

Corruption and Anti-Corruption in Cambodia

2012 in review

This briefing paper is published by the Partnership for Research in International Affairs and Development (PRIAD). The purpose is to provide an overview of latest policy developments in the area of anti-corruption. PRIAD is a research consultancy specialising in integrity and corruption, governance and democracy, and humanitarian work. The views reflected in this document are entirely those of its authors.

Overview

Corruption continues to be systematic in Cambodia, and links-in with a number of issues, chief of which is access to valuable natural resources and human rights abuses. Many rural residents and civil society activists are locked in a fight with government over the allocation of large land concessions to exploit minerals, timber, and water resources, often encroaching on settlements and villages. Cambodian authorities, in turn, are increasingly resorting to violence to quash the protests. Land concessions tend to be awarded in shady circumstances to international conglomerates and/or local businesses that often act as front companies for tycoons or politicians. The Cambodian NGO *Licadho* estimates that approximately 2.1 million hectares (roughly the area of Wales) has been transferred to private developers. This is often done at the expense of local residents who are rarely compensated as well as the environment (Cambodia is experiencing high deforestation rates due to illegal logging, hydropower projects, large-scale agro-industrial ventures and entertainment complexes). A recent report by the U.N's special rapporteur on Human Rights claimed there is no evidence that revenues from land concessions are used to alleviate poverty.

Whilst the Anti-Corruption Unit (ACU), established with the 2010 Anti-Corruption Law, is now fully active, concerns remain over its independence and effectiveness. Nevertheless, it played an important role in convicting a number of high-profile officials including the former anti-drug czar Moek Dara (now serving life in prison) court judges, prosecutors and tax officials. Fostering the development of the ACU is likely to be the most significant anti-corruption development in times ahead, but the Unit has a number of administrative and operational hurdles to overcome. Whilst the new anti-corruption

framework provides investigators with some policing powers, there are no special prosecutors, courts or judges. Investigations are still likely to be overseen by the ACU in partnership with police and other law-enforcement authorities. The latter lack competence and operate with impunity. The Judiciary also lacks independence and remains under the thumb of the Executive, which explains the delays or complete absence of fair trials. Similarly, the independence of important oversight institutions such as the National Audit Agency (NAA) can be called into question, and the capacity of such institution needs to be built in order to help assist the work of the ACU. Parliamentary elections in Cambodia are scheduled for July 2013, but opposition movements and commentators fear it will not change the current status quo. The opposition, which is deeply divided, is unable to mount a viable challenge to the ruling party.

Policy developments

This year has been gripped by numerous conflicts over natural resources and access to land, which are in turn related to corruption.

- Among the highest profile case is the assassination on the 26th of April of environmental activist and founder of the *Natural Resource Protection Group* Chutt Wutty. Wutty is said to have been accompanying two journalists to witness illegal logging activities near a hydroelectric dam in Koh Kong (Cardamom Mountains). Official accounts of his death claim he died at the hands of the military police when he refused to hand in photographic evidence. A court in Koh Kong concluded that a security guard who was also shot dead was the suspected murderer and abruptly closed the case.

Activists charged that the decision was politically motivated.

- Journalist Hang Serei Oudom, of the *Vorakchun Khmer Daily*, wrote profusely about the involvement of vested interests, including police forces, in illegal logging activities, extortion and corruption. He was found dead in the boot of his car in September. Two people, a provincial military officer and his wife, were charged with murder and a judge closed the case in November.
- Protest in the Boeung Kak lake area near Phnom Penh began in 2011 as the 133-hectare surface was allocated to Shukaku Inc., a development company owned by a Senator affiliated with the ruling Cambodia's People Party, for the development of luxury condos and hotels. 13 women protesters were arrested and imprisoned in May, and released in June. There are numerous other cases involving forced evictions and arrests, at times with deadly consequences.

