ROLE OF LAW AND LEGAL INSTITUTIONS IN CAMBODIA ECONOMIC DEVELOPMENT:

"Opportunities to Skip the Learning Curve"

Thesis Paper

Candidate: Mr. Siphana SOK

SID: 777058543

Degree: Doctor of Philosophy

School: School of Law, Bond University

Supervisor: Professor Mary Hiscock

Date: 15 August 2008

Certification

I, the undersigned, Sok Siphana, declares that the work presented in the thesis is to the best of my knowledge and belief, original (except as acknowledged in the text) and that the work has not been previously submitted for a degree or diploma at Bond University or any other institution.

_____

Sok Siphana
SID: 777058543
Degree: Doctor of Philosophy
School: School of Law, Bond University
Supervisor: Professor Mary Hiscock
Date: 15 August 2008

I. SUMMARY OF THE THESIS

This thesis advances the view that, in an era of regionalization and globalization, Cambodia, as a least developed country, can deliver sustained economic growth, social stability and development if it can develop a coherent set of economic policies linked to the development of a functional and credible legal system. The scope for 'catch up' or 'skip the learning curve' is possible provided Cambodia can draw from the experiences - policies, legal system and institutions that have been discovered, tried, tested and refined - of other countries with similar background and with proven track records of rapid economic growth. In the context of Asian economic growth and development over the past 30 years, policy choices have been shown to be crucial for achieving high growth rates. Experience of the high performing economies in Asia over the past decades is the best evidence that those with relatively low income levels are, with the right policy and institutional choices, able to catch up with the richer ones.

The Cambodian experience, tested against four hypotheses (convergence, divergence, differentiation and irrelevance hypotheses), demonstrates a series of complex causal links and effects intertwined between law, economics, politics, history and culture. Arguably, the thesis seeks first to understand, through a multi-dimentional lens, *la problématique* of Cambodia's long term economic development, and second to provide a long term coherent systemic solutions to the wider issues of nation building.

Certain Cambodia experiences have shown substantive convergence with those of the West or other advanced Asian countries as reflected by the steady economic growth over the past decade. Along that line the degree of catch-up is not only feasible but far exceeds those of other similar countries. Other positive signs of development are prevalent throughout the country. Other Cambodian experiences confirm the economic divergence hypothesis which suggests that Cambodia's catch-up efforts may be possible, though not necessarily along international best practices, but under the influence of other major different factors typically identified as culture, tradition, history and geo-politics. The overall economic expansion in the last decade has not brought the so-called "quality of growth" where development has had a positive impact on factors such as poverty and inequality, the role of the state, democracy and freedom. The argument in favor of the economic differentiation hypothesis suggests that while there are strong signs of policy catch-up in the area of economic

integration and trade related areas, Cambodia's institutional structures have not fully converged. Culture is another facet confirming this hypothesis.

On the legal side, the Cambodian experience has shown that some legal convergence did occur with the process extensively influenced by Western and successful Asian experiences. The policy shift in the mid 1990s has promoted the process of legal convergence and the legal system had evolved slowly towards being much more rule-based. Other Cambodian legal experiences support the legal differentiation hypothesis which suggests that different parts of the legal system behave differently, with some parts showing signs of convergence and others developing along a more idiosyncratic path. While there are strong signs of catch-up in the area of legislative development, Cambodia's institutional structures and their enforcement mechanisms either have not converged, or worse have persistently resisted change. The trend towards a more market-allocative legal system has not resulted generally in a strengthening of the rule of law.

In sum, the Cambodian experience, while balancing to some extent the convergence and divergence hypotheses, validates the strength and dominance of the *differentiation hypothesis*. The dominance of the differentiation factors explains why Cambodia, while having the necessary ingredients and possibilities to skip the learning curve or leap frog, did experience only a minimum and uneven quantum of the leap frogging process. Nonetheless, taking into account the 'Ground Zero' starting point, the fragile peace and the multiple-fold transition that Cambodia went through since the late 1980s, there is a merit in supporting the argument that Cambodia, as still a post-conflict society and political system, has decently done well, and that the leap frogging process, though minimal, can serve as a foundation pillar for skipping the learning curve in the future. Moving into the future, there is a strong likelihood, if not certainty, of the Cambodian experience inexorably pursuing its path-dependent trajectory well into the next generation affirming in the process the continued validity of the *differentiation hypothesis.* The combined 'push and pull' effect, generated from the constant changes of both external and internal factors, will invariably shape and give credence and authority to the *differentiation hypothesis* confirming the trends and expectations that indeed Cambodia will continue to leap frog, not at a fast pace had the convergence hypothesis be validated, but with a *minimalist* quantum.

