

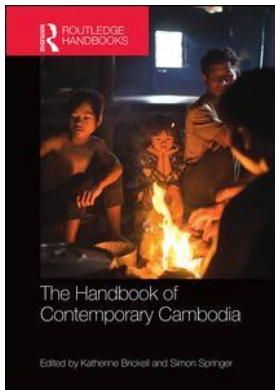
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JUSTICE INVERTED

Law and Human Rights in Cambodia

Catherine Morris

Introduction

Much has changed in Cambodia since the 1991 Paris Peace Agreements, a series of peacebuilding initiatives by the United Nations (UN) and foreign donors that aimed to uproot violence and impunity in the country and implant human rights and the rule of law. As part of this transitional process, Cambodia adopted a liberal democratic Constitution in 1993 and the country became party to an impressive array of international human rights treaties. Implementation is another story. Cambodia's government, led by the long-ruling Prime Minister Hun Sen and his Cambodia People's Party (CPP), has resisted reforms that would put liberal legal frameworks and human rights ideologies into practice. Contemporary Cambodia remains haunted by Pol Pot's 1975–79 Khmer Rouge regime, which eradicated Cambodia's traditional dispute resolution processes and colonial civil law system. The subsequent decade of Vietnam-sponsored rule in the 1980s entrenched centralized socialist governance and legal institutions that have stubbornly challenged reform efforts of the 1990s and onwards. Cambodian and foreign observers alike often mutter the French adage: "*plus ça change, plus c'est la même chose*" (see Ear 2013, 38; Chandler 2010). This chapter considers two decades of international human rights promotion and liberal legal development efforts in Cambodia with emphasis on courts, lawyers, and human rights defenders.

For their own benefit, elites in Cambodia manipulate its laws, its corrupt and politically dominated courts, and a weak legal profession. The dysfunctional legal system has played a leading role in Cambodia's lopsided economic growth characterized by widespread land-grabbing, rapacious environmental destruction, and marginalization of the poor, minorities, and indigenous peoples (Springer 2015). Concern about Vietnam's historic domination and economic power finds expression in discrimination against Cambodia's Vietnamese minority, including xenophobic opposition political rhetoric (Oesterheld 2014). Corruption and lack of independence from the ruling party have corroded public trust in Cambodia's courts, police, lawyers, and public officials. Those exposing lawlessness and corruption or resisting the powerful are likely to experience threats, harassment, or even murder. Rarely is there accountability for attacks on opposition members, journalists, environmentalists, or human rights activists.

This contemporary state of affairs defies the 1991 Paris Peace Agreements, the 1993 Constitution and Cambodia's international human rights obligations. In 2007, the prominent

Cambodian human rights organization, LICADHO, called the justice system a “charade,” urging international donors to “wake up” and realize there is “no reason to believe the Cambodian government is serious about improving the country’s courts” (LICADHO 2007, 1). The 2013 national election revealed popular support for the opposition Cambodia National Rescue Party (CNRP) and considerably reduced the CPP’s majority in the National Assembly, demonstrating new political boldness led largely by Cambodian youth. During the post-election period, mass street demonstrations, featuring opposition leaders, youth, women, and activist monks, dramatized public concern about election irregularities including partisan election bodies and fraudulent manipulation of election laws (Transparency International Cambodia 2013). The power shift yielded more CPP promises of reform to strengthen the rule of law, but there has been no abatement of judicial harassment of opponents and no change in Cambodia’s “rule by decree” legal culture. It is difficult to reconcile the CPP’s version of the “rule of law” with its UN definition as:

a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.

(UN Security Council 2004)

This definition articulates standards for laws themselves and for the manner in which they are made and implemented. As Kheang Un (2012, 202) writes, Cambodia “has moved toward rule *by* law rather than rule *of* law, meaning ‘for my friends everything; for my enemies, the law’” (emphasis in original).

This chapter proceeds first with a discussion of some conceptions of law in Cambodia, including village dispute resolution. Second is an outline of aspects of Cambodia’s legal framework, touching on the Constitution, international human rights, selected laws and two cases illustrating how courts operate. Third is a discussion of alternatives to Cambodia’s distrusted formal courts, contrasting foreign-led alternative dispute resolution (ADR) initiatives with community-based conciliation. Fourth is a discussion of Cambodia’s weak legal profession. Finally, Cambodia’s robust civil society is featured, with case studies demonstrating how the CPP makes and uses laws to try to quell dissident voices. The chapter concludes with a discussion of reasons for the glaring failure of international interventions to instil the rule of law and human rights and suggests some local movements that may produce positive change.

