



# CAMBODIA

CAPITAL: Phnom Penh

POPULATION: 14.8 million

GNI PER CAPITA (PPP): \$1,820

<b>SCORES</b>	<b>2006</b>	<b>2010</b>
ACCOUNTABILITY AND PUBLIC VOICE:	3.23	2.83
CIVIL LIBERTIES:	3.36	3.08
RULE OF LAW:	2.04	1.90
ANTICORRUPTION AND TRANSPARENCY:	2.54	2.19

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

## Duncan McCargo

### INTRODUCTION

Cambodia has come a long way since the 1975–79 Khmer Rouge period during which an estimated 1.5 million Cambodians out of a population of 7 million were killed in one of the 20th century’s most appalling genocides. The Khmer Rouge were toppled by a Vietnamese invasion, which ushered in a period of civil conflict. In 1992–93, peace agreements were implemented under the auspices of United Nations Transitional Authority in Cambodia (UNTAC), an early peacekeeping and post-conflict reconstruction mission.

The logistically smooth 2008 general elections, widely hailed as the country’s freest and least violent polls to date, were a sideshow that should not divert attention from the main act: Prime Minister Hun Sen and the Cambodian People’s Party (CPP) have been gradually but inexorably tightening their grip on power and resources. Indeed, authoritarianism has become normalized in Cambodia.

The CPP entered the 2008 elections as the only significant competitor, a very different situation from the 1993 elections, in which the winner was the royalist FUNCINPEC party. At that time, Hun Sen became the “second” prime minister in a two-headed administration, subsequently seizing power in 1997 to ensure his supremacy in the 1998 elections. Following the 2003 polls, there was a genuine struggle between the CPP and its major rivals, which briefly formed an “Alliance of Democrats.” Hun Sen was unable to form a new government for the better part of a year. By 2008, however, both the pragmatic royalist FUNCINPEC and the populist, nationalist, and staunchly anti-Hun Sen Sam

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Duncan McCargo is Professor of Southeast Asian politics at the University of Leeds. He was a Leverhulme Trust fellow in Phnom Penh, 2004–05.

Rainsy Party (SRP) were marginalized well before the election, undermined by state harassment and politically-inspired court cases.

Cambodia's fourth general elections therefore marked the culmination of a long process by which the CPP has outfoxed the competition and secured considerable electoral support. This time, the ruling party won 58 percent of the popular vote and nearly three-fourths of National Assembly seats. A border dispute with Thailand over the Preah Vihear temple in mid-2008 gave Hun Sen a useful opportunity for nationalistic grandstanding just prior to the elections. The dispute turned violent in both October 2008 and April 2009, resulting in the deaths of several Thai and two Cambodian soldiers. In addition to suppressing dissent, populist demagoguery has been central to the CPP's electoral success.

In recent years, Cambodia has become considerably more stable. Viewed from the vantage point of Phnom Penh, life is more orderly, politics is more predictable, the economy has grown remarkably (10.8 percent in 2006, 10.2 percent in 2007, and an estimated 6 percent in 2008),<sup>1</sup> and crime has declined. Although people in more remote rural areas remain overwhelmingly poor and powerless, the CPP is as popular as ever in the settled rice-growing villages of the central plains, a result of economic growth and government patronage programs.<sup>2</sup> Though lacking a formal organizational structure similar to the Vietnamese Communist Party, the CPP and Hun Sen have established a formidable informal network of supporters throughout the country, using district working groups to reach from the center to commune chiefs who work closely with loyal, male heads of household in every village. District working parties are now very influential and consult closely with commune councils, giving a more bottom-up aspect to the party, but the CPP is still heavily reliant on personal relationships rather than institutionalized positions, and the relationship between higher and lower levels is consultative and patronizing rather than responsive.

Cambodia is currently staging the Khmer Rouge Tribunal, a hybrid local-international court intended to bring former leaders of the murderous regime to justice. (See box on page 94.) The tribunal has received global media attention amid talk of an end to the culture of impunity. But while five elderly figures from the 1970s face charges relating to genocide, in 2009 Hun Sen's CPP is getting away with a disturbing range of political abuses. Cambodia's elite is quietly enriching itself, grabbing huge tranches of land across the country. Community leaders, labor activists, and critical journalists who challenge the CPP face threats, intimidation, and sometimes violence.

Despite concerted attempts at donor coordination, the Hun Sen government has consistently outmaneuvered international donors and thwarted efforts to impose governance-related conditions. International aid and assistance accounts for more than 50 percent of the Cambodian government's annual budget. Every year, donors issue ritual protestations concerning the government's appalling record on tackling corruption and then proceed to provide

even more aid than has been requested: in 2006, US\$513 million was requested and US\$713 million granted; in 2007, US\$689 million requested and US\$790 million granted.<sup>3</sup> Over US\$1 billion in aid was pledged in 2008. In return, donors eventually receive new laws, new policies, and promises of implementation. Meanwhile, the CPP is consolidating its authoritarianism, while average Cambodians remain stripped of a sense of citizenship and participation in the governing of their country.<sup>4</sup> The growing role of China as a major aid donor, pledging some US\$600 million in assistance, has further undermined attempts to press for greater democratic governance and transparency, as Hun Sen has used China's competing contributions as a bargaining card.

