

Existing Mechanisms for Addressing Corruption



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Acronyms:

ACB	Anti-Corruption Body
ACU	Anti-Corruption Unit
AWG	Accountability Working Group
CAR	Council on Administrative Reform
CPP	Cambodian People's Party
MONASRI	Ministry of National Assembly and Senate Relations and Inspection
NAA	National Audit Authority
NGO	Non-Governmental Organization
SCM	Supreme Council of Magistracy
UNTAC	United Nations Transitional Authority in Cambodia
UNTAC Law	Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period

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I. Executive Summary

Cambodia has a significant corruption problem. The government recognizes the problem and has made combating corruption a key part of its plan for sustainable growth in Cambodia. Both the donor community and the government have focused on passage of the Anti-Corruption Law as the centerpiece of this effort. However, there are a number of mechanisms that already exist that could be used to fight corruption.

Cambodian criminal law (primarily the UNTAC Law) already prohibits corruption-related activity, including corruption, bribery and embezzlement. It is illegal for government officials to solicit, request or receive money (or any other benefit) in return for using his or her office to grant a benefit. Similarly it is illegal for members of the public to offer or give government officials money (or any other benefit) in return for receiving a benefit. Moreover, after many years during which there were no corruption trials at all, recently there have been a number of trials. While the prosecutions have focused on low-level officials, like park rangers and border police, they are definitely an improvement over the past. Hopefully, they represent the first step towards a broader campaign of prosecuting corruption.

In addition to Cambodian criminal law, there are a number of administrative procedures that could be used to combat corruption within the government. These administrative procedures are separate from – and in addition to – criminal charges, and the punishments are usually limited to loss of seniority, loss of position, forcible transfer, forcible retirement or termination. For example, civil servants are subject to the disciplinary proceedings described in the Law on the Common Statute of Civil Servants. The Supreme Council of Magistracy oversees discipline amongst the judges and prosecutors. The police and military are also subject to special disciplinary procedures. In short, most government employees are theoretically subject to formal disciplinary procedures if they are found to be corrupt.

The government's recent decentralization efforts have also created new mechanisms that can be used to combat corruption. The most interesting of these is the Accountability Working Groups that have been set up to oversee how commune funds are spent. The Working Groups provide a number of innovative features, including an anonymous reporting mechanism, complaint

boxes located in each commune, the participation of civil society representatives, and the power to sanction government employees. Accountability Working Groups are now functioning in each province, and have received more than fifty complaints so far. The biggest limitation is that they can only investigate complaints about the misuse of commune funds. Corruption allegations that do not relate to commune funds are not investigated. However, the Ministry of Interior is currently considering proposals to strengthen and improve the Working Groups.

Overall, corruption in Cambodia remains a pervasive problem. However, there are some signs of improvement, like the recent prosecutions of low-ranking government officials, and the creation of the Accountability Working Groups. These bright spots represent opportunities for donors and civil society to contribute to combating corruption by supporting these mechanisms. More generally, there is also much that donors and civil society can do to improve access to information on corruption. While access to information for combating corruption will not solve Cambodia's corruption problems on its own, it is one necessary component of the solution. Moreover, it is a component that donors and civil society are well placed to support.

II. Introduction

Cambodia has a well-known corruption problem.¹ Senior government officials have regularly acknowledged that corruption is a serious problem in Cambodia and indicated their desire to combat corruption. In 2004, the government adopted the “Rectangular Strategy for Growth, Employment, Equity and Efficiency.” The Rectangular Strategy is intended to guide the policies of the Royal Government of Cambodia between 2004 and 2008. At the core of the Rectangular Strategy is a focus on “good governance,” which is to be achieved by reform in four key areas, including “anti-corruption.” By adopting the Rectangular Strategy, the government has put anti-corruption measures at the heart of its plan to foster sustainable growth in Cambodia.

The centerpiece of the government’s anti-corruption reforms is supposed to be passage of the Anti-Corruption Law. However, the Anti-Corruption Law has existed in draft form for more than 10 years, but has never been passed. Its passage was once again listed as a key benchmark of progress in the Consultative Group’s 2006 Joint Monitoring Indicators.² Regrettably, the current draft under consideration by the government does not fully meet international standards. Moreover, it is still not clear when it will be passed.³

The latest draft of the Anti-Corruption Law is being discussed in the Council of Ministers. Once the Council of Ministers agrees on the text, it will be forwarded to the National Assembly and the Senate for passage. If it passes both of the legislative branches, the Constitutional Council may

¹ According to Transparency International’s 2005 Corruption Perception Index, Cambodia ranks 130th out of the 159 countries surveyed. That is worse than any of Cambodia’s immediate neighbors – Thailand was ranked 59th, Laos was 77th, and Vietnam was ranked 107th.

² It was also listed in the Consultative Group’s Joint Monitoring Indicators for 2002 and 2004.

³ To put the difficulties of passing the Anti-Corruption Law in perspective, the following quote appeared in the Phnom Penh Post in 1999: “After five years of planning, discussion and a lengthy stint in legislative limbo . . . a National Anti-Corruption Law is on the horizon.” *See* Cambodia’s kingdom of corruption: trying to find ways to turn the tide,” Phnom Penh Post, Issue 8/14, July 9-22, 1999. Seven years later, the Anti-Corruption law is still just on the horizon.

be asked to decide whether it is constitutional. If it is found to be constitutional, it would be promulgated by a Royal Decree.

In light of the uncertainty surrounding passage of the Anti-Corruption Law and understanding that even if the law is promulgated, it may take up to 12 months for a future Anti-corruption Body (ACB) to be active, this report explores existing measures that can be used to combat corruption in Cambodia. These can generally be broken down into three categories: 1) criminal actions; 2) administrative actions; and 3) informal mechanisms. The section on criminal actions will address the existing laws that criminalize corruption in Cambodia and the mechanisms in place to prosecute it. The section on administrative actions will describe the internal auditing and investigatory procedures that exist in individual government departments to address corruption. Finally, the report will conclude with a brief review of the informal mechanisms that are used at the village and commune level to cope and respond to corruption.

III. Crimes and Criminal Procedures

Even without passage of the Anti-Corruption Law, corruption is already illegal in Cambodia. This is primarily the result of the UNTAC Law.⁴ The UNTAC Law criminalizes embezzlement by public officials, corruption, forgery of public documents and bribery. There is also a special provision within the Law on Taxation which criminalizes corruption by tax officials. Each of these crimes will be addressed below. There are no special procedures for corruption investigations or trials in the Cambodian courts, and criminal corruption cases are treated like all other criminal cases under the Law on Criminal Procedure. The general mechanism for filing and prosecuting a criminal case under the Law on Criminal Procedure will be discussed below.

A. Criminal Offenses

The UNTAC Law forms the basis for most substantive criminal law in Cambodia. It lays out the elements of the crimes and their punishments.⁵ The UNTAC Law contains four articles that prohibit various aspects of corruption. It draws a distinction between serious crimes (referred to simply as “crimes”) and lesser crimes (“misdemeanors”). In general, the possible sentences for crimes are more severe than for misdemeanors. Two of the corruption-related articles, Embezzlement by Public Officials and Corruption are considered crimes, while the other two, Forgery of Public Documents and Bribery are misdemeanors.⁶ There is also a provision in the Law

⁴ The formal name of the UNTAC Law is “Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period.” It was drafted with the assistance of UNTAC (which is the reason it is often referred to as the UNTAC Law) and adopted by the Supreme National Council on September 10, 1992.

⁵ Criminal procedure – the body of rules by which criminal cases are initiated, investigated and tried before the courts – is contained in the Law on Criminal Procedure (1993). Cambodian criminal procedure is discussed below in Section III(B).

⁶ Even without passage of the Anti-Corruption Law, these crimes are likely to be substantially changed in the near future. The government has committed to making passage of the draft Penal Code a priority. When passed, the new Penal Code will completely replace the UNTAC Law.

on Taxation which makes it a crime for tax officials to withhold tax money from the government or improperly attempt to collect tax money.

1. Corruption (UNTAC Law Art. 38)

The central corruption-related provision of the UNTAC Law is Article 38, which states that:

Without prejudice to possible disciplinary action, any civil servant, military personnel, or official agent of any of the four Cambodian parties to the Paris Agreement, or any political official who, while performing official duties or tasks related to such duties, solicits or attempts to solicit or who receives or attempts to receive property, a service, money, staff, a professional position, a document, an authorization or any benefit in exchange for any of these same elements is guilty of the crime of extortion and shall be subject to a punishment of three to seven years in prison.

Like any crime, the crime of corruption is composed of individual elements. Each of these elements is derived from the language of Article 38. The elements of corruption are that:

1. a government official;
2. acting in the course of his or her duties;
3. solicits, attempts to solicit, receives or attempts to receive;
4. any benefit;
5. in exchange for any other benefit.⁷

⁷ This section is not intended to be a technical legal analysis of the elements of corruption-related crimes. Rather, it is intended to focus on the key elements of the crimes and explain them in a manner that is clear and understandable. The target audience is the public, civil society, donors, and the Royal Government of Cambodia. In some instances, this will mean that potentially complicated or ambiguous legal issues have not been addressed.

The key to the crime of corruption is that a government official is receiving or requesting something (which could include money, property, services, favors, or anything that has value or confers a benefit) in return for using his or her official position to confer a benefit on the person doing the bribing.

In order for an individual to be convicted of corruption, each of the elements listed above must be present. If an individual is found guilty of corruption, they can receive a prison sentence of between three and seven years. It is also worth noting that the existence of a criminal charge arising out of an act of corruption does not preclude a parallel administrative proceeding arising out of the same act.⁸

2. Bribery (UNTAC Law Art. 58)

Article 58 of the UNTAC Law states that:

Any person who corrupts or attempts to corrupt any elected official, civil servant, military personnel, or official agent of any of the four Cambodian parties to the Paris Agreement or of any registered political party who, while performing official duties or tasks related to such duties, by promising property, services, money, staff, professional position, documents, authorization or any benefit whatsoever in exchange for one of these same benefits is guilty of bribery and shall be liable to a punishment of one to three years in prison.

Based on this, bribery has occurred when:

1. any person;
2. corrupts or attempts to corrupt any government official;
3. while that government official is acting in the course of his or her duties;
4. by promising some benefit;
5. in return for receiving a benefit.

⁸ Indeed, as will be seen later, a single act of corruption could lead to three different proceedings – a criminal trial for corruption, a civil action for damages arising out of the corruption, and an administrative proceeding that could lead to the loss of employment.

Bribery is the companion crime to corruption. Corruption requires two participants, the government official who receives the benefit and a member of the public that confers that benefit (in return for some other benefit). The government official can only be charged with corruption. The member of the public can only be charged with bribery. Despite being the companion crime to corruption, bribery is treated as less serious than corruption. While corruption is a full-fledged crime, bribery is listed as a misdemeanor. In addition, while the maximum penalty for corruption is seven years in prison, the maximum penalty for bribery is three years in prison.