Conceptions of “law” in Cambodia

Despite six written constitutions since 1947, including the liberal democratic 1993 Constitution, Cambodia has no liberal constitutional history. No discussion about law in Cambodia makes sense without awareness that written laws and formal courts have never been the primary social ordering mechanisms for most Cambodians (Donovan 1998; Springer 2013a). Western understandings of law that underwrite international rule of law projects differ from traditional Cambodian conceptions of “law,” such as customary dispute resolution processes or Buddhist moral law (*dhamma*) (Geertz 1983). According to Cambodian academic, Hor Peng (2012, 32), “ancient regimes in Cambodia had always had a constitutional law . . . [which] applied local customary, social and religious norms . . . [and] referenced the king as a God on earth . . . all powers were focused in the King himself.” Social order has traditionally necessitated “a righteous ruler at the top of a social and moral hierarchy” (Ledgerwood 2008, 198), maintained

through vertical networks of patron–client relationships emanating from the center to the grass roots (Ledgerwood and Vijghen 2002, 114–117). People secured their wellbeing by remaining in harmony with patrons’ power and authority.

Buddhist monks, as guardians of *dhamma*, have traditionally undergirded popular legitimacy of the ruler who maintained clergy support (and social control) by observing the *dhamma*. Cambodia’s post-colonial regimes have all appealed to the “cultural and political cloth of both Theravada Buddhism . . . and the people-centred kingship that has been tied to it” (Gyallay-Pap 2007, 72). Even Pol Pot’s anti-religious regime sought legitimacy by inverting Buddhist morality, claiming that its cadres had “surpassed the discipline of monks” (Gyallay-Pap 2007, 89) and by keeping Sihanouk alive, albeit in the “gilded prison” of the palace (Sihanouk 1980–1982; Marlay and Neher 1999). Nowadays, Buddhist ethical practice is often shallow, but monks still evoke deference. The monk establishment has aligned itself with the CPP since the 1980s. Both the CPP and monk leaders have punished activist monks (Heng 2008b), many of whom align Buddhist teaching with international human rights (Heng 2008b; LICADHO 2014b).

At the village level, dispute resolution traditionally involved informal conciliation by a monk, elder, village chief, or commune chief (Luco 2002). The community-based, non-adversarial conciliation system re-emerged soon after Vietnam’s ousting of the Khmer Rouge (Donovan 1993, 446). If unable to settle disputes locally, villagers traditionally might go to the capital to plead their case before the King (Luco 2002).

Since the 2004 abdication of “the last God-King,” Norodom Sihanouk, villagers are more likely to seek Prime Minister Hun Sen’s intervention (Strangio 2014). Hun Sen’s displays of power have increasingly featured use of his royal-sounding title, *Samdech Akka Moha Sena Padei Techo* (“exalted supreme great commander of gloriously victorious troops”), signalling his “political reinvention” as God-King “towering over” King Sihanouk and his son, King Norodom Sihamoni (Heder 2012, 104; Gyallay-Pap 2007; Strangio 2014). Hun Sen’s governance style evokes traditional Cambodian kingship while retaining the centralized, authoritarian decision-making established under socialism in the 1980s by which all institutions, including courts, were controlled by the communist Central Committee. These patterns have challenged international legal development efforts and local human rights advocacy since the early 1990s.

Laws, legal institutions and foreign intervention

The Paris Peace Agreements, Annex 5, prescribed a liberal democratic constitution, and accordingly, Cambodia’s 1993 Constitution guarantees an independent judiciary and assures recognition and respect for human rights “as stipulated in the UN Charter, the *Universal Declaration of Human Rights* (UDHR) and the covenants and conventions related to human rights, women’s rights and children’s rights” (Article 31). Cambodia is a party to the core UN human rights treaties (except for the *Migrant Workers Convention*) and has ratified a number of International Labor Organization (ILO) conventions. Legal development projects since the early 1990s have been led by foreign experts from civil law and common law traditions. As a result, pluralism marks Cambodia’s “hybrid legal system . . . [which is] an amalgamation of Cambodian customs, the French based legal system (an influence from French colonization), and the common law system, which is an influence arising from foreign . . . assistance to legal and judicial reform” (Kong 2012, 8). Civil law experts from Japan and France influenced the drafting of Cambodia’s civil and criminal laws respectively (Sok 2008). Beginning in 1999, the Japan International Cooperation Agency worked with Cambodia’s Ministry of Justice (MOJ) to draft a *Code of Civil Procedure* and a *Civil Code*, in effect in 2007 and 2011 respectively. Over the period of a

decade, experts from France and the MOJ drafted a new *Code of Criminal Procedure* and a new *Criminal Code*, in effect since 2007 and 2010 respectively.

