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Decentralization in Cambodia

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1 CAMBODIA CASE STUDY

In Asia, as in many other regions of the world, decentralization occurs in countries of all sizes and in highly diverse contexts. A few countries are large and have substantial and heterogeneous populations, while others are much smaller in area and have populations lower in number and less varied in composition. Some countries have attained middle income status, while others remain poor. A number of countries have some history of decentralization and democratization, while others have had little previous experience.

Despite the great variety, many Asian countries have chosen to pursue some form of decentralization. The way decentralization is structured and functions, however, is as diverse as the countries themselves, and not always in systematic ways. This variety results from considerable differences in country characteristics, histories and various political economy drivers that shape the dynamics underlying how public governance is managed.

In order to better understand decentralization in Asia, EC DEVCO B2 prepared a set of short case studies--on Bangladesh, Bhutan, Cambodia, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka, Vietnam and Yemen. This note presents the case of Cambodia.

For the past decade and a half, Cambodia has been pursuing an unusual decentralization in an unlikely environment for such reform. The country is characterized by socioeconomic and fiscal conditions not normally associated in conventional thinking with an ideal environment for decentralization. It is small in size and population, and the economy is not very well diversified. Human resource development is relatively limited and poverty remains widespread. The population is relatively homogeneous in ethnic and religious terms. The government has long been highly centralized and non-democratic (as well as having been enmeshed in long periods of conflict), is quite small by international standards and has limited capacity (Turner 2002, Hughes 2003, Blunt and Turner 2005, Smoke 2007, Niazi 2011, Smoke and Morrison 2011).

1.1 Underlying political economy context/drivers of decentralization

Cambodia has suffered from an unstable modern political history. After an infamous period of conflict during which the Pol Pot/Khmer Rouge regime ruled and was toppled by Vietnam, internal conflict persisted. The UN helped to broker the Paris Peace Accord in 1991, establishing a constitutional monarchy. The negotiations led to elections in 1993 in which the main contestants were the Cambodian People's Party (CPP) under Hun Sen, who had served as Prime Minister under the Vietnamese regime, and FUNCINPEC (the royalist party) under Norodom Ranariddh, son of King Sihanouk.

FUNCINPEC won the election, but Hun Sen retained a powerful influence over the military and refused to yield power. Rather than risk new hostilities, a coalition was created in which the leaders of the two parties became First and Second Prime Ministers. This pattern of power sharing was replicated through the government system and subnational administration, resulting in considerable bureaucratic conflict and paralysis. The sharing arrangements collapsed in a 1997 power grab by the CPP, which then narrowly won the next election.

Although this context and political scenario may seem far from amenable to genuine democratic governance, the dominance of the CPP helped to open a window for decentralization. During the immediate post-peace accord period, a series of international donor (largely UN managed) programs had evolved from supporting local emergency relief and resettlement activities to a focus on the development of subnational institutional and capacity development initiatives. Local level planning and service delivery was eventually embraced by the government and turned into a formal local government system. Initially (beginning in 2001) this occurred at a low level of government (the commune).

Focusing on the communes for the early stages of decentralization served at least four purposes. First, it helped the CPP to get access to external funding and use it to consolidate support at the grassroots level (building in its traditional strong base of rural support). Second, the policy assisted the government under more stable conditions to shift its public expenditure priorities from internal security to development. Third and related to the first two, the new policy allowed the central government to deliver many local development projects that its own agencies did not have the capacity or resources to deliver. Finally, since the initial decentralization to the communes was so modest in terms of share of public resources, it did not threaten the power of central government ministries and provincial governors.

