

# **Democracy and Human Rights in Cambodia**

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Phnom Penh, Penang, Stockholm 1996

[\*additional comment and footnotes from 2011-2012 is enclosed in asterisks and brackets\*]

[\*NB: This is a report commissioned in 1995 by SIDA (Swedish International Development Cooperation Agency). The background was that “Sweden has entered into a long-term development cooperation with Cambodia. During 1995/96 a country strategy for the development cooperation during a three-year period beginning in January 1997 will be formulated. SIDA will produce background material in various fields in order to present a **country overview**, an analysis of results and a proposal for the continued cooperation with Cambodia.”

As stated in the Terms of Reference, the part of Ramses Amer and Michael Vickery in the country overview was “Analysis of the democratization process, human rights situation and judicial system in Cambodia.” Our text was to be limited to 50 pages, with additional appendices where we considered them necessary.

Given Sweden’s solid reputation as a flourishing social democracy, we expected from SIDA a sympathetic understanding for the problems of post-revolutionary Cambodia, in particular for the PRK (Peoples’s Republic of Kampuchea, 1979-1989) and the succeeding SOC (State of Cambodia, 1989-1993), and a critical understanding of the changes, often negative, brought about after 1993 by UNTAC (United Nations Transitional Authority in Cambodia) and the rapid shift into an extreme free-market society.

Instead, we were faced with considerable hostility in the section of SIDA concerned, and among a coterie of Swedish academics (not Cambodia specialists) to whom our report was sent for comment. Indeed, they exhibited the attitudes I have attacked as a special *Vietnam Syndrome* in my writing on that subject (<http://michaelvickery.org/vickery2010kicking.pdf>).

As a result of this hostility, SIDA organized a seminar in Stockholm on 29 April 1996 for the purpose of confrontation with our report; and a response to that seminar written by Michael Vickery is attached.\*]

What follows here was written by Michael Vickery, but Ramses Amer shared equally in the research and discussion leading to our written report\*]

## **EXECUTIVE SUMMARY**

### **A. The Democratization Process**

#### **Government and politics**

In discussing democracy and human rights in Cambodia the traumatic history of the last 25 years and Cambodia's political culture must be kept constantly in mind. The situation today resembles that in the former Soviet Bloc countries, but is more violent, more the result of foreign imposition, with less economic resilience, and in a culture where equality before the law was not widely recognized at any time in the past.

Although Cambodia's first constitution and multi-party elections were in the 1940s and 1950s, by 1955 a single-party dictatorship had been installed by King, then Prince, Sihanouk and democratic forms were either suppressed or ignored until 1993.

In the UN-supervised election in May of that year twenty parties competed, but only four won seats in the National Assembly, and only two, FUNCINPEC with 58 and the CPP with 51, had significant strength. The result has been a grand coalition of all, leaving no party in opposition.

FUNCINPEC is the royalist party headed by Prince Norodom Ranariddh, son of King Sihanouk, and the CPP is the former ruling party of the pre-election State of Cambodia (SOC), from 1979 to 1989 the People's Republic of Kampuchea (PRK). They are respectively First and Second Prime Minister. Other ministries, as well as provincial governorships are shared almost equally, with a few posts given to the third party, BLDP, which has ten seats.

Politics since the election has been characterized by tension and factional power manoeuvres. In June 1993 disgruntled CPP members who had not been chosen by their party for the National Assembly tried to take three eastern provinces out of the state in a secession coup. A year later the same two leaders were caught planning a coup against the government. In December 1995 Prince Norodom Sirivudh, half-brother of the King, former Foreign Minister and Secretary-General of FUNCINPEC was charged with planning the assassination of Hun Sen and exiled to France. Sam Rainsy, a FUNCINPEC member of the Assembly, who had been the first post-1993 Finance Minister, was so active in criticism of the government and his own party that he was expelled from the party, and then from the Assembly. Throughout these two years King Sihanouk has intrigued to increase the limited power allowed him by the constitution, and to that effect tried to negotiate reconciliation with the *Partie of Democratic Kampuchea* (PDK or 'Khmer Rouge'), including their entry into the Assembly. In July 1994 the PDK was outlawed, a move strongly opposed by Sihanouk, Rainsy and Sirivudh.

In 1997 an election is planned to choose leaders of communes, the third level of provincial administration, for the first time in Cambodian history. The next national parliamentary election, prescribed by the constitution, is scheduled for 1998. The modalities of organization for these elections are uncertain, but it seems that in 1998 the government intends to run as a coalition.

### The press

Since UNTAC (United Nations Transitional Authority in Cambodia) arrived in 1992 there has been an explosion in newspaper publishing, although many papers have been short-lived. At present there are around 40 newspapers in Phnom Penh, and there is greater press freedom than at any time in the past, except perhaps right at the time of independence in 1953-54, and just after the overthrow of Sihanouk in 1970. Three main tendencies may be identified, pro-government, anti-government, and newspapers supportive of Sam Rainsy, which are also anti-government.

Most of the new papers have been of very low quality, both in terms of writing and journalistic responsibility. This is in contrast to the relatively high quality of the few papers published

with official support under the PRK/SOC. Many of the new newspapers have written things which would be in violation of laws in western democracies concerning libel, incitement to violence, and racism. The reaction of the authorities, which has sometimes seemed severe, must be seen against this background. In 1994-95 there have been over a dozen prosecutions of journalists and editors resulting in fines, closure, and imprisonment. The law under which they were charged was the UNTAC criminal law which has articles on libel and incitement to violence, including penal sanctions. In July 1995 a new, milder Press Law was passed, without imprisonment for press offences. Three journalists were murdered in 1994, presumably in revenge for their writings, without the guilty being punished.

### Non-governmental associations and civil society

Approximately 80-100 domestic and 200 international NGOs exist in a state of relative disorder. A few began work in the 1980s and established a good record of worthy projects in cooperation with the government. Most were formed after 1991 along with UNTAC with foreign encouragement, or to obtain foreign salaries. All depend on foreign money, and if it were suddenly cut off, most would collapse, having done nothing to become self-sustaining. The modalities of registration of the NGOs were chaotic, there is much overlap in their activities, little coordination, and the government is concerned that many operate as semi-political bodies. An NGO statute is being drafted so that all may be registered and their activities rationalized [\*Such an NGO statute, long overdue, is only now, in 2011, being finalized\*].

Many of the NGOs give 'Human Rights' as their area of concern, and some regularly give courses in human rights, including in the past year much work with the police and military. Many other NGOs are 'women's organizations', and they, as a group, have come under strong criticism from an independent consultant for administrative laxity.

Although the Constitution gives freedom to create associations and political parties, it is subject to a further organizational law on associations, which has not yet been promulgated. It might thus be argued that all NGOs exist outside the law.

In these circumstances, the NGOs are not a firm basis for the development of civil society. There are no labor unions.

### The military

Military personnel are not prominent in the government, except the Ministry of Defence, and they are not directly active in politics. Because of the ongoing war with the PDK, however, the military budget is inflated, the army is too large, and in the provinces where insecurity prevails (the Northwest, North, and Southwest, in particular) the military are outside the law and commit many offences against the population. They are also involved in illegal logging.

Demobilization of the estimated 130,000 army has not begun, perhaps because the army resists it, but in any case there would be no employment available for demobilized soldiers. The

inflated officer corps has been reduced, the number of generals declining from over 2000 in early 1994 to less than 200 at the end of 1995.

## **B. The Judicial System and Rule of Law.**

### Laws and Courts

There is nearly as much confusion in the laws as in the press and the NGOs. During the 1980s the PRK/SOC developed new laws and courts largely based on Soviet practice, but also influenced by the French system which Cambodia had known before 1975. When UNTAC arrived there was much ignorance of the laws in force and functioning courts, and an attempt was made to supersede them with UNTAC law. Total change was impossible, and the courts remained much as before. PRK/SOC laws were never formally abrogated. UNTAC promulgated an electoral law and a criminal law which included penalties for press violation, and in 1993 the SOC promulgated its own Criminal Law, including organization of the court system. In September 1993 the new constitution established new legal institutions and procedures, and as one foreign expert remarked, "no one knows what is valid".

The legal confusion has been evident in prosecution of the press, in the expulsion of Sam Rainsy from the National Assembly, and in the controversy over his new political party. Rule of law is weak in many areas, and the first step to strengthen it is to rationalize the laws and constitution.

The courts derive from those established by the PRK in the early 1980s, one in each province and in Phnom Penh, plus an Appeal Court inserted by UNTAC between the lower courts and the Supreme Court. There is much concern about independence of judges, but they are paid only \$30 per month, not enough to keep them in the courtroom, not to speak of remaining honest.

Much effort by foreign donors has gone into training of judges, defense lawyers, and para-legal defenders. The organizations involved seem pleased with their success. The non-lawyer defenders are paid salaries from foreign funds, from \$50 to \$300 per month, depending on the organization, and they are forbidden to ask payment from clients. This will certainly change when foreign funding ends.

### Prisons

The condition of prisons is very bad, in terms of food, hygiene and treatment of prisoners. A 1995 report by the UN Centre for Human Rights, however, noted some improvement since 1993. Here also the problems result from lack of funds and ensuing corruption. It seems encouraging that prisoner per population ratio is very low in Cambodia.

## **C. Overview of Human Rights**

### Rights violations in general

Cambodia has acceded to most of the relevant conventions, and the Constitution incorporates their provisions. Reporting has been late, but this probably reflects the general chaotic political and economic situation rather than ill will.

Many of the conventions are not well implemented, and many human rights violations occur, particularly in areas of insecurity where military are concentrated in opposition to the PDK.

The violations frequently cited by international observers are those committed by military and police: illegal arrest and detention, extortion, checkpoints on highways to extort money, rape, kidnapping. Most complaints from the predominantly rural population are about conflicts over land rights. That is, the poor lose their land to the rich with the collusion of the authorities.

#### Women's and children's rights

There are no explicit formal barriers to gender equality in Cambodian law, religion or custom. Within the home the wife was often dominant, and controlled the family finances, particularly in rural society. Certain habits are to the disadvantage of women in certain situations. Girls were not considered to require the same level of schooling as boys, and higher moral standards were imposed on them. In general the situation of women has been deteriorating in the transition from socialism to free market which began in 1989, and in the new political situation after the 1993 election.

After 1979 there was a significant surplus of women, then estimated at 60%, but now around 52%. On the one hand this worked to the disadvantage of poor rural women when there was no male labor. On the other hand there was more opportunity than before for women to enter positions of responsibility previously reserved mostly for men. The socialist ideology of the PRK worked to enhance the promotion of women in all areas of government and administration, including management posts in industry.

The Marriage and Family Law passed in 1989 by the PRK prohibits polygamy and treats both spouses equally. Divorce may be easily obtained by mutual consent, but [\*if the marriage has been registered\*] an arduous reconciliation process may be required, particularly if there is disagreement about the disposition of children or communal property. There is no legal, moral, nor traditional hindrance to contraception.

The greatest disadvantage to women starts with unequal education, resulting partly from old habits, and partly from objective material disadvantages. In primary schools the gender ratio is nearly equal, but at each level thereafter the proportion of girls diminishes until it is only 12-15% in the University, and under 1% in technical subjects. Even where there may be parental support for tertiary education, girls are disadvantaged by lack of living quarters away from home. Boys may live in Buddhist Wats with the monks for free, but there is no equivalent place for women, and most girls cannot afford to rent rooms in Phnom Penh where tertiary institutions are concentrated.

There is much anecdotal evidence that domestic violence against women and rape are increasing, particularly in insecure provinces with large military contingents; and with the new market economy more women than before resort to prostitution.

Children suffer from the deepening poverty of a large proportion of the population, and previously unknown offences are said to be increasing: child prostitution, kidnapping of children for prostitution or labor, forcing children to perform oppressive labor. Cambodia has acceded to the Convention on the Rights of the Child, but many of its provisions are quite unrealistic for Cambodia.

As with women, improvement for children depends on schooling, improved health care, and poverty alleviation.

### Ethnic minorities

The important ethnic minorities are Chinese, Vietnamese, Cham, and approximately 20 other small ethno-linguistic groups, mostly hill and forest dwellers, of whom the majority live in the northeastern provinces of Ratanakiri and Mondulakiri. None of these except the Vietnamese suffers because of ethno-linguistic minority status. Their problems are the same as those of the Khmer, overcoming poverty, and outside Phnom Penh conflicts over land ownership.

The northeastern hill and forest minorities face special problems because of the belief of the government and lowland Khmer society that progress for them means assimilation to Khmer life. Since this has never been a policy applied by force they could ignore it, except for the projected large-scale development of rubber and oil-palm plantations in the Northeast which will destroy the forests, the traditional habitat of these people, and turn them into workers on the plantations.

Destruction of the northeastern forests, moreover, would be disastrous for the entire country, because of the three large northeastern rivers which flow into the Mekong. The overdevelopment of the Northeast may be the greatest danger facing Cambodia today.

The Vietnamese face real prejudice and abuses, although the past year has seen improvement compared to 1992-1994. This is partly because of traditional attitudes which were revived by the anti-SOC political parties who were able to return with UNTAC. Under the PRK/SOC from 1979 to 1989 a special effort, for the first time ever, was made to establish good relations with Vietnam, and between Khmer and Vietnamese populations.

### Conclusions

In spite of the obvious wealth in Phnom Penh, which is not being mobilized for development, most Cambodians have not benefited from the economic shift from socialism to a free market after 1989, and the political changes brought by UNTAC in 1993. Poverty is generalized. Corruption is therefore widespread, and there is little respect for the law, not encouraged by the chaotic mixture of sometimes conflicting laws in force.

International intervention in Cambodia since 1992 has set new tasks for Cambodia without providing the tools to carry them out, yet Cambodia has been sharply criticized for not living up to the foreign expectations. Many Cambodians of all factions are exasperated with the ongoing interference of too many foreign experts and advisers, and they may not have confidence in 'democracy', or belief in what foreigners call 'human rights'.

New foreign aid projects are welcome, but the structures to receive them (NGOs for example) must be rationalized and many of them weeded out. Further foreign intervention should be focused on concrete material development--health care, appropriate education for a society which will for a long time remain rural, agricultural development, meaningful associations for farmers, urban labor, the unemployed poor. These are the areas which ordinary Cambodians stress when they are

asked about their problems. Moralizing and concentration on vague 'human rights', especially the mishaps of elite politicians, should be avoided.

## **Democracy and Human Rights in Cambodia**

### Preliminary remarks

In no society can the subjects treated in this report be understood separately from their political, social, economic and historical contexts. This is even more true in Cambodia where the past 25 years have been a time of unusual violence, political upheaval, social disintegration, and economic collapse. The reader must be aware of the background against which all description, and in particular all judgements, concerning Cambodia must be understood (for more detail see Historical Appendix).

After 1975 Cambodia went through the most violent revolution of modern times, in which the entire non-agricultural population were forced to become rice-growing peasants at the most primitive level, often after forced migration from their homes. The result was a total disintegration of normal Cambodian society, the end of most cultural activities and education, and a death toll over normal of possibly more than 10% of the population.

This revolution was followed after 1979 by ten years of moderate reform communism under year-by-year decreasing Vietnamese tutelage, but afflicted by an economic blockade by the West [\*led by USA\*], China and ASEAN, the purpose of which was to [\*effect regime change, destroy the government in place, because of its close relationship with Viet Nam\*], and replace it by its Cambodian rivals. Aid came from the Soviet Bloc, and when it collapsed the Phnom Penh government was forced to enter into negotiations with its enemies and make concessions which had not been envisaged before 1987. This led to acceptance of the Paris Agreement of October 1991, the UN-supervised election of 1993, and a new Royal Government committed to a free-market capitalist economy and superficial democratic political forms.

Just as occurred in the Soviet Union and Eastern Europe, the sudden leap from a type of socialism to the free market meant a collapse of social services and decline in living standards for most, but sudden wealth for those who could make use of the new market freedom, too often in ways which if not illegal, were dubious.<sup>1</sup> Different from the Soviet Bloc, the transition was more clearly imposed from without, and carried out under heavy-handed foreign pressure and an overwhelming foreign presence during 1992 and 1993. Cambodians who may have felt that they were too much under Vietnamese guidance after 1979 until freed from it in 1989 through their own efforts to develop an acceptable Khmer administration, found themselves once again under a type of foreign tutelage. Even those Cambodians whose return to the center of Phnom Penh politics depended on the new foreign intervention were sensitive to the decline in real independence, and their resentment has been clear since the first attempts to form a coalition government made by Prince, now King, Sihanouk immediately following the election. The resentment has grown since 1993, and lies behind much of the aggressive tone recently adopted by Cambodian leaders, who are returning to old patterns of pre-1975 domestic politics to consolidate their positions against both

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<sup>1</sup>. [\*On this see Joseph E. Stiglitz, *Globalization and its Discontents*, New York, London, W.W. Norton & Company, 2003, 2002. \*]



foreign interference and domestic rivals, who may be accused of reliance on foreign intervention to bolster their positions.

The need to view Cambodia against the background of its particularly traumatic history and the idiosyncrasies of its own political culture is invoked by a wide variety of Cambodian activists who cannot be accused of serving the aims of government propaganda or of using cultural arguments to line their own pockets. Pleas for recognition of cultural differences were heard by the authors of this report from some of the more important Cambodian emigrés active in NGO work.<sup>2</sup>

One interesting case which may be cited, because he has published his views, is that of Sichan Siv, who escaped from Democratic Kampuchea (DK) in 1976, was able rather quickly to reach the United States, where he first became active in emigré politics and eventually rose to become an adviser to President George Bush and an unofficial US envoy to the Thai Foreign Ministry just before the final peace negotiations in 1991.

In an article entitled, "The U.S. Must Support, Not Push, Cambodia", Sichan Siv noted that the problems of the 'Khmer Rouge', the expulsion of Sam Rainsy from the National Assembly, corruption, human rights, and press freedom, "raise questions about the direction in which the coalition government is taking the country. Mr. [Warren] Christopher's [US Secretary of State] visit should remind the leadership in Phnom Penh that the United States...always has human rights as a cornerstone of its foreign policy. America supports democracy, freedom, justice and the principles of good financial management. Yet Americans should ask whether it is really right to expect that these ideals...should take absolute precedence over sustaining political stability and economic growth in Cambodia. Are Americans expecting too much from an elected government that has been in office barely two years--but one that has already lasted longer than most Italian and some recent Japanese governments?".<sup>3</sup>

Cambodian culture and governance have never been pluralistic, nor has tolerance for opposition been nurtured. The political leaders of today grew up under dictators of several types, and those who never left Cambodia were cut off from good information about democratic societies from at least 1975, sometimes earlier, to the early 1990s.

In Cambodia, as in all Southeast Asian societies, both traditionally, and still, there are people who by custom, and in modern polities by law, are above the law, and above criticism. This included royalty, and as heads of state, presidents, and prime ministers replaced, or became politically equal with royalty, the aura of inviolability was extended to them. The return of Sihanouk as king, as a

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<sup>2</sup>. 'Emigré' is used here to mean Cambodians who returned to Cambodia after 1991, following long residence abroad (not in refugee or guerrilla camps), having left Cambodia before 1975, or during Democratic Kampuchea (DK) in 1975-1979, or in the early 1980s when travel to and across the Thai border became relatively easy in the transition from DK (Democratic Kampuchea) to the People's Republic of Kampuchea (PRK). 'Returnee' would be more precise, but that term has already taken on the meaning of returnee from the camps on the Thai border.

<sup>3</sup>. *International Herald Tribune*, 4 August 1995, p. 7, where he was identified as "senior adviser to the U.S. delegation to the Paris peace conference on Cambodia".

result of UNTAC, after 14 years of the PRK/SOC when there was no formal distinction of persons above the law, and little social differentiation, meant that all the old habits of privilege would be revived. This was especially easy in Cambodia, where there was no conception of equality in traditional society, and where modern experience had done little to inculcate it. If Sihanouk is inviolate, then so is his son Ranariddh, who not only is Prime Minister, but a potential candidate for the throne on his father's constantly expected death. Then, so is Hun Sen, the second Prime Minister, since 1993 decked out with the semi-royal title 'Samdech' by grace of Sihanouk. The formal privileges extend on down through the hierarchy, as seen in the immunity of civil servants, who cannot be charged in court without permission from their hierarchical superiors.<sup>4</sup>

#### **A. Overview of the democratization process**

##### **The development of the political system; the situation and development of governance; elections; democratization and participation at the central, provincial and local level**

Because of Cambodia's historical experience electoral institutions are weak, and people are unfamiliar with elections.

Formal democratic politics began after World War II, and there were three free multi-party elections in 1947, 1948, and 1951, before independence from France in 1953. After Prince Sihanouk's party won all seats in the National Assembly in 1955, Cambodia was an authoritarian single-party state until the overthrow of Sihanouk in 1970 and the emergence of the Khmer Republic under General Lon Nol. Khmer Republic elections were hardly democratic, and under the radical communist Democratic Kampuchea (DK), the 'Khmer Rouge' regime, (1975-1979) there were no democratic practices at all.

After 1979 the People's Republic of Kampuchea (PRK) began a slight opening toward democratic practices. In 1981 a written constitution was promulgated, and an election for a National Assembly was held. It was a single-party election, but with slightly more candidates than seats. Constitutional amendments in 1989 changed the economy from socialist to mixed state and private sector and the name of the country became State of Cambodia (SOC). The UN-supervised election of 1993 resulted in a multi-party coalition government of the Kingdom of Cambodia (for further detail see the Historical Appendix).

#### **The 1993 election**

With the Paris Agreement of October 1991 the SOC and its enemies in the tripartite Coalition Government of Democratic Kampuchea, (1) the Partie of Democratic Kampuchea (PDK) ['Khmer Rouge'], (2) the FUNCINPEC Sihanoukists, and the (3) Khmer Peoples' National Liberation Front (KPNLF), which since 1982 had enjoyed the support of the United States, China and ASEAN, agreed to make peace and participate in an election to be supervised by the United

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<sup>4</sup>. This is according to Article 51 of the Civil Service law of October 1994. The level at which permission must be sought to charge civil servants depends on their rank. This may be changed, because the Minister of Justice is believed not to favor it.

Nations. The United Nations Transitional Authority in Cambodia (UNTAC) arrived in Cambodia in 1992, and the election was held in May 1993. Before the election, in 1990, a Supreme National Council (SNC), presided by Prince Sihanouk and with six members from SOC and two each from the three other parties, was formed as the repository of state authority, although SOC state structures were maintained for administrative purposes.

The 1993 election was for a 120-seat Constituent Assembly which, after approving a new constitution by a two-thirds majority, would transform itself into a National Legislative Assembly for a period of five years until the next election in 1998.

[\*It must be emphasized that the 1993 election was not to choose a new government, but only to write a new constitution for which they could take up to three months during which the government would not change. Change of government would only take place according to the new structure established by the new constitution.<sup>5\*</sup>]

The UNTAC election law prescribed proportional representation by province. Any group of 5000 persons could be registered as a political party. At the time, when it was expected that the Cambodian People's Party (CPP) of SOC would do well in the elections, the proportional representation formula seemed designed to weaken CPP chances, and to permit the entry of small parties into the Assembly. This had the potential to produce a weak parliament and unstable government. The voting age was 18.

Cambodian voters were restricted to choosing party slates, not individual candidates, and all candidates had to be members of a recognized party. Often, the result was that voters did not know the identities of the people for whom they were ostensibly voting. UNTAC prepared lists of the candidates of all parties only in English, and with the spelling of many names so garbled that even specialist students of Cambodian politics might not have recognized them. Most parties listed nearly twice as many candidates as there were seats in any province, in case some resigned or died before the election.

Voting took place from 23 to 28 May and 20 parties competed, but the PDK party had withdrawn. In the total popular vote FUNCINPEC won approximately 45%, the CPP 38%, and the Buddhist Liberal Democratic Party (BLDP), an offshoot of Son Sann's KPNLF, nearly 4%, with the rest spread among minor parties. FUNCINPEC won 58 seats, CPP 51, BLDP 10, and Moulinaka, the party which had the fourth largest popular vote, 1.37%, one seat. The total failure of all other small parties to obtain enough votes to get seats, even with the advantage of proportional representation, was not expected. Those 16 minor parties, **the only parties spontaneously formed by groups of interested citizens, the basis for civil society**, represented a bloc of about 11% of the total vote, and most of them were explicitly republican, or non-committal concerning the monarchy. The BLDP, and of course CPP, have historically been republican, although they had opportunistically accepted Sihanouk before the election. This means that less than

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<sup>5</sup> [\*See Michael Vickery, *Cambodia: A Political Survey*, Phnom Penh, Funan Press, 2007, pp. 78-83.\*]

50% of the voters actively cast ballots for a monarchy and King Sihanouk. That part of the democratization process had been pre-decided.

The method of proportional representation for allocating seats in the new Assembly did not work as expected, because of the near total rejection of the small parties, and the unexpectedly poor showing of Son Sann's BLDP. The new Assembly was essentially a two-party organ, with a small BLDP in a position to affect majority votes. Proportional representation did, however, perform its function of diluting the power of the party receiving the largest vote, that is FUNCINPEC. Had the election law incorporated the principle of largest party taking all seats in any election district, which had been the formula desired by the CPP, then FUNCINPEC would have won 79 seats to 41 for the CPP; and no other parties would be represented in the Assembly. With that total FUNCINPEC could easily have obtained at least one supporting vote from a CPP member in the Assembly, and its two-thirds majority to govern alone would have been assured.

Although FUNCINPEC 'won', it did not have a majority. Its most logical ally in a coalition, according to normal parliamentary procedure and their mutual antipathy to the CPP, would be the BLDP, but their combined total of 68 seats was still not the two-thirds (80 seats) necessary to ratify a constitution. Thus drafting of a new constitution could have been blocked if cooperation between FUNCINPEC and CPP had not been achieved. Even the combined FUNCINPEC-BLDP majority which would normally suffice to form a government might be only theoretical, for those two parties did not have a national administrative capability; and continuing administration had to count on support by the cadres of SOC, particularly after it was decided that a two-thirds vote would also be required for votes of confidence in the government. There had to be either open cooperation between FUNCINPEC and CPP in the government, or FUNCINPEC must persuade a large number of SOC politicians and administrators to defect to FUNCINPEC. The leadership of the BLDP, and of the Liberal Democratic Party (LDP), another party which split from the KPNLF before the election, have a history of opposition to and dislike of Sihanouk, which might prevent close cooperation between them and FUNCINPEC, in spite of the antipathy of both toward CPP.

#### The post-election situation

After the results of voting were known, but before the winning candidates were officially announced, 32 of the CPP candidates whose places at the top of provincial candidate lists would have made them winners, resigned, opening the way for other CPP candidates lower on the lists to take seats in the new Assembly. The purpose was transparent. Having won fewer seats than they had expected, CPP sacrificed a number of its senior politicians in favor of more intellectual or technocratic figures who would be more effective as parliamentarians.<sup>6</sup>

After the election all the parties in the Assembly formed a coalition government which is dominated by FUNCINPEC and the CPP. This came about in three stages. First, on June 3,

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<sup>6</sup>. See Michael Vickery, "Cambodia: A Political Survey", Discussion Paper Series, Number 14, Department of Political and Social Change, Research School of Pacific Studies, Australian National University, 1994.