The Extraordinary Chambers in the Courts of Cambodia (ECCC) aimed not only to bring senior Khmer Rouge leaders to justice but also to be a model court by which to strengthen judicial reform and the rule of law (see Hughes and Elander, this volume, p. 42). Such a legacy is predicted to be “superficial at best,” because the slow and costly ECCC has been fraught with allegations of political interference and corruption, thus delivering a “message to the national judiciary that the ECCC is no different than the Cambodian courts” (Coughlan *et al.* 2012, 16, 28). In the regular courts, endemic corruption is facilitated by judicial salaries that are insufficient to maintain a middle-class living standard (Transparency International Cambodia 2014, 6). According to a judge who admitted to accepting money and gifts, “[i]f a judge is a clever man . . . he can find ways to make a lot of money” (LICADHO 2007, 22). In addition, even though the Judicial Police officially report to the courts (through the prosecutor), the police have a history of non-cooperation with the courts (Un and Ledgerwood 2010, 5). Judges also experience interference through letters, calls, or visits from “fixers” sent by powerful parties or government officials. This leads to fear for personal or job security (Un 2008).

Two cases are illustrative: the 2003 murder of Judge Sok Sethamony and the 2004 murder of trade union leader Chea Vichea. In April 2003, Judge Sok Sethamony had refused to comply with the demand of then Phnom Penh Police Chief Heng Pov to reverse a verdict. The next morning, gunmen shot the judge to death. Kheang Un (2008) has argued that the killing unnerved other judges and undermined progress towards judicial independence. While Heng Pov is now serving a jail sentence for the murder, his unfair trial creates uncertainty that he was the killer (Phann and Piore 2006; US Embassy Phnom Penh 2006).

Nine months later, in January 2004, gunmen murdered Chea Vichea, leader of the prominent Free Trade Union of Workers of the Kingdom of Cambodia (FTU), which was allied with the then opposition Sam Rainsy Party (Hughes 2007; Springer 2010). Chea Vichea had received death threats purportedly from “someone in a position of power” (RFA 2004). Police arrested Born Samnang and Sok Sam Oeun, even though both men had good alibis. In March 2004, Judge Hing Thirith refused to confirm the charges, citing insufficient evidence and irregularities in the investigation. LICADHO (2004) applauded the judge’s decision as a step towards judicial independence. Within days, the judge was removed from his position and reassigned to a remote provincial court; he explained that he had refused to comply with a senior official’s order to confirm the charges (Phann and Barron 2004). The Appeals Court overturned Hing Thirith’s decision and reinstated the charges. Born Samnang and Sok Sam Oeun were convicted and sentenced to 20 years’ imprisonment (LICADHO 2005). After years of convoluted court proceedings, in 2013 the Supreme Court dropped the charges and freed the two men. There has been no proper investigation, and the killers of Chea Vichea remain at large. In 2004 and 2007, unknown gunmen shot two other FTU leaders; there were no proper investigations, and courts wrongly convicted individuals who served considerable jail time before verdicts were overturned. These cases are not atypical. They demonstrate how Cambodia’s courts facilitate the intimidation of those who oppose the plans of the powerful. The murder of Judge Sok Sethamony and the removal of Judge Hing Thirith from his position show how judicial independence has been punished.

Over the years, donor skepticism turned to frustration about glacial progress of law-making, court reform, anti-corruption, and democratic development. Yet donors have continued to supply hundreds of millions of dollars in aid. In 2006, Sophal Ear (2006, 87) denounced such “international collusion,” noting that the government is “adept at doing just enough to win donor support.” LICADHO noted in 2007 that the millions poured into “research, legislative

drafting, training of court and law enforcement officials, judicial mentoring and the improvement of court and prison facilities” has helped to some degree in that judges and prosecutors are seen as more knowledgeable and competent, but “the most important area of all has seen no change whatsoever. The political and financial influence over the courts is as strong as it has ever been, and there is nothing to suggest that this will change” (LICADHO 2007, 27). Some legal development donors withdrew from Cambodia, including the Danish Institute for Human Rights (Buhmann and Castellani 2012), which in 2013 phased out its longstanding work with Cambodia’s Legal Reform Strategy, citing the government’s lack of political commitment (Pedersen 2013).