## ACCOUNTABILITY AND PUBLIC VOICE

2.83

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	2.75
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	2.25
CIVIC ENGAGEMENT AND CIVIC MONITORING	3.33
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	3.00

Cambodia is a constitutional monarchy. Under the constitution, “Cambodian people are masters of their own country. All powers belong to the people.” In practice, although elections have been held regularly since 1993, political choices are largely dominated by the CPP and an informal power network centered on Prime Minister Hun Sen. Current king Norodom Sihamoni is mostly a symbolic figure and plays a relatively minor role in national politics compared to his father, King Norodom Sihanouk, who abdicated the throne in 2004 due to health problems.

The country has a bicameral parliament, consisting of a Senate and National Assembly (NA). The NA's 123 members are elected by popular vote to five-year terms. The government, consisting of the prime minister and a council of ministers, is chosen and approved by a two-thirds vote in the NA.

In all general elections held since 1993, multiple parties have contested the polls, the secret ballot has been applied, and thousands of international observers have been present. Although the technical aspects of elections have improved over time, the integrity of the process has been undermined in a number of ways. Opposition parties and their leaders have faced legal and other forms of harassment, while political violence has often increased in periods surrounding elections. The National Election Commission (NEC) has repeatedly taken actions perceived as favoring the CPP, while failing to meet legal obligations to punish political intimidation and other violations of electoral laws.<sup>5</sup>

In July 2008, Cambodia held its fourth general elections. The regional Asian Network for Free Elections (ANFREL) found that although some aspects of the election process had improved compared to previous polls—including a reduction in violence—the process as a whole could not be regarded as fair.<sup>6</sup> According

to the Committee for Free and Fair Elections in Cambodia (COMFREL), the polls remained characterized by the presence of partisan election officials, coercion, disparities in media access, inadequate responses to election violations, and voters being turned away from polling stations. The opposition SRP and Human Rights Party rejected the results, charging that they had been “manipulated and rigged by the ruling CPP” with the collusion of the National Election Committee (NEC).<sup>7</sup>

The NEC’s performance during the 2008 election process raised concerns about partisanship. This included a decision to allow commune election commissions, many of them aligned with the CPP, to tally polling results, a measure condemned by COMFREL as illegal and likely to lead to controversy. More serious were reliable reports that the NEC deleted 585,723 names from voter lists during a 2007 revision and fraudulently issued copies of a form that allowed people not on the rolls to vote.<sup>8</sup>

While opposition parties are permitted in Cambodia and enjoy considerable public support, the CPP is both popular and extremely dominant. There exists no real prospect that power will rotate in the near future. All 24 provincial governors are loyal to or supportive of the ruling coalition, as are 98 percent of Commune Council chiefs, who are charged with voter registration. As a result, campaigning for opposition parties is difficult in many rural areas considered CPP strongholds.

The 2008 elections saw the virtual demise of FUNCINPEC, one of the two main opposition parties, reinforcing the CPP’s dominance. The CPP won 58 percent of the popular vote and 90 out of 123 NA seats. While the SRP gained 26 seats (up from 24 in 2003), the implosion of FUNCINPEC left non-CPP parties extremely marginalized.<sup>9</sup> The SRP remains a primarily urban party that has been unable to garner significant rural support. It was also weakened when several high-profile figures defected to the CPP prior to the elections in return for lucrative advisory posts or following intimidation.

A number of factors contributed to FUNCINPEC’s deterioration. Former leader Prince Norodom Ranariddh was forced out of the party elite in October 2006 as a result of internal divisions exploited by Hun Sen. He subsequently faced court cases on charges of adultery and corruption, leading him to temporarily flee the country. Meanwhile, the party’s long-standing collaboration with the CPP undermined its credibility in the eyes of the electorate as a viable alternative.

The ability of the CPP to retain its power has been made easier in part by legal changes made in 2006. Constitutional amendments permit a party with an absolute majority of parliamentary seats to form a government, whereas previously a two-thirds majority was required. The adjustments were made following the 2003 elections, when there were unsuccessful attempts to form an alternative administration by an anti-CPP coalition.

Effective regulation of campaign financing is absent, further contributing to CPP dominance of the political arena. There are no legal limits or disclosure

requirements on donations to political parties. This has enabled the CPP to develop a system of patronage whereby donations from business tycoons help fund development projects in rural areas, thereby boosting the party's popularity.

The 61-member Senate held its first elections in January 2006. Only commune councillors and members of the NA were eligible to vote, however. In practice, the Senate performs a largely ceremonial function, with seats serving as a reward for loyal and wealthy supporters of the regime.

The NA does not effectively exercise scrutiny or oversight over the activities of the executive.<sup>10</sup> The ability of opposition members of parliament (MPs) to challenge the government is limited as parliamentary procedures organize MPs into groups, meaning that outspoken parliamentarians have their opportunities to speak strictly rationed. The courts are subordinated to the power of the executive branch.

Appointment, promotion, and dismissal of civil servants are neither merit based nor transparent. In addition to positions being granted as a way to distribute patronage, some senior posts are reportedly awarded to the highest bidder. Global Witness describes the method of securing senior positions in the Forest Administration as a "job auction," with posts in the provinces sold for between US\$2,000 and US\$30,000.<sup>11</sup>

Cambodia's community of nongovernmental organizations (NGOs) is large relative to the country's size. By law, civic associations are supposed to register with the Ministry of Interior, but in practice unregistered community-based and informal organizations operate freely. Approximately 200 international NGOs, 400 local NGOs, and nearly 600 registered associations operate, covering a variety of social issues including health, poverty reduction, and education. NGOs working on such issues enjoy greater freedom and ability to influence government policy compared to the relatively small number of human rights-oriented organizations. Nonetheless, although civic groups are occasionally involved in policy debates and the drafting of legislation, new legislation is rarely enforced even when passed and ultimately has little impact on addressing social problems.

