

Project Name	Cambodia-Legal and Judicial Reform Project
Region	East Asia and Pacific Region
Sector	Institutional Development; Judicial Reform
Project ID	KHPE71289
Borrower(s)	KINGDOM OF CAMBODIA
Implementing Agency	Address OFFICE OF THE COUNCIL OF MINISTERS, PIU Coordinating Agency: Project Implementation Unit (PIU) Contact Person: H. E. Heng Vong Bunchhat Tel: 85523 363 132 Fax: 85523 880 647
Environment Category	C
Date PID Prepared	February 16, 2001
Projected Appraisal Date	June 28, 2001
Projected Board Date	December 4, 2001

1. Country and Sector Background

Legislative Reform and Lawmaking Process The existence of an adequate set of rules is one of the main pillars of the rule of law. In Cambodia, however, the lawmaking process has been anything but systematic and coordinated. Lawmaking process is a long, protracted and sometimes confusing process which does not facilitate the adoption of laws. There is also limited capacity in the Ministries responsible for the drafting of laws. As a result, the legal framework is largely incomplete. Following three decades of war and civil strife, Cambodia finally embarked on a program of national reconstruction in 1993, which included rehabilitation of the legal and judicial system. Rehabilitation of the legal system involved the preparation and passage of legislation in areas such as organization of the courts and the legal profession, land registration and management, privatization, foreign investment, taxation, banking, environment and currency regulation. The few laws that have been adopted since 1993, however, are not backed up by the necessary implementing decrees. Inevitably there is a tendency to rule by decrees or sub-decrees, without regard for the hierarchy of laws and other legal instruments. There are three main challenges facing the lawmaking process in Cambodia. They are the absence of any coherent legislative reform program, the limited capacity to manage and implement the legislative reform agenda, and the total absence of any coordination mechanism in the lawmaking process. Absence of legislative reform program. Not surprisingly, bearing in mind the major gaps in the existing legislation in Cambodia, several donors have stepped in to support the preparation of major pieces of legislation by the respective Ministries. France has supported the preparation of the draft criminal and criminal procedures codes; Japan has been involved in the preparation of the civil and civil procedure codes; the World Bank has assisted in the preparation of commercial and trade legislation, whilst ADB has provided assistance in the preparation of the

land tenure legislation. There has been no agreed program or strategy, however, to guide the process of preparation of these major pieces of legislation, nor has there been consultations amongst either donors or the concerned Ministries in the process. Limited capacity of agencies and institutions. In view of the limited capacity of Ministries to manage and implement a legislative reform program, most legislative reform initiatives have been driven by donors. In most cases, the legislative reform process has been managed by expatriate teams of draftsmen acting under the direct supervision of donors and with little or no involvement of local counterparts. There is a clear need not only to involve nationals in the legislative drafting process, but also to develop local expertise in this specialized area of legal activity. A step toward this direction was taken under the Bank's Technical Assistance in the preparation of commercial laws by the Ministry of Commerce. The National Assembly and Senate are not better equipped than the executive branch to deal with an ambitious legislative program. Most of their members lack the necessary skills to review and grasp the intricacies of modern technical legislation. The inability of the National Assembly and the Senate to draft, review and adopt legislation is a major factor responsible for delays in the lawmaking process. In the case of the National Assembly, its limited capacity is further exacerbated by cumbersome and inefficient internal rules. Lack of coordination. There are many Ministries, agencies and branches of government which are involved in the lawmaking process. Sponsoring Ministries are responsible for the preparation of individual pieces of draft legislation. The Legal Reform Unit of the Council of Ministers is responsible for the review of all pieces of draft legislation prior to their submission to the National Assembly for adoption. Besides the National Assembly which adopts the laws and the Senate which reviews them prior to their adoption, the King also plays a role in the process by promulgating laws adopted by the Assembly. At present, there is no mechanism or laws regulating the process of drafting nor any coordination of the lawmaking process either within the executive branch or between the executive and legislative branches. State of the Judiciary Another main pillar of the rule of law is the Judiciary which provides the mechanism for the application and proper enforcement of laws. In Cambodia, however, following decades of war and civil strife, the Judiciary is severely depleted, and lacks both credibility and the capacity to assume its new role as arbiter of rights in a rule-based environment. Of the 120 or so judges who form the Judiciary, only a handful of them have any proper legal qualifications to speak of, and only one is a woman. It is rumored that cases are often handled and disposed of on the basis of considerations which have little to do with either the application of the law or the merits of cases. The average monthly salary of a judge ranges from \$15 to \$20. Allegations of corruption and political interference in the judiciary are not infrequent. In the absence of a law governing appointments and promotions in the Judiciary, there are no known criteria for the appointment and promotion of judges. Under the Constitution, the Supreme Council of the Magistracy (SCM) is mandated to advise the King on measures to safeguard the independence of the Judiciary and handle issues pertaining to appointments, promotions, and maintenance of discipline in the Judiciary. There are frequent complaints that, in its present form, the SCM is too dependent on the executive to be effective in the performance of its constitutional mandate. The SCM has only convened on rare occasions since its creation in 1994. In the municipal tribunal of Phnom Penh, as in other