Sihanouk announced the formation of a FUNCINPEC-CPP coalition under himself with his son Prince Ranariddh and Hun Sen, Prime Minister of SOC as Deputy Prime Ministers. Within 24 hours, following American displeasure, coolness by UNTAC, and reluctance by Ranariddh, Sihanouk renounced this project.<sup>7</sup>

This was followed, on June 10, after an inflammatory speech by Sihanouk on June 6, by a secession of three eastern provinces led by Sihanouk's son Prince Chakrapong and SOC State Security Minister Sin Song, who had been among the CPP candidates rejected by their party following the election. The secession quickly proved a fiasco, with Hun Sen gaining most of the credit for suppressing it.<sup>8</sup>

On July 2 the FUNCINPEC-CPP coalition was formed anew, as a Provisional National Government, and after promulgation of the constitution in September the Royal Government was formed in October 1993. There is a First and a Second Prime Minister, respectively Prince Ranariddh of FUNCINPEC and Hun Sen of CPP, and ministries are divided almost equally (see Historical Appendix). Wherever the minister is from one party, the deputy minister is from the other. BLDP was allotted three ministerial positions, in proportion to its strength. The National Assembly thus consists of parties which are all in the government, and there is no formal, evident, or institutional opposition. In such a situation there cannot be political or institutional independence of the National Assembly. There are very few, perhaps no, members of the Assembly who represent private interests outside the parties through which they reached the Assembly. The deputies of the CPP were nearly all party or PRK/SOC state officials before 1993, and that party is thus a bureaucratic party. Most of the deputies from the other two parties were also party workers in exile, or they are professionals who only returned to Cambodia just before the 1993 election, and had no personal or institutional base within the country. There is no party or faction representing business, workers, or peasants, or any groups or classes outside the parties and government themselves. So far the only opposition has been by individual members of FUNCINPEC and BLDP.

This is very much like the *Sangkum* government of the 1960s, and is in accordance with local political tradition, which has an aversion to confrontational politics, pluralism or tolerance for opposition, as in other Southeast Asian semi-democracies. This situation became inevitable once there had been a tacit agreement among the Great Powers and the major Cambodian factions that Sihanouk would return as King or President or Chief of State. Sihanouk would not have accepted to rule over an active democracy, and in the election campaign of 1993 the major parties all professed support for Sihanouk.

#### Politics under the new government

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<sup>7</sup>. The US mission in Phnom Penh had "released to the diplomatic corps what is called in official jargon a 'non paper'. The conclusion of this document was: "*We are opposed to the establishment of any interim government*" (*The Nation*, Bangkok 10 June 1993, "Let the Khmers decide on democracy", a comment by Raoul Jennar).

<sup>8</sup> See Vickery, article cited in note 5, where Sihanouk's speech is summarized.

At the time of Sihanouk's first effort to form a coalition right after the election, one of the top American UNTAC officials had remarked, "to do what we want in Cambodia we don't need Sihanouk, and we don't need the CPP. We have 90 million dollars to hold the officials and soldiers of SOC and to buy the CPP Assemblymen needed to get a two-thirds majority and set up the coalition we want".<sup>9</sup> That threat did not materialize, but a surprising shift in US moves to establish contacts within the new regime came in November 1993 when Sar Kheng was invited to the US, followed in February 1994 by an invitation to Sin Song. Sar Kheng's invitation was official, "to expose [him] to the mechanics of democracy and...wean him away from the influence of Vietnam...", as it was quaintly reported, but Sin Song was invited to attend the National Prayer Breakfast in Washington on February 3, by Howell Heflin, a Democratic Senator from Alabama and one of those who voted against lifting the Vietnam embargo.<sup>10</sup>

These two CPP figures, accurately or not, had been most often identified as responsible for pre-election violence against other parties. They were thus implicitly exonerated by the US. Sin Song, moreover, had been one of the leaders of the secession fiasco, and at the time of his American invitation had not been fully accepted back into CPP ranks.

The Americans, displeased at the ability of the CPP to preserve its hegemony in the new coalition, seemed to be playing a new card in Cambodian factional politics, giving support to Sar Kheng, previously reputed to be of the more rigid communist faction of Chea Sim and a rival of Hun Sen, and to Sin Song, clearly out of favor with Hun Sen since the secession. At the same time Sar Kheng began recruiting as advisers a number of intellectuals from the LPD who had spent years fighting against the PRK on the Thai border or in exile in the West, in particular in the U.S. The LPD faction made another advance into politics in the unification of the military forces of the three coalition partners, for they dominated the army of the former KPNLF, from which both the BLDP and the LPD had split.

A continuing bone of contention among the factions, including King Sihanouk, was relations with the PDK ('Partie of Democratic Kampuchea', the official name of the 'Khmer Rouge'). During the election campaign the CPP had insisted that if they won they would attack and eliminate the PDK militarily, whereas FUNCINPEC based its campaign on negotiations and a peaceful solution. This was the policy favored by Sihanouk. After the election and the formation of a new army, the government, with full acquiescence by Ranariddh, adopted the CPP policy toward the PDK, and in September 1993 the new unified army achieved some initial successes on the battlefield. The PDK survived, however, and by February 1994 inflicted stinging defeats on the government forces.

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<sup>9</sup>. Raoul Jennar, "Cambodian Chronicles (X)", 29 June 1993.

<sup>10</sup>. Sar Kheng's trip was reported in *Phnom Penh Post*, vol. 2. no. 24, 19 November-2 December 1993, Nate Thayer, "New govt: who's really in control"; and Sin Song's invitation was reported in *Phnom Penh Press* vol. 3, no. 3, 11-24 February 1994, Nate Thayer, "Fury over Sin Song's trip to US". The information on Heflin is from *Indochina Interchange*, Vol. 4 no 1, March 1994.

In November 1993 Sihanouk offered the PDK a role in the government, or as his special advisers, if they ended violence, dissolved their army, and gave up their territory. In April 1994 he again proposed reconciliation, and in May 1994 he proposed new elections in order to include the PDK in the National Assembly, in fact offering to set aside the constitution and the 1993 election. In order to rule as he had in the 1960s, Sihanouk needed a coalition of as many mutually hostile factions as possible, particularly after FUNCINPEC under Ranariddh began to cooperate closely with Hun Sen, and he had been urging negotiations to bring the PDK into the government. In an interview with the *Far Eastern Economic Review* in June 1994, Sihanouk admitted he wanted political power, and blamed Hun Sen for blocking him. This provoked a long public answer from Hun Sen in which he rejected concessions to the PDK, and also rejected constitutional changes to give more power to Sihanouk, and which had been proposed to him by Prince Sirivudh.<sup>11</sup> In the context of Cambodian society and political history, Hun Sen's bold stance against Sihanouk could be seen as unforgivable *lèse-majesté*.

These tensions came to a head on 2 July 1994 when Prince Chakrapong and Sin Song were accused of leading a plot to overthrow the government. At the request of the King and Queen, Chakrapong was allowed to leave the country, but Sin Song and several others, including a group of Thais alleged to have been hit men, were arrested, later tried and most of them found guilty, although Sin Song escaped to Thailand. Another former security official, Sin Sen, was tried, sentenced and imprisoned, but released after an appeal by Sihanouk. This second coup attempt by Chakrapong and Sin Song, coming in the middle of the tensions surrounding policy toward the PDK and Sihanouk's evident desire for increased power, no doubt convinced Hun Sen that his domestic enemies, including some princes and their allies, would stop at nothing to remove him.

On 7 July 1994, in the face of their inability to defeat the PDK, and the PDK refusal to lay down their arms and join the new government on any but their own exaggerated terms, the Cambodian government voted a law outlawing the PDK. This was opposed by King Sihanouk, and in the Assembly by Sam Rainsy and Prince Sirivudh. After passage of this law, relations between Rainsy and Sirivudh and the government became increasingly strained until both were finally removed from the National Assembly.

#### The Sam Rainsy and Prince Norodom Sirivudh incidents

An example of unsuccessful opposition activity, also reminiscent of events in the 1960s, is the case of Mr. Sam Rainsy of FUNCINPEC, who was appointed Minister of Finance following the election. He is an emigré, son of Sam Sary who was involved in an American-backed plot against Sihanouk in 1958, and spent most of his adult life before the election in France. Within and outside of the Assembly he continued to attack the CPP, and implicitly his own party FUNCINPEC, ignoring the coalition. His attacks concentrated on corruption, political harassment and policy toward the PDK. He strongly objected to the law outlawing the PDK. Finally, in October 1994,

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<sup>11</sup>. This appeared in *The Nation* (Bangkok), 24 June 1994, "Sihanouk and Hun Sen at opposite ends", text of Hun Sen's letter to Sihanouk concerning Sihanouk's desire to assume power.

Prime Minister Ranariddh expelled him from FUNCINPEC, and then on this basis the Assembly voted to deprive him of his seat.

There have been objections from Western groups and press that the expulsion of Sam Rainsy was illegal, and an example of violation of human rights. The situation, however, is far from clear, and is a good illustration of the chaotic state of the legal system (see detail in Appendix IV, Human Rights).

#### A new political party

After expulsion, Sam Rainsy formed a new opposition political party named 'Khmer Nation' (*Cheat khmer*) with its founding dated to 9 November 1995, Cambodia's National Day, and with the bust of King Jayavarman VII (1181-1220?) as its logo. The name of the party together with that date is a challenge to the very legitimacy of the government, and the tactic, reminiscent of his father 30 years ago (see Appendix I, Historical Appendix), suggests that Rainsy is more interested in provocation than meaningful parliamentary opposition. One of the themes of his party program is an extreme chauvinist position against Vietnamese, a very dangerous policy. The government has denied the legality of this party and on 7 December 1995 ordered it dissolved and its offices closed, claiming that no new party may yet be formed because a law on associations and political parties has not yet been passed by the National Assembly. Mr. Rainsy and his supporters argue that formation of new parties is permitted by the Constitution, and that they have followed the procedures for party formation in the UNTAC electoral law, which is still valid.

It is true that Article 42 of the Constitution permits the formation of political parties, but this right is "to be determined by a law", and there is not yet a law on associations which would prescribe how a political party should be organized and registered. As for the UNTAC law, its status in the view of some Western legal advisers in Phnom Penh is unclear. It still appears in a collection of "Laws in Force" provided by the UN Center for Human Rights, although its validity is sometimes denied. The presence of the US, Australian, and Canadian ambassadors at the launching of Rainsy's party, from which the rest of the diplomatic corps (excepting a Thai representative) abstained, indicates that they accept, at least in this instance, the continued validity of the UNTAC law. It may also be interpreted as pressure on the government in favor of Sam Rainsy.<sup>12</sup>

It is piquant that when Ranariddh argued that Rainsy could be expelled from FUNCINPEC and the Assembly on the basis of the UNTAC electoral law, supporters of Rainsy argued that the UNTAC law was no longer valid, but that law mysteriously acquires new validity for them when its provisions can be used to legitimize formation of a new opposition political party.

Following the Sam Rainsy affair came the events surrounding Prince Sirivudh, King Sihanouk's half-brother, who was Secretary-General of the FUNCINPEC party and Foreign Minister from July 1993 to October 1994, when he resigned at the time of the expulsion of Sam Rainsy. He was a close associate of Sam Rainsy, and like him had spent most of his adult life in

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<sup>12</sup>. See Jason Barber and Ker Munthit, "Details sought on KNP staff's deaths", *Phnom Penh Post*, Vol. 4, No. 23, 17-30 November 1995, p. 3.



France. On the night of 17 November 1995 Sirivudh was suddenly placed under house arrest, transferred briefly to prison, and then to confinement in the Ministry of Interior, accused of having made threats to kill Second Prime Minister Hun Sen.

There seems to be no doubt that he made such statements, and there is a tape recording containing the threat on which his voice has been clearly identified. Those who object to his arrest say first that he was only joking, and that he was known for making thoughtless rash statements. This is not a serious argument. Threats to kill a President or Prime Minister are illegal in many countries, and in the charged political atmosphere of Cambodia, with the known hatred for Hun Sen among some of the royalists, and given the country's history of political violence, the authorities certainly had justification to act against Sirivudh.

The second objection to the treatment of Sirivudh concerns its alleged dubious legality in terms of the laws now in force. This is a stronger case. Sirivudh was entitled to parliamentary immunity, and thus his first detainment was possibly illegal. After the Assembly voted to remove immunity however, there could be no further objection to his comfortable detainment in the Ministry of Interior while preparations were made for his trial, which seemed to be proceeding within legal norms. An extra-judicial solution was reached in an agreement between King Sihanouk and Second Prime Minister Hun Sen by which Sirivudh would go to France and promise to abstain from further political activity. Later, a trial convicted Sirivudh in absentia of conspiracy and illegal possession of weapons and sentenced him to ten years imprisonment<sup>13</sup>

In the eyes of many foreign observers, including diplomats, NGO personnel, and journalists in Phnom Penh, these three incidents, Rainsy's expulsion from the National Assembly, the prohibition of his new political party, and the arrest and exile of Prince Sirivudh, together with the aggressive tone of Hun Sen's recent speeches, in one case praising an attack by a crowd of villagers on the offices of a Phnom Penh newspaper, signal the end of Cambodia's fledgling democracy, after an alleged "Phnom Penh Spring" following the 1993 election.<sup>14</sup>

Such a conclusion is unfair and exaggerated. Not only is 'Phnom Penh Spring' inappropriate, except for those who could accept a mere facade of electionism as evidence of democratic politics, but Hun Sen has adequate reasons to believe that plots against him are being organized. One coup was launched just after the election, one more was nipped in the bud in 1994, and a member of the royalty, Prince Chakrapong, was involved in both. The US began wooing the rival CPP faction, even though its leader, together with Sin Song, Chakrapong's ally in both plots, had been blamed for pre-election violence. Throughout 1994 King Sihanouk quite obviously had been trying to

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<sup>13</sup> *Phnom Penh Post*, Vol. 5, No. 5 (8-21 March 1996), pp. 6-7.

<sup>14</sup> The expression "Phnom Penh Spring" was used by Michael Hayes, "The politics of fear: what's next?", *Phnom Penh Post*, Vol. 4, No. 24, 1-14 December 1995, p. 1. This abusive comparison of the arrest of a prominent politician who had threatened to kill a Prime Minister with the Soviet invasion of Czechoslovakia is a good example of the efforts by foreign interests to demonize the Cambodian government.

undermine Hun Sen, and then, to end the Sirivudh affair, the King wrote a letter whose tone can only be termed obsequious, which suggests admission that the statements attributed to Sirivudh were meant seriously, and that he may have been involved in a wider plot.<sup>15</sup>

Hun Sen, in his most arbitrary moves, is behaving according to the norms of traditional Cambodian politics that he, and most of his colleagues, learned under Sihanouk in the 1960s, and under the US-backed Khmer Republic in the 1970s. These norms were legitimized when the international negotiations insured that Sihanouk would return as king or chief of state, and they were legitimized again when Sihanouk engineered a coalition which was outside, and in part contrary to, the UNTAC election. Cambodian politicians today are acting according to the only model they know, and if Hun Sen were replaced by his rivals, they would act in the same way. Interference from foreigners will not have any beneficial effect, for the Cambodians have too often seen in the last 15 years that the foreign powers have their own agendas which have nothing to do with democracy in Cambodia.

### **Government and Administration (including an assessment of the relative political and economic power of the central versus provincial administration)**

The constitutional government structure is ministerial, as it was before 1970, with the executive branch (Prime Minister and other ministers) chosen from among the deputies elected to the National Assembly, or from among other members of the parties represented in the Assembly.

Cambodia is divided into 19 provinces (*khaet*) and 2 independent municipalities, Phnom Penh and the port of Kompong Som (Sihanoukville). The provinces are further subdivided into districts (*srok*), of which there are 170, 1,544 communes (*khum*), and 12,538 (*phum*). The total population in mid 1995 was estimated at between 10 and 10.5 million [all figures from 1996].

Since provincial administration is subordinate to the Ministry of Interior, with both province and district officers centrally appointed, there is an inbuilt superiority of the central over the provincial administrations. This superiority may be weakened by inability of the central authorities to effectively exercise their superiority because of lack of control due to distance, because of personal authority of some provincial governors due to popularity, efficiency, or fear, or because a distant province, in particular on the Thai or Vietnamese border, or on the coast, has some economic advantage which enables it to ignore central authority. Thus local independence may be real, but is informal, not institutional. Effective imposition of central authority may be similarly circumscribed (an interesting illustration of center-province relations came out in the story of the "Kompong Speu prison 'scandal'", see below). Throughout recorded history central control over provinces has been weak, and the degree of centralization which exists was introduced by the French.

In 1979 the People's Republic maintained the pre-1975 division of provinces, but with a new system for appointment of provincial officials. Province administrations were called People's

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<sup>15</sup>. The exchange of letters concerning Sirivudh was published in *Phnom Penh Post*, Vol. 4, No. 25, 15-28 December, 1995, p. 12.

Revolutionary Committees, and the persons corresponding to governors were the presidents of those committees, who were often the Provincial Party Secretaries as well. According to the 1981 constitution all levels of local administration were supposed to be chosen in local elections, direct for the lowest (*commune/khum*) level, and indirectly by representatives of the next lower level for district and province. In fact such elections were rarely held, perhaps not at all for district and province, and province chiefs were appointed by the central Party organization in Phnom Penh.

In principle, the PRK provincial administration was the most decentralized of all historical regimes, and nearly all provincial officials, even if their appointments were decided in Phnom Penh, were local inhabitants, not bureaucrats regularly shifted from one place to another. For many provincial inhabitants this meant greater formal status than they would have achieved in any pre-revolutionary regime, and this was particularly notable in the northeastern provinces of Ratanakiri, Mondulakiri, Kratie, and Stung Treng, where for the first time some province and district chiefs, both of People's Revolutionary Committees and of Party organizations came from local minority ethnic groups (see below under "Ethnic minorities"). Provinces also had more economic autonomy under the PRK than previously.

#### Post-UNTAC provincial organization

When the new Royal Government coalition was formed in 1993, it adopted the principle of proportional sharing of provincial governorships among the political parties. This was implemented in December 1993. Each of the two large parties received ten, not counting the municipality of Phnom Penh. In each province there are also three deputy governors, the first deputy chosen from the other party than the governor, and the second and third deputies each from a different party. Thus the four posts are equally shared among the two parties except in Kompong Chhnang and Kratie where the third deputies are from the BLDP. In only five of the FUNCINPEC provinces, has the former SOC governor remained as Deputy.<sup>16</sup> Because the administration remains almost entirely CPP, the new FUNCINPEC governors and deputy governors have little independent power, and remain dependent on the pre-existing administration. As of October 1995 the two major parties in the government, FUNCINPEC and the CPP, had agreed to greater sharing of power in local administration, with a 50-50 division of district (*sruk*) chiefs and staff.<sup>17</sup>

Rather than simple-minded recitation of the buzzword 'decentralization', reformers should look carefully at the decentralization which already exists. An example is the Governor of Battambang, whom Western interventionists have desired removed since UNTAC because of the despotic nature of his regime. He runs the province very independently, and it is possible that the central government would find it difficult to remove him, even if it desired. Of course sufficient military force is available, but the violence involved might be counter-productive. Removing him

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<sup>16</sup>. The list was published in *Phnom Penh Post*, 2/27, 31 December 1993-13 January 1994, p. 3, with a note that the relevant decrees were dated 18 and 20 December 1993.

<sup>17</sup>. Jason Barber, *Phnom Penh Post*, Vol. 4, Number 21, 20 October-2 November 1995, p. 1.

means increasing the degree of central control of a province, and decentralization would increase his authority.

A similar problem exists with respect to logging and deforestation, perhaps the single greatest danger to Cambodia. Would strong local, or central, control be most effective in halting deforestation? No *a priori* answer is possible, but assuming equal good will, strong central authorities would probably be more effective against the logging interests involved.

The next elections which are planned are for commune (*khum*) officials, scheduled for 1997, and National Assembly elections due in 1998, according to the constitution. Remarks by leading political figures suggest that for the 1998 National Assembly election they are planning to continue the coalition which they have put in place, which means that the election will be organized to assure that outcome.

Much secrecy surrounds the planning for the 1997 *khum* elections. There is a committee in the Ministry of Interior charged with drafting an electoral law, and a draft has been completed but not made public. According to this draft (and other drafts are said to be in existence) the election will be for *khum* councils of between 7 and 21 members depending on the population of the *khum*, and voters will choose between lists of candidates, voting for a full list without being able to choose individuals from different lists.

At present [December 1995] there is concern among non-CPP Cambodians and foreign observers that the 1997 election will be organized by the Ministry of Interior, as in the available draft law, not by an Independent Election Commission. This is a matter from which foreigners should abstain. There is room for advice on election organization, and it might be welcomed if offered as non-partisan technical expertise. In the Cambodian situation an 'Independent Election Commission' would be meaningless. If 'independent' meant non-CPP, it could only mean anti-government, and the government will certainly not turn the election over to its enemies. Organization of elections by ministries of the interior is not unusual, and they do not usually attract outside interference. On this question the Cambodians should be left to themselves.

### **Public participation and citizen involvement in political decision-making**

Except for a very few NGOs, this is virtually non-existent, in accordance with Cambodian tradition (see further below on NGOs). The PRK instituted a policy of sending all officials except those of ministerial level 'down to the base' once a year to disseminate government policies and to gather information about local conditions for use of the central government. This meant two weeks to a month living with the people in rural villages. It was taken very seriously, an example being the revision of the PRK attitude to Sihanouk after reports from the 'base' beginning in the late-1980s that he was increasingly popular among the rural population. This practice was discontinued after 1991, and it is likely that few of the members of the National Assembly spend much time on visits to their constituents, particularly since they were not chosen as individuals by the voters, but by the political parties.

## **Freedom of speech, the existence of an independent and free media and its situation**

### Before UNTAC

Before the changes brought about by the Paris Agreement of 1991 and the ensuing supervision of Cambodia by UNTAC, there were only two short periods of relative press freedom, (1) from the end of World War II in 1945 to 1955, and (2) between the overthrow of Sihanouk in March 1970 and the gradual repression which set in again after 1972 under the Khmer Republic government of Lon Nol. Between 1945 and 1955, the first period of constitutional multi-party government before independence in 1953/54, each political party published its own newspaper, and other papers in Khmer, French, Chinese and Vietnamese were published by non-party groups as well. Censorship was very light, each party proclaimed its ideology and goals and attacked its rivals.

This situation of relatively wide freedom began to narrow when Sihanouk's *Sangkum* party won all seats in the National Assembly in 1955. During that election campaign some editors were arrested and their papers closed. Thereafter it was very dangerous to publish material contrary to the wishes of Sihanouk, and there were numerous cases of newspapers closed and journalists arrested. With the overthrow of Sihanouk in 1970 there was an explosion of writing and publishing, both of newspapers and novels, for the first two years of the Khmer Republic, after which traditional oppression again set in.

After the establishment of the PRK in 1979 the first new newspaper to appear was that of the army, entitled 'Revolutionary Army', followed by *Kampuchea*, the organ of the National Front, and in 1985 *Pracheachun* ('Citizen'), the official newspaper of the Party. A fourth newspaper, *Phnom Penh*, was published by the Phnom Penh municipality from 1980.

A few more papers, with official backing, appeared after 1989, the best known being *Nokorbal pracheachun* ('People's Police'), published by the Ministry of State Security. Studies by the Information and Education Component of UNTAC commented on the high quality and commitment of many of the editors and writers on these papers, which contrasts with the scurrility of much of the post-UNTAC press.<sup>18</sup>

### The UNTAC period

With UNTAC, 1992 and 1993 saw a veritable explosion of new newspapers, some of very short life, most of very low quality, and nearly all representing the views of small groups or an individual publisher, and nearly all probably financed by one or another political or business figure.

In 1992 the State of Cambodia government promulgated a press law, which was repudiated by the SNC and by UNTAC. This was not because it was a 'communist' law, for it defines the

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<sup>18</sup> For example, Information/Education Division, July 30, 1993, "Cambodian Media in Overview"; Information/Education Division, November 26, 1992, "Background Information on Kampuchea Newspaper"; Tim Carney, Valentin Sviridov, John Marston, "Conversation with Pracheachon Newspaper Editor", July 22, 1993; Information/Education Division, "Report on Pracheachon Newspaper", January 8, 1993.

media as operating in a free market, but it was feared that it might permit the SOC to block opposition media and pre-empt UNTAC's dominant position in relation to the media. UNTAC incorporated its own press regulations, which were quite harsh, including penal sanctions, into its law on criminal procedure. One of its victims was Mr. Sam Rainsy. He was refused permission to broadcast one of his election speeches because it was considered too racist in his attacks on Vietnamese.<sup>19</sup>

### Post UNTAC

The UNTAC law has now been superseded by a new, more moderate Press Law, without penal sanctions, promulgated on 18 July 1995, after much debate in the National Assembly and press criticism. The first draft contained many provisions considered too harsh, and these were deleted, in part, apparently, as a result of advice from the UN Centre for Human Rights. According to their report, the law as passed "contains many positive elements...such as prohibition of pre-publication censorship, confidentiality of sources, freedom of information...a code of ethics for the press and the prohibition of incitement to violence". Some criminal sanctions which had been in the first draft were deleted and jail terms withdrawn from the law.<sup>20</sup>

In spite of its moderation, the new Press Law has been harshly criticized in some of the local media, particularly in the English-language press run by foreigners. The main objection seems to be that it permits punishment for publication of news affecting 'National Security' and 'political stability', while these concepts remain undefined, thus in theory permitting arbitrary sanctions against journalists under that pretext. This objection would carry more weight if the same objection was made against the Convention on the Rights of the Child, in which Articles 13 and 14 permit restrictions of the respective rights of the child "for the protection of national security" and "in the interests of national security" respectively (on this convention see further below). In any case, many Western democracies place limits on news considered to affect 'National Security'. As for 'political stability', it should be noted that UNTAC media authorities taught Cambodians that "if information is used in such a manner as to incite or destabilize the political environment, then of course we have to explain that they wouldn't be allowed to use [it]".<sup>21</sup>

The constitution promulgated in 1993 gives freedom of speech and media, and there seems to be little fear among ordinary people of speaking as they please in private situations. That is, there does not seem to be fear of an omnipresent political police, as there was under Sihanouk in the 1960s and under the PRK in the 1980s.

As of December 1995 over 40 newspapers were being published, with, however, a total circulation of only about 100,000. Most of the Cambodian population is not interested in the press

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<sup>19</sup>. *Phnom Penh Post*, Vol. 2 No. 9, 23 April-6 May 1993, p. 4; "Rainsy Bemoans Censorship, UN Cites Racism". for more detail see Appendix IV, below.

<sup>20</sup>. UN Centre for Human Rights, "Report to the Secretary-General", "Human Rights Questions: Technical Cooperation in the Field of Human Rights", September 1995, p. 12.

<sup>21</sup>. See note 18.

or in the question of press freedom. They have other priorities, such as food, education, and security. There is almost no provincial press, and almost all news is from Phnom Penh. There is little advertizing, and newspapers must depend on financing from the political figures for whom they make propaganda. Obviously, there are far more newspapers than the country needs or could support if the papers were dependent on market success. Most of the young journalists have little education. They have imagined that the press freedom introduced with UNTAC meant that they could quite literally write whatever they pleased, however slanderous or inaccurate, not realizing that even the most democratic countries impose rules on what may be published. There are three journalist associations, the original Khmer Journalist Association formed in 1993, a splinter group called the League of Cambodian Journalists formed in July 1995, and the subsequent Independent Association of Journalists formed of those who constitute the support of Sam Rainsy.