Numerous local NGOs receive foreign funding without reporting any government restrictions on grants or donations. Nonetheless, the government has interfered in some foreign-funded programs, as well as issued statements raising concerns that NGO activity in the country may face greater obstacles in the future. In May 2007, 12 trainee lawyers working as interns at human rights and other NGOs in a program supported by the United States Agency for International Development (USAID) were forced to resign from their internships by the president of the progovernment bar association.<sup>12</sup> In September 2008, Hun Sen declared in a radio speech that "Cambodia has been heaven for NGOs for too long . . . the NGOs are out of control . . . they insult the government just to ensure their financial survival."<sup>13</sup> As of mid-2009, an NGO law was being drafted. Although its text has yet to be made public, some activists fear the new bill might be used to curtail their freedom to organize.

Adding to such concerns was the July 2009 conviction in absentia of Moeung Sonn, president of the Khmer Civilisation Foundation, to a two-year jail term on charges of “disinformation” over comments he made suggesting lights installed at the ancient temple complex of Angkor Wat could cause damage to the site. Sonn fled to France in May after the initial charges were filed, thereby avoiding imprisonment.<sup>14</sup>

In recent years the government has become increasingly intolerant of those who voice concerns about its human rights record. In 2007, Prime Minister Hun Sen described anyone expressing support for the latest human rights report by United Nations Special Representative Yash Gai as “the vilest person,” and made a formal complaint about Gai to the UN secretary-general. Also that year, the information minister threatened to expel the Open Society Institute from the country over criticisms of alleged mismanagement at the Khmer Rouge Tribunal.<sup>15</sup>

Cambodia’s print media are accessible to all major parties and present a diversity of viewpoints as well as criticism of the government, though they reach less than 10 percent of the population. By contrast, most broadcast media is closely linked to the ruling party, and outlets carry little critical news. A majority of 141 Cambodian media workers—mostly from print media—interviewed in 2007 described media freedom as “somewhat free” (73) or “very free” (21); 26 said “controlled,” and only 10 “strictly controlled.”<sup>16</sup>

Freedom of expression is enshrined in the Cambodian constitution. However, articles of the 1995 Press Law contradict and undermine such guarantees by prohibiting the publication of material deemed prejudicial to “national security and political stability.” The government has also relied on provisions from the 1992 UNTAC Criminal Code covering libel and criminal defamation, disinformation, and incitement to curb critical coverage by the print media. Prominent politicians, including governors and a deputy prime minister, as well as powerful businesspeople with close ties to the CPP, make extensive use of defamation laws to file cases against print media for critical reporting. Since 2006, defamation is no longer a criminal offense; nonetheless, individuals unable to pay fines in civil cases may still face imprisonment. The offense of “spreading disinformation” continues to carry a jail sentence of up to three years and was used in 2008 to charge a prominent opposition newspaper editor. Hun Sen himself brought a defamation action against popular opposition MP Mu Sochua, who was promptly stripped of her parliamentary immunity and then convicted by a Phnom Penh court in August 2009.<sup>17</sup>

Although murders and physical assaults on journalists have declined in recent years, nine local journalists have been killed since 1994. There have been no convictions of those responsible. Shortly before the July 2008 elections, outspoken opposition journalist Khim Sambo and his son were murdered; the attack appears to have been carried out by contract killers confident they would not be arrested, suggesting they had high-level state connections.<sup>18</sup>

In a 2007 survey of 150 journalists conducted by the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), 54 percent of interviewees reported being threatened with physical harm or legal action.<sup>19</sup> There is little evidence of state action to curtail or investigate such threats. On the contrary, high-ranking officials have themselves threatened journalists. In 2007, Prime Minister Hun Sen made a personal verbal attack on Radio Free Asia reporter Um Sarim, causing him to flee the country for several weeks.

The government seeks to maximize its influence over media content either via direct censorship or more informal measures, such as ensuring that most media ownership rests in the hands of figures closely aligned with the CPP. There is evidence of direct government involvement in censoring the state-owned television station TVK.<sup>20</sup> Other stations typically have informal “protocols” not to report on certain issues or feature particular prominent figures known to be critical of the government. In an incident of explicit government interference in media coverage, Minister of Information Khieu Kanharith ordered newspapers in 2007 to limit reporting about a critical report by Global Witness on illegal logging. The minister’s instructions had no legal basis.