Table of Contents

	Pages
Certification	ii
Summary of the Thesis	iii
Table of Contents	v
List of Tables and Diagrams	vi
Abbreviations and Acronyms	vii
Part I :	
Chapter I : Thesis Statement and Conceptual Framework	1
Chapter II: Cambodia's Experiences on Economic Policies and Development	37
Chapter III: Cambodia's Experiences on Law and Economic Development	71
Part II:	
Chapter IV: Economic Convergence: Post 1991 -2005	107
Chapter V: Legal Convergence	133
Chapter VI: Legal Divergence	148
Chapter VII: Institutional Divergence	181
Chapter VIII: Legal and Institutional Differentiation	206
Part III:	
Chapter IX: Policy Choices and Legal Reforms for Leap Frogging Process	228
Chapter X: Intended Outcomes	264
Chapter XI: Conclusions	279
Annexes :	
Annex I : Chapter Annexes	297
Annex II : Chronology	321
Bibliography	344
Publications by the Candidate Relevant to the Thesis	395

List of Tables and Diagrams

List of Tables	Pages
Cambodia: Selected Indicators	xii
Map of Cambodia	xiii
Table 2.1: Real GDP Growth: Regional Comparisons	42
Table 2.2: Inflation: Regional Comparisons	43
Table 2.3: Composition of Growth	43
Table 2.4: International Reserves	58
Table 2.5: Imports and Exports	62
Table 4.1 : Real GDP Per Capita Growth	122
Table 4.2: World Bank Doing Business Indicators in 2006	129
Figure 11.1: Legal System in Cambodia: Patterns of Change from 1993-2008 and Scenario for 2028	296
Annex 2.1: The Ladder of Preferences: Hierarchy of Access to the U.S. Market	297
Annex 9.1: Update Status of the Legislative and Regulatory Action Plan, October 2007	313

Abbreviations and Acronyms

ACMECS	Ayeyawady Chao Phraya Mekong Economic Cooperation
ADB	Asian Development Bank
AISP	ASEAN Integration System of Preferences
ASEAN	Association of Southeast Asian Nations
AFTA	ASEAN Free Trade Area
APEC	Asia-Pacific Economic Cooperation
ATC	Agreement on Textiles and Clothing
BTA	Bilateral Trade and Intellectual Property Rights Protection Agreement
CAFTA	China-ASEAN Free Trade Area
CAR	Council for Administrative Reform
CC	Constitutional Council
CCJ	Club of Cambodian Journalist
CDC	Council for the Development of Cambodia
CDF	Comprehensive Development Framework
CDP	Cambodian Defenders Project
CDRI	Cambodia Development Research Institute
CEPT	Common Effective Preferential Tariff Agreement
CIDA	Canada International Development Agency
CLJR	Council for Legal and Judiciary Reform
CMDGs	Cambodian Millennium Development Goals
CMEA	Council for Mutual Economic Assistance
CPK	Communist Party of Kampuchea
CPP	Cambodian People's Party
CSD	Council for Social Development
CSES	Cambodia Socio-Economic Survey
DDA	Doha Development Agenda
DK	Democratic Kampuchea
EBA	Everything But Arms
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECOSOC	Economic and Social Council of the United Nations
EITI	Extractive Industries Transparency Initiative

ELCs	Economic Land Concessions
EPZs	Export Processing Zones
EU	European Union
FDI	Foreign direct investment
FTAs	Free Trade Agreements
FTBC	Foreign Trade Bank of Cambodia
FUNCINPEC	Front uni national pour un Cambodge indépendant, neutre, pacifique, et coopératif
GA	United Nations General Assembly
GATT	General Agreement on Tariffs and Trade
GAP	Governance Action Plan
GDP	Gross domestic product
GMAC	Garment Manufactures Association of Cambodia
GSP	Generalized System of Preferences
HDI	Human Development Index
HiiL	Hague Institute on the Internationalization of Law
HRC	United Nations Human Rights Council
ICORC	International Committee on the Reconstruction of Cambodia
ICSID	International Center for Settlement of Investment Disputes
ICTs	Information and communication technologies
IFC	International Finance Corporation
IFIs	International financial institutions
ILO	International Labour Organisation
IMF	International Monetary Fund
IPRs	Intellectual property rights
IRI	International Republican Institute
ITU	International Telecommunication Union
KR	Khmer Rouge
LAC	Legal Aid of Cambodia
LAC	Labor Arbitration Council
L&D	Law and Development
LDC	Least developed country
LDGs	Law-Dependent Goods
LIC	Low-income country