3. Embezzlement by Public Officials (UNTAC Law Art. 37)

The UNTAC Law also makes embezzlement by public officials a crime:

Any elected official, civil servant, military personnel or official agent of any of the four Cambodian parties to the Paris Agreement or any political official who, while performing official duties or tasks related to such duties, with a view to owning or using, misappropriates, sells, rents, embezzles for personal profit, or for that of a third party, property, services, money, personnel, any advantage, document, authorization, or any function belonging to any public authority, is guilty of the crime of embezzlement of public property and shall be liable to imprisonment for a term of three to ten years.

Embezzlement by a public official occurs when:

1. a government official;
2. acting in the course of his or her duties;
3. misappropriates, sells, rents or uses;
4. any public function;
5. either for personal profit or to profit a third party.

There are two key differences between corruption and embezzlement. First, corruption requires two actors, the public official who is receiving a personal benefit, and the member of the public that is providing that benefit. Embezzlement, on the other hand, does not require the participation of a second individual. The second key difference is that in corruption, the government official is

trading a benefit over which he has control in return for some other benefit. In embezzlement, the government official is simply misappropriating some benefit conferred on him by his official position.

For example, if a government official who has the right to provide licenses or permits for some activity were to accept money to provide a license to a company that cannot meet the minimum qualifications for a license that would be corruption. In this case, the official is using his position (his ability to grant licenses) to obtain a benefit for himself (the payment) in return for providing a benefit to the briber (issuing the license). This is a classic case of corruption. However, if the official were to issue licenses but under-report the amount of money that he was collecting, this would be embezzlement. In this latter case, a government official is using a public function conferred on him by his position (the right to issue licenses) in order to enrich himself (by withholding some of the money received from those seeking licenses). This latter case does not require any wrongdoing by the public, who may be unaware that the official is withholding their payments from the government. Individuals convicted of embezzlement can be imprisoned for between three and ten years.

4. Forgery of Public Documents (UNTAC Law Art. 49)

Article 49 of the UNTAC Law states that:

Any elected official, civil servant, military personnel, or official agent of any of the four Cambodian parties to the Paris Agreement or any registered political party who, while performing official duties or tasks related to such duties, commits a forgery, either by false signature, or by alteration of a deed, writing or signature, or by impersonation, or by false entry into a registry or other public deed after its execution or closing, and any person knowingly makes use of the same, is guilty of forgery of a public document and shall be liable to a term of imprisonment of five to fifteen years.

Forgery of public documents occurs when:

1. a government official;
2. performing official duties;
3. commits forgery by;
 - a. falsely signing a document;
 - b. altering a deed, writing or signature; or
 - c. falsely entering something into a public registry or public deed after its closing or execution;
4. and any person knowingly makes use of that forgery.

This is a slightly more complicated crime than corruption or embezzlement. For one thing, it requires two actors, the government official who commits the forgery and another person who makes use of it. Moreover, there is a specific mental element defined in the crime. The person who makes use of the forged document must do so “knowingly.” This would require not just proof that someone used the forged document, or even that they profited from it. It requires proof that they used the document knowing that it was forged. The difficulty of proving knowing use is mitigated in cases where the person using the forged document is the government official who created the forgery in the first place, because he or she would be aware that it was forged.

The punishment of forgery of public documents is somewhat confusing. It is listed as a misdemeanor, yet the maximum possible penalty (fifteen years) is more than twice the maximum penalty for corruption. In fact, it is punished almost as severely as murder, which has a maximum penalty of twenty years in prison. It is not clear why this is the case.

5. Violations by Tax Officials (Law on Taxation Art. 139)

The Law on Taxation contains a special provision devoted to corruption by tax officials.

Article 139 states that:

Any person who has been assigned to implement tax provisions and who has deliberately committed acts as below shall be guilty of a violation of the law and

liable for a fine from five million riels to ten million riels or imprisonment from 1 month to 1 year or both:

- 1) withholding an amount of tax for his own use or for other uses not mentioned in the tax provisions;
- 2) submitting incorrect reports of the tax amount that he has collected or has received;
- 3) using his position as a tax official to obtain money or other benefits from the taxpayer or other person;
- 4) collecting or attempting to collect tax without authorization.

Any person who has been assigned to implement tax provisions and who has deliberately requested an amount more than is allowed by law shall be punished for a violation of law according to the criminal law in force.

Any person who has been assigned to implement tax provisions and who has deliberately requested or accepted bribes shall be punished for bribe taking according to the criminal law in force. The person making the bribe shall be punished for offering bribes according to the criminal law in force.

Many of the acts prohibited by this article would, even in the absence of this article, constitute violations of the UNTAC Law. For example, “withholding an amount of tax for his own use” would, in most circumstances, probably also count as Embezzlement by a Public Official. Similarly, “using his position as a tax official to obtain money or other benefits from the taxpayer” sounds very much like using an official position to obtain a benefit from a member of the public in return for providing some sort of benefit, which is Corruption. Indeed, the language of the article seems to suggest that a single act could be a violation of Article 139 of the Law on Taxation and the provisions of the UNTAC Law.

B. Criminal Procedures

Cambodian criminal procedure is based largely on the French civil law system and is quite different from the common law system that is used in much of the English-speaking world. Current criminal procedures are defined by the Law on Criminal Procedure (1993). That law is due to be replaced by a new Criminal Procedure Code that has been drafted with considerable international technical assistance. However, until the new Criminal Procedure Code is promulgated – and it is not clear when that will happen – Cambodia will continue to use the 1993 law. There are no special provisions that apply to criminal prosecutions for corruption, and corruption prosecutions should proceed like any other criminal prosecution in Cambodia.

All criminal actions begin with a crime. Only duly-appointed prosecutors have the right to file criminal charges. *See* Law on Criminal Procedure Arts. 4, 8, 52. There are generally two ways in which crimes come to the attention of the prosecutors. First, the judicial police have a duty to investigate crimes. They are supposed to collect evidence that a crime has been committed and present that evidence to the prosecutor. *Id.* Arts 35, 56. Consequently, one way to initiate a criminal proceeding is to complain to the police. Second, any person who believes a crime has been committed may report that crime directly to the prosecutor, who then has a duty to receive the complaint. *Id.* Art. 56.

Once the prosecutor has received a report of a crime, he or she has an obligation to undertake a preliminary investigation. *Id.* Art. 56. The purpose of the preliminary investigation is to determine whether there is sufficient evidence to bring charges. The prosecutor can use the judicial police to carry out this preliminary investigation. *Id.* Art. 36. At the end of the preliminary investigation, the prosecutor will decide whether or not to bring charges. If the prosecutor believes a crime has been committed, he or she will make a preliminary charge, which identifies the crime allegedly committed and the person believed to be responsible. *Id.* Art. 60. If the prosecutor declines to bring a preliminary charge after having received a complaint from someone, he or she must notify the complaining party of the decision not to bring charges. The complaining party then has the right to appeal the prosecutor's decision to the Appeals Court. *Id.* Art. 59.

Once a preliminary charge has been made by the prosecutor, the case is transferred to an investigating judge. *See* Law on Criminal Procedure Art. 60. The investigating judge then has a responsibility to begin a formal investigation. The investigating judge has broad powers to investigate the crime, and may interview witnesses, collect evidence, search buildings, and obtain expert advice, amongst other things. *Id.* Arts. 81, 87, 88. Once the investigating judge is satisfied that the investigation is complete, he or she will make a determination about whether there is sufficient evidence to make a formal charge. If the investigating judge is convinced there is not enough evidence, he or she will issue a “nonsuit order” which effectively dismisses the preliminary charge. *Id.* Art. 90. The prosecutor may appeal a nonsuit order. *Id.* Arts. 90, 94. If the victim has filed a civil complaint that claims damages arising out of the allegedly illegal activity that formed the basis for the preliminary charge,⁹ then the civil complainant may also appeal the nonsuit order. *Id.* Art. 91.

The Appeals Court has discretion to allow the civil complainant to introduce evidence during the appeal that was not included in the investigating judge’s decision to dismiss the preliminary charge. *Id.*, Art. 191. The Appeals Court can even conduct a new investigation of the facts, if it believes the original investigation was incomplete. *Id.*, Art. 192. Assuming that the investigating judge is satisfied that the investigation has produced sufficient evidence to continue with the prosecution, the investigating judge will turn the dossier (which contains all the information collected by the investigating judge) over to the prosecutor. The prosecutor will then

⁹ One important feature of criminal procedure in Cambodia is that every criminal act can give rise to two different legal actions – a criminal one and a civil one. *See* Law on Criminal Procedure Art. 2. The prosecutor decides whether to bring charges against the accused under criminal law. *See id.* Arts. 4, 52. This is the first action. In addition, the victim may also bring suit against the accused in a parallel civil action for damages caused by the crime. *Id.* Arts. 5, 9. The two cases are often heard at the same time, before the same judge, with the judge ruling first on the criminal charges and then on the civil claim for damages. *Id.* Art. 16. However, there is no requirement that they be filed or heard together. *Id.* Art. 6. The plaintiff in the parallel civil action is called the civil complainant.

confirm the preliminary charge, turning it into a formal charge. The case will then be put on the docket for trial.

Trials in the provincial courts are overseen by a single judge. *See* Law on the Organization and Activities of the Adjudicate Courts of the State of Cambodia, Art. 6. That judge may not be the same person as the investigating judge for the case. *See* Law on Criminal Procedures, Art. 98. The judge is primarily responsible for the questioning of the witnesses. The prosecutor, defense counsel, and civil complainant may only ask questions if the judge allows them to do so. *Id.*, Art. 132. All of the parties may present witnesses to the court. The prosecutor's witnesses are questioned first, followed by the civil complainant's witnesses and finally the defense witnesses. *Id.*, Art. 133. After the witnesses are questioned, each party may speak to the court, in the following order: 1) the civil complainant; 2) the accused; 3) the civil complainant's lawyer; 4) the prosecutor; and finally 5) the accused's lawyer. Before coming to a conclusion, the judge must examine all of the evidence produced by the parties during the trial. *Id.*, Art. 125. The civil complainant has the right to appeal an adverse result in the criminal case. *Id.*, Arts. 155, 161, 169.

Appeals Court proceedings are heard by panels of three judges. *See* Law on the Organization and Activities of the Adjudicate Courts of the State of Cambodia, Art. 11. There is no limitation on the scope of appeal before the Appeals Court, with the apparent result that the Appeals Court re-hears the evidence and witnesses in most cases. *See* Law on Criminal Procedures, Art. 198.¹⁰ Procedures for hearing witnesses and evidence at the Appeals Court are similar to the procedure described above for the provincial courts. *Id.*, Art. 188-191. Appeals to the Supreme Court can be made by "interested persons," which presumably includes civil complainants. *Id.*, Art. 211.

