

Introduction to Cambodian Legal and Juridical System

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국문초록

본 논문에서는 캄보디아의 법률과 사법 제도, 법률 교육뿐만 아니라 캄보디아 법조계의 조사를 목적으로 하고 있다. 인도 차이나와 동남아시아 2 개국, 즉 라오스, 베트남과 마찬가지로 프랑스의 식민체제는 1863년 8월 11일부터 1953년 11월 9일까지 거의 한 세기동안 캄보디아 법체계에 도입되었다. 또한 식민지화, 정치 이념, 그리고 대외 원조도 직접적으로 캄보디아 법제도에 영향을 주었다. 가장 중요한 것은 1993년 10월 23일에 있었던 캄보디아 파리 평화 협정 후 캄보디아의 법 제도가 민사 및 관습법 제도를 복원하고 혼합했다는 것이다. 본 논문에서는 정부 문서, 학술 논문, 교과서 및 원조국 문서를 포함한 2차 자료(보조자료)를 기반으로 하여 주로 기술적인 접근 방식을 채택하고

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있다. 그러므로 학생, 연구자, 변호사, 학자가 현재 캄보디아의 법률과 사법 제도에 대한 더 나은 이해를 심화하는데 중요한 논문검토가 될 것이다.

주제어 : 법률과 사법 제도, 캄보디아, 법률 교육, 법조계

I . Historical Background of Cambodian Legal and Juridical System

Some legal scholars pointed out that there were two main stages of the development of the Cambodian legal system (Beatrice et al., 2005). First stage, it was the ancient law, which was the unwritten customary law, starting from the Funan Period (Pre-Angkor Era) to Angkor Period (613-1335). Second stage, it was the modern law, which is the codification of Cambodian law, starting from the Post Angkor Period to the present (1336-now). Due to its French protectorate and colonization (1863-1953), Cambodia is generally considered to be part of the civil law family. Remarkably, there are other six stages of legal development in Cambodia from French protectorate and colonization to present due to the various political and ideological regimes. They are included: (1) French Colony period, (2) the Prince Sihanouk period, (3) the Khmer Republic period, (3) the Democratic Kampuchea period, (4) the Vietnamese occupation period, (5) the United Nation Transitional Authority in Cambodia (UNTAC) and Coalition government period, and (6) the Second Kingdom of Cambodia period. For instance, during the period of the UNTAC, there were several compulsory laws- such as Criminal Law, Media Law, and Juridical Law- had been adopted for the social need implementations.

II. Current State of Cambodian Legal System

After the new constitution promulgated in September 24, 1994, Cambodia had received technical and legal assistances from some donor countries for its country's development. For example, Japan had assisted Cambodia to draft the Cambodian Civil Code and Civil Procedural Code, in which some concepts of these codes extracted from Japanese Civil Code. Especially, Cambodia has established its new regulations and legal frameworks because of the adhesion in the Association of South-East Asian Nations (ASEAN) and World Trade Organization (WTO). Therefore, a few influences of common law concepts have been introduced into Cambodian legal and juridical system. Notwithstanding, there are no specialized administrative courts has been interpreted such influences (Roque, 1998). Furthermore, international institutions like Asian Development Bank, World Bank, International Monetary Funds and bilateral cooperation partners like Australia, United States and China have influenced on Cambodia legal system. Currently, the Royal Government of Cambodian strived to reform its legal and juridical system to meet the regional and international standards in order to harmonize them for the purpose of a better investment environment and economic growth.

III. Sources of Cambodian law

Cambodian legal system is categorized in a civil law family, and the concept of the legal hierarchy norm developed by Hans Kelsen (1881-1973) has influenced on Cambodian laws. Therefore, the constitution, international agreement and treaties, laws, royal degrees, sub-degrees, proclamation or

ministerial orders, decision, circular, and bylaws are main sources of Cambodian. This section investigates the sources of law in Cambodia as following:

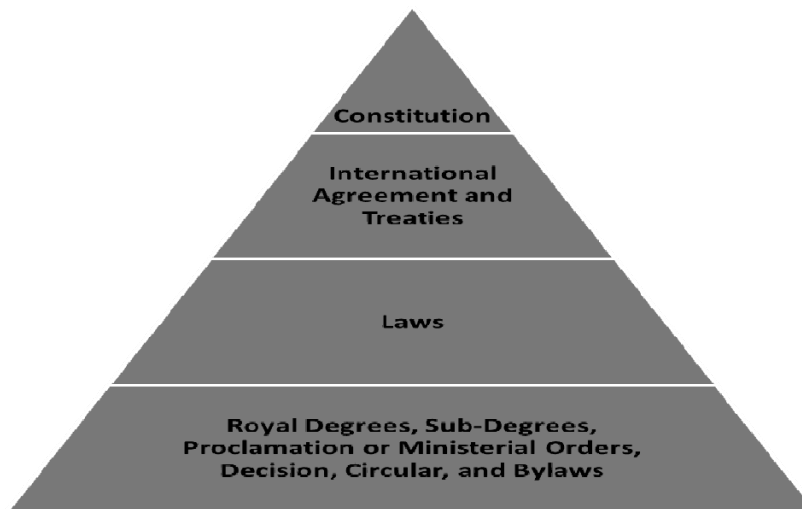


Figure 1. Cambodian legal hierarchy adapted from Hans Kelsen (1881–1973)

