

LEGAL SERVICES COUNTRY PROFILE

KINGDOM OF CAMBODIA

International Legal Services Advisory Council

Attorney-General's Department

Australia

January 1998

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Acknowledgment

The contributions and assistance of Matthew Rendell and Keith Schultz, Asia Foundation, Phnom Penh; Professors Dolores A. Donovan and Jeffrey Brand, University of San Francisco School of Law; USA; Christopher Roper, Centre for Legal Education, Sydney; Professor Alice Tay, University of Sydney, Sydney; Thomas Miller, Siam Premier International Law Firm, Bangkok; Gary Bugden, Mallesons Stephen Jaques, Brisbane; the Australian Embassy, Cambodia, (in particular, Hanh Chuon Naron, Research Assistant); the Cambodia Taskforce of the Department of Foreign Affairs and Trade, Canberra; the Australian Agency for International Development (AusAID), Canberra; the Department of Employment Education and Training, Canberra; David Howarth and Odile Ruijs, Attorney-General's Department, Canberra; are gratefully acknowledged.

Legal Services Country Profile : Cambodia

International Legal Services Advisory Council (ILSAC)

January 1998

ISSN 1323-9139

<http://law.gov.au/aghome/advisory/ilsac/ilsac.htm>

Published by the International Legal Services Advisory Council (ILSAC) Secretariat, Attorney-General's Department, Canberra. Printed in Australia.

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Introduction

The International Legal Services Advisory Council (ILSAC) was established in late 1990 by the Australian Government to assist in improving Australia's international performance in legal and related services. To help achieve this purpose profiles for seventeen countries and economies of the Asia Pacific region have been prepared. The Profiles, which are intended as a guide only, cover Australia, Cambodia, China, Fiji, Hong Kong, India, Indonesia, Japan, Laos, Malaysia, Papua New Guinea, The Philippines, Singapore, South Korea, Taiwan, Thailand and Vietnam.

ILSAC is chaired by the Hon Sir Laurence Street AC KCMG and comprises representation from private legal practice, the Law Council of Australia, commercial dispute resolution centres, education institutions and relevant Government departments and agencies.

This third edition of the Profiles is designed to provide an overview of the legal and related services sector in each country or economy. The information in the Profiles is organised under the following main headings:

1. General information:	key data, legal language, form of government and economic indicators.
2. Basic legal information:	system and sources of law, structure and regulation of the legal profession, law-making bodies and professional legal education.
3. Legal services market:	professional legal associations, local, Australian and foreign law firms, and commercial dispute resolution.
4. Market access requirements:	foreign lawyer admission requirements, regulation and restrictions on foreign lawyers/firms and recent regulatory changes.
5. Australian legal services:	prospects for Australian legal services; Australian dispute resolution services and Australian legal education and training services.
6. References/sources:	list of source material and date of information contained in the profile.

Comments, additional information or corrections, and suggestions for improvement of this Profile would be welcome.

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1 General information

Official name

Kingdom of Cambodia.¹

Former names include: Democratic Kampuchea (1975–1978), the People’s Republic of Kampuchea (1979 to 1989), and State of Cambodia (1989–1993).

“Cambodia” is the English transliteration of the Khmer name for the country “Kampuchea”, however the latter is more closely associated with the country’s turbulent history from 1975 to 1989 (particularly the Khmer Rouge period) and is not often used today in international parlance. The country is also referred to as “srok Khmer” (the Khmer district or nation) in the Khmer language. “Cambodian” or “Khmer” are equally acceptable as adjectives in English.²

Population

9.3 million (1993).³ Population growth rate 3.3 per cent. Urban population makes up 12–15 per cent of the total.⁴

Languages

The official language is Khmer.⁵ French is the most popular second language amongst those who were educated before the 1970s, however English is increasingly spoken and popular.

Legal language

Khmer.

Capital

Phnom Penh.⁶

Form of government

Since 24 September 1993, Cambodia has been a constitutional monarchy.

- Head of State: King Norodom Sihanouk
- Head of Government:
 - First Prime Minister: Prince Norodom Ranariddh
 - Second Prime Minister: Hun Sen
- Ruling Party: FUNCINPEC (the French acronym for “United National Front for an Independent, Neutral, Peaceful and Cooperative Cambodia”—45 per cent) and the CPP (Cambodian People’s Party—38 per cent) are the two main parties in the coalition government.⁷ The

Buddhist Liberal Democratic Party (BLDP) is the third major player.

- Head of Judiciary:
(Chairman of Supreme People's Court) Ket Kiattisak
- Minister for Justice: Chem Snguon
- State Secretary for Justice: Mr Heng Vong-Bunchhat

Historical/political background

After the historical grandeur of Angkor in the 8th to 13th centuries, Cambodia had a difficult time next to its powerful neighbours in later centuries. The French presence⁸ prior to World War I was largely peaceful. In 1941 France enthroned the 18 year old Sihanouk. However, in 1953 King Sihanouk dissolved Parliament, declared martial law and proclaimed independence from France on 9 November 1954. In 1955, the King abdicated in favour of his father, in order to participate in national elections which were held in November of the same year. Prince Sihanouk was elected Prime Minister and dominated Cambodian politics for the next 15 years.

His premiership ended in 1970 when he was deposed by his cousin, Prince Sisowath Matak and General Lon Nol, who was in turn deposed by the Khmer Rouge troops of Pol Pot in 1975. The new Khmer Rouge government sought to reduce the country to a simple agrarian cooperative. The implementation of this policy entailed oppression and suffering which is now inextricably linked with Pol Pot and his government. Little was left of the educated population of Cambodia and most of those who survived fled to the West. The government also conducted a policy of aggression toward Vietnam and in response to repeated Cambodian incursions, the Vietnamese invaded on 25 December 1978, overturning the Khmer Rouge regime two weeks later.

Hun Sen and Heng Samrin (both Cambodians who had fled to Vietnam a few years previously) led the new government, which maintained power until 1989. During this period, a coalition of the Sihanouk-led royalists, the Khmer People's Liberation Front and the Khmer Rouge actively resisted the government installed by the Vietnamese. Support for the opposition came from a diverse alliance of Thailand, Malaysia, Singapore (all seeking to limit Vietnamese influence in the region), China (which supplied most of the weapons used by the coalition), and the United States (which supported the non-Communist coalition members).

The conflict in Cambodia defied resolution between 1979 and the late 1980s, when the international community largely ceased the supply of arms to the resistance movement, and the Vietnamese army withdrew from Cambodia (in 1989). On 23 October 1991, the party in power, the Cambodian People's

Party (CPP), and the three resistance factions agreed to a ceasefire, and agreement was obtained from all parties for a limited United Nations role in a settlement. This took the form of the United Nations Transitional Authority in Cambodia (UNTAC) which supervised the elections held from 23 to 28 May 1993. The elections produced no clear winner and there was an initial period of tension. Eventually a coalition was formed between Prince Norodom Ranariddh's FUNCINPEC party, the CPP and the BLDP9 and now constitutes an internationally recognised Government. King Sihanouk was appointed as head of state in September 1993. The Khmer Rouge remains a disruptive force and it still has control of some territory in the country.

Economic information

Basic indicators ¹⁰	1990	1991	1992	1993	1994 ^a
GDP per capita (US\$)	n/a	203	204	210	214
GDP (CR bn)	247.0	280.3	302.8	319.5	335.5
Real GDP growth (%)	1.2	7.6	7.0	5.7	5.0
Inflation (%)	210	197	75	114	25
Exports (US\$ mn)	32.9	67.3	51.3	37.7	60.9
Imports (US\$ mn)	110.6	99.8	137.5	225.5	263.2
Current account (US\$ mn)	-91.3	-27.7	-49.6	-136.9	-211.5

Source: DFAT, *Country Economic Brief*, February 1995 and The Economist Intelligence Unit, *Country Report: Indochina*, 3rd Quarter 1994 (to be updated).

n/a = not available a = provisional CR = Cambodian Riel

Per cent of GDP in services sector

In 1993, 35 per cent of Cambodia's output came from the services sector.