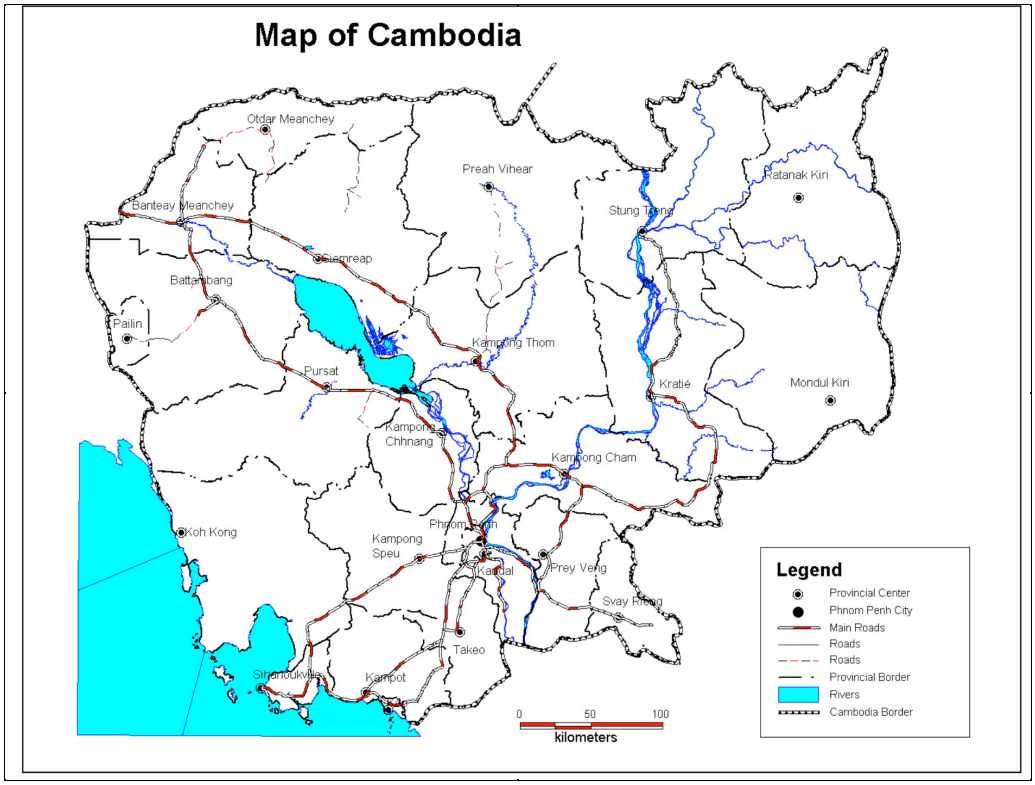
LoI	Law on Investment
LoT	Law on Taxation
LTC	Lawyers Training Centre
MAFF	Ministry of Agriculture, Forestry and Fisheries
MBPI	Merit-based pay initiative
MCRRC	Ministerial Conference on the Rehabilitation and Reconstruction of Cambodia
MDGs	Millennium Development Goals
MEF	Ministry of Economy and Finance
MFA	Multifiber Agreement
MFN	Most favored nation
MIGA	Multilateral Investment Guarantee Agreement
MoJ	Ministry of Justice
MoP	Ministry of Planning
MoU	Memorandum of Understanding
MPs	Members of parliament
MPDF	Mekong Project Development Facility
MPWT	Ministry of Public Works and Transport
MTEF	Medium-Term Expenditure Framework
NAA	National Audit Authority
NBC	National Bank of Cambodia
NIS	National Institute of Statistics
NGO	Non-Governmental Organization
NWO	New World Order
NPRD	National Programme to Rehabilitate and Develop Cambodia
NPRS	National Poverty Reduction Strategy
NSDP	National Strategic Development Program
NTR	Normal trade relations
ODA	Official Development Assistance
OHCHR	Cambodia Office of the High Commissioner for Human Rights
OPIC	Overseas Private Investment Corporation
PAR	Public Administration Reform
PFM	Public financial management
PFMRP	Public Financial Management Reform Program