1. Constitution

Cambodian constitution was officially promulgated on September 24, 1993; it is a supreme law of the Kingdom of Cambodia. Article 152 of the constitution stipulated that laws and decisions made by state must be in strict conformity with the constitution. Currently, the Constitutional Council of Cambodia (CCC) has important roles to examine and interpret the constitutionality of laws and decision. To date, Cambodian national assembly has amended its constitution for eight times. First amendment is to modify article 28 mentioned the delegation of power from the King's signature to the Acting Head of State in case of the absence of the King at foreign countries on July 14, 1994. Second time is to amend articles 11, 12, 13, 22,

24, 26, 28, 30, 34, 51, 90, 93 and other articles from charter 8 to chapter 14 of the constitution for establishing the Senate on March 4, 1999. Third time is to amend article 19 and 29 of the constitution for creating and conferring of national medals by the King on July 28, 2001. Fourth amendment is to introduce additional provisions to the constitution in order to ensure the regular process of the national institutions on July 8, 2004. Fifth amendment is to modify article 88 and 111 (new) of constitution on May 18, 2005. Sixth time is to amend article 82, 88 (new), 90 (new), 98, 106 (new), 111 (new), 114 (new) and article 6 of the additional provisions to the constitution to ensure the regular process of the national institution on March 2, 2006. Seventh amendment is to modify article 145 (new) and 146 (new) of the constitution on January 15, 2008. The last time is to amend article 76 and other articles from chapter 15 (new) to chapter 16 (new) of the constitution.

2. International Agreement and Treaties

International law is considered a source of Cambodian law (CCC, 2007). According to article 26 (new) of the constitution, Cambodian legislative bodies- the National Assembly and Senate- adopted all international treaties and conventions by the majority of approval votes. Afterwards, the King or Acting Head of State signs and ratifies these international treaties and conventions. In addition, article 31 of the constitution states that “the Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the Covenants and Conventions related to human rights, women’s and children’s rights.” Based on the spirit of this article, Cambodian constitution adapted a monistic concept (Rebeca, 2013) because it recognizes all international instruments.

3. Laws

The National Assembly and Senate adopted the law, the King or the Acting Head of States signed and promulgated this adopted law. There are two kinds of law: Regular law and Organ law (CC, 1993).

4. Royal Degrees

There are two kinds of Royal Degrees: (1) individual and collective acts and (2) commanded acts. The Council of Ministers proposed this executive regulation and the King or Acting Head of States signed it (CC, 1993).

5. Sub-Degrees

Relevant ministries drafted any regulation became a sub-degree: the Council of Ministers adopted this sub-degree and signed by the Prime Minister (Council of Ministers, 1994).

6. Proclamation or Ministerial Orders

A proclamation refers to any regulations that issued by the government ministries. According to article 28 and 29 of the Law on the Organization and Functioning of the Council of Ministers, the relevant ministries have prepared and signed these declarations.

7. Decision

A decision is regulation issued by the Prime Minister and Ministers of the relevant ministries. Article 150 (new, paragraph 2) of Cambodian

constitution stipulated that laws and decisions made by State institutions must be in strict conformity with the constitution. There are unclear terms of decision using in different legal context such as a decision issued by the Constitutional Council, a decision issued by the Prime Minister, and a decision made by relevant ministers. Remarkably, a decision of Constitutional Council is final and binding. It means that all laws and regulations must be in strict conformity with a decision of the Constitutional Council.

8. Circular

A Circular is an administrative directive that is employed to explain and clarify the government affair. Prime Minister and ministers signed on this circular based on article 13 of the Law on the Organization and Functioning of the Council of Ministers.

9. Bylaws

In Cambodia, the Council of Sub-National Level adopted the byelaws. This Council refers to the Capital Council, Provincial Councils, Municipal Councils, District Councils, Khans Councils, and Section (Sangkat) Council, and Commune Councils. These Councils have a privilege to issue the bylaws.