Cambodia's Supreme Court consists of nine judges. Initial appeals to the Supreme Court are heard by a panel of five judges. *See* Law on the Organization and Activities of the Adjudicate Courts of the State of Cambodia, Art. 16. The scope of the initial appeal to the Supreme Court is

¹⁰ This is substantially different from the common law system, where appeals are not general re-trials of the lower court decision but are focused only on the alleged errors in the lower court's decision. The Cambodian Appeals Court has a much broader and duplicative jurisdiction.

limited to errors of law, and the Supreme Court is not supposed to re-consider the facts. *Id.*, Art. 14. In the event that a criminal case returns to the Supreme Court a second time after having been returned to the lower courts, all nine judges may decide the case together. *See* Law on Criminal Procedure, Art. 226. When sitting on a second appeal from the same case, the Supreme Court may reconsider both the facts and the law. *Id.*

C. Criminal Corruption Trials in Practice

Unfortunately, even though the UNTAC Law criminalizes corruption, bribery and embezzlement by public officials, in the past there have been relatively few prosecutions for these crimes. Between 1992 (when the UNTAC Law was adopted) and 1999 there was not a single prosecution for corruption-related offenses, despite widespread acknowledgement that corruption was rampant within the government.¹¹ It is often difficult to find reliable information on cases in the Cambodian courts,¹² but the situation appears to have improved in recent years. Today, court cases against lower-ranking provincial officials are moderately common. In some cases, higher-ranking officials (like provincial governors and deputy-governors) appear to be able to use their political connections to protect themselves, but there have been cases against provincial governors. However, publicly discussing the involvement of senior central government officials in corruption is still very risky.¹³ In general, the system seems to be much more responsive to charges of corruption against lower-ranking officials than it was six or seven years ago.

¹¹ *See* “Cambodia’s kingdom of corruption: trying to find ways to turn the tide,” Phnom Penh Post, Issue 8/14, July 9-22, 1999. *See also* “Graft: pervasive, ever-present, problematic,” Phnom Penh Post, Issue 11/15, July 19 - August 1, 2002.

¹² There is no publicly available information about how many cases of each kind are tried each year, nor are the courts’ final decisions considered public. It is possible to get some information about the courts’ activities from newspapers, but they present information about a very narrow and biased selection of court cases. Nevertheless, in many cases they are the only source of information.

¹³ Allegations of corruption against senior central government officials have tended to result in defamation or disinformation charges against those making the allegations. Until recently, defamation was a criminal charge, and disinformation remains a criminal charge. Several individuals who have made allegations

In 2006, there have been quite a few corruption trials against provincial officials, often arising out of allegations of participation in illegal logging or land-grabbing.¹⁴ In one illustrative case, 14 officials from Ratanakkiri province were charged with involvement in a multi-million dollar logging operation that took place in Virachey National Park. Initially, the case stalled because local court officials were unwilling or unable to investigate the allegations. However, the investigation resumed after it was transferred to Phnom Penh Municipal Court. Ultimately, 11 low-ranking officials, including park rangers and border police were tried on charges of corruption for accepting bribes to allow trucks containing illegally logged wood to leave the national park. However, the trials of the 3 highest-ranking officials – a former provincial governor, the former provincial police chief, and the local military commander – were postponed because of alleged problems with the witnesses and evidence.¹⁵ All three high-ranking officials were members of the Cambodian People’s Party (CPP). One of them remains in custody, while the other two have fled. The outcome of this case, at least so far, suggests corruption trials against low-ranking officials are becoming more common but that higher-ranking officials may in some cases have the political connections to avoid (or flee from) corruption charges.¹⁶

of corruption against senior government officials have either been sent to prison or fled the country. For example, Sam Rainsy was sentenced, in absentia, to 18 months in prison on charges of defamation for alleging that Prime Minister Hun Sen had bribed National Assembly President Norodom Ranariddh with \$30 million and an airplane during negotiations over the formation of the coalition government in 2004. *See* “Sam Rainsy Sentenced To 18 Months,” *The Cambodia Daily*, December 23, 2005.

¹⁴ *See, e.g.*, “S’ville Official Arrested In Alleged Land Scheme,” *The Cambodia Daily*, July 21, 2006 at 17 (a Sihanoukville land title official was charged with attempting to forge the title to five hectares belonging to local residents); “Forestry Official, Wife Are Charged in Timber Scheme,” *The Cambodia Daily*, July 17, 2006 at 21 (the deputy director of the of a district Forestry Administration office in Kampot province was charged with using his position to help his wife run an illegal logging business).

¹⁵ *See* “Graft Trial of 3 Senior R’kiri Officials Postponed,” *The Cambodia Daily*, July 21, 2006 at 16; “R’kiri Illegal Logging Trial To Begin Thursday,” *The Cambodia Daily*, July 19, 2006 at 12.

¹⁶ On the other hand, in a recent high-profile case, the former governor of Kampot province was arrested and charged with corruption under Article 38 of the UNTAC Law for allegedly participating in illegal

In another illustrative case, the World Bank froze funding on several Bank-funded projects in May 2006 after an internal investigation concluded that there was evidence of corruption by government officials. The government initially responded with skepticism and several senior government officials, including Prime Minister Hun Sen, questioned the Bank's findings.¹⁷ However, in July 2006, the former director of one of the suspended projects was arrested and charged with embezzlement under Article 37 of the UNTAC Law. He was accused of embezzling more than \$800,000 from four road-building contracts and was immediately placed in pre-trial detention.¹⁸

There is considerable corruption in the process of collecting taxes.¹⁹ According to a recent study by the Economic Institute of Cambodia, the government only collects about 25% of the potential tax revenue, largely because of "unofficial payments being made to government officials in order to avoid paying taxes."²⁰ Nevertheless, a search of public documents and newspaper reports did not identify any prosecutions of tax officials for corruption under the UNTAC Laws or under the specific provision in the Law on Taxation.

land-grabbing and logging. *See* "Ex-Governor Charged With Land Crimes," *The Cambodia Daily*, July 19, 2006 at 1.

¹⁷ *See* "Claim and counterclaim," *Phnom Penh Post*, Issue 15/13, June 30-July 13, 2006; "Hun Sen Says Still Awaiting World Bank Evidence," *The Cambodia Daily*, July 19, 2006, at 12.

¹⁸ *See* "Gov't Official Arrested in World Bank Scandal," *The Cambodia Daily*, July 20, 2006, at 16.

¹⁹ *See, e.g.*, "Top taxman goes, unwieldy system stays," *Phnom Penh Post*, Issue 13/27, December 31, 2004 – January 13, 2005.

²⁰ *See* "Finance Minister Said To Blast Corruption Report," *The Cambodia Daily*, July 19, 2006 at 12.

IV. Administrative Proceedings

In addition to formal criminal proceedings for corruption, which can lead to imprisonment and the possibility of parallel civil claims for payment of damages, various Cambodian laws also create administrative proceedings to address corruption. These administrative proceedings, which are generally conducted within a ministry or government department, may result in employees being reprimanded, demoted, losing benefits, or being terminated. There is no barrier to a government employee being charged with a corruption-related crime, being sued in a parallel civil action, and also being charged under one of the following administrative proceedings. Different classes of government employees are subject to different administrative proceedings. For example, judges are subject to one procedure, while civil servants are subject to a different one. The different administrative mechanisms for preventing corruption will be addressed below.

A. Civil Servants

Cambodian civil servants, excluding judges and civil servants working in the legislative branch of government, are regulated by the Law on the Common Statute of Civil Servants. *See* Law on Civil Servants, Art. 1. In the course of their work, they are required to “respect the law” and are forbidden to “use the prerogatives and authority of their position for personal profits or to threaten or violate the rights of citizens.” *Id.*, Arts. 33-35. Failure to follow these rules should result in disciplinary sanctions. *Id.*, Art. 39.

There are actually two different administrative procedures specified in the Law on Civil Servants, depending on the severity of the offense and the proposed punishments. Less serious offenses are known as “first degree” offenses. The punishments for first degree offenses are limited to: 1) a formal reprimand; 2) a censure that is recorded in the civil servant’s personnel file; 3) removal from the list of individual’s entitled to promotion; and 4) “automatic position change by disciplinary measure,” which seems to be a transfer to a different job within the civil service. *See* Law on Civil Servants, Art. 40. A civil servant charged with a first degree offense has a right to review the allegations against him or her and provide a written explanation. *See* Anukret Establishing Procedures for Imposing Disciplinary Sanctions on Civil Servants, dated January 28,

1997 (hereafter “Anukret on Disciplinary Sanction for Civil Servants”), Art. 3. The Minister of the Ministry that employs the accused civil servant (the “concerned Minister”) will then review the personnel file and the civil servant’s written explanation and then decide whether to impose any of the punishments described above. *Id.*, Art. 4. The civil servant does not have a right to a hearing, and the Minister can decide the case solely on the documents in the personnel file and the written explanation. There is no appeal.

More serious offenses are called “second degree” offenses.²¹ The punishments for second degree offenses are: 1) severe censure with removal from the promotion list; 2) placement on leave without pay for a period up to a year; 3) demotion to a lower grade or class within the civil service hierarchy; 4) forced retirement; and 5) termination. *See* Law on Civil Servants, Art. 40. There are more procedural safeguards in a proceeding for a second degree offense. To begin with, the concerned Ministry must conduct a preliminary inquiry. The report of the preliminary enquiry must then be forwarded to the concerned Minister, who will decide whether to continue the proceedings, impose a lesser first degree punishment or dismiss the proceedings entirely. *See* Anukret on Disciplinary Sanctions for Civil Servants, Art. 6.

If the Minister decides to continue the proceedings, a Disciplinary Council must be appointed. It is composed of five members, three of which are chosen by the concerned Minister. One will become the president of the council, another will become the reporter, and the final ministerial appointee is simply a member. The other two members of the Disciplinary Council are peers of the charged civil servant. *Id.*, Art. 8. The reporter will then review the charged civil servant’s personnel file and conduct an investigation. At the end of the investigation, the reporter will file a written report with the Disciplinary Council. *Id.*, Art. 10. The Disciplinary Council will then convene to hear the charges. The charged civil servant may have representation at this

²¹ There is no formal definition of what violations of the Law on Civil Servants constitute first or second degree offenses. Rather it appears that whether an offense is considered first or second degree depends entirely on the punishment that is sought. This means that the exact same acts could be treated at different times as either first or second degree offenses, at the discretion of the concerned Minister. This lack of a definition creates opportunities for inconsistency and favoritism.

hearing, and is entitled to call witnesses, and make a written or verbal presentation. *Id.*, Art. 12; *see also* Law on Civil Servants, Art. 49. After hearing the evidence, the Disciplinary Council will then vote, in secret, on what punishment to recommend. The council will forward this recommendation to the concerned Minister, who makes a final determination of what punishment to impose. *See* Anukret on Disciplinary Sanctions for Civil Servants, Arts. 13-14. If the Minister decides to impose a lesser sentence, he or she must explain his or her reasons in writing. *Id.*, Art. 15.

