Fact Sheet: Institutions Series: The State

Institution: The State

Snapshot: The Kingdom of Cambodia (“Cambodia”) fails not only to match up to objective definitions of a “state”, but also to adhere to its own constitution, which envisaged and prescribed a liberal democracy that observes the rule of law, with robust and independent state institutions to act as democratic checks and balances on the power of the executive.

Introduction
This fact sheet aims to define the role of “the state” in terms of what institutions and systems need to be in place for a state to function properly, and analyzes the state of Cambodia against these standards. This fact sheet is written by the Cambodian Center for Human Rights (“CCHR”), a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

The state
The concept of “the state” as an institution, i.e., an organized political community living under a government, should be distinguished from “the state” as a legal notion, i.e., a sovereign political entity under public international law – in this case the state of Cambodia. It is difficult with most definitions of “the state” to avoid ideological leanings, but the key element is that a fully functioning state should take precedence over the government: the government’s role is to control and run the state apparatus. Governments are merely the means by which state power should be employed.

The Cambodian state: low levels of governance
Based on findings of the World Bank Governance Indicators (2008) and other governance measurements such as the Bertelsmann Transformation Index (2010), Cambodia suffers low levels of good governance, as it performs weakly on most or all of the governance indicators (voice and accountability, political stability, government effectiveness, regulatory quality, rule of law and control of corruption). It fares particularly badly on the last two – which is attributed by many to weak state capabilities, low bureaucratic quality and a lack of effective public institutions. Due to the absence of the rule of law and the presence of rampant corruption in Cambodia, it is reasonable to conclude that the Cambodian “state” is weak, and that it suffers by comparison not only with other countries in the region (Singapore, Malaysia, Indonesia, Thailand, the Philippines and Vietnam), but also with objective criteria as to what ranks as a “good” or “effective” state. It is clear from the World Bank indicators mentioned above that if Cambodia were to improve its ratings for rule of law and control of corruption, its ratings for good governance would rise correspondingly. Ensuring a proper separation of powers, strong state institutions (such as an independent judiciary), and the supremacy of the law above all state actors would vastly improve the governance indicators.

The separation of powers and an independent judiciary
A strong state comprises three pillars that form the three branches of government – namely the executive, the legislature and the judiciary. Each should have an equal amount of power, and a system of checks and balances should operate between them. This principle is intended to be a safeguard against arbitrary rule, whether by an authoritarian leader or by mob rule. Each pillar should be robust, accountable and fully independent, with no pillar exerting control over any other, nor any individuals exerting excessive or permanent control over the pillar itself. Despite prescription for the separation of powers under Article 51 of the Constitution of the Kingdom of Cambodia:...
Cambodia (the “Constitution”), the governing Cambodian People’s Party (the “CPP”) exerts extensive control over the judiciary, using it as its primary tool of oppression, with criminal charges systematically levelled at the pillars of Cambodia’s fledgling democracy – parliamentarians, the media, lawyers and human rights activists. A fully independent and robust judiciary should be one of the key state institutions: to preserve the rule of law and tackle the culture of impunity that currently prevails in Cambodia, to the detriment of the institution of the state (please see below). The CPP also exerts clear control over the legislature, with laws regularly passing through the houses of parliament without proper consultation, despite the protestations of opposition parlamentarians.

**Rule of law**
A state must adhere to the rule of law – the principle that no one is above the law – if it is to be considered a fully functioning democratic state. The aim of this principle is that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws adopted and enforced by established procedural steps that constitute due process. However, in breach of Article 41 of the Constitution, the Royal Government of Cambodia has devised a concerted legislative agenda to limit the rights to freedom of expression of all Cambodian citizens, codifying criminal defamation in the 2009 Penal Code, while currently finalizing draconian and controversial laws to regulate and shrink the democratic space of trade unions, NGOs and associations – in other words, ruling by law rather than observing the rule of law. Furthermore, endemic impunity is a tell-tale indicator of the absence of the rule of law in Cambodia: garment factories routinely flout labour law provisions, well-connected individuals and companies grab land at will, and members of the elite rarely face justice for their crimes. They are seemingly above the law.

**Conclusion: the implications of a weak state**
By any objective standards, the state as an institution is very weak in Cambodia. The principles of the separation of powers and the rule of law are widely flouted, and vital state institutions such as the judiciary are totally subservient to the executive. Despite the holding of regular commune and national elections, Cambodia displays all the hallmarks of an authoritarian state, which, as in Cambodia’s case, tend to suffer from weak state structures and strong authoritarian executives.

Because Cambodia exhibits a lack of institutional capacity and administrative capability, it is highly unlikely that true democracy could provide stability or sufficient governance quality. For now, in the absence of strong state institutions (an independent judiciary) and established principles (the separation of powers and the rule of law), control of the state is exercised by force and maintained by manipulation of state institutions to serve the CPP’s purposes. Cambodia effectively represents “electoral authoritarianism” (A. Schedler, “The Logic of Electoral Authoritarianism”, 2006) or a “defective democracy” (A. Croissant, “From Transition to Defective Democracy: Mapping Asian Democratization”, 2004) rather than the liberal democracy that it claims to be and which the Constitution anticipates. The over-riding concern is that a weak state is fragile and unsustainable in the long-term; yet true democracy will struggle to take hold under present conditions. Furthermore, an army and police force that are personally loyal to the leadership rather than to the state will only preserve the status quo and delay the emergence of a strong state and true democracy.

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