IV. Current State of Cambodian Judicial System

There are three levels of Cambodian court consisting of (1) courts of first instance, (2) the Appeal Court, and (3) the Supreme Court (LOC, 2014, article 3). In addition to this judiciary system, the Extraordinary Chambers

in the Court of Cambodia (ECCC) has been jointly established by the Royal Government of Cambodia and the United Nations (UN) in order to sentence the highest responsible leaders, who committed the crimes during the Democratic Kampuchea regime from April 17, 1975 to January 7, 1979. Furthermore, the Cambodian constitution provided for the independence of the judiciary from the executive and the legislative bodies. Cambodian Constitution enacted that the judiciary is an independent power, and it must be impartial and protect the rights and freedom of citizens. The judiciary considers all legal cases including administrative cases; this jurisdiction must be vested in the supreme court and in all courts of all sectors and levels (CC, 1993, article 128 and 129). On July 16, 2014, there were three main laws, which govern the Cambodian judiciary, have been adopted by the legislative bodies: (1) Law on the Organization of the Courts, (2) Law on the Organization and Functioning of the Supreme Council of Magistracy, and (3) Law on the Status of Judges and Prosecutors. This section examines the Cambodian Judiciary, Supreme Council of Magistracy, and Alternative Dispute Resolution.

1. Courts

1) The Courts of First Instance

The Court of First Instance is the lowest court that located at the provincial and municipal territory of the Kingdom. There were 21 provinces and 4 municipalities. According to article 14 of the Law on the Organization of the Courts, the Courts of First Instance has divided into four specialized courts including (1) Civil Court, (2) Criminal Court, (3) Commercial Court, and (4) Labor Court.

(1) Civil Court

According to Article 21 of the Law on the Organization of the Courts, the Civil Court of the Court of First Instance has competence to hear all civil cases within its jurisdiction in accordance with the provisions stipulate in the Code of Civil Procedure, except as otherwise provided by law. The Civil Court of the Court of First Instance must adjudicate civil cases by one judge or Trial Chamber in accordance with the provisions of the Code of Civil Procedure.

(2) Criminal Court

The Criminal Court of the Court of First Instance has competence to hear all criminal cases which fall within its jurisdictional competence in accordance with the Code of Criminal Procedure, except as otherwise provided by other laws. The Criminal Court of the Court of First Instance must adjudicate criminal cases by one judge or a Trial Chamber in accordance with the provisions of the Code of Criminal Procedure. The Department of Investigation of the Court of First Instance is one part of the Criminal Court and has jurisdiction to investigate criminal cases in accordance with the Code of Criminal Procedure.

The President of the Court of First Instance shall appoint at least two judges pursuant to the order to function as investigating judges at the Department of Investigation of the Criminal Court of the Court of First Instance. This order shall also determine the order of judges to take the duty. In case there is no or a lack of investigating judge, the President of the Court of First Instance may appoint the judges of other specialized court to perform the investigating function. When necessary, investigating judges may act as judges at other specialized court as assigned by the President of the Court of First Instance (Article 20 of the Law on the Organization of the Courts).

(3) Commercial Court

The Commercial Court has not yet been established. It will only handle commercial matters. The court will probably be established in Phnom Penh, the capital. The territorial jurisdiction of this court will cover all of Cambodia. The procedure for selecting and determining the duty of the commercial advisors shall be determined by a Sub-Decree upon the request of the Minister of Justice following the consultation with the Minister of Commerce (Article 24 of the Law on the Organization of the Courts).

The Commercial Court of the Court of First Instance shall have competence to hear all commercial cases including insolvency case, commercial cases and cases related to the requests for enforcement of Commercial Arbitration decisions in the country complying with the provisions regarding the commercial procedures (Article 22 of the Law on the Organization of the Courts).

The Commercial Court of the Court of First Instance, when hearing the cases, must be comprised of one judge accompanied by two advisors, who are businessmen or who have knowledge in commercial laws. In commercial cases where the subject matter is equal to or over One thousand millions Riels (Approximately USD 25, 0000), the Commercial Court, when it render its decision, must consist of three judges accompanied by two advisors, who are businessmen or who have knowledge in commercial law. The judgment of the Commercial Court must be decided by one or three judges as provided by paragraph 1 and 2 above following the consultation with commercial advisors. With regards to the commercial case, where its subject matter is below or equal to One hundred millions Riels (Approximately USD 25, 000), the Commercial Court, when rendering its decision(s), must consist of one judge with no participation from commercial advisors. The commercial advisors shall not carry out their duties permanently in the Commercial Court of the Court of First Instance. The commercial advisors

shall carry out their functions at the invitation extended by the President of the Commercial Court of the Court of First Instance (Article 23 of the Law on the Organization of the Courts).

(4) Labor Court

The Labor Court of the Court of First Instance shall have competence to hear all cases relating to labor in accordance with the provisions on the labor procedures (Article 25 of the Law on the Organization of the Courts). The Labor Court of the Court of First Instance, when hearing the cases, must consist of one judge, accompanied by two labor advisors, among whom one is the worker or employee and another is the employer. Judgment(s) of the Labor Court of the Court of First Instance shall be rendered by a judge after the consultation with labor advisors.