In 2014, the government passed three judicial reform laws that had long been promised to donors to improve the independence of courts. Local and international human rights organizations deplored the process and the results. The CPP rushed the laws through the National Assembly without debate during the CNRP’s post-election boycott of parliament. Promised consultations with civil society and other stakeholders were bypassed. Instead of advancing judicial independence, the laws entrench government control of courts in violation of Cambodia’s constitution and international human rights obligations (International Commission of Jurists 2014). Human Rights Watch (2015, 58) summarizes the problems of political influence;

Most judges report to the CPP, including the Chief Justice of the Supreme Court, Dith Munthy, who is a member of the CPP Standing Committee. Judges around the country are regularly called to party meetings and report to senior provincial officials as well as the Minister of Justice, who since UNTAC [the United Nations Transitional Authority in Cambodia] has been a CPP appointee. The CPP controls both the Constitutional Council and Supreme Council of Magistracy, a constitutional body set up to appoint, remove and discipline judges.

After years of foot-dragging and promises to implement the rule of law, the CPP chose the time of the opposition’s post-election parliamentary boycott to spring into action and deploy its law-making power to try to legitimize its control over the judiciary.

Bypassing courts? Alternative dispute resolution and community-based conciliation

Most Cambodians avoid the courts, which are not only distrusted but also inaccessible to the poor. Lack of legal assistance and advocacy is a significant impediment, and people prefer informal conciliation at village and commune levels to settle cases such as small land disputes, defamation and insult, divorce, domestic violence, contracts, and inheritance (Luco 2002; Coghlan 2009; McGrew and Virorth 2010). Ninh and Henke (2005, 11) report that mediation at the village and commune level is experienced as easier, cheaper, and more effective than mediation at higher levels. However, citizens see corruption, nepotism, and (need for) impartiality as important problems in commune council mediation, while councillors view a lack of legal knowledge/respect for the law, a lack of knowledge/skills on the part of the council, and a lack of resources as most challenging. Mediation of domestic violence cases achieves mixed results (Lim 2009). Access to mediation does not extend much beyond the commune level (Coghlan 2009).

For those in the court system, mandatory mediation by court administrators or judges has been a formal part of Cambodian law for decades, albeit interrupted during the Pol Pot years (Neam 1998, 47–54; *Code of Civil Procedure* 2006, for example Articles 97, 104, 220, 222), with

mediated agreements treated as court orders (Article 222). Austermiller (2012) indicates a need for mediation training for judges, “administrative guidance on how and when to mediate,” and a specific law on mediation to protect confidentiality and improve enforcement of mediated agreements.

To resolve labor disputes out of court, in 2003 Cambodia set up an Arbitration Council under the *Labor Law*. More than 90 percent of the Council’s cases originate from the garment sector. Commentators have lauded the Council as a successful foreign-funded legal reform; from 2003 to 2010, the Council resolved more than 70 percent of the 1,000 cases it received (van Noord *et al.* 2011). The process is mandatory but emphasizes conciliation and non-binding arbitration. Parties may voluntarily agree to binding arbitration. A regulation (*prakas*) drafted in consultation with the ILO and major stakeholders (management, labor and government) ensures arbitrators’ independence, largely through a tripartite design in which each of the Ministry of Labor, unions and employers appoint a third of the arbitrators, who must not be officials of unions, employer organizations, or the Ministry. The Council operates outside the Ministry’s funding or administrative control. The voluntariness of the Council’s processes may have contributed to its reputation for independence and integrity, but it is criticized as having “no teeth.” Also, unions represented on the Labor Advisory Committee (which appoints the arbitrators) are largely CPP-aligned (Nuon and Serrano 2010, 130). Deterioration of labor relations in the garment sector, including wildcat strikes, plus violent crackdowns against garment workers’ strikes, has led to accusations of bias by unions and the Garment Manufacturers Association in Cambodia. In early 2015, the FTU threatened to boycott the Council because of factories’ non-compliance with rulings (Mom and Teehan 2015).