Total two-way trade with Australia¹¹ (1993–94; A\$,000)	9,736
As % of total Australian trade	n.m ^a
Rank in total Australian trade	98
Value of Australian exports (1993–94; A\$,000)	9,134
Market ranking in Australian exports	87
% growth (five-year trend)	124
Value of Australian imports (1993–94; A\$,000)	602
Market ranking in Australian imports	117
% growth (five-year trend)	332

Source: Department of Foreign Affairs and Trade, 'Composition of Trade—Australia, 1993/1994', 1994. n.m^a = "not meaningful".

Australia-Cambodia trade¹²

Major Australian exports to Cambodia in 1993–94 were: prefabricated buildings, telecommunications equipment and electric motors.

The only significant Australian import from Cambodia in 1993–94 was seafood.¹³

Trade and investment prospects

Cambodia is a very small market for Australian exports and Australian imports from Cambodia are almost negligible. In the longer term, there may be some opportunities for Australia to export to Cambodia if recent economic reforms translate into greater prosperity and demand for imports.

Australian firms were heavily involved in the United Nations Transitional Authority in Cambodia (UNTAC) program, winning contracts for supply of pre-fabricated buildings, telecommunications and supplies to peace-keeping troops.¹⁴ Although the level of international operations has levelled out since the withdrawal of UNTAC, some opportunities still exist for Australian firms to be involved in rebuilding the Cambodian economy. Advisory services (particularly in infrastructure development) will be important to the continued development of the Cambodian market economy.

The government's policy of encouraging foreign investment is evident in recent moves to simplify company profit tax (now a flat 20 per cent), and the abolition of the \$3,000 tax on foreign businesses establishing local operations.¹⁵ At the same time, however, other taxes are to be introduced, including new land taxes and the requirement that import/export companies pre-pay company tax.

One of the major obstacles to foreign investment until recently was the delay in enacting the new Investment Law, which covers both foreign and domestic investors. The bill was passed by the National Assembly on 4 August 1994. The Investment law includes tax holidays for export-oriented enterprises, deregulation of foreign exchange, and guarantees against nationalisation of assets owned by foreign or Cambodian investors. Other important laws, such as the Commercial Code, are still to go before the National Assembly.

Cambodian economy— current assessment

The most significant influence on the economy in recent times was the elections held in May 1993. Prior to the elections, uncertainty led to a general decline in economic well being. During the first five months of 1993, the local currency (the Riel or CR) depreciated from CR2,000 per US\$ to CR4,000/US\$.¹⁶ In the same period, the CPI increased by more than 80 per cent as households stockpiled food and consumer

items. However, the optimism caused by the successful elections began to be translated in increased confidence in the (economic) future: the exchange rate recovered to its January 1993 level and has since stayed more or less steady, and inflation eased, although fixed riel wages never adjusted to compensate for the price increases.

The economic policy of the new government is very outward looking both with regard to long term investment and short term international aid for reconstructing the economy. Both the government and King Sihanouk have stressed the massive expenditure needed to adequately address the country's needs¹⁷ and significant aid is being delivered. At the end of the second International Committee on the Reconstruction of Cambodia (ICORC) in March 1994, Japan pledged US\$325m of new aid, the United States US\$73.3m, France US\$40.1m, Denmark US\$18m and Sweden US\$16m.¹⁸ Funding from the International Monetary Fund also increased. At ICORC III held in Paris on March 14–15 1995, pledges, both old and new, amounted to some US\$473 for 1995 and a further US\$440 for subsequent years.

The budget deficit expanded in 1993 and 1994 to 5.7 per cent and 6.8 per cent of gross domestic product respectively, as a result of lower revenue and greater infrastructure spending. The 1994 budget adopts an improved, national approach to fiscal management.¹⁹ Revenue and expenditure have both increased by more than 200 per cent since last year, but although the government aimed to achieve fiscal balance, it is unlikely that this will happen in 1995. Major areas of expenditure are public works (19%) and defence (18%); major sources of revenue are tax revenue (46%) and aid (31%).²⁰ The IMF is also predicting a current account deficit of 9–10 per cent of GDP to continue in the near future.

2 Basic legal information

Legal system

Traditional Cambodian law is non-adversarial, using mediation as the form of dispute resolution. The formal legal and judicial system, together with civil and criminal codes based on the French legal system which the French superimposed on the existing Cambodian system, was retained after independence in 1954. It was totally destroyed when the Khmer Rouge came to power in 1975 and all laws and institutions, such as the courts, were then abolished.²¹ There was no attempt to establish an alternative system; arbitrary administrative decisions were the norm from 1975–78.

With the installation of the Vietnamese-installed government in 1978/79 (subsequently known as the State of Cambodia (SOC)), an effort was made to rebuild the legal system from 1982 onwards, although the country was virtually without a legal profession and judicial and other infrastructure. Reinstitution of the pre-1975 legal codes was not attempted. Recovery of the legal system occurred to a limited extent and prior to the peace process Cambodia had a functioning court system based on revolutionary people's courts in all provinces. Judges were trained in East Germany, Russia and Vietnam.²² However, the judiciary was not independent, and courts were subjected to direction and interference..²³

Following the signing of the Paris Agreement of October 1991 and the establishment of the United Nations Transitional Authority (UNTAC) on 28 February 1992, further attention was directed to the rehabilitation and development of the legal system. UNTAC had authority to exercise all powers necessary to ensure the implementation of the Agreement, including the supervision and control of civil police, together with the organisation of free and fair general elections and civil administration. During UNTAC's mandate, two laws were passed relating to reorganisation of the court system and criminal procedure (by the Supreme National Council and the State of Cambodia).²⁴

A constitution was drafted by the newly created constituent assembly and promulgated on 21 September 1993. Amongst other things, the Constitution provides for the separation of powers and the independence of the judiciary (articles 51 and 109).

A Constitutional Council is still to be established and the judiciary re-organised, particularly with regard to appointment of judicial officers. A Court of Appeals was established in May 1994, but is not yet operating effectively.

Sources of law

The rebuilding process has been made even more difficult by the loss of public records and other documentation from the period prior to 1975, which resulted from a policy of deliberate destruction of such material during the Khmer Rouge period. However, Cambodia is not a country without laws, as the last article of the 1993 Cambodian Constitution (article 139) states that:

Any law or regulation in Cambodia which guarantees the State property, rights, freedom and legal properties of individuals which is in conformity with national interests shall continue to have legal force until a new law is promulgated or amended. Such laws must not be contrary to the spirit of this Constitution.²⁵

In theory, this would imply that any legislation as far back as the French period, for example, could still have force. A major problem, however, is to determine what law has been passed (including decrees and the like), and to what extent the laws still have validity.

Apart from laws still in place from the period of communist rule and some laws introduced by the United Nations Transitional Authority in Cambodia (UNTAC), sixteen laws have been passed by the legislative body (see below). Some areas of law such as property law, tort law, civil procedure, tax law, contract law and administrative law are still governed by the executive arm of government through the issuing of decrees²⁶, and are awaiting further legislation. The rules for Criminal Law and Criminal Procedures issued by UNTAC were adopted and enacted by the State of Cambodia in the final months of its existence and are still applied by the Cambodian courts.²⁷

An important development has been the passing of the Constitution of the Kingdom of Cambodia in September 1993.²⁸ The new Constitution has 14 chapters, dealing with the powers of the King, Government, National Assembly, Judiciary, Constitutional Council and National Congress. A significant change from the Communist period is that the doctrine of separation of powers now exists in Cambodia²⁹ (see also the section on *Court structure* below).