There is no legal reason why a civil servant who had engaged in corruption could not be the subject of a criminal prosecution and an administrative proceeding under the Law on Civil Servants. However, Article 51 of the Law on Civil Servants imposes limitations on the prosecution of civil servants. As originally drafted in 1994, Article 51 prohibited the prosecution of civil servants for criminal offenses, unless either the Council of Ministers (in the case of high-ranking civil servants) or the concerned Minister (for lower-ranking civil servants) granted permission in advance for the prosecution. It was criticized for effectively granting immunity from prosecution to civil servants.²²

In 1999, Article 51 was amended. The prosecutor no longer needs permission from the government to charge a civil servant with a crime, but instead must notify the concerned Ministry within 72 hours of deciding to charge a civil servant. In addition, if the charged offence “occurs within the framework” of the performance of a public function, then the government is obligated to defend the civil servant.²³ The amended version of Article 51 has been criticized for creating a double standard for civil servants and potentially providing civil servants advance notice that a

²² *See* “Trials and Tribulations at the Ministry of Justice,” Phnom Penh Post, Issue 8/16, August 6-19, 1999 (“Article 51 . . . has been castigated by human rights organizations as a mechanism for fostering de fact impunity for government employees.”).

²³ Arguably, corruption will always take place within the framework of a public function because one of the elements that must be proven is that the government employee was acting within the scope of his or duties at the time of the alleged corruption. Read this way, Article 51 may compel the government to defend any civil servant that it accuses of corruption.

decision to prosecute has been made and thereby creating opportunities for civil servants to flee justice.²⁴

There appears to be no publicly-available information on how many disciplinary procedures are carried out under the Law on Civil Servants. In fact, numerous people who work with the government, including a number of Khmer lawyers, were not aware of the civil service disciplinary procedures. This suggests that either the proceedings are accompanied by an unusual level of secrecy, or that they do not occur very often. Complaints about civil servants are supposed to be handled through the Secretariat of State of the Civil Service. *See Anukret on the Organization and Functioning of the Secretariat of State of the Civil Service*, dated May 28, 1997, Art. 3. However, the author has not been able to find any information on this organization.

B. Judges and Prosecutors

The judiciary is intended to be an “independent power” that “uphold[s] impartiality and protect[s] the rights and freedoms of the citizens.” *See* Cambodian Constitution, Art. 128. In order to aid in the impartiality of the judiciary, judges cannot be dismissed by the Ministry of Justice. *Id.*, Art. 133. Rather, only the Supreme Council of Magistracy has the power to appoint new judges and discipline existing judges. *Id.*, Arts. 133, 134. The Supreme Council of Magistracy has nine members, and the King is automatically the Chairman. *See* Law on the Organization and Functioning of the Supreme Council of Magistracy, Art. 2. Other members include the Minister of Justice, the Chief of the Supreme Court, the Chief of the Appeals Court, the General Prosecutors of the Supreme and Appeals Courts, and three other judges elected by the judges. *Id.*

When deciding on disciplinary measures against a judge or prosecutor, a subset of the Supreme Council of Magistracy meets as the Disciplinary Council. The King and the Minister of Justice are excluded from the Disciplinary Council, which is chaired by either the Chief of the Supreme Court or the Prosecutor General of the Supreme Court, depending on whether the alleged offender is a judge or prosecutor. *Id.*, Art.12. The law does not give many specifics about what

²⁴ *See* “Trials and tribulations at the Ministry of Justice,” Phnom Penh Post, Issue 8/16, August 6-19, 1999.

should happen at the hearing, other than noting that voting on any disciplinary sanction must be secret. *Id.*, Art. 14. For instance, it is not clear from the law whether the alleged offender or the complaining party has a right to be present or make a presentation at the hearing.²⁵ The recommendation of the Disciplinary Council is then forwarded to the Supreme Council for approval. *Id.*, Art. 15. There is no appeal from the Supreme Council's decision. *Id.*

There is no formal mechanism in the law for members of the public to raise complaints with the Supreme Council of Magistracy (SCM). However, newspaper reports indicate that the Ministry of Justice provides administrative support to the SCM, and that all complaints about judges or prosecutors should be submitted to the Ministry of Justice.²⁶ It also appears that the Ministry of Justice now does the initial investigation of complaints.

The judiciary is perceived by the public as one of the most corrupt branches of the Cambodian government, and there is a need for the SCM to address corruption within the judiciary.²⁷ However, the SCM was largely inactive until March 2005, when Prime Minister Hun

²⁵ In addition, it is not clear what constitute offenses that are punishable by the SCM because there are no ethics rules for judges. Various rules exist in draft form, but it is not known when or if they will be promulgated. As it stands, the SCM appears to have unfettered discretion in deciding what constitutes an offense.

²⁶ See "Power Shift Puts Judiciary Under Gov't Control," *The Cambodia Daily*, May 9, 2005 (noting that the Ministry of Justice will handle all complaints on behalf of the SCM); Human Rights Watch World Report 2006, Cambodia Country Summary at 2 ("In May 2005, the prime minister strengthened his control over the judiciary by placing the Supreme Council of Magistracy (SCM) – a disciplinary body for the judiciary that is meant to be independent – under the Ministry of Justice.").

²⁷ One survey of businesses indicated that more than 70% of respondents believed that corruption in connection with judicial decisions was common. See Economic Institute of Cambodia, Cambodia Competitiveness Report 2005-2006 at 20-21 and A21. That same survey found that reforming the judiciary was perceived as one of the most important ways to improve the effectiveness of the government. A more recent study by the Economic Institute of Cambodia found that businesses view the judiciary as the least honest public institution. See "Report: Firms See Judges as Most Corrupt," *The Cambodia Daily*, July 13, 2006, at 1. See also Center for Social Development, *Corruption and Cambodian Households*, March 2005, at

Sen announced an “iron fist” campaign to reform the judiciary. As part of the iron fist campaign, a number of judges were disciplined for “wrongdoing,” although in most cases it was never disclosed what rules or laws they had allegedly broken. A judge and a prosecutor were dismissed, at least one judge was transferred to a different court, several judges were suspended, and several judges were transferred to the Ministry of Justice. Less than a year later, most of the judges who were disciplined were quietly reinstated.²⁸ Only the judge and prosecutor who were dismissed have not been reinstated.

A closer look at two of the cases demonstrates the potential for problems that are inherent in any system that is as opaque as the SCM. One judge, Hing Thirith, was apparently disciplined and transferred from Phnom Penh to Stung Treng because he released two murder suspects for lack of evidence, despite orders from senior government officials to send them to trial.²⁹ His decision was appealed and the two remained in custody.³⁰ While the lack of public information about the courts or the SCM makes it difficult to assess such cases, it appears that Hing Thirith was disciplined for not bowing to political pressure.

45-46 (reporting that all government institutions are perceived as untrustworthy by the public, but that the courts are viewed as the most dishonest).

²⁸ See “Prime Minister’s ‘iron fist’ campaign has judges, prosecutors in cross hairs,” Phnom Penh Post, Issue 14/14, July 15-28, 2005; “Hun Sen’s ‘iron fist’ ends up as a slap on the wrist,” Phnom Penh Post, Issue 15/13, June 30 - July 13, 2006.

²⁹ See Report of the Special Representative of the Secretary-General for Human Rights in Cambodia, dated December 20, 2004, United Nations Document No. E/CN.4/2005/116 at ¶¶ 22-23.

³⁰ The two suspects were later convicted of murder and sentenced to twenty years in prison. According to the UN Secretary-General’s Special Representative for Human Rights in Cambodia, the “prosecution failed to present any evidence linking the defendants to the crime, and disregarded fundamental principles of fair trial, such as the presumption of innocence and the impartiality of the court.” See Press Release entitled “The Special Representative calls for continued investigation into the murder of trade union leader Chea Vichea and for the immediate release of Cheam Channy,” dated August 16, 2005, available at <http://www.ohchr.org/english/press/docs/Leuprecht16august.pdf>.

The other case involves a prosecutor named Yam Yet. When Prime Minister Hun Sen announced his “iron fist” crackdown on the judiciary in March 2005, Battambang Prosecutor Yam Yet was appointed to look into corruption in the courts. During the course of his investigation, he sent a letter to the Phnom Penh Municipal Court requesting the release of a suspect who was being held illegally at the Phnom Penh police headquarters on Prime Minister Hun Sen’s orders. A few months later Yam Yet was suspended by the Supreme Council of Magistracy, allegedly because he had not followed the “proper procedures” in sending the letter.³¹ The punishment seems out of proportion to the alleged wrongdoing, and suggests that Yam Yet was really disciplined for questioning Hun Sen’s orders.

The lack of certainty about the procedures under which the SCM operates, combined with a lack of transparency about the individual cases it hears, raise questions about the effectiveness of the SCM as a mechanism for addressing corruption in the judiciary. This is further compounded by the reinstatement of most of the judges who have been disciplined as well as the questions raised by the cases of Hing Thirith and Yam Yet. Nevertheless, it is the only body that has the authority to discipline judges or prosecutors.

C. Police

The National Police are “supervised” by the Ministry of Interior,³² and discipline amongst the police is regulated by a decision of the Ministry of Interior. *See* Decision No. 6, Discipline of the National Police Forces, dated Nov. 25, 1996. Policemen and policewomen are required to “abide by the laws,” and failure to do so can result in punishment. *Id.*, Arts. 1, 8. The severity of the punishment and the procedure that are used are determined by the seriousness of the offense. Unlike many of the administrative procedures in Cambodia, the rules governing the police spell out in some detail which offenses lead to which punishments. According to Article 8.C.1 of the Decision on Discipline of the National Police Forces, most minor offenses, like arriving late to

³¹ *See* Lee Berthiaume and Prak Chan Thul, “Iron Fist’ Court Reform Seizes On of Its Own,” *The Cambodia Daily*, August 19, 2005 at 1.

³² *See* Law on the Establishment of the Ministry of Interior, Art. 2.

work, being absent without permission, and not wearing a proper uniform, result in a warning or reprimand. A warning or reprimand comes directly from the offender's supervising officer. *See Id.*, Art. 8.A.

More serious offenses can lead to more serious punishments and are accompanied by more procedural safeguards. The following acts can lead to demotion, transfer, and expulsion:

1. commission of one of the lesser offenses by an officer who has already received two or more warnings or reprimands;
2. receiving a bribe of more than 5,000 riels;
3. embezzling state property worth more than 100,000 riels;
4. using his or her rank, position, or power for personal gain;
5. falsifying official documents or tampering with evidence; and
6. imposing fines without issuing a proper receipt.

See Id., Art. 8.C.2.³³ Before an officer can be demoted, transferred or expelled, he or she must go through a Disciplinary Council proceeding as described in the Law on Civil Servants. Under those rules, the officer is entitled to substantial procedural safeguards, including a hearing before a Disciplinary Council and the right to representation by counsel. *See supra* Section IV(A) for more details on the process.

Finally, there are some offenses which are supposed to result in an officer being referred directly to the courts for criminal prosecution. These include:

1. being apprehended during the commission of a crime;
2. selling weapons or ammunition;
3. torturing individuals who are being held in police detention, but only if it results in their death; and
4. treason.

