coercion (threat) or torture (application of force).^{clxx} NGOs have also alleged that torture is an institutionalised practice during police custody due to lack of proper training for police, lack facilities for investigation, and impunity.^{clxxi}

- k. Do these laws prohibit persons from being tried or punished again for an offence for which they have already been finally convicted or acquitted?

The Code of Criminal Procedure clearly forbids trying or punishing a person for an offence for which they have already been finally convicted or acquitted (*Res Judicata*).^{clxxii} An exception to double jeopardy is in the case of motion for review.^{clxxiii} However general amnesty or pardon is not an obstacle for trying a person, especially in the case of most serious crime (crime against humanity, war crime, and genocide).^{clxxiv}

- I. Do these laws provide for the right to seek a timely and effective remedy before a competent court for violations of fundamental rights?

In general, the rights and freedom of Cambodian citizens are protected by the judiciary.^{cbxxv} The Cambodian Constitution and Criminal Code provide for a right to seek a remedy from a competent court (court at all level) for a complaint against public official.^{cbxxvi} Furthermore, any violation of fundamental rights by a private person shall be settled and remedied according to the Code of Criminal Procedure.^{cbxxvii} Imprisonment (maximum life imprisonment) and/or fine by the state are two types of remedies enforced by the state for any violation of fundamental rights by private or public persons.^{cbxxviii} Compensation for injury sustained by the victim of rights violations seeks to proportionally restore damaged or destroyed property to its original state.^{cbxxix}

In practice, incidents of ineffective remedies have been reported whereby perpetrators of human rights violations enjoyed impunity.^{cbxxx} Victims or their families were under threat not to resort to judicial recourse and persuaded/forced to accept monetary compensation.^{cbxxxi} It has also been reported that state authorities often seek compensation for victims of rape or sexual assault as an alternative to criminal prosecution, and that victims' access to court for civil remedies was hampered by fees imposed by court. Nevertheless, in such cases there are available alternatives to court proceedings, for instance the Arbitration Council^{cbxxxii} and Cadastral Commission.^{cbxxxiii}

3. The process by which the laws are enacted and enforced is accessible, fair, efficient, and equally applied.

- a. Are legislative proceedings held with timely notice and are open to the public?

Legislative proceedings or session must be in held public unless requested otherwise.^{cbxxxiv} The sessions are conducted twice a year with a period of 3 months for each session, and extraordinary sessions can also be convened. The agenda for the session is proposed by the Secretariat of the two houses and made known to the public.^{cbxxxv} In the past several years and up to now, there is a state-televised live session or debate of legislation

at both houses, National Assembly and Senate. There is little information about the written record of legislative sessions as to whether they are recorded or the record is made available to the public.

- b. Are official drafts of laws and transcripts or minutes of legislative proceedings made available to the public on a timely basis?

In the past several years, draft laws are treated with confidentiality. They are only circulated among government entities and NGOs involved in the consultation process. Only in recent years have some draft laws been circulated and reached the academic sphere (including students).^{cbxxxvi} Praise for consultative participatory dialogue between the civil societies and the government has been reported in the case of enactment of Law on Peaceful Demonstration.^{cbxxxvii} However, in the case of the Anti-Corruption Law and NGOs Law, there was not much consultation and little information was made known to the public, especially civil society groups.^{cbxxxviii} Later on, the government changed the stance to involve and take NGOs' recommendation into consideration.^{cbxxxix} Concerns were also raised about the lack of consultation and parliamentary debate in the case of the Law on Peaceful Demonstrations in October 2009, the Law on Expropriation in February 2010, and the Anti-Corruption Law in March 2010.^{cbxc}

- c. Are the thresholds for legal standing before courts clearly specified, not discriminatory and not unduly restrictive?

Standing before the law, especially in criminal proceedings is clearly defined.^{cbxci} In fact, the new Criminal Code (2009) allows some associations to assist victims in filling a complaint.^{cbxcii} In addition, the victim can be represented by the victim's successor (in case of death) or legal representative (in case of minor or adult under legal guardianship) and can file a civil complaint attached to the criminal action initiated by prosecutor.^{cbxciii} The Constitution also clearly mentions standing before the Constitutional Council. An ordinary citizen can request constitutional review of laws and other executive's regulation that affect their constitutional rights through representatives and through the Supreme Court.^{cbxciv} Any individual, legal representatives, groups, organisations, or association have standing before the committee of Human Right Protection and Reception of Complaint.^{cbxcv}

- d. Are judicial hearings and decisions public and made readily available to affected parties?

Trial hearings must be conducted in public except in case where public morals, public order, national security, or the privacy of relevant parties is at stake.^{ccxvi} Nevertheless, the announcement of the judgment must be in public,^{ccxvii} and the ruling part must be read aloud by the presiding judge in a public hearing session.^{ccxviii} A recent court monitoring of 199 trials^{ccxix} by CCHR indicated that the public was not obstructed from attending the trial, but notice of hearing on the public notice board occurred only in 5 trials.^{cc} In recent years, however, there have been efforts by courts, especially the Phnom Penh Municipal Court and Supreme Court, to make the information about trial schedules public via the notice board and court website.^{cci} Last but not least, an announcement of judgment is also required to inform the parties.^{ccii} Please see information regarding the publication of decisions at Section B: Justice Grid of this report.

- e. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law?

The laws provide for equal protection,^{cciii} but in practice it has been widely alleged that application of the laws favoured wealthy or powerful individuals.^{cciv} These cases particularly involve land disputes arising from economic land concession and other development projects^{ccv} leading to alleged forcible land eviction^{ccvi} and land grabbing.^{ccvii} The OHCHR has raised other equal protection issues such as those involving Khmer Krom Buddhist monks, government's dissidents,^{ccviii} equal payment and promotion for female employees,^{ccix} slow issuance of certificate of land title for indigenous group despite evidence of valid possession,^{ccx} etc.

- f. Do persons have equal and effective access to judicial institutions without being subjected to unreasonable fees or arbitrary administrative obstacles?

The victim in a criminal case is not required to pay any fee, but it is the responsibility of the state.^{ccxi} However, in civil disputes, the filing fee must be paid by the plaintiff and if the defendant loses, the defendant shall be responsible

for the court fee (paying the plaintiff a lump sum to cover the filing fee). Aside from fees associating with the preceding, by filling fee is calculated based on the value of the subject matter of the complaint. The minimum filing fee is USD 25 (approx.), and the maximum is USD 70 (approx.).^{ccxii} Concerns have been raised about the extraction of an "extra fee" by judicial officials, especially clerks, in order to support their low salaries.^{ccxiii} One report also cited the example of victims of human trafficking who were unable to bring civil suit against the perpetrator due to fees imposed by courts.^{ccxiv} The OHCHR has also reported lack of access to judicial institution due to fees imposed by courts in cases of rape and sexual assault against women.^{ccxv}

- g. Are the laws effectively, fairly and equally enforced? Are persons seeking access to justice provided proper assistance?

The issue of equality before law is discussed in Indicator II.2. Concerns have also been raised about unequal enforcement of laws regarding assembly, public demonstrations, disinformation, and defamation, depending on the political orientation of the demonstrators.^{ccxvi}

- h. Do the laws provide for adequate, effective and prompt reparation to victims of crime or human rights violations for harm suffered? Do these victims have access to relevant information concerning violations and reparation mechanisms?

The Human Rights and Complaints Reception Committees of the National Assembly and Senate of Cambodia as well as the executive branch's Cambodian Human Rights Committee are empowered to conduct investigations into human right violations, but they are enabled to effectively and promptly provide reparation to victims of human rights violation (i.e. victim of land eviction) or hold perpetrators accountable. These bodies have been claimed to be largely ineffective.^{ccxvii} Victims of human rights violation have often either asked for help from NGOs or important figures in the country such as members of Parliament, the Prime Minister, or the Human Rights Special Rapporteur.^{ccxviii}

- i. Do the laws provide for and do prosecutors, judges and judicial officers take measures to minimise the inconvenience to witnesses and victims (and their representatives), protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect their interests?

So far there is no mechanism other than Criminal Code which punishes perpetrators who cause inconvenience to witnesses, victims or civil parties, or that deals with safety concerns such as intimidation or retaliation toward victims, witnesses, and their families before and after there is a proceeding against the perpetrators. The punishment for the perpetrators who commit crimes against these persons involves aggravating circumstances depending on target.^{ccxix}

4. Justice is administered by competent, impartial and independent judiciary and justice institutions.

Obstacles to judicial independence include the possibility of politically motivated removal of judges as well as low wages for judges. Judges can be impartial only when they are able to make decisions on the basis of the evidence presented at trial, not based on outside threats, bribes, personal bias, financial interest, etc.^{ccxx} A need to reform of judiciary is acknowledged by the government^{ccxxi} and it has developed policy initiatives towards legal and judicial reform to ensure competency of judicial officials and the impartiality and independence of judiciary and justice institutions.^{ccxxii}

- a. Are prosecutors, judges and judicial officers appointed, re-appointed, promoted, assigned, disciplined and dismissed in a manner that fosters both independence and accountability?

Judge shall not be dismissed, but disciplinary action may be taken by the Supreme Council of Magistracy a body which also proposes to the King the appointment, transfer and removal of all judges and prosecutors in the country.^{ccxxiii} A report in October 2003 showed that before 1993, judges and prosecutors were appointed by

the Communist Party and had little legal education^{ccxxiv}. While the qualifications and training for judges has dramatically improved it has been alleged that political factors influence the selection and appointment of judges.^{ccxxv} Judges have no effective means of control over court clerks, who are appointed by the Ministry of Justice.^{ccxxvi}

- b. Do prosecutors, judges and judicial officers receive adequate training, resources, and compensation commensurate with their institutional responsibilities? What percentage of the State's budget is allocated for the judiciary and other principal justice institutions, such as the courts?