All laws are required to conform with the Constitution, which is the “supreme law”.³⁰ There are concerns about how much respect will be afforded the new Constitution, given the relative newness of constitutional principles in Cambodia. At this stage there appears to be no means of enforcing compliance with the Constitution. Legislation, providing procedural mechanisms whereby citizens can enforce the Constitution’s guarantees of individual rights, is still needed.³¹

Legal development

Cambodia, like many other Asian countries, has a strong local tradition of dispute resolution which favours community-based conciliation and mediation. This tradition is still strong.

Following the arrival of the French in the 19th century, the French legislative and judicial system was combined with the pre-existing system. This hybrid system remained until it was destroyed by the Khmer Rouge in 1975.³²

The Vietnamese-installed government (later known as the State of Cambodia (SOC)), which replaced the Khmer Rouge in 1979, attempted to develop a workable legislative and judicial system based on socialist legal principles, ie., to rebuild the legal system upon a basis where the Executive (Ministry of Justice, Council of Ministers) exercised control over the legal and judicial process. Influence was reportedly exercised on the judiciary by both local politicians and administrative authorities.³³ Following the election of the new government in 1993, a complete rebuilding of the legal system has been commenced. The Constitution establishes new institutions and new laws are now being enacted. The architects of the new legal system wish to create a mixed system that will incorporate the best of the civil law and common law traditions.³⁴

Since the formation of the National Assembly in 1993, 16 laws were passed by the legislative body: the internal regulations of the National Assembly, the National Assembly budget for 1994, the financial system, the financial law for 1994, the law on land management, urbanisation and construction, the legislation outlawing the Khmer Rouge, an amendment to article 28 of the Constitution, the law on the Cabinet, the immigration law, the investment code, the statute on civil service, the law on pension and disability allowances of the RCAF, a mini-budget for 1994, the law on the Supreme Council of the Magistracy, the National Assembly budget for 1995, and the national budget for 1995.

Another eight bills are awaiting consideration by the National Assembly: the press law, the law on trading companies, the law on the chamber of commerce, the law on trade rules and registration of companies, the statute of judges law, the Bar Association Statute, the revised labour code, the law on declaration of personal assets by Government officials and judges and the law on the national anti-corruption board.

The Royal Government of Cambodia is in the process of drafting and/or of considering completed drafts of the following laws: state-owned assets legislation, the laws on BOT, BOOT and BLT³⁵, a customs code, a taxation law, the insurance law, the casino and gaming law, the guidelines and rules for public procurement and tendering, the contract law, the bankruptcy law, the commercial venue law, the law on product quality control, the law on intellectual property rights, the environment law, the petroleum, mining and natural resources law, the law on electricity, the law on the

organisation of the judiciary, a code of criminal procedure, a law on the magistracy, the civil code and the narcotics law.

Structure of the legal profession

The Cambodian legal profession consists of judges, prosecutors, lay-people and law teachers. There are virtually no private (Cambodian) lawyers, and only a few foreign lawyers (including some overseas Cambodians returning to work in Cambodia).

Under the old court system, lay people participated at the provincial level where the court of first instance comprised a judge and two “people’s assessors”. Representation for defendants facing sentences of more than five years was provided by “social defenders”, who were also non-lawyers. An overview of the structure of the new court system is given below.

Conciliation offices in the provinces are staffed by “justice representatives”, who conduct the conciliation in the first instance and are employed by the state. The system is very informal and these “representatives” have even less formal legal training than the members of the judiciary. However, the importance of conciliation in the Khmer justice system makes the justice representatives important members of the Cambodian legal profession.

Regulation of the legal profession

Due to the lack of a developed private legal sector, the Cambodian government has not published legal practice guidelines or regulations. However, a draft Law on the Bar's Statute is currently being considered which outlines, inter alia, the credentials required to practise law in Cambodia.³⁶ The current state of affairs, where virtually anyone may proclaim himself or herself a lawyer, appears to have led to some cases of abuse and less-than-professional conduct. If the current draft³⁷ is adopted in its present form, it will regulate who can be admitted to the Bar and therefore who will be allowed to practise law in court (article 3.2).

Law-making bodies

Prior to the establishment of the current government, the Supreme National Council and UNTAC were at the head of Cambodia’s political and legal system. The two had a broad legislative competency, and passed a number of laws.³⁸ Under the current system of law-making, proposals for laws are made by:

- members and committees of the National Assembly;
- the Prime Minister; and

- the Council of Ministers, acting on the recommendations of the Ministries.

Proposals are then adopted by the National Assembly.³⁹ The Constitutional Council may consider the constitutionality of the laws, assessing their conformity with the procedures set out in the Constitution. The laws are signed and promulgated by the King, registered in the State Archives and published. Urgent laws take effect immediately; ordinary laws take effect in Phnom Penh in 10 days after promulgation, and throughout the rest of the country in 20 days after promulgation.⁴⁰

Law derived from Australia

There is no law derived from Australia. However, through Australian involvement in UNTAC and the subsequent development of the legal system, some assistance has been provided in the drafting of new laws. An Australian lawyer was reportedly working on the Investment Law with the then Minister of Economics and Finance, Sam Rainsy, in 1994, and another Australian lawyer was engaged by UNDP in the same year to advise on a new tourism law.

Court structure

The Court system as it stands was established by the State of Cambodia government and by UNTAC. The system is three-tiered and comprises the Provincial Courts⁴¹, a single Court of Appeals based in Phnom Penh, and a Supreme Court. Appeals from the Provincial Courts are heard by the Court of Appeals, which considers both questions of law and of fact. Appeals from the Court of Appeals to the Supreme Court are taken solely on questions of law.⁴² The procedure by which citizens may invoke the jurisdiction of the Constitutional Council is as yet unclear.⁴³

There is also a proposal for a Commercial Court, with that in each province having limited jurisdiction, and that in the capital having unlimited jurisdiction.

The organ responsible for the interpretation of the constitution is the Constitutional Council, not the judiciary.⁴⁴ The Council has not yet been established, and its creation has been noted as a priority by the UN Special Representative on Human Rights.⁴⁵

The National Assembly passed in December 1994 the bill on the Supreme Council of the Magistracy. The Supreme Council of the Magistracy is chaired by the King, and consists of a representative of the Minister for Justice, the president of the Appeals Court, a public prosecutor of the Appeals Court and three elected judges. The Supreme Council of Judges is responsible for the appointment and discipline of judges.

The doctrine of the separation of powers is incorporated into the new Constitution and judicial power will now be limited to

the Supreme and other courts.⁴⁶ The Constitution provides that trials shall be conducted according to the legal procedures and laws still in force.⁴⁷

Professional legal education

Local training

Most legal education and training is undertaken in Cambodia at present, which includes short and intensive courses. Further information is provided in the following sections.

Qualifications for practice

Legal practice is currently not regulated. However, if the draft Law on the Bar's Statute is adopted in its present form, the following *educational* qualifications are required to be admitted to the Bar: a Bachelor Degree of Law or an equivalent certificate (not specified); and a "professional certificate" which will be issued by the Lawyers' Vocational Training Centre upon completion of its minimum eight month training program (articles 14.1; 40.1). Those with more than five years experience working in law-related areas, judges with more than five years experience as judges, Khmer lawyers registered in overseas Bar Associations and holders of doctorates of Law are exempted from the need to have a "professional certificate" (article 14.2).

Those who may be selected to attend a "lawyer's training program"⁴⁸ are (article 39.1):

- defenders who have the capability to perform this function and who have worked as defenders for three years continuously in provincial or municipal courts (minimum post-secondary qualifications apply);
- persons who have a Bachelor's degree of Law or equivalent certificate;
- government (civil) servants who have been working in government's services for at least three years and who have a Second Degree Certificate of Law (Le Certificat de la Capacité en Droit).

