



# គណៈកម្មាធិការដើម្បីការបោះឆ្នោតដោយសេរី និងយុត្តិធម៌លើកម្ពុជា (គ.ប.ស.យ)

COMMITTEE FOR FREE AND FAIR ELECTIONS IN CAMBODIA (COMFREL)

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## Report On Youth Evaluation of the Achievements of the Royal Government of Cambodia or Elected Political Parties in “Legal and Judicial System Reform”

Phnom Penh, September 20, 2007

110 youth voters, of whom 44, equal to 40%, were female, attended a forum organized by COMFREL in cooperation with the Youth Council of Cambodia, Khmer Youth Association and the Youth Resource Development Program. After discussion and presentations from three speakers (two parliamentarians and the Executive Director of Cambodian Defenders Project), participants evaluated the achievements of the Royal Government of Cambodia (RGC) or elected political parties regarding legal and judicial system reform. The evaluation focused on four main issues, which were later scored by participants on a scale of 1 to 5: 1 represents absolutely dissatisfied and 5 very satisfied.

- 1- Finalization and submission to the National Assembly of the draft of basic laws** such as the *Statute of Judges, the Law on the Organization of the Court, the Criminal Code, the Law on Criminal Procedures and the Law on the Organization and Functioning of Bailiffs.*
- 2- Establishment of specialized courts** such as the *Commercial Tribunal, the Juvenile Tribunal, the Labor Tribunal and the Administrative Tribunal, and a pilot court to enhance the quality and effectiveness of judicial services.*
- 3- Enhancement of capacity and responsibility of judges; judges who are 60 years of age or more being subject to retirement. Training of court clerks, notaries and judicial police.**
- 4- Provision of legal aid to the poor and enhancement of mechanisms for dispute remedy outside the court system.**

Results were as follows:

1- On **finalization and submission to the National Assembly of the draft of basic laws** such as the *Statute of Judges, the Law on the Organization of the Court, the Criminal Code, the Law on Criminal Procedures, the Civil Code, the Law on Civil Procedures, the Law on the Organization and Functioning of Notaries Public, and the Law on the Organization and Functioning of Bailiffs*, participants scored performance at an average of **2.43**, falling into the category of **“dissatisfied”**. 6% of participants gave a score of 1 (absolutely dissatisfied); 57% gave a score of 2 (dissatisfied); 25% gave a score of 3 (fairly satisfied); 11% gave a score of 4 (satisfied); and only 1% gave a score of 5 (very satisfied).

Discussion during the forum and reports found that there the Council for Legal and Judicial System Reform had been established and, as of September 2007, 58 draft laws had been approved, including amendments to the Constitution and laws, as well as some conventions, treaties and covenants. However, of the eight key laws crucial to strengthening

the judicial system, only two draft laws had been submitted to and approved by the National Assembly: the *Law on Criminal Procedures* and the *Law on Civil Procedures*. The draft *Civil Code* has already been debated by the National Assembly's Expert Commission and is awaiting debate and approval in the National Assembly and the *Criminal Code* is being debated in the National Assembly's Expert Commission.

The draft *Law on the Statute of Judges* is being reviewed by the Council of Jurists of the Council of Ministers and the *Law on the Organization of the Court* has already been drafted but is yet to be sent to the National Assembly. There is *Sub-decree on the Organization and Functioning of Notaries Public* but no law yet. There is no information related to other laws. However, Mr. **SOK Sam Oeun**, Executive Director of the Cambodian Defenders Project, said that laws have been drafted but are **awaiting politicians' decisions**. Parliamentarian **Monh Saphan** (Kampong Cham constituency) said that the Minister of Justice had promised to submit the laws to the National Assembly soon, but could not define the word "soon".

2- On ***establishment of specialized courts*** such as the *Commercial Tribunal*, the *Juvenile Tribunal*, the *Labor Tribunal* and the *Administrative Tribunal*, and a *pilot court to enhance the quality and effectiveness of judicial services*, participants scored performance at an average of **2.23**. This falls into the category of "**dissatisfied**". 25% of participants gave a score of 1 (absolutely dissatisfied); 41% gave a score of 2 (dissatisfied); 22% gave a score of 3 (fairly satisfied); 9% gave a score of 4 (satisfied); and 3% gave a score of 5 (very satisfied).