Training for Judicial officials is provided by government entities in cooperation with various donor agencies.^{ccxxvii} Prosecutors, judges, and judicial officers received a salary equal to that of government official. One source wrote that salary of the judge is in between USD 400 – 1,200 per month^{ccxxviii} or 8,400 – 48,000 per annum, which present much gap between judicial officials' salary at ordinary court and those of at ECCC.^{ccxxix} According to a report by ADB, the national budget (in 2000) devoted to judiciary is only 0.30%,^{ccxxx} and National Budget allocation for ministry of justice (in 2011) is approximately 0.82%,^{ccxxxi} which doesn't represent much difference from that of in 2000. ADB stated that such low remuneration didn't allow, especially judges, to maintain a minimally respectable standard of living roughly commensurate to their level of responsibilities and status.^{ccxxxii}

- c. Are judicial proceedings conducted in an impartial manner and free of improper influence by public officials or private corporations?

Under the Constitution the judicial power shall be an independent power to protect the rights and freedoms of citizens^{ccxxxiii} and it should not be given to legislative or executive branch.^{ccxxxiv} The impartiality and independence of judiciary is guaranteed by the King with assistance from the Supreme Council of Magistracy.^{ccxxxv} One may interpret the involvement of the Ministry of Justice in SCM as a possible interference^{ccxxxvi} with the independence of the judges, because the Minister of Justice is empowered by the law on SCM to draft a sub-decree on the appointment,

promotion, transfer, suspension, and dismissal of judges and prosecutors.^{ccxxvii} There is a proposal to have the Ministry of Justice perform the role of secretariat of the SCM, which includes assistance to Disciplinary Council of SCM in investigating the alleged misconduct of the judge or prosecutor.^{ccxxviii} In what seems to be an overlapping function, in September 2009, an assistance team to the Disciplinary Council of the SCM was created for the “effectiveness of disciplinary action” against misconduct by judges and prosecutors.^{ccxxix} Furthermore, the Minister of Justice is also authorised to issue a proclamation regarding the election of 3 judges as full members of SCM and another 3 judges as reserve members.^{ccxl} Most importantly, SCM doesn’t have autonomous budget approved by the legislature but its budget is a part of Ministry of Justice’s budget.^{ccxli}

Since the Law on Judge and Prosecutor is being drafted, the SCM issued a Code of Ethics for Judges and Prosecutors in 2007. The Code of Ethics is consistent with international standards of judicial independence and impartiality. The Council is headed by King, but he does not attend the meetings of the Council, but delegated the chairmanship to the President of the Senate. Such delegation is seen by civil society groups as violation of judicial independence and separation of power.^{ccxlii} In a recent report and analysis of impartiality and independence of judiciary, Prof. Surya P. Subedj^{ccxliii} offered 8 points, for consideration, regarding the current public confidence and problems associated with Cambodian judiciary.^{ccxliv}

In 2003, the ADB analysed two sources of pressure on the independence and impartiality of judges, which was based on appointment and disciplinary actions, budget and remuneration, court facilities and infrastructure, etc.^{ccxlv} In 2009, FIDH, LICADHO, CHRAC, and other NGOs jointly made a submission for the UPR of Cambodia (Joint Submission, JS3) that was highly critical of the judiciary in regard to independence and impartiality.^{ccxlvii}

- d. Are lawyers or representatives provided by the court to accused persons, witnesses and victims competent, adequately trained, and of sufficient number?

One may become a lawyer after completion of a 24 months training program at the Lawyer Training Center or fulfilment of the requirement of experience (2 years of legal experience with the bachelor of law degree) or receiving a doctoral degree in law.^{ccxlvii} The competency of legal aid lawyers is a subject that requires empirical assessment.^{ccxlviii} In regard to numbers, for a population of approximately 14 million, Cambodia has a total of less than 600 practicing lawyers. Nevertheless, it represents an increase in numbers, however slow.^{ccxlix} An evaluation by the Rule of Law Program indicated that there were simply too few lawyers in the country to defend in criminal prosecutions.^{cccl}

- e. Do legal procedures and courthouses ensure adequate access, safety and security for accused persons, prosecutors, judges and judicial officers before, during and after judicial, administrative, or other proceedings? Do they ensure the same for the public and all affected parties during the proceedings?

Safety and security for accused person, prosecutors, judges, and judicial officers are well provided in the cases before the ECCC, but it is less true in ordinary cases. A joint NGO submission for UPR Cambodia 2009 pointed to threats against human right defenders/activist^{cccli} and activists for other causes.^{cccli} The statistic of threat increased from one year to another for example 37 cases in 2006, 46 in 2007 and 52 in 2008. It also equally important to note that in the past a Judge was shot dead in a high profile case.^{ccclii}

B. ECCC's LEGACY FOR THE RULE OF LAW

1. Overview and Operation

The problems facing the Cambodian legal system were well known when the ECCC was created and were among the reasons for its establishment.^{ccliv} Impunity and lack of redress has increased frustration and resentment in victims, which has led to revenge killings. By providing aggrieved parties with a legitimate mechanism for pursuing justice, can stay the hand of vengeance, which will help pave the way for reconciliation. Additionally, the creation of a hybrid court partnering international and national lawyers and judges provides a forum for exchanging legal knowledge, skills and best practices, building the capacity of the legal profession in Cambodia and strengthening the rule of law.

The ECCC, the only internationalised criminal tribunal currently sitting in an ASEAN country, has a number of unique features which distinguish it from its counterparts that deal with mass atrocities in former Yugoslavia, Rwanda and Sierra Leone.

While formally part of the Cambodian court system, the ECCC has its own separate jurisdiction. It applies both international and domestic law, allows for the participation of victims as civil parties and has Chambers comprising national and international judges. The Trial Chamber is composed of five judges (3 Cambodian and 2 International) and the Supreme Court Chamber contains seven judges (4 Cambodian and 3 International). Every decision requires a "super-majority," meaning an affirmative vote of at least four out of five judges in Trial Chamber, and at least five out of seven judges in the Supreme Court Chamber. The existence of national and international staff purports to confer ownership to Cambodia in seeking its own justice, and allows Cambodian nationals to play a meaningful role in prosecuting and defending the suspects. While existing criminal procedure applies before the Court, if that procedure does not deal with a particular matter, or if there is a question regarding its consistency with international standards, guidance is sought in rules established at the international level.

The jurisdiction to try a defendant under national and international law is a significant innovation of the ECCC. The ECCC has jurisdiction over specific offences set out in the 1956 Cambodian Penal Code (murder, torture and religious persecution), as well as international crimes of genocide, crimes against humanity and grave breaches of the 1949 Geneva Conventions. The ECCC limits criminal liability to senior leaders of Khmer Rouge regime and those most responsible for the crimes committed.

The ECCC thus enhances the possibility of national reconciliation by enabling lower level cadres who were not personally responsible for the commitment of atrocities to distance themselves from their association with the CPK policies. Individual accountability of those most responsible for crimes also serves as a rehabilitative mechanism for victims and survivors of atrocities.

The ECCC issued its first verdict in July 2010, finding Kaing Guek Eav (alias "Duch"), a Khmer Rouge official, guilty of crimes against humanity and war crimes for his operation of the notorious Toul Sleng detention centre in Phnom Penh. The Trial Chamber's judgment is discussed in greater detail below.

Case 002, the second trial for four of the most senior surviving Khmer Rouge leaders, is scheduled to begin in mid-2011. On 15 September 2010, the Co-Investigating Judges indicted Nuon Chea, Ieng Sary, Khieu Samphan and Ieng Thirith for genocide, crimes against humanity, war crimes, and violations of the 1956 Cambodian Penal Code. Among the many positions they held, Nuon Chea was the Deputy Secretary of the CPK, Ieng Sary Minister for Foreign Affairs, Khieu Samphan the Chairman of the State Presidium, and Ieng Thirith the Minister for Social Affairs. While the ECCC has had many achievements since its establishment in 2006, it has faced setbacks. The tribunal is under great pressure to ensure due process and to administer justice quickly given the advanced age of the accused.

It also faces ongoing funding difficulties and has attracted several damaging accusations of corruption and unwarranted influence by the Royal Government of Cambodia.^{cclv} A recent example of alleged political interference in the proceedings the ECCC was the Cambodian government's public condemnation of any

further prosecutions beyond Case 002. Nevertheless, Cases 003 and 004 are currently under judicial investigation and civil party applications were lodged in early April 2011.

2. Rule of Law and the ECCC

Despite the criticisms and difficulties faced by the ECCC, it has made substantial progress in achieving justice for victims, a central principle for bolstering the rule of law in Cambodia (see central principle III above). The proceedings are conducted in a transparent public manner and are open to scrutiny by the press and civil society. The court complies with international fair trial principles, demonstrating the importance of the accused persons' right to a fair trial, in accordance with central principle II.

It is also the first international tribunal to provide for such comprehensive participation of victims in official criminal proceedings, which contributes to the healing of trauma and brings reconciliation to the country as a whole.

As such, the ECCC is making considerable progress in raising the expectations for the administration of justice in Cambodia's legal system through promoting increased transparency and accountability in its criminal and civil proceedings. Furthermore, ensuring that fair and rights-based procedure is followed will promote a desire among Cambodians for future legal reforms, encouraging fair and just procedure in domestic courts. Capturing the decisions and interpretations of the National Penal code upheld by the ECCC will also give national judges and lawyers a basis to litigate on rule of law issues in domestic courts. The ECCC further facilitates this process by producing jurisprudence of international standards on human rights in Khmer, which can easily be transposed into the Cambodian legal system.