The labor advisors shall not carry out their duties permanently in the Labor Court of the Court of First Instance. Labor advisors shall carry out their functions at the invitation extended by the President of Labor Court of the Court of First Instance (Article 26 of the Law on the Organization of the Courts). The Competent Labor Court is the Labor Court of the Court of First Instance where the labor disputes arise. Even though the competence is determined in this paragraph, the workers/employees may file lawsuits in Court of First Instance as determined below, except as otherwise provided by the provisions of other law:

- At his/her place of residence or
- At the location of head office or a principal place of the Company or legal entity or
- At the place of residence of the representative or a person in charge of the Company or legal entity, if the location of head office or a principal place of the Company is not available (Article 27 of the Law on the Organization of the Courts).

(5) The Prosecution attached to the Court of First Instance

The Prosecution attached to the Court of First Instance shall be comprised of (1) Prosecutor, (2) Deputy Prosecutor, (3) Clerk, and (4) Administrative officers and other legal specialized officers who work at the Prosecution attached to the Court of First Instance (Article 29 of the Law on the Organization of the Courts). The Prosecution is an indivisible body. The Prosecution has the duty to bring criminal actions and request for law enforcement before the investigating and adjudicating jurisdiction as well as other functions as determined by applicable law and provision.

The Prosecutors and Deputy Prosecutors are the representatives of the Prosecution attached to the Court of First Instance for where they work. The Deputy Prosecutor shall carry out the function of the Prosecution under the supervision and joint responsibility of the Prosecutor attached to the Court of First Instance. In the event that the Prosecutor attached to the Court of First Instance is busy or sick or absent, he/she shall appoint the Deputy Prosecutor to replace him/her. In the event that the Prosecutor cannot perform his/her function or the position of Prosecutor is vacant, the Ministry of Justice shall appoint a Deputy Prosecutor to act as an Acting Prosecutor in order to ensure the functioning of the Prosecution attached to the Court of First Instance until the official appointment of Prosecutor takes place (Article 30 of the Law on the Organization of the Courts).

The Prosecutor shall have authority over all Deputy Prosecutors under his/her jurisdictional competence. The prosecutor shall have the right to entrust and assign tasks to Deputy Prosecutors to perform. The Prosecutor has the power to issue a mandatory injunction commanding Deputy Prosecutors over prosecutors who are under his territorial jurisdiction. He can issue an injunction to such prosecutors to initiate proceedings or to make conclusions that he thinks are appropriate. The conclusions of the Deputy Prosecutor shall be submitted to the Prosecutor before the hearings take place.

If the Prosecutor attached to the Court of First Instance disagrees with the conclusions and conclusion-maker refuses to follow, the Prosecutor may designate other Deputy Prosecutors or designate him/herself as a representative of the Prosecution to attend the hearing of the Court of First Instance. However, during the hearing, the Deputy Prosecutor may freely make verbal remarks on his/her personal views according to the law and his/her own conscience. No disciplinary punishment can be made against the representatives of the Prosecution for the reason that the verbal remarks during the hearing differ from the written conclusion (Article 31 of the Law on the Organization of the Courts).

2) The Court of Appeal

The Court of Appeal is the second level tribunal. The Court of Appeal consists of the Phnom Penh Court of Appeal and each regional Court of Appeal whose determination of territorial jurisdiction of the regional Court of Appeal shall be made by a Royal Decree (Article 35 of the Law on the Organization of the Courts). The Court of Appeal reviews both questions of law and fact; therefore if a party is not satisfied with the judgement or a decision issued by the court of first instance, that party may file an appeal to the Court of Appeal through the Clerk's Office of the court rendering such judgement or decision. The Court of Appeal must have Chambers as follows: (1) Criminal Chamber, (2) Civil Chamber, (3) Investigating Chamber, (3) Commercial Chamber, and (4) Labor Chamber. When necessary, other specialized Chambers of the Court of Appeal may be established by a Royal Decree. Each Chamber renders its judgment(s) autonomously within its jurisdictional competence, in the name of the Court of Appeal to which it belongs (Article 37 of the Law on the Organization of the Courts).

Each Chamber shall be comprised of (1) President of the Chamber, (2)

Judges, and (3) Court Clerks. The President of each Chamber shall be appointed by the President of the Court of Appeal. The number of judges, Court Clerks and the functioning of the Chamber thereof shall be determined by the President of the Court of Appeal (Article 38 of the Law on the Organization of the Courts). The Court of Appeal shall have authority to adjudicate all cases within its territorial Jurisdiction, except as otherwise provided by law to fall under the jurisdiction of other court. The territorial jurisdiction of each Court of Appeal shall be determined by law (Article 41 of the Law on the Organization of the Courts). The Court of Appeal shall consider at the same time on both the matter of law as well as of facts of a case under its jurisdictional competence as determined by law (Article 42 of the Law on the Organization of the Courts).