Principal universities and institutions

Faculty of Law and Economic Sciences, University of Phnom Penh

The principal institution is the Faculty of Law and Economic Sciences, of the University of Phnom Penh (sometimes referred to as a Faculte du Droit or the Law School). The Faculty is not

geographically located on the University campus and has separate premises (there has been some uncertainty as to whether the Faculty of Law and Economic Sciences is formally part of the University of Phnom Penh; latest advice is that it is formally part of the University.⁴⁹) The present Director is Dr Loeung Chhai. Members of the current staff often only have several years of legal training. There were four French professors at the Faculty in 1994 teaching political economy as well as French advisors.

The Faculty of Law and Economic Sciences was re-established by the Ministry of Justice in 1989, and is now under the control of the Ministry of Education.⁵⁰ The Khmer Rouge exterminated the entire teaching staff of the original Law School, and it was only reopened in the early 1980s.⁵¹

Between 1982–87 the Law School trained some 2,500 persons by way of short training course. In 1986 a two year program of courses was introduced, which closed in 1993. Some 700 persons were trained in the 2 year course.⁵²

Support has been provided to the Law School by France and from the University of Lyons, France, to start a five year degree program, which commenced in 1993. The academic year runs from September to June. There are about 150 students in each year. More than 4,000⁵³ applied for enrolment in 1994 of which 3,600 were preparatory school students (students have to successfully complete a one year, post-secondary preparatory course before entering university). Only about 150 were accepted.⁵⁴ In early 1994, Law School students demonstrated about bribes allegedly paid by some unqualified students to gain entry to the second year intake.⁵⁵ There are plans by the Ministry of Education to expand the intake. The present buildings, constructed in the late 1950s and 1960s, are a constraint to an expanded student intake and are in need of refurbishment.

All teaching at the Law School is in French and there are compulsory French language lessons (16 hours per week). Students are to take English classes in third year, from 1994. Twelve professors were reportedly teaching first and second year of the new five year course together with Khmer staff in 1994. The subjects taught in first year are : French, Geography, History, Institutions of law, Penal Code, Civil Code, Constitutional Law (the French Constitution is taught but teaching is expected to include the Constitution of the Kingdom of Cambodia). In second year, the subjects taught are Penal Code, Constitutional Law, Civil Code and other subjects.⁵⁶

The Asia Foundation (an American non-government organisation) funded 200 places at the Australian Centre for English (ACE) in Phnom Penh for law students to undertake English language training in 1994.⁵⁷

Note : The creation of a second law curriculum, focusing on the common law tradition, with particular emphasis on commercial and international law, was approved by the Council of

Ministers in late 1994. The establishment of such a law curriculum is supported strongly by the Ministry of Justice. The language of instruction will be Khmer. It is expected that the law courses at present being taught at the Institute of Economic Sciences (see below) will develop into the new law program envisaged by the Council of Ministers. Assistance in the development and teaching of the new law curriculum is being provided to Cambodia by the University of San Francisco School of Law. Modest participation in the new law curriculum, possibly involving an Australian law school(s), is under consideration by the Australian International Legal Cooperation (AILEC) Committee.⁵⁸

*Faculty of Law, Institute of
Economic Sciences*

The Institute of Economic Sciences, under the Ministry of Education, was created in 1984 by the Vietnamese-installed government. Formerly supported by the French, it now focuses on business studies and receives technical assistance from two American universities: Georgetown University and the University of San Francisco School of Law. The Institute is sometimes referred to as the Faculty of Business. It is associated with the University of Phnom Penh, but the precise relationship is unclear. A Department of Law was established alongside the Faculty of Business in 1994. A four-year curriculum has been designed and approved for the business administration course and includes law courses such as business law. The Department of Law was renamed as a Faculty of Law in early 1995.

It is expected that the law courses at present being taught at the Institute of Economic Sciences (see above) will develop into the new law program envisaged by the Council of Ministers.

**Other domestic training
institutions**

The Ecole Royale d'Administration (Royal School of Administration) was formed in 1927 and until 1975 it taught the French administrative system. In 1975 it was closed by the Khmer Rouge, and reopened in 1993.⁵⁹ At present it is not fully operational and is in the process of developing a curriculum and planning courses, which are mainly for senior bureaucrats, in administration, management and law. The French government is providing assistance to the School and there is reportedly a requirement that teaching is conducted in French. The School has conducted a course for judges and other legal officials from the provincial courts.

Post-graduate legal courses

The Royal School of Administration offers programs for a Masters degree in law.

Other domestic legal training

The Ministry of Justice organised in 1994 a training course funded by the Asia Foundation for legal clerks. Upon completion of the course, the clerks are nominated to various courts in the country.

Practical legal training

The International Development Law Institute (IDLI), a Rome-based intergovernment organisation with the objective of encouraging and facilitating the use of legal resources in the development process, has conducted a number of training workshops in the region. A one-week workshop was conducted on Dispute Settlement in International Contracts in Phnom Penh in February 1994 and a further workshop on Banking was held in April 1994.

The Cambodian Defenders Program, which had its first graduation on 3 February 1995 after a nine month training program, was supported financially by the Asia Foundation. The program was restricted to criminal advocacy. The graduates apparently have approval from the Minister of Justice to represent accused in court although there is some concern that the proposed Bar's Statute may affect this right. It is understood that six of the graduates will be located in Battambang, six in another province and the remainder will operate in Phnom Penh.

The Asia Foundation, with the assistance of the University of the San Francisco School of Law, is currently supporting a year long certificate course in Contract Law for the Ministry of Justice. Students include officers of various ministries as well as the judiciary. The purpose of the course is to satisfy an immediate need for knowledge of contracts now that the country moves once more in the international market economy. It is proposed that the course will also become part of the curriculum of the new law school. The course is being developed and taught by an Australian and American lawyers.⁶⁰ The course was commenced in 1994 and will be completed in the third quarter of 1995.

There have been efforts by international agencies during the last few years to assist in the training of judges (who are often former teachers) in the rule of law and case management.⁶¹ The Special Representative of the Secretary-General of the United Nations, Mr Justice Kirby (who is also President of the New South Wales Court of Appeal in Australia) has visited Phnom Penh on several occasions and made a number of recommendations regarding judicial training and institutional strengthening in the area of human rights.⁶² The United Nations Centre for Human Rights in Phnom Penh has been active in this field.⁶³

Foreign legal training

Sources

France has traditionally been the main country in which overseas legal training has been obtained. France is understood to offer scholarships for a variety of forms of legal training.

In the 1980's a number of Cambodians with law-related responsibilities received training in former Eastern Bloc countries and Vietnam. It is understood that these people now work in the Phnom Penh Municipal Court, the Appeals Court, the Secretariat to the Parliament and the Legal Department of the Ministry of Foreign Affairs.

Most foreign and multilateral involvement in legal training has been on the basis of assistance for programs to be run in Cambodia. The French are particularly active in this area. The courses and institutions supported by France are usually taught in French and often the content is exclusively French law.

The International Development Law Institute (IDLI), a Rome-based non-government organisation, has also been active in the delivery of intensive, one week training workshops.

The United States through USAid has recently funded a substantial program in legal education, under the auspices of the Ministry of Education, to be developed and initially taught by the University of San Francisco School of Law. Limited Australian participation in this program is under consideration.⁶⁴

The American Bar Association is understood to be considering forms of practical legal training for Cambodia. No further information is available.

The Australian International Legal Cooperation (AILEC) program funded a one week course on Public International Law in June 1994 for the Ministry of Foreign Affairs and International Cooperation.

Skills obtained

Those Cambodian lawyers trained in the former Eastern Bloc countries obtained Masters degrees, and are qualified to work as judges in the Phnom Penh Municipal Court and the Appeals Court. However, the largest numbers are to be found in the Ministry of Foreign Affairs.