tribunals, the Judiciary also faces challenges of a different nature. Office space is severely constrained, whilst office equipment and materials are inadequate or in short supply. The organizational structures of tribunals do not allow for specialization or the formation of specialized units or chambers. Training opportunities are few and far between, and the judicial process is slow. Legal Training Demand for legal training is building up in all three branches of the Government, including, in particular, judges and other judicial staff, parliamentarians, government officials and lawyers. Recently, there has been a proliferation of law courses offered for the benefit of both prospective lawyers and government officials. These law courses are offered by the Faculty of Laws of the University of Phnom Penh, the National Economics Institute, the National Institute of Management and the Legal Reform Unit of the Council of Ministers (LRU). The quality of such courses has been uneven at best, and the benefits questionable. There is a clear need to consolidate these different initiatives and strengthen them, not least to rationalize the use of limited resources available for training.

Access to Legal Information The rule of law presupposes not just the existence of a set of rules, but also that they should be known in advance and constantly brought to the knowledge and attention of the population. Through its constitution, Cambodia has fully adhered to this basic principle. Article 23 of the Cambodian Constitution provides that laws which have been promulgated by the King are to be published in the Official Journal and brought to the knowledge and attention of the population. Had this not been the case, one of the fundamental principles of every legal system would have been devoid of meaning: the principle that ignorance of the law is not a defense presupposes that laws are regularly published and brought to the knowledge and attention of the population. Publication of laws not only serves to enhance knowledge of the law, it also helps to build confidence in the system amongst investors and international community in general. It facilitates the proper application of the law by tribunals, enforcement agencies and other interested parties. It also serves to highlight contradictions and inconsistencies which would otherwise not be apparent amongst different legal and regulatory instruments. Notwithstanding the clear merits of publication and an explicit constitutional requirement to that effect, the Official Journal is not published on a regular basis in Cambodia. Under the Technical Assistance, the Bank has provided assistance to the LRU in its efforts to produce a monthly bulletin of laws and regulations in three languages. Clearly, however, these monthly bulletins are not mandated as such by the Constitution and the high costs of their publication limits their quantities and distribution. Current issues of the monthly bulletins have been insufficient to satisfy the huge demand that they have generated. There is one issue of substantive law which the process of publication of laws raises. According to Article 158 of the 1993 Constitution, laws and regulations which safeguard state property, as well as the rights and property of private individuals, and are consistent with the national interest, continue to be in force unless and until they are amended or repealed, except to the extent that they are contrary to the spirit of the Constitution. There have been sharp disagreements in the interpretation of this Article, between those who would prefer to limit its effect to those laws and regulations which were actually in force immediately before the entry into force of the 1993 Constitution, and those who seek to use its provisions to revive laws which had been in force prior to the Khmer Rouge regime, but have in effect been repealed by

the Khmer Rouge. It is an issue which would need to be addressed and successfully resolved, through passage of fresh legislation, if need be, if the objectives of the publication of laws are to be fully achieved.

THE BAR There is an acute shortage of qualified lawyers in Cambodia. Out of the fewer than 200 lawyers who currently practice law, many are employed in government service or by private firms. In the absence of clear rules governing admission to the Bar, many candidates seeking admission to the Bar have had their applications turned down without even a hearing. Legal aid is provided by two NGOs, the Cambodia Defenders Project (CDP) and Legal Aid of Cambodia (LAC). Most of the active lawyers in Cambodia are said to belong to one or other of these two organizations.

The law governing admission to, and practice at, the Bar in Cambodia dates back to 1995. Article 31 of the law provides that, in order to be admitted to the Bar, candidates must have a bachelor of laws or equivalent degree, as well as a certificate of proficiency for admission to the legal profession issued by a legal training center. According to the law, the organization and functioning of the training center would be determined by a sub-decree. Nearly six years after the passage of the law, the training center has yet to be established, and the sub-decree has yet to be issued. In the absence of a training center, Article 32 of the law also provides an alternative to the need for a certificate of proficiency. In the case of candidates having a bachelor of laws degree, it provides that they shall be exempted from having to produce a certificate of proficiency if they can demonstrate that they have not less than two years' experience in the legal or judicial sector. According to a ruling of the Bar Council issued in January 1998, however, the term "experience in the legal and judicial sector" has been interpreted restrictively to refer to experience acquired in a government ministry or the courts. The ruling serves in effect to discount experience acquired by lawyers employed in such organizations as CDP or LAC. The ruling of the Bar Council was intended to exclude the possibility of abusive, fictitious or unverifiable attestations of legal employment being provided of behalf of candidates for admission to the Bar. In practice, however, it has served to make the process of admission to the Bar impossible and, in so doing, protect the vested interests of the privileged few who are already members of the Bar. There is widespread consensus that the rules governing admission to the Bar merit further clarification and improvement.