The director of one of Cambodia’s leading private television stations has refused to reveal who owns the Apsara Media Group, rumored to be leading members of the ruling CPP. Hun Mana, daughter of Prime Minister Hun Sen, runs another leading TV station, Bayon TV.<sup>21</sup> The three leading newspapers—*Raemei Kampuchea*, *Koh Santepheap Daily*, and *Kampuchea Thmei Daily*—are all progovernment; many other newspaper owners have close ties to the CPP. The English-language newspapers *Cambodia Daily* and *Phnom Penh Post* carry more critical reporting than the Khmer-language press, and some stories that first appear in English find their way into vernacular newspaper reporting. Additional critical reporting can be found on radio, notably the Beehive Radio station, which also rebroadcasts Voice of America and Radio Free Asia. The authorities have repeatedly denied licenses to other independent radio outlets, such as a proposed Voice of Democracy station backed by the Cambodian Center for Human Rights. Critical radio stations may be subject to arbitrary suspension or even permanent closure, as happened in two cases during the run-up to the 2008 general elections.<sup>22</sup>

The government uses the media it controls, such as TVK, largely to provide official points of view and propagandize on behalf of the CPP. Positive images of CPP leaders inspecting rural projects or providing assistance to the poor are staple news items. This style of television news is emulated by private, state-licensed stations. Bribery of reporters is widespread; a survey showed that 25 percent of journalists knew of cases where bribes were paid for favorable coverage, while 34 percent were aware of bribes being paid to prevent stories appearing.<sup>23</sup> There is no evidence that the state restricts internet access, which remains largely the preserve of a small urban elite. If passed, however, a proposed bill would extend some existing restrictions on broadcast media to audiovisual online content.

**CIVIL LIBERTIES****3.08**

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	1.63
GENDER EQUITY	3.67
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	3.00
FREEDOM OF CONSCIENCE AND BELIEF	4.33
FREEDOM OF ASSOCIATION AND ASSEMBLY	2.75

The Cambodian constitution codifies an impressive set of human rights, including those in the UN Charter and Universal Declaration of Human Rights. Cambodia ratified the United Nations Convention against Torture in 1992 and its adjoining optional protocol in 2007. In practice, however, there is little protection from abuse by either state or nonstate actors due to shortcomings in the court system and a prevailing culture of impunity.

Police routinely torture detainees during the initial stages of investigation in order to force confessions, according to reports from local NGOs and Human Rights Watch. Cases of arbitrary arrest and detention continue to be reported, with the Cambodian Human Rights and Development Association (ADHOC) investigating 85 such cases in 2008.<sup>24</sup> Large numbers of sex workers, homeless individuals, beggars, and drug addicts are reported to be held in government-run “social rehabilitation centers” following detention in police roundups; NGOs have documented cases of detainees beaten to death or raped. Following the exposure of the facilities in June and September 2008, some detainees were released.

Prison conditions are poor and, due to overcrowding, appear to be worsening.<sup>25</sup> Inmates often lack access to fresh water and basic medical facilities, while some have reported being subject to torture. “Welcome beatings” for new prisoners by guards and trusted inmates (known as cell leaders) are common. In some prisons, guards have delegated many of their duties to cell leaders, while others demand bribes in exchange for allowing relatives to visit inmates.<sup>26</sup>

Prior to 2007, pretrial detention was limited to six months, though the authorities frequently flouted the requirement. During the summer of 2007, a new criminal procedure code came into force and was hailed by some observers as an important step forward. However, under the new code, pretrial detention for felonies is permissible for up to 18 months. More broadly, an analysis of the code by LICADHO questioned the degree to which it was an improvement, finding the amendments introduced to be either neutral or negative in outcome.

Political opponents and other peaceful activists are regularly subjected to attack, and extrajudicial killings by security forces continue. In 2008, ADHOC investigated 40 instances of murder committed by the security forces or government officials; six of the victims were political activists.<sup>27</sup> Human rights defenders involved in land disputes are also regularly targeted with violence and threats. Impunity remains the norm in such cases.

Abuses by nonstate actors, such as illegal land seizures by wealthy individuals, remain widespread. The state takes little action to protect citizens or punish perpetrators in such cases. Partly reflecting the ineffectiveness of the court system, mob killings and vigilantism have also emerged as a serious problem, leading to 17 deaths in 2006. Such incidents have since declined, although the authorities have taken little action to investigate previous killings or arrest perpetrators. Guns, including AK-47 assault rifles, are readily available and widely used by criminals and gangs. Rival youth gangs regularly fight turf battles on the streets of the capital Phnom Penh. In March 2009, the Cambodian government reported that crime had fallen by 20 percent in 2008, but these statistics have been disputed by NGOs.<sup>28</sup>

Cambodia has three existing human rights bodies, while the establishment of a new National Human Rights Commission was announced in 2006. The independence and impartiality of the existing committees remains questionable, however, as they are under the authority of the National Assembly, the Senate and the government, all of which are dominated by the CPP. As of mid-2009, the new body had yet to be established as the government repeatedly postponed passage of a law outlining its mandate and authority.<sup>29</sup> In practice, most investigatory and advocacy work on human rights issues is done by NGOs, notably ADHOC, the Cambodian Center for Human Rights, and LICADHO.

The state generally addresses issues related to women and minorities in response to international pressure from donors and NGOs. Women's issues are given a weak voice through the Ministry of Women's and Veterans' Affairs. Cambodia ratified the Convention on the Elimination of Discrimination against Women (CEDAW) in 1992, but has not passed other antidiscrimination legislation. Several more recent laws, including the 2005 Law on the Prevention of Domestic Violence and the Protection of Victims, contain provisions that contravene CEDAW principles.

A 2007 study by an NGO coalition found Cambodia's laws to be, "severely lacking in protective measures and guarantees of equality for women in Cambodia"; existing legislation was found to contain discriminatory or inadequate provisions, including those related to marriage, domestic violence, and rape.<sup>30</sup> As with many Cambodian laws, legislation protecting women and punishing offenders is inadequately enforced, reportedly contributing to an increase in violence against women and child rape: 20 to 25 percent of Cambodian women are estimated to have been victims of domestic violence.<sup>31</sup> In some cases, police have reportedly released offenders in exchange for bribes.<sup>32</sup> Women remain significantly disadvantaged economically and socially, lagging behind males in access to education and health care. There is no evidence of significant government efforts to prevent gender discrimination in employment.