The foreign press in Cambodia does not always set a good example, in spite of a pretentious attitude toward their own role as a model for Cambodians. Since 1992 the Cambodian government has shown far more tolerance toward foreign-owned foreign language media than is permitted by laws in many western democracies, such as Sweden and France. Although the Press Law in force in 1992 prohibited foreign ownership of the press, no action was taken against foreign-owned papers which appeared, such as the *Phnom Penh Post*; and the new Press Law of 1995 says nothing about foreign ownership, except in the Khmer language press. The leading foreign newspaper is the *Phnom Penh Post*. It was established in 1992 by two American former employees of Asia Foundation. It has adopted an American-style of sensationalist writing, and too often its headlines are in themselves editorials.

An example of covert editorializing was in an article in their first issue on Vietnamese within Cambodia. Interviewing only representatives of FUNCINPEC, BLDP, and PDK, whose anti-Vietnamese positions were well known, *Phnom Penh Post* repeated without comment their assertions, such as, "UNTAC is ignoring the reality of Cambodian history", it was the Vietnamese presence which was causing the war, "we have to get our country back from foreign occupation", "we just cannot mix with these people...the Vietnamese are warmongers", "at stake here is the issue of a 'Cambodian' Cambodia, and not a 'Vietnamized' Cambodia where foreigners were to be given the right to take part in the elections".<sup>22</sup> There were no opinions from Cambodians or foreign Cambodia specialists known to be more sympathetic to Khmer-Vietnamese friendship. Before the 1993 election *Phnom Penh Post* had an anti-SOC editorial policy, and since the election and coalition government of the former SOC and FUNCINPEC, *Phnom Penh Post* policy has been against the government, and in support of dissidents.

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<sup>22</sup>. Sara Colm, "Factions, UNTAC Debate Electoral Law", quoting respectively Ieng Mouly of the BLDP, Veng Sereyvuth of FUNCINPEC, and Khieu Samphan of the PDK, *Phnom Penh Post*, 1/1, 10 July 1992. See also Sara Colm, "What's in a Name? A Not So Neighborly Debate", *Phnom Penh Post*, 1/9, 6-19 November 1992, p. 9.

Its most prominent writer, Nate Thayer, who is also a correspondent for the *Far Eastern Economic Review*, an American-owned magazine, produces the most unbalanced commentary, giving sympathetic treatment to the opposition, including the PDK, and publishing reports of dubious accuracy. From the *Review* exaggeratedly negative information on Cambodia reaches the world's press and serves to undermine the country's normalization. Thayer seems to be writing to a pre-planned agenda, although it is difficult to say whose agenda. During 1995 he treated the US ambassador Charles Twining, and UN Special Representative for Human Rights Justice Michael Kirby as too lenient on the government.

The new private press has often been outspoken to an irresponsible degree, and the government has taken several editors to court and imposed harsh fines, imprisonment and closure of papers aimed at silencing excessive criticism. In 1994 three journalists were murdered and in 1994-1995 there have been over a dozen prosecutions of editors publishing libellous material, or material allegedly endangering national security. Most of the prosecutions were based on the UNTAC law. Presumably, further charges against journalists, if the new law is followed, cannot result in imprisonment. There is still some confusion, however, as to whether the UNTAC law, which is not a press law *per se*, but which outlaws slander and incitement to certain crimes, is superseded and void, or whether it is still in force alongside the new press law.

The authorities have sometimes overreacted against the local press, the most serious incident being Hun Sen's expressed sympathy for the sacking of a newspaper office by people from a village development project which he sponsors, because they felt the paper had slandered Hun Sen and their village. In this case Hun Sen behaved precisely like Sihanouk in the 1960s. There is, however, general agreement among western press experts in Phnom Penh that the local press, especially the so-called opposition papers, often publishes material which would be in violation of laws on slander, racism and incitement to violence in western democracies, and would not have been tolerated under the UNTAC press regulations. It would be a mistake for foreigners to continue to take uncritically the side of this irresponsible press. In spite of occasional heavy-handed reactions from the authorities, there is more press freedom today than at any time since 1955.

### **The situation and development of the civil society (domestic non-governmental organizations, labour unions, trade associations, women's organizations, etc.)**

Article 42 of the constitution gives the right to create associations and political parties, although "this right is to be defined by a law", and such a law has not yet been passed by the National Assembly. Nevertheless, as of December 1995 estimates of the number of NGOs varied between 80 and 100 for domestic organization and around 200 for international NGOs. This includes several which are women's organizations, but there are no labor unions in Cambodia. Many of the NGOs are Human Rights organizations. It should be noted that most of the domestic NGOs are totally dependent on foreign funds.



Most of the NGOs have been formed since 1992, arriving with UNTAC, although a few, including some of the most important ones came early in the 1980s and worked successfully with the PRK/SOC.<sup>23</sup>

The NGOs which developed along with UNTAC included both local special interests seeking patrons and foreign organizations with a mission. Many of them were frankly anti-PRK/SOC before the election, and maintained a confrontational stance when the election ended with the CPP still in a strong position within the coalition. The anti-Government attitude continued as FUNCINPEC under Prince Ranariddh moved into close cooperation with Hun Sen's CPP. Besides problems of political orientation, the new foreign NGO groups sometimes came with agendas reflecting perceived problems in Western societies which may not be relevant in Cambodia, or with a belief that nothing had been accomplished in any area of development under the PRK/SOC in the 1980s, or with total ignorance of Cambodia.

One example of ignorance was the case of a foreign NGO proposal to revive traditional weaving by women with workshops set up in Buddhist Wats. Not only was the proposal for women to work in such a manner in close proximity to monks contrary to Cambodian mores, but traditional weaving had already revived on its own soon after 1979, and had no need of a foreign NGO for support.

There is severe lack of coordination in NGO activity. In December 1995 a Draft Report on NGOs was being prepared to make it possible to determine how many exist, how they were registered, who funds them, and what they do. There is much overlap in their activities, and some of the local NGOs have clearly been set up to provide bureaucratic employment for their staffs (one local student organization, partly funded by Asia Foundation, has a permanent Vice-President who is a graduate doctor from the medical school with eight months further medical training in Australia, but who does not work as a doctor because he refused to accept a post in the northeastern province of Kratie, and has not tried to work in medicine in the capital).

One study of 23 women's NGO's concluded that "donors have confided tens of thousands of dollars...to people within organizations that have little to no general experience with organizations or management and little to no specific experience in the programs they are trying to manage...[they] are working under the guise of a NGO in spite of the fact that they have no members, no boards and it appears accountability to no one but the donor who seems to be quite anxious to spend money in Cambodia...not unusual to find organizational leaders that cannot describe in any detail what they do, how they do it, for whom they do it and how much it costs". "Unlike in the West, very few of these organizations started out as volunteer action, the salary was available immediately...UNTAC personnel seemed to have suggested to many individuals that starting an NGO would be a good thing to do...with rare exception are they not actively seeking salary support". "It appears that potential funding--read salaries--is very much a motivating factor for starting an organization". "One

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<sup>23</sup>. Among these 'old' NGOs were OXFAM, PADEK, ACR, Church World Service, Redd Barna, although there is no attempt here to establish a complete list.

organization recently received \$13,000 for a \$2,000 project...the rest...for salaries and overhead". "There is an ongoing concern about the continued brain-drain on the government institutions, first by the I[n]ternational O[rganizations] and now the local NGOs that pay so much more". The author of the report believed that proportionally the same results would come out of wider study of more NGOs.<sup>24</sup> For unseemly squabbling among NGOs involved in legal training see below, "Defense Lawyers".

Some of the new NGOs registered with UNTAC, some with the Prime Minister(s), some with the King, some registered only at the Province level, and in guise of registration some NGOs produce a paper with no more than a note by an authority that the application "has been noted". Naturally the relevant Cambodian ministries, in particular Interior and Plan, are concerned, realizing that many of the NGOs are to some degree political, and not knowing the sources of their funding.

It is widely recognized, both by the Cambodian authorities and by responsible NGOs and international organizations that order and coordination need to be imposed on the NGOs, in particular by a new 'Statute for NGOs', which at best would force them all to re-register with one central authority, which could decide where there was too much overlap, where an NGO was merely a facade for narrow personal interests, and whether the project planned was feasible or desirable in Cambodia. As of December 1995, however, there was also lack of coordination in working out the new statute, with three different drafts being prepared, one by the Council for Development of Cambodia (CDC), one by the Foreign Ministry and one by the Ministry of Interior [\*As of April 2011 such a new NGO statute had still not been finalized\*].

In these circumstances the NGOs do not form the nucleus for a development of civil society. If foreign funds dried up most of them would collapse with nothing to show for their activities. Only a few NGOs represent elements of genuine civil society, that is, organized by local people to advance a local project and funded by contributions from their members. Such are the ethnic associations of the Chinese, the Vietnamese, and at least one Cham-Khmer Islam organization, and possibly the organization of the urban squatters undertaken under the auspices of SKIP [Stiftung Kinderdorf Pestalozzi, interview with Ms. Huy Rumduol]. There the squatters were organized into co-operatives, with bank accounts, to which members made regular contributions. This has resulted in a large federation of squatters with its own independent funding from members' contributions, separate from all foreign inputs.

Some of the old NGOs show awareness of these weaknesses, and are instituting localization in their operations, phasing out foreign personnel, and setting up projects designed to become self-supporting. One example is OXFAM, which supports over 30 local NGOs, avoiding the political ones, and they accept no more than 20% of their funds from any foreign government. Their staff is increasingly local, with international staff now cut back to four persons.

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<sup>24</sup>. "The Good, The Bad and the Ugly, A Review of Women's NGOs in Cambodia", Prepared for Oxfam-Quebec by Judith Hushagen, Consultant, April 1995.

Noteworthy changes in personnel in two high-profile organizations established at the time of UNTAC which will improve possibilities for coordination and progressive activities were the replacement of Julio Jeldres by Lao Mong Hay at the Khmer Institute for Democracy which may now change from a largely propaganda institution to one oriented toward real civil society work, and new leadership at the Preah Sihanouk Raj Institute to counter an emigré from the United States who arrived in 1993 with an intense anti-Vietnamese prejudice and the belief that nothing had been accomplished in Cambodia during the 1980s. By March 1996, further leadership conflict at this institute seemed to have caused its collapse.<sup>25</sup>

Many of the NGOs give 'human rights' as a focus of their activity; and the proliferation of human rights NGOs dates from 1992-93, when most of them emerged, often encouraged by foreign advisers and money as focuses for anti-government (SOC) activity to influence the election. The confrontational stance toward the government has continued.

The human rights activities started with education using illustrated booklets to teach about the Universal Declaration of Human Rights, either provided by UNTAC, or based on such booklets produced by UNTAC. When read literally, the Universal Declaration is at best a statement of hope for an ideal world, in application dangerously utopian, and many of its prescriptions would be considered as oppressive and as violating the human rights of custom in many of the world's societies. Besides this, most of these booklets produced for Cambodia were greatly, even dangerously, oversimplified, and could easily give readers a belief that the international convention gave them absolute, even anarchic rights against the political authorities. Thus there was no hint that the right to travel was everywhere subjected to restrictions concerning possession of travel documents, permission from destination countries, or countries transited, or possession of sufficient funds. One international press adviser in Phnom Penh stated that young journalists would wave a booklet and allege that they had an absolute right to print whatever they wished, without regard for libel, falsehood or incitement to violence.

Some of the Human Rights NGOs issued membership cards to persons who had completed their courses and were encouraged to show these cards to police to resist abuses of authority. There was a danger that some might consider that these cards from organizations with obvious foreign backing conferred a kind of immunity from authority. One case of villagers reportedly telling their Commune chiefs that "there is someone else saying that we do not have to obey you...we go to them instead" was discovered by a SIDA team.<sup>26</sup>

The first UNTAC booklets were so inappropriate that some of the old NGOs refused to implement a UNTAC Human Rights project to prepare trainers to teach primary schoolchildren

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<sup>25</sup> Jason Barber, "Academy falls apart with bitterness", *Phnom Penh Post*, Vol. 5, No. 6 (22 March-4 April 1996), p. 3.

<sup>26</sup> Jan Ovesen, Ing-Britt Trankell, Joakim Öjendal, "When Every Household is an Island, Social Organization and Power Structures in Rural Cambodia", Preliminary Draft Report, November 1995, p. 48.

about the International Declaration of Human Rights. Those NGOs considered that the material was inappropriate for Cambodia, the trainers would be of low quality, and the end result absorbed by the school children might be meaningless, if not dangerous.

There was wide agreement in December 1995 among international workers in the field, including at least one lawyer in an organization concerned with human rights, that most of the Human Rights training material was inappropriate in rural areas of Cambodia, that is, where 80-90% of the population lives. The rights to vote, or to travel, or to change nationality, or to periodic holidays with pay, are meaningless, and even those rights which might in some sense be relevant to a poor farmer in rural Cambodia if presented in an appropriate way, become meaningless when taught literally using booklets with illustrations set in a prosperous urban milieu.

An encouraging development is that four of the prominent Human Rights organizations whom we met in December 1995 said that they are shifting their activity from the general public to police and military, to inculcate respect for legal procedures and human rights principles in carrying out their duties. These organizations say that main cause of abuses by police and military was ignorance, certainly credible given Cambodia's history. They claim an encouraging degree of success, and report that now the police and military request courses in human rights principles for their personnel. Of course, there are cynics among the Cambodian political elite who allege that it is superficial and has no effect on police practices. This remains to be seen. Certainly the exposure of police and military to instruction in human rights and legality is better than leaving them in ignorance, and some of it will certainly be absorbed. On human rights day Cambodian national television featured one of the prominent activists, Tun Saray and his course on human rights for police and military. Among the prominent human rights activists Tun Saray is the only one who is not an emigré, who worked with the PRK from 1979 until imprisoned in 1990 for involvement in the formation of a new political party before permission had been given.

There is increasing awareness among some international donors and the more thoughtful NGOs that human rights education must be part of village level development projects which enable the villagers themselves to define their most important needs and to act to secure them. Most of the Human Rights complaints are related to conflict over land (see below, "Human Rights Violations") Indeed, the NGOs with most experience in village economic development do not hesitate to declare that spreading appropriate technical knowledge is more valuable than teaching about theoretical human rights. The Village Development Councils which some NGOs have initiated may be a good beginning, in which political education starts in open voting to select village committees, or when a village decides to build a school and contribute to a teacher's income, or water users' associations which must plan with participation of farmers to allocate irrigation water and negotiate with higher authorities about canal design.

The rural credit schemes of several NGOs may also serve to teach basic rights through village level economic planning, although more coordination in this area might be desirable, for there are at least 30 different organizations implementing rural credit schemes, with different rates of

interest and different types of village organization. Most started in 1993-1995, and there is as yet no impact study.

#### Separation between party and state

Party and state have not been separate in Cambodia since Sihanouk's *Sangkum* won all seats in the 1955 election, with perhaps the exception of 1970-72, after Sihanouk's overthrow and before the Khmer Republic was consolidated under Lon Nol. Under DK (1975-1979) the central leadership of the Party was the only functioning political institution; and in the PRK the state and party were explicitly and transparently merged, after the manner of Soviet-style socialism.

As noted above, the two major parties in the current government are bureaucratic parties, and in coalition they tend to control the state in a single-party manner. Appointments of senior officials, military officers, and perhaps civil servants at all levels have been made to reflect relative party strengths. Although according to the constitution members of the National Assembly may not be public officials, there has not been in Cambodia a strong conception that the state apparatus, the bureaucracy, should be separate, serving with equal efficiency any elected government; indeed there is no conception that the bureaucracy should serve, not rule. This has been equally true in Thailand and Malaysia, and was only interrupted in Thailand, at first with violent reactions, by the election of 1988, won by a party representing capitalists, which installed, exceptionally, an elected civilian prime minister.

The change to a genuinely separate party and state can only come in Cambodia when there are parties formed outside the bureaucracy, with interests outside the state apparatus, strong enough to challenge the existing coalition. Several small parties of this type competed in the 1993 election, but without success. One more party of this type, Mr. Sam Rainsy's Khmer Nation Party (see above) has recently attempted to organize, and if successful it could be the first step toward a more genuine pluralism, although Rainsy's record, and the identities of the persons forming the party committee suggest that it will be a clique party of former officials, not a party representing any genuine segment of Cambodian civil society.<sup>27</sup>

Nevertheless, Cambodian political traditions, which favor coalitions and are against party-state separation, may inhibit the change, even if the next elections are totally free. General Dien Del, Honorary President of the Liberal Democratic Party, a splinter group from the BLDP, has said that his party planned a Party Congress to prepare for the 1998 election, but "the party was not yet ready to become an opposition, and would prefer to cooperate with other parties to serve the country".<sup>28</sup> Several members of that party, a group with more or less higher education and experience abroad, have already made their own entry into a grand coalition, serving as advisers to Minister of Interior Sar Kheng.

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<sup>27</sup>. See Jason Barber and Ker Munthit, "Former Minister jumps over to new Rainsy party", *Phnom Penh Post*, Vol. 4, No. 23, 17-30 November 1995, p. 3.

<sup>28</sup>. *Phnom Penh Post*, Vol. 4, No. 17, 25 August- 7 September, 1995, p. 4, Ker Munthit, "...while another political faction rises".

### The role of the military in politics

Before the war of 1970-75, Cambodia's military were politically rather weak, first because the French had not developed a strong Cambodian military force, and second because Sihanouk wished to prevent the military from becoming a threat to his rule, as in the end they did. That military, the army of Lon Nol, was thoroughly destroyed by 1975, and many surviving officers executed by the authorities of DK, under which an entirely different type of military force evolved.

With the overthrow of DK in 1979, their military retreated to camps along the Thai border to be revived with US, Chinese, and ASEAN aid, while the new state within Cambodia had hardly any military of its own and at first relied on Vietnam for defence. Because of the continuing war with foreign supported domestic enemies, development of the military after 1979 was of first importance and absorbed far more wealth than the country could afford. As in the communist systems which the PRK emulated, and which provided aid, however, civilian control of the military, at the top, was the rule. Military conscription was instituted, and by 1991 the Phnom Penh government may have had 150,000 men under arms.

In accordance with the Paris Agreement, the Phnom Penh government at first agreed to demobilize 70% of its forces, and had the UNTAC intervention resulted in peace, that would have been an excellent occasion to drastically reduce the military, both in numbers and in influence. UNTAC, however, was not given a mandate to impose peace, and was unable to act decisively against the PDK, not even exert sufficient pressure to force Thailand to cease the business and military relationships which kept the PDK strong. Therefore, demobilization of PRK forces was never completed. After the election of 1993 and the formation of a new government, a strong army was still necessary against the PDK. This was achieved partly by unification of the Phnom Penh army with the armies of FUNCINPEC and the KPNLF, and the granting to their officers of rank equivalent to the Phnom Penh army. This in itself led to rank inflation, which was encouraged by Sihanouk who incontinently distributed generalships and stars to all whom he wished to favor. In June 1993 he issued a decree proclaiming Chea Sim, Heng Samrin, and Hun Sen as five-star generals, and giving his son Chakrapong four-star rank.<sup>29</sup> The Sihanouk-led reconciliation process was the first step in the inflation of rank which ultimately resulted by early 1994 in an army with 2000 or so generals.

The army unification was never perfect, and in August 1994 a spokesman for the General Staff said "there are three factional armies, and each one goes their own way...the consequence is inflation in ranks and in the size of the army".<sup>30</sup>

Of course in a capitalist country, in particular one which has newly re-emerged into capitalism after years of egalitarian penury, and in a society which values social distinctions above all, officers cannot be expected to live hardly better than privates, and it was no more than expected

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<sup>29</sup>. Announced in the local press: *Reaksmei kampuchea*, 23 June, 1993.

<sup>30</sup>. John C. Brown, "Warning as R[oyal]C[ambodian]A[armed]F[orces] tables reform plan", *Phnom Penh Post*, Vol. 3, No. 16, 12-15 August 1994, p. 24.

that all the new officers should insist on and receive special compensation and privileges commensurate with their ranks. This meant overt salaries plus tolerance for extra-legal income and authoritarian behavior.

The military, however, has little direct role in politics or government. Except for the Ministry of Defence, there are no serving military officers in the government, and few of the ministers have had any military experience at all.<sup>31</sup> The power of the military lies in the very large proportion of the budget allocated to them to combat the 'PDK', a role which gives them great *de facto* political power in front-line provinces, in particular Battambang, Banteay Meanchey, Siemreap and Kampot. This problem cannot be overcome until the threat of the PDK is removed, something which requires more international intervention to insure compliance from Thai military and business figures who profit from deals, particularly in logging, with the PDK. The first step would be to persuade the Thai to open the border to international surveillance, for example by the International Committee of the Red Cross with respect to displaced persons. The Cambodian army's own logging adventures must also be stopped.

Nevertheless, most observers are agreed that the PDK political and military threat to the government has been declining year by year, and there is a possibility that their threat could be reduced more rapidly, but is in fact being nurtured by some government military who see it as a guarantee of wealth and influence for themselves.

Although the government has announced a desire to decrease the size of the army, little demobilization has been carried out. The first reports that an army reform was underway came in August 1994, followed by the "sacking of some generals and the demotion of more than 1,300 others" in September. It was said that the total of 1,909 generals had already been reduced to 600, with a final target figure of only 91. Ranariddh and Hun Sen each gave up one of the stars conferred by Sihanouk right after the election, setting an example which forced all others to give up one star, and affecting all the ranks down the line. Of course, it would have been too much to expect that Ranariddh and Hun Sen give up their military rank entirely; moreover, it would have been interpreted as an insult to Sihanouk. The reform plan is based on a three year period to reduce the total forces from 130,000 to 70,000.<sup>32</sup> A year later Ranariddh was quoted as offering similar figures for total forces, and as saying that the number of generals had been reduced to less than 200, and that figure was generally accepted by observers in Phnom Penh in December 1995.<sup>33</sup>

The problem of demobilization is complicated by that of phantom soldiers, a device used by officers to pocket allowances for non-existent troops. Thus the total number of troops is unknown to

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<sup>31</sup>. The strictly honorific generalships given by Sihanouk to Ranariddh and Hun Sen may be ignored.

<sup>32</sup>. John C. Brown, "Warning as R[oyal]C[ambodian]A[armed]F[orces] tables reform plan", *Phnom Penh Post*, Vol. 3, No. 16, 12-15 August 1994, p. 24; Tom Fawthrop, "Cambodia begins major overhaul of army", *The Nation*, 30 September 1994, citing "French military sources in Phnom Penh", and Cambodian military sources.

<sup>33</sup>. In a report on "Vital Issues", dated 3 August 1994, published in PPP 4/17, 25 Aug-7 Sept 1995, pp. 8-9.

observers outside the army, and estimates vary wildly. Because of the listing of phantom troops by some provincial commanders, sudden conscription is sometimes undertaken in villages when an operation must be mounted against the PDK. It would be interesting to determine which of the three factional sections of the army is most guilty of corruption, illegal conscription, and human rights abuses against the population, but during our stay in Phnom Penh it was impossible to discover any such analysis.

Demobilization policies, whatever the degree of sincerity of the authorities, will for a considerable time be constrained by employment possibilities. Urban unemployment in Phnom Penh is very widespread, and in rural areas land may not be available to absorb a large number of people released from military or civil service. Sudden demobilization could easily create more problems than an inflated army.

The military and police, in particular in the provinces where proximity of PDK forces gives the military a large role, have been guilty of numerous instances of arbitrary violence and questionable arrest. Too often they have enjoyed impunity from prosecution.

In the budget for 1996 defense expenditure is just over 20%, and the government expressed hopes that expenses for security and defense could be reduced from 5% of GDP to 3% by 2000.

## **B. Overview of the judicial system and the rule of law**

The legal and judicial system as a whole reflects the same uncertainties as the regulations governing establishment of political parties discussed above. As one responsible official of an international organization involved in these matters said, "no one can say for certain what [law] is valid".

In 1992, on the assumption that "the structures, laws and judicial institutions of Cambodia do not fully comply with the requirements of the Paris Agreement...and in any case are inadequate to ensure public order and human rights", UNTAC, in the name of the SNC, promulgated "Provisions relating to the judiciary and criminal law and procedure applicable in Cambodia during the transitional period" (dated 10 September 1992; for a summary of the pre-existing legal and court systems (see Appendix III, Court and Law Appendix). Fortunately, for the preservation of some continuity from the existing structure, the Civil Administration Component of UNTAC used the PRK Decree Law no. 27 of March 1986 as a basis for their new law.<sup>34</sup>

The court system was simplified with respect to the number of persons required to constitute a court, and an Appeal court was inserted between the local courts and the Supreme Court. The death penalty was abolished, but sentences for other crimes were not greatly at variance with those in PRK criminal law. The maximum lapse of time between arrest and arraignment was shortened from 30 days to 48 hours, and maximum pre-trial detention was fixed at six months, against seven

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<sup>34</sup>. [\*An English translation of this PRK law by Michael Vickery, "Criminal Law in the Peoples Republic of Kampuchea", is in *Journal of Contemporary Asia*, Vol. 17, No. 4 (1987), pp. 508-18.\*]



months under PRK law. A provision reflecting the ideological preconceptions of UNTAC was Article 28, par. 2, "Penal texts...may no longer refer to offences based on opinion or ideology, and are accordingly abrogated". PRK laws had never included such offences, but this article and the absence of any other relevant provision, effectively decriminalized treason or offences against the state.

The most important immediate effect of the UNTAC law was that many prisoners had to be released because their detainment was not in conformity with the new rules. Some of them were political detainees, but many were common criminals who went back to crime in the favorable situation of a city suddenly filled with affluent, inexperienced foreigners and millions of dollars of loose money. Of more lasting effect were the provisions relating to the media. Incitement in speech or writing to any of the specified crimes, to national, racial, or religious discrimination, publication of disinformation, defamation, and libel, could all be punished with imprisonment (see above in section on the press).

The position of UNTAC was that after the formation of the SNC, no Cambodian faction had the right to pass laws, but the SOC did pass a new Criminal Procedure Code, which is still in force, in January 1993. There has been some confusion over which law takes precedence, but the court system today [1995] is based on the law of January 1993, which, however, stipulates that the courts would follow "the laws in force, and laws and provisions adopted by the Supreme National Council". It establishes provincial and municipal courts, a Military Court, an Appeal Court and a Supreme Court. The last three are in Phnom Penh and have jurisdiction over the entire country. The Military Court judges military offences, "those committed by military members in the army and which concern military discipline or the property of the military armed forces". If a member of the military commits a "normal criminal offence, he/she shall be prosecuted by the provincial/municipal court".CHECK NOTE All of the personnel of the courts are appointed by a decree at the request of the Minister of Justice.

According to the law, the Supreme Court accepts complaints against the judgements of the Appeal Court, but considers only errors of law, not of fact; and appeals against acquittal shall not be made. Although cases have been taken to the Supreme Court, there are no clear rules for its functioning, and a case taken to it seems to end with a new trial. No one can state clearly what the Supreme Court's mandate is, in part, at least, because of confusion introduced into the structure of the judiciary by the new Constitution of 1993.

In its Chapter IX on the Judiciary, the Constitution does not change the structure of the courts, and in Article 110 says that "justice is rendered...in conformity with procedures and laws in force". Two new institutions established by the Constitution, however, affect the legislative process, the choice of judges, and functioning of the Supreme Court. They are the Supreme Council of the Magistracy and the Constitutional Council, taken over respectively from the pre-1979 Royal Constitution and the Constitution of the Khmer Republic (1970-75), and deriving indirectly from French practice.