Government Strategy Under the legal component of the Technical Assistance Project, the Government appointed a team of consultants to undertake a comprehensive diagnostic study of the legal and judicial framework, the findings and recommendations of which were produced and widely circulated in March 2000. A workshop was organized in April 2000 to review and discuss the outcome of the study. By and large the workshop, which was attended by public and elected officials, donors, private sector and civil society representatives, has served to confirm and validate the findings and recommendations of the study. Following the workshop, a draft legislative reform program was prepared, setting out the elements of a proposed legislative reform agenda and giving details of the purpose and objectives of each proposed piece of legislation. A steering committee, made up of representatives from the executive, judicial and legislative branches, as well as the civil society and the bar association, was also established to review further the consultants' report, and to develop a legal and judicial reform strategy. The first draft of the strategy paper has been prepared and widely disseminated, and subsequently discussed with all major stakeholders, including donors, public officials and civil society

representatives. This paper, which has yet to be finalized for submission to the Government for final approval, outlines a comprehensive strategy to develop a comprehensive program of legal and judicial training, strengthen the judiciary, improve the lawmaking process and establish a legislative reform program. The design of the proposed project is consistent with the strategy as outlined in the draft strategy paper.

2. Objectives

The project's overall development objective is to promote the establishment of a credible and effective legal and judicial framework conducive to private sector development and protection of personal and property rights through strengthening of legal and judicial processes and institutions, thereby contributing to the strengthening of good governance and the rule of law.

3. Rationale for Bank's Involvement

The Bank has been engaged in social and economic development activities for many years already in Cambodia. Based on the legal and judicial reform activities which it has undertaken in Cambodia, as in other member countries, it has also acquired a wealth of experience in legal and judicial reform matters and developed a deep understanding of both civil and common law systems, both of which continue to influence legal development in Cambodia. The Bank's deep involvement in the social and economic development of Cambodia, coupled with the wealth of experience that it has acquired in legal and judicial reform matters, makes it uniquely suited to contribute to legal and judicial reform in Cambodia. Both in the development of the legal and judicial reform agenda, and in the context of the preparation of the strategy paper, the Bank continues, as it has done in the past, to take a lead role, maintaining close donor coordination and promoting the SWAP or partnership approach as developed in the CAS.

4. Description

The project addresses the objective of building a credible legal and judicial system in Cambodia by focusing on the most important elements that underpin the foundations of an efficient, credible and transparent legal and judicial system based upon the rule of law. The six components of the project are identified below: Component 1: Legislative Reform and Institutional Strengthening (US\$1.1 million). This component supports efforts of the executive branch to improve the quality, efficiency, consistency, transparency and effectiveness of the laws and regulations, and streamline the lawmaking process. It consists of three principal activities: (a) development of a legislative reform program of priority legislation essential to the creation of a credible legal and judicial framework; (b) establishment of a mechanism to coordinate legislative reform process across principal government units and institutions charged with responsibility for legislative reform; (c) development of the capacity of agencies and institutions responsible for legislative reform, including, in the case of the National Assembly and Senate, the capacity to consider, initiate, review or adopt legislation, as the case may be. Component 2: Judicial Strengthening (US\$3.0 million). The judicial strengthening component sets forth a program of support to assist Cambodia in its efforts to develop the institutional capacity of its court system to implement and enforce the legislative and regulatory framework, and establish a credible, independent, efficient and transparent judicial

system that is based upon the rule of law. This component would focus on (a) legal framework governing appointments and promotions and exercise of discipline in the judiciary; (b) legal framework governing court organization and administration of justice; (c) terms and conditions of employment of judges; (d) work environment; and (e) alternative dispute resolution. Component 3: Legal Training (US\$0.7 million). There is a shortage of qualified and experienced judges and other legal practitioners; and the short supply of training is not able to meet the rising demand for training. This component would establish training programs and support partnership, exchange and cooperation programs with partner institutions. Particular emphasis would be placed on gender equity in the training programs. Component 4: Legal Information and Public Access (US\$0.3 million). The goal of the Legal Information and Public Awareness Component is to improve the quality of and access to legal information for government officials, judges, legal education institutions, legal scholars, practicing attorneys, businessmen and society as a whole. This component would support the development of the legal and institutional framework government publication of laws and capacity building. Component 5: Law and Justice Facilitation Fund (US\$0.2 million). To complement the Government's role in legal and judicial reform, this component seeks to facilitate private sector participation in the legal and judicial reform process through establishment of a law and justice facilitation fund to provide resources on a matching grant basis to support private initiatives consistent with the project, which are not otherwise financed by the project. Component 6: Project Management and Implementation (US\$0.2 million). For the PIU to effectively carry out the day-to-day management of project implementation, the project would provide support through technical advisory services, equipment, and training.