In addition to helping address the lack of transparency and accountability within Cambodia's legal system, the ECCC can also be used to strengthen judicial capacity and resources in Cambodia. One of the major challenges confronting Cambodia is the lack of institutional and judicial capacity and expertise. In terms of strengthening judicial capacity, the hybrid nature of the ECCC provides an ideal environment to ensure that positive skills, practices, and knowledge from the ECCC are transferred to domestic

institutions through training, workshops, internships and roundtable discussions. National lawyers, prosecutors and judges can participate in these training programmes and utilise the skills, practice and knowledge they have gained at the ECCC when they return to domestic practice.

Since the ECCC was established in 2006, its judges and lawyers have litigated on a wide range of matters, including pre-trial detention, modes of criminal liability, requests to disqualify judges and jurisdiction. The legal professionals at the ECCC are therefore exposed to a breadth of ethical and procedural issues that are determined in line either with national law, international law, or both. As such, the ECCC provides an ideal environment to strengthen judicial capacity which will then feed into the national institutions. The ECCC also runs an internship programme providing national law students with an insight into the work of the ECCC, educating the younger generation of Cambodians about human rights violations suffered by the previous generation, and exposing them to the criminal justice process which holds the perpetrators accountable in fair and transparent proceedings.

Although the decisions coming out of the ECCC are made in the context of mass crimes, such as genocide and crimes against humanity, and as such will not be directly applicable to every-day litigation in Cambodia, the recording of the judges' interpretation of the provisions of domestic legislation will add much-needed persuasive value to the ability of national legal professionals when they litigate on these provisions in the domestic courts. The ECCC also strengthens the rule of law in Cambodia by involving victims as parties to the proceedings, ensuring that they are aware of the proceedings and providing them with collective reparations. The scope of victims' rights to participate in ECCC proceedings in Cambodia is wider than in any other international criminal tribunal.

Because the ECCC functions within the existing Cambodian court structure, the general Cambodian procedural rules regarding victim participation apply. During the Duch trial it became evident that the procedural rules relating to be civil party participation would have to be amended to promote greater efficiency in trial management, especially given the substantially higher volume of victims in the second case.

The disappointment expressed by some civil parties in the Duch trial, regarding their limited role in practice, demonstrates the need for pro-active outreach by the court to better prepare victims for future proceedings and to assist them with a broader understanding of the judicial process. In addition, the Court has committed to balance the limitations in the civil party process with a more robust mandate to support victims generally through non-judicial measures to be implemented by the ECCC Victims Support Section. By giving victims a voice and including them in the criminal justice process, the ECCC will help to increase the social demand for justice within the Cambodian population.

3. ECCC Judgments and Decisions

Duch Judgment

The former director of Tuol Sleng Security Centre (S21), Kaing Guek Eav, alias "Duch," was arrested by the Cambodian authorities in 1999 and kept in military detention without trial until his transfer to the ECCC in 2007. His trial at the ECCC commenced in early 2009 and closing statements were delivered in November 2009. During the trial, the court heard extensive testimony from Duch, as well as 33 witnesses and 22 civil parties at public hearings attended by approximately 28,000 visitors. On 26 July 2010, the Trial Chamber pronounced its judgment, finding Duch guilty of persecution as a crime against humanity and grave breaches of the Geneva Conventions. The Chamber imposed a sentence of 30 years of imprisonment (after a five year reduction in recognition of Duch's unlawful detention by the Cambodian authorities).

Given that he had already been detained for 11 years at the time of his conviction, Duch will serve only another 19 years, subject to the outcome of the appeal proceedings, which were in progress at the time of writing (April 2011). Both Duch and the Co-Prosecutors have appealed the Trial Chamber's judgment before the ECCC Supreme Court Chamber. Duch's defence team has argued on appeal that that Duch did not fall within the personal jurisdiction of the ECCC, as he was not a senior leader of the Khmer Rouge, and should therefore be released. The prosecutors have argued, among other things, that the Trial Chamber erred by subsuming individual crimes (including murder

and torture) under persecution as a crime against humanity and failing to sentence Duch to 40 years imprisonment as requested by the prosecution during the trial. The Supreme Court Chamber's decision will likely be announced in June 2011.

The Duch judgment represents a significant milestone in Cambodian and international criminal justice. The judgment and sentence reinforce the fundamental nature of due process by recognizing the illegality of Duch's pre-trial detention and reducing his sentence accordingly. The reduction of Duch's sentence augurs well for fair trials in Cambodia; for example in cases of detention related to land evictions.

In order for the Duch trial to positively affect the rule of law in Cambodia, it is crucial to gain the support of the Cambodian people. This can be achieved through conducting meaningful outreach and equipping the victims with a better understanding of the judgment and sentence which will help victims to accept the sentence and appreciate the judgment as having contributed to the nation's reconciliation.

It will also help to increase support and interest in the ECCC for the trial of the four senior leaders of the Khmer Rouge, due to commence in mid 2011. The guilty verdict is a significant first step forward at both the national and the international levels in terms of holding one of the perpetrators of the regime accountable for the crimes committed during the DK era, as well as providing a model for fair trials in Cambodia.

Not only will future prosecutions at the ECCC be informed by the results of Duch but the rulings on particular provisions of the domestic law, such as the statute of limitations and sentencing provisions, can be used by national judges and lawyers in the domestic courts in Cambodia going forward.

Decisions dealing with accusations of corruption

Allegations of corruption have been directed towards national judges at the ECCC, casting doubt on the legitimacy of the proceedings. This reflects poorly on judicial practices within Cambodia and the fact that bribes and political interference play a prominent role in the domestic criminal justice process.

Positively, investigating and litigating the corruption allegations and disqualification of judges request at the ECCC has enabled lawyers to confront the issue of corruption. In dismissing the request to disqualify Judge NEY Thol on the basis of corruption charges, the Pre-Trial Chamber responded by emphasizing that the ECCC “is a separate and independent court with no institutional connection to any other court in Cambodia”.^{cclvi}

These statements affirm the court’s impartiality and take a step forward toward ending impunity and, thereby strengthening the rule of law in Cambodia. In addressing these corruption allegations, the ECCC has also sent messages to the Supreme Council of Magistrates stressing the importance of competent and impartial Judges. Dismissing an application to disqualify Judge NIL Nonn, the Trial Chamber stated that:

“[W]here allegations of individual fitness to serve as a judge are entailed, recourse is instead to domestic mechanisms designed to uphold standards of judicial integrity within the Cambodian judiciary. The Chamber agrees that the allegations in the application must be taken seriously and emphasises the importance of a genuine commitment on the part of the Royal Government of Cambodia to develop further judicial capacity and thereby fully restore public confidence in the judiciary”.^{cclvii}

The Chamber also noted the ECCC’s role in strengthening the rule of law, declaring that the ECCC was “designed in part to reinforce measures intended to strengthen domestic judicial capacity in Cambodia”.

4. Legacy Projects

The most direct link between the work of the ECCC and the future integrity and effectiveness of the domestic legal system are ‘legacy’ projects being undertaken by the court and various NGOs. Broadly speaking, ‘legacy’ refers to “a hybrid tribunal’s lasting impact on bolstering the rule of law in a particular society... [T]he aim is for this to continue even after the work of the court is complete”.^{cclviii}

Legacy involves multifaceted programming that seeks to disseminate relevant rulings and decisions of the court to actors in the domestic legal system, provide training to law students and practitioners, and spreading the human

rights values upon which the tribunal rests. In order for the decisions and interpretations of National and International law to improve the capacity of national institutions in Cambodia, various organisations have created tools and training programmes to ensure that the ECCC has a lasting legacy in Cambodia. As discussed below, this has been done through the creation of practical tools aimed at carrying on the legacy of the ECCC in national institutions (e.g. practice manuals, annotation books). In order to understand how the ECCC impacts on the rule of law in Cambodia, one must be aware of the various legacy projects planned or already underway.

a. Archiving ECCC documents and judicial decisions

The ECCC can only manifest its modelling potential if there are mechanisms whereby ECCC documents and judicial decisions are disseminated to the Cambodian judiciary, legal practitioners, and Cambodian citizenry. As noted above, such access is currently virtually nonexistent in Cambodia.^{cclix} The ECCC serves a fundamental function of creating a judicial record of the atrocities committed for future generations of Cambodians and for the rest of the world. Several institutions are attempting to alter the status quo by creating archives of ECCC-generated jurisprudence.

The Virtual Tribunal (“VT”), is an online digital archive, research portal, interactive educational site, and public outreach tool for international criminal tribunals and human rights courts. The immediate aim of VT is to assist the legacy preservation of the ECCC by turning its vast records into a powerful educational tool for both domestic and international audiences. VT will also enhance the rule of law in Cambodia by providing public access to important judicial decisions that will have persuasive value in proceedings addressing related judicial matters. VT aims to recreate the live courtroom environment, with enhancements such as immediate access to relevant court records and exhibits, links to related civil society advocacy materials, and supplementary interview footage of trial participants sharing their own personal reflections on historically significant criminal proceedings. This multi-faceted design enables users, ranging from victims to scholars, to easily use the resources wherever they may be.

Also aiming to archive the products of the ECCC is the Documentation Center of Cambodia (“DC-Cam”), long revered for its invaluable archiving of primary source materials relating to the Khmer Rouge, including documents and photographs. DC-Cam is currently establishing a permanent centre, the Sleuk Rith Institute, which will serve as a permanent documentation centre and include a research and training institute, library, museum, and press archive.^{cclx} Though its focus will not be exclusively on the ECCC’s jurisprudence, the process and outcome of the trials will factor heavily in the Institute’s substantive focus.

Both Virtual Tribunal and the Sleuk Rith Institute seek to be more than static archives where the onus is on users to find value in the materials stored within. The mission of each involves substantial educational programming to ensure that the ECCC’s documents and decisions are comprehensible and relevant for users.

b. Capacity-building training

Another way in which the decisions and best practices from the ECCC are preserved and passed on to legal practitioners in Cambodia is through educational initiatives. A number of organisations are currently conducting trainings, seminars and courses to ensure that the training value of the court is not lost.