The important functions of the Supreme Council of the Magistracy are to "propose to the king the nomination of judges and prosecutors in all jurisdictions", and to exercise discipline over judges. The Constitution stipulates that the Council is presided by the king and according to the law establishing the Council its other members consist of (1) The Minister of Justice, (2) the President of the Supreme Court, (3) the Chief Prosecutor of the Supreme Court, (4) the President of the Appeals Court, (5) The Chief Prosecutor of the Appeals Court, (6) three judges chosen by the body of court judges. The law defining the Council as outlined above was passed on 22 December 1994, but it has not begun to function [December 1995].

The Constitutional Council has not yet been formed. It is defined in Chapter X of the Constitution as consisting of nine members serving for nine years, three each appointed by the King, by the National Assembly, and by the Supreme Council of the Magistracy. One of the duties of the Constitutional Council is to approve the Internal Statute of the National Assembly and all organizational laws passed by the National Assembly (Article 122), which means that it could be argued that none of the organizational laws so far passed, nor the working of the Assembly itself, is valid. This has in fact been argued by one of the appointees of King Sihanouk.<sup>35</sup> The Constitutional Council also decides questions of constitutional interpretation, thus depriving the Supreme Court of that duty.

The government argues that the delay in forming the Constitutional Council is the lack of qualified persons. Its members should be "chosen among high personalities holding university degrees in law, administration, diplomacy, economy, and who have had important professional experience". Indeed, Cambodia does face a shortage of persons with those qualifications. Opponents of the government, on the other hand, claim the delay is due to fear by the CPP that they might not be able to secure a majority of supporters on the Council.

King Sihanouk has already made his appointments. They are Nhiek Tioulong, Chau Sen Cocsal Chhum, and Pung Peng Cheng. All three are old Sihanouk courtiers from the 1960s, with Tioulong, who is also the father-in-law of Sam Rainsy, being the most influential. In a strict interpretation of the qualification for appointment it might be decided that none of them qualifies, in particular Nhiek Tioulong, the author of the opinion that no law of the National Assembly is yet valid.

Partly because of its own history, and partly because of the UNTAC intervention, Cambodia is in a legal morass with conflicting bodies of law and constitutional provisions which add to the confusion. The two new legal institutions established by the constitution, the Supreme Council

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<sup>35</sup>. *Phnom Penh Post*, Vol. 4, No. 20, 6-19 October 1995, Matthew Grainger, "King's adviser bemoans lack of Constitutional Council". According to Art. 122 any law may be submitted to the Constitutional Council by the King, the Prime Minister, the President of the Assembly, one tenth of the Deputies, or the courts. 'Organizational laws' (French *loi organique*), are enabling acts authorizing and specifying the modalities of something which has been established in general terms in the Constitution. An example is political parties, authorized by the Constitution, but subject to enabling legislation. The Khmer texts say simply 'subject to a law'.

of the Magistracy and the Constitutional Council, have been adopted blindly from a foreign system without consideration of their applicability. The 'independent' membership which they assume would be difficult to find in a situation where 'independent' means anti-government or anti-CPP. The Constitutional Council provides a means for King Sihanouk to intervene indirectly in affairs from which he is barred by the constitution.

In this situation miscarriages of justice may not be imputed to ill will of the authorities until the laws and constitution have been rationalized. Well-intentioned foreign influence should take the form of technical expertise in the process of rationalization, not the carping and preaching which have prevailed in the last two years.

#### The legislation process

According to the constitution of 1993 (Art. 91), the Deputies and the Prime Minister(s) may introduce bills. After passage the law is signed and promulgated by the King (Art. 93), and becomes effective ten days after promulgation in Phnom Penh and twenty days later in the rest of the country.

Most bills have so far been initiated by the executive, and reportedly, when in one case the assembly brought its own bill on a subject also initiated by the government they did not know how to proceed. Debate has often been lively, but final passage is usually by a large majority. This, of course, reflects the circumstance that there is no opposition party, and all are members of the government coalition.

#### Access to laws and regulations by officials, judges and public

At the National Assembly, because of insufficient seats (30), there is no public access to debates, only by invitation. The Hansard record of debates is kept on computers, tape recordings and videos; and the record is printed in a very limited edition. Besides the complete record of debates, printed copies of each member's interventions are prepared for checking by the member before the final record is made. The public does not have access to the Hansard, which, according to a SOC law still applied, is secret, as are all parliamentary documents.<sup>36</sup> Some of the debates, however, are televised, and after laws are promulgated they are printed in cheap paper editions which are sold on newsstands. It is thus easy for interested citizens to acquire copies of the laws which are in existence.

#### The political independence of the judges

According to the constitution, the judiciary is independent (Art. 109), this independence is guaranteed by the King (Art. 113), no body of the legislative or executive branches may exercise any judicial power (Art. 111), and judges may not be removed (Art 114). The Supreme Council of Magistracy, which is supposed to contribute to judicial independence by proposing the nomination of judges and exercising discipline over them has not convened. The political independence of the judges has been questioned because they have been appointed by the Minister of Justice according to the law of January 1993, and nearly all are CPP members. Part of the problem lies in the

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<sup>36</sup>. Visit to National Assembly building and Hansard section, plus conversation with adviser Brad Adams on 5 December 1995.

objective structure of Cambodia's political society. Even when questioning CPP dominance of the justice system, and demanding that at least one judge be appointed by FUNCINPEC, Prince Ranariddh acknowledged that it was FUNCINPEC'S own problem because "it had no judges".<sup>37</sup>

Perhaps more important in guaranteeing judicial independence would be salaries on which judges could live. The UNTAC law recognized this, saying (Art 1, par. 3) that "judges must receive suitable training and be remunerated adequately to ensure their impartiality and independence", although UNTAC made no provision to ensure that this was possible.

At present judges are paid around \$30. per month, a mere token, whereas some defenders working for foreign organizations are paid \$300., which is a liveable salary, although still incommensurable with the prestige which a judge needs. One foreign trainer of defenders recalled having commented to a provincial judge about his fine car, intimating that the source of the purchase price might be dubious. He answered that if he were to move around on a cheap motorcycle no one would respect him, and he would be unable to accomplish any work. Given the importance of status symbols throughout Cambodian society, that is probably true, meaning that in some cases necessary work cannot be carried out without corruption.<sup>38</sup>

#### Defense lawyers

The UNTAC law which superseded the PRK laws in this respect states (Art. 10) that, "the right to assistance of an attorney or counsel is assured for any person accused of a misdemeanor or crime"; and (Art. 7), stipulates that "during the transitional period, any Cambodian holding a Diploma of completion of secondary school education [except executive-level officials or elected officials] may represent an accused person in court", and, continuing a practice of the PRK laws, "accused persons may ask a member of their family to represent them, regardless of education". This same article of the UNTAC law authorized the establishment of a Bar Association, and stipulated that "any person holding a degree equivalent at least to the university law degree or having five years of legal or judicial experience at a sufficiently high level of responsibility may be admitted to practice law".

Since then the Royal government has promulgated its own Bar Association law, on 15 June 1995, and a Bar Association has been formed, with a membership of 42 lawyers.

The first reason for the unusually low qualifications allowed for defenders and even lawyers was the penury of legally educated or trained personnel who reappeared after the replacement of DK by the PRK in 1979. Estimates range from three to ten persons.<sup>39</sup> During the 1980s rapid

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<sup>37</sup>. *Phnom Penh Post*, Vol. 4, No. 21, 20 October-2 November, 1995, Ker Munthit, "Ranariddh targets CPP's control of judiciary"; p. 3.

<sup>38</sup> Lest someone evoke the oral tradition that Khieu Samphan, in the 1960s, gained respect by refusing, even when he was a minister in the government, to accept a luxury car and using a cheap motorcycle, such admirable behavior today might be associated with the extreme egalitarianism of Democratic Kampuchea.

<sup>39</sup>. Three was the number I heard from Ministry of Justice officials in the 1980s, ten is the number which appears in a statement by the Cambodian Defenders Project about their work.

training programs were set up for legal personnel. Of course, those trained during the 1980s were trained in legal practices of the Socialist bloc, mainly by teachers from Vietnam and the German Democratic Republic, and they might therefore have been unacceptable in the new structures. Some, however, have continued, and are participating in the new training programs.

Together with the penury of trained personnel, Cambodia after 1991 was faced with new problems requiring legal skills. One area of widespread complaints now, and in which increasing litigation may be expected, is conflicting claims to land, which could not arise when land was state property, before privatization began in 1989. Nor, until the leap into a free market economy, was it important that "micro-entrepreneurs have no access to legal help when their businesses fail".<sup>40</sup> Arrest and imprisonment for debt was rare in a non-market economy with few luxuries and no private real estate. Robbery was rare when few had possessions or cash worth stealing, when class differences were too small to excite envy, and when private possession of weapons was unknown. Extortionate road blocks were not set up when nearly all vehicles belonged to the state. The transformation of the political system and economy has meant a rapid increase in criminality and legal conflict of all types.

To meet the increasing needs for defence lawyers, several foreign agencies have instituted training projects for defenders, while French government aid goes to training for judges and to the Faculty of Law of Phnom Penh University. Thirty new judges recently completed training [December 1995], although they had not yet taken up posts. Most of them were former civil servants, some with a law background, including two with pre-1975 law training in Cambodia. Since the first graduates of the Law Faculty will not be ready to practice before 1997, other organizations have set up courses to train defenders who are allowed to represent accused person in the courts, although they are not qualified as lawyers.<sup>41</sup>

The first public defender's office staffed with trained lawyers was the Cambodia Defenders Project, begun in December 1994. In February 1995 they graduated 25 defenders, including five women. Prerequisite for the course was one year university education. A very small number had university degrees in subjects other than law. Most of the group were people who had spent many years in the refugee camps near the Thai border, and many had received American legal training at Site 2. Only 25% of them had remained to work in the PRK/SOC after surviving DK. Under the Cambodia Defenders Project they receive \$300. per month.

Another local NGO, Human Rights Vigilance of Cambodia, reported that they trained defenders who had passed the Baccalauréat Part 2 secondary diploma, and who received salaries of \$50-60 per month.

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<sup>40</sup>. "The Cambodian Defenders Project".

<sup>41</sup>. French advisers work in the Ministry of Justice; money comes from USAID to the "court Training Program, the Cambodia Defenders Project, CADEDAS, ADHOC, LICADHO and Vigilance. In addition there are judicial training projects being done by UNHCR and the Task force on Human Rights"(from *Phnom Penh Post*, Vol. 4, No. 20, 6-19 October 1995, p. 8, Matthew Grainger, "The Uneven scales of Khmer justice")

The Ministry of Justice was at first not enthusiastic about using the defenders in the courts, and a draft bill for a Bar Statute would have prohibited all but lawyers from practising law. Lobbying by the defenders and their supporters secured an amendment permitting defenders to continue their work until 1997, during which period it is expected that additional training will enable a number of them to qualify as lawyers according to the Bar Statute. As of December 1995 thirteen defenders' applications for a Lawyer Training Course had been accepted and seven rejected. The course will last 2-3 years, and the concept has been accepted by the Minister of Justice.<sup>42</sup>

Besides the question of professionalism, the objections of the Ministry of Justice to some of the defenders may have been their political background, training at Site 2, a KPNLF stronghold, where they were trained to consider the government in Phnom Penh as their enemy, and where the American lawyers teaching them were prepared to overlook some legal niceties in the interests of developing an anti-PRK/SOC force. When American lawyers were assigned to teach basic law in the camps of the Coalition Government of Democratic Kampuchea on the Thai border, they explicitly recognized that considerable leeway had to be allowed. As one of the lawyers said, "Many of these things [police practices in the camps] fly in the face of what we believe about the law...But...we came here as a 'liaison'. Who are we to challenge basic Khmer concepts of justice and fair play?". Those 'liaison' lawyers were attempting to introduce a new code, "the backbone" of which is "an allowance for Khmer tradition ... 'accordance with Khmer practice'", for "We don't want to force anything on the population here", certainly not, at least, the standards which UNTAC and the post-UNTAC foreign agencies believed they were entitled to impose on Phnom Penh.<sup>43</sup>

By 1997 it would seem that Cambodia's needs in lawyers may be nearly satisfied, at least quantitatively, when the first class graduates from the Law Faculty, the defenders have qualified as lawyers, and others return from legal education abroad. The American trainers at the Defenders Project are pleased with the record of their defenders, and also with the effect the defenders and their approach to their work has had on judges and the court system.

Their work has meant that many people without money or influence have been able to secure legal advice and defence. The first grants of bail were due to their efforts, and a number of acquittals have been achieved, although they note that some cases have been decided against them when, in their view, the law was entirely in their favor.

The results may only be judged, however, when the foreign training and financing have ended and the new lawyers are forced, not only to defend the poor and ignorant, but to earn a living. At present defenders, depending on their NGO, are paid from \$50 to \$175 to \$300 per month from foreign funds, of which the highest amount is a good Cambodian salary in Phnom Penh today, and in

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<sup>42</sup>. Information provided by the Cambodia Defenders Project.

<sup>43</sup>. Tom Nagorski, "Wanted at Site 2: Law and Order", *The Nation* (Bangkok), 9 June 1989, p. 25. Since the formation of the post-election government in 1993 at least one of the lawyers quoted by Nagorski, Ken Bingham, moved, along with his students, to teach law in Phnom Penh under the auspices of Asia Foundation.

principle they are not allowed to ask fees from their clients. This will certainly change when the foreign funds end, particularly given the mores of Cambodian society in which all professional training is evaluated by those receiving it and their families in relation to the wealth and prestige which ensues.

The dangers of legal greed have already appeared in at least one publicized case. When one newspaper editor was on trial there was competition among three defender NGOs to take his case, and one of them was accused of demanding large sums of money to defend him. On that occasion an "NGO expert" was quoted as saying, "this incident highlights the dilemma in the set-up structure of NGOs. It is good to encourage them to compete against each other for funding so that they will be efficient...but sometimes such competition can become counterproductive".<sup>44</sup>

### The prison system

Prisons are administered by the Ministry of the Interior, but "many prisons seem to be virtually autonomous units under the control of local Police Commissioners". The ministry has direct control over T3, within Phnom Penh, Prey Sar near Phnom Penh, and T5 in Kompong Cham. The other 21 prisons are under effective day-to-day control of local Deputy Commissioners of Police to whom Prison Directors report. Prisons are seen as an extension of the police. The Ministries of Justice and Health are also involved.

According to a report by the UN Centre for Human Rights, "Cambodia's prisons are in a state of crisis". Among the reasons alleged for the crisis are the age of the prisons, some built in the 1930s, or because they are "hasty constructions erected to house the sudden rapid increase in prison numbers during the post-Khmer Rouge period", a most peculiar assertion implying that the state of justice declined after DK had been replaced by the PRK in 1979. Further prejudice and ignorance is seen in the beginning of the report in the astonishing statement that "the systematic use of prisons in Cambodian society is only very recent...as if the Cambodians themselves have had very little interest in building such places". Prisons, the report says, are the products of foreign occupation, the French period and "more recently during the Vietnamese occupation" (p. 2). Thus, "they are probably representative to many Cambodians of abhorrent and alien regimes and therefore unworthy of much consideration". Aside from this nonsense, the report presents a reasonable picture, generally confirmed by other observers.

During the UNTAC period from March 1992 to September 1993, it was discovered that "Cambodian prisons did not come close to meeting basic international standards". There was shackling, solitary confinement, lack of exercise, many instances of deaths related to malnutrition. In July 1993, soon after the election, King Sihanouk called prison conditions deplorable.

In November 1994 there were approximately 1,900 prisoners in 24 Cambodian civilian prisons, which, interestingly, is an extraordinarily low number by international standards. The prisoner-to-population rate is 22/100,000, against a world average of 106 (p. 13). The low number

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<sup>44</sup>. Derek Francis, "NGO infighting as Nomn freed", *Phnom Penh Post*, Vol. 3, No. 16, 12-25 August 1994, p. 10. CHARTO was quoted as paying its defender \$175.

reflects three characteristics of the Cambodian criminal justice system, (1) inherent weakness of formalized systems of public enforcement and adjudication, (2) reliance on informal self help to resolve disputes, (3) lack of public and enforceable standards of conduct (p. 4). "Cambodians have little prospect of going to prison because means to put and keep them there are lacking". If courts were made more efficient, prison populations would increase, and conditions deteriorate. The UNTAC intervention drastically reduced the number of prisoners, but prison population rose again to something over 2000 today. Cambodian authorities are not secretive about the numbers, and there is reason to believe that numbers will continue to grow (p. 11).

Prison registers are "strictly in conformity with the Standard Minimum Rules for the Treatment of Prisoners", but they are usually the only information kept in the prison and often badly kept, and lack information on next of kin. None of the prisons kept comprehensive records on their prisoners. (p. 17)

"Most Cambodian prisoners are perpetually hungry", 78% complained they did not have enough to eat. (p. 28). The Siemreap prison was described as notably good (p. 48-9), and the report included a picture of a vegetable garden in the Kompong Cham prison.

It seems that the privatization of state duties as part of Cambodia's Great Leap into a free market system may be returning the prisons to conditions not seen since the days of DK. In October *Phnom Penh Post* reported that in the Kompong Speu prison "one prisoner is dead, seven more hospitalized, and 90% of the rest of the prison population here are sick after being fed rancid rice and weak soups for months". Besides malnutrition the prisoners were said to be suffering from beriberi and tuberculosis. Many could not walk and some were observed to be blind. This situation came about after provincial authorities "privatized the prison food contract in May to two businessmen at...around \$1,000 a month". Previously prison food was the responsibility of the prison chief, who said "previously, prisoners grew their own vegetables, getting exercise in the process". In his 16 years as a prison chef, "I have never had so many prisoners sick". He said this was the only prison with privatized feeding.<sup>45</sup> Stories like this have not been heard since refugees crossed the Thai border telling of their experiences under DK, a comparison made by a Khmer human rights worker who blamed the second deputy governor, a FUNCINPEC appointee, who had a "dim view of prisoners...killers and robbers" needing to be "strictly controlled". He said the food contracts were privatized "in accordance with the Ministry of Economy and Finance because they asked us to make a profit for the province".

Although the report cited here noted some instances of improvement, prison conditions are still generally very bad, if only because of lack of resources. The budget allocates 1000 *riel* (US\$ .40) per prisoner per day for food, while a prison guard is paid 34,000 *riel* (US\$ 13.60) per month.

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<sup>45</sup>. Matthew Grainger, "Prison mismanagement brings fatal results"; and Matthew Grainger, Sou Sophannara, "Kompong Speu prison 'scandal'", *Phnom Penh Post*, Vol. 4, Number 21, 20 October-2 November, 1995, pp. 1, 4.



Besides the fact that 1000 *riel* may be insufficient, there is great temptation for prison officials and guards to appropriate some of the allowance for themselves.

Moreover, as in all societies, prisons are for persons who have committed offences deemed to merit punishment, and part of the punishment is living conditions worse than those of most of the population. In Cambodia imprisonment as a time for reform and rehabilitation is still such a distant dream as to be nearly inconceivable. Cambodia is full of law-abiding citizens who have no more for food than 1000 *riel* per day and who are forced to occupy housing hardly better than the prisons. Prison conditions which would be accepted as adequate in the rich democracies of Western Europe might look like very comfortable housing and a bountiful diet to many Cambodians.

Besides the official prisons, the existence of secret detention centers run by sections of the military has been reliably reported, especially in the Northwest war zone. Some of the detainees were accused of working for the PDK, others were apparently held for extortion, and several were arbitrarily murdered. It has been impossible to bring those responsible to trial.

### **C. Overview of the situation with regard to the respect for human rights**

#### **Ratification of international conventions**

Cambodia is a party to (1) "International Covenant on Economic, Social and Cultural Rights", (2) "International Covenant on Civil and Political Rights", (3) "International Convention on the Elimination of All forms of Racial Discrimination", (4) "International Convention on the Suppression and Punishment of the Crime of Apartheid", (5) "Convention on the Prevention and Punishment of the Crime of Genocide", (6) "Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", (7) "Convention of the Rights of the Child", (8) "Convention on the Elimination of Discrimination Against Women", (9) "Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees". The initial reports on these conventions, which were all due in 1993 or 1994, have not been submitted, but, as one lawyer attached to the United Nations Center for Human Rights in Phnom Penh remarked, the due dates were after an unreasonably short time following the election and formation of a new government, and the lack of reports should not yet be taken as a serious violation by the Cambodian authorities.

Cambodia has been a member of the ILO since 1969 and is a party to ILO conventions on "Night Work (Women) (No. 4)", "Night Work of Young Persons (No. 6)", "White Lead (Painting) (No. 13)", "Forced Labour (No. 29)", and "Employment Policy (No. 122)".<sup>46</sup>

Most of the goals of these international conventions are enshrined in the Constitution, but in many cases further enabling legislation has not been passed, and in any case full compliance at present is made difficult, if not impossible, by military operations and lack of security in some provinces, by poverty and lack of education which impedes understanding of some provisions of the conventions both by the population and by local authorities, and, in the case of the Convention on

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<sup>46</sup>. United Nations, Economic and Social Council, Commission on Human Rights, Fiftieth session, Agenda Item 19, E/CN.4/1994/73, 24 February 1994, p. 29.

the Rights of the Child, provisions which may be contrary to basic notions of family solidarity in Cambodian society.

### **The practical implementation of the conventions and the existence of human rights violations**

There are no doubt many types of human rights violations in Cambodia. The generalized poverty with wages and salaries which are meaningless, means that economic, social and cultural rights cannot be guaranteed. The state of political rights cannot be adequately judged until the next elections, for communes (*khum*) in 1997 and for the National Assembly in 1998. Only then will it be possible to see whether parties may freely form, campaigns be carried out safely, and the voters offered choices among freely contesting parties and individuals.

The Human Rights violations most often cited by international organizations and NGOs are those resulting from abuse of authority by military and police, illegal arrest and detention, extortion, checkpoints on highways to extort money, rape, and kidnapping for extortion. The main concern of the 80% or more Cambodians who are rural farmers might be conflicts over land rights, as was the case during UNTAC, to the surprise of its Human Rights Component.<sup>47</sup>

The high incidences of these violations occur in districts near battle zones, or where there are incursions by the PDK, that is, parts of Battambang and Banteay Meanchey provinces in the Northwest, Siemreap in the North, Kampot in the South, and in the western districts of Takeo and Kompong Speu near mountains where the PDK units hide. The violations in these areas are directly related to military insecurity and the presence of large numbers of soldiers, often untrained, badly disciplined, and unpaid. In the Northwest the incidence of military-related violations has worsened, apparently because of a change of tactics by PDK. They no longer try to gain political support, nor allow villagers to use PDK-controlled land, as previously occurred. Instead they burn entire villages which they suspect of supporting the government. Government forces have also adopted more violent policies, and no longer tolerate movement by villagers from government to PDK areas in search of land, food or forest products.

Elsewhere there seems to be general agreement that conditions have improved, at least slightly. In the central provinces roads have improved and become safer for travel, both from bandits or PDK, and from undisciplined soldiers. In conditions of general political and military tranquillity, arbitrary action by the police has decreased.

### **The situation of the rights of women**

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<sup>47</sup>. This detail appears in Ovesen, Trankell, Öjendal, p. 36, with reference to "Greve 1992", missing from their Bibliography, but undoubtedly referring to Hanna Sophia Greve, a pro-FUNCINPEC and very anti-SOC Norwegian jurist employed by UNTAC.

There are no formal, explicit restrictions in Cambodian culture, religion or law to equality of women and men, although there are ingrained habits which work to the disadvantage of women in certain situations.

In most Southeast Asian societies before the impact of Western colonialism, the situation of women in local law and custom was superior to that of women in most European countries before the end of the 19th century. In Thailand, whose society and culture very much resembled those of Cambodia, divorce was easy, there were no prohibitions on abortion, and a Thai term for 'illegitimate child' had to be invented in the early 20th century when the English-educated elite became imbued with Victorian mores.<sup>48</sup> The British and French laws imposed on the colonies degraded the situation of women with respect to disposition of their own persons in marriage and in relationships with their children.

The disadvantages to Cambodian women in French family law were still clearly realized in the 1960s. Many women, particularly rural women, refused to have their marriages registered in order to be able to freely leave their husbands if the marriage deteriorated, which custom permitted. Legitimacy of marriage, in the eyes of the Cambodian community, was determined by the traditional ceremonies, not formal registration with the authorities; and if the marriage was registered, divorce initiated by the wife was much more difficult. There was not a strong prejudice against remarriage of divorcées or widows. Their prospects depended on their personal qualities and wealth.

Within the family, the wife was often the dominant figure. It was accepted that she would hold the family finances, doling out cigarette money to her husband who had turned his wages over to her. Often business deals could not be concluded until the men concerned had consulted their wives.

Independence and high status of women were much more pronounced in rural than in well-to-do urban families. The semi-protected, semi-exploited position of the ideal female reflected in traditional literary works and moral texts, such as the much-cited *Chbab Srei* ('Rules for Women'), was not at all an accurate description of rural women, and hardly fitted the situation of most young urban women of the 1960s and 1970s, unless their families were extremely conservative and wealthy. Already before the war Cambodian women were becoming impatient with their lack of full equality, and were quick to take advantage of any new opportunities for freedom and equality which arose.

Because of the demographic changes of the DK years, that is the heavy death toll above normal, particularly among men, Cambodia was left in 1979 when the PRK was formed with an excess of women. This has been variously estimated, from a high of 60% to a more accurate figure of only 52.2% in the latest statistical study.<sup>49</sup> Whatever the statistical truth, many more households

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<sup>48</sup>. Sanitsuda Ekachai, "Following the law of reality", *Bangkok Post*, **Outlook**, 15 December 1995, p.31.

<sup>49</sup>. Royal Government of Cambodia, Ministry of Planning, National Institute of Statistics, "Report on the Socio-Economic Survey of Cambodia 1993/94", Phnom Penh, 1995.

are headed by women than was usual in pre-war Cambodia. This is not entirely the result of disappearance of males during DK, but also of the disintegration of the old rural society. It has been found that among the squatter communities in Phnom Penh, women are often the actual heads of households, even when living with a husband; and it is likely that many rural households are usually headed by women because husbands spend long periods elsewhere, usually in urban areas, earning an income. Probably many military households are also headed, in fact, by the wives.

Regardless of ideology, which being socialist insisted on gender equality, the new PRK was forced to give more attention to women because of need for their labor. There were more kindergartens and day-care centers, including at factories, than before 1975 or since 1991; and the number of pre-schools has declined from 689 in 1985-86 to 203 in 1993-94.<sup>50</sup> In rural areas the agricultural 'Solidarity Groups' (*krom samakki*), working on state-owned land, gave some protection to poor and widowed women, whose situation has declined since the introduction of free market policies and land privatization after 1989.

