



Hun Sen versus Mu Sochua and the state of democratic reforms
Sebastian Strangio and Sam Rith
June 26, 2009

Observers say the recent legal offensive against government critics raises questions about how far Cambodia has come on the road to democracy - and how far the nation has yet to go.

The National Assembly's decision to strip two opposition lawmakers of their parliamentary immunity on Monday has soured views on the status of democratic reform in Cambodia, with local and international observers saying the gap between the letter of the law and the country's daily reality remains substantial.

On paper, Cambodia has relatively progressive laws: The Kingdom's Constitution guarantees the independence of the judiciary, and other key pieces of legislation, including the 2001 Land Law, largely conform to international standards.

But with eight separate lawsuits filed against government critics in recent months, including one against Sam Rainsy Party lawmaker Mu Sochua after she filed a defamation complaint against Prime Minister Hun Sen, some claim that nearly two decades of NGO- and donor-led reforms have left the bedrock of Cambodian People's Party power largely untouched.

"Things are going back to square one," said Yeng Virak, executive director of the Community Legal Education Centre, a local legal aid group.

Yeng Virak drew a parallel to the 1980s, when he said a layer of "invisible law" held sway in Cambodia, informed by personal patronage and the selective application of formal law. In those days, he said, NGOs making legal arguments that ran counter to "invisible" prerogatives were quickly shut out.

He said those charged with enforcing the law would "refuse to listen" and "ignore the law" altogether.

"But the government is more sophisticated [now] - it is using the legal system," he said.

An authoritarian pattern

According to overseas observers, Cambodia's progress - from the outright violence of the inter-factional fighting of 1997 to the judicial intimidation of the present - is following a familiar path.

"This is a common pattern, evident especially throughout Asia, where autocratic leaders first rely on means of physical violence until they manage to consolidate power within state institutions, particularly the judiciary," said Sorpong Peou, a professor of political science at Sophia University in Tokyo.

Now that military threats have subsided, she said, the regime is relying on a quasi-legal framework to stifle dissenting voices - a similar path to that taken by Singapore under Prime Minister Lee Kuan Yew.

But as in Singapore, the government's response to international criticism is that foreign observers somehow do not understand "the realities" of the local culture.

Hun Sen's warning to foreign observers not to "interfere" in the lifting of the parliamentary immunity of Mu Sochua and Ho Vann matched recent government criticism of international watchdog Global Witness and US Ambassador Carol Rodley for airing corruption allegations.

But how much is Cambodian culture to blame for the stalled progress of legal reforms? Lao Mong Hay, a campaigner at the Hong Kong-based Asian Human Rights Commission, said the communist political culture of the 1980s - rather than Cambodia's Buddhist tradition - was to blame for the present state of the rule of law.

The civil law system introduced by the French had planted a seed of judicial independence that was uprooted by the onset of CPP rule in 1979, he said.

"Communism, after the ousting of the Khmer Rouge, suppressed all notion of the rule of law and the independence of the judiciary," he said.

"Its legacy is like a very heavy iron ball tied to Cambodia's foot."

Hollow institutions?

Professor Oliver Richmond, director of the Centre for Peace and Conflict Studies at University of St Andrews in the United Kingdom, said Cambodia's "misuse" of the law was hardly unique, describing it as "a normal part of a local negotiation with liberal international frameworks".

Although that "misuse" could frustrate reformers in the short term, he said, even unimplemented laws and hollow institutions could help pry apart the government's hold on power.

"I do think that even empty institutions are very influential ... and allow questioning to occur," he said by email.

"But this also provokes local cooption, resistance, fragmentation and misuse."

Meanwhile, judicial officials say they are optimistic that the country is moving in the right direction, despite a lack of resources.

Chiv Keng, head of Phnom Penh Municipal Court, said a new Civil Code and the Council of Ministers' approval of the new Penal Code last Friday had put two critical pieces in place.

"When we have adopted the two codes, we can upgrade the courts," he said, though he added that a lack of human resources and funds would continue to hamper the court system.

"Right now, we have enough judges to satisfy about 50 percent of the country's current demand. The salary for clerks is still small, which impacts their attitudes towards work."

Suy Mong Leang, secretary-general of the General Secretariat for Legal and Judicial Reform in the Council of Ministers, said the reform process was necessarily slow but was moving along the right tracks.

"The goal of the program is to establish a legal and judicial framework that is credible, stable and foster[s] the principle of individual rights and freedoms," he told the Post.

To do so, the government has established seven strategic objectives, he said, including efforts to enhance rights awareness; educate judges, notaries and lawyers; and improve access to judicial and legal information and access to legal services.

He said that four model courts - in Phnom Penh, Kandal, Kampong Cham and Banteay Meanchey - would receive extra funding and would serve as centrepieces of the reform program.

The French government, which has provided assistance to bolster the government reform programme, believes that proper training will help close the gap between theory and practice.

"The main challenge for legal and judicial reform in Cambodia is capacity-building (familiarisation with legal texts, professional codes of ethics, etc) and deployment of this training throughout the country," said Fabyene Mansencal, first secretary at the French Embassy.

Opening too quickly

But Suy Mongleang said a major barrier to reform was the pace of the reforms themselves. In the early 1990s, the one-party Cambodian state was thrown into the liberal democratic deep end, he said, adding that many Cambodians were still struggling to find their feet.

"I see that some young people, when they violate the traffic lights, it seems that they're proud of [themselves]," he said.

"Vietnam opened the door to liberal reforms very slowly, but Cambodia [did it all at once]."

He said many reformers' emphasis on "rights" had instilled a sense of entitlement in Cambodia's youth, and that education must also focus on legal and civic duties.

"Usually, NGOs provide lessons and provide training to people about rights. But I tell them, 'Don't talk just about rights; you have to talk to them about obligations too,'" he said.

Some NGOs remain optimistic that rights-based education will push the country in the right direction. Along with the deterioration in freedom of dissent, Yeng Virak said he has also seen an increased awareness of the law - and a willingness to argue in legal terms.

"[Due to] the level of awareness of rights and increasing public participation of the citizens, I hope that people will dare more to demand rulers and lawmakers to be accountable," he said.

Not everyone shared his optimism. With the courts again being used to narrow the democratic space, Sorpong Peou said foreign donors are unlikely to become a powerful agent of democratic change.

"Donors have no choice but to go along, hoping that the hegemonic power will not turn malignant," she said.