5. Financing

	Total (US\$m)
Total Project Cost	5.5

6. Implementation

Implementation Period: The project is expected to be implemented over a five-year period, beginning in January 2002. Each of the components of the project would be implemented through the existing legal and judicial institutions. LRU, and the National Assembly and Senate would be chiefly responsible for implementation of the Legislative Reform Component. MOJ, the Council for Judicial Reform and SCM would be responsible for the implementation of the Judicial Strengthening Component. The Legal Information Component would be the responsibility of the Council of Ministers and MOJ. The Legal and Judicial Reform Coordination Committee (LJRCC) would manage and supervise the Law and Justice Facilitation Fund Component. Overall supervision and coordination of the project would be the responsibility of LJRCC, which is yet to be formed, and would consist of representatives of the executing agencies. A PIU would be created under the LJRCC to perform the day-to-day management of the technical aspects of project execution, including procurement, disbursement, financial management, monitoring and evaluation, and reporting.

7. Sustainability

The collaborative process which has been used to develop the project provides a sound basis as well as a constituency to be used to promote and strengthen the legal and judicial reform agenda. The focus on development

of institutional capacity and training of judicial staff and other legal practitioners promotes its sustainability by providing the necessary human resources and developing capacity for sustained legal and judicial reform. The interest of sustainability is also served by the establishment of a coordinated legislative process which would facilitate the adoption of key laws and regulations. Irrespective of institutional and capacity-building considerations, sustainability also presupposes that the Government would over time increase the resources that it currently allocates to the legal and judicial sector not only to cover an increase in the number of its legal and judicial staff but also to provide them with decent salaries and adequate amenities. Measurable improvements in the legal and judicial sector cannot be undertaken on budget-neutral basis. Given the importance that the Government accords to the establishment of good governance and the rule of law, it is reasonable to assume that supplemental resources as needed to support the legal and judicial sector would be forthcoming.

8. Lessons learned from past operations in the country/sector

Key lessons which have been learned from other Bank credits and other activities include the need to: (a) ensure adequate consultations and coordination with other donors and NGOs so that they can be committed and help with project design, preparation, implementation and evaluation; (b) establish government leadership early on during the design and preparation of the project; (c) take into account the implementation and management capacity of the Government in the project design. This would help determine the level of complexity and the number of project components; (d) carefully design the technical assistance component to ensure not just an adequate support for effective implementation but also to have adequate training of local staff and know-how transfer. Key lessons from other projects in Cambodia have been identified through the Cambodia Country Assistance Evaluation (CAE), executed by OED (February 2000). The evaluation indicates that although IDA's assistance objectives were relevant, project design was in some cases too complex and implementation capacity stretched. Several projects suffered from implementation delays because of political events and weak domestic capacity. Lessons learned from the Technical Assistance Project includes: (a) the legal system in general, and the judiciary, in particular, have experienced difficulty in understanding and interpreting increasingly complex economic transactions; (b) with the opening of the economy and influx of foreign investments, the law has become more and more a vital instrument in economic life. These lessons have not only been fully integrated into the design of the proposed project; they would also continue to guide its preparation, implementation and evaluation. The project has been developed on the basis of a fully participatory process which included consultations and collaboration with donors, civil society and private sector representatives. The April 2000 workshop was organized by government officials, whilst the legal and judicial diagnostic study, as well as preparation of the strategy paper, have been undertaken under their direct guidance and authority. The design of the project is simple but comprehensive, challenging but not beyond the capacity of the Government to implement. Its successful implementation is predicated on the active involvement of existing institutions and on the existence of an effective partnership between the staff of such institutions and external technical assistants which facilitates transfer of knowledge. In view of the limited capacity of the Government, the project also provides for the

establishment of a law and justice facilitation to promote private sector participation in the legal and judicial reform process.

9. Program of Targeted Intervention (PTI) N

10. Environment Aspects (including any public consultation)
Issues : N/A

11. Contact Point:

Task Manager
Renganaden Soopramanien
The World Bank
1818 H Street, NW
Washington D.C. 20433
Telephone: (202) 473-81770

12. For information on other project related documents contact:

The InfoShop
The World Bank
1818 H Street, NW
Washington, D.C. 20433
Telephone: (202) 458-5454
Fax: (202) 522-1500
Web: [http:// www.worldbank.org/infoshop](http://www.worldbank.org/infoshop)

Note: This is information on an evolving project. Certain components may not be necessarily included in the final project.

This PID was processed by the InfoShop during the week ending March 23, 2001.