3 Legal services market

Professional associations/law societies/bar associations

A draft Law on the Bar's Statute is currently being considered by the National Assembly and is reportedly the subject of ongoing negotiations between the Legislation Commission and the Ministry of Justice concerning its language and content.

The Cambodian Defenders Program (CDP) and the Cambodian Defenders Association (CADEAS) are fledgling organisations of people carrying out lawyers' functions, with an emphasis on criminal justice issues. CDP comprises 39 members, not all of whom are legally qualified.

Local legal firms

Local legal firms

- Say Bory Clough Thuraissin Gham and Bridges is a partnership between Cambodian and foreign lawyers. The Council for Development of Cambodia has granted a licence to the firm which is led by the former Secretary of State for Relations with the Parliament. The firm provides advocacy services in both criminal and civil cases and operates as legal counsel. (Note: the National Assembly Legislation Committee is in the process of debating the draft Law on the Bar's Statute which will determine whether Cambodian legal firms can engage foreign lawyers and bring them to work in Cambodia according to the labour code).
- Cambodian Defenders Association (CADEAS). Some twenty-five defenders, employed with CADEAS, are working in Phnom Penh, Battambang, Kompong Cham and other provinces. The defenders have a certain amount of legal training and are reportedly allowed to defend people on a case-by-case basis, depending on the judge's decision.
- Cambodian Human Rights Trainer Organisation (CHARTO) offers free legal services to Cambodians. It comprises three committees: the Legal and Defender Committee, the Children and Women's Protection Committee, and the Human Rights Training Committee. The 11 CHARTO defenders, trained by UNTAC and at the border camps, provide services in Phnom Penh, the provinces of Banteay Meanchey, Pursat, Kompong Chhnang, Sihanoukville, Kandal, Kompong Speu and Takeo.

Local lawyers

Information not currently available.

Per cent in international commerce

Information not currently available.

Value of legal services

Information not currently available.

Local legal firms involved in international work

Information not currently available.

Practice mix

Information not currently available.

Australian and other foreign legal firms

Australian firms

Firms represented in Cambodia

Only one Australian lawyer currently has an established commercial presence in Cambodia: Mr Michael Kennedy of Michael Kennedy & Associates, who is also a lawyer with Corrs Chambers Westgarth in Perth. Corrs Chambers and Westgarth has been engaged by the Royal Government of Cambodia to advise it in respect of its international casino project, which is part of a larger tourism property development project, reportedly worth over US\$1.3 billion.⁶⁵.

Australian firms with other forms of representation

Most firms, instead of opening an office, choose to operate in Cambodia on a fly-in/fly-out basis, as needed.

Other International firms with links to Australia

- Siam Premier International Law Office is a Thai firm which undertakes work in Cambodia on a fly-in/fly-out basis. Australian lawyer Thomas Miller is currently seconded to the firm from Allen Allen & Hemsley in Sydney.

Australian lawyers

Several Australian lawyers are known to have a professional interest in Cambodia. These include:

Legal Services Country Profile: Cambodia

- Mr Gary Bugden from Mallesons Stephen Jaques (Brisbane) prepared a report on the Land Law situation in Cambodia for the World Bank in 1994.
- Mr Philip Crutchfield of Mallesons Stephen Jaques in Melbourne has carried out some preliminary work on law reform issues with the World Bank in Cambodia.
- Mr Matthew Rendall has been working as a law instructor for the Asia Foundation since April 1994 and is involved in the development and teaching of certificate law courses.
- Mr Thomas Miller of Siam Premier International Law Office in Bangkok has worked in Cambodia representing business clients.
- Associate Professor of Law Trevor Atherton (Bond University) was funded by UNDP to advise the Ministry of Tourism on a new tourism law.
- Associate Professor Trudi Atherton (Bond University) assisted the Asia Foundation with developing a certificate course in Family Law.
- Mr David Took, formerly of Mallesons Stephen Jaques, now with Freshfields in Bangkok, advised the Australian Government concerning the purchase of the Australian Permanent Mission premises in Phnom Penh. Mr Took was also legal adviser to a consortium involved in a proposed hotel, residential and retail complex in Phnom Penh.
- Mr Bruce Purdue, presently a legal counsel with the Asian Development Bank (ADB), Manilla, and previously with the Brisbane firm, Clarke & Kahn, undertook an assignment for the ADB in 1992 on the legal and constitutional status of the Cambodian nation.
- Mr Bruce Henry, a Brisbane-based lawyer who has undertaken assignments for UNTAC and has an interest in law relating to the establishment of human rights⁶⁶.
- Mr Daryl Dealehr, a Melbourne barrister, acts as Cambodia's Honorary Representative in Victoria, Australia, and has been involved in assisting the Royal Government of Cambodia.

Local lawyers

Information not currently available.

Foreign legal firms

There is no law governing foreign legal firms, per se. All foreign firms, including those offering legal services, are governed by the investment code, adopted and immediately

promulgated in August 1994. All legal firms should receive licences to operate from the CDC and formal approval from the Ministry of Justice.

Some expatriate Khmer have reportedly returned to set themselves up as legal advisers although the numbers are small. The following law firms, in addition to those mentioned above, are known to be operating in Cambodia:

- Dirksen Flipse Doran & Le, an American-based international law firm, received a licence to operate from the Council for the Development of Cambodia in December 1994. All the firm's work will be in the civil area and will concentrate on commercial and corporate assignments, real estate and contract law. The firm works as local counsel, drafting contracts and giving general advice. The firm has offices in Phnom Penh, Vientiane, Ho Chi Minh City and Seattle.
- Baker & McKenzie, an international practice which originated in Chicago, USA, is operating in Cambodia.
- Saleh & Associate, a Singapore-Malaysian law firm.
- Mbando Consulting Group has opened an office in Phnom Penh. Mr Mbella Ngongi, a Cameroun national and the principal of the firm, previously worked as a legal adviser to the United Nations Transitional Authority in Cambodia (UNTAC).

Status of lawyers employed

Local lawyers

Information not currently available.

Foreign lawyers

Information not currently available.

Practice mix

Information not currently available.

Commercial arbitration

The Cambodian government adopted the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (also known as the New York Convention (1958)) on 5 January 1960. However, whether Cambodia currently has the means to enforce this Convention is uncertain. The Cambodian government intends to re-affirm this ratification, and take other measures (see below), in order to reassure foreign and domestic business people in the area of commercial dispute resolution.

The government is currently considering enacting legislation to implement the 1985 UNCITRAL Model Law on international commercial arbitration, as well as legislation to implement the provisions of the 1985 Convention Establishing the Multilateral Investment Guarantee Agency (MIGA) and the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the ICSID Convention). It is also considering joining either the Regional Centre for Arbitration in Kuala Lumpur (RCAKL) and/or utilising the Singapore International Arbitration Centre (SIAC) in cases in which parties are unable to agree on the choice of arbitrators.

Under the old Foreign Investment law, a provision was made that in the case of any dispute arising as a result of any joint enterprise, foreign enterprise or business co-operation contract, the parties in dispute were to resolve the matter by negotiation and conciliation. If this failed the matter would then be referred to a Cambodian arbitration body, or any other body mutually agreed to by the parties⁶⁷. As most international contracts usually contain a choice of law clause providing for any disputes to be arbitrated in a foreign, that is, non-Cambodian, jurisdiction it is understood that Cambodian courts are not being approached to resolve international contractual disputes at the present time. If the proposed Commercial Courts are established, this may change.

Firms/centres

As mentioned above, Cambodia is considering joining either the Regional Centre for Arbitration in Kuala Lumpur (RCAKL) or utilising the Singapore International Arbitration Centre (SIAC) in cases in which parties are unable to agree on the choice of arbitrators.

Principal coverage

Not known.