Besides this, the PRK offered more women opportunities to assume more responsible positions in political, administrative, and economic affairs than had been possible in pre-war Cambodia. At various times there was one woman minister, two deputy ministers, and one ambassador; and the women who held the posts of President of the Women's Association, the General Secretary of the National Assembly, the President of the Trade Unions, and the Director of the party newspaper, *Pracheachon*, had ministerial rank.<sup>51</sup> There were women province and district chiefs, where there had been none before, and at lower levels far more women than had been customary, over one-third of the lower level civil service positions. In 1985 five out of 30 full members of the Party Central Committee were women. Out of a total of between 40 and 60 judges in the PRK courts (2-3 per province) six were women. At the end of 1995 there were ten women judges, all from the CPP, thus reflecting improvement in the situation of women between 1979 and 1991. Judges with FUNCINPEC and BLDP background are all men. Every PRK delegation sent abroad had to include women, a practice which reflected influence from the socialist countries with which most of Cambodia's foreign relations were conducted.

The large intake of women into the civil service and the equality of salaries of the PRK meant that such women were no longer dependent on marriage for economic and social security. Often such women avoided marriage because a husband's salary would make no difference in their living standard, and they began to make independent lives resembling professional women in the West.

Compared with the prominence of women in prestigious positions under the PRK/SOC, it was notable that there was no female minister in the new Royal Government formed in 1993 after

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<sup>50</sup>. Edward B. Fiske, *Using Both Hands, Women and Education in Cambodia*, Manila, Asian Development Bank, 1995, p. 32.

<sup>51</sup>. The Secretariat of State for Women's Affairs, "Women: Key to National Reconstruction", Cambodia's Country Report, March 1995.

the election. There are only seven women in the 120-member National Assembly, three from CPP and four from FUNCINPEC, compared to 21 of 117 under PRK/SOC. Even the State Secretariat for Women's Affairs, one of the positions given to FUNCINPEC in the division of posts in the coalition, was headed by a man. This situation seems about to change [in December 1995]. It has been decided that the State Secretariat will be elevated to a Ministry, with a woman appointed as Minister.<sup>52</sup>

In the formation of new village-level organizations foreign NGO workers have noted that women who were formed in the PRK Women's Associations are the most articulate, confident and active speakers, while other women who did not have such experience tend to shyness.

A majority of the workers in most factories are women, a situation which began in the new textile factories in the 1960s, and continued into the PRK. It is not just an effect of war and revolution. A Phnom Penh textile factory in 1984 employed over 400 women in a work force of 700, the pharmaceutical factory 250 out of 400, the Kompong Cham textile plant 423 women and 393 men in 1988, and of the 12,000 employees of the Chup rubber plant a large proportion (50% in 1995 according to "Cambodia's country Report") were said to be women.<sup>53</sup>

The difference now from the 1960s is that they are not young single village women expecting marriage and return to domesticity after a short time, but independent women, often widows with children to support, who must earn their living without family help; or if married, they may be earning more than husbands working somewhere in an office. Noteworthy also was the post-1979 movement of former workers, including women, into management positions, partly of course, because pre-1975 owners and managers either perished or fled abroad. In 1984 two of the three-person management committee of Textile Factory No. 3 in Phnom Penh were women, former workers. One of them had obtained a high school diploma in 1964, but could neither find white collar work nor afford further education, and began work in the same factory, then privately owned, in 1966, and remained there throughout the DK period.<sup>54</sup>

A new law on Family and Marriage was passed under the PRK in 1989, and is still in force. This law prohibits polygamy, which was legal in Cambodia before 1975, and gives both parties equal rights in divorce proceedings. With divorce an equitable distribution of property is determined according to the needs of the wife and children. Children aged 14 and over are allowed to choose the parent with which they wish to remain, infants are left with the mother, and custody of other

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<sup>52</sup>. Heng Sok Chheng, "Women MPs content to let 'boys be boys'", *Phnom Penh Post*, 4/14, 14-27 July 1995; The Secretariat of State for Women's Affairs, "Women: Key to National Reconstruction", Cambodia's Country Report, March 1995. The elevation of the State Secretariat to Ministry and the appointment of a woman minister, Mu Sochua, was announced in March 1996 (*Phnom Penh Post*, 22 March-4 April 1996, pp. 6-7).

<sup>53</sup>. These are observations made by one of the authors in Cambodia in 1984 and 1988.

<sup>54</sup>. This is a good individual example of the social and economic disintegration which was just beginning in the 1960s.

children is determined by mutual agreement. Alimony and child support payments are provided for, but with the decline of purchasing power of the currency since 1989, they are worthless.

Although both parties are in principle treated equally, divorce proceedings, if not completely consensual, are very slow, requiring three efforts at reconciliation involving one after the other recourse to commune, district and provincial authorities. The question thus arises whether a woman seeking divorce against her husband's wishes would be susceptible to his pressure or violence at home during the waiting periods required. It was impossible to obtain other than anecdotal information on this point, but one woman who has been a responsible official since the 1980s said there were provisions for temporary separation to prevent such cases of domestic violence. [\*When a divorce is completely consensual, without problems related to children or communal property, it is very simple. The couple just goes to the office where the marriage was registered and 'de-registers' it.\*]

Most sources agree that domestic violence has increased with the leap into a free market economy and the destruction of the PRK social safety net after 1989. A new Women's Code has been prepared by the Secretariat of State for Women's Affairs which would make domestic violence against women a criminal offence. Although it is not expected that the Code will be passed as written, because its provisions conflict with the prerogatives of too many different ministries, there is optimism that the main provisions will be passed in separate bills under the different ministries, such as Health, Education, Social Action, Interior, etc.

Answers to the question, "What are the main problems facing women now?", differ according to whether the woman asked has spent all her life in Cambodia working under the PRK/SOC, or whether she is an emigré after 15-20 years in the West, or a foreigner. Foreign women and Khmer women with a bourgeois background and long residence in the West list domestic violence, rape, and prostitution as the main problems, whereas women who worked in Cambodia throughout the 1980s emphasize poverty, education, illiteracy, health, including contraception, and employment as the main problems, and only discuss violence, rape, and prostitution when asked. Of course domestic violence and prostitution are directly related to poverty and lack of education and rape seems to occur in direct relation to proximity of combat zones where there are large numbers of unruly soldiers and police.

In an interview after her appointment as the new Minister of Women's Affairs, Mu Sochua, identified the "priorities" as: "universal education; health care, looking specifically at safe motherhood, which includes access to primary health care, which includes the prevention of HIV/AIDS and STDs; economic development and others...lastly, we must look at access to legal services...". Two months later she said, "My four priorities are to ensure gender equality in

education, equal opportunity in economic development and free access to healthcare and legal services".<sup>55</sup>

The status of contraception in principle differs little from what would be expected in Western countries. There is no religious or strong male prejudice against the use of contraception, state policy does not prohibit it; and lack of access to contraception is directly related to level of education and wealth. When made aware of contraceptive possibilities, and able to procure contraceptive devices, Cambodian women are eager to use them. In rural areas there is still widespread ignorance about modern means of contraception, and also lack of money to buy contraceptive devices.<sup>56</sup>

According to the "Country Report" cited above, "there is no place where women can file a complaint against sexual harassment in the work place". In 1986, however, there was a case of a woman in the Foreign Affairs Ministry who took her chief to court for unfair dismissal resulting, according to one of her colleagues, from sexual harassment (see Appendix III, Court and Law Appendix). This is of course not sufficient evidence to conclude that the situation of women has declined in this respect.

Women appear disfavored in the educational system. Numbers of boys and girls are nearly equal (45% girls) in primary schools. Thereafter the proportion of girls drops in secondary schools to around 33%, and in tertiary institutions to 23% in teacher training and the Foreign Language Institute, 12-15% in the University and Medical School, and under 1% in the institutions for architecture, electricity, hydrology, law, and economics. The proportion of women teachers is also low, 32% in primary schools and 25% in secondary education. This is partly the effect of tradition and custom which has re-emerged since 1991. Girls are considered by many parents as homemakers and mothers who require only basic literacy, and are expected to be married not long after puberty. There is also pressure on girls to stay home to care for ageing parents.

Nevertheless, it is more difficult for girls who desire to enter tertiary institutions, all located in Phnom Penh, even if they have parental support, unless they are from wealthy families, because of the lack of suitable housing. Male students can live without payment in the Wats (Buddhist monasteries), but there is no comparable institution to accommodate women. Thus many girls are forced to renounce tertiary education because there is no student housing, and they cannot afford to rent private accommodation. The two solutions to this problem which might be proposed are construction of suitable housing in Phnom Penh, or establishment of provincial universities. The latter is not feasible at present, even if funds were available, because of the lack of qualified academic staff.

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<sup>55</sup> Mu Sochua: the long fight for women's rights", *Phnom Penh Post*, 22 March-4 April 1996, p. 7; Pang Yin Fong, "Mu's vision for a new Cambodia", *New Straits Times*, **Life and Times**, p. 1, 30 May 1996.

<sup>56</sup>. "KAP Survey on Fertility and Contraception in Cambodia", by Chhun Long Sann, Chan Soeung, Mey Meakea, Sofia Sprechmann, Helen Kerr, Cambodia, July 1995

Most of the special problems facing women are related ultimately to education and employment, and these are areas in which foreign assistance can have an impact. It should not be imagined, however, that simply keeping more girls in school longer is an answer. The appropriateness of the schooling needs to be examined. The type of primary and secondary schools which derive from a foreign model designed for a comfortable middle class may have little relevance for rural girls, unless the purpose is to turn them into urban bourgeois, or civil servants. This was indeed the purpose in the 1960s, but it is not a viable goal for the majority of rural girls today. They need education which can improve their life as rural farm women, which most of them are destined to remain. If they acquire literacy, they will lose it without material to read, and rural women are not going to amuse themselves reading the traditional *Chbab Srei* ('Rules for Women'). They need literature relevant to their life and work--about hygiene, child care, agricultural improvements, etc--something which requires a rural extension service to provide.

It may in principle be desirable to enable more girls to enter tertiary education, but at present even the small proportion who do, like their male colleagues, may find no employment relevant to their studies. Female university graduates today are being given sewing courses, as are other groups of unemployed women, by several NGOs, without regard to the number of seamstresses which the economy can support. [\*Added in 2011. There have been significant changes since this report was written in 1996. The rapid expansion of businesses with offices requiring secretarial and computer tasks, has opened up employment opportunities for women, who now frequent computer courses and in one relevant university, Pannhasastr, make up around half of the enrolment, studying business, management, etc. These new educational opportunities, leading to remuneration higher than in the past, sometimes higher than the salaries of prospective husbands, also influence women's ability to exercise increasing personal choice in marriage and family.\*]

### **The situation of the rights of the child and the implementation of the child convention:**

The UN "Convention on the Rights of the Child" (CRC) was signed by Prince Norodom Sihanouk as President of the Supreme National Council (SNC) on 22 September 1992; and Article 48 of the Cambodian Constitution of 1993 recognizes the CRC. As in the case of reports on other international conventions, Cambodia's report on the CRC, due in November 1994, has not been submitted. A draft was completed in July 1995, but not yet approved by the government.

There is lack of clarity concerning the legal position of children in Cambodia, and no specific laws define the age at which a person attains legal majority. The legal age to vote in 1993 was 18, and 18 is the age at which young men may be conscripted as soldiers. No law defines the age of consent for sexual intercourse, although the UNTAC code prescribed punishment for sex with persons under 16. For marriage the man should be 20 and the woman 18. Sexual exploitation of children and child trafficking are outlawed by the Constitution, but there are no further legal instruments to implement it, and there is general agreement that these problems, previously rare, are rapidly increasing.



Although there is no doubt good will among the authorities, as seen in the articles of the Constitution relevant to protection of children, and "Programme for Children and Women in Cambodia, Plan of Operations 1996-2000", adopted by the government in cooperation with UNICEF, some of the provisions of the CRC are radically contrary to Cambodian mores. As one UNICEF expert recognized, "the concept that children have rights is not self-evident in traditional Khmer society, which tends to see children as the property of their parents, who have every right to make decisions regarding the lives of their offspring". Contrary to Cambodian morality are those provisions which give the child independence against the family, such as Article 12 giving the child "the right to express...views freely in all matters affecting the child", Article 13, the right to "seek, receive and impart information and ideas of all kinds", Article 16, "no child shall be subjected to arbitrary or unlawful interference with his or her privacy...or correspondence...". It is impossible to know whether it is such provisions which are causing the delay in reporting, but efforts by the Cambodian state to enforce such provisions could result in strong reactions from the populace, [\*including accusations that these rights of the child resembled policies of the 'Khmer Rouge', who sought to diminish parental authority over children.\*]

Other provisions, such as the right "to benefit from social security, including social insurance", seem utopian, not only because of Cambodia's recent history and ruined economy, but because in the type of extreme free-marketism which has been forced on Cambodia, social insurance is one of the first things to be sacrificed. Certainly no Cambodian government could enforce all the provisions of the CRC on its population.

The CRC was obviously composed with the situation in the most socially democratic and progressive Western countries in mind. Although it may be held up as a general goal, attempts to rapidly implement all its provisions in Cambodia could damage such family and social solidarity as still exists, and which most foreign aid organizations in Cambodia claim to wish to preserve.

## **The situation of the rights of ethnic minorities**

### General conditions

Minorities, since 1979, constitute a smaller proportion of Cambodia's population than before 1975, less than 4%, according to a Ministry of Interior estimate. The Ministry of Interior lists 20 non-Khmer ethnic groups, plus a small category 'others'. The largest recognized minority is the Cham with over 203,000, then Vietnamese and Chinese with 95,000 and 47,000 respectively. Many observers believe these two estimates are too low. There are small groups of Thai and Lao, and fifteen groups who inhabit forest and hill regions in more or less isolation from lowland Khmer society. They constitute nearly all the population in the northeastern provinces of Ratanakiri and Mondulakiri, plus significant numbers in Kratie, Stung Treng, Preah Vihear, Kompong Thom, and smaller numbers in Siemreap and Pursat. The largest of these groups are the Tampuan with over 15,000 in Ratanakiri, the Kui with 14,000, mainly in Kompong Thom and Preah Vihear, and the

Jarai with over 11,000 in Ratanakiri. All of these numbers are of course uncertain estimates.<sup>57</sup> The Cham and Jarai speak Austronesian languages related to Malay and the languages of Indonesia, while most of the other upland minorities speak languages related to Khmer.

The PRK and SOC constitutions (1981-93) recognized the equality of all national minorities, the right to maintain their own cultures, literatures and languages, and the right to use the latter in court. This was probably one of the positive elements of Vietnamese influence in the PRK constitution. Likewise, the most important minority religion, Islam, followed by most of the Cham, seemed to enjoy the same freedom as Buddhism. Certainly there was no support for ethnic prejudice and discrimination in PRK laws or official statements.

In the 1993 constitution of the Kingdom of Cambodia, those safeguards of the rights of ethnic minorities have disappeared. The only language recognized is Khmer, and the status of other ethno-linguistic groups is in limbo pending the promulgation of a new law on nationality. The constitutional implication that all formal education will be in Khmer does not in itself represent oppression, if implemented in the right way. The minorities will need Khmer for interaction with Khmer society and officialdom which they cannot avoid. It was noteworthy that in a Cham village which we visited near Phnom Penh, site of the headquarters of a Cham-Khmer Islam organization, Cham is spoken by the villagers, and literacy in Cham written in Arabic script is actively maintained. This literacy, however, is used only for religious texts, and no interest is shown in using written Cham for any other purpose. The Cham there are quite satisfied to receive formal education in Khmer, and to use Khmer for all written communication and record keeping other than religious texts.

It is likely that the same lack of interest in literacy in their own languages will prevail among the upland groups, especially because of the total lack of writing in traditional culture, in contrast to the Cham, who have had a written culture in three religions, and formerly in non-religious literature, for 1500 years.

#### Northeastern upland groups

The relatively favorable conditions for these minorities under the PRK may be eroding in other ways. In 1993 at the time of the UNTAC election the governors of Ratanakiri and Mondulkiri were of minority groups, but by 1995 they had been replaced by lowland Khmer, in Ratanakiri after the death of the minority ethnic governor in 1995. Moreover, those minority leaders who became prominent in the 1980s, whether in the army or in the civil administration, have largely assimilated to Khmer culture, may no longer represent the economic and political interests of their own groups, and in fact, because of continuing prestige and influence, they may become the worst violators of local economic rights through accumulation of land for logging and plantations.

In general the problems of the ethnic minorities of these two provinces differ little from those of the lowland Khmer rural population--landownership, loss of land to 'development' by state-supported enterprises, land-grabbing by powerful persons, or land purchases of dubious honesty by

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<sup>57</sup>. Figures from Matthew Grainger, "Govt approves study of ethnic minorities", *Phnom Penh Post*, Vol. 4, No. 15, 28 July-10 August, 1995, p. 8.

wealthy persons from lowland Khmer areas. In one case a District Chief signed away his people's land without them being aware of what had happened. Sometimes the people have no idea of the true value of their land; and if purchasers claim to represent the government, the local people may sell their land too cheaply, or unwillingly, out of fear.

Different from the situation in Khmer agricultural areas, is the effort by the state to persuade the minorities to leave their hill swidden cultivation and to move to lower land near the roads and engage in paddy rice cultivation. So far, this effort by the state has been carried out by propaganda and persuasion, not by force, and some of the minority people have accepted it as a way of getting greater access to education, health services, and other aspects of 'modern' life.

Specific to the Northeast are the large concessions of land made to companies for logging, or for development of palm oil and rubber plantations, which first involves logging to clear the forest for the plantations. The forest clearing means the destruction of the habitat and farming area of the local peoples and their more or less forcible displacement to other areas which may be less habitable or less fertile. From the point of view of the state, the displaced people should find employment as plantation workers, which they may not want, and which means a total change in their ways of life.

Second Prime Minister Hun Sen, typical of a lowland Khmer, showed that he lacks understanding of the problem, and assumes that assimilation is desirable from all points of view. At an August 1995 international conference on hill tribes in Phnom Penh he said, "The government is pushing for development in the Northeast to ignite redevelopment of the rest of the country"; "We are trying to maintain and preserve", but "ending slash and burn agriculture and moving from place to place every couple of years should not be considered hurting a culture. It is an economy not a culture"; tribes should be "motivated to participate" in the inevitable development so they "will still be the masters of their land"; he said he envisioned hill-tribe children working on plantations when they grew older and eventually owning stock in the companies expected to flourish in the remote three-province region.<sup>58</sup>

The claim sometimes made by the state that it is the swidden practices of the local populations which destroy the forests, and therefore they must be resettled, is not true. The local populations are extremely sparse compared to the available land area, and the swidden cycle is about 20 years, long enough for the forest to revive before the next cultivation. As the population increases through immigration from the lowlands, however, this will change, and ultimately population could reach levels where a very short swidden cycle would endanger the remaining forests. Short cycles are now seen where people have resettled along the roads without sufficient land. The real danger to the forests, however, is from logging and plantation concessions.

Destruction of the northeastern forests is dangerous not only for the local populations, but can be catastrophic for all of Cambodia. The large northeastern rivers, the Se San, Se Kong and Sre Pok, are major sources for the Mekong and removal of the forest cover will result in silting and

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<sup>58</sup>. "Rift Over Cambodia's Tribes, Big Development Plans Would Uproot Mountain People", *International Herald Tribune*, 30 August 1995, p. 4.

floods throughout central and southern Cambodia. Now is a crucial time, for the largest logging plans have not yet been implemented, and could be stopped.

In these plans for plantations, two products are proposed, rubber and palm oil. Rubber at least is suitable on the land of the Northeast, and rubber plantations were already being developed in the 1960s. Palm oil, however, is totally unsuitable, and projects promising development of palm oil plantations are nothing more than disguised logging operations. The Cambodian authorities have even been warned of this by competent Malaysian authorities.

As of December 1995 there were fourteen Cambodian companies with concessions of over 60,000 hectares to develop plantations, not counting the giant projects of the Malaysian Samling and Indonesian Panin companies. Only one of those companies, a joint Malaysian-Cambodian company, had started operations. They hire local labor to clear the land, paying them by the hectare cleared. The governor of Ratanakiri has been left out of the chain of authority concerning these operations, and has little knowledge of the situation. The contracts with Samling and Panin, moreover, have been negotiated directly with the Prime Ministers, and are outside the authority of any relevant ministry or local authority.

Another problem different from that of lowland Khmer is the question of nationality and citizenship. Since some of the minority groups occupy lands on both sides of the Cambodia-Vietnam border, and have always moved back and forth, their formal citizenship may be in doubt; in fact they themselves may not know where they belong legally. At the moment all decisions are pending the adoption of a new law on nationality, after which questions of citizenship, and then right to own land, may be settled.

The present Royal Government is continuing the policy of the pre-war government and the PRK to settle large numbers of Khmer in the Northeast. Settlement of lowland Khmer and the opening of large plantations, not any prejudice directed specifically at the northeastern minorities, are the threats to their existence. With their small populations, about 65,000 in Ratanakiri and 23,000 in Mondulakiri, the demographic balance can easily be changed. Both the plantations and the Khmer arrivals and purchase of land for speculation or transformation into wet rice will deprive the minorities of their traditional economy. New demands and needs will be created which cannot be satisfied through traditional livelihood. Prostitution has already been observed, and is certain to increase, and in the general medical ignorance prevailing in those areas, it will rapidly generalize venereal infections and HIV.

#### The Cham

There is little evidence of special problems faced by the Cham because of their ethno-linguistic status or Islamic religion. The problems about which they complain, such as loss of good land in certain areas, are the same problems faced by ethnic Khmer. Nevertheless, since the end of the PRK there has been a decline in official emphasis on their status as full citizens. The PRK Cham spokesman, Dr. Abdul Coyaume, was not even a candidate in the 1993 election, although he and Math Ly, an old Cham revolutionary stalwart, continue a Cham association established under the

PRK. This association now has a rival which claims to be non-political, is open to all minority groups, and has a wide membership covering most of the central provinces.

According to the leaders of the independent Cham-Khmer Islam Association, the problems of child abduction and exploitation and prostitution are not found in Cham society. Cham custom still permits multiple wives, provided they are well treated; and there are some cases of wife abuse, which village elders try to settle through admonition and persuasion. There are few Cham students in the university; after school most try to go into business, or fishing, which is the important local activity. There are also many Cham in army and police, which was common before 1975.

Some prominent Cham are the National Assembly members Math Ly, Ahmad Yaya, and Sen Slaiman; Tol Lah, the Minister of Education, Ismael Osman in the Ministry of Religious Affairs, and one Deputy Governor in Battambang. Princess Marie Ranariddh, wife of First Prime Minister Ranariddh, and her brother Eng Roland, a member of parliament and ambassador to Thailand, are half Cham. All of these Cham political figures, except Math Ly, are with FUNCINPEC.

#### Vietnamese

The only ethnic minority which suffers from discrimination as such is the Vietnamese. Most Cambodians do not consider them an ethnic minority, but a foreign group, the distinction being based on the fact that Vietnamese have a national homeland Vietnam, whereas real national minorities have no other homeland, and are recognized as belonging in Cambodia.

The PRK was the first independent Cambodian government which actively strove for friendship with Vietnam and eradication of hostility toward Vietnamese, rather than institute ethnic hatred of Vietnamese as a bedrock of patriotism as in the Kingdom of Cambodia (1954-1970), the Khmer Republic (1970-75), and Democratic Kampuchea (1975-79), a position which some irresponsible political figures have tried to revive since 1993.

According to the Ministry of Interior there are around 100,000 Vietnamese in Cambodia, and there are reportedly just over 31,000 fully legal Vietnamese residents Phnom Penh, that is Vietnamese born in Cambodia or resident there before the war and their children.<sup>59</sup> These people in general can acquire Cambodian citizenship or permanent resident status. Most of them are employed as skilled workers, such as mechanics, or run small businesses. Within the city of Phnom Penh the Vietnamese report little trouble with the authorities, although beginning in November 1995 there had been an outbreak of attacks on Vietnamese by groups of Khmer youth in some of the suburbs. In one such area, Chak Angre south of Phnom Penh, researchers have reported that local Buddhist monks were instigating violence against Vietnamese, and did not hesitate to voice and justify their hostility to foreign observers.

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<sup>59</sup>. Matthew Grainger, "Govt approves study of ethnic minorities". With respect to Vietnamese, the extreme and absurd estimates by the Khmer Rouge and Son Sann of four million and one million respectively, and the UNTAC estimate of 300,000 were noted, with a quote from a UNHCR representative that "no one really knows".

Transient Vietnamese workers in Phnom Penh, mainly in construction, are regularly asked to produce their papers, and fined if they are not carrying them. This also happens to fishermen on the Tonle Sap and to small businessmen in the provinces.

In the provinces outside Phnom Penh the situation of the Vietnamese is much worse. There is a large group of fishermen on the Tonle Sap, farmers, particularly in Takeo near the Vietnamese border, and in all provincial towns the same group of skilled workers and small business people as in Phnom Penh. There is frequent police harassment caused by the uncertainty surrounding proper identity papers, which in turn is related to the uncertain legal situation of Vietnamese pending passage of a new law on nationality and citizenship. This harassment takes the form of demanding that the Vietnamese hand over their old papers and pay a fee to receive new ones, which vary in form and content from place to place. This suggests that the harassment is local initiative rather than policy decided in the central government.

In general, relations between Vietnamese in the provinces and their Khmer village neighbors are good, and abuses against Vietnamese do not come from that source, but from rogue police and soldiers, or gangs of youth from outside the immediate area.

One encouraging development with respect to state policy is that of the approximately 3000 Vietnamese fishermen from the Tonle Sap who fled to Chrey Thom on the Cambodian-Vietnamese border after massacres by the PDK in 1993, all but about 30 families have been allowed to return to their homes on the Tonle Sap, and the rest, most of whom had lost their papers, are expected to return when their identities have been established.

The promulgation of an Immigration Law in August 1994, which has been subject to much controversy, is in part related to the question of minorities, especially the Vietnamese. Allegedly it is potentially discriminatory against Vietnamese. Some of the objections, from foreign businesses and the foreign press were disingenuous, however, attempts to use the issue of discrimination against Vietnamese to secure privileged status for foreign, mainly western businesses. Nearly all of the provisions which were said to worry expatriates (restrictions on employment for foreigners, the requirement to carry ID, hotel registration reports to police) are in no way attempts "to create a police state", but are common in the capitalist countries of Southeast Asia, and indeed in most of the Western European democracies.<sup>60</sup>

There may be a danger for misuse of the law against Vietnamese, but who pushed Cambodia in this direction? During 1979-1991 Cambodia had a government which practised friendship with Vietnam and tolerance of Vietnamese residents. Perm Five and ASEAN pressure, the so-called 'peace process', destroyed that government, and purposefully hoped to replace it entirely with Cambodian groups whose record on Vietnamese was even worse than the provisions of the new immigration law. Even the PDK were encouraged, and it is not to the credit of the peace process manipulators that the PDK do not sit in the government and National Assembly today pushing their line

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<sup>60</sup>. Derek Francis, "UN bodies attack immigration law" *Phnom Penh Post*, Vol. 3, No. 16, 12-15 August 1994, p. 7.

on Vietnamese settlers. After carping about alleged anti-Vietnamese discrimination in the immigration law, the same foreign groups gave support to Sam Rainsy and his new political party which is overtly anti-Vietnamese.

According to a report by the UN Centre for Human Rights, the Cambodian authorities have given assurances that mass expulsions of Vietnamese would not occur. The Ministry of Interior has also cooperated with the Centre in drafting amendments to the law and subordinate legislation and has accepted a consultant specialized in immigration work.<sup>61</sup>

### Chinese

Chinese have so well assimilated to Cambodian society that they rarely face problems as a minority. Indeed the distinction between Chinese and Khmer is often hard to make, and many live parts of their lives as Chinese, parts as Khmer. Khmer-Chinese intermarriage has always been common.