(1) Criminal Chamber

The Criminal Chamber shall have competence to hear appeal complaints against criminal judgments of the Courts of First Instance and Military Court, and other cases within its jurisdictional competence in accordance with the applicable provisions on criminal procedure. The Criminal Chamber when hearing felony, misdemeanor and petty crime cases, shall consist of three judges, including the President (Article 43 of the Law on the Organization of the Courts).

(2) Civil Chamber

The Civil Chamber shall have competence to hear appeal complaints against civil judgment(s) of the Court of First Instance within its jurisdictional competence in accordance with the applicable provisions on civil procedure. The judgments shall be rendered by three judges, including the President (Article 44 of the Law on the Organization of the Courts).

(3) Investigating Chamber

The Investigating Chamber shall have competence to hear appeal complaints against decisions of the investigating judge and other cases as determined by law within its jurisdictional competence in accordance with the applicable provisions on criminal procedure. The judgment shall be rendered by three judges, including the President (Article 45 of the Law on the Organization of the Courts).

(4) Commercial Chamber

The Commercial Chamber shall have competence to hear appeal complaints against decisions of the Court of First Instance in commercial cases within its jurisdictional competence in accordance with the applicable provisions relating to commercial procedures. The judgment shall be rendered by three judges, including the President. The Commercial Chamber of the Court of Appeal, when hearing the cases, shall consist of three judges including one judge and accompanied by two advisors, who are businessmen or who have knowledge in commercial laws and who are not the commercial advisors to the same case previously adjudicated before the Court of First Instance and the Court of Appeal. The Commercial Chamber of Appeal Court's decision shall be made by three judges, among whom one is the President, after consultant with the commercial advisors. The commercial advisors shall not carry out their duties permanently in the Commercial Chamber of the Court of Appeal. The commercial advisors shall carry out their functions at the invitation extended by the President of the Commercial Chamber of the Court of Appeal. The procedure of selecting and terms of reference for the commercial advisors shall be determined by a Sub-Decree upon the request of the Minister of Justice following the consultation with the Minister of Commerce (Article 46 of the Law on the Organization of the Courts).

(5) Labor Chamber

The Labor Chamber shall have competence to hear appeal complaints against decisions of the Court of First Instance in labor cases and other cases within its jurisdictional competence in accordance with the applicable provisions on labor procedures. The Labor Chamber of the Court of Appeal, when hearing the cases, shall consist of three judges including one judge who is the President and accompanied by two labor advisors, among whom one is the worker/employee and another is the employer; both of whom are not the labor advisors to the same case previously adjudicated before the Court of First Instance and the Court of Appeal. The decision of the Labor Chamber shall be made by three judges, among whom one is the President, after consultation with the labor advisors (Article 47 of the Law on the Organization of the Courts).

(6) The Prosecution-General attached to the Court of Appeal

There is a Prosecutor-General's Office attached to Court of Appeal, which shall consist of (1) Prosecutor-General attached to the Court of Appeal, (2) Deputy Prosecutor-General, (3) Prosecutors, (4) Clerks, and (5) Administrative officers and other legal officers who work at the Prosecution attached to the Court of Appeal (Article 49 of the Law on the Organization of the Courts).

The Prosecutor-General shall have authority over all Deputy Prosecutor-Generals and Prosecutors attached to the Court of Appeal. The Prosecutor-General attached to the Court of Appeal shall appoint and designate the works to the Deputy Prosecutor-General and Prosecutors attached to Court of Appeal to work in the working groups of the Prosecution and Chambers. The conclusions of Deputy Prosecutor-General or Prosecutor attached to the Court of Appeal shall be submitted to the Prosecutor-General for examination before the hearings take place. If the Prosecutor-General attached to Court

of Appeal disagrees with the conclusions and the conclusion maker refuses to follow, the Prosecutor-General may designate another Deputy Prosecutor General or another Prosecutor or designate him/herself as a representative of the Prosecution to attend the hearing.

However, during the hearing, the Deputy Prosecutor-General or Prosecutor may freely make verbal remarks on his/her personal views according to his/her own conscience. No disciplinary punishment could be made against the representatives of the Prosecution for the reason that the verbal remarks during the hearing differ from the written conclusion. The Prosecutor-General attached to the Court of Appeal has the right to issue a mandatory injunction commanding the Prosecutor attached to the Court of First Instance in accordance with the applicable provisions on criminal procedures (Article 51 of the Law on the Organization of the Courts).

3) Supreme Court

There is only one Supreme Court, which is located in the Capital of Phnom Penh (Article 55 of the Law on the Organization of the Courts). It is the highest court of appeals in the country and its jurisdiction covers the whole territory of Cambodia. The Supreme Court has only adjudicated questions of law matter for cases appealed from the Appellate Court. The Supreme Court shall be comprised of (1) President, (2) Vice-President, (3) Judges, (4) Court Clerks, and (4) Administrative officers and other legal officers who work at the Supreme Court (Article 56 of the Law on the Organization of the Courts).