Foreign restrictions

No regulations at present

International instruments

Cambodia is a member of the New York convention (Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)), which was ratified on 5 January 1960. The government is currently considering adopting several other international conventions (see above).

4 Market access requirements

Foreign lawyer/firm regulation⁶⁸

Body responsible

Pending the passage of the draft Law on the Bar's Statute, there is no other law which regulates foreign law firms. The draft Law on the Bar's Statute (as at 1 March 1995) indicates that foreign lawyers will require permits and approval from the Khmer Bar Association before they are allowed to operate in the country (article 4.2).

Laws & regulations

The draft Law on the Bar's Statute stipulates that foreign lawyers are not permitted independently to undertake either criminal or civil cases in Cambodian courts (article 4.1). If they are registered with another country's Bar Association and if that country extends the same rights to Cambodian lawyers, then they are allowed to "stay next to Khmer lawyers in court" (article 4.1).

The draft Law on the Bar's Statute states that foreign lawyers, recognised by the Bar association of their own country, are allowed to provide legal services in Cambodia. They can operate as local legal counsel, protecting the interests of companies. However, foreign lawyers which are authorised to operate in Cambodia are not allowed to undertake any action to attract clients (including "commercial advertisement"; article 4.3).

It is not clear whether the provisions of the investment code, immigration law and labour law can be fully applied to the operation of legal firms in matters not covered by the draft Law on the Bar's Statute. Under the provisions of the investment code, legal firms are allowed to hire foreign employees provided that their qualifications and expertise are not available in the Kingdom of Cambodia among the Cambodian populace. In the event of such hiring, appropriate documentation, including photocopies of the employee's passport, certificates and/or degrees, and curricula vitae are to be submitted to the Council for Development of Cambodia.

Under the investment code, foreign employees are allowed to remit abroad their wages and salaries earned in the Kingdom, after payment of appropriate tax, in foreign currencies obtained through the banking system.

Foreign lawyer admission to practice requirements

Citizenship

Articles 4.1 and 4.2 of the draft Law on the Bar's Statute make provision for foreign lawyers to practise professionally, subject to authorisation by the Khmer Bar Association, and to meeting educational and other requirements. It is unclear as to whether a Khmer nationality requirement is to be proposed for the practice of local law. Article 14.1 of the draft Law on the Bar's Statute states "A person may not be allowed to engage in profession as a lawyer (sic), unless he/she has fulfilled the conditions as hereunder : (1) has Khmer nationality; (etc)".

Educational qualifications

Minimum educational qualifications are not specifically mentioned other than that they must be registered with the Bar Association in their country of origin (article 4.1).

Experience

The draft Law on the Bar's Statute does not specify experience requirements for foreign lawyers.

Pupillage period

The draft Law on the Bar's Statute does not specify a pupillage period for foreign lawyers.

Residency requirements

Under the provisions of the immigration law, foreign employees should lodge an application form with the immigration office within 48 hours of arrival in Cambodia in order to obtain a residency permit. A residency permit is valid for two years and renewable for a further two years.

Government approvals

Not regulated at present.

Other

Not regulated at present.

Admission authority

Not regulated at present. In the future this will probably be the Khmer Bar Association.

Special admission

Not regulated at present.

Additional requirements

Visa restrictions

Foreign employees should apply for exit and entry visas with the Immigration Department of the Ministry of Immigration. In principle, overseas stays should not exceed three months. In cases in which the stay lasts more than three months, he/she should apply for a new visa.

Work permit

Under the provisions of the Cambodian Labour Code, all foreign employees should apply for work permits with the Ministry for Social Welfare, Labour and Veteran's Affairs.

Regulation of foreign law firms

Pending the passage of the draft Law on the Bar's Statute, there is no other law which regulates foreign law firms.

Use of firm names

Not regulated at present.

Employment of local lawyers

Under the provisions of the investment code, Cambodian and foreign legal firms are free to hire Cambodian nationals and foreign nationals of their choosing in compliance with the labour and immigration law.

Local firm association

Not regulated at present.

Government approvals

Not regulated at present.

Other

No regulations known

Restrictions on practice

In the current situation, there are so few professionally trained Khmer lawyers that whether a lawyer (foreign or Khmer) can be admitted in court is reportedly decided on a case-by-case basis by the judge presiding over the case. Language used (Khmer or other) is apparently also not strictly regulated. There appears to be no strict regulations at present on which types of law foreigners can practice.

Legal Services Country Profile: Cambodia

The draft Law on the Bar's Statute does not set restrictions on legal practice by foreign lawyers or legal firms. However, foreign lawyers are not permitted to defend cases independently in Cambodian Courts.

Local law

Not regulated at present.

Home law

Not regulated at present.

Foreign law

Not regulated at present.

International law

Not regulated at present.

Other

Not regulated at present.

Recent regulatory changes

As mentioned above, a Law on the Bar's Statute is currently in draft form.

5 Australian legal services

Australian law firms

For Australian law firms and lawyers providing services see 3—*Legal services market*

Prospects for Australian legal services

The prospects for Australian law firms at the moment are rather limited. At the present time, most work can probably be done on a fly-in/fly-out basis, either from Australia or from one of the cities in the region (Bangkok, Singapore, etc.), as is currently practised by most foreign lawyers.

As private demand for legal services in the near future will probably be limited, most work is likely to be in areas such as providing advice in respect of the drafting of new legislation, consultancy services in connection with Australia's aid program and in the field of legal education.

Dispute resolution services

Centres/firms

The present volume of commercial and investment activity is unlikely to create a demand for the provision of dispute resolution services from Australia. Centres which offer services are :

The **Australian Centre for International Commercial Arbitration (ACICA)** provides services for the settlement of international commercial disputes of all kinds to the region. ACICA was established in 1985 as a company limited by guarantee and incorporated in Victoria by The Institute of Arbitrators, Australia. The Institute of Arbitrators has as its main objectives the education and training of arbitrators and their grading, the nomination of arbitrators to arbitrate disputes and the promotion of arbitration as a means by which commercial disputes can be resolved. ACICA has entered into arrangements with the International Centre for Settlement of Investment Disputes in accordance with the provisions of the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 (ICSID)*.

ACICA has Co-operation and Trade Arbitration Agreements with 34 International Arbitral Centres around the world including those in the world's major trading nations in Asia, Europe, the Middle East and the Americas.

ACICA is a member of the Council of Asia Pacific Commercial Dispute Resolution Centres and has close relationships with the

International Chamber of Commerce Court of Arbitration in Paris.

ACICA has concluded a Co-operation Agreement and is in regular communication with the Hong Kong International Arbitration Centre.

For further information on ACICA, contact:

**The Secretary General
Australian Centre for International Commercial Arbitration
Level 1
22 William Street
Melbourne Victoria 3000
Telephone: (03) 9629 6799
Facsimile: (03) 9629 5250**

The **Australian Commercial Disputes Centre (ACDC)** provides consulting, training and dispute resolution services both domestically and internationally. It concentrates on mediation, expert appraisal and determination. ACDC has entered into arrangements with the International Centre for Settlement of Investment Disputes in accordance with the provisions of the ICSID Convention.

ACDC is the London Court of International Arbitration (LCIA) Registry for the whole Asia-Pacific Region. LCIA's services are available to all involved in international commercial activity. It is open to any party to elect to have his/her dispute determined under the internationally recognised LCIA Arbitration Rules or UNCITRAL Rules.

ACDC is also a member of the Council of Asia Pacific Commercial Disputes Centres.

For further information on ACDC, contact:

**Ms Carol Dance
Chief Executive Officer
Australian Commercial Disputes Centre
Level 4
50 Park Street
Sydney NSW 2000
Telephone: (02) 9267 1000
Facsimile: (02) 9267 3125**

Legal education and training

Overseas students studying law in Australia

No figures are currently available. As the total number of Cambodian students studying in Australia is small (see below), the number of students studying law is probably very low, if any.