Because of the support of the People's Republic of China for DK, some official prejudice against them appeared after 1979. Chinese schools were not permitted, nor was the celebration of special Chinese festivals. Now these hindrances are gone, and the Chinese have resumed their place as the leading business community.

### Corruption

Allegations of corruption abound--by foreign experts, NGO workers, and journalists; by Cambodian political figures against their rivals; by ordinary people against the authorities. It cannot be doubted that many of the allegations are true; but by their very nature they are not made specific, nor can they be quantified. No one admits to being corrupt, and few admit to paying a bribe. In analyzing corruption possible differences in Cambodians' ideas of what constitutes corruption from prevailing conceptions in the best Western democracies must also be taken into consideration. Moreover, when Cambodians read the international press and discover some of the best Western democracies engaging in what the Western public considers corrupt practices, such as paying bribes to secure contracts for the sale of submarines to other countries, the Cambodian public may well decide that the fuss about corruption is Western hypocrisy.

Probably most Cambodians would not consider that a 'commission' to an agent to secure a contract, even if the agent is an employee of the government, was serious corruption. Even if not provable, we may assume that all of the foreign companies now operating in Cambodia made such advance payments to someone. Nor do most Cambodians feel that small monetary gifts to officials for performing their duties should be considered corruption. After all, no civil servant in Cambodia today can live on his or her formal salary. An example witnessed by one of us occurred in 1992 when two Cambodians acquaintances had returned from ten years in the United States to visit an elder sister and her husband and to take them for a visit to the United States. This involved obtaining passports, and the returned emigrés, following old norms of the pre-war period, had sought out an

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<sup>61</sup>. UN Centre for Human Rights, "Report to the Secretary-General", "Human Rights Questions: Technical Cooperation in the Field of Human Rights", September 1995, p. 11.

'agent' who promised to procure the passports for a fee of \$400 per person. We then intervened, insisting that they could get the passports directly from the proper authorities for the legal fee of \$40 per passport, and with the UNTAC supervision then in place, everything would proceed quickly and according to form. When they had obtained the passports a couple of weeks later, we asked how much they had paid, and they answered that it had been \$100 per passport, the extra \$60 being a gift which they had voluntarily offered because the passport official had done the job so quickly. Thus old attitudes which nearly all accept, together with the precarious economy, hinder the emergence of a corruption-free society.

This type of corruption, which would seem to be universal, cannot be eradicated until there is overall improvement in the economy; and for foreigners to fuss about it is both useless and offensive.

One area which had become very corrupt by the end of the 1980s, and which all Cambodians agreed was corrupt, and which they deplored, was the education system. Entrance to schools and tertiary institutions, examination passes, and diplomas, could all be secured, often had to be secured, through payment of bribes. This development was in part related to the severe drop in purchasing power of salaries at the end of the 1980s, and it was deplored more than corruption in some other areas because incompetent but rich students were being passed, while bright but poor students failed. It is generally agreed that this type of corruption has ended, due to the efforts of Mr. Ung Huot, now Foreign Minister, when he was Minister of Education from October 1993 to October 1994. The success was due to special salary supplements to the teachers responsible for conducting the national examinations. Whether this success can be maintained, in the absence of a significant rise in teachers' salaries, may be problematic, and if so, it may be offset by neglect of teaching by teachers forced to engage in secondary employment elsewhere.

An area in which corruption is alleged, and where the effects are serious, is the courts. Here also corruption is directly connected to the impossibly low salaries of judges, approximately \$30 per month. The formation of new court defenders and lawyers may exacerbate the judges' vulnerability, since the para-legal defenders are paid up to \$300, per month, which is a liveable salary, from foreign funding, and the new fully fledged lawyers who begin graduating in 1997, may claim high salaries from wealthy clients or good retainers from foreign firms. There are already a few foreign-educated Cambodian lawyers in this favorable situation. An initial step in ending court corruption would be to have judges paid salaries and allowances equivalent to those of members of the National Assembly, around \$1,800 per month.

There is also much corruption in the form of check-points on the roads, manned by police and military, who request payment to let vehicles pass. This type of corruption is linked both to the extremely low salaries, and to the insecurity in some regions which permits large numbers of military to be deployed, often without proper discipline. There has been, however, noticeable improvement over the last three years. In 1992 and 1993, in spite of, or perhaps more accurately because of, the UNTAC presence, this type of corruption, accompanied sometimes by violence, was common even



in Phnom Penh at night. Now it is virtually non-existent in Phnom Penh and much less frequent in those central provinces which are also free of political insecurity, such as Kandal, Takeo, Prey Veng, and Svay Rieng. Even the road to Kompong Thom, which was considered quite dangerous in 1992 and 1993, and that to Kompong Cham, then considered moderately dangerous, are now reported to be safe. The worst areas for this type of corruption by military and police are Kampot in the south, and in the north Battambang, Banteay Meanchey, and parts of Siemreap.

There is a near total lack of transparency in public administration and budgeting, which is conducive not only to corruption, but to rumors about corruption, which may be exaggerated, and lack of confidence in the government. One report, which seems well substantiated, concerns the contracts allowing two enormous leases of land for logging and development of plantations in the Northeast, one to the Malaysian Samling corporation, and one to Panin from Indonesia. These contracts have been negotiated directly with the companies concerned by the Prime Ministers, without recourse to any of the relevant Ministries, such as Finance, Plan, or Environment. In the Cambodian milieu this might not be defined as corruption, depending on the use made of the foreign investment funds received, but it is bad government, hiding matters of national importance, not only from the ordinary public, but from the government itself.

### **Analysis for the future**

In his study of the French war to reconquer Vietnam after 1945 Paul Mus related a story of a Vietnamese school teacher around 1913 who had accepted French rule and education and who had taught loyally and well in a French school in Hanoi. One day in a conversation with his French school director he spoke of his loyalty and service to the French and said, "I have taken your side...you should treat me as a friend, have confidence in me...why don't you ever tell me the real reasons for what you have me teach? For fifteen years...I have taught my pupils that the earth moves around the sun...but a child has only to look toward the East in the morning to see that the opposite is true...I shall continue to teach this faithfully...but what I would like to know is why you ask us to say that...what result do you expect...how does it fit into your manner of acting?"<sup>62</sup>

Mus's point was that the Vietnamese, even those loyal to France, believed that the French possessed some kind of superior knowledge involving supernatural power. They had no confidence that the science brought by the French had anything to do with a straightforward description of the real world.

In 1991, the American anthropologist Judy Ledgerwood wrote, "When we conducted research for CIDSE...in 1991, we found that if we specifically asked if people wanted a daycare center, they would say that they did. In fact, they said they wanted everything we asked them if they wanted. However, when pushed and asked if they would take their children there, people replied

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<sup>62</sup>. Paul Mus, *Sociologie d'une guerre*, Paris, Éditions du Seuil, 1952, pp. 146-47.

rather sheepishly that they would not". "Child care is not discussed as a major concern in the countryside".<sup>63</sup>

These two attitudes may account for many of the reactions in Cambodia to Western initiatives, including such things as 'democracy' and 'human rights'. It is not meant that Cambodians with modern education believe that the sun orbits around the earth, nor would it matter if they did. [\*Just recently, April 2012, I spoke with a young woman, very intelligent, final year university student, diligent reader, who had difficulty believing the modern western view of the solar system\*] It does seem, however, that they see written constitutions, multi-party democracy, conscientious observance of legal niceties for murderers, thieves, and traitors, and many other things, as elements of mystification which the West has used to impose control, and which they may also use, if they discover the right way to manipulate them--according to their local preconceptions.

"Do you want a constitution"? "Yes". And of course Cambodia did adopt a Western constitution as early as 1947. "Will you use it the way we say it should be used". "Maybe not". And by 1955 that constitution was made effective in support of a single-party, even single-person dictatorship. A perfect example in a country that has never suffered such wars and socio-economic collapse as Cambodia is Thailand. There in 1932 a Western-type constitution was adopted. This was seemingly just to make the country appear modern and civilized, for in the ensuing 60-odd years Thailand was for most of the time under military dictatorships, while constitutions came and went in rapid succession. The real Thai, and Cambodian, constitutions are unwritten; and the written charters have to be fitted into the practices they sanction. **Some of the basic principles of the real constitutions resemble the celestial mechanics of the Vietnamese teacher cited above: an explicitly hierarchical society, no recognition of equality of persons, differential access to justice according to position, patronage and nepotism as norms, and opposition politics defined as disloyalty.**

As a UNDP officer put it to our interviewer, "donors expect too much too soon from Cambodia given the country situation at departure...[t]he message to be sent to donors should be that it will take longer to achieve results in Cambodia with its weak response capacity...donors have to be patient".<sup>64</sup>

It must be realized that all over the Third World 'democracy', 'human rights', '*liberté*', '*égalité*', and '*fraternité*', were forced down people's throats at gun point. These great Western principles were secret power doctrines for westerners only. If applied at all in the colonies, it was selectively, usually not for the natives, and often smothered in corruption. The post-independence military dictators, corrupt businessmen, and demagogic princes learned their foreign lessons well. They agreed to keep teaching the doctrines which any child could see were contrary to the truth of the real world, and to adapt these doctrines to their own purposes.

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<sup>63</sup>. Judy Ledgerwood, **Analysis of the Situation of Women in Cambodia**, "Research on women in Khmer society", pp. 9-10.

<sup>64</sup>. Interview of UNDP officers with Anne Bruzelius.

Since they constituted a mystical doctrine and were plainly not 'true', there was little surprise when the Western hocus-pocus seemed to collapse in the 1970s. When Cambodia, after trying an extreme reaction, came out of its great crash in 1979, its educated began to memorize a new power catechism, 'Maklenin', just as they had the old one learned from France. They took courses, they passed exams, they published journals in it. And it did not work too badly, for a while. Then it collapsed all over the world, leaving Cambodia again in an ideological vacuum.

Now they are back again to 'free market', 'multi-party', 'democracy', 'equality' etc. Do they want them? "Yes". Will they use them? That depends. In fact, for the most recent transition, they were not asked. They were told, "if you don't say yes, your country will be squeezed". The intervention consecrated by the Paris Agreement and UNTAC was brutal toward the society as a whole, even if brutality against individuals was not part of it. It is difficult for politically aware Cambodians to doubt that the purpose was to force the replacement of one Cambodian government by another, just to satisfy the prejudices of certain great, and not so great but equally greedy, powers. Even those Cambodians who preferred and worked for the intended new government are aware that their country was pushed around. American influence after the election was too heavy too soon, and dominated by organizations, USAID and Asia Foundation, [\*with significant inputs by the International Republican Institute, on which see my *Cambodia a Political Survey* (1207) \*] whose records in the past give cause for suspicion.

Since 1993 Cambodians have seen their country full of foreigners, often working at cross purposes, and all of them preaching and harassing and meddling, as though nothing had been accomplished before 1991 and there were no Cambodians capable of accomplishing anything.

By now it may be that most Cambodians, even when their personal situation has benefited, have had enough. This explains the harsh reactions in the last few months to perceived foreign meddling. It was clear in the statement at the beginning of this report by a man whose record shows him to be one of the most pro-American Cambodians. More recently it was expressed in another way by another influential emigré, Mr. Chang Song, who reminded *Phnom Penh Post* readers that the human rights record of the present state is far superior to that of the 1940s, 1950s, and 1960s, when Cambodia was dominated by people now favored by foreign interventionists and who have been conniving since 1993 to secure more power for themselves.<sup>65</sup>

Progress in the areas of democracy and human rights in the future, until the 1998 national election, and prognosis beyond that would be no more than tea-leaf reading, will not depend on 'good' people versus 'bad' people. Interested foreigners of good will should not be impressed by one faction of the government which suddenly seems to be more sympathetic to democratic practices than another. Hardly more than two years ago those who now appear as newly born democrats, the Sar Kheng faction, were treated by Western observers as the 'Communist hard-

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<sup>65</sup>. Chang Song, "Democratic reforms need support; Lessons being learned by Govt", *Phnom Penh Post*, Vol. 4, No. 26, pp. 8-9.

liners' working against the more liberal Hun Sen faction, and the former may now simply be playing with an imported Western power formula.<sup>66</sup>

As far as political democracy is concerned, such things as the Sirivudh affair and Hun Sen's outbursts against Western embassies should be seen as mere flare-ups, not signs of Cambodia's definite course; and "progress in Cambodia cannot be expected to follow a straight line".<sup>67</sup> The next formal democratic exercise will be the commune election in 1997, but too much weight should not be placed on it as a test of long-term democratic prospects. Elections at that level were never conducted by any Cambodian regime, they are not required by the constitution, and there is no reason why elected commune councils should be obligatory. Nor is there evidence of a demand for them from below, from villagers. The idea probably took flight as part of factional struggle within the ruling coalition, and if the 1997 election should be postponed, or a different form of administration for communes decided, that would not be a matter justifying reaction from foreigners.

The 1998 national election, however, will be a real test case. That election is required by the constitution, and refusal to hold it would represent rejection of democratic forms (of course in Southeast Asia rejection of democratic forms has not always been a barrier to aid and cooperation from the West). As noted above, however, and as was seen in the 1993 election, the probability of a real, effective opposition, either in the election campaign, or later in the National Assembly is slight. Almost all Cambodian politicians desire to be in the government coalition, and the existing coalition will probably campaign as such.

Of course, if the present coalition should split into two or more mutually hostile parties, for example a Hun Sen party, a Ranariddh party, and a Sar Kheng party before the election, there might be genuine competition in the election campaign, but there would probably not be much focus on issues. It would more likely be a campaign of demagoguery and vote buying such as regularly occurs in Thai elections. The three parties evoked above do not represent distinct interest groups nor differing ideologies. None of them would represent the interests of farmers or urban workers, the majority of the population, more than the others.

Foreign agencies should steer clear of 'party-building' activities, or any kind of involvement with political parties, after the manner of USAID. Not only does USAID have a bad record in Cambodia, left over from the 1960s, but the two organizations which USAID has supported, since 1993, in party-building activities, showed extremely bad judgement in their choice of experts at election time. From El Salvador one of them, the International Republican Institute, brought in Raul Garcia Prieto, Vice-President of the ARENA Party, the El Salvador government party, long

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<sup>66</sup> [\*See Michael Vickery, *Cambodia: a Political Survey*. Phnom Penh, Funan Press, 2007, pp. 13, 134.\*]

<sup>67</sup>. These remarks were made by UNDP officers in an interview with Anne Bruzelius.

identified, and early in 1993 confirmed by an UN Truth Commission, as mainly responsible for the death squads and massacres in El Salvador during the civil war which had recently ended.<sup>68</sup>

The weaknesses in the observance of human rights may all be related to instability left over from the UNTAC failure to tame the PDK, to poverty, which is to a large extent related to the too rapid rush into a free market, and to ignorance of what human rights means and why they should be extended to 'enemies'. As explained above, UNTAC and post-UNTAC education on human rights has too often been inappropriate. Although most of our informants in December 1995 recognized some degree of improvement, the situation will remain unsatisfactory until the war with the PDK has ended and the living standard of the majority improved. This means more employment at decent wages in the non-agricultural sectors, including the civil service, and better prices for agricultural products, perhaps an utopian dream in the short and medium term. Current estimates are that 180,000 persons enter the labor market each year, but only 40,000 can expect work in the modern sector. Moreover, at present Cambodia often gets the 'wrong' investors (UNDP interview).

The draft of the report on "Sweden's Role in Developing Rural Cambodia", p. 3, contains interesting remarks about "lack of domestic resource mobilization in all sectors of the economy", yet indicates commitment to both a free market economy and democratic politics. Domestic resource mobilization, which indeed is a major problem, for there is obviously much wealth being wasted on conspicuous consumption, means first of all adequate taxation, and there is no sign that the National Assembly would democratically vote the taxes required. If they did, they would be charged by business interests, both local and foreign, with interference in the free market. This is an area in which the tools given to Cambodia by the West in 1993 are inadequate for the tasks Cambodia has been forced to face.

For long-term improvements in human rights, Swedish money and expertise might be better devoted to improving state capacity to tax adequately and spend the money wisely, than to continue funding NGOs. 'Capacity building', a current buzzword, might better be devoted to certain state capacities, than to the capacities of groups which are perceived as, and often are, anti-state. Indeed aid to NGOs should be strictly limited until an NGO statute has been passed, and the situation of NGOs rationalized.

Perhaps the most dangerous developmental threat is deforestation, and the enormous concessions for logging and plantations given to foreign companies in the Northeast by the two Prime Ministers. If these projects are not stopped, the ensuing ecological damage will have a far worse effect on human rights than the existing corrupt police. This might be an area in which Swedish expertise in forest management could be helpful.

The draft report on "Sweden's Role in Developing Rural Cambodia", like most such documents, commented on Cambodia's lack of trained and skilled people. This lack may be

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<sup>68</sup>. The UN Truth Commission report was dated 15 March 1993; and a detailed comment on it by Senator Mark O. Hatfield, entitled "Salvador's Grievous Loss" was published in *The Christian Science Monitor Weekly*, 2-8 April 1993.

exaggerated, partly as a result of the generalized denigration of and propaganda against the PRK/SOC in the West during 1979-1991. Capable and well-educated people are numerous, especially in the middle levels of government departments, and many others, who worked for the state in the 1980s, are now in NGOs or international organizations drawing foreign salaries. Still another pool of technically-trained people who have been neglected since 1993, are those trained in the 1980s in the Soviet Union and other countries of Eastern Europe. According to the Russian Embassy in 1994, there were 2500 graduates from the Soviet-built Phnom Penh Institute of Technology (now under the French), 1200 technicians from the Tek Thla center of professional training, 4000 graduates from various Russian universities, and 1300 Cambodians still being trained in countries of the former Soviet Union.<sup>69</sup> Their neglect since 1993, and the need for their skills were evoked in December 1995 by Mr. Lao Mong Hay of the Khmer Institute for Democracy. Fortunately that group has begun to organize themselves, and are publishing a journal in which they write about current problems from the points of view of their technical specialities. Perhaps now a program of discovery and utilization of existing capacities could be substituted for the shibboleth of 'capacity building'.

Progress in human rights is visible and acknowledged by all but committed enemies of the government. It has been slow, however, and further progress will be linked closely to economic development. This does not mean that the glib responses of Cambodian politicians about economic development before social development, or food first, should be accepted without further discussion. Those politicians, along with, probably, most of the population, are under an illusion that Cambodia is an extremely rich country, whose development has been artificially held back, and once the potential has been liberated Cambodia will have wealth for all from oil, rice, rubber, timber, tourism, etc. Concern for social development, they imagine, will be unnecessary because of the inflow of wealth.

These dreams can never be realized. Cambodia is, and will be, very poor. They are running out of sufficient rice for consumption as the populations grows, and will never be a major rice exporter. A shift of significant number of poor peasants (80% of the population) into industry may never occur, or if it does happen rapidly, the industries will be foreign-owned plants looking for cheap labor and workers' living standards may be worse than poor farmers. Oil may be found, but it is problematic, and in any case will not mean great wealth for everyone. The possibilities for tourism as a major income earner will remain limited as long as insecurity prevails, especially in those areas of major interest to tourists.

Economic development must be accompanied by planned social development based on mobilization of existing resources, financial, material and human, not based on expectations of miraculous wealth from new sources. This must involve some modification in the *mantras* about free

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<sup>69</sup>. *Phnom Penh Post*, Vol. 3, No. 5, 11-24 March 1994, p. 6.

market and competitive democracy. But only then will there be real progress in human rights based on a decent living for most of the people.





# **Democracy and Human Rights in Cambodia**

By Michael Vickery and Ramses Amer

## **APPENDIX I:**

### **I. Historical Appendix**

WW II and Japan

Among all the countries of Southeast Asia perhaps Cambodia entered the post-world War II period and independence with the least favorable preconditions for democracy. Not only was old Cambodian society itself rigidly hierarchical, with lines of authority, whether in government or in the family, descending from above, but its colonial experience served to perpetuate those structures into the twentieth century.

The French impact froze the indigenous social structure and prevented changes which might have occurred if the country had been left to itself, or if the French had chosen to rule directly. The ruling classes were protected from revolutionary or reformist pressures, and danger of attack from outside was removed. The native rulers' powers to tax and command servile labor were modified and limited, but they still maintained a real administration and were more than figureheads. Modern education before independence in 1953 was so limited that even the non-elite individuals who took advantage of it could for a long period be assimilated into the ruling class. The largest foreign commercial group, the Chinese, were assimilated, particularly at the upper levels, to Khmer society, until by mid-20th century most of the urban upper and middle strata were Sino-Khmer. The highest stratum of this group constituted a financial and commercial, and to a small extent industrial bourgeoisie, but they were assimilated, or subordinate, to the aristocrat/officials and royalty. The Cambodian ruling class was an alliance of royalty, bureaucracy and merchants, somewhat resembling imperial Germany and Japan, but unlike those countries, the goals in Cambodia were neither industrialization nor modernized commercial agriculture, but a skimming of the surplus for elite consumption.<sup>1</sup>

It was not only a certain type of Asian nationalism which was comfortable with Japanese policies. In fact World War II brought little change within Cambodia, because Franco-Japanese agreement maintained the colonial administration in Indochina while giving the Japanese the facilities they desired, until on 9 March 1945 the Japanese interned the French and offered independence to the three Indochina states. King Sihanouk, who had succeeded to the throne in 1941, likewise saw no harm in cooperation with Japan, and he abrogated all treaties with France, promulgated a new Basic (Constitutional) Law, and formed a government of traditionalists who had already made administrative careers under the French. In May, Son Ngoc Thanh was brought back from Japan and appointed Minister of Foreign Affairs, and in August, Prime Minister.

The Thanh government showed an intention to make the most of their formal independence; and a programme which he announced, long forgotten, is worth reviewing. It included: (1) support

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<sup>1</sup>. See Barrington Moore, *Social Origins of Dictatorship and Democracy*, Peregrine Books (Penguin), 1969.

the Great Asian war, which is the emancipation of the peoples of this part of the world, and which illustrates Thanh's pro-Japanese orientation, (2) reawaken the historical grandeur of 'Kampuchea' [in French text], (3) achieve the union of all peoples in Cambodia, especially the Vietnamese and the Khmer.<sup>2</sup>

The Thanhist group wished to eliminate French influence, and remove that language from primary schools; and among Phnom Penh intellectuals there was a movement to introduce Vietnamese as the first foreign language. This desire for Khmer-Vietnamese rapprochement included recognition by Thanh of Ho Chi Minh's independent Vietnam on 2 September 1945, and permission for a Vietnamese mission to be established in Phnom Penh. A reformist fraction of the Cambodian elite was seeking friendship with an independent Vietnam.<sup>3</sup> These policies, however, came to naught, for King Sihanouk strongly opposed Khmer-Vietnamese rapprochement, and he preferred confrontation over the issue of old Cambodian provinces incorporated in Vietnam since the 18th century. When British and French troops arrived in September 1945, Thanh, too weak to resist, was arrested; Sihanouk cooperated enthusiastically, and the French protectorate was re-established.

#### The Rise and fall of party politics

In general the French returning in 1945 were accepted by the Cambodian ruling class who feared a new protectorate less than the potential threat from below; but French plans for reform of their entire colonial structure provided channels for further development or reformist and revolutionary tendencies. A democratic constitution modelled on that of the Fourth Republic, with a strong parliament, political parties, and regular elections, but with considerable power reserved to the king in emergencies, opened the door to parliamentary politics. The dominant party, named 'Democrat', during the first three elections (1946, 1947, 1951) represented the same petty bourgeois interests as the protest movement of the late 1930s. They were small businessmen, teachers, the first graduates of French universities, officials, some young descendants of old elite families, led at first by a member of a minor branch of the royalty who was also one of the new university graduates from France. The resulting governments would be solely concerned with local affairs, for France retained control of Foreign Affairs, Defense, and any matter which they deemed crucial to maintenance of the protectorate.

Nevertheless, the position of the traditional ruling group was to be threatened more by these minimally democratic reforms which the French now introduced than by either the Japanese occupation of Indochina or the re-establishment of the protectorate. A modern constitution and elections, and a cabinet responsible to the National Assembly, were innovations which would

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<sup>2</sup>. This information is from contemporary Phnom Penh newspapers.

<sup>3</sup>. Vickery, *Kampuchea*, 9. Note that the 'Phnom Penh intellectuals' of the time would have included the Thiounn brothers who are now among the DK leadership, and Son Sann. On the Thiounns see Vickery, *Kampuchea*, 5-6 and Kiernan, *How*, 29-33.

enlarge the possibilities of upward mobility for the new 'middle' class created by the French, and whose second and third generations had gone to modern schools, occasionally even to university in France.

he first three elections, in 1946 for a Constitutional Convention, and in 1948 and 1951 for the National Assembly, were won handily by the Democrat Party, vehicle of the 'new men' led by a minor prince fresh from a French university. They were both anti-French and anti-Sihanouk, with direct links to the Son Ngoc Thanh nationalists (and to more radical groups), who, as they returned from exile or were released from prison, joined it. The goals of this largely urban party were even more threatening because in the rural areas armed resistance against the French was developing along with Vietnam's war for independence.

During the 1940s numerous groups of varying political tendencies had begun armed struggle against the French, some in collaboration with the Vietnamese, some wary of them. Certain of these groups also had vague notions of overthrowing the monarchy and some form of social revolution. In April 1950 a 'Unified Issarak' [freedom] Front was formed, and sometime in mid-1951 a Khmer Peoples Revolutionary Party (KPRP), following a decision of the Second Congress of the Indochina Communist Party to split into three national parties. In 1952 the Issarak and KPRP forces were winning in the countryside, controlling from one-half to three-fifths of the country, the situation was becoming intolerable for the French and for the Cambodian right; and the French Minister for Associated States declared that France would make no concession (toward independence) to a government under the Democrat party.

In these circumstances Sihanouk, with French military support, carried out a *coup d'état* against his own government in June 1952. Basing his actions on residual powers granted to the king by the constitution for emergencies, he dismissed the Democrat-led government, named himself Prime Minister, while promising to achieve independence within three years. Then, in January 1953, in conflict again with the Democrat-dominated parliament which refused to grant him emergency powers or to pass his budget, Sihanouk dissolved both houses, proclaimed a national emergency which abridged all democratic rights, and launched a 'Royal Crusade for Independence'.<sup>4</sup>

The French, hard pressed in Vietnam, were persuaded to negotiate now that the Cambodian government seemed securely in conservative hands; so that by November 1953 the attributes of independence had been transferred to Sihanouk. Again, as in 1945, a Cambodian government, against the wishes of the progressive elements of Khmer society, had chosen a course threatening to Vietnam, even collaboration with the colonial power seeking to reimpose its control.

Independence and its confirmation by the Geneva Conference of July 1954 represented a defeat for all progressive currents of Cambodian politics from the KPRP through the Thanhist guerrillas to the urban Democrats. Because Cambodia was already independent, it was Sihanouk's government which was represented at Geneva. His delegation adamantly refused any concessions to

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<sup>4</sup>. See Vickery, "Looking"; and David P. Chandler, *The Tragedy of Cambodian History*, New Haven and London, Yale University Press, 1991.

the communists, and in the end neither China nor the Soviet Union insisted, particularly once the more important question, partition of Vietnam, had been decided against the Vietnamese revolutionary forces. In contrast to Vietnam and Laos the Cambodian communists were allowed no regroupment zone, and were left with no choice but to lay down their arms and reintegrate with Cambodian society under Sihanouk and his conservative supporters. About one thousand of the leading KPRP cadre withdrew to North Vietnam, while the rest who remained active changed from armed to political struggle in order to contest the coming elections as Krom Pracheachon ('Citizens' Group), in fact the new political form of the KPRP.