The Supreme Court shall have Chambers of Criminal Chamber, Civil Chamber, Commercial Chamber, Labour Chamber (Article 57 of the Law on the Organization of the Courts). And each Chamber shall consist of (1) President of the Chamber, (2) Judges, and (3) Court Clerks. The President

of each Chamber shall be appointed by President of the Supreme Court. The number of judges, Court Clerks and the functioning of the Chambers thereof shall be determined by the President of the Supreme Court. Each Chamber, when hearing the cases, shall consist of five judges, one of whom is the President in accordance with the applicable provisions (Article 59 of the Law on the Organization of the Courts).

(1) Criminal Chamber

The Criminal Chamber shall have competence to hear appeals against criminal judgments of the Court of Appeal according to the provisions laid down in the Code of Criminal Procedure (Article 64 of the Law on the Organization of the Courts).

(2) Civil Chamber

The Civil Chamber shall have competence to hear appeals against judgments and objections filed against the Court of Appeal's decisions in civil cases as well as appeals against civil judgments of the Court of First Instance pursuant to the provisions regarding Civil Procedure (Article 65 of the Law on the Organization of the Courts).

(3) Commercial Chamber

The Commercial Chamber shall have competence to hear appeals against judgments and objections filed against the Court of Appeal's decisions in commercial cases pursuant to the provisions of commercial procedure law (Article 66 of the Law on the Organization of the Courts).

(4) Labor Chamber

The Labor Chamber shall have competence to hear appeals against judgements and objections filed against the Court of Appeal's decisions in

labor and social security according to the provisions of labor law (Article 67 of the Law on the Organization of the Courts).

(5) The Prosecution attached to the Supreme Court

There is a Prosecution attached to the Supreme Court, which shall consist of (1) Prosecutor-General attached to the Supreme Court, (2) Deputy Prosecutor-General, (3) Prosecutors, (4) Clerks, and (5) Administrative officers and other legal officers who work at the Prosecution attached to the Supreme Court (Article 68 of the Law on the Organization of the Courts). The Prosecutor-General shall have authority over all Deputy Prosecutor-Generals and Prosecutors attached to the Supreme Court.

The Prosecutor-Generals attached to the Supreme Court shall appoint and designate works to the Deputy Prosecutor-Generals and Prosecutors attached to the Supreme Court to attend the hearing. The conclusions of a Deputy Prosecutor-General or Prosecutor attached to the Supreme Court shall be submitted to the Prosecutor-General for examination before the hearings take place. If the Prosecutor-General attached to the Supreme Court disagrees with the conclusions and the conclusion-maker refuses to follow, the Prosecutor General may designate another Deputy Prosecutor General or Prosecutor or designate him/herself as a representative of the Prosecution to participate as prosecutor at the hearing. However, during the hearing, the Deputy Prosecutor-General or Prosecutor of the Supreme Court may freely make verbal remarks on his/her personal views according his/her own conscience. No disciplinary punishment could be made against the representatives of the Prosecution for the reason that the verbal remarks during the hearing differ from the written Conclusion (Article 69 of the Law on the Organization of the Courts).

2. Supreme Council of Magistracy

A Supreme Council of Magistracy has been established in accordance with the Cambodian constitution in 1993. The Supreme Council of the Magistracy is under the royal presidency of His Majesty the King and has the following composition in table 1.

Table 1: the Composition of the Council of the Magistracy

N°	Composition	Status
1	Minister of Justice	Member
2	President of the Supreme Court	Member
3	General Prosecutor Attached to the Supreme Court	Member
4	One Member, among dignitaries of former judges or prosecutors or dignitaries who have at least 15 years of experience in legal or judicial sector, elected by the Senate in an absolute majority of all Senators.	Member
5	One Member, among dignitaries of former judges or prosecutors or dignitaries who have at least 15 years of experience in legal or judicial sector, elected by the National Assembly in an absolute majority of all members of parliamentary.	Member
6	One Member, who is a judge of higher courts, elected by judges of higher courts	Member
7	One Member, who is a prosecutor of General Prosecution attached to higher courts or a prosecutor serving in the Ministry of Justice, elected by prosecutors serving in General Prosecution attached to higher courts or in the Ministry of Justice.	Member
8	One Member, who is an eligible judge in a court of first instance, elected by eligible judges in courts of first instance throughout the country.	Member
9	One Member, who is an eligible prosecutor attached to the prosecution of a court of the first instance, elected by eligible prosecutors in prosecutions attached to courts of first instance throughout the country.	Member

All members of the Supreme Council of the Magistracy must be appointed by His Majesty the King. The Minister of Justice puts forward the draft royal decree to His Majesty the King with regard to this matter. The formalities and procedures for the elections to select the members of the Supreme Council of Magistracy must be stipulated by a proclamation by the Minister of Justice after obtaining consent from a majority of members of the Supreme Council of Magistracy (Article 4 of Law on the Organization and Functioning of the Supreme Council of Magistracy).