Over time the dominance of the CPP was again challenged, and as another round of elections approached there pressure emerged to put additional effort into enhancing service delivery and governance. Accordingly, the government began a process of expanding the commune decentralization upward to the district, provincial and municipal levels in 2008. Political realities, however, led to the development of a system that kept a heavy measure of central oversight and control in the evolving intergovernmental system (more below). When the decentralization was expanded, the government maintained institutional structures and procedural controls that constrained powerful expressions of local autonomy. The higher level entities included in the expanded reforms had long been part of a deconcentrated administration and were used to looking to the center for guidance. In addition, the small size of the elected communes--the original object of decentralization--ensured that most of them would never become independently viable local governments.

1.2 Decentralization policy

Although Cambodia has been historically centralized, there have been some efforts over the years to improve subnational administration. The Law on Provincial and Municipal Budgets and Asset Management (1998) was a particularly important step, defining the basis for a deconcentrated system of nonelected provinces and municipalities to help manage subnational budgets and assets. The law lays out their basic functional responsibilities and assigns considerable tax and nontax revenues to them. This is done, however, in the clear context of a unified administration and budgeting process with strong upward accountability. Budget and financial management authority is given to the (centrally appointed) governors, and their fiscal role is subject to supervision by the Ministry of Economy and Finance. In addition, budget approval is required by the National Assembly in line with the public finance laws and regulations.

The first step towards present decentralization policy--with elements of limited devolution to elected councils--began with the passage of the Commune *Sangkat* Administrative Management and Commune *Sangkat* Election Laws in 2001 and follow-up decrees (Royal Government of Cambodia

2002). These laws and regulations laid the groundwork for decentralization by providing for local (commune and *sangkat*--hereafter referred to as commune) elections, allowing the communes to take responsibilities for certain matter and to raise certain revenues, as well as setting up operating mechanisms and procedures. The first local elections were held in February 2002.

In June 2005, the government adopted the Strategic Framework for Decentralization and Deconcentration Reforms (hereafter referred to as the strategic framework) to expand the initial decentralization (Royal Government of Cambodia 2005). This document outlines official policy for subnational democratic development through the restructuring of all levels of subnational administration. The strategic framework outlined two major changes. First, the government declared its intention to maintain direct elections at the commune level but to establish indirectly elected (by commune councilors) government councils at the province/municipality and district/*khan* levels. The framework also declared that it would empower these councils with functions, resources and capacity to deliver services. Second, these new levels were mandated to adopt unified administrations within their territories aimed at promoting the coordinated development and delivery of public services. This provision in part recognized how difficult it would be to empower the existing small-scale commune councils, but it does state that the higher levels are expected to work closely with communes and help them to assume a greater role in planning, budgeting, service provision and development.

With the passage of Law on Administrative Management of Capital, Provinces, Municipalities, Districts and *Khans* in 2008 (hereafter referred to as the organic decentralization law), Cambodia took the next step in decentralization reform. Broadly following the strategic framework, the law empowers new levels of subnational government and reaffirms the importance of the existing commune/*sangkat* councils. The law also formally establishes unified administrations for each level as per the strategic framework, mandates mechanisms for public consultation, participation, equity, transparency and accountability, and creates a strong implementing authority to oversee implementation.

Since many details were undefined by the 2008 legislation, it was left to the National Program for Subnational Democratic Development (NP-SNDD) to create a framework, process and policies for reform at all levels of government and to guide development partners – international and national agencies and NGOs—to adopt common strategies and more harmonized approaches to support decentralization (NCDD 2010). This is all being done under the authority of the National Committee for Democratic Development of Subnational Administrations (NCDD), which was established in 2008 to manage the overall reforms. NCDD is the successor of several previous national bodies charged with managing various stages of decentralization reforms.

1.3 Basic structures, actors and mechanisms

The institutional architecture of the Cambodian government is based on structures and systems used during the French colonial and Vietnamese occupation periods as well as a number of recent innovations (Niazi 2011, Smoke and Morrison 2011). The 1993 Constitution (last revised in 1999) provides (in Article 145) for the national territory to be administratively divided into provinces and municipalities. Provinces are divided into districts, which are further divided into communes. Municipalities are divided into *khans* (urban districts), which are partitioned into *sangkats* (urban communes). Article 146 provides that all of these entities shall be governed in accordance with organic

law, but it says nothing specific on the principles and policies for decentralization and the roles and responsibilities of different tiers of government. Villages are the lowest level of state presence and exist throughout the country.