³³ There are twenty enumerated acts which can lead to demotion, transfer or expulsion. The ones listed above are the ones that seem most relevant to corruption.

See Id., Art. 8.C.3. What is most striking about this list is how short it is. Corruption and embezzlement are not listed at all. This suggests that the police will generally not turn over a fellow policeman or woman to the courts for trial on corruption or embezzlement charges. Rather, such charges will probably be dealt with as in internal police matter which may or may not use the administrative proceedings described above.³⁴ This is clearly at odds with the UNTAC Law, which makes corruption and embezzlement crimes, irrespective of the amount of money at issue. Recently, the Interior Ministry stated that it would investigate any allegations of corruption within the police force.³⁵

If a police officer is charged with a crime, the prosecutor must notify the Ministry of Interior within 72 hours. *See* Royal Decree on Specific Statute of National Police Personnel, Royal Decree No. 0501/178, dated May 22, 2001, Article 45.³⁶ This is similar to Article 51 of the Law on Civil Servants. *See supra* Section IV(A). An officer who is accused of a crime “may” be suspended. An officer who has been convicted but has appealed the lower court’s decision must be suspended

³⁴ Indeed, in several incidents in 2005 and 2006, off-duty police officers shot civilians. In most cases, the police officers were not charged with crimes. For example, a police officer recently chased down a high school student who had bumped into his car on a motorbike and shot him three times in the back. The police officer was released without charge after paying \$5,200 in compensation to the victim. *See* “Cop Pays Student After Shooting Him 3 Times,” *The Cambodia Daily*, July 24, 2006 at 15. *See also* “Payment Clears Police Officer of Man’s Killing,” *The Cambodia Daily*, October 21-22, 2006 at 3 (describing how a police officer who pistol-whipped and then shot and killed a man was not charged with a crime and allowed to return to work after paying \$3,000 to the victim’s family). The Daun Penh district police chief stated that the “families of the suspect and the victim have a mutual understanding, which is why they accepted compensation to end the matter as it will be a waste of time lodging a complaint at the court.” *Id.* Impunity, particularly for less serious crimes, appears to be the norm in the police department. On the other hand, in a recent case, six Phnom Penh policemen were found guilty of murder after torturing and killing a woman in custody. *See* “Six Policeman Sentenced For Torture, Killing,” *The Cambodia Daily*, July 22-23, 2006, at 3.

³⁵ *See* “Report: Firms See Judges as Most Corrupt,” *The Cambodia Daily*, July 13, 2006 at 14.

³⁶ This Royal Decree supplements, but does not replace, the November 1996 Decision on the Discipline of the National Police Forces.

during the course of the appeal. An officer who has exhausted his or her appeals and been sentenced to jail must be dismissed. *See* Royal Decree on Specific Statute of National Police Personnel, Arts. 46-47.

The author has not been able to find any statistics on how often police officers are disciplined under the Decision on Discipline. Nor has the author been able to find any information on how often police officers are formally charged with crimes. It appears that this information is not publicly-available. However, it seems that neither criminal charges nor formal disciplinary proceedings occur very often.³⁷

D. Military Personnel

The Royal Cambodian Armed Forces are organized and regulated by the Law on General Statutes for the Military Personnel (1997) (hereafter “Law on Military Personnel”). RCAF personnel are forbidden to use their position, influence or power to gain any personal advantage or to intimidate, threaten or abuse the rights of citizens. *Id.*, Art. 25. This prohibits most forms of corruption or embezzlement. Administrative punishment under the military law is expressly in addition to, not a substitute for, punishment under general criminal law. *Id.*, Art. 45; *see also* Prakas on the Organization and Functioning of a Disciplinary Council, dated Sept. 13, 1999 (hereafter “Prakas on Functioning of Disciplinary Council”), Art. 1.

The military law provides for administrative punishments for those military personnel who “commit faults.” *See* Law on Military Personnel, Art. 45. Unfortunately, it says nothing about how administrative proceedings are initiated. It does not indicate whether members of the public can complain about military personnel, nor does it indicate which body within the military should receive complaints. The assumption seems to be that complaints will be initiated by a soldier’s commanding officer and forwarded up the chain of command. This suggests that complaints should be made to a soldier’s commanding officer.

Before any soldier can be punished under the Law on Military Personnel, the military must convene a Disciplinary Council. *Id.*, Art. 46. The Disciplinary Council will be composed of seven

³⁷ *See supra* note 34.

members – three officers appointed by the Ministry of Defense, and four officers from the accused’s unit or service (who must be of higher rank than the accused). The three officers appointed by the Ministry of Defense serve as the president, vice-president and reporter. *See* Prakas on Functioning of Disciplinary Council, Art. 3. It is the duty of the reporter to investigate the case and prepare a written report of the findings. *Id.*, Art. 5. The Disciplinary Council will then meet, with the accused officer present, to review and discuss the report. *Id.*, Art. 7. The council will then vote in secret to recommend a penalty. *Id.*, Art. 8. The recommended penalty, along with a record of the hearing, is then forwarded to the Minister of National Defense (or any other “competent authority”) for a final determination of the penalty. *Id.*, Art. 9; Law on Military Personnel, Art. 47. The Minister of Defense may decline to follow the Disciplinary Council’s recommendation and impose a lesser penalty. Punishments include: 1) temporary suspension from work; 2) loss or rank; 3) transfer to inactive status; and 4) expulsion from the military. *Id.*, Art. 48. The author has not been able to find any statistics on how often military personnel are disciplined. Nor has the author been able to find any information on how often they are formally charged with crimes. It appears that this information is not publicly-available.

E. Provincial, District and Commune Officials

Provincial and district administrations are “guided” and “controlled” by the Interior Ministry. *See* Law on the Establishment of the Ministry of Interior, Art. 2. Due to the policy of decentralization, communes have more independence from the central government, but still report to the Ministry of Interior on key issues. Mechanisms that could be used to address corruption at the provincial and district levels will be addressed first.

1. Provinces

Provincial governments are “representatives of the Royal Government” and fall under the direct jurisdiction of the Ministry of Interior. *See* Prakas on the Roles, Responsibilities and Organizational Structure of the Provincial and Municipal Administrations, dated February 15, 1994, Art. 1. They have a general duty to implement the laws and policies of the Royal Government and provide reports on their work to the Interior Ministry. *Id.*, Art. 2. Each provincial government is

run by a governor and several deputy governors. *Id.*, Art. 3. Each provincial administration is composed of several units – the Cabinet, General Secretariat, Finance Unit, and Inspection Unit. *Id.*, Art. 4. While none of these units is specifically tasked with addressing corruption, the Inspection Unit within each provincial government has the responsibility of monitoring and supervising the activities of provincial and district officials. *Id.*, Art. 4.04. In addition, the provincial police report to the governor and the provincial government has the authority to order police to investigate “crimes and offenses.” *Id.*, Arts. 2, 6. Taken together, these form the basis for a system that could be used to investigate and prosecute corruption at the provincial level. However, interviews indicate that provincial governors do not use their investigative powers in any systematic way to address corruption.

2. Districts and the Ombudsman’s Offices

The provincial administration is mirrored, in a slightly less sophisticated form, at the district level. The organizational structure of the districts is determined by a prakas of the Ministry of Interior. *Id.*, Art. 8. According to that prakas, each district shall maintain a district office that contains three units – the Administration Office, the Social Affairs Office, and the Economics Office. *See* Prakas on Roles, Responsibility, Tasks and Structure of District/Khan Office, dated March 16, 2000, Arts. 11-12, 19. None of these offices is specifically assigned responsibility to receive or investigate complaints of corruption. Nevertheless, district governors have a duty to “disseminate, monitor and implement the laws” and provide reports on this duty to the governor of the province. *See* Prakas on the Roles, Responsibilities and Organizational Structure of the Provincial and Municipal Administrations, dated February 15, 1994, Art. 7. The district governor also serves as the local official of the administrative and judicial police, which arguably gives him or her the power to investigate corruption. *Id.*

Two districts – Siem Reap district in Siem Reap province and Battambang district in Battambang province – are part of a pilot program that is testing several new administrative structures designed to improve accountability and good governance. One of the new structures is the “people’s office” or ombudsman’s office that has been created in the district administration. *See* Decision on the Structure and the Administration of Srok Battambang and Srok Siem Reap, dated

June 11, 2003, Art. 12. These ombudsman’s offices are tasked with providing information to the populace and receiving complaints about any “irregularities and shortcomings” of the district staff. *Id.* In a prakas that fleshes out the operation of the ombudsman’s office, the Ministry of Interior made it clear that the office has an obligation to receive and investigate complaints of corruption or extortion. *See* Prakas on the Structure and Management of the Ombudsman Office in Srok Siem Reap and Srok Battambang, Art. 3. In order to aid in the investigation, the “citizen’s representative” (the head of the ombudsman’s office) has the authority to question district employees and obtain documents from other district offices. *Id.*, Art. 14. If the citizen’s representative cannot resolve the complaint or the district staff will not cooperate with the investigation, he or she can send a report of the complaint and investigation to the district governor for resolution. *Id.*, Arts. 3, 15. In addition, the records of the investigation are supposed to be open to the public, and the individual who lodged the complaint is entitled to a report on the results of the investigation. *Id.*, Arts. 3, 16.

However, the ombudsman offices have not received any actionable complaints. The offices in Battambang and Siem Reap have been in operation for about one year so far, but have received only 10 complaints in total. Each complaint had to do with a decision or an action taken at the provincial level. None were within the jurisdiction of the citizen’s representatives, and none were related to corruption in the district administration. As a result, no investigations or dispute resolutions have been undertaken by the citizen’s representatives. The low number of overall complaints may be due, in part, to the fact that complaints must be in writing and the citizen must supply his or her name and contact information. The ombudsman is supposed to keep the contact information secret, but the need to identify oneself may discourage reporting of corruption. The number of non-actionable complaints suggests that there is a need for an ombudsman office at the provincial level.³⁸

³⁸ The government is considering plans to expand the new administrative structures to four new locations (Phnom Penh, Poipet, Sihanoukville, and Kompong Cham) in 2007, but there do not seem to be any plans to duplicate the new administrative structures at the provincial level.

3. Communes and the Accountability Working Groups

Communes operate on a quite different system from the provinces and districts. Since 2001, communes have been made more independent as part of the government's policy of decentralization. *See* Law on Commune Administration, Art. 1. Rather than having government appointed leaders, people vote directly for Commune Councilors, who then collectively form the Commune Council, which acts as the government for the commune. *Id.*, Arts. 4, 9-10. Of course, the Commune Council must still operate within the guidelines established by the Ministry of Interior, or it can be dissolved. *Id.*, Arts. 53-59.