Trafficking of women and girls, both within the country and from outside, primarily for work in the sex trade, remains a serious problem. A new Law on the Suppression of Human Trafficking and Sexual Exploitation was adopted in 2008 but has yet to be effectively enforced. Despite the new legislation,

ADHOC reported a 38 percent increase in trafficking cases in 2008.<sup>33</sup> According to another report, law enforcement agencies have potentially distorted anti-trafficking statistics by conflating measures taken against ordinary sex workers with attempts to “rescue” trafficking victims.<sup>34</sup>

Most Cambodians would identify themselves as ethnically “Khmer,” though the country is home to several minority groups, including populations of both immigrant and transgenerational Chinese, Vietnamese, Thai, various “hill tribes,” and Cham Muslims. No specific legislation outlaws discrimination based on ethnicity or religion, and government policies are characterized by ambiguity and confusion. For example, Cham Muslims, who number approximately 300,000, are not classed by the government as a minority, although many do not speak Khmer as a first language.<sup>35</sup> Public discussion of the Vietnamese and Chinese minorities is politically sensitive and problems facing these communities receive little government attention.

The rights of non-Khmer ethnic minorities, who constitute 10 percent of the population, are inadequately protected. They suffer from discrimination related to citizenship, residency, electoral participation, access to education and health care, and control over natural resources. Ethnic minority languages have also come under threat from government assimilation policies, including decentralization reforms that restrict non-Khmer speakers from representing their communities in local state institutions.<sup>36</sup> The government has recently prepared new sub-decrees ostensibly aimed at assisting indigenous populations, especially those in the highland regions, where an estimated 220,000 people reside. These have proven controversial, however. Although they potentially offer indigenous communities collective land titles, NGOs have criticized the decrees as providing insufficient guarantees to enforce such titles. In practice, indigenous groups continue to suffer from extensive land grabbing and occupy a marginalized place in Cambodian society.

Cambodia has a significant disabled population, including some 40,000 amputees injured by landmines. A Law on the Protection and Promotion of the Rights of Persons with Disabilities was approved by the Council of Ministers in February 2008, but has yet to be ratified by the NA.

Buddhism is the state religion and the constitution provides for religious freedom. Most Cambodians are Theravada Buddhists, and citizens are generally able to practice freely, though discrimination against Cham Muslims is widespread. Since the 1990s, the government has tightly controlled senior monastic appointments within Buddhism through the Ministry of Cults and Religious Affairs. Khmer Krom monks from Vietnam residing in Phnom Penh have been subjected to official harassment when trying to organize peaceful protests in support of religious freedom in Vietnam. One prominent monk, Tim Sakhorn, was defrocked and deported in June 2007.

The constitution recognizes the right to freedom of assembly and to form trade unions. In practice, labor leaders have regularly faced intimidation and extrajudicial killings. In February 2007, unidentified assailants shot dead Hy

Vuthy, president of the Free Trade Union at Suntex in Phnom Pehn. In 2008, the International Labor Organization expressed concern at the level of violence directed at union leaders and the lack of official efforts to investigate and punish those responsible, including in Hy Vuthy's case.<sup>37</sup>

Although the Cambodian constitution protects the right to strike and to peaceful demonstration, police and military forces routinely suppress protests. According to one estimate, 108 of the 155 peaceful strikes and demonstrations that took place during 2008 were met with excessive force.<sup>38</sup> As a result, civic groups have urged passage of a "demonstration law" clarifying the right to protest, and the government has introduced such a bill. Critics have raised concerns, however, that the current draft is poorly worded and restrictive, requiring official permission for protests. It nonetheless appears to be on the verge of being enacted.<sup>39</sup>

## RULE OF LAW

1.90

INDEPENDENT JUDICIARY	1.20
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	2.00
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	1.75
PROTECTION OF PROPERTY RIGHTS	2.67

Cambodia's legal system is based on the relatively liberal constitution drafted during the UNTAC period, as well as a provisional UNTAC legal code designed for a postconflict society and intended to be temporary. A new French-backed civil procedure code was issued in 2006, and a new Japanese-backed criminal procedure code came into effect in 2007. Problems of inconsistency between these various frameworks plague the system. While the justice system has gradually improved in various technical ways—judges and prosecutors are more knowledgeable and articulate, as well as more assertive in their relations with the police—entrenched patterns of political interference continue to undermine the rule of law and contribute to courts being held in low public regard.

According to former UN special representative Yash Gai, "the institutions charged with implementing the rule of law [in Cambodia] are very weak and subordinated to the government," while people fear courts as "sites of injustice."<sup>40</sup> The judiciary lacks independence and is marred by inefficiency and corruption. Judges, prosecutors, and court clerks are pressured to join the ruling party and to campaign for the CPP during elections. Almost all judges and prosecutors are CPP members,<sup>41</sup> which has facilitated the CPP's use of the courts in recent years to pursue political vendettas against its opponents. In 2005 opposition party leader Sam Rainsy was convicted on charges of defaming Hun Sen, and in 2006 and 2007, FUNCINPEC leader Norodom Rannaridh was charged with corruption and adultery. The use against Rannaridh of a new law criminalizing adultery shortly after it was passed raised concerns that the

legislation had been promulgated with the aim of targeting opposition politicians. There is very little sense that the government is expected to comply with court decisions. Rather, the government has on numerous occasions pardoned opposition politicians as part of a political deal following their conviction under dubious circumstances. Such high-profile cases illustrate larger patterns of CPP interference in the judiciary, reinforcing perceptions that the courts serve as a tool of the executive.