Possibly the greatest proponent and organiser of legal education initiatives related to the ECCC is the United Nations’ Office of the High Commissioner of Human Rights (OHCHR) Cambodia Office. From hosting judicial roundtables with lawyers from the ECCC and national sector to discuss best practices, to hosting legal study tours from national sector judges at the ECCC, facilitating legal dialogue for practitioners and a instigating a lecture series for law students, OHCHR is attempting to support and facilitate the sharing by ECCC judges and legal professionals of their knowledge, skills and experience with individuals working in, or in the process of entering, the domestic legal system.

Various offices within the ECCC itself are also participating in the educational aspects of its legacy by conducting training.

Recognising that the future of the domestic legal system will be served by not only investing in current Cambodian lawyers, organisations have also created educational opportunities for law students and, in some cases, for high school students. For example, DC-Cam conducted a one-week training after the publication of the Duch verdict, geared towards law students and discussing the international and domestic laws relevant to Duch’s case. It plans to host another training at the commencement of trial for Case 002. The English Language Based Bachelor of Law Program at Royal University of Law and Economics (RULE) has formed strategic partnerships at the ECCC to place students in internships and fellowships, bring ECCC lawyers to the university to guest lecture, and confer the responsibility of coaching the international law moot court team to international lawyers from the ECCC.

c. Creation of educational materials

In the same educational vein, the OHCHR is contributing to the rule of law by creating A Practitioner’s Guide to the Cambodian Code of Criminal Procedure. Currently in creation, the handbook will annotate the provisions of the Cambodian Code of Criminal Procedure (CCPC) with the decisions, interpretations, orders and practices of the ECCC. It is intended to assist the Cambodian legal community to understand, apply and develop the CCPC and, in doing so, strengthen the rule of law in Cambodia.^{cclxi}

5. Conclusion

By setting standards for procedural fairness subject to international scrutiny and building capacity amongst Cambodian legal professionals, the ECCC has the potential to leave a profound and positive legacy on the Cambodian legal system. Various organisations, including the ECCC itself, have designed practical measures to ensure that its work has a meaningful and practical effect on Cambodian society as a whole. These include practical annotated versions of the National Penal Code incorporating ECCC interpretations of its provisions, judicial capacity trainings, National ECCC Internships and archiving programmes. The existence of the ECCC and the initiatives created to ensure its legacy act as a building block in developing a fairer and more effective legal process in Cambodia.

Endnotes

- i. PHUN Vidjia, Director of PUC Legal Clinic and Law lecturer, Paññāsāstra University of Cambodia (PUC). Jennifer Holligan from Royal University of Law & Economics Cambodia and Singapore Management University.
- ii. Most Statistics and Information are extracted from CIA, The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html> (last visited Mar. 12, 2011).
- iii. Cambodia CONST. (Sep. 24, 1993), Ch. I, Art. 1.
- iv. A comprehensive set of Civil and Political Rights and Social, Economics, and Cultural Rights are stated in Cambodia CONST (Sep. 24, 1993), Ch. III, Art. 31-50 and Ch. V-VI.
- v. ASEAN, ASEAN Intergovernmental Commission on Human Rights (AICHR), <http://www.aseansec.org/22769.htm> (last visited Mar. 12, 2011).
- vi. Cambodia CONST. (Sep. 24, 1993), Ch. III, Art. 31(1).
- vii. The power of Special Representative of the Secretary General for human rights in Cambodia was weakened by a change of mandate to a Special Rapporteur mandate as claimed by a Joint submission on Freedom of Expression for UPR Cambodia 2009 (JS2 coordinated by Alliance for Freedom of Expression in Cambodia), at p. 3, ¶ 13.
- viii. Cambodian lodged a formal complaint against the Special Representative. Critics said the government was not happy with blatant assessment of the human rights situation in Cambodia. In few months before his mandate ended (2008), the Special Representative forced to resign in September 2008. See UNHCR, Cambodia: Concern over UN Human Rights Role, Oct. 30, 2008, <http://www.unhcr.org/refworld/country,,,KHM,,,490ad4d4c,0.html> (last visited Mar. 12, 2011).
- ix. See OHCHR – Cambodia Country Office, Reports, <http://cambodia.ohchr.org/EN/PagesFiles/ReportIndex.htm> (last visited Mar. 12, 2011). The government extended the mandate of OHCHR-Cambodia country in January 2010 for two more years, but subsequently threatened to close the OHCHR-Cambodia Country Office at the end of this extension. See Human Rights Watch, Cambodia: Closure of UN Office Threatens Rights Efforts, Oct. 29, 2010, <http://www.hrw.org/en/news/2010/10/29/cambodia-closure-un-office-threatens-rights-efforts> (last visited Mar. 12, 2011).
- x. U.N. GAOR, HRC, 13th Sess., Agenda Item 6, at 3, ¶ 5, U.N. Doc. A/HRC/13/4 (2010), available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KH/JS3_KHM_UPR_SO6_2009_JointSubmission3.pdf (last visited Mar. 12, 2011).
- xi. Universal Periodic Review, Response to Recommendation: Cambodia, available at http://www.upr-info.org/IMG/pdf/Recommendations_to_Cambodia_2009.pdf (last visited Mar. 12, 2011).
- xii. Cambodia CONST. (Sep. 24, 1993), Ch. III, Article 39; Ch. VII, Art. 80(2-3); Ch. VIII, Art. 104(2-3); and Ch. XI, Art. 133 and 134(4) and provisions of Criminal Code 2009, Criminal Procedure 2007, Anti-Corruption Law 2010, and a set of Administrative Laws (adopted between 2008-2009).
- xiii. See Snapshot box, “historical background”.
- xiv. CHRAC, however, stated that progress on the reform is slow and insubstantial. See U.N. GAOR, HRC, 6th Sess., at 5, ¶ 24, UN Doc. A/HRC/WG.6/6/KHM/3 (2009), available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KH/A_HRC_WG6_6_KHM_2_E.pdf (last visited Mar. 12, 2011).
- xv. Five years after the adoption of 1993 Constitution, the Council was created in 1998 (see Law on Organizing and Functioning of SCM) and came into operation in 2000.
- xvi. Triangular Strategy, available in general at http://www.cdc-crdp.gov.kh/cdc/socio_conomic/introduction.htm (last visited Mar. 12, 2011); Rectangular Strategy Phase I, available at http://www.cdc-crdp.gov.kh/cdc/7cg_meeting/position_paper_eng2004/7cg_default.htm or http://www.ilo.org/wcmsp5/groups/public/-asia/-ro-bangkok/documents/genericdocument/wcms_100515.pdf (last visited Mar. 12, 2011); and Rectangular Strategy Phase II, available at http://www.aideffectiveness.org/media/k2/attachments/Rectangular_Strategy_Phase_II_1.pdf (last visited Mar. 12, 2011).
- xvii. See e.g. The Cambodian Government in Report to the Human Rights Committee in 1993 (ICCPR/C/81/Add.12, 23 September 1998), E9/6.8, ERN (Fr) 00333208, para. 212; Report of United Nations Secretary-General for Human Rights, Mr. Michael Kirby (Australia) to the Commission on Human Rights, Cambodia Human Rights in 1994, E/CN.4/1994/73, E9/6.6, ERN (Fr) 00333197, 00333198, paras 137, 155

- xviii. See http://www.un.org.kh/index.php?option=com_content&view=article&id=330:united-nations-special-rapporteur-on-the-situation-of-human-rights-in-cambodia-statement&catid=44:un-speeches-and-statements&Itemid=77
- xix. "ECCC Agreement," at <http://www.eccc.gov.kh/en/tags/topic/80> (last accessed 11 April 2011).
- xx. It is claimed that Anti-Corruption Unit possibly cannot perform its function independently and without any bias when there is no exclusion of party-affiliation as one of criteria for president and vice-president candidacy. Moreover, the president and vice-president are not elected, but nominated by the Prime Minister and approved by the King. Also, it is placed under supervision of a body National Council for Anti-Corruption, whose membership criteria does not exclude affiliation with any political party and given a role to report to the Prime Minister, and whose annual budget is a part of Council of Minister's annual budget approved by the legislature. See Law on Anti-Corruption (March 2003), Art. 6(3), 10(2), and 16.
- xxi. *Id.* at Art. 21.
- xxii. *Id.* at Art. 17-19. See also Chun Sakada, Official Begin Asset Declaration to Counter Corruption, VOA News, Jan. 14, 2011, <http://www.voanews.com/khmer-english/news/Officials-Begin-Asset-Declaration-to-Counter-Corruption-113602619.html> (last visited Mar. 12, 2011) and DAP-News, Cambodia's Anti-Corruption Unit Urges Officials to Claim Assets, Jul. 14, 2010, <http://www.dap-news.com/en/news/923-story-cambodias-anti-corruption-unit-urges-officials-to-claim-assets.html> (last visited Mar. 12, 2011).
- xxiii. U.N. GAOR, HRC, 6th Sess., *Supra* note xiv, at 2, ¶4.
- xxiv. Chun Sakada, Cambodia Hope to Expand Alternative Justice Centers, VOA News, Dec. 15, 2010, <http://www.voanews.com/khmer-english/news/Cambodia-Hopes-to-Expand-Alternative-Justice-Centers-111921724.html> (last visited Mar. 12, 2011). For larger picture of ADR project in Cambodia, please see UNDP, Access to Justice: Project ID # 00048421, last updated Oct. 2010, http://www.un.org.kh/undp/what-we-do/projects/access-to-justice-project?app_id=17 (last visited Mar. 12, 2011).
- xxv. Tep Darong, Cambodia and the Rule of Law, in Konrad Adenauer Stiftung, 5 Democratic Development: Occasional Paper 21, 23-24 (Jan. 2009).
- xxvi. Cambodia CONST. (Sep. 24, 1993), Ch. III, Art. 31(1) "The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women's and children's rights".
- xxvii. Constitutionality of the Article 8 of the Law on the Aggravating Circumstances of Felonies, No. 131/003/2007, Constitutional Council, Jun. 27, 2007, available at http://www.ccc.gov.kh/english/dec/2007/dec_003.html (last visited Mar. 12, 2011).
- xxviii. See Cambodia CONST. (Sep. 24, 1993), Ch. II, Art. 26; Ch. IV, Art. 55; Ch. VII, Art. 90(5); and Ch. XV, Art. 150.
- xxix. Trademark Law (Jan. 8, 2002), available at GoCambodia.com, Trademark Law, <http://www.gocambodia.com/laws/copyright.asp> (last visited Mar. 12, 2011).
- xxx. Law on Establishment of ECCC (Oct. 27, 2004), available at Extraordinary Chambers in the Courts of Cambodia (ECCC), Law on Establishment of ECCC, <http://www.eccc.gov.kh/english/law.list.aspx> (last visited Mar. 12, 2011).
- xxxi. President of the Royal Academy for Judicial Profession.
- xxxii. Tep Darong, *Supra* note xxv, at 21.
- xxxiii. Hun Sen, Rule of Law in Cambodia, in Konrad Adenauer Stiftung, 5 Democratic Development: Occasional Paper 9, 9 (Jan. 2009).
- xxxiv. James L. Gibson et al., Cambodia's Support of the Rule of Law on the Eve of the Khmer Rouge Trials, 4 IJTJ 377, 388 (2010), available at <http://ijtj.oxfordjournals.org/content/4/3/377.full.pdf+html> (last visited Mar. 12, 2011).
- xxxv. *Id.*, pp. 385-396.
- xxxvi. *Id.*, p. 395.
- xxxvii. *Id.*, p. 389.
- xxxviii. *Id.*, p. 390.
- xxxix. *Id.*, p. 378.
- xl. The 3 main elements are elaborated more in Hun Sen, *Supra* note xxxiii, at 10-11.
- xli. Tep Darong, *Supra* note xxv, at 25-26.