Individual commune residents have the right to complain about almost anything to the Commune Council, and the Commune Council is obligated to respond to the complaint. *See* Sub-Decree on the Decentralization of Powers, Roles and Duties to Commune/Sangkat Councils, dated March 25, 2002, Art. 31. However, there is also a body specifically mandated to receive and investigate complaints about the misuse of commune funds – the “Provincial/Municipal C/S Fund Accountability Working Groups.” *See generally* Decision on Establishment of Provincial/Municipal C/S Fund Accountability Working Groups. The Accountability Working Groups (AWGs) are set up at the provincial level and contain members from the provincial government, commune councils, and civil society. *Id.*, Art. 2. The provincial Accountability Working Groups are expected to collect, review and investigate complaints of misuse of commune funds. *Id.*, Art. 4. In addition, they are supposed to impose and implement disciplinary measures on staff that are found to have misused commune funds. All complaints are recorded in a log, and all decisions are reported upwards to a National Accountability Working Group. *Id.*, Arts. 4, 6.

There are three methods to complain to the AWGs. Complaints can be made in person to any member of the Working Group, who then has an obligation to prepare a written report detailing the allegations. *Id.*, Art. 8. In addition, the Working Groups are required to distribute leaflets on accountability which contain a section for written complaints. These written complaints can then be sent to the Working Group. *Id.*, Arts. 5, 8. Finally, and most practically, the AWGs are required to set up complaint boxes and place them at the provincial government, all district offices, and all commune offices. They may also be placed in the offices of civil society organizations. *Id.*

Residents can then place their written complaints in the complaint boxes. Copies of the complaint leaflets should be available at all complaint boxes. The complaint forms do not ask for identifying information and the majority of complaints that have been received are anonymous. However, in some cases, complaints have included the name and address of the person making the complaint.

Once complaints have been collected and logged, the Accountability Working Group must decide, by a simple majority vote, which complaints to investigate and (after the investigation is complete) what disciplinary measures, if any, to take. *Id.*, Art. 9. Disciplinary sanctions take several forms. For government employees who are found to have misused commune funds or accepted bribes, they will have their employment contracts terminated and the results of the investigation will be forwarded to the appropriate ministry for disciplinary action under the Law on Civil Servants. *See id.*, Annex 2, Disciplinary Measures of Sanctions for Those Who Abuse Accountability Issues. Disciplinary measures under the Law on Civil Servants are described above in Section IV(A). Staff that are found to have misused commune funds will be fired, and contractors or vendors who bribe commune officials will have their contracts terminated and they will be barred from bidding on commune fund projects. *Id.* Finally, commune councilors who are found to have been involved in accountability issues will be reported to the Ministry of Interior, which can remove them. *Id.* There is no mention in the documents on the Accountability Working Group of referring the results of an investigation to the local prosecutor, despite the fact that some of the prohibited activities would also probably constitute crimes under the UNTAC Law.

In an interview, representatives of the Ministry of Interior repeatedly stressed that the AWGs are not designed to be an anti-corruption measure. Rather, they are designed to strengthen accountability with respect to Commune/Sangkat Funds. Moreover, they are only part of a whole system of mechanisms that are designed to improve accountability in the way money is spent by the communes. Nevertheless, they do have functions that can be used to investigate corruption.

Accountability Working Groups are now operating in every province, and fifty-nine complaints about the misuse of commune funds have been received since June 2005. Of those, eleven have been completely resolved. Resolutions have included termination of district staff,

termination of contracts with vendors, and written warnings to Commune Councils on the proper procedures to be followed when spending commune funds.

Officials from the Ministry of Interior confirmed that Accountability Working Groups receive complaints about corruption that does not involve commune funds. However, the Working Groups do not take any action on these complaints because they have no mandate to investigate corruption unless it is related to commune funds. The Ministry of Interior is generally pleased with the performance of the AWGs and is considering various proposals for how to expand their scope.

F. The National Audit Authority and Ministerial Audit

Departments

The National Audit Authority was established in 2000 to conduct audits of “transactions, accounts, systems, controls, operations, and programs of government institutions, in accordance with generally accepted auditing standards” *See* Law on Audit, Art. 1. In particular, one of its roles is to ensure that “controls, procedures and practices” within the various ministries, departments and agencies “are adequate to assure compliance” with Cambodia’s laws and regulations. *Id.*, Art. 4(c). The National Audit Authority (NAA) is also supposed to audit the “accuracy [and] completeness . . . of the financial data appearing on the statements of ministries” *Id.*, Art. 5. Even though the word corruption is not mentioned in the law, the NAA clearly has a role to play in preventing corruption and is a tool for addressing corruption.

In order to carry out its functions, the NAA has various information gathering powers. The Auditor-General, the head of the NAA, has the power to request documents from other ministries, and compel ministry officials to appear and answer questions. *Id.*, Art. 30. In addition, NAA officials may enter the facilities of any entity that is being audited and are entitled to full and free access to that entity’s documents and records. *Id.*, Art. 32. The penalty for impeding an audit is a fine of 1 to 5 million riel, imprisonment from 1 to 3 months or both. The penalty for providing false information to the NAA is a fine of 5 million riel or more, imprisonment from 1 to 5 years or both. *Id.*, Arts. 44-45.

The Auditor-General is supposed to notify the National Assembly, Senate, Council of Ministers, Ministry of Justice and the affected ministries whenever any “serious irregularities” in the

accounts are identified. *Id.*, Art. 24. In addition, the NAA is supposed to issue public reports on each audit that has been performed. *Id.*, Arts. 22, 25-29. However, audit reports remain confidential if they contain information that would “prejudice the security, defense, [or] integrity” of Cambodia, or if the reports would “unfairly prejudice the commercial interest of any legal entity or person.” *Id.*, Art. 38. It is not clear whether reports are publicly available.³⁹

In practice, it appears that powerful ministries, like the Ministry of Interior and Ministry of National Defense, are not audited at all, while less powerful ministries can take years to respond to requests for information from the NAA. The NAA is several years behind in auditing the national budgets and is also years late in providing reports on the ministries it has audited.⁴⁰ It appears that in some instances, the NAA does conduct audits in response to public accusations of corruption.⁴¹ A search of public documents did not find any evidence that NAA audits have led to any criminal prosecutions for corruption-related activities.

In addition to creating the National Audit Authority, the Law on Audit also established internal audit departments within each ministry. *See* Law on Audit, Arts. 41-43. These internal audit departments are supposed to be “an independent function to examine and evaluate the effectiveness, economy, and efficiency of the system of internal controls” in each ministry. *Id.*, Art. 42. However, they report to the head of their own ministries, not directly to the National Audit Authority. So, it is not clear how independent they are in practice. In addition, it appears that they have none of the information gathering powers of the NAA.⁴² Prime Minister Hun Sen has

³⁹ The author did look for, but was unable to find, any published reports of the NAA.

⁴⁰ *See* “Audit Authority blames gov’t ministries for budget delays,” Phnom Penh Post, Issue 14/03, February 11-24, 2005; “Audit Authority to finalize reports on budget, ministries,” Phnom Penh Post, Issue 13/01, January 2-15, 2004.

⁴¹ The NAA pledged to open an audit into allegations of corruption recently raised by the World Bank about projects it was financing. *See* “Claim and Counterclaim,” Phnom Penh Post, Issue 15/13, June 30 - July 13, 2006.

⁴² The articles that create the internal audit departments say nothing about information gathering, and the provisions within the Law on Audit on gathering information are explicitly limited to the NAA.

publicly criticized financial and auditing officials for being “the leading group in extorting money” from the government. According to the Prime Minister, the inspection officials extort money from government departments by threatening to report irregularities if they are not paid.⁴³

G. Parliament

Both the National Assembly and the Senate have bodies which have responsibility for anti-corruption activities. In the National Assembly it is primarily Commission No. 4 on Interior, National Defense, Investigation and Anti-Corruption. The primary Senate body is called the Commission on Interior National Defense and Anti-Corruption. The Commissions on Finance and Banking in both the National Assembly and Senate also have a role in anti-corruption activities because it appears that they are the recipients of the audits produced by the National Audit Authority. *See supra* Section IV(F). There is little publicly-available information about how these bodies operate, and the following section is based largely on interviews.

Neither Commission has formal investigatory powers. Nor do the Commissions have the staff, funding or expertise to carry out investigations of corruption.⁴⁴ However, both bodies do receive corruption complaints on a regular basis. Members of the National Assembly in particular, are encouraged to consult with their constituents on a regular basis, and complaints about corruption are raised at these public consultations. In addition, the Human Rights Commissions in both the National Assembly and Senate also receive complaints, some of which are corruption-related. Like the Anti-Corruption Commissions, the Human Rights Commissions do not have the staff, funding or expertise to carry out investigations.

The parliamentarians’ main tool in responding to corruption complaints is to invite government officials to come to parliament and answer questions about the complaint in a public

⁴³ *See* “Samdech Hun Sen: Handcuffs Are Prepared for Finance Inspecting Officials of Ministry of Economy and Finance,” *The Mirror*, May 15-21, 2005 at 6-7.

⁴⁴ Indeed, one expert suggested that the Senate Commission may not have any oversight powers because the role of the Senate is spelled out quite narrowly in the Constitution and does not appear to include overseeing the implementation of the laws.

hearing. The hearing transcripts are supposed to be part of the public record, though they can sometimes be hard to obtain. Government officials will often come if invited by the Chair of the Commission, but generally do not come if the invitation comes from a lower-ranking member. It is not known how often complaints are resolved through this process.

Another tool that the Commissions can use is to write letters to the appropriate ministry or government department asking for information, requesting an investigation, or urging resolution of a corruption complaint. However, in many cases, the government does not respond to these letters. There does not seem to be any mechanisms to track whether the government has satisfactorily resolved the complaints that are forwarded to it from parliamentarians. Parliamentarians may also attempt to raise awareness about particular corruption issues by discussing the complaints with the press. Neither of the Commissions provides regular reports on its work or its findings.

H. The Ministry of National Assembly and Senate Relations

The Ministry of National Assembly and Senate Relations (MONASRI) was created by the Law on the Establishment of the Ministry of National Assembly Senate Relations and Inspection in 1999. However, the law is extremely brief and leaves the details of how MONASRI will be organized and function to a sub-decree, which was promulgated shortly after the law. *See* Law on the Establishment of the Ministry of National Assembly Senate Relations and Inspection at Art. 4, No. NS/RKM/0699/05, dated June 17, 1999. MONASRI has two main functions: 1) maintaining relations between the executive and legislative branches of the government; and 2) inspecting the operations of the government in order to fight against corruption, abuse of power and other misconduct. *Id.*, Art. 2; Sub-Decree on Organization and Functioning of the Ministry of National Assembly Senate Relations and Inspection at Art 2, No. 67/ANK/BK, dated Aug. 3, 1999. Within the field of inspection, MONASRI has the duty to: 1) oversee and review the work of the inspection offices of the individual ministries, provinces and cities; 2) investigate allegations of misconduct or corruption amongst civil servants, police or military personnel; and 3) prepare reports on its work for the government. *See* Sub-Decree on Organization and Functioning of the Ministry of National Assembly Senate Relations and Inspection, Arts. 3(b), 11-15.