If Geneva disappointed the Cambodian left, it also added an unexpected difficulty to the plans of the right. The latter, under Sihanouk, had hoped to continue the dictatorial regime instituted with Sihanouk's January 1953 coup, but the Geneva accords required all three Indochina countries to hold elections, in Cambodia before the end of 1955, under existing constitutions and with freedom for all factions, including former guerrillas, to participate. This made possible the open organization of the Pracheachon, while the old Democrat Party was revitalized and pushed leftward by students who had returned from study in Paris, perhaps even with organizational work by Saloth Sar (Pol Pot). Because of the Democrats' previous successes, and the popularity which both groups had gained during the anti-French struggle, it was expected that in an honest election the parties of the left would at least win enough seats to form an effective parliamentary minority.

Sihanouk's dictatorial regime of 1953, however, was still in control, and in charge of preparing for the election, which in the end was not honest. The result was total victory for Sihanouk's new so-called 'Popular Socialist Community Party' (in Khmer *Sangkum Reastr Niyum*, or just *Sangkum*), formed from an alliance of several small right-wing parties which had run unsuccessfully against the Democrats in 1948 and 1951.

From then until 1970, through subsequent elections in 1958, 1962 and 1966, no non-*Sangkum* politician sat in the National Assembly, although talented members of the former leftist opposition to Sihanouk were permitted to join the *Sangkum* and even become ministers.

Step by step the democratic institutions and practices established right after World War II were undermined by King, then Prince, Sihanouk with the support of conservative traditionalists, until under Sihanouk in the 1960s democracy was a sham and Sihanouk ruled as a traditional autocrat. Nevertheless, it appeared that most Cambodians did not perceive Sihanouk's regime as oppressive. There was no widespread nor grass-roots movement in favor of democracy. Elections in 1958 and 1962 were virtually single candidate contests, in which Sihanouk's *Sangkum* won in all districts. In 1966 Sihanouk opened the election to all who wished to compete, provided that no parties were formed to challenge his *Sangkum*. Blatant pressure was exerted by the authorities against Sihanouk's enemies, both on the left and on the right. Nevertheless, a significant number of them won anyway, including some of the founders of the Cambodian guerrilla movement, such as Khieu Samphan, Hou Yuon and Hu Nim.

### Royal Socialist Dictatorship

With open political competition abolished, the remnants of the left, whether KPRP-Pracheachon or Democrat, either renounced politics or went underground, and with the peaceful, prosperous conditions of the late 1950s and early 1960s Sihanouk's regime, although anti-democratic, enjoyed wide popular support. A sensible foreign policy widened Cambodia's international relations, particularly with socialist countries, some of whom were very generous with aid projects competing for recognition with the large U.S. aid program. The illusion of economic well-being was due in large part to the large amounts of foreign aid given to Cambodia because of Cold War competition.

Sihanouk's opening to the left internationally brought down the ire of the U.S., whose diplomats hectored Sihanouk about Communist danger and whose agents began to plot with his enemies, the most notorious examples being the Sam Sary and Dap Chhuon incidents of 1958-1959, which discredited the U.S. both because of the methods involved and the people chosen as instruments.

Sam Sary started as a bright young right-wing Cambodian who studied in France and in the 1950s became an important adviser to Sihanouk. However, "his hauteur, his involvement in financial scandals, and... 'his sulfurous and vindictive personality'... earned him many enemies". By 1957 he had earned the "dubious distinction of being... 'the staunchest friend of the United States in Cambodia'... [after] a three month visit to America in 1956 [where] he probably became acquainted with U.S. intelligence officers". In late 1958 he attempted to form an opposition newspaper and political party, was accused of treason by Sihanouk, and fled to Thailand. He apparently died in exile in the 1960s. His son, Sam Rainsy, appears to be trying to duplicate some of his father's exploits. Dap Chhuon started out as an independence fighter when Lon Nol and Son Sann were making careers as *fonctionnaires* under the French, and Sihanouk was abetting the French in arresting true nationalists. In 1949 Chhuon joined Sihanouk and was given charge of Siemreap Province. In 1959 he emerged as leader of an abortive U.S.-supported plot to overthrow Sihanouk and was killed.<sup>5</sup>

Then, from 1963-1964 Cambodia began to fall apart. Early in 1963 a student riot against official brutality and corruption set off a chain reaction which led to government confrontation with leftists, real and imagined. This in turn led to the rejection of needed economic reforms advocated by leftist ministers. Early in 1964 American aid was rejected on the grounds that the U.S. was supporting Sihanouk's enemies, Sam Sary and Son Ngoc Thanh. A nationalization program served to concentrate state-owned businesses in the hands of courtiers who treated them as old-fashioned appanages, while decreases in foreign aid were compensated with increased pressure on the rural population to produce and deliver cheap rice for export.

From 1955 to 1967 roughly 65% of the population were rice farmers, and land planted to rice increased from 1.7 to 2.5 million hectares. Production increased from 1.5 million tons of paddy

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<sup>5</sup>. Chandler, *The Tragedy of Cambodian History*, pp. 99-107, from which all quotations have been taken.

(unhusked rice) in 1955 to 2.7 million tons in 1964, then dropped to 2.38 and 2.28 million tons in 1966 and 1967. These quantities provided for domestic requirements and an exportable surplus ranging from 197, 000 tons in 1957 to 366, 000 in 1963, 451, 000 in 1964, and 491, 00 in 1965, in spite of the decline in total production in the last two years. These exports accounted for 34% of total export income in 1957, over 50% in 1963-1964, and 38% in 1966, slightly behind rubber in that year. After the high point of both export and domestic surplus after export in 1963-1964, there was a decline in rice for domestic consumption in 1965, probably due to squeezing the peasants through debt and tax.

As a result, in 1966 only 172, 000 tons were exported officially out of a good crop of 2.38 million tons, which put domestic consumption back at the 1963 level, in spite of an increase in population. It seems also that peasants were selling their surplus illegally across the borders to Thailand and Vietnam for higher prices, depriving the government of revenue. This was particularly serious after American aid, which had covered much of the annual budget deficits, was terminated.

Faced with this the government organized rice purchase campaigns by state agencies, which in fact amounted to forcing the peasants to sell to the state at below market prices. The results were not particularly impressive--219, 000, 226, 000, and 87, 000 tons exported in 1967-1969, out of large crops of 2.5, 3.8 and 2.7 million tons.

As the economy declined, signs of political opposition, which could only be rebellion, became increasingly frequent. **In 1960 the small communist party had been reorganized with former Paris students who had begun to return in 1953 gradually taking control. The deteriorating economic and political conditions of the 1960s favored them, but they were frustrated by the insistence of the Vietnamese that conditions for a revolution in Cambodia were not ripe, while the Cambodian communist leadership felt that Sihanouk's corrupt and increasingly despotic regime should be overthrown.** These opposing views conditioned the growth of the revolutionary movement throughout the 1960s, with control increasingly achieved by the nationalist group, of whom Saloth Sar, Ieng Sary, and Son Sen fled Phnom Penh in 1963 to begin organizing a rural revolutionary struggle.

The controversy was ultimately taken out of the hands of both the Cambodian party and their Vietnamese comrades and mentors by a real peasant revolt against direct oppression, the Samlaut uprising in April 1967.

At a time when government forces were engaged in an enforced collection of the rice crop at below market prices and a roundup of suspected communists, peasants in Samlaut, in southwestern Battambang province, attacked a state farm. Conflict between peasants and government forces continued into June with considerable brutality, particularly by the army. Although there is disagreement as to whether the Samlaut uprising was part of a nation-wide

communist plan, other disturbances occurred at the same time elsewhere, and two prominent leftist intellectuals. Kieu Samphan and Hou Yuon fled Phnom Penh.<sup>6</sup>

### The War

The Samlaut uprising and more particularly its continuation in January 1968, deserves to be called the beginning of the Cambodian War, for conflict between left and right continued and increased, both in suppression of individual leftists by the authorities and in armed attacks by both sides in rural areas.

Of course neither the outbreak of armed struggle in Cambodia nor the development of the communist party may be understood without reference to the war in Vietnam. Sihanouk had agreed to tolerate sanctuaries for the DRV and PLF forces on the Cambodian border, and to allow shipment of Chinese arms across the country from the port at Sihanoukville, an operation of great profit for key Cambodian military figures. Advantages such as these contributed to Vietnam's objection to a Cambodian revolution, whatever the objective political-economic conditions.

By 1969 even Sihanouk's neutralist foreign policy, which had endeared him to the local left and international socialist bloc, was no longer certain. He was moving toward the United States, was increasingly critical of Vietnam, and in spite of formally good relations with that country, he permitted, perhaps even encouraged, anti-Vietnamese tirades in the Khmer-language press.

It now seems certain that the 18 March 1970 coup which overthrew Sihanouk was an internal Cambodian affair. In spite of the great interest in discovering major American responsibility, little evidence has appeared, and given Sihanouk's shifts during 1969 the U.S. government would have seen little reason to remove him. The line taken by those responsible for the coup, that Sihanouk had to be removed because he was selling the country to the Vietnamese, is also difficult to accept, for Sihanouk was then moving away from his earlier position of sympathy for the Vietnamese communists, and toward reconciliation with the United States.

Sihanouk was overthrown by men who belonged to the right, and who were pro-U.S., but Sihanouk's support had always been at that end of the spectrum, and his supporters in Phnom Penh in March 1970 were no less right wing than his enemies. The two groups represented different factions of the ruling class, and what divided them was rivalry over control of the economy and style of management. Sihanouk's policies since the mid-1960s had favored a courtier-bureaucrat group who treated their offices as appanages, and while they grew conspicuously wealthy the account books of the state enterprises they managed showed red. Their rivals wanted a more modern, rational, capitalist style of economic management, under a functioning bourgeois democratic

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<sup>6</sup>. The major work on Samlaut is in the following publications by Ben Kiernan: Kiernan, "The Samlaut Rebellion and its Aftermath 1967-1970: The Origins of Cambodia's Liberation Movement" (Melbourne: Monash University, Centre of Southeast Asian Studies, Working Papers, nos. 4-5, 1975-1976); Kiernan, "Conflict in the Kampuchean Communist Movement", *Journal of Contemporary Asia* vol. 10, nos. 1-2 (1980); Kiernan and Boua, *Peasants and Politics*; and Kiernan, *How*.

government, not Sihanouk's rubber-stamp Assemblies. Perhaps they considered that it was necessary to get rid of Sihanouk before he secured firm U.S. support.

Following Sihanouk's destitution, the constitution and form of government were changed until by 1972 Lon Nol, elected President of the Khmer Republic in an apparently fraudulent contest, was able to rule in a quasi-dictatorial manner as Sihanouk had in 1953-1954.

The change of regime at first received support from many who had opposed Sihanouk from the left, even the moderate left who had no intention of becoming revolutionary combatants. For a few months Phnom Penh lived in a state of euphoria. There was a freedom of speech and press unknown since pre-*Sangkum* days in the early 1950s, and progressive-minded people tried to believe, against increasing evidence to the contrary, that the new government would keep its promises to reform the system, gain the confidence of the peasantry, and create a more viable national life.

The Lon Nol government, however, did not take long to justify the worst apprehensions of everyone. Its declared policy of free enterprise, instead of the strict control and rationing of essential supplies which the situation demanded, aggravated the expected inflation, and those in positions of power proved as rapacious as in *Sangkum* days. The army showed itself inefficient, which could have been forgiven, but also corrupt and brutal in its dealings with the peasantry. Within a few months it was common knowledge in Phnom Penh that the enemy troops made a better impression on villagers than the Phnom Penh forces.

Surprising to all parties must have been Sihanouk's moves after his removal. he remained in Peking and declared that he would lead the struggle against Phnom Penh. His move led to a split in the urban left, some hating him so much that they remained in Phnom Penh on the government side until the end.

With Sihanouk on the revolutionary side, and his popularity maintained among peasants who suffered from attacks by American planes and Lon Nol troops, the revolutionary forces in the short term stood to gain, for any peasant hesitation to attack the towns and government troops would be removed.

**Sihanouk's switch also removed Vietnamese objections to a Cambodian revolution, but meant that Vietnam's traditional Cambodian allies were latecomers on the revolutionary scene and operated under the disadvantage of having advocated apparent theoretical and tactical errors over the previous twenty years.** As is now well known the veterans who returned from Vietnam after 1970, and the domestic intellectuals who may have favored a similar line, were pushed aside and in majority physically eliminated during 1970-1975, while anti-urban, peasantist theories came to dominate the 'Pol Pot clique' among the Party leadership.

Although the war did not start in 1970, it grew in that year to encompass nearly the entire country--but not immediately. Even before the coup Lon Nol, seriously out of touch with reality, had permitted massacres of Vietnamese civilians, and had issued an ultimatum to the Vietnamese to



withdraw all troops from Cambodian territory; and on March 16, Vietnamese representatives met with Cambodian officials to discuss the request. Until early May both Vietnamese and Chinese representatives remained in Phnom Penh to try to persuade Lon Nol to continue to tolerate the Vietnamese sanctuaries on the border; and only then did Lon Nol tell them this was out of the question. This was interestingly just when U.S. and South Vietnamese forces had invaded eastern Cambodia, a move which pushed North Vietnamese troops farther into the country, increased the level of civil warfare between the two Cambodian sides, and set the disaster on its course.

By the autumn of 1970 the anti-government forces had occupied nearly all territory east of the Mekong except major towns; and over the next four years inflation rose by hundreds of percent, refugees crowded into the city, fleeing both bombing and harassment by revolutionary forces, and by 1974 much of the Phnom Penh population was facing hunger, while the privileged kept up a lavish lifestyle.

In January 1973, in Paris, the United States, the Republic of Vietnam (South Vietnam), the Democratic Republic of Vietnam (DRV, North Vietnam), and the Provisional Revolutionary Government of South Vietnam (PRG) signed an "Agreement ending the war and restoring peace in Vietnam". The Cambodian revolutionary forces refused to participate and continued their assault on Phnom Penh. In order to stem the imminent collapse, and with their air force no longer engaged in Vietnam, the U.S. began an air assault, perhaps the most intensive ever, right through the heart of Cambodia's central agricultural area where most of the population lived. During February to August 257, 000 tons of bombs were dropped, for a total of 540, 000 tons since secret bombing of Cambodia began in 1969. This was nearly three and one-half times as many bombs as fell on Japan during the entire Second World War.

**The bombing of 1972 and 1973 physically destroyed most of the heavily populated central agricultural region, and it probably stopped an offensive that would have overrun Phnom Penh. It very likely undermined the more moderate communist leaders, who were sympathetic to Vietnam, for the Paris Peace Agreement was viewed by the Cambodian communists as a stab in the back by Vietnam which allowed the full force of U.S. power to be directed at them. The terror of the bombing also imprinted a hatred of city folk on the young survivors of the raids, who blamed Phnom Penh for having called in the American bombers.** It has been reasonably suggested that a communist victory in Cambodia in 1973 would have avoided a solution like that carried out after 1975.

After the bombing ceased under orders of the U.S. congress in August 1973 it took another year and a half for the communists to regroup and rebuild, with ever stricter measures of control over their population base. More significantly, Vietnam was increasingly viewed as an enemy rather than a friend, occasionally even as the principal enemy. This was particularly true after the Paris Agreement, which opened the way for concentration of American bombing on Cambodia.

Democratic Kampuchea

Democratic Kampuchea attempted to carry out a revolution which, in spite of their rhetoric about 'Marxism-Leninism', was different from any previous revolution in modern times. Not only were peasants viewed as the main revolutionary class, but unlike classical Marxism, Leninism, Stalinism, or even Maoism, in Cambodia even the urban working class, along with all other urban groups, were considered class enemies, and were forced to become poor peasants.

The imprinting of terror and violence, particularly during the American bombardment, **combined with the nature of class conflict already present in Cambodian society**, can account adequately for the first wave of the violence for which Democratic Kampuchea has become a paradigm. Besides the evacuation of Phnom Penh, which in itself must have caused thousands of deaths, massacres soon afterward occurred in a number of places. In general they were focused on the military and highest level civilian officials of the Khmer Republic.

By the time the Vietnamese attack came, in December 1978-January 1979, terror had also spread so far into peasant circles which were once DK regime supporters that even foreign invasion was felt as a relief. Little resistance was offered by the populace who welcomed the complete turn-around in policies instituted by the new Peoples Republic of Kampuchea with Vietnamese encouragement and support.

#### The Peoples Republic of Kampuchea

The People's Republic of Kampuchea (PRK) thus came into existence after 7 January 1979 following the destruction of the previous Democratic Kampuchea regime by Vietnamese military forces in response to attacks during 1977-78 by DK against Vietnamese territory, and in support of Cambodians who had been opposed to, and in some cases resisted the extreme DK policies. These Cambodians became the nucleus of the new state.

The PRK immediately reversed the basic policies of DK. Freedom of movement and in choice of work was announced, normal urban-rural differences were re-established, educational, medical, administrative structures rebuilt, non-revolutionary intellectuals, technocrats, administrators who had been restricted to peasant labor during 1975-1979 were invited to return to work in their former occupational areas. The change in January 1979, in addition to political and economic rationality, represented a vast improvement in personal freedom and human rights.

Although bourgeois democracy was not one of the goals of the new government, some of the institutions and practices important to democracy were gradually brought into existence in the new state. First was freedom to move and to search for whatever work was available. Then, in 1981 came a new written constitution, which established a national legislative body chosen in principle by election. The constitution also provided for provincial and district elections for local assemblies, but these were never carried out for the entire country.

The first state structure was a People's Revolutionary Council combining executive and legislative functions with Heng Samrin as President. Then in a constitution was adopted in 1981, and the state structure was changed to an executive branch consisting of State Council plus Council of Ministers and a National Assembly. In elections to the latter 117 members were chosen by province

according to size of population. Although there were no competing parties, each provincial list contained more candidates than seats to be filled. The 1981 election was thus of the same type as Sihanouk's elections of 1958 and 1962, but slightly more liberal. Heng Samrin became President of the State Council and most of the Revolutionary Council ministers remained in equivalent posts in the new structure.

Changes in leading state personnel in terms of their political background--whether revolutionary veterans who spent 1954-1970s in Vietnam, DK cadres without such Vietnam experience, or other--show an interesting evolution since 1979. In the Revolutionary Council of 1979 there were 12 Vietnam veterans against 5 former DK cadre, with one person of non-revolutionary background as Minister of Education. After May 1981 there were 11 Vietnam veterans, 8 former DK, and 5 non-revolutionaries, in Education, Agriculture, Health, Culture/Information, and Secretary-General of the State Council.

This tendency has continued, and by 1986-1987 there were 6 or 7 of the Vietnam veteran group at ministerial level, only three former DK officers, and at least 11 of the former bourgeois non-revolutionaries. The latter moreover were being given ever more significant departments. In addition to the powerful Interior Ministry, assigned to Nay Pena in 1985, Agriculture, Cambodia's most important economic sector was under Kong Samol, who obtained his degree in agricultural science from the United States, and people of similar non-leftist background headed Finance, Trade, and Education, the last particularly significant given the controversy over the direction being taken by Cambodia's cultural development.

The same evolution in factional tendencies is even clearer in the Peoples Revolutionary Party of Kampuchea, which was only formally revealed to the public after its 4th Congress in May 1981. In 1981 eleven full members of the Central Committee and one alternate were of the Vietnam group, and 7 had served in the DK administration.

Even more of the new people who were rapidly moving up to the top ranks of the state bureaucracy and party are to be found in sub-ministerial and provincial government positions. They represent the pre-1975 upwardly mobile 'middle class', that is Khmer who were moving upward socially and economically via modern education and state employment, often out of a peasant or non-elite urban family background. In general they found places then as school teachers, administrators, technicians, or were still students in 1975. Without the war and revolution they would have, and in some cases did, serve under the regimes of Sihanouk and Lon Nol. Although they could have fled abroad, they have chosen to stay in Cambodia and work for the PRK out of nationalist commitment, ideology, idealism, or of course in some cases inertia. Noteworthy is that because of the great loss of skilled manpower between 1970 and 1979, most of them now have higher positions than they could have expected under a peaceful evolution of Cambodia after 1970.

The Fifth Party Congress, convened in October 1985, was the major political event in the PRK/SOC between 1979 and the election of 1993. The Central Committee was increased to 31 full and 14 alternate members, and the shifts in personnel were indications of the direction in which

the PRK intended to move and how the factional tendencies in the PRK leadership were to be balanced. Four of the pre-Congress full members, all Vietnam veterans, were dropped, leaving only 5 of that group, while 9-10 were DK cadres. Of the 16 new full members, at least 12 were 'new people' who had been outside the DK apparatus during 1975-79, and who had no Vietnam connection. Several others were young professionals who neither went to Vietnam nor joined Pol Pot, who had been students, teachers, technicians, or civil servants under Sihanouk and Lon Nol, who were considered class enemies after 1975, and who chose to work for the PRK after 1979.

No doubt of equal significance is that three more of the new members who had fought for the DK were said to have broken with Pol Pot by 1975, reinforcing that tendency, neither DK nor strictly Vietnam veteran, already represented by several powerful figures in party and army leadership. The rise of these two groups among the leadership augured well both for Cambodian independence and for smooth integration of pre-revolutionary intellectuals and administrators into the new system.

That means they came from those elements of Cambodian society least likely to be enthusiastically pro-Vietnamese, and as exploited third-class citizens under DK they are strongly against that type of regime. They could be expected to represent a genuine current of Cambodian nationalism, but one which, unlike the ideologies of Pol Pot, Sihanouk, or Son Sann, does not define such nationalism as first of all anti-Vietnamese chauvinism, and which seeks to live in peaceful cooperation with Cambodia's eastern neighbor.

In general, then, the results of the 5th Congress showed an erosion of the position of Vietnam veterans in the Cambodian Party, and thus relatively a gain in the power of former DK cadres, but also a rapid rise to positions of responsibility by younger people who did not represent a pro-Vietnamese tendency, and who may never have been active in the revolutionary struggles at all. **By 1985 the Cambodian Party was certainly not a Vietnamese puppet organization.**

If the surprising emergence of this new leadership group was to be linked to any single leader, it was probably to Hun Sen, the youngest of the top level figures, born in 1951, a combatant during 1970-75, then DK cadre until 1977, and whom some observers saw as one of the most nationalistic of the top leadership.

The 1986 changes were little-noticed, perhaps even deliberately not noticed, by foreign observers, no doubt because they contradicted the conventional kremlinology of the time, perhaps also because they demonstrated that the previous year's 8-point peace plan devised by Phnom Penh's enemies and offering to place the Peoples Republic on a par with each of the three coalition partners was too little, too late, and addressed to the wrong people. It was attractive to no constituency within the country, where the leaders were increasingly credible as a Cambodian government which could not be delivered by Vietnam in negotiations with their enemies. The U.S., ASEAN, and China could no longer credibly pretend that the government of Cambodia sat in a collection of jungle camps of three inherently incompatible factions along the Thai border, or that the

conflict was something to be settled among foreign powers acting as proxies for their various Cambodian favorites.

By 1986 the trend of personnel changes in the PRK leadership since 1981, both in the party and in the government, indicated that if the new Cambodian regime was ever a mere creation of Vietnam, its Khmer nationalist credentials had increased yearly until the state was close to being taken over by pre-war educated intellectuals and administrators, few tainted by collaboration with Pol Pot, or by past close association with Vietnam.

The changes in 1985-86 established the general outline of PRK/SOC leadership, both party and government, until 1993. Erosion of the Vietnam veteran group continued by natural causes, and as more new people were brought in, without any sign of a young Vietnam generation within the CPP to carry on that tendency. The young generation which has been formed within the party since 1979 is from previous non-party people who, while often sympathetic to the Vietnamese efforts against Democratic Kampuchea, do not identify with Vietnam, or the Vietnamese party. Children of the old Vietnam veteran generation, to the extent they have been identified within the PRK/ CPP administration and party, are not prominent.

A Second National Cadres Conference in April 1989 increased the total Central Committee membership to 65 with the election of 18 more full members and 10 more candidates. The same factional tendencies continued, that is the Vietnam group was swamped with people who represented either nationalist communism or pre-1979 non-communism. Membership in the Central Committee was increased again to 75, with 19 new members, in a Special Party Congress in July 1992. Few of them were prominent, but most appeared to be relatively young, and none can be related to the traditional pro-Vietnam tendency..<sup>7</sup>

After 1988 factional divisions imputed by observers were no longer Vietnam group versus non-Vietnam groups, but between followers of Chea Sim, or Chea Sim with Heng Samrin, and Hun Sen.<sup>8</sup>

Factional differences became blurred in 1991-92, when the CPP gave up 'Marxism-Leninism', and moved toward an accommodation with Sihanouk. In 1992, on the anniversary of the founding of the party, Chea Sim laid out the new line in unequivocal terms. Although the founding date of the party remained 1951, the first historical event evoked was the common struggle of the Party with Sihanouk against the illegal Lon Nol coup in 1970. The party had always been loyal to Sihanouk. Since the political changes decided in 1991, they had made efforts to bring Sihanouk

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<sup>7</sup> *Pracheachon*, nos. 38 (373)-43 (378), 6-13 April 1989; and *Pracheachon* 401 (1120), 1 August 1992, respectively.

<sup>8</sup> The most detailed analysis of intra-CPP factions appeared in a FUNCINPEC publication, "La nomenclatura communiste cambodgienne", *Realités cambodgiennes*, No. 2, Phnom Penh, March 1993, which named 41 members of the 'Chea Sim clan' and 77 of the 'Hun Sen clan'. Lest it be dismissed as election propaganda, we must note that at the time both 'Chea Sim clan' and 'Hun Sen clan', were for FUNCINPEC equally derogatory epithets, and we may assume that they were serious, if exaggerated, involving careful examination of the associations of the persons concerned.

back, and had declared that they recognized Sihanouk as Chief of State as he was before the coup of 1970. They would support him as candidate for President in the coming election, and the Cambodian Peoples Party, and government, would continue to further the cause of the *Sangkum Reastr Niyum*, that is, the Sihanouk party of the 1960s.<sup>9</sup> In terms of party ideology, there was no longer anything to distinguish the new CPP from its rival FUNCINPEC. The only clear difference in their policies expressed in the 1993 election campaign was with respect to the Khmer Rouge, Hun Sen calling for their defeat and Ranariddh advocating reconciliation.

#### PRK/SOC and the international community

The radical changes in party line between 1988 and 1992 were the results of external pressures, the inability of the Cambodian government to resist their enemies after aid from Vietnam and the Soviet Bloc had been terminated.

In the autumn of 1979 the nearly destroyed Democratic Kampuchea armed forces, with tens of thousand of civilian supporters or impressed workers, reached the Thai border after several months retreat from the Vietnamese attack. Very quickly an international rehabilitation and re-equipment operation was set in motion, much of it disguised within the large refugee camp network which was being created; and the foreign-sponsored reconstruction of the DK forces ensured that Vietnamese troops would have to undertake the defense of Cambodia for some time to come.