Issues to watch

- In January 2012, the National Assembly passed Cambodia's first law on public procurement, which does not concern the military or matters of national security. The Law was voted unanimously by all MPs from the ruling party, and boycotted by the opposition. Whilst some welcomed the Law as a way to close previous loopholes and rationalize the country's bidding procedures, there are a number of shortfalls. This includes the absence of complaints procedures and lack of reference to procurement planning, implementation, and monitoring procedures by government agencies. Procurement is delayed by long bureaucratic procedures within Procurement Review Committees, whose work is heavily influenced by the supervising ministry. The integrity of public procurement also needs to be further developed.
 - Following a formal request by Sam Rainsy MP Son Chhay, Deputy Prime Minister Sok An publically listed 23 foreign firms involved in oil exploration in Cambodia, detailing information on signature bonuses and similar payments to the government. Drawing on the SEC's recent
- rulings, *Oxfam* and *Cambodians for Resource Revenue Transparency* are said to be considering a website which would allow the public to access information about how much profit government authorities make by selling land concessions and other natural resources. Cambodia is not part of the EITI.
 - Just weeks after the assassination of Chut Wutty, and coinciding with the visit of a special U.N envoy on human rights, the Prime Minister issued Directive 01¹ in early May calling for a moratorium on 'Economic Land Concessions' (ELC) and a review of existing concessions. However, there are reports that this freeze was not respected as government exploited a loophole in the ban according to which concessions can be granted when these were agreed to 'in principle' prior to May 2012. The lack of access to information makes it impossible to verify the conditions under which these principled decisions were taken². By some accounts, more than 80,000 hectares in protected areas have been awarded since the ban came into effect. Just days after the freeze was announced, an adolescent girl, Heng Chantha, was shot dead by security forces during a forced eviction.
 - In the aftermath of Directive 01, the government launched a new land titling scheme in order to foster tenure security. Large numbers of Cambodian youth and volunteers assisted local cadastral officials in demarcating land and providing titles to 350,000 families living within ELCs, forest concessions, and state land³. However, some reports suggest the youth wore military fatigues similar to the armed forces, and military vehicles were provided to transport them on site, thus increasing confusion among villagers.

¹ Royal Government of Cambodia, Directive No.01 Bor/Bor on the Measures to Strengthen and Foster Effectiveness for the Management of ELCs, 7 May 2012.

² The Ministry of Agriculture, Forestry and Fisheries (MAFF) occasionally provides data on ELCs, though it is often incomplete.

³ Official figures. Government reportedly earmarked 1.2 million hectares in total.

- From January 1 through to January 31st, legislators, commune officials, high-ranking civil servants and employees from the Anti-Corruption Unit (nearly 30,000 officials in total) will have to declare their assets. This process will be overseen by the ACU. The opposition, civil society and analysts raised concerns since financial and family assets will not be declared. Moreover, the process is confidential and kept away from the public's sight. Declarations are to be thoroughly inspected only in the event a person is being investigated. This is the second year the ACU organises this exercise.

Other news in brief

- Representatives from the State Bank of Vietnam and the National Bank of Cambodia signed a Memorandum of Understanding (MoU) in March outlining the principles for the exchange of information to combat money laundering and terrorism financing.
- Elections will be held in July 2013. Yet there are concerns about the partiality and professionalism of the organisations in charge of overseeing the polls, including the National Elections Committee, as well as the complexity of voting forms and the lack of transparency in the vote-count.
- BHP Billiton, one of the world's largest mining conglomerates, continues to be under investigation by the U.S. Securities and Exchange Commission three years after opening the case. The investigation allegedly relates to possible corrupt payments (known locally as 'tea money' or facilitations payments) worth approximately \$U.S 2.5 million to finance social and community programmes for displaced communities. Whilst the U.S case is still open, Australian authorities announced they closed their own investigation into BHP Billiton. Following its own internal investigation, the company allegedly banned facilitation payments. This is not the first time a large conglomerate is enmeshed in scandals involving facilitation payments. Two years ago, TOTAL reportedly paid US\$ 28 million to the Government, of

which \$8 million went to a 'social fund'.

- At a high level meeting between the Aid Community and Government authorities in September, donors expressed 'concern' and called on the government to use 'responsible policing' when cracking down on land protesters. Ahead of the event, NGO and civil society had published a long list of recommendations for donors, including on land rights, corruption, and transparency.
- The U.N Global Fund to fight AIDS, Tuberculosis and Malaria claimed an investigation revealed evidence of financial wrongdoings (worth approximately US\$ 1 million). The Global Fund is a grant-giving organisation funded by private and public donations. Project Implementation is carried out by *Country Coordinating Mechanisms*, usually mixing government and civil society on the ground. Despite these revelations, the Fund said it would maintain aid to Cambodia alleging high impact rates of the grants.
- Ahead of Barack Obama's visit to Cambodia for the ASEAN Summit in November, a small number of U.S lawmakers (including John McCain and Joe Lieberman) sent a letter to the President to express concern about corruption and human rights in the country and to put pressure on the Cambodian government. Corruption was not discussed during the Summit.
- The 2012 Corruption Perception Index (CPI) was launched in December. The CPI ranks countries according to the perceptions of corruption in the public sector on a scale ranging from 0 (highly corrupt) to 100 (very clean). Cambodia obtained a score of 22 in the CPI, placing it 157th of 176 surveyed countries. This is one of the worst scores in South-East Asia before Lao PDR (21, and in 160th position).

Contact

info@priad.org