MONASRI has extensive investigatory powers. For example, it has the ability to question those suspected of corruption, search and collect documents, and even suspend individuals who refuse to cooperate with MONASRI's investigation. *Id.*, Arts. 3(b), 10. However, it is not independent. It undertakes only "assignments given by the Royal Government," and reports directly to the prime minister. *Id.*, Art. 3(b). It only makes its reports public once they have been "checked and approved" by the government, and it only refers cases of misconduct to the courts if the prime minister approves. *Id.*, Arts. 3(b), 15. Within MONASRI's Department General of Inspection, there is a sub-department of "grievance and investigation," which has the duty to receive and investigate public complaints, and investigate allegations of corruption published in the press. *Id.*, Art. 14.

Publicly, MONASRI appears to have two main accomplishments. First, since 2003, it has taken a leading role in revising the draft Anti-Corruption Law. With the help of several international donors and civil society organizations, including Pact Cambodia, MONASRI has been working to revise the draft Anti-Corruption Law after the draft that was submitted to the National Assembly in 2003 failed to pass. It is hoped that the revised draft can be submitted to the National Assembly in 2006.

Secondly, it has undertaken several significant corruption investigations. For example, in 2005, MONASRI released a report entitled "Report for Previous Years and 2005 Plans," which found that the Cambodian government had lost a total of \$26.3 million to corruption in nine reported cases.⁴⁵ In addition, it is MONASRI that is heading the Cambodian government's investigation into allegations of fraud and corruption in several World Bank programs, which resulted in the World Bank suspending funding of several projects in June 2006.⁴⁶ MONASRI has also undertaken an investigation of the customs office at Kompong Som, after there were

⁴⁵ According to MONASRI officials, between 1999 and 2005, MONASRI received and investigated 53 complaints. *See* "Inspection Ministry reports \$30 million loss in corruption," *Development Weekly*, Issue 44, May 23-29, 2005 at 1. On the other hand, the 2005 report was the first report MONASRI had completed since its establishment in 1999, despite being supposed to produce an inspection report each year. *Id.*

⁴⁶ *See* "Working for a Cambodia Free of Poverty," World Bank report, July 2006, at 25.

allegations of corruption involving customs officials.⁴⁷ In at least one case, the World Bank corruption allegations, the investigation resulted in charges being filed against an individual.⁴⁸

I. The Anti-Corruption Unit

Within the Council of Ministers, there is a sub-body called the Council on Administrative Reform (CAR). The CAR is charged with implementing the government’s administrative reform program. *See* Anukret on the Establishment of the Administrative Reform Council, dated June 10, 1999, Art. 1. Within the CAR is another sub-body called the “Anti-Corruption Unit.” The Anti-Corruption Unit recently replaced an earlier body called the “Entity Against Corruption Activities.”⁴⁹

The Anti-Corruption Unit (ACU) assumes many of the roles of the earlier entity, including:

1. gather documents and information related to corruption;
2. develop the government’s action plan on corruption; and
3. implement the government’s anti-corruption measures.

See Sub-Decree on the Creation of an Anti-Corruption Unit, dated Aug. 22, 2006, Art. 3. However, the ACU also has new tasks and roles the earlier body did not have. Perhaps most importantly, it now has an explicit mandate to receive and investigate complaints about corruption through its “Investigation Unit.” *Id.*, Art. 7. The ACU does not seem to have any new investigative powers (like the power to subpoena documents or compel government employees to testify), and it will apparently work by “cooperat[ing] with the competent authorit[ies].” *Id.* It is not clear how

⁴⁷ *See* “Inspection Ministry Will Go and Seek Facts from Kompong Som Customs Officials for One Month,” *The Mirror*, January 30, 2005 – February 5, 2005, at 10-11.

⁴⁸ *See supra* note 18.

⁴⁹ The Entity Against Corruption Activities was created by the Anukret on the Creation of the Entity Against Corruption Activities, dated October 27, 1999. The Anti-Corruption Unit replaced it as a result of Sub-Decree on the Creation of an Anti-Corruption Body, dated Aug. 22, 2006. *See id.*, Art. 11 (noting that the 2006 Sub-Decree rendered the 1999 Anukret “null and void”).

effective this will be. For instance, it is not clear what the ACU can do if the competent authorities refuse to cooperate.

In addition to receiving and investigating complaints, the ACU also has a Law Enforcement Promotion Unit. *Id.*, Art. 8. One of the stated tasks of the Law Enforcement Promotion Unit is to cooperate with the judicial police to provide the information necessary to formally charge individuals with a crime. *Id.* This is a welcome development as it appears that corruption has historically been treated as an administrative matter that can be resolved internally, rather than a crime.

The Entity Against Anti-Corruption Activities had a core staff of only 5-6 personnel, and appears to have been largely inactive most of the time. It was not an effective anti-corruption mechanism. Because the ACU is so new, it is unknown whether it will have a large enough budget and enough trained personnel to be more effective. However, on paper, it appears to be an improvement over its earlier incarnation.

J. Lawyers

Lawyers are not generally government employees⁵⁰ and therefore would not usually be capable of committing corruption, as it is defined in the UNTAC Law, although they could be guilty of bribery.⁵¹ Nevertheless, lawyers are regulated by law and required to meet certain ethical standards. “Any lawyer who abuses the rules or commits any acts affecting the ethics or honor of lawyers shall be subject to disciplinary sanction” *See* Law on the Bar Art. 59. Although the Bar Association’s “Code of Ethics” does not directly address corruption, it does prohibit any act

⁵⁰ Most lawyers work in private practice. In fact, the Law on the Bar states that practicing law is incompatible with “public functions” and bars lawyers from actively practicing law if they have any function in the government. *See* Law on the Bar Art. 53.

⁵¹ In fact, in several interviews with Cambodian lawyers, the author has been told that some lawyers act as intermediaries to arrange bribes between their clients and court staff. Any lawyer engaged in arranging a bribe to affect the outcome of a court case would be guilty of bribery under Article 58 of the UNTAC Law.

that is “contrary to the law.” *See* Code of Ethics Art. 6. Presumably, this would extend to cover any participation in corrupt activities, including bribery.

A lawyer may be accused of ethical violations either by members of the public, the General Prosecutor of the Appeals Court, or directly by the Bar Council. Complaints should be directed to the Bar Council (the governing body of the Bar Association), which will appoint a lawyer to investigate the complaint. *See* Law on the Bar Art. 60. The investigating lawyer will prepare a report that is made available to all the parties. *Id.* The Bar Council will then meet to discuss the case, hear from the accused lawyer and issue a decision, which must contain a “statement of precise reasons” for that decision. *Id.*, Arts. 60-61. The Bar Council, in its decision, may issue sanctions that include one or more of the following: 1) warnings; 2) probation for up to 5 years; 3) a ban on the practice of law for up to two years; 4) a ban on serving on the Bar Council for up to 5 years; and 5) expulsion from the legal profession. *Id.*, Arts. 63-65. Either the complaining party, the accused lawyer or the General Prosecutor may appeal the decision of the Bar Council to the Appeals Court. *Id.*, Arts. 24-25, 62.

Unfortunately, since late 2004, the Bar Association has been paralyzed by a dispute over who is President, with two candidates claiming to be the rightful President.⁵² The dispute prevented the Bar Council from meeting for most of 2005 and 2006 because neither faction had enough supporters to form a quorum.

⁵² *See* “Presidential spat divides Cambodian Bar Association,” Phnom Penh Post, Issue 13/23, dated November 5-18, 2004.

Informal Mechanisms

While there are numerous formal mechanisms for addressing corruption, many of which have been discussed above, studies of the impact of corruption consistently show that the rural poor (who comprise the majority of all Cambodians) do not use these formal dispute resolution mechanisms.⁵³ Indeed, most corruption is not reported or addressed in any way. Opposition to corrupt or illegal acts seems to occur most often when the acts affect a large number of people at the same time, and there is the possibility of collective action to address it. However, even when collective action is taken, it does not seem to follow the formal rules for reporting or addressing corruption. When corruption is aimed at individuals or single families, most Cambodians seek to cope with it rather than report it.

K. Individual Responses to Corruption

Most corruption is aimed at individuals and single families. Within families, it is most often the women who encounter corruption and are forced to pay bribes. This appears to be because it is women who traditionally control household finances. For example, it is usually women who go to the market to buy food, take the children to the health clinic, send children to school, and visit government offices to obtain official documents. Consequently, they tend to encounter more situations where some sort of corrupt payment is necessary.

There is also a difference between the way urban and rural dwellers experience corruption. While urban dwellers pay more on average per family in corrupt payments (probably because they use more government services), rural families as a whole pay more because they represent a much larger portion of the population. Rural families most frequently experience corruption in dealings

⁵³ This section is largely based on three recent studies of corruption in Cambodia: 1) Center for Social Development, “Corruption and Cambodian Households” (March 2005); 2) Center for Social Development, “Living Under the Rule of Corruption” (March 2005); and 3) Center for Advanced Study and the World Bank, “Justice for the Poor?” (forthcoming 2006). It has been supplemented with information from interviews with people familiar with the problem, including government personnel, private consultants, and staff with international organizations.

with local government service providers, particularly the police, the school system, and public health care. They rarely come into contact with the courts, the central government or even district or provincial governments. The poor also have very low trust in the police, the courts, and local government structures (like commune councils and district offices). Consequently, they are reluctant to use any of these structures to try to address corruption. Most of the rural poor perceive formal reporting of corruption to be both a waste of time (because the likelihood that the government will act is very small) and potentially quite risky (because those being complained about are often in a position of relative power that they could use against the complainant). According to the results of the International Crime Victim Survey, which was administered in Cambodia in 2001, only 1% of victims of corruption report it to the police. In contrast, 100% of car theft victims reported the theft, and more than 50% of robbery victims reported the robbery.⁵⁴

Most Cambodians dislike corruption and recognize that it is negatively impacting their standard of living and access to services, but they feel powerless to do anything about it. Instead of trying to address corruption, most people simply cope with it. Coping mechanisms are varied. Some people simply avoid the public sector entirely, foregoing many of the services that the government should be providing because they cannot afford the payments that would be required. For example, people might not have birth certificates for their children and might not be registered with the local authorities. They might barter their foodstuffs with neighbors rather than going to the market and being forced to pay bribes along the way. If they can afford it, people might send their children to private schools and visit private health care clinics.

Another coping mechanism is to try and create personal networks that can cushion the impact of corruption. Studies show that individuals who have a personal or familial relationship with an official at the service provider can avoid or minimize the corruption payment. In addition, someone who has a high-ranking patron can often avoid making payments because the official who might otherwise expect a payment is afraid of antagonizing the patron. Social networks are very

⁵⁴ See Cambodia Criminal Justice Assistance Project, Interim Report on Administration of the International Crime Victim Survey for Cambodia, dated March 27, 2002.

important for minimizing the impact of corruption at the village and commune level.