The Supreme Council of Magistracy decides and submits requests to His Majesty the King regarding the appointment, transfer, discharge from post, suspension from job, and the removal of all judges. The Supreme Council of Magistracy shall submit requests to His Majesty the King regarding the appointment, transfer, discharge from post, suspension from job, and the removal of all prosecutors at the request of the Minister of Justice. It is mandatory that the Supreme Council of Magistracy shall be consulted regarding the request stated here-above. The Supreme Council of Magistracy shall advise on the advancement and promotion of all judges and prosecutors in line with the procedures and requirements set forth in the Law on the Statutes of Judges and Prosecutors (Article 18 of Law on the Organization and Functioning of the Supreme Council of Magistracy).

3. Alternative Dispute Resolution

It is undeniable that the Alternative Dispute Resolution (ADR) plays very significant role to solve their conflicts beside the juridical system. Cambodian people had a tendency to use this mechanism for many centuries in its history (Koy, 1998). Moreover, reconciliation mechanism existed in Cambodian juridical system before French colony, and it continued until now. According

to the principle and practice of ADR, Cambodia experienced three kinds of dispute resolution outside the court litigation as following:

1) Negotiation

Negotiation is the part of ADR that is most popular method in Cambodia. The conflicted parties resolve their disputes through the compromise without the assistance from a third party. According to article 20 of the Cambodian Investment Law, conflicted parties should resolve their conflicts through the negotiation prior to bring their lawsuit to the council, court, and international rules settle the conflicts.

2) Conciliation

Conciliation or mediation is also the part of the Cambodia traditional legal system. This traditional mechanism is required a third party, including a monk, honest person, or the King, to settle the conflicts. In the real practice, this concept might be confused by some Cambodian people in cases of criminal and civil actions. They bring their lawsuits to the authorities rather than court in case of rapes or domestic violence. This mechanism can find in some laws and regulation included: Law on Family and Marriage (LFM, 1989), Labor Law (LL, 1997), and Regulations related to Land Deputes (Royal Degree, 2006).

3) Arbitration

Practically, contracted parties agree to introduce specific clauses to settle the disputes through employing a neutral, impartial arbitrator, based on the evidence and arguments provided by relevant parties. The conflicted parties selected the arbitrator; the arbitrator's decision or award has the same legal

effect as a court judgement. In Cambodia, labor arbitration is common used by employees and employers in the garment factories and other sectors. In addition, Law on the Commercial Arbitration, which was promulgated in 2006, also stipulated the role of arbitration in the settlement of commercial disputes.

4) Royal Hearing

The Royal hearing is part of an extra-judicial forum where citizens have rights to submit their civil disputes to the King for the settlement purposes. This mechanism was initiated by King Norodom Sihanouk after the national election organized by the United Nations for Transitional Authority in Cambodia in 1993.

V. Legal Education in Cambodia higher education

1. Universities

Legal education in Cambodian universities is dramatically increased in the last 23 years stated from 1993 to 2015. Due to the development of the free-market economy, the majority of Cambodian students prefer to select legal studies in private and public universities. The main specialized courses offer for legal students such as Constitutional Law, Criminal Law, Civil Law, Contract Law, Public International Law, Private International Law, Administrative Law, Civil Procedural Law, Criminal Procedural Law, Taxation Law, Humanitarian Law, Legal Research Methodology, Political Science, International Relationship, and Legal English Terminology. There are top ten universities, which offer legal education as in table 2:

Table 2: Top ten universities offer legal education in Cambodia

N ^o	Name of University	Year of Foundation
1	Royal University of Law and Economics (RULE)	1948
2	Paññasastra University of Cambodia (PUC)	1997
3	National University of Management (NUM)	1983
4	Build Bright University (BBU)	2000
5	Norton University (NU)	1996
6	Cambodian Mekong University (CMU)	2003
7	University of Cambodia (UC)	2003
8	University of Battambang (UBB)	2007
9	International University (IU)	2002
10	Cambodian University for Specialties (CUS)	2002

These universities offer legal education from undergraduate to postgraduate program. For bachelor's degree program is required to provide at least 120 credits, master's degree is at least 56 credits, and doctorate's degree is at least 15 credits (MoEYS, 2002). Students, who graduated from law programs, can find a job in juridical sectors, legal consultant, public and private institutions.