PMG	Priority Mission Group
PPI	Private Participation in Infrastructure
PPIAF	Public-Private Infrastructure Advisory Facility
PRGF	Poverty Reduction and Growth Facility
PRGO	Poverty Reduction and Growth Operations
PRC	People's Revolutionary Council
PRK	People's Republic of Kampuchea
PRP	People's Revolutionary Party of Cambodia
PSD	Private Sector Development
RCAF	Royal Cambodian Armed Forces
RGC	Royal Government of Cambodia
RoL	Rule of Law
RS	Rectangular Strategy
RTAs	Regional trading agreements
SAD	Single Administrative Document
SCAC	Supreme Council Against Corruption
SCM	Supreme Council of Magistracy
SEDP	Socio-Economic Development Plan
SEZs	Special economic zones
SITF	Special Inter-Ministerial Task Force
SLC	Social Land Concessions
SLJR	Strategy for Legal and Judicial Reform
SNC	Supreme National Council
SPS	Sanitary and Phytosanitary
SPT	Special and preferential tariff
SWAp	Sector-Wide Approach
SWOT	Strength-Weakness-Opportunity-Threat
TAF	The Asia Foundation
T&C	Textile and clothing
TBT	Technical Barriers to Trade
TI	Transparency International
TIFA	Trade and Investment Framework Agreement
TRIM	Trade-Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights

TWG	Technical Working Group
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNDP	United Nations Development Programme
UNTAC	United Nations Transitional Authority in Cambodia
UNDAF	United Nations Development Assistance Framework
UPOV	International Convention for the Protection of New Varieties of Plants
USTR	United States Trade Representative
VAT	Value-added tax
WB	World Bank
WEF	World Economic Forum
WEO	World Economic Outlook
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Cambodia: Selected Indicators

People	**2006**
Population, total	14.2 million
Surface area (sq. km)	181.0 thousand
Population growth (annual %)	1.7
Life expectancy at birth, total (years)	58.9
Fertility rate, total (births per woman)	3.3
Adolescent fertility rate (births per 1,000 women ages 15-19)	43.5
Mortality rate, under-5 (per 1,000)	82.2
Malnutrition prevalence, weight for age (% of children under 5)	28.4
Immunization, measles (% of children ages 12-23 months)	78.0
Primary completion rate, total (% of relevant age group)	86.6
School enrollment, secondary (% gross)	38.2
Economy	
Nominal GDP (current US$)	7.3 billion
GDP per capita	512
GDP growth (annual %)	10.8
Inflation, GDP deflator (annual %)	4.7
Agriculture, value added (% of GDP)	30.1
Industry, value added (% of GDP)	26.2
Services, etc., value added (% of GDP)	43.7
Exports of goods and services (% of GDP)	68.8
Imports of goods and services (% of GDP)	75.8
Gross capital formation (% of GDP)	21.5
Revenue, excluding grants (% of GDP)	9.8
Total external debt ($ millions)	3.5 billion
Short-term debt ($ millions)	209.1 million
Foreign direct investment, net inflows (BoP, current US$)	483.2 million
Workers remittances and compensation of employees, received (US$)	297.4 million
Official development assistance and official aid (current US$)	529.0 million
Source: *World Development Indicators database*, April 2007	


Map of Cambodia
Otdar Meanchey
Preah Vihear
Ratanak Kiri
Banteay Meanchey
Stung Treng
Siemreap
Battambang
Pailin
Kampong Thom
Pursat
Kratié
Mondul Kiri
Kampong Chhnang
Kampong Cham
Koh Kong
Phnom Penh
Kampong Speu
Kandal
Prey Veng
Svay Rieng
Takeo
Sihanoukville
Kampot
0
50
100
kilometers
Legend
Provincial Center
Phnom Penh City
Main Roads
Roads
Roads
Provincial Border
Rivers
Cambodia Border