To foster international business, in 2006, Cambodia enacted a *Commercial Arbitration Law* (Austermiller 2012) and set up a National Commercial Arbitration Center (NCAC). However, the NCAC did not receive its first case until May 2015 (Kang 2015). Preconditions for NCAC success include parties’ ability to trust its independence from government and local courts (Verghese 2014), so for the foreseeable future, businesses are likely to prefer the Hong Kong or Singapore international arbitration centers or the China International Economic and Trade Arbitration Commission.

Denial of access to justice: Cambodia’s weak legal profession

“The first thing we do, let’s kill all the lawyers,” said the rebel plotter, Dick the Butcher, in Shakespeare’s *Henry VI*. As Neilson (1996) notes, the Pol Pot regime did exactly that as part of its systematized elimination of all social institutions and all possible sources of opposition. Only a handful of lawyers survived the Pol Pot period. In 1995, the new government agreed to adopt a *Law on the Bar*, creating an independent Bar Association of the Kingdom of Cambodia (BAKC). In 1997, the first law students graduated from the Royal University of Phnom Penh. Within two years, the number of lawyers burgeoned to about 250. Yet, in early 2015 there were only 725 practicing lawyers, not enough for Cambodia’s population of 15 million. The shortage of lawyers, especially legal aid lawyers, is critical, particularly in rural areas. Some legal aid is provided by Cambodian legal aid and human rights NGOs, supported by uneven foreign funding. The BAKC provides legal aid representation to several hundred people a year with MOJ funding.

While there are hundreds of law school graduations annually, the Bar Council admits only 35 to 70 lawyers to the bar each year. Many applications are delayed or denied. Allegations of corruption have dogged bar admission processes for years (Dunlap 2014), but evidence is difficult to obtain, because persons paying bribes are unwilling to report their experiences on record

for fear of implicating themselves. Nor are applicants for bar admission willing to blow the whistle on powerful people who might retaliate against them by thwarting their ability to enter the legal profession. To date, there has been no independent investigation or review of bar admission processes to identify and eliminate opportunities for bribery or delay. While the BAKC is independent “on paper,” it has a reputation for being controlled by the CPP (Dunlap 2014). Assertion of CPP control became evident in 2004, when the BAKC President was Mr. Ky Tech, a lawyer with links to powerful CPP members, including the Prime Minister (Global Witness 2007, 24). In July 2004, the Bar Council admitted four senior government officials to the bar, who lacked qualifications for membership; all had honorary, not earned, law degrees. The four were none other than Prime Minister Hun Sen, Deputy Prime Minister Sok An, Minister of Interior (MOI) and Deputy Prime Minister Sar Kheng and MOI Secretary of State Prum Sokha. This move signaled that the CPP controlled Bar Council decisions, and that the BAKC was an organ of government control over the legal profession rather than a guardian of the independence and integrity of lawyers. The BAKC has not noticeably countered harassment of lawyers by well-connected parties or government officials through intimidation, threats of disbarment, criminal prosecutions, or obstruction of lawyers, particularly those representing villagers or indigenous communities in land-grabbing cases or lawyers representing opposition politicians (Lawyers’ Rights Watch Canada 2009).

Attempts to control civil society

UNTAC is credited with creating space for development of Cambodia’s now skilled and vigorous civil society organizations. However, the government regularly denies civil society rights to freedom of expression and peaceful assembly and other rights guaranteed by the Constitution and international human rights treaties. Human rights defenders from urban, rural, and indigenous communities, along with NGO workers, journalists, trade unionists, and opposition parliamentarians, regularly face threats “simply for promoting and protecting human rights” (Amnesty International and LICADHO 2013).

For example, in April 2012 a military police officer shot and killed an unarmed environmental activist, Mr. Chut Wutty, while he was investigating illegal logging in an indigenous community in Koh Kong province. Before he was killed, he had received a number of death threats. A military police officer was also shot dead at the scene, and a logging company security guard was convicted of unintentionally killing the police officer and sentenced to two years’ imprisonment. He served six months. There has never been a credible investigation (LICADHO 2012a, 19–20). In another incident of profound violence on May 2012, hundreds of armed soldiers and police converged on a village in Kratie province to forcibly evict residents and clear land around a rubber plantation. Soldiers fired recklessly on protesting villagers, fatally shooting a 14-year-old girl (LICADHO 2012b). There was again no investigation. Authorities instead jailed several village protesters for ostensibly plotting a “secession.” In a June 2012 televised speech, Hun Sen accused a 71-year-old journalist and political activist, Mam Sonando, of inciting the supposed “insurrection.” Despite the complete absence of evidence, the Phnom Penh Court convicted and sentenced him to 20 years’ imprisonment for leading a secession plot (LICADHO 2012a, 57). On March 14, 2013, the Supreme Court reduced his sentence, releasing him after eight months in jail (RFA 2013). The village protesters were released a few days later (Peter and Khuon 2013).