2. Royal Academy for Juridical Profession

Royal Academy for Juridical Profession is a public administrative establishment which is a characteristic of administrative and financial autonomy. It was established by the Royal Degree Number 0105/019 dated January 15, 2015. There were four schools and a center under the supervision of the Royal Academy for Juridical Profession. The Royal School for Judges was created by the Sub-Degree Number 9, dated on February 5, 2002. Second, the Royal School for Clerk and The Royal School for Bailiff were set up by the Sub-Degree Number 116, dated on August 18, 2008. The Royal School for

Notary was established by Sub-Degree Number 117, dated on August 18, 2008. Finally, the Professional Training Center for Lawyers was founded by Sub-Degree Number 130, dated on September 11, 2008. A Qualified candidate, who hold bachelor of law or relevant degrees, can take a very competitive examination to study in these schools and center for two year programs.

VI. Cambodian Legal Profession

1. Bar Association

The Bar Association of Cambodia cam was established in October 1995; the Bar Council is the governing body of the Bar Association. It is composed of a president and members, and the President is elected for a term of two years. The members of the Bar Council are elected by registered lawyers for a term of three years. The number of members of the Bar Council was elected from the members of the Bar Association (as of April 2015, there are 986 registered lawyers). The Bar Council has main duties to ensure that all members shall implement the internal rules and Code of Conduct of legal profession; it shall organize the training and the registration of lawyers on the Bar List. The Bar Council shall assure compliance with disciplinary rules, and shall impose disciplinary sanctions in cases of malpractice.

Additionally, the Law on Bar Statutes, which was enacted on June 15, 1995, defines the role of the legal profession. It stipulated that the “legal profession is an independent and autonomous profession involved in serving justice and may be only pursued within the framework of the Bar Association”, which is an “organization bringing together all lawyers who

establish offices in the Kingdom of Cambodia”.All practicing lawyers have to register to be full members of the Bar Association.

Beside these duties, the Bar Council together with the Royal Academy for Juridical Profession- Professional Training Center for Lawyers- has been providing a series of training courses for lawyer students. They must take a final exam after the completion of the training courses. The successful lawyer students must take internship in law firms or offices for a period of one year. Lawyer students can register with the Bar Association after they finished their internship programs. After that, they will award a “Certificate of Membership of the Bar Association”, and they can practice law.

2. Ministry of Justice

Based on Royal Code, Number 0196/04, dated on January 24, 1996 on the Organization and the Functioning of the Ministry of Justice, the Ministry of Justice has the following duties:

- assure the smooth operation of the courts in civil, criminal, administrative and commercial matters
- monitor the execution of judgements through inspection of penitentiaries
- provide guidelines to judges on the application of laws or regulations in cases where they are unclear or have been misconstrued
- assure uniformity and consistency in the drafting of civil, criminal, administrative, labor and commercial laws and the implementation thereof
- maintain criminal records and issue the official criminal records

Furthermore, the Ministry of Justice has privilege rights to govern some juridical profession such Judges, Prosecutors, Clerks, Notary, and Bailiff. For instance, according to article 7 of the Status of Judges and Prosecutors of the Kingdom of Cambodia states that “All judges and prosecutors shall be

in the central administrative framework of the Ministry of Justice and can be appointed to function at the Ministry of Justice. When performing their duties at the Ministry of Justice, judges shall request authorization from the Supreme Council of Magistracy.”

VII. Conclusion

In conclusion, Cambodian legal and judicial system is on the ways of right tracked development and transformation due to the influences of foreign countries’ various legal system and political regimes in its longstanding history. Consequently, Current Cambodian legal system can be considered as a hybrid legal system, which is the mixtures of civil and common law systems. The most importantly, there were many national and international legal instruments have been adopted and promulgated for the current social needs of the country. Cambodia has strived to transform its system to be a nation with a sense of rule of law and real democracy. Therefore, further research should be conducted to analyze research gap, the strength, and weaknesses of the influence of the foreign legal system on the current legal and judicial system in Cambodia.

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[Abstract]

Introduction to Cambodian Legal and Juridical System

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This paper aims at investigating Cambodian legal and juridical system, legal education as well as the legal profession in Cambodia. Similar to two countries in the Indochina and South-East Asia, namely Laos and Vietnam, the French colonized system had introduced into the Cambodian legal system for almost a century started from August 11, 1863 to November 9, 1953. Moreover, the colonization, political ideologies, and foreign assistances also directly influenced Cambodian legal system. The most importantly, after the Paris Peace Agreement of Cambodia on October 23, 1993, the legal system of Cambodia has restored and mixed with civil and common law systems. This paper employs a predominantly descriptive approach based on secondary sources including government documents, academic papers, textbooks, and donor country documents. Therefore, this review paper would be significant for students, researchers, lawyers, and academicians to deepen their better understanding of current Cambodian legal and juridical system.

Key words : Legal and Juridical System, Cambodia, Legal Education, Legal Profession