Undergraduate/post-graduate

Information not currently available (see above). A number of Australian universities (such as the University of New South Wales), make material available locally in the Khmer language on study opportunities, through such bodies as the Australian Centre for English (ACE), in Phnom Penh.

Short courses

Information not currently available in Australia (see above). The Australian Centre for English (ACE) in Phnom Penh was engaged by the Asia Foundation in 1994 to provide a local course in a Legal English for Businesspeople. Demand for English language tuition is very strong.

Overseas students studying in Australia

As of June 1993, there were 8 Cambodian students in Australia, of which 4 were in intensive English language study, two in Commonwealth funded higher education, one in privately funded higher education and one in secondary education.

Commonwealth-funded higher education institutions

Overall

Australia has a strong commitment to the development of human resources in Cambodia as reflected in Australia's bilateral aid and other support for this sector.

Qualifications recognised

Information not currently available.

Australian Education Centre representation

Currently, there is no Australian Education Centre representation in Phnom Penh.

Value of educational services

Unknown

6 International legal assistance

Australia

Australian aid program and legal assistance

The Australian Agency for International Development (AusAID), previously known as AIDAB, administers Australia's development assistance program to Cambodia. In April 1994, Senator Evans announced that Australia will provide A\$92 million over four years (1994/95–1997/98). The new program is expected to address needs in a number of key development sectors in Cambodia which include infrastructure, de-mining, human rights, education and health.

Total Australian aid to Cambodia in 1994/95 is expected to be about A\$28.5 million which rose from \$22.6 million in 1993/94. Australia ranks in the top six aid donors to Cambodia.

In the area of human rights, Australia will provide additional funding for the UN Centre for Human Rights, complementing Mr Justice Michael Kirby's appointment as the United Nations Secretary-General's Special Representative in Cambodia.

AusAID presently has under consideration a project proposal in the field of human rights : Institutional Strengthening in the Development and Administration of Law and Justice. The project has a number of components relating to the police, prisons, development of legal drafting capacity and human rights issues. The indicative budget for the project proposal is of the order of \$A6–7 million over three years. The project is expected to get underway in 1995/96, if approved.

AusAID also administers a program of scholarships and fellowships to enable Cambodians to undertake study both within Cambodia and overseas. Twenty new awards under the Australian Sponsored Training Scholarships (ASTAS) program will be provided to Cambodia by AusAID in 1995.

Australian International Legal Cooperation (AILEC) program

The Australian International Legal Cooperation (AILEC) program is a three year program directed at fostering closer relations in law between Australia and Cambodia, Laos and Vietnam. It was established by the Australian Government in mid 1993 for a three year term. The Australian International Legal Cooperation (AILEC) Committee advises the Attorney-General of Australia on legal cooperation activities and other matters relevant to the AILEC program. The Committee is chaired by Ms Elizabeth Nosworthy, a senior private practitioner in Brisbane, and comprises 14 members drawn from private practice, university law schools, the business

community, government departments and the Law Council of Australia. The Committee and AILEC program is serviced by a small Secretariat in the Australian Attorney-General's Department, Canberra.

Total approved funding of the AILEC program is A\$670,000. The AILEC program will be reviewed in mid 1996.

Mr Chris Roper from the Centre for Legal Education, Sydney, visited Cambodia in January/ February 1994 on behalf of AILEC. The purpose of the visit was to examine possible opportunities for legal education and training between Australia and Cambodia, and to assess extent for the exchange or donation of legal materials. A visit report was prepared for the AILEC Committee.

Mr David Laidlaw from Maddock Lonie & Chisholm, Melbourne, visited Cambodia in a private capacity in late January 1994. An informal report on the scope for legal cooperation with particular government bodies and the level of existing cooperation and assistance in the legal services sector by other countries, agencies and organisations, was presented to the AILEC Committee.

Professor Alice Tay, Professor of Jurisprudence and Director of the Centre for Asian and Pacific Law, the University of Sydney, visited Cambodia in March 1994 in connection with her research interests and will also advise the Committee on scope for legal cooperation activities of interest to Laos. A visit report was prepared for the AILEC Committee.

The Chair of the AILEC Committee, Ms Elizabeth Nosworthy, and the Director of the AILEC Secretariat visited Cambodia in June 1994 in connection with the development of a program of legal cooperation activities.

AILEC legal cooperation activities to Cambodia, to date, comprise a one week workshop in public international law for participants from the Ministry of Foreign Affairs and International Cooperation and the Ministry of Justice (June 1994), co-funding (with the Australian Attorney-General's Department) of computer equipment and software for the Ministry of Justice, and provision of legal materials and text books. A Legal Sector Background Paper on Cambodia was prepared and published in March 1994.

Other countries and multilateral

The United Nations commitment to Cambodia, following the conclusion of UNTAC's mandate, has continued through the United Nations Development Program (UNDP), the UN Centre for Human Rights (UNCHR) and the appointment of Mr Justice Kirby as the Special Representative of the Secretary-General on the situation of human rights in Cambodia. Justice Kirby reported and made recommendations in February and

November 1994. His reports concentrates on methods of encouraging respect for human rights, including a number of recommendations aimed at strengthening the legal system.

In the area of law, the United Nations Development Program (UNDP) has expressed interest in assisting with administrative reforms, providing trainers to teach about human rights, arbitration and commercial law and concepts of land ownership and title.⁶⁹

France has in recent years spent considerable resources on assisting the rebuilding of the Cambodian legal system. A major part of France's current aid program of US\$56 million is devoted to education, with an emphasis on law, medicine, engineering and technology.⁷⁰

USAid is providing technical assistance to the Parliament and Ministries for legislative projects and funding for court reform on a large scale.⁷¹ Significant funding to help establish a second law school in Phnom Penh is also under consideration by USAid (see *Principal universities* above). The project, which is expected to commence in 1995, is being implemented by the University of San Francisco School of Law.

The Asia Foundation, an American sponsored NGO, has been particularly active throughout the region. In Cambodia, activities include provision of an adviser to the Ministry of Justice, assistance to the National Assembly covering areas such as strengthening the committee system and provision of administration services.⁷² The Asia Foundation also provides training to court personnel on the operation of courts including assistance in renovation and improving the courts' infrastructure. A pilot project to train the staff of the Battambang provincial court in 1994, conducted by a British lawyer was the first of its type and attracted widespread praise from the Cambodian government and the international community alike. The Battambang court is reportedly now the most efficiently operating court in the country.⁷³

The International Development Law Institute (IDLI), a Rome-based non-government organisation with the objective of encouraging and facilitating the use of legal resources in the development process, has conducted a number of training workshops in the region. Workshops held in Phnom Penh, usually of one week's duration, include Negotiating and Drafting International Contracts (in French) (1992); Mediation and Conciliation Techniques (1993), and Dispute Settlement in International Contracts (1994). A workshop on Banking was scheduled to be held in Phnom Penh in April 1994.