As noted above, the initial decentralization was to the commune and sangkat councils. These bodies are elected with a five-year mandate on a proportional basis, such that more than one party can be represented. The council president (chief) is the individual receiving the most votes on the majority party candidate list. The elected councilors have formal authority for commune administration under the leadership of the chief. The councils are required to prepare a five-year development plan, three year rolling investment plan and an annual budget. Direct commune staffing is modest. There is a single clerk assigned by the Ministry of Interior (MOI) and funded through the MOI budget. The role of the clerk is to assist and advise the commune councils in meeting their duties. In addition, the provincial treasury appoints a staff member to serve as commune accountant. The councils may directly employ other staff, but only subject to MOI approval.

The decentralization law does not assign mandatory sectoral functions to the communes. It simply provides a framework in which commune councils are empowered to maintain public order and security; manage public services; enhance public welfare; promote socioeconomic development; preserve the environment, natural resources, and culture; promote tolerance and mutual understanding; and respond to citizen needs. Commune councils may jointly deliver services. The legislation also allows for agency functions that communes must perform on behalf of ministries or provincial departments, and it prohibits communes from making decisions in certain sectors reserved for the center.

The main source of commune resources is the Commune *Sangkat* Fund (CSF), an intergovernmental transfer program capitalized from both domestic and external contributions. It is very modest, starting at 1.2 percent of national domestic revenue and rising to around 3 percent over time. The 2001 legislation technically gave communes the right to raise tax and non-tax revenues and to charge for services. It specifically assigns land tax, real estate tax, and rental tax to the communes, but provides no details, requiring further legal action to elaborate revenue sources, including types, rates, and collection processes. Further revenue empowerment has never been formalized, with the exception of minor fees. The law also allows income transfers from national tax or nontax sources, and it requires compensation from the central government for any agency functions that communes performed on behalf of a state ministry or agency.

Participation is facilitated through a broad-based planning forum involved in all stages of the planning process. It includes all commune councilors, two representatives (one male and one female) from each village, and one representative from each NGO registered with the council. The annual budget is also supposed to be formulated through a broadly participatory process. More generally, communes are expected to actively promote and coordinate the process of democracy by setting up mechanisms for consultation with residents, civil society organizations, and community groups. Residents are permitted to attend council meetings, and they can ask questions and make suggestions in writing that the council is obligated to respond to. Commune councils are mandated to set up information boards at their headquarters and at every village under their jurisdiction in order to display official notices and information.

All of this occurs in a centrally defined managerial framework. The governor is responsible for ensuring compliance with official rules, but has no formal authority to demand alteration of commune plans and budget if legality requirements are met. A commune accounting and financial management system was established to record transactions, produce reports, and provide a basis for monitoring budget implementation. Most commune financial activities are handled by the commune accountant in the provincial treasury.

Key national government actors play important roles in the commune decentralization. The Ministry of Interior (MOI) is the leading central agency in this area. Provincial governors and the provincial/district administrative system fall under MOI jurisdiction. The Ministry of Economy and Finance (MEF) and the Treasury have also been important players in decentralization, and the National Audit Authority is also critical. The Ministry of Planning (MOP) took the lead in initial planning reforms and is continuing to play a role in redefining the planning system as decentralization evolves. Finally, key sectoral ministries, including Agriculture, Forestry and Fisheries, Education, Health, Public Works, Water Resources, Land Management and Women's Affairs, play a substantial role in subnational activities. Coordination has been very limited.