Discussions and actual reports showed that, so far, none of the above tribunals has been established. A pilot court to enhance the quality and effectiveness of judicial services in Kandal province has been set up. 21 Provincial/Municipal Courts, one Appeals Court and one Supreme Court, with a total of 226<sup>1</sup> judges and prosecutors nationwide, have to cover all lawsuits, including administrative, commercial and juvenile cases. As a result, the courts deal with 12,000 civil and criminal cases every year, leaving many cases unsolved. In 2005, 40% of suspects in felony cases were detained for longer than the maximum period for pre-trial detention (six months), according to ADHOC's Report on the Human Rights Situation for 2006.

Establishing the Commercial Tribunal is crucial for the economy and investment, in response to the needs of the World Trade Organization (WTO) and stock exchanges. In the absence of a juvenile tribunal, more juveniles were sentenced to jail. LICADHO's report (2007) describes the situation of children in prisons in Cambodia as bad, crowded and unhygienic. Additionally, about 40% of all children in prisons are detained with adults, with limited access to education, training and legal representation.

3- On ***enhancement of capacity and responsibility of judges, retirement of judges who are 60 years of age or more*** and the *training of court clerks, notaries and judicial police*, participants scored performance at an average of 2.52, falling into the "**fairly satisfied**" category. 16% of participants gave a score of 1 (absolutely dissatisfied); 41% gave a score of 2 (dissatisfied); 26% gave a score of 3 (fairly satisfied); 10% gave a score of 4 (satisfied); and 7% gave a score of 5 (very satisfied).

Discussion and reports revealed that the Royal Academy of Judicial Professions, Notary and the Training of Bailiffs had been established. However, there is still a lack of judges. Trainings for judicial police had also taken place, but Mr. **SOK Som Oeun** said that training length was short. The newly approved criminal procedure code requires three judges to preside over felony cases; some provincial courts, such as those in Preah Vihear, Mondolkiri, Ratanakiri and Kratie, have only two judges apiece. According to the Cambodia Daily (PRAK Chanthul, 2007, 'Judge shortage illustrates the Slow Road to Justice', September 13), 55 judges and prosecutors will graduate in 2008 and another 63 in 2009.

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<sup>1</sup> The number of judges and prosecutors is taken from PRAK Chanthul (2007) 'Judge shortage illustrates the Slow Road to Justice', *Cambodia Daily*, September 13.

The forum argued that some judges were not independent and were susceptible to corruption. Siem Reap Parliamentarian **Ke Sovannroth** said some complaints had been left unsolved by judges for months or years. Some judges and prosecutors had been found to have committed corruption, which had result in the use of the “iron fist” by government against them. However, parliamentarian **Monh Saphan** said that punishment of wrongdoing was not sufficient (usually entailing only transfer from one province to another). Recently, the Special Rapporteur of the UN Commission on Human Rights found that the appointment and/or replacement of some judges had not taken place in accordance with the Constitution, laws or decisions of the Supreme Council of Magistrates; instead, it was carried out according to the proposals of the executive branch of government.

ADHOC’s Report on the Human Rights Situation for 2006 says that “justice continues to be on sale to those who can afford it”. The report details unofficial justice, bribery and impunity, which seriously hinder the possibility of obtaining justice. The report also raises the serious issue of failing to comply with the legal requirements for fair trial. This includes: failure to comply with the legal maximum period for pre-trial detention (in 2005, 40% of suspects in felony cases were detained for longer than six months); alleged torture during interrogation (in 2005, nearly one in three suspects in felony cases alleged they were tortured); witness not being required to give oral evidence in court (in 2005, witnesses testified in only 16% of cases); the defense regularly not being permitted by judges to call witnesses and lawyers not being provided to ensure a fair trial (in 2005, 46% of defendants did not have legal representation); trials continuing to take place in the absence of the defendant and trials being so brief that no semblance of justice could take place (in 2005, around half of felony cases were finalized in less than 30 minutes – ADHOC sources put this figure as even higher for 2006).