The Supreme Council of the Magistracy is, by law, responsible for appointing judges and monitoring judicial conduct. In practice, however, this body lacks the power to punish misconduct, while appointment and promotion processes are characterized by corruption and political interference. A rotation system introduced in 2005, ostensibly to reduce corruption in the judiciary, seems to be functioning more as a form of punishment for those who fall out of political favor than as an impartial accountability mechanism. A new code of conduct for judges was issued in February 2007, but has so far proved ineffective. Membership in the bar association, a requirement for lawyers and judges, has become difficult for some to gain; under the current CPP-aligned bar association president, many applications have been frozen, apparently for political reasons.<sup>42</sup>

Many judges have no formal legal qualifications, and some, including several members of the Supreme Court, have only an elementary school education. The Australian government has invested heavily in funding training through the Royal School of Judges and Prosecutors, yielding some positive results. Nonetheless, the ultimate impact of such programs on strengthening the rule of law remains constrained by the significant political and economic pressures that routinely influence decisions.

There is extensive evidence of biased judgments and failure to observe established legal standards in a range of cases, most notably in land disputes.<sup>43</sup> Although guaranteed under the constitution, the presumption of innocence and the right to counsel are often disregarded. A lack of transparency also plagues the system; journalists interviewed in a recent survey reported that courts were the government agency from which obtaining information was most difficult.<sup>44</sup> Judges and prosecutors continue to struggle to exercise authority over the judicial police, a special branch of the force mandated to arrest and investigate serious crimes. The judicial police at times act as a “second court,” working to check the power of the judiciary on behalf of the government.<sup>45</sup>

In 1997, Hun Sen and the CPP seized power in a *de facto* military “coup.”<sup>46</sup> Since then, the security forces have remained highly politicized, with control concentrated in the hands of the prime minister as a matter of personal loyalty rather than democratic institutional oversight. Hun Sen also maintains what is effectively a private army of highly-trained troops: his 4,000-strong Bodyguard Unit and a 2,000-strong military force known as Brigade 70.<sup>47</sup>

Police and soldiers are widely believed to tolerate, or be involved in, the trafficking of guns, drugs, and people, as well as other crimes. As part of a study of

illegal logging practices, the international NGO Global Witness stated that the “RCAF [Royal Cambodian Armed Forces] has continued to operate more as an extended crime syndicate than as a defence force.”<sup>48</sup> Security officials have occasionally been charged and convicted for abuses of power, notably former Phnom Penh police chief Heng Pov and several of his subordinates. Nonetheless, such prosecutions generally reflect a fall from grace politically, while those who retain close ties to powerful politicians remain immune.

Respect for human rights among members of the security forces remains limited, and according to Human Rights Watch, impunity for violations has been the norm since the 1997 “coup.”<sup>49</sup> One human rights group gathered 145 accusations of torture by law enforcement and state officials between 2000 and 2005, with a conviction secured in only one case. In four cases between May and September 2008, off-duty police officers or military personnel opened fire on innocent people for apparently trivial, nonpolitical reasons. Although the shootings resulted in deaths and injuries, the officers in question escaped prosecution.<sup>50</sup>

Land ownership was voided by the Khmer Rouge during the 1970s. Since its defeat in 1979, land titles have been selectively—and with dubious legal basis—reinvented in ways that typically enrich powerful elites at the expense of the country’s poor majority. Nearly one million hectares, or 5.2 percent of Cambodia’s total land, has been granted to well-connected business groups for plantations or other forms of economic development over the past 15 years.<sup>51</sup> Meanwhile, 80 percent of citizens with land in rural areas have no title deeds,<sup>52</sup> which has facilitated the growing scourge of land grabs across the country. Confiscations routinely occur without adequate notice or compensation and are often accompanied by violence or intimidation meted out by hired thugs or security forces. The state has done little to curb this trend, although some small tracts have been allocated to poor farmers under the legal mechanism of “social concession land.” Ethnic minority groups have been particularly disadvantaged by land disputes. Suspicious land purchases and evictions have also occurred in urban areas, including Phnom Penh. In late 2008, the city’s historic Renakse Hotel was forcibly closed by well-connected businesspeople hoping to “redevelop” its prime location. Also during the year, over 4,000 families faced displacement as Boeung Kak Lake was turned into a landfill site. Some ministers have reportedly sold the downtown locations housing their ministries to property tycoons. In total, forced evictions in Phnom Penh and elsewhere affected over 27,000 people in 2007.<sup>53</sup>

The Cadastral Commission, created in 2002, is technically charged with mediating land disputes. However, the more recently created National Authority for Land Dispute Resolution (NALDR) has overlapping powers. The existence of both bodies undermines the jurisdiction of the courts over questions of land ownership. The UNTAC-era 1992 Land Law outlines standard international legal principles for land use and holding, based on the notion that “Cambodians have the full right to possess and to use the land.”<sup>54</sup> In practice, however, the law is often manipulated or altogether disregarded by officials.<sup>55</sup>