- xlii. The strategy was approved by the government on 29 April 2005. Judicial and legal reform effort of the government, including legal aid, are assisted by foreign donors such USAID, ABA, EWWMI (an implementing agency), UNDP (Access to Justice), ADB, (Access to Justice), JICA and French Agency (Legislative drafting and general judicial reform), AUSAID (criminal justice reform); World Bank (legal and judicial reform); etc. See in general Council for Administrative Reform, http://www.car.gov.kh/document/gap/gapll/legal_judicial_reform_en.asp; and http://www.car.gov.kh/document/gap/gapl/areas_actions_en.asp; LICADHO, Briefing Paper: Legal and Judicial Reform in Cambodia, available at <http://www.licadho-cambodia.org/reports/files/79LICADHOLegalJudicialReformPaper06.pdf>; and Cambodia Criminal Justice Assistance Project at <http://www.ccjap.org.kh/> (last visited Mar. 12, 2011).
- xliii. According to the paper, there are 6 elements of Rule of Law, 1) Voice and Accountability, 2) Political Stability and Absence of Violence, 3) Government Effectiveness, 4) Regulatory Quality, 5) Rule of Law, and 6) Control of Corruption.
- xliv. Hun Sen, *Supra* note xxxiii, at 10-12.
- xlv. *Id.*, p. 12.
- xlvi. *Id.*, pp. 10-11.
- xlvii. Then a President of FUNCINPEC Party.
- xlviii. Then a member of the Constitutional Council.
- xlix. Keo Puth Reasmey, *The Rule of Law in Cambodia in the 21st Century*, in Konrad Adenauer Stiftung, *5 Democratic Development: Occasional Paper 13*, 13-14 (Jan. 2009) and Son Soubert, *The Rule of Law in Cambodia in the 21st Century*, in Konrad Adenauer Stiftung, *5 Democratic Development: Occasional Paper 15*, 15 (Jan. 2009).
- I. Cambodia ranked 154 out of 178 in 2010 and 158 out of 180 in 2009 by Transparency International. See Transparency International, *Corruption Perceptions Index*, http://www.transparency.org/policy_research/surveys_indices/cpi (last visited Mar. 12, 2011).
- li. Son Soubert, *The Rule of Law in Cambodia in the 21st Century*, in Konrad Adenauer Stiftung, *5 Democratic Development: Occasional Paper 15*, 15-16 (Jan. 2009).
- lii. *Id.*, pp. 16-19.
- liii. Education, defense, health, social affairs, and agriculture are prioritized. See Vong Sokheng, *National Budget Approved*, *The Phnom Penh Post*, Nov. 29, 2010, p. 3 and *Cambodia Review*, *Cambodian National Budget for 2011 Approved by NA*, *Cambodian Economy Reviews*, Nov.29, 2010, <http://khmerian.com/cambodia%E2%80%99s-national-budget-for-2011-approved-by-na/> (last visited Mar. 12, 2011).
- liv. Cambodia CONST. (Sep. 24, 1993), Ch. VII, Art. 90 & Ch. VIII, Art. 99.
- lv. Cambodia CONST. (Sep. 24, 1993), Ch. VII, Art. 81 & Ch. VIII, Art. 105.
- lvi. Cambodia CONST. (Sep. 24, 1993), Ch. VIII, Art. 94, 95, 114, & 115.
- lvii. Cambodia CONST. (Sep. 24, 1993), Ch. VII, Art. 80 & Ch. VIII, Art. 104.
- lviii. Cambodia CONST. (Sep. 24, 1993), Ch. II, Art. 22 & 24; Ch. VII, Art. 86 & 90; and Ch. VIII, Art. 102.
- lix. Cambodia CONST. (Sep. 24, 1993), Ch. VII, Art. 79.
- lx. Few examples would be 1) dissolution of the National Assembly by king with the request of the Prime Minister and approval by Chairman of National Assembly in case that executive branch is dissolved twice through vote of no-confidence within a period of twelve months (Article 78). Yet, dissolution of National Assembly during state of emergency is prohibited (Article 86); 2) Approval of National Budget and the like, Treaties or International Convention, Law on Declaration of War; and 3) Motion by the legislative branch against the member of Council of Minister, explanatory reply by member of Council of Minister to legislative branch (in oral or in writing), and question and answer session (invitation by legislative branch to member of Council of Minister).
- lxi. Cambodia CONST. (Sep. 24, 1993), Ch. VII & Ch. VIII, Art. 76-115.
- lxii. Cambodia CONST. (Sep. 24, 1993), Ch. X, Art. 118-127 and Law on Organization and Functioning of Council of Minister (1994).
- lxiii. Cambodia CONST. (Sep. 24, 1993), Ch. XI, Art. 128-135; Law on Organization of the Court (1994); and Law on Law on the Organization and Activities of the Adjudicative Courts of the State of Cambodia (SOC Law 1993).
- lxiv. Interference of judiciary by executive branch was once reported in ADB report in which in December 2000 hundreds of people were re-arrested when the Prime Minister issued an order for the arrest of all suspects and prisoners previously released

- on bail or acquitted by the courts. This act suggests that the government itself does not have confidence in the judicial system. See ADB, Judicial Independent Project, Judicial Independence Overview and Country Level Summaries, Oct. 2003, p. 51.
- lxv. Sok Khemara, Donors, UN Weak against Tribunal Interference: Court Monitor, VOA News, Dec. 9, 2010, <http://www.voanews.com/khmer-english/news/Donors-UN-Weak-Against-Tribunal-Interference-Court-Monitor-111597604.html> (last visited Mar. 12, 2011).
- lxvi. Apsara, 2 Thais Accused of Spying a Cambodian Military Unit are being Questioned by Investigating Judge, Koh Santepheap Daily, Jan. 12, 2011, <http://www.kohsantepheapdaily.com.kh/article/20110111-19484.html> (Khmer) (last visited Mar. 12, 2011); Apsara, Thai Newly Appointed Border Officer Visited Cambodia while Court Questioning 2 Thais, Koh Santepheap Daily, Jan. 12, 2011, <http://www.kohsantepheapdaily.com.kh/article/2011z0111-201356.html> (Khmer) (last visited Mar. 12, 2011); and Apsara, Samdech Decho: No One or Any Foreigner Interfere Court's Action [Arrest of Thais], Koh Santepheap Daily, Jan. 11, 2011, <http://www.kohsantepheapdaily.com.kh/article/20110110-19409.html> (Khmer) (last visited Mar. 12, 2011).
- lxvii. Please see Apsara, [Transfer of Banteay Meanchey Police Officers to Anti-Corruption Unit for Legal Action], Koh Santepheap Daily, Jan. 11, 2011, <http://www.kohsantepheapdaily.com.kh/article/20110111-041756.html> (Khmer) (last visited Mar. 12, 2011) and Apsara, [Civil Society Supports the Arrest of Corrupt Officials by Anti-Corruption Unit], Koh Santepheap Daily, Jan. 14, 2011, <http://www.kohsantepheapdaily.com.kh/article/20110113-194954.html> (Khmer) (last visited Mar. 12, 2011). An unspecified source claimed that Mr. Hun Hean is a cousin of Prime Minister Hun Sen, a claim that the PM denied.
- lxviii. Sok Khemara, Parliamentary Group Seeks Solution to Sam Rainsy Cases, VOA News, Oct. 14, 2010, <http://www.voanews.com/khmer-english/news/Parliamentary-Group-Seeks-Solution-to-Sam-Rainsy-Cases-104943589.html> (last revised Mar. 12, 2011).
- lxix. Cambodia CONST. (Sep. 24, 1993), Ch. XV, Art. 151(2).
- lxx. Cambodia CONST. (Sep. 24, 1993), Ch. XII, Art. 141.
- lxxi. Cambodia CONST. (Sep. 24, 1993), Ch. XII, Art. 141.
- lxxii. Cambodia CONST. (Sep. 24, 1993), Ch. VII, Art. 86.
- lxxiii. The translation version of the decision regarding this matter is "Additional Constitution". See Cambodia Constitutional Council, Case No. 082/005/2004, available at http://www.ccc.gov.kh/english/dec/2004/dec_002.html, (last visited Mar. 12, 2011).
- lxxiv. Son Soubert, *Supra* note li, at 15.
- lxxv. According to Articles 136(1), 140(1), and 141(1), the Constitutional Council has the power to review constitutionality of a law before and after its promulgation by the head of state.
- lxxvi. See a Decision of the Constitutional Council, *Supra* note lxxiii. One of the objectives of the Additional Constitution is to guarantee regular functioning of the National Institutions, an objective that stemmed from a political deadlock in 2003 when the winning party cannot secure a two-third majority either through the vote or coalition. Please see the background information here BBC News, Time Line: Cambodia, last updated Feb. 7, 2011, http://news.bbc.co.uk/2/hi/asia-pacific/country_profiles/1244006.stm and Xinhua, Chronology of Forming Cambodia's New Government Since Election in 2003, n.d., available at http://english.peopledaily.com.cn/200407/16/print20040716_149826.html (last visited Mar. 12, 2011).
- lxxvii. Code of Criminal Procedure (CCP 2007), Art. 44, 69, 109, 117, and 252.
- lxxviii. CCP (2007), Art. 59.
- lxxix. CCP (2007), Art. 64, 65, 79, and 80.
- lxxx. Law on Supreme Council of Magistracy, Art. 12 and Art. 7-16.
- lxxxi. Sen David & Phak Seangly, Military Commander Issues Gun Warning, available, Phnom Penh Post, Jan. 12, 2011, available at <http://www.phnompenhpost.com/index.php/2011011246020/National-news/military-commander-issues-gun-warning.html>, (last visited Mar. 12, 2011).
- lxxxii. Sen David & Phak Seangly, Police Chief Removed Pending Graft Probe, Phnom Penh Post, Jan. 9, 2011, available at <http://www.phnompenhpost.com/index.php/2011010945959/National-news/police-chief-removed-pending-graft-probe.html> (last visited Mar. 12, 2011).
- lxxxiii. See Cambodian Criminal Code (CC 2010), Art. 30 for the definition of these titles. See CC (2010), Art. 204, for example, for the punishment for any public official who commit homicide.