The Mekong Region Law Center was established as a result of an international conference in August 1992, and is a joint venture between Thailand, Cambodia, Laos and Vietnam. The Center operates as an "information clearing house", providing research facilities and sharing of legal experience. Although it is, in theory, a cooperative project amongst the four countries, the experience of Thailand as the most developed member of

the group adds an element of legal assistance to the operation of the centre.⁷⁴ The Center's inaugural meeting was held in Phnom Penh from June 17–20, 1994, at which the globalisation of law, environmental law and foreign investment law were discussed, as well as the logistics of the Center's establishment. Support for the Center was pledged from a number of countries and institutions and Mr Christopher Roper (Centre for Legal Education, Sydney) on behalf of the Australian institutions present, expressed their readiness to encourage support from within Australia.⁷⁵

7 References/sources

- 1 Constitution of the Kingdom of Cambodia, s.1.
- 2 Curtis, G., Cambodia: a country profile, 1989, p.1.
- 3 Department of Foreign Affairs and Trade (DFAT), Country Economic Brief (CEB), February 1995, p.5.
- 4 Economist Intelligence Unit (EIU), Country profile, p.96 (based on UN estimates).
- 5 Constitution of the Kingdom of Cambodia, s.5.
- 6 Constitution of the Kingdom of Cambodia, s.6.
- 7 Kingdom of Cambodia, Legal Sector Background Paper, AILEC Secretariat, March 1994 page 1 and Bar News Autumn/Winter 1994, NSW Bar Association p26.
- 8 The country was a protectorate until 1884, when it became a colony.
- 9 Far Eastern Economic Review (FEER), State of Confusion “24 June 1993”.
- 10 GDP in 1989 constant prices, inflation: consumer prices (period averages), exports exclude re-exports, imports exclude re-exports, current account excl. official transfers.
- 11 Figures for two-way trade, exports and imports in 1992/1993 were: 46,107; 45,780 and 327 A\$,000 respectively; rankings were 65, 54 and 122; after the departure of the UN troops and Election personnel, exports to Cambodia were down, but imports were up.
- 12 Source: Department of Foreign Affairs and Trade, ‘Composition of Trade—Australia, 1993/1994’, 1994. n.m^a = “not meaningful”.
- 13 DFAT, Composition of Trade Australia, 1993–94.
- 14 “Making deals with the UN” Flightdeck, December 1993.
- 15 EIU report .p. 53.
- 16 DFAT, Cambodia Country Economic Brief 1994, p13.
- 17 At the second International Committee on the Reconstruction of Cambodia, Prince Ranariddh read a statement from his father suggesting that a program similar to the Marshal Plan was needed. (EIU Country Report, p.50)
- 18 EIU Report, p.51.
- 19 The SOC government provided separate budgets for each of province and ministry, hampering fiscal control DFAT CEB, p.22.
- 20 DFAT CEB p.23.
- 21 Donovan, D.A., “Cambodia : Building a Legal System from Scratch”, The International Lawyer, Vol. 27, No. 2, 1993.
- 22 Matthew Rendell, personal communication, March 1995.
- 23 Report of the Special Representative of the Secretary-General for human rights in Cambodia : E/CN.4/1994/73 of 24 February 1994, page 11.
- 24 The Transitional Provisions, which attempted to re-organise the court system and criminal procedure, was passed by the Supreme National Council on 10 September 1992; the Code of Criminal Procedure was proclaimed by the State of Cambodia on 8 March 1993.
- 25 Unofficial translation of the Cambodian Constitution, UNTAC version.
- 26 Dolores A. Donovan and Jeffrey Brand, March 1995
- 27 Dolores A. Donovan and Jeffrey Brand, March 1995
- 28 The unofficial UNTAC translation has been used throughout this Profile.
- 29 Article 51, Constitution of the Kingdom of Cambodia.
- 30 Article 131, Constitution of the Kingdom of Cambodia.
- 31 Laidlaw, David; Report, p.2, and Dolores A. Donovan & Jeffrey Brand, March 1995.
- 32 Donovan, D. A., op. cit. p445.
- 33 NSW Bar Association, op. cit. p27.
- 34 Dolores A. Donovan and Jeffrey Brand, March 1995
- 35 BOT = Build-Operate-Transfer; BOOT = Build-Own-Operate-Transfer; BLT = Build-Lease-Transfer
- 36 Matthew Rendell, March 1995.
- 37 In this Profile an unofficial English translation of the second draft, dated March 1 1995, is used.

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- 38 Donovan, D.A., op cit, pp445–446.
- 39 Key terms such as “approved” and “adopted” are not defined in the Constitution; an official translation may provide clarification.
- 40 Article 93, Constitution of the Kingdom of Cambodia.
- 41 There is a Court of first instance in each province and in Phnom Penh and Kompong Cham. Donovan, D.A., op.cit. p450
- 42 Dolores A. Donovan and Jeffrey Brand, March 1995
- 43 Dolores A. Donovan and Jeffrey Brand, March 1995
- 44 Article 117, Constitution of the Kingdom of Cambodia.
- 45 Special Representative, Report, addendum, p. 12.
- 46 Article 110, Constitution of the Kingdom of Cambodia.
- 47 *ibid.*
- 48 It is not quite clear from the draft Law on the Bar’s Statute what the purpose of the “training course” is as opposed to the “professional certificate”.
- 49 Christopher Roper in his Report on Visit to Cambodia, February, 1994, (p.19), and Professor Alice Tay .in her report Australia—Vietnam, Laos & Cambodia Legal Cooperation, April 1994, (page 24) suggest or state that the Faculty of Law and Economic Science/ Law School is not formally part of the University of Phnom Penh; Professor Dolores Donovan, University of San Francisco School of Law, has stated that it is (communication dated 30 March 1995).
- 50 Dolores A. Donovan and Jeffrey Brand, March 1995.
- 51 Roper, C, Report op. cit., p.19.
- 52 Tay, A & Leung, C, Australia—Vietnam, Laos & Cambodia Legal Cooperation—report to the AILEC Committee, April 1994, p 27.
- 53 Tay, A & Leung, C, Report, P 27, op. cit. According to the “Education Handbook”, published by Educam, 1993, p219, in 1992/1993 academic year there were 3503 students in the preparatory cycle, 51 teachers.
- 54 The UN Special Representative, Mr Justice Kirby, has recommended that students not accepted into the full law course be awarded a diploma or certificate of legal studies to enable them to perform paralegal work within the courts (see Report of the Special Representative, 21 February 1994, addendum, p. 8.
- 55 Roper, Report, op. cit., p.25.
- 56 Roper, Report, p.25–26, and Tay, A & Leung, C, Report, P 27, op. cit.
- 57 Roper, Report, op. cit., p.25.
- 58 Dolores A. Donovan and Jeffrey Brand, the University of San Francisco School of Law, March 1995.
- 59 Roper, Report, op. cit., p.19.
- 60 Matthew Rendell, March 1995, and Donovan, D A, March 1994.
- 61 Roper, Report, op. cit., p.47.
- 62 See reports of the Special Representative of the Secretary-General for human rights in Cambodia : E/CN.4/1994/73 (and Add 1) of 24 and 21 February 1994, and A/49/635 (and Add 1) both of 3 November 1994.
- 63 See the above reports of the Special Representative of the Secretary-General for human rights in Cambodia and see also “Training new Cambodian Judges”, Australian Lawyer, Nov. 1993, p.10.
- 64 Dolores A. Donovan and Jeffrey Brand, the University of San Francisco School of Law, March 1995.
- 65 Warnecke, Andrea, " Legal Profiles" (1995), page 219.
- 66 Attorney-General’s Department, 1993.
- 67 Baker & McKenzie, Indochina Quarterly, 1992.
- 68 The information in this and succeeding sections has been provided by the Australian Embassy, Phnom Penh and/or obtained from the draft Law on Bar's Statute (Draft II) dated 1 March 1975. The information is intended as a guide only and should not be relied upon without independent verification.
- 69 Laidlaw, David; Report, p.9.
- 70 Cambodia Daily as quoted in an Australian Embassy, Phnom Penh, Communication of 2 March 1995.
- 71 Professors Jefferey Brand and Dolores Donvan "A Summary Proposal to the United States Agency for International Development for Assistance to the Department of Law of the Faculty of Business at the University of Phnom Penh" (December 21, 1994), p 2.
- 72 Laidlaw, pp. 7–8.

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- 73 Matthew Rendell, March 1995.
- 74 Laidlaw, David; Report, p. 4.
- 75 “Mekong Regional Law Center”, Lawasia Comparative Constitutional Law Newsletter, pp. 5–6.