Increased court fees, introduced under the 2007 Code of Civil Procedure, further impede poor Cambodians' ability to pursue legal avenues in order to defend their land rights. Moreover, some community representatives have been charged with crimes as apparent punishments for land rights advocacy. In 2007, Siem Reap community leader So Socheat was charged with battery and destruction of property. Despite a lack of evidence linking her to any criminal behavior, she was convicted on the grounds that she was a "ringleader" and sentenced to eight months in jail.<sup>56</sup> In September 2009, the Cambodian government

#### THE KHMER ROUGE TRIBUNAL AND RULE OF LAW IN CAMBODIA

In February 2008, the Extraordinary Chambers of the Courts of Cambodia (ECCC), popularly known as the Khmer Rouge Tribunal, began hearing evidence against the first of five defendants. The tribunal is a hybrid international-local court, created with UN support and funded by a number of donors (notably Australia, the European Union, and Japan).

The defendants scheduled to stand trial for egregious rights violations committed under the Khmer Rouge regime are Kaing Guek Eav, also known as Duch (former head of the S-21 jail and torture center), Nuon Chea (chief ideologist and parliamentary president under the Khmer Rouge), Khieu Samphan (former president), Ieng Sary (former foreign minister), and his wife, Ieng Thirith.

Supporters of the tribunal argue that prosecuting leading figures from the Khmer Rouge will serve the interests of justice and reconciliation. Perhaps more important, the tribunal will challenge Cambodia's culture of impunity and set a new national standard for impartiality and good governance.<sup>57</sup>

Critics of the tribunal argue that the process is deeply flawed:<sup>58</sup> too few defendants have been charged; the Cambodian majority judges may face political pressures impossible to resist when deciding their verdicts; the trial is not being complemented by other outreach and reconciliation activities; the tribunal is generating limited awareness inside Cambodia; the process is stirring up disturbing and traumatic memories among a significant section of the population; the administration of the court is characterized by pervasive corruption; and the Hun Sen government is cynically exploiting the tribunal to divert attention from, and to a degree justify, its growing authoritarianism.

To date there are few signs that the ECCC is having a positive exemplar effect on the wider Cambodian justice system. Indeed, the court's foreign co-prosecutor, Robert Petit, cited government attempts to interfere in the tribunal's proceedings as "very disturbing" when he quit his position for personal reasons in June 2009.

announced that it was unilaterally terminating the World Bank's US\$24 million land re-titling program. Donors had demanded that the government end forced evictions until transparent land dispute mechanisms had been created.

<b>ANTICORRUPTION AND TRANSPARENCY</b>	<b>2.19</b>
ENVIRONMENT TO PROTECT AGAINST CORRUPTION	2.25
PROCEDURES AND SYSTEMS TO ENFORCE ANTICORRUPTION LAWS	2.00
EXISTENCE OF ANTICORRUPTION NORMS, STANDARDS, AND PROTECTIONS	2.00
GOVERNMENTAL TRANSPARENCY	2.50

Corruption and abuse of public office for private gain are endemic, permeating nearly every aspect of public life in Cambodia. Cambodia was rated the third most corrupt country in Asia by the Political and Economic Risk Consultancy in 2009,<sup>59</sup> and ranked 166th out of 180 in Transparency International's 2008 Corruption Perceptions Index. The bureaucracy is cumbersome, politicized, and opaque. Citizens are routinely required to pay bribes to access public services. The economy is predominantly cash based, with only a small percentage of transactions passing through the banking system, further facilitating corruption. Recent years have seen some improvements in revenue collection procedures and reduced corruption in certain ministries. However, such changes have been piecemeal and largely overshadowed by almost complete impunity for corrupt practices among both high- and low-ranking officials.

Opportunities for state corruption are extensive, particularly in the extractive and natural resource industries, such as petroleum, gas, and logging. In an extensive 2007 study of the logging industry, Global Witness warned that "Cambodia's extractive industries are exhibiting early warning signs of kleptocratic state capture."<sup>60</sup> The organization characterized the informal business and power networks surrounding Prime Minister Hun Sen as a "shadow state." The study found that corruption in the forestry industry was not confined to isolated officials but involved a systematic policy of extortion ordered and controlled by senior Forest Administration and military police personnel.<sup>61</sup> The Cambodian government has responded to such allegations with vilification and censorship but has failed to offer evidence that might rebut Global Witness's meticulously researched assertions.

In the petroleum industry, contracts are often drafted on an ad hoc basis, undermining consistency and facilitating kickbacks. "Signature payments" by foreign companies to the government at the time oil contracts are signed are the norm. The government has not made public the amount of revenue received or how it has been spent, raising doubts as to whether it found its way to the Cambodian exchequer at all. Following the discovery of additional oil and gas reserves in recent years, the potential for high-level corruption is likely to increase in the short and medium terms.

Although the government has been working on anticorruption legislation since 1995 and has repeatedly promised donors the promulgation of such a law, it has yet to pass one. In August 2008, the government pledged to present the draft bill to the NA, following approval of the new penal code; as the latter piece of legislation has also been long delayed, the anticorruption bill is not yet under parliamentary consideration. Without anticorruption legislation clearly delineating conflict of interest requirements, many cabinet members, senior civil servants, and military officers continue to pursue business interests in fields that also fall under their policy purview.

No legislation requires the declaration of assets or contains other financial disclosure provisions. Information about the identity of concession holders in major industries such as timber and petroleum—including the names of companies and their owners—is also often concealed from the public.