- lxxxiv. See also section B: Key Rule of Law Structure for more articles concerning the accountability of public officials before the laws. There is, however, no available database of government officials being held accountable by judiciary (court at any level) for violation of a law.
- lxxxv. Corruption related crimes are mentioned in Law on Anti-Corruption (2010), Art. 32-44.
- lxxxvi. Sen David & Phak Seangly, Anti Corruption Unit Nabs First Suspects, Phnom Penh Post, Nov. 29, 2010, available at <http://www.phnompenhpost.com/index.php/2010112945041/National-news/anticorruption-unit-nabs-first-suspects.html> (last visited Mar. 12, 2011) and Mom Kunthea, ACU Charges Pursat Prosecutor, Phnom Penh Post, Nov. 30, 2011, available at <http://khmernz.blogspot.com/2010/12/acu-charges-pursat-prosecutor.html> (last visited Mar. 12, 2011). The possible punishment is 20 years imprisonment, please see, Officials face 20 Years: ACU, Phnom Penh Post, Dec. 2, 2010, p. 6.
- lxxxvii. Chun Sakada, 30 Tax Agents to Face Corruption Charges, VOA News, Dec. 1, 2010, <http://www.voanews.com/khmer-english/news/30-Tax-Agents-To-Face-Corruption-Charges-11114219.html> (last visited Mar. 12, 2011).
- lxxxviii. Chun Sakada, Anti-Corruption Group Accuses Official of Marriage Graft, VOA News, Dec. 9, 2010, <http://www.voanews.com/khmerenglish/news/Anti-Corruption-Group-Accuses-Officials-of-Marriage-Graft-111593629.html> (last visited Mar. 12, 2011).
- lxxxix. Vong Sokheng, Provincial Official in Graft Warning, Phnom Penh Post, Jan. 2, 2011, available at <http://www.cam111.com/photonews/2011/01/03/69419.html> (last visited Mar. 12, 2011).
- xc. Chun Sakada, Corruption Charges Leveled at Detained Police, Official, VOA News, Jan. 17, 2011, <http://www.voanews.com/khmer-english/news/Corruption-Charges-Leveled-at-Detained-Police-Officials-113873149.html> (last visited Mar. 12, 2011).
- xc. CCP (2007), Article 86-88, Police Custody (Article 96-102), Handing over of Person in Police Custody (Article 103-104), Arrest Warrant (Article 195-202), Provisional Detention (Article 203-218), Detention Order (Article 219-222) Article 116, 306, 308, 353, Provisional Detention and Punishment Depriving of liberty (Article 502-511), Parole (Article 512-522), and Imprisonment in Lieu of Payment (Article 523-533) of Criminal Procedure 2007 and CC (2010), Article 24, 31-41, 43-71.
- xcii. See further answer in Indicator II.6.
- xciii. It seems that the focus is on socio-economic rights rather than law that deprive liberty of individuals.
- xciv. See websites (available in Khmer, English, and/or French) of National Assembly at <http://www.national-assembly.org.kh/eng/> and Senate at <http://www.senate.gov.kh/home/index.php?lang=km> and Council of Minister <http://www.pressocm.gov.kh/> (last visited Mar. 12, 2011).
- xcv. Web links to ministries and other public entities and relevant laws are available Senate at www.senate.gov.kh/; Bar Association of the Kingdom of Cambodia at www.bakc.org (Khmer), Office of High Commissioner for Human Rights at http://cambodia.ohchr.org/KLC_pages/klc_english.htm, a German technical assistant agency, GTZ (not available online but soft copy circulated among academia and practitioners), or PUC Law Faculty at http://www.puc.edu.kh/taclaw/index.php?option=com_content&view=article&id=10&Itemid=14.
- xcvi. Legislative acts will become effective 10 days in the Capital after date of promulgation and 20 days in the whole country after date of promulgation (Article 93(1) of Cambodian Constitution). However, virtually all laws in Cambodia enter into force immediately its promulgation (See Article 93(2) of Cambodian Constitution).
- xcvii. Cambodia CONST. (Sep. 24, 1993), Ch. VII, Art. 93(3).
- xcviii. The author is informed that more lexicons concerning criminal law and criminal procedure are being compiled.
- xcix. Significantly, there is series of law talk shows about criminal procedures recorded on a national TV, TVK, where three leading experts from Ministry of Justice are in panelled Some shows are creative because they raise legal awareness through a role play/performance by comedians before an explanation by a lawyer/legal practitioner or academia. Other shows are just a plain explanation by experts. The others may be a bit more interactive by responding to legal questions posted by audience (in a letter not a call-in show).
- c. See in general, Konrad Adenauer Stiftung, 5 Democratic Development: Occasional Paper, (Jan. 2009).
- ci. CC (2010), Art. 9 & 10 and CCP (2007), Art. 610 & 612.
- cii. or circumstances where retroactive application of law is allowed, please see Royal University of Law and Economics, Introduction to Cambodian Law, 2007, pp. 82-84.
- ciii. CCHR, Fair Trial Rights in Cambodia: First Bi-Annual Report, Jul. 2010, p. 21.
- civ. Richard Blue, Evaluation of the Program on Rights and Justice (PRAJ), p. 10.

- cv. Cambodia CONST. (Sep. 24, 1993), Art. 31(1) and CCP (2007), Art. 3.
- cvi. See further at Indicator III and IV.
- cvi. Surya P. Subedi, Report of the Special Rapporteur on the situation of human rights in Cambodia, U.N. Doc. No. 4/HRC.15/46, September 2010, p. 9.
- cvi. U.N. GAOR, HRC, 6th Sess., Supra note xiv, at 2.
- cix. CCP (2007), Art. 96. The police have to either hand-over the suspect to prosecutor or release at the expiration of period of police custody (Article 103 of Code of Criminal Procedure).
- cx. See CCP (2007), Art. 205-206 for reasons of provisional detention and Art. 208-214 for duration and extension of provisional detention.
- cxi. See Criterion II.8 of this report.
- cxi. See CCP (2007), Art. 7 and 10 for principle and duration of statute of limitation and Art. 11 for calculation of statute of limitation.
- cxiii. U.N. GAOR, HRC, 6th Sess., Supra note xiv, at 6.
- cxiv. Cambodian government is still working on the mechanism. See *Id.*, p. 2.
- cxv. See Cambodia CONST. (Sep. 24, 1993), Ch. III, Art. 39 and various articles in Criminal Code (Book 2 onward).
- cxvi. Cambodia CONST. (Sep. 24, 1993), Ch. III, Art. 38(5).
- cxvii. Cambodia CONST. (Sep. 24, 1993), Ch. III, Art. 38(3). It should be noted that Code of Criminal Procedure (2007) allows an imposition of imprisonment in lieu of payment requested by civil party (CCP, Art. 533).
- cxviii. CCP (2007), Art. 103.
- cxix. CCP (2007), Art. 205-215.
- cxix. John Marston, Cambodia in 2004: Deadlock, Political Infighting, and New Reign, Center for Studies of Asia and Africa, Apr. 2005, <http://ceaa.colmex.mx/profesores/paginamarston/imagenespaginamarston/Ap05.htm> (last visited Mar. 12, 2011).
- cxix. U.N. GAOR, HRC, 6th Sess., Supra note xiv, at 3.
- cxix. Cambodia CONST. (Sep. 24, 1993), Ch. III, Art. 38(6&7).
- cxix. CCP (2007), Art. 203 (Principle) and Art. 205 (Reasons).
- cxix. CCHR, Supra note ciii, at 11.
- cxix. *Id.*, pp. 15-16.
- cxix. Cambodia CONST. (Sep. 24, 1993), Ch. III, Art. 38(9).
- cxix. CCP (2007), Art. 98, 143, 304(2).
- cxix. See CCP (2007) for main articles concerning access to legal counsel at Article 46(2) (Citation), Article 48(2) (Procedure of immediate appearance), Article 97(1)(5) (Record of police custody) Article 98 (Assistance of lawyer during police custody), Article 143(3&4) (Right to counsel and right to legal aid), Article 145 (Presence of counsel during interrogation or investigation by investigating judge - suspect has the right to be informed about counsel and legal aid), Article 149 (Right of defense during pre-trial detention), Article 167&170 (Performing and concluding expert's task in the presence of lawyer), Article 300 (Right to counsel during hearing), Article 301 (Right to compulsory legal aid, in case of felony and juvenile defendant), and Article 304 (Right to counsel informed by prosecutor), Article 426 (Appointment of lawyer), and Article 510 (Communication between detainee and his lawyer).
- cxix. CCP (2007), Art. 98.
- cxix. U.N. GAOR, HRC, 6th Sess., Supra note xiv, at 6.
- cxix. CCHR, Supra note ciii, at 15.
- cxix. See BAKC, Legal Profession in Cambodia, 2005, pp. 101-139.
- cxix. Internal Regulation of BAKC. See Telstra, Big Pond, available at http://www.bigpond.com.kh/council_of_jurists/Judicial/jud008g.htm (last visited Mar. 12, 2011).
- cxix. Law on Bar, Art. 29(3).
- cxix. The poor are those who have no property, no income, or who receive insufficient income to support their living. Poverty is determined by the Chief Judge of the Courts and the Chiefs of the Court Clerks following an on-site investigation. See further Internal Regulation of the Bar of the Kingdom of Cambodia, Article 6 & 7.