Unfortunately, the poor tend to have the smallest social networks and are thus most susceptible to corruption.

People may also negotiate over the amount of the payment. This is often combined with lying about how much money the family has. So for example, faced with a demand for a 20,000 riel payment from local police officers, a family might haggle over the amount claiming to be very poor. Eventually, they might negotiate the price down to 5,000 riel. In many cases, however, it seems that the payment amount for certain services is established by custom and there is little room for negotiation.

Even civil servants reported being unable to complain about corruption, despite theoretically being better placed to do so. Civil servants tend to have a better understanding of the government's structure and rules and better social networks, yet it was precisely these social networks that prevented them from complaining. Civil servants depend on patronage relationships with their superiors for job security, promotions, and access to jobs that allow for collection of unofficial payments to supplement their income. They reported being afraid to complain about corruption to superiors because it would destroy the patronage relationships on which they and their families rely.

None of those individual households surveyed reported formally complaining about corruption. However, when people were asked what they would do about corruption if they had the power to change things, the top two answers were: 1) dismiss/jail corrupt officials; and 2) enforce the existing corruption laws. There is clearly a demand for better anti-corruption measures at the village and commune level, although it may be very difficult to devise mechanisms that people feel comfortable using.

L. Collective Responses to Corruption

A recent study by the Center for Advanced Study and the World Bank – entitled “Justice for the Poor?” – did identify a class of disputes that result in active rather than passive opposition. One of the key characteristics of these disputes was that they involved large numbers of families, in some cases hundreds of families, and thus presented an opportunity for collective action. All of the

case studies in the report involved allegations of land-grabbing but they were often complemented by allegations that local government officials were either corrupt or colluding with outsiders to the detriment of the local populace. However, not all land-grabbing cases resulted in any collective action. Whether action was taken or not depended on the presence of the following factors:

1. the issue affects more than one person or family, so that there is an incentive for individuals to group together to defend their rights;
2. the dispute affects an issue that is important enough to take some risks in defending (like land ownership);
3. the presence of local informal leaders⁵⁵ who could coordinate the collective action;
4. access to external sources of information and advocacy support (often through NGOs or political parties);
5. the relative isolation of the village⁵⁶; and
6. the support of laypeople associated with the administration of the local temple.

Not every factor was present in every case, but these factors seemed to be the most important in determining whether collective action took place.

In cases where collective action was taken, one striking factor was that formal dispute resolution mechanisms, like those described in Parts II and III of this report were not used. While complaints were often written and thumb printed by villagers as a way to emphasize their commitment to the collective action, the complaints were rarely pursued through the formal channels described by the law. Rather, the village and commune level governments were often

⁵⁵ Local leaders are rarely a formal part of the village or commune government, but they often have had some sort of experience that makes them respected in their community – for example, the ability to read and write, experience on the pagoda committee, connections with local NGOs, or prior experience in local government.

⁵⁶ Villages with more access to radios, TVs, phones and roads seemed to be better able to organize.

perceived as being corrupt, beholden to outside influences, non-responsive, or having colluded in the wrong.⁵⁷ Initial attempts to deal informally with the village chief or commune council often seem to have been ignored, resulted in warnings not to pursue the matter, or a realization that the local officials were in collusion with the supposed perpetrators of the problem. Therefore, most of the groups taking collective action avoided the village or commune governments in favor of trying to find someone higher up in the hierarchy (at either the district or province level) who could intervene on their behalf. This was particularly true where it was perceived that a “powerful person” from outside the village was involved in the dispute because village because commune authorities seemed to be helpless to resolve the dispute if it involved someone higher in the government hierarchy than themselves. A commonly expressed view was that only the provincial governor was powerful enough to guarantee that any decision that was made would be followed. In each of the case studies, powerful, well-connected individuals dominated the dispute resolution process, not rules or laws.

One result of the reliance on intervention by highly-placed individuals within the government hierarchy was that the results of the interventions rarely were predictable or conformed to what a rules-based approach would indicate should have happened. While villagers who acted collectively were apparently able to achieve more than they could have if they had not acted, they rarely received what the law would suggest they should receive. The result, while better than it would have been in the absence of action, was arbitrary. Moreover, it suggests that until people trust the commune and district governments to fairly and transparently resolve disputes over corruption or other illegal acts, they are not likely to use formal complaint mechanisms. Rather, the emphasis will continue to be on informal mechanisms, particularly the attempt to involve a highly-placed member of the hierarchy who has the power to enforce his or her will on the disputants.

⁵⁷ Several studies have shown that commune councilors are more accountable to their party and to the government hierarchy than they are to the public.

V. Conclusions

There are a number of conclusions that can be drawn from this report. The most obvious conclusion is that there is a great deal of corruption in Cambodia and that most of it is not reported, investigated or punished. There are numerous reasons for this conclusion. For example, many Cambodians do not report corruption because they do not believe the government will do anything about it and because they are afraid that they will be retaliated against for reporting it. In addition, the patronage system within the civil service makes it very difficult for government officials to report corruption without risking their careers. In fact, in many cases civil servant salaries are still too low to support a family, which results in a system where many government employees “supplement” their income through low-level corruption. Another problem is that the government’s position appears to be reactive rather than proactive. Corruption may be investigated if it is brought to the attention of the government but the government makes little effort to find corruption on its own. Perhaps the biggest problem is that too many people profit from corruption and too few are punished – the ratio of risk to reward is weighted too heavily in favor of the people who profit from corruption.

There are areas where improvements are apparent. Although the number of prosecutions for corruption is still low, and even though the majority of those prosecuted are low-ranking government officials, the fact that there are corruption trials is itself significant. As recently as six or seven years ago, there had never been a corruption trial under the UNTAC Law. It is possible that the recent trend can be the starting point for a broader campaign of corruption prosecutions. Over time, the judiciary may be able to gradually expand the number of cases it brings and may eventually be able to investigate and prosecute higher-ranking members of the government.

There are ways in which civil society, political parties, private sector and donors could help with such a campaign. The government’s current reactive approach to corruption appears to be driven by several factors, including: 1) lack of proven political will but strong political rhetoric; 2) lack of staff; 3) lack of training; and 4) lack of funding. While the donor and civil society community probably cannot help with the lack of political will, it could help alleviate the other limiting factors. Assistance might include: 1) training to prosecutors and investigating judges on the

prosecution of existing corruption-related crimes; 2) training to police on investigating corruption-related crimes; 3) financial support for corruption investigations, like paying for transportation expenses, office equipment, etc.; 4) providing subgrants and technical assistance to local organizations that work on corruption at the national and local levels; 5) establishing a coalition that has a strong voice to demand more action be taken by government to address corruption; 6) supporting political parties to make anti-corruption a major political issue; 7) providing education with the private sector on Corporate Social Responsibility; 8) demanding further progress on Administrative Reform; etc.⁵⁸ Of course, to be successful, support would have to be accompanied by evidence of a commitment to try and address corruption. However, the recent corruption prosecutions may demonstrate the political will necessary to make assistance a worthwhile investment.

Another bright spot in this report is the Accountability Working Groups. They appear to represent a promising approach to increasing government accountability at the village and commune level. The Working Groups have a number of novel and exciting features: 1) complaints can be anonymous, which encourages complaints from people who might otherwise be afraid of retaliation; 2) complaint boxes are located within the communes, rather than at the district or provincial offices; 3) the complaints are received and handled at the provincial level, which helps prevent inappropriate influence over the investigations by the commune officials that are the object of the complaints; 4) there is civil society participation in the investigation and resolution of complaints; and 5) the Accountability Working Groups have the power to sanction government officials found to be involved in the misuse of commune funds.

Of course, the AWGs have their limitations too. The most significant limitation is that the mandate for the Working Groups will only consider complaints about the misuse of commune funds. As a result, there are many forms of corruption that the Accountability Working Groups will not investigate. One obvious way to improve them would be to expand their scope to include

⁵⁸ Any program would have to be carefully monitored to make sure that it is not generating additional corruption, embezzlement, or other malfeasance.

other acts of malfeasance by commune personnel. Unfortunately, given the Ministry of Interior's insistence that the AWGs are not anti-corruption mechanisms, this may be unlikely. However, there may be ways to improve the operation of the Working Groups without immediately expanding their role beyond misuse of commune funds. For example, they apparently have little training or capacity to carry out anything but the simplest investigations. One way to improve the Working Groups might be to provide training or support creation of an investigative capacity. Another way might be to push for greater civil society participation on the Working Groups, or to improve the contributions of the existing civil society representatives.⁵⁹

Access to information is also a problem – both in the Accountability Working Groups and throughout Cambodian society. In the case of the Accountability Working Groups, there does not appear to be any way to transmit the results of their investigations back to the communes. People in the communes may not realize when action has been taken or what action has been taken, which may lead people to distrust the process. More generally, information on what the government is doing about corruption is hard to find. Court records are not public, nor are most of the records relating to the functioning of the ministries. Even the laws, decrees, and sub-decrees that govern Cambodia can be hard to locate. The lack of transparency both makes corruption easier and helps mask the size of the problem. It also contributes to apathy about corruption. Cambodians do not report corruption, in part, because they do not believe the government will do anything about it. This is, in part, because information about what the government is doing is usually unavailable.

⁵⁹ There are some interesting possibilities for working with the existing civil society representatives. For example, it might be possible to bring all of the civil society representatives across Cambodia together to discuss what they have learned and discuss ways to improve the system. Or, it may be possible to support regular meetings in the communes between the civil society representatives and members of the public to discuss the work of the Accountability Working Groups. It may also be possible to work with civil society groups in the individual provinces to strengthen the process by which the civil society representative is chosen, with the goal of ensuring that a strong, proactive representative is elected.

Increased access to information of all sorts can help break this cycle. For example, according to a recent study by the World Bank,⁶⁰ one factor that makes collective action against corruption more likely is access to information, usually through civil society organizations or political parties. People need basic information like: 1) definitions of corruption and its effects; 2) how to document corruption; 3) where they can go to complain; 4) what their rights are in the complaint procedure; 5) how to obtain information on the outcome of their complaints; 6) government documents that assist in making a solid case such as private sector concessions; and 7) basic advice on advocacy and organizing. Much of this could be provided or supported by donors and civil society with support of an Access to Information Law as designated in the Consultative Group benchmarks. Improved public awareness of corruption and how to combat it will not solve the problem on its own,⁶¹ but one of the reasons people do not report corruption appears to be a belief that what they do does not make a difference. Well-informed people, on the other hand, are in a better position to oppose corruption, report corruption, and demand that their government do more to eliminate corruption.

The information in this document is accurate to the best of Pact's knowledge and belief. Pact welcomes all comments, further information and corrections. Please contact Sek Barisoith, Director, Anti-Corruption Program sbarisoith@pactcambodia.org.

⁶⁰ See *supra* Section V(B).

⁶¹ It will also require the commitment of resources and political will by the government to combating corruption. Increased information about corruption without any increase in actual anti-corruption activities will probably eventually result in greater distrust of the government.