No independent anticorruption agency exists. Pervasive corruption within the judiciary hinders its ability to provide effective oversight of the government or recourse to victims. Two bodies—the Ministry of National Assembly-Senate Relations and Inspection and the Anti-Corruption Unit of the Council of Ministers—are mandated to combat corruption. However, these bodies' close relationship to the CPP and limited resources severely restrict their ability to fulfill their roles effectively.<sup>62</sup>

The National Audit Authority (NAA) was created in 2002 and given the authority to audit ministries and government institutions. Although by law it is to report to parliament, its monthly budget allocations derive from the government, rendering it susceptible to executive influence. In recent years it has conducted some audits and staff have received technical training; however, none of its reports have been made public, despite legal stipulations mandating such disclosure.<sup>63</sup> In some instances, government agencies tasked with overseeing certain industries have used their authority to extort payments from those under supervision. According to Global Witness, officials from the Forest Administration have used their increased effectiveness at detecting illegal activities to extract payments from perpetrators in exchange for not prosecuting them.<sup>64</sup>

Rhetorical commitments from Prime Minister Hun Sen to pursue an anti-corruption policy have not been matched with action and government officials continue to enjoy almost complete impunity. With the exception of a small number of token convictions of judges and prosecutors on bribery charges, few officials have been investigated or prosecuted for corruption in recent years.<sup>65</sup>

Although allegations of government corruption receive some coverage in the print media, newspaper editors report that self-censorship related to high-level corruption remains common. Corruption-related stories rarely appear on television, which is closely controlled by the government and is the primary source of information for much of the population. In 2007, the government engaged in extensive efforts to limit circulation of the above-mentioned Global Witness study. In early June, the Ministry of Information ordered the confiscation of print copies of the report and directed newspapers to cease reproducing

its contents. In addition, anticorruption activists and journalists risk harassment and physical attacks when investigating illegal activities by officials or powerful private actors, particularly in rural areas.

The educational system suffers from pervasive corruption, with 30 percent of parents estimated to make regular unofficial payments to teachers. A 2005 nationwide survey reported that education-related payments accounted for more than half of the annually reported number of bribes paid. The problem is worse in urban areas; extra payments to teachers are the norm in most Phnom Penh primary schools.

Public access to government information remains poor. No freedom of information legislation exists, although a draft is under preparation with donor support. Some observers have raised concerns, however, that the new law might be used to legalize certain restrictions on free expression. Under Cambodia's 1995 Press Law, journalists may submit written requests for information to government officials, who are obliged to respond within 30 days or explain why they cannot provide the information; however, there is no sanction for officials who deny access. While some journalists have sought to use this provision to obtain official documents, most are reluctant to do so because the process may involve requests for bribes in exchange for information, is unlikely to elicit useful information, and could expose them to charges of defamation if they were to uncover and publicize official misconduct.

Given the relative strength of the executive and CPP dominance of the National Assembly, parliamentary oversight of government operations is limited. Cambodia received a score of 11 percent on the 2008 Open Budget Index, indicating that the government provides scant information to the public about budget and financial activity during the fiscal year.<sup>66</sup> Scrutiny of the budget is hasty, performed behind closed doors, and not subject to thorough review in either the NA or the Senate.<sup>67</sup> The government's budget proposal is not made available to the wider public until after its adoption by the legislature and promulgation by the king.

Public procurement procedures are notoriously corrupt; a 2007 World Bank Enterprise Survey found that nearly 80 percent of firms interviewed reported being expected to provide a gift in order to secure a government contract.<sup>68</sup> Such contracts are typically awarded via a minimally open bidding process.

A large percentage of the national budget is derived from foreign aid. Such international donor funds have also been susceptible to embezzlement and corruption. The UN's World Food Programme fired a number of Cambodian staff in 2005 over irregularities, while the World Bank has found evidence of misused and misrouted funds in 43 of its contracts in Cambodia.<sup>69</sup> The British government's Department for International Development (DFID) recently announced its intention to terminate US\$30 million in annual aid to Cambodia by 2013. Officially, the decision was based solely on internal agency priorities and a belief that development aid could be better deployed elsewhere, but Cambodia's poor record on governance and transparency did nothing to help matters.<sup>70</sup>

## RECOMMENDATIONS

- In the process of drafting an NGO law, ensure that any legislation passed meets international standards for protecting freedom of association, including enabling local civic groups to freely receive financial support from foreign development agencies.
- In order to improve media freedom, revoke the 1992 UNTAC law governing freedom of expression; abolish the existing criminal offences of defamation, disinformation, and incitement; and grant operating licenses to independent radio stations.
- To better protect the property rights of small landholders, accelerate the process of granting title deeds to rural owners, clarify the delineation of mandates of the Cadastral Commission and the National Authority for Land Dispute Resolution, and abolish court fees in cases related to land grabbing.
- Accelerate and improve enforcement of the 2008 Law on the Suppression of Human Trafficking and Sexual Exploitation.
- Initiate action to depoliticize and professionalize the judicial system, including by granting the Supreme Council of the Magistracy the authority and autonomy to appoint judges, monitor misconduct, and remove justice officials who engage in unethical behavior.
- Enact anticorruption legislation that replaces existing bodies with an independent agency mandated to remove officials involved in corruption and initiate prosecutions. Provide the anticorruption agency with a mixture of local staff and advisors seconded by international organizations.

## NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at <http://freedomhouse.org/template.cfm?page=139&edition=8>.

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