- cxvvi. Law on Bar, Art. 30.
- cxvii. Law on Bar, Art. 29.
- cxviii. Internal Regulation of BAKC, Art. 7.
- cxvix. Council for Legal and Judicial Reform, Legal Aid in Cambodia, Practices, Perceptions, and Needs, December 2006, pp. 1 & 13-18, available at <http://www.ewmi-praj.org/download/legalaid/Legal%20Aid%20in%20Cambodia%20study%20report.pdf> (last visited Mar. 12, 2011). Examples of some legal aid NGOs, please see these links Cambodia Defenders Project at <http://www.cdpcambodia.org>; Legal Aid of Cambodia at <http://www.lac.org.kh>; and Legal Support for Children and Women at www.lscw.org.
- cxl. Id, pp. 1-2.
- cxli. See for example Thet Sambath, Legal Aid Group Shuts Two Provincial Offices due to Lack of Funding, Phnom Penh Post, Jun. 9, 2009, available at <http://khmernz.blogspot.com/2009/06/legalaid-group-shuts-two-provincial.html> (last visited Mar. 12, 2011).
- cxlii. CCP (2007), Art. 97, 325, and 330. See also CCP (2007), Art. 48 (Procedure of immediate appearance).
- cxliii. CCP (2007), Art. 145 (Presence of lawyer during interrogation).
- cxliv. CCP (2007), Art. 48(7).
- cxlv. 15 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; 2 months if the accused person lives in a country bordering the Kingdom of Cambodia; 3 months if the accused person lives in other places. If the accused person is in detention, no duration of time is required.
- cxlvi. This also implies sufficient facilities to prepare for the case.
- cxlvii. CCHR, Supra note ciii, at 12-13.
- cxlviii. In 60 of 199 trials, defense lawyer raised issue of adequate time and facilities. See CCHR, Supra note ciii, at 14. See also another obstacle of having adequate time to prepare for the case in indicator II.9.
- cxlix. CCP (2007), Art. 283(2).
- cl. CCP (2007), Art. 303 & 304.
- cli. CCP (2007), Art. 305.
- clii. See CCP (2007), Art. 208-214.
- cliii. CCHR, Supra note ciii, at 11-12.
- cliv. CCP (2007), Art. 298 & 324.
- clv. See CCP (2007), Art. 365-372 & 409-416.
- clvi. CCHR, Supra note ciii, at 18-19.
- clvii. 1-3 months statute of limitation for appeal to Court of Appeal (Article 381-383 of Code Criminal Procedure).
- clviii. 1 month statute of limitation for appeal to Supreme Court (Article 420 -Time Period for Request for Cassation of Code of Criminal Procedure).
- clix. See CCP (2007), Art. 373-408 for authority and procedures of Court of Appeal and admissibility and effect of appeal and Art. 417-442 for request for cassation to Supreme Court.
- clx. See CCP (2007), Art. 443-455 for Motion for Review of Proceeding.
- clxi. CCP (2007), Art. 55 for Special Composition of Investigation Chamber of Court of Appeal, Art. 257 for Registry of Appeals and Requests of Code of Criminal Procedure, and Art. 266-277 for Appeal against various orders of Investigating Judge.
- clxii. LICADHO, In Absentia: The Right of Appeal & Cambodia's Inmate Transportation Crisis, Feb. 2010, pp. 1-5.
- clxiii. Id, p. 1.
- clxiv. According to Article 389 of Code of Criminal Procedure detainee pending appeal "shall be transferred without delay by the order of the Prosecutor to the nearest prison or detention centre to the seat of the Court of Appeal." This transfer should take place after the court notifies the General Prosecutor of the appeal hearing date (Article 388 of Code of Criminal Procedure)
- clxv. LICADHO, Supra note clxii, at 4.
- clxvi. Cambodia CONST. (Sep. 24, 1993), Ch. III, Art. 38(5).
- clxvii. CCP (2007), Art. 321(1).
- clxviii. CCP (2007), Art. 321.
- clxix. CCP (2007), Art. 143 (Notification of Placement under Judicial Investigation).

- clxx. CCHR, *Supra* note ciii, at 20-21. See also Indicator II.4.
- clxxi. See these links Asian Human Rights Commission at <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-130-2010>; International Center on Human Rights and Drug Policy at <http://www.humanrightsanddrugs.org/?p=861>; LICADHO Project Against Torture at <http://www.licadho-cambodia.org/programs/project.php>; LICADHO Press Release at <http://www.licadho-cambodia.org/pressrelease.php?perm=89>; and Asian Legal Resource Center at http://www.alrc.net/doc/mainfile.php/unar_cat_cam_2003/322/ (last visited Mar. 12, 2011).
- clxxii. CCP (2007), Art. 7 (Extinction of Criminal Action), Art. 12 (Res Judicata), Art. 264, and Art. 439.
- clxxiii. See Indicator II.9.
- clxxiv. Law on Extraordinary Chambers in the Courts of Cambodia, Art. 40. 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. It would be interesting to see what the decision of ECCC will be in future hearing. There is an argument that a constitutionally valid pardon given to Ieng Sary and Khieu Samphan was only to shield the two accused from death sentence and confiscation order issued by a genocide tribunal in 1979, said a deputy co-prosecutor. See AFP, Former Khmer Rouge Minister Claims Royal Amnesty, Jul. 3, 2008, available at http://ecccreparations.blogspot.com/2008_07_01_archive.html (last visited Mar. 12, 2011).
- clxxv. Cambodia CONST. (Sep. 24, 1993), Art. 128(2).
- clxxvi. See Indicator I.3: Accountability of public official before the laws.
- clxxvii. CCP (2007), Art. 2 (Criminal and Civil Actions).
- clxxviii. CC (2010), Art. 1, 2, and 8 and CCP (2007), Art. 2.
- clxxix. CCP (2007), Art. 14.
- clxxx. See Also Indicator I.3 for accountability of government officials before the law.
- clxxxi. ADHOC & Forum-Asia, Joint Submission on Key Human Rights Problems in Cambodia for UPR Cambodia 2009, p. 5 and Alliance for Freedom of Expression in Cambodia, Joint Submission on Freedom of Expression for UPR Cambodia 2009, p. 7.
- clxxxii. Arbitration Council is one leading example of an alternative to court that can be legitimate, accessible, predictable, equitable and transparent .
- clxxxiii. The effectiveness of these dispute resolution bodies are mentioned in CCHR, Business and Human Rights in Cambodia: Constructing the Three Pillars, November 2010, p. 6.
- clxxxiv. The request can be made by the Chairman (of national assembly or senate) or of at least 1/10 of its members, the King or the Prime Minister. Ch. VII, Art. 88 and Ch. VIII, Art. 111.
- clxxxv. Cambodian CONST. (Sep. 24, 1993), Ch. VII, Art. 83 and Ch. VIII, Art. 107.
- clxxxvi. Please see indicator I.1 of this report for more information
- clxxxvii. EWMI, Cambodia Enact Peaceful Demonstration Law through Consultative Process, n.d., <http://www.ewmi-praj.org/news.asp?nID=13> (last visited Mar. 12, 2011).
- clxxxviii. See in general Cooperation Committee for Cambodia (CCC) at <http://www.ccc-cambodia.org/ccc-project/ngo-law/135-anti-corruption.html> (last visited Mar. 12, 2011).
- clxxxix. See CCC, Latest Updated News on Association and Non-Governmental Organizations, Jan. 5, 2011, <http://www.ccc-cambodia.org/ccc-project/ngo-law/73-ngo-law.html> (last Visited Mar. 12, 2011). See also CCC, Articles about NGO Law on Newspaper, n.d., <http://www.ccc-cambodia.org/press-clips.html> (last visited Mar. 12, 2011).
- cx. Surya P. Subedi, *cvii*, p. 5.
- cxci. Criminal action and complaint may be initiated by prosecutor and victim (Article 4 -6 of Code of Criminal Procedure).
- cxcii. 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. See CCP (2007), Art. 17-20.
- cxciii. CCP (2007), Art. 15, 16 and 22.
- cxciv. Please see this link for the chart and summary explanation Constitutional Council of Cambodia at <http://www.ccc.gov.kh/english/index.php> (last visited Mar. 12, 2011).
- cxcv. Please see Senate at www.senate.gov.kh and National Assembly at www.national-assembly.org.kh.
- cxcvi. CCP (2007), Art. 316, 392, and 434.