In December 2012, 30-year-old Ms. Yorm Bopha, was convicted and jailed on fabricated charges of masterminding an assault. The prosecution was one of a number of cases against members of Phnom Penh’s Boeung Kak Lake community in retaliation for peaceful protests

seeking fair compensation for evictions by a company with connections to senior government officials. Her case was still under appeal in March 2013, when Hun Sen claimed on television that her arrest was unrelated to land issues; rather, she had acted “violently and unjustly in the eyes of the government” (Yorm Bopha v. Cambodia 2013). Days later, a court denied Yorm Bopha’s bail application. She spent over a year in jail before Cambodia’s Supreme Court reduced her sentence and released her, albeit upholding her conviction.

In another high-profile case, ten women land rights activists and a Buddhist monk were sentenced to year-long prison terms, the maximum sentence for obstructing traffic. During a peaceful protest in November 2014, they had pulled a bed onto a busy Phnom Penh street to protest government inattention to flooding in the Boeung Kak community (LICADHO 2014a, 2015; RFA 2014b). In January 2015, the Appeal Court upheld the sentences. Responding to the decision, a human rights defender commented that, “evidence of a crime is not necessary for a conviction in Cambodia. Mere criticism of the government is all it takes to secure a prison term” (LICADHO 2015). Hun Sen insists, however, that the government has no power to interfere in independent court decisions (Kuch 2012; RFA 2014a). Belying this claim, in April 2015, Hun Sen agreed to royal pardons and the release of the ten activists from prison as part of a political accord between the CPP and CNRP on electoral reforms (Dech 2015). In addition to underlining political interference with courts, these cases illustrate two phenomena. First, land disputes have created numerous “accidental activists,” notably women and indigenous villagers affected by logging, agribusiness or urban developments that intrude on their homes and livelihoods. Second, activism by young monks is increasing. Despite prosecutions and threats of discipline by the conservative monk establishment, young activist monks are standing for Buddhist principles of righteous rule, framed in terms of non-violence, human rights, and the rule of law (Heng 2008b).

In July 2015, the CPP appears to have struck a *coup de grâce* against civil society. After vigorous demand for public consultation and extensive legal criticism of several drafts of a *Law on Associations and Non-Governmental Organizations* (NGO law) by Cambodian and international NGOs and the UN since 2009, the CPP used its parliamentary majority to pass, without consultation, a law that contradicts Cambodia’s Constitution and international human rights obligations. Mandatory registration provisions and broad government powers to regulate activities create increased opportunities for government restriction, harassment, and criminalization of civil society groups (Amnesty International *et al.* 2015, see Coventry, this volume, p. 53). Despite government assurances that such concerns were unwarranted, just days after the law came into force, police threatened “punishment” of a group of litigants in a land rights dispute if they protested without being registered under the NGO law (Aun 2015). Several unregistered community-based organizations have reported being forbidden to hold meetings, and the implementation of the NGO law is said to be contributing to Cambodia’s “very disempowering environment” for civil society (Kiai 2016).

Conclusion

Lack of an accessible and trustworthy legal system means that impunity, malfeasance, and corruption remain the norm. These factors are among the roots of Cambodia’s poverty, landlessness, environmental degradation, and land conflicts. Despite years of urging by Cambodia’s civil society organizations, donors have failed to insist on government accountability beyond its many promises of reform. With the rise of China’s economic power, Western countries have become more eager to develop economic relationships throughout Asia (Strangio 2014) than to cultivate respect for human rights and the rule of law in Cambodia.