Many of the same types of provisions developed for the commune councils—including planning, budgeting, financial management, participation, etc. have been extended to the provincial and municipal system under the 2008 organic law. These higher levels will also maintain their oversight and support relationships with communes, but in changing ways as the system evolves. Of course, there have already been deconcentrated systems in place at these levels (unlike for the communes when the 2001 legislation was passed), and the 1998 law noted above also outlined certain aspects of the intergovernmental framework that may have to be modified under the new reform scenario.

1.4 Decentralization outcomes

Although decentralization has been in process in Cambodia for some time, there is not a great deal of robust empirical evidence about its outcomes (Spyckerelle and Morrison 2007, Niazi 2011, Ojendal and Kim 2011, Smoke and Morrison 2011). The development of new and credible systems and procedures has been extensive and generally productive at the commune level—there are planning, budgeting, financial management, procurement and participation mechanisms operating in an environment where this would have seemed incredible not so long ago. In addition, there is no question that the delivery of certain basic services—rural roads and irrigation, and to a lesser extent, domestic water supply, education facilities and urban transport—has expanded, with levels of subnational spending on public services and the extent/coverage of those services growing substantially. There are also some reported enhancements in cost effectiveness and service quality, but most of the evidence is limited and anecdotal.

In any case, subnational governments continue to account for relatively small percentages of public sector spending, and the long expected formal development of functional assignments to local governments has thus far failed to materialize. At the commune level, most available funds are expended on small capital projects and salaries/councilor allowances. Another potential concern is that unspent resources being carried-over to the following fiscal year (reserve fund) have generally been increasing relative to total revenues, likely due to limitations in absorptive capacity of some of the weaker communes and bottlenecks in disbursements through the provincial treasury system.

At the higher subnational levels (provinces and municipalities), almost all of their expenditure is on recurrent operating expenses, with the vast majority of development expenditure handled by the central government, and there is still nontrivial use of off-budget mechanisms (often in conjunction with international donor-financed projects). The expenditure numbers at the provincial and municipal level are challenging to analyze fully because during the relatively early stages of the decentralization transition, the distinction between what the center manages and what the provinces and municipalities manage as the system rolls out is not entirely clear cut.

Revenue generation performance has been particularly limited. As already noted above, the mandated (by the 2001 decentralization legislation) elaboration of the details regarding commune revenue sources, including types, rates, and collection processes, has never materialized beyond the devolution of a few minor administrative fees (such as birth, death and marriage registrations). Provincial and municipal revenues (assigned under the 1998 law discussed above) are more significant, but still represent a modest share of total public revenue. They have in recent years been increasing largely because of initiatives related to a couple of revenue sources (increases in the stamp duty on property transfers and the introduction of a hotel beds tax).

The picture on governance and accountability is mixed (Kim and Ojendal 2007, Smoke and Taliercio 2007, Ojendal and Lilja 2009, Ojendal and Kim 2011). On the one hand, some analysts believe that decentralization has played a role in keeping the peace in Cambodia, and there has been a degree of genuine local discretion and accountability fostered at the commune level. There has also been evidence in some areas of growing and broadening citizen participation in the activities of the commune councils and positive perceptions of the role of the communes in the public landscape, at least in some parts of the country. In fact, although there have been variations over time and there are considerable differences across jurisdictions, the evidence that commune councils have been noticed and are valued is clear.

There is general agreement from many observers that a number of factors have created obstacles to more effective decentralization reform, most of which can be traced back to political dynamics and capacity (both technical and governance) weaknesses. First, there are nontrivial inconsistencies in the overall public sector policy framework. These are embodied in inconsistencies in national legislation (e.g. conflicting provisions of the 2008 organic decentralization law and the more centralizing tendencies of the 2008 Law on Public Finance Systems) and in public sector reform programs (e.g. the differences between the provisions of the strategic decentralization framework and the more centralizing public financial management program). These are largely related to varying perceptions of different ministries, the divergent priorities of the international development agencies that support them, and the inability or unwillingness of the central government to better coordinate the various actors involved.