- cxvii. CCP (2007), Art. 317.
- cxviii. CCP (2007), Art. 359.
- cxix. Two courts: in the Capital City, Phnom Penh and a neighbouring provincial court, Kandal.
- cc. CCHR, *Supra* note ciii, at 11.
- cci. See example of hearing schedule of Supreme Court (in Khmer) at <http://www.supremecourt.gov.kh/index.php/en/2010-11-30-02-20-01>. Only Schedule of hearing in January and February 2011 is posted. The website is in progress and decision is not yet fully updated. Only judgment of civil case in 1994-1995 is available.
- ccii. CCP (2007), Art. 347.
- cciii. See Indicator II.2 for relevant legal provisions.
- cciv. ADHOC & Forum-Asia, Joint Submission on Key Human Rights Problems in Cambodia for UPR Cambodia 2009, p. 1.
- ccv. ADHOC & Forum-ASIA, *Supra* note cciv, at 1-2; Center on Housing Rights and Eviction et al., Joint Submission on Right to Adequate Housing in Cambodia for UPR Cambodia 2009, pp. 5-6.
- ccvi. A Special Rapporteur wrote in September 2010 in his report that there were government efforts in strengthening of the legal framework to manage the issue of urban evictions and Relocations. See Surya P. Subedi, *Supra* note cvii, at 4-5.
- ccvii. See this news for general information about World Bank's Project on land titling and development at Chun Sakada, Inspection Faults World Bank Program in Lake Eviction, VOA News, Mar. 9, 2011, <http://www.voanews.com/khmer-english/news/Inspection-Faults-World-Bank-Program-in-Lake-Evictions-117646673.html> (last visited Mar. 12, 2011).
- ccviii. U.N. GAOR, HRC, 6th Sess., *Supra* note xiv, at 7.
- ccix. *Id.*, p. 8.
- ccx. *Id.*, p 10.
- ccxi. CCP (2007), Art. 553 & 554.
- ccxii. If the case goes on the Court of Appeal, the fee shall be increased by 1.5 times, and 2 times if goes on to the Supreme Court (Article 61-66 of the Code of Civil Procedure).
- ccxiii. See ADB, Judicial Independent Project, *Supra* note lxiv, at 51.
- ccxiv. ADHOC & Forum-ASIA, *Supra* note cciv, at 4 and Center on Housing Rights and Eviction et al., Joint Submission on Right to Adequate Housing in Cambodia for UPR Cambodia 2009, p.5.
- ccxv. U.N. GAOR, HRC, 6th Sess., *Supra* note xiv, at 4.
- ccxvi. Alliance for Freedom of Expression in Cambodia, Joint Submission on Freedom of Expression for UPR Cambodia 2009, pp. 8-9. The requirement for the responsibility of the organizer was not incorporated in the final law. See EWMI, *Supra* note clxxxvii.
- ccxvii. Alliance for Freedom of Expression in Cambodia, *Supra* note ccxvi, at 3.
- ccxviii. Surya P. Subedi, *Supra* note cvii, at 3-4.
- ccxix. See some articles in the Criminal Code for the punishment at Article 203 (Murder), Article 212 (Torture and Barbarous Acts), 220 (Intentional Violence), Article 231-234 (Acts of Threat). These articles cite crime that target victim and witness but not their family.
- ccxx. CSD, Fair Trial Handbook, 2008, p. 22.
- ccxxi. Jörg Menzel, The Rule of Law: A View of Cambodia from A German Perspective, in Konrad Adenauer Stiftung, 5 Democratic Development: Occasional Paper 71, 78 (Jan. 2009).
- ccxxii. Please refer to Section B: Overview, Foundation and Evolution of Rule of Law.
- ccxxiii. Cambodia CONST. (Sep. 24, 1993), Ch. I, Art. 21, Ch. XI, Art. 133 & 134.
- ccxxiv. The little legal knowledge was caused by the killing of educated people, including legal practitioners and judicial officials during Pol Pot regime.
- ccxxv. ADB, Judicial Independent Project, *Supra* note lxiv, at 15.
- ccxxvi. ADB, Judicial Independent Project, *Supra* note lxiv, at 50.
- ccxxvii. Please see Section C: Justice Grid and Indicator II.6
- ccxxviii. A huge increase in comparison to salary received by judge and prosecutor as reported in 2003 (USD 20 – 40 per month).
- ccxxix. Stan Strygin, Judicial Officer Salaries at the ECCC for 2010-11, May 19, 2010, at <http://ecccreparations.blogspot.com/2010/05/judicial-officer-salaries-ateccc-for.html> (last visited Mar. 12, 2011).

- ccxxx. ADB, Judicial Independent Project, *Supra* note lxiv, at 19.
- ccxxxi. See Section C: Justice Grid of this report.
- ccxxxii. ADB, Judicial Independent Project, *Supra* note lxiv, at 18.
- ccxxxiii. Cambodia CONST. (Sep. 24, 1993), Ch. XI, Art. 128.
- ccxxxiv. Cambodia CONST. (Sep. 24, 1993), Ch. XI, Art. 130.
- ccxxxv. Cambodia CONST. (Sep. 24, 1993), Ch. XI, Art. 132.
- ccxxxvi. Others may consider it as a principle of check and balance.
- ccxxxvii. See Law on Supreme Council of Magistracy (SCM), Art. 11(3). Minister of Justice and the King, however, do not involve in the disciplinary proceeding against judges or prosecutor (Article 12.2 of Law on SCM).
- ccxxxviii. See Lao Monghay, *Institutions for the Rule of Law and Human Rights in Cambodia*, Asian Legal Resources, posted Mar. 21, 2006, available at <http://www.article2.org/mainfile.php/0501/223/> (last visited Mar. 12, 2011).
- ccxxxix. The team consists of 11 members, 5 of whom are judges at Supreme Court, other 5 are prosecutors at Supreme Court and the other one member is a representative from Ministry of Justice (Article 4 of the Sub-Decree). See this link for the sub-decree that create this special body <http://www.supremecourt.gov.kh/index.php/kh/judicial-standard-document/150-decree-160-dated-on-sep-232009> (last visited Mar. 12, 2011).
- ccxl. Law on SCM, Art. 6.
- ccxli. Law on SCM, Art. 18 & 19.
- ccxlii. ADB, Judicial Independent Project, *Supra* note lxiv, at 48.
- ccxliii. Surya P. Subedi, *Supra* note cvii, at 11-14.
- ccxliv. ADB, Judicial Independent Project, *Supra* note lxiv, at 13-14.
- ccxlv. *Id.*, p. 41.
- ccxlv. U.N. GAOR, HRC, 6th Sess., *Supra* note xiv, at 6. Unfortunately, similar allegations also made against the ECCC (See Alliance for Freedom of Expression in Cambodia, *Supra* note ccxvi, at 4.
- ccxlvii. See further information at Section C: Justice Grid of this report.
- ccxlviii. Description of challenges face by legal lawyer in Section II.6 and Legal Aid report by EWMI in 2006 may be helpful.
- ccxlix. See Section C: Justice Grid of this report
- ccd. Richard Blue, *Supra* note civ, at 10.
- ccdi. U.N. GAOR, HRC, 6th Sess., *Supra* note xiv, at 8.
- ccdii. ADHOC & Forum-ASIA, *Supra* note clxxxiv, at 4 and Center on Housing Rights and Eviction et al., *Joint Submission on Right to Adequate Housing in Cambodia for UPR Cambodia 2009*, pp. 6-7. Also see a specific case reported in joint media statement at Joint Organizations, *Civil Society Condemns Conviction of Human Rights Defenders Involved in Kampong Chhnang Land Dispute*, Jan. 27, 2011, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=237>. (last visited Mar. 12, 2011).
- ccdiii. See this link Saing Soenthrith, *Gunmen Kill Municipal Court Judge*, Cambodia Daily, Apr. 24, 2003, available at <http://cambodia.ahrchk.net/mainfile.php/news200304/599/> (last visited Mar. 12, 2011). See also Indicator II.9 for threat resulted in actual death despite request to police or authorities for protection.
- ccdiv. See paragraph 14 Trial Chamber Decision on Ieng Sary's application to disqualify Judge Nil Nonn and related requests, 28 January 2011.
- ccdv. For example see <http://www.timesonline.co.uk/tol/news/world/asia/article5745438.ece>
- ccdvi. Paragraph 30, PTC Decision on the Co-Lawyer's urgent application for disqualification of Judge Ney Thol pending the appeal against the provisional detention order in the case of Nuon Chea, 4 February 2008.
- ccdvii. TC Decision on Ieng Sary's application to disqualify judge Nil Nonn and related requests, 28 January 2011.
- ccdviii. "International Justice and Human Rights: Supporting the Legacy of Cambodia's Extraordinary Chambers," United Nations Office of the High Commissioner of Human Rights. (Last accessed 10 April 2011).
- ccdx. "Country Report: Cambodia," ASEAN Rule of Law for Human Rights Study, Human Rights Resource Centre. (April, 2011).
- ccdx. "Archiving," Documentation Center of Cambodia, www.dccam.org. (Last accessed 10 April 2011).
- ccdx. See the webpage for the Office of the High Commissioner of Human Rights <http://cambodia.ohchr.org/EN/PagesFiles/RuleOfLawIndex.htm>.

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