The Center for Social Development noted in its Annual Report on the Court Watch Project 2006 that the delivery and accessibility of court documents (such as subpoenas, summons, detention or release orders and verdicts) had been another area of concern. For example, written verdicts should be written immediately after the trial (State of Cambodia Law, Article 145). In practice, this can take several days or even months. This affects the ability of the parties to draft their appeal, which must be filed within two months from the oral pronouncement of the verdict. The report also noted that further delays could occur in hearing appeals, owing to delays in transferring dossiers from the lower court to the Appeals Court. Some transfers have taken two years. These delays run counter to the Circular issued by the Ministry of Justice in 1995, which states that lower courts must transfer dossiers within 60 days from the complaint being lodged.

4- On *provision of legal aid to the poor and enhancement of mechanisms for dispute remedy outside the court system*, participants scored performance at an average of **2.42**, falling into the category of “**dissatisfied**”. 21% of participants gave a score of 1 (absolutely dissatisfied); 37% gave a score of 2 (dissatisfied); 28% gave a score of 3 (fairly satisfied); 9% gave a score of 4 (satisfied); and only 5% gave a score of 5 (very satisfied).

Discussion and reports found that mechanisms and institutions to solve disputes outside the court system had been set up; recently national authorities had been established as well as a house of justice at district level in Kampong Speu province. However, the forum found that some authorities for dispute remedy outside the court system were under the control of the Royal Government of Cambodia (RGC) and, as such, were not independent. A model of a mechanism for dispute resolution outside the court system exists in the Arbitration Council (for resolving collective labor disputes) which received 120 cases in 2006, of which 110 were settled. Parliamentarian Monh Saphan also noted the existency of controversy in one case, where the government issued a notice to overturn the verdict of the court.

Meanwhile, the ADHOC Report shows that commune councils in Cambodia take up 40,000 disputes annually but are limited to conciliating, lacking the means to enforce their decisions. NGOs have been strengthened to provide legal aid to the poor and victims of rights violations. The

government and NGOs, along with the media, encourage and promote the dissemination of information related to laws.

**In total, fulfillment of promises on “Legal and Judicial System Reform” has been very slow. Youth participants gave an average score of 2.4 (dissatisfied) on government or elected political party achievements. Only enhancement of capacity and responsibility of judges through training was given a score of 2.52, falling into the category of fairly satisfied.**

Youth participants prioritized some issues related to legal and judicial system reform as recommendations for the government or elected political parties, to help them fulfill their promises. Political parties contesting in the 2008 General Elections should consider including these prioritized issues in their political platforms. Those prioritized issues which need to be completed within this mandate are as follows:

- Establish the Law on the Statute of Judges and the Law on the Organization and Functioning of the Court and make amendments to the Law on the Supreme Council of Magistrates to ensure the independence and safety of judges.
- Strengthen law enforcement: judges who commit crimes should be investigated and punished in accordance with their crime; judges who have been removed should not be reappointed.
- Establish the Commercial Tribunal to attract investors and to reduce the work of provincial/municipal courts.
- Strengthen the provision of legal aid to the poor.

In conclusion, all main points on legal and judicial system reform remain important for inclusion by political parties in their political platform for the upcoming national elections. Parties should clarify timing and prioritization, as well as methods for implementing reform.

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*COMFREL’s mission is to help to create an informed and favorable democratic climate (1) for free and fair elections through lobbying and advocacy to establish a permanent and suitable legal framework; education to inform citizens of their rights; and monitoring activities that both discourage irregularities and provide comprehensive data to enable an objective, non-partisan assessment to be made of the election process, and (2) for the general public to fully understand democratic processes not just before elections but after and between them. It arranges, towards this end, educational sessions and public forums to encourage citizens to participate in politics and decision making. It encourages constructive advocacy and lobbying for electoral reforms that increase the accountability of elected officials. Finally, by providing comprehensive observation and monitoring, it enables objective, non-partisan assessments to be made on the progress of commitment made in political platforms and on the performance of elected officials.*