Second, there are potential issues with certain provisions of the 2008 organic law that extends decentralization reform to the district, provincial and municipal level. This move was widely hailed by the international development community, but the system that emerged in the organic law and subsequent regulations raises some nontrivial concerns about the motives behind and the likely consequences of the additional reforms. The councils formed at higher subnational levels in 2009 were indirectly elected by commune councilors rather than directly elected by citizens. This was justified as keeping the locus of accountability at the grassroots level. But candidates for district, provincial and municipal elections ended up being largely nominated by the national government. The

fact that these positions were effectively not open to any interested citizen and that many candidates for the first round of elections were former government employees and ruling party members potentially inhibits reform. In addition, the underlying problems with the composition of district, provincial and municipal councils were compounded by the appointment of a Board of Governors in each of these jurisdictions by the MOI. The role of this executive committee is supposed to be advisory to the elected councils, but it could end up primarily serving as an instrument of upward accountability.

Third, although there is some evidence noted above of the development of some accountability channels at the commune level, there is no guarantee given the shape that new reforms have taken that these governance connections will take root at the higher levels. In fact with the potentially declining importance of the communes and in the absence of the commune councils' ability to influence decisions at higher subnational levels, there is a potential risk that citizens could become frustrated and disengage.

1.5 Evolution of decentralization and local government performance

Cambodian decentralization has uncommon origins and is unusually constructed due to a particular set of contextual conditions and the powerful political incentives they created. Some genuine institutional and governance innovations and positive results have been realized in the commune system, but they are very modest in the larger picture, and they somewhat stalled at the initial level as the incentives for pushing further commune empowerment waned. Evolving political dynamics created new incentives to extend the system to higher subnational levels, but in ways that could reinforce central control and limit democratic decentralization despite their portrayal as a means to expand it.

Given the considerations outlined above, there is significant reason to be concerned about how decentralized and locally accountable the evolving system will really be. With indirectly elected district and provincial councils (based on lists established by the national government), a board of governors at both of these levels appointed by MOI, and a lack of clarity in what the various levels are expected to do and how they will pay for meeting their functions, the role of the communes could be at risk. More important, the genuine managerial and governance gains that the commune system has attained may be overwhelmed by a higher-level “decentralized” system that seems designed to respond to the national government (and in the current environment the dominant political party).

The Cambodian government has developed a national program for decentralization and a fairly detailed implementation plan. On paper, many of the provisions of these policy documents look reasonably well conceived. As they are implemented, however, various central agencies (with ties to specific ruling party factions and international development agencies) are almost surely going to be jockeying to position themselves to shape the details of the expanded system with respect to powers and functions of various levels and sectors and their interrelationships.

It seems clear that some of these agencies will try to protect and expand downward non-transparent national financial and civil service processes that have long existed in the deconcentrated system, as well as to promote potentially centralizing service delivery reforms in particular sectors. even as these systems are supposed to be subject to formal reforms at the national level. Other actors may try to

varying degrees to push to expand to the higher levels the “better practice” administrative, financial and planning systems of the communes and try to protect the modest governance gains that have been realized at the local level, as well as to engage the communes appropriately as service delivery systems are reformed and decentralized. The multiple international donors with different interests are likely to be supporting both ends of the spectrum.

It remains to be seen where along the spectrum these forces will meet and whether those who seek a more centralized system will prevail over those who wish to preserve and build on the genuine local governance accomplishments—with their recognized limitations—of the commune decentralization. On the one hand, there are some threatening signs for democratic governance. On the other hand, the citizens of Cambodia have experienced some degree of autonomous local governance and may resist losing it. As a new generation of leaders emerges on the political and bureaucratic scene, there may be greater opportunities for advancing democratic decentralization reforms. Moreover, the stakes for Cambodia in terms of economic development and poverty reduction are considerable--the country cannot afford to accept an intergovernmental system that does not deliver improved development to its citizens.

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