Several reasons have been posed for the failure of foreign legal development assistance to further law reform and the integrity and independence of courts. Some have blamed Western “arrogance, ethnocentricity, failure to recognise plurality and lack of imagination” (Nicholson and Kuong 2014, 176). One independent evaluation of Cambodia’s Legal Reform Strategy suggested that efforts might bear more fruit with increased emphasis on “[b]uilding rule of law awareness and a rule of law culture” (Buhmann and Castellani 2012, 16). The implied assumption is that the key to the “rule of law” in Cambodia is more awareness. Such an assumption is challenged by Un and Ledgerwood (2010, 9), citing Evan Gottesman’s finding (2004, viii) that as far back as the 1980s, “Cambodia’s top leaders were clearly familiar with the concepts of human rights and the rule of law . . . [but] were unlikely to alter the way they governed the country merely in response to Western advisors.” Cambodia’s socialist history partly explains CPP resistance to the liberal rule of law efforts. The 1980s solidified socialist court administration. Many of Cambodia’s current judges were appointed during those years (Neilson 1996, 3). Nowadays, no one imagines that Hun Sen or the CPP hold socialist economic values, but the ruling party benefits from maintaining its grip on socialist-style power structures that subordinate courts to the ruling party. Toope (2003, 393) suggests that: “The one ‘precondition’ [for success] that seems to exist in almost all cases is indigenous demand for legal and judicial reform, be it driven by an elite (the common pattern) or by broad popular sentiment.” Neither CPP-based elites nor popular sentiment have driven reform. Foreign-led rule of law projects have emphasized law reform and judicial and lawyer training, often giving priority to measures that support neoliberal economic development (Springer 2010, 2015). Rule of law projects have not emphasized grassroots mobilization to facilitate broad-based human rights claims (Hughes 2007). While human rights projects have emphasized public dissemination of human rights information, a large focus has been on building NGO workers’ skills in monitoring, investigation, and funnelling of human rights reports to governments, donors, international NGOs, and international organizations. According to Hughes, human rights work has become professionalized and technocratic, and human rights struggles are “largely restricted to a limited role for the educated middle class, operating in a subordinate relationship with international organizations” (Hughes 2007, 841).

Springer (2013b) emphasizes that law itself, created by elites and abetted by neoliberal economic reforms, is the chief mechanism for the legitimization of “violent accumulation” of land and resources by powerful elites. While the most extreme expressions of direct violence—political assassinations—have abated over the past two decades, people’s suffering from injustice—or “structural violence” as Galtung (1969) terms it—remains acute as laws themselves are created and used by the powerful to dispossess people of their land, livelihoods, and other entitlements. Judicial and administrative harassment, using literal or perverse interpretations of laws and regulations, are routinely used by the powerful to repress opponents and silence those who advocate for them. Increasingly, the norms created by contemporary law-making in Cambodia work to invert justice, facilitate structural violence, and deepen inequality. Cambodia’s legal processes promote injustice, rather than limiting it, and provide few or none of the limitations on power promised by liberal conceptions of the rule of law.

Yet, no society remains static. In Cambodia, there are three arenas of potential resistance to “law’s violence” (Sarat 2001). First, there may be increased interest in the possibilities of expanding and improving traditional village-level dispute resolution processes, which have proven to be both resilient and effective to settle many local disputes (Coghlan 2009; Luco 2002; McGrew and Virorth 2010; Ninh and Henke 2005). Second is the emerging movement of young, educated Buddhist monks seeking to hold rulers accountable to the *dhamma* (Heng 2008a; Heng 2008b) and inspire Cambodians to become a “just populace” (Heng 2008a).

Third is Cambodia's energetic civil society, increasingly led by young, well-educated women and men who think for themselves and are less prone than their elders to fear Hun Sen's threats that without his saving strong hand at the helm, Cambodia might return to civil war.

At the close of the last millennium, David Chandler (1999) observed that entrenched power structures may, "[f]or the first time in history be under serious threat, largely from the young." He saw the concept of individual human rights as posing serious challenges to authoritarian rulers: "The notion of empowering the powerless, through the protection of their individual rights, is genuinely revolutionary. So is the notion that power can exist outside the grip of those at the top of a regime." In the twenty-first century, people in Cambodia—including indigenous communities, rural villagers, women, and youth—are even more impatient with ceaseless, violent land-grabbing, corruption, and lack of respect for their rights. The CPP's grip on power is under threat by grassroots activists using strategies of nonviolent protest aided by social media communications. More than foreign expertise, Cambodian activists seek solidarity from transnational networks of activists. The future will reveal whether Cambodia's young women and men will succeed in shifting Cambodian governance towards justice and peace on Cambodians' terms.

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