An international diplomatic campaign was also mounted against the PRK. It proceeded through numerous phases, from the International Conference on Kampuchea in July 1981 to the two Jakarta Informal Meetings in July 1988 and February 1989 to the final Paris Agreement of October 1991 which provided for the UN-supervised election in 1993.

In all of the various proposals and formats which were developed over the years the principal demands made by opponents of the PRK centered on withdrawal of the Vietnamese troops in Cambodia and free elections. An assumption behind this emphasis was that the PRK only existed by virtue of the Vietnamese presence, once they were gone it would quickly fall, and in free elections the present PRK leaders would stand no chance. As it gradually became clear that the PRK would not just fade away, the proposals called for formation of a coalition government among the PRK and its Cambodian enemies.

The latter were the Coalition Government of Democratic Kampuchea, formed in 1982 under pressure by ASEAN and the U.S. It consisted of the PDK, the KPNLF of Son Sann, and the Sihanoukists, eventually FUNCINPEC. Although the PDK were reviled by all western countries during their time in power, there was no hesitation to use them against Vietnam after 1979. In fact they were deemed essential to any serious resistance against the PRK. To make them more respectable their backers insisted on a coalition with the two non-communist groups which had formed on the border after 1979.

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<sup>9</sup>. Chea Sim's speech on the 41st anniversary of the founding of the party, was in *Pracheachon*, no. 378 (1093), 1 July, 1992.

Son Sann, and the other older leaders of his group in general traced their political descent from the Democrat Party of the 1940s-1950s, or else they were supporters of Lon Nol during 1970-1975. The Sihanoukist leadership, naturally, consisted of his traditional supporters. There was thus no natural affinity among the three coalition partners. The KPNLF leaders had a history of anti-Sihanoukism since pre-war days, while both they and the Sihanoukists were violently anti-Communist, particularly anti-DK. The only thing in common was a desire, not only to remove the Vietnamese from Cambodia, which was occurring by itself, but to destroy the PRK because of its friendship with Vietnam.

The coalition hardly functioned as such, because of the internal animosities, and it never would have formed without the insistence of its foreign backers. Indeed, the KPNLF and Sihanoukist groups were truly foreign creations as much as the PRK was alleged to be. In addition, the KPNLF nearly destroyed itself with factional infighting, and the record on human rights within its camps was nearly as bad as the fierce discipline attributed to the DK authorities in their camps.

The coalition, however, held Cambodia's United Nations seat, and was recognized by most important western governments, including the United States. The non-recognition of the PRK was based on its alleged unrepresentative character, and the alleged violation of international law through which it was established. The improvement in human rights, the reconstruction, and the evolution in state personnel outlined above were ignored. According to the Coalition and its backers, particularly the United States, China and ASEAN, the PRK government was a collection of Vietnamese puppets who only remained in power because the country was occupied by the Vietnamese army.

The demands made by the international enemies of the PRK, and the assumptions behind them, showed an amazing lack of realism or attention to the facts of the situation within Cambodia. In 1979-1980 it might have been possible to achieve quick withdrawal of Vietnamese troops, if it was guaranteed that sanctuaries and support would not be offered to anti-PRK and anti-Vietnamese groups on the Thai border, in particular the universally discredited DK. The ASEAN proposal to the International Conference on Kampuchea in 1981 showed awareness of this, with its call for disarmament of Cambodian factions and exclusion of DK, but it was blocked by China and the U.S., who preferred to rearm and rehabilitate the DK army in an effort to destroy the PRK by force.

Nevertheless, the Vietnamese troops were being withdrawn, in a gradual phase-out which began in 1982 when, according to an American expert, their numbers fell from 180,000 to 150,000.<sup>10</sup> Each year thereafter Vietnam announced a further partial withdrawal, only grudgingly acknowledged by their enemies with some delay, until by early 1988 the latter were admitting a figure of 120,000 against Vietnam's claim of 100,000 remaining troops. In September 1989 the final elements of Vietnamese troops departed.

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<sup>10</sup>. Edmund McWilliams, "Vietnam in 1982: Onward into the Quagmire", *Asian Survey*, January 1983, pp. 62, 70.

It is interesting now to review some of the signals showing awareness of the changing situation which were emitted by some of the key international players in the Cambodian game during the end of the 1980s.

Chinese policy on Cambodia since 1975 was always more related to its dispute with the Soviet Union than to approval of DK ideology and domestic policies, particularly since the reforms of Deng Xiaoping. As Sino-Soviet relations improve, China's interest in DK diminished. Indeed, in a little-noticed statement to the Malaysian Institute for Strategic and International Studies a specialist from the Institute for International Studies in Shanghai said that "recent steps of the Chinese government may be interpreted as leading toward withdrawal of support" for the Khmer Rouge.<sup>11</sup> Of course China would not change positions overnight, but they accepted the Sihanouk-PRK dialogue, and agreed that the DK group should not come to power again, although they still insisted on replacement of the PRK by a coalition of all four Cambodian parties.

Encouraging sounds also came from Thailand, through which all aid for the DK coalition had to pass, and which could quickly end the struggle with a change of policy. In a 1986 ASEAN SERIES publication of the Malaysian Institute of Strategic and International Studies, M.R. Sukhumband Paribatra, one of the most influential of Thailand's younger political scientists, argued that perhaps the best ASEAN can hope for in Cambodia is 'a Finland solution'. Then on two occasions in November 1987 General Chaovalit Yongchaiyuth, Commander of the Thai Army, declared that the Cambodian dispute was mainly an internal conflict, and that Vietnam did not constitute a threat to Thailand.<sup>12</sup> Still more encouraging was the statement of new Prime Minister Chatichai Choonhavan in 1988 that Indochina should be Thailand's market, not battlefield, a position reflecting the Thai business community's unhappiness with the policies followed since 1979. Chatichai, moreover appointed M.R. Sukhumband to a new group of special Prime Ministerial advisers.

The Vietnamese too did their part, announcing credibly that they would hasten their departure and pull out half their remaining 100, 000 troops in 1988, with the rest leaving by September 1989 if there was an overall political settlement, or at the latest by the end of 1990, settlement or not.

After the first obligatory sound of congratulations, however, the anti-PRK forces began to show nearly as much consternation as was caused by Vietnam's move into Cambodia 10 years earlier. Vietnam had called their propaganda bluff. They really intended to leave, and the PRK was not going to collapse as a result.

In the face of clear Vietnamese intentions to get out fast, ASEAN began to engage in delaying tactics. Just before the first Jakarta Informal Meeting in July 1988 an ASEAN Foreign ministers' Joint Communiqué, as though there had been no changes since 1979, expressed "deep

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<sup>11</sup>. *The Nation*, 8 July 1988; *Berita Harian* (Kuala Lumpur), 9 July 1988.

<sup>12</sup>. Sukhumband Paribatra, *Kampuchea Without Delusion*, 1986, pp. 15, 16, 20; General Chaovalit's remarks in *The Nation* 4, 5, 6, 8 November 1987, *Bangkok Post* 6 November 1987.



concern over the continued illegal occupation of Kampuchea by Vietnamese military forces", now down, remember, to 50-70, 000. A subtle new approach was the foreign ministers' "call for a durable and comprehensive political settlement in Kampuchea which will lead to [my emphasis-- MV] the total withdrawal...under international supervision".<sup>13</sup>

The Vietnamese were not to be permitted to just leave, and the ASEAN foreign ministers were even seeking to delay their departure until new machinery could be set up to undermine the PRK. As Indonesian Foreign Minister Ali Alatas told a Thai journalist, the question is no longer just "the unilateral withdrawal of Vietnamese troops, " but withdrawal "in a context of an overall comprehensive solution", meaning within a framework supervised by those powers which desire a change in the Cambodian government.<sup>14</sup>

Although Alatas claimed to be concerned about the DK forces which might continue fighting after Vietnamese withdrawal, they could easily have been blocked by ASEAN pressure; and his remarks implied that it was PRK durability which was causing concern. ASEAN even seemed to be calling for another foreign occupation, named the 'International Peacekeeping Force', in the embarrassing event of a real Vietnamese withdrawal. All ASEAN and China had to do was cut off aid to the anti-PRK coalition and the PRK could take care of its own peacekeeping. The U.S. also chimed in with "uncertainty about Vietnamese intentions", and the "direct threat to Thailand of continuing Vietnamese occupation".<sup>15</sup>

The enemies of the PRK were caught in a dilemma created by a too wishful belief in their own propaganda. Behind all of the moves since 1979 had been a conviction that the PRK could never become anything more than a Vietnamese puppet state, without any national base, which would collapse as soon as the Vietnamese could be made to leave, of course unwillingly. The maintenance of this view against all the accumulating evidence to the contrary resulted from a rare dialectical reinforcement between official U.S. and ASEAN disinformation and house-broken journalists who with witless reverence repeated whatever their favorite 'western diplomats' said, until apparently they all came to believe their own propaganda. Finally they could not avoid perceiving that the Vietnamese really intended to leave; and embarrassment was caused by the sudden realization that the PRK was real Cambodian government which might survive.

The position of the anti-PRK parties at the end of 1988 was that the PRK must not be allowed to survive the Vietnamese withdrawal as government of Cambodia. The international settlement planned to precede or coincide with the Vietnamese withdrawal would require replacement of the PRK with a 4-power coalition (DK, KPNLF, Sihanouk, PRK) in which no party would be dominant, and the arrangement would be assured by an international force. Naturally the PRK refused to dissolve itself after having rather successfully governed for 10 years. PRK leaders agreed to some kind of participation of their enemies, minus eight DK leaders, in a new

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<sup>13</sup>. "ASEAN Joint Communiqué", *The Nation*, 6 July 1977.

<sup>14</sup>. *The Nation*, 10 July 1988, pp. 6-7.

<sup>15</sup>. *Bangkok Post*, 2 July 1988; *The Nation*, 6 and 8 July 1988.

government which would be in fact an enlarged PRK. They also agreed to hold elections under international observation and to abide by the results even if they lost their dominant position. Together with this was a warning that by 1990 at the latest the Vietnamese forces would be gone, and then the problem would have resolved itself and would no longer require any concessions to the coalition.

An unexpected breakthrough came in January 1989 when Thai Prime Minister Chatichai Choonhavan invited Cambodian Prime Minister Hun Sen to visit Bangkok. Although Prime Minister Chatichai denied this meant a change in Thai policy, that it was merely a get-acquainted meeting which would facilitate the negotiations desired by ASEAN, it was a clear coup for Hun Sen and a moral defeat for the coalition and Prince Sihanouk. The visit was not even coordinated with the Thai foreign minister Siddhi Savetsila, one of the most energetic proponents of the standard ASEAN hard line against Cambodia. It clearly signalled Prime Minister Chatichai's intention to break with the old policy, and a realization that the PRK was a viable government. In this initiative he probably enjoyed the support of the then Army Commander General Chaovalit Yongchaiyut, who, it was later revealed, had already had contacts with PRK General Tea Banh.

To realize the full international impact of Chatichai's sudden move, it must be recalled that ASEAN policy had always been to maintain unity and on the Cambodian question to follow the lead of Thailand, the 'front line state', even when it seemed that Indonesia and Malaysia were not enthusiastic about confrontation with Vietnam, and the Philippines too preoccupied with other matters to be greatly concerned. Furthermore, the U.S. had always claimed that its policy on Cambodia was to follow ASEAN.

The reactions from Indonesia and Malaysia indicated that they had no strong objection to the new Thai opening to Phnom Penh, and that front-line Thailand could indeed effect changes in united ASEAN policy. Unfortunately, the United States seemed no more willing to obey its own dictum of 'following' ASEAN than in 1981 or 1985. It was reliably reported that U.S. "officials do not hide their displeasure" with "Thailand for its policy switch", and they warn that Thailand "would have to pay a price", that "Thailand should consider whether the total value of any new Indochinese trade would even cover the US trade access privileges it still gets", and which implicitly might be cut. More threatening were the simultaneous announcements that the U.S. would strengthen the KPNLF and Sihanouk forces, and would even countenance the participation of the Pol Pot group in a Cambodian coalition, after years of insisting that no return of the 'Khmer Rouge' could be accepted.<sup>16</sup>

In any case, further dramatic moves had to await the Sino-Soviet Summit scheduled for May. In a March 1989 visit to Peking, Thai Prime Minister Chatichai seemed to have been called to order, for he admitted that "Thailand doesn't have enough influence" to effect changes in Indochina on its own, and that there will be "no more direct approach to Vietnam, Phnom Penh". He added,

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<sup>16</sup>. *Far Eastern Economic Review* (2 March 1989), pp. 9, 10-11; for U.S. actions in 1981 and 1985 see note 2 above.

"we will not do anything now...We are just a small country, not a superpower". Thailand will "wait for the outcome of the Sino-Soviet summit".<sup>17</sup> Until then it was expected that China would keep insisting on a four-power coalition to replace the PRK, but perhaps only as a bargaining chip, for there had been too many signals that if other matters affecting Sino-Soviet relations could be settled, China would quietly shift away from supporting the DK party, which could mean in effect the end of the coalition.

In fact nothing happened, because of the Tien An Men events, and the next step on which attention was fixed was the meeting among Cambodian factions scheduled for 4 August in Paris.

But even if the failure of the Chinese liberals to prevail dismayed some friends of the PRK and gave encouragement to their enemies, a continued gradual Chinese withdrawal from support for the DK coalition against Phnom Penh could be expected. As one Thai commentator remarked, "the withdrawal of Vietnamese troops...inhibits Peking from exerting further pressure...[for] China had accepted it as an instance of the Soviet Union fulfilling an obligation".<sup>18</sup>

This seemed also to be the prognosis of the anti-PRK ASEAN groups and enemies of the PRK in the United States. They became more insistent than ever that Vietnam must not just go off and leave Cambodia to itself. With a rare degree of double-speak they evoked an imagined Afghan parallel, with Vietnam, by its unilateral withdrawal, which we must recall had been their demand since 1979, allegedly imposing civil war on Cambodia, pushing aside the obvious circumstance that it was precisely the enemies of Phnom Penh, both Cambodian and their foreign supporters, who threatened civil war.

Ironically it was the PRK whose position most approximated the stated objectives of the United States. They were unalterably opposed to the return of the DK leadership (the 'Khmer Rouge' of American commentators); they agreed to free multi-party elections; they accepted in principle Sihanouk's return as Chief of State; they wanted foreign investment and trade, they reestablished the traditional official religion, and they had been moving toward an increasingly free economy since 1985.

Sihanouk, on whom the U.S. regime was pinning its hopes, was insisting on DK inclusion in a four-party coalition to replace the PRK. He preferred this to the bipartite merger offered him by Phnom Penh, because instead of the powerless, if ceremonially prestigious, position of figurehead Chief of State which the PRK solution implied, a coalition of four factions which hate and distrust one another would have provided Sihanouk with considerable opportunities to manoeuvre, and thereby to acquire some real power, such as had resulted from the internationally supervised settlement in 1955. With breath-taking cynicism Sihanouk, in a desperate attempt to salvage maximum authority for himself, was willing to risk civil war and the return to power of the DK leadership.

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<sup>17</sup>. Surachai Sirikrai, a Thai sinologist, quoted in "Experts say Soviets Scored at Summit", *Bangkok Post*, 24 May 1989.

<sup>18</sup>. Surachai Sirikrai, quoted in "Experts say Soviets Scored at Summit".

The U.S. regime position was equally dangerous, and without even any apparent justification in self-interest, after Phnom Penh had offered to establish the type of political and economic system which the U.S. pretended to favor.

Indeed, as laid out in an interview by Assistant Secretary of State for East Asia and the Pacific Robert Solomon which was broadcast to Southeast Asia on 29 June, the U.S. position, insisting on the one hand on "self-determination for the Cambodian people", but also on "a process of national reconciliation", was dangerously contradictory.<sup>19</sup> If, as seemed likely to people who had observed life within Cambodia, the majority of the population should prefer the PRK, and if 'national reconciliation' meant forcing them to accept integration with feared and despised coalition elements under international pressure, this would have increased the danger of civil war which the U.S. regime pretended to be trying to avoid.

It was perhaps not just a coincidence that Solomon gave his policy statement interview on the same day that Sihanouk announced a hardening of his position. This included a demand that a pre-condition for his participation in the forthcoming Paris talks was "a dismantling of the Phnom Penh regime in exchange for his government". Solomon emphasized several times that the U.S. wanted "Sihanouk to play **the** [my emphasis--MV] leadership role", and was "making efforts...to strengthen the position of Prince Sihanouk", implicitly against the perceived wishes of the Cambodian majority who through their leadership had indicated their acceptance of Sihanouk as ceremonial leader, but not with strengthened authority.<sup>20</sup>

Subsequent developments in 1989-1990 did not justify the optimism which followed the Thai policy change. The international players, in whatever slightly changed formula, Jakarta Informal Meetings, Tokyo Conference, Australia Plan, UN Plan, still insisted on weakening, if not destroying, the State of Cambodia with a four-power arrangement termed Supreme National Council in which national sovereignty will be vested pending the outcome of elections under international supervision. China continued to maintain its support for the tripartite coalition and for the Democratic Kampuchea faction within it. Even within Thailand Prime Minister Chatichai was not able to persuade his army to terminate the supply lines across Thai territory to the DK forces, and he in 1991 he was overthrown by the military, after which Thai Cambodia policy returned to its traditional pro-American line.

Washington was perhaps counting on the Nicaragua syndrome to effect the long-desired outcome, elimination of the Phnom Penh government. Beginning in late 1988 Phnom Penh undertook a series of economic liberalization measures. They were partly no doubt to remain in line with Vietnam which was doing the same thing, in order to qualify for IMF and World Bank aid, partly also in the hope that the U.S., Western Europe and ASEAN would view Cambodia more sympathetically. As in all cases of new economic liberalism in poor countries the immediate effects

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<sup>19</sup>. Solomon's remarks were reported in *The Nation* (Bangkok), 1 July 1989.

<sup>20</sup>. Sihanouk statement reported in *Bangkok Post*, 30 June 1989, "Sihanouk makes threat to boycott Paris peace talks".

were disastrous, with even less prospect for the subsequent pickup dreamt of by neo-classical and monetarist economists than in Eastern Europe.

Moreover, the lesson of Vietnam demonstrates that as far as the U.S. is concerned, insistence on such liberalization is intended to destroy the economy, not just to put it onto a track that U.S. theory says leads to development and qualifies the country for normal international economic relations. Vietnam carried through the reforms recommended by the IMF and World Bank, and very successfully, but the U.S. still blocked loans from those institutions on the pretext that Vietnam had not persuaded the Phnom Penh government to cooperate in its own demise.<sup>21</sup>

In Cambodia, after 10 years of a well-managed currency and low inflation, there was over 200% devaluation in 1988-1990, without the state being able to raise salaries commensurably. The small class of local merchants with enough capital to invest in imports were thriving while the population as a whole sank into even worse poverty than before. In spite of the clear opportunism of the indecent western press campaign in favor of the Khmer Rouge, urging that to save Cambodia from them they must be taken into the government, there was probably some truth in the claims that they were making progress with hearts and minds in rural Cambodia.<sup>22</sup> Certainly Sihanouk was gaining popularity in the countryside, contrary to SOC prognosis.

In September 1990 the Phnom Penh government moved further toward its enemies, accepting in principle the UN plan which called for formation of a Supreme National Council as repository of sovereignty, while a UN administrative and security force would take over administration pending supervised national elections to form a new government. In Jakarta on 10 September 1990 all four Cambodian factions accepted a formula for the Council, 12 members, 6 from the SOC and 6 from the Coalition, that is, 2 from each partner in the latter.

Further meetings over the next twelve months led to the final Paris Agreement of October 1991. The SOC was forced to accept equal participation of its three enemy factions in an election, but had avoided their constant demand of the previous ten years, that the Phnom Penh government be replaced by a four-power coalition before the election.

## **APPENDIX II**

### **International Relations**

by Ramses Amer

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<sup>21</sup>. Susumu Awanohara, "US, Japan block IMF effort to support Vietnam, fiscal interdiction", FEER 28 September 89, pp. 22-23.

<sup>22</sup>. Nate Thayer, "Despite record, Khmer rouge gaining support", *Bangkok Post*, 9 May 1990; Steven Erlanger, "United Nations' Cambodia plan dodging vital issues" (New York Times), published in the *New Straits Times* (Kuala Lumpur), 31 August 1990; Nate Thayer, "Resistance routs P. Penh troops in countryside", *Bangkok Post*, 17 July 1990, reporting Khmer Rouge claims as truth. At least the Khmer Rouge were winning some hearts and minds among the western press corps in Bangkok.

[\*Because of the very great changes in the situation since this report was written in 1996 this appendix is no longer useful for understanding the current situation, and Ramses Amer did not wish to take time to write a new version.\*]

**APPENDIX III**  
**Court and Law Appendix**  
**Pre-UNTAC background**

A basic Penal Code was promulgated in 1911, "practically a list of sentences to be applied for crimes, *délits* or *contraventions*"; in 1924 it was replaced by a new Penal Code; and this was totally rewritten in 1934.<sup>23</sup> Under the French Protectorate the Cambodian legal system was based on the civil law system of France. Along with democratic electoral politics a legal system of the French type continued after World War II. When Cambodia became independent in 1953-54 the French legal system which had been imposed remained in force except for provisions contrary to Cambodian sovereignty. The criminal and civil codes were thus French codes, based not on local traditional law, but on laws and principles imported from France. Independence of the courts and rule of law declined after 1955 as Sihanouk's authoritarianism increased. There was further deterioration from 1970 to 1975 because of the war, and this situation prevailed until the defeat of the Khmer Republic by revolutionary forces on 17 April 1975, after which all previous legal institutions became nullified, if not formally, at least de facto.

Apparently the Democratic Kampuchea (DK) regime did not formulate written laws, nor organize courts as such. As far as is known, arrest, imprisonment, and punishment for offences were entirely based on administrative decisions, usually arbitrary. Moreover, persons with pre-revolutionary legal training, like most intellectuals and technicians, were turned into rural laborers and their skills ignored.

In normal peacetime conditions before 1970 ordinary Cambodians tried to avoid litigation because of conventional wisdom that both courts and lawyers were too expensive, if not dishonest. When reconciliation and amicable settlement of disputes was impossible recourse might first be had to an administrative official to exert pressure on the other party; and if all efforts failed people might accept their loss rather than go to court. When charged with a crime and thus forced to appear in court, the natural response of most people was to attempt to influence the judge. In any case, criminal sentences were usually light, 3-4 years for murder. Harsh sentences were for political crimes.

When the PRK was formed in January 1979 with the promise to restore normal legal, social, educational, and administrative institutions, the country had been without laws or courts at all for over four years, much of the country for longer than that because of wartime conditions during 1970-75. Even in places not in the war zone, or in pre-war conditions before 1970, legal guarantees

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<sup>23</sup>. Jean Imbert, *Histoire des institutions khmères*, Phnom Penh, Annales de la Faculté de Droit de Phnom-Penh, 1961, p. 188.

and general observance of civil rights were far from the standards seen as ideal in the affluent, democratic west.

After 1979 the PRK began to institute new laws and courts, based on models from the Soviet Union and Vietnam. Since these systems also have their roots in the civil law systems of continental Europe, they bore many similarities with what Cambodians were accustomed to before 1975. For example, the inquisitorial system of prosecutions, and the relatively minor role of defense counsel. Also, in the Soviet-influenced system the government is unitary, under the leadership of a ruling party, and there is no perceived need for 'checks and balances', for there is no separation of powers.<sup>24</sup>

Few of the pre-war corps of legally-trained people returned to such work in 1979. Like other groups of urban intellectuals under Democratic Kampuchea, they had suffered a death rate higher than normal, some had emigrated before the 1975 defeat, and others chose to flee abroad across the Thai border once freedom of movement returned in 1979.

In law, as in all areas other than basic agriculture, the new PRK was faced with a situation of too few trained people, no material (records, archives, legal books and documents), and an absence for several years of attention to rule of law by authorities, or belief in it by the population. It cannot be too strongly emphasized when discussing legality and human rights in Cambodia that in 1979 there was hardly anyone trained in law, and any surviving law-enforcement personnel taken into PRK service had been used to working under regimes which offered few if any guarantees to the accused. It is also likely that no set of pre-war law texts was available within the country.

Coincident with this was a domestic and international political situation which produced maximum social instability and tended to provoke more lawbreaking, both petty and major, than one would expect in a country which had lived for years at peace.

The old laws of the Sihanouk or Lon Nol periods, even if they could have been found, could not just be re-promulgated, for as positive law deriving authority from higher acts, ultimately the pre-war constitutions, they could have no legal force after those constitutions had been superseded. Moreover, as the constitutions and laws of enemy regimes, it would have been inconceivable to simply restore them, and some of their provisions would have been contrary to the goals and ideals of the new state.

Thus the PRK set out to create a new legal structure, pending completion of which decisions relating to right and wrong, arrest and punishment were taken administratively, no doubt often based on individual officials' beliefs about equity, or what had formerly been 'the law', but inevitably varying according to time and place, and in degree of severity. Thus a court and legal system was established *ad hoc*, step by step.

Before the promulgation of a constitution and establishment of a legislative organ in 1981, Decree-Laws were issued by the KPRC, and the first was concerned with the establishment of

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<sup>24</sup>. James D. Ross, Asia Program Director, Lawyers Committee for Human Rights, 1 November 1992, pp. 1-2.

tribunals, termed 'Revolutionary People's Courts'; and the second Decree-Law, dated the same day, established penalties for various crimes. The first PRK law was Decree-Law no. 01 of the then ruling State Organ, the Revolutionary Peoples Council, dated 15 May 1980, and deriving its authority from the proclamation of 8 January 1979 establishing the new regime immediately after the occupation of Phnom Penh. This law provided for Revolutionary Peoples Courts in all provinces and municipalities. The very basic text of only three printed pages and 11 short articles established such courts to deal with all types of criminal and civil cases, defined the membership of the courts, and the most basic modalities of their functioning.

The PRK constitution of 1981, in its chapter 8 on tribunals and the office of public prosecutor, left the organization of a court system to be established by law, no doubt because at the time of promulgation of the constitution, in mid-1981, courts had already been functioning for over two years. Thus with respect to the courts the constitution just established certain principles which clearly relate to an already existing system.

After the state apparatus was modified in May 1981 to executive State Council plus Council of Ministers, and a National Assembly, operating under a written constitution, Decree-Law no. 01 was superseded by a Law on "The Establishment of Courts and Public Prosecutor", passed by the National Assembly on 10 February 1982, and promulgated by a Decree of the State Council deriving authority from article 60 of the Constitution.

This much longer text of 22 articles developed the basic organization and principles established by no. 01, and in its article 4 faced squarely the particular Cambodian difficulties. This article says that "In cases where no written law exists, the court is to apply principles resembling law, or based on the meaning of the constitution and the political line of the revolution."

According to this law there was to be a court in each province and municipality, with personnel of a president, one or two vice presidents, and a judge. Trials were presided by a panel of three, or in some cases five, consisting of the above, and on occasion 'People's Assessors'. The available texts do not indicate how court personnel were appointed, nor the qualifications required, nor was the position of the courts within the state apparatus clear, although they seemed to be under the Ministry of Justice.

The same law added to the right of defense of the accused that it may be conducted by the accused alone, or with the assistance of lawyers. No Appeal Court or Supreme court was established, but the right of appeal to 'higher authorities' was recognized, as was the requirement that death sentences must be sent to the State Council for approval. The first two Decree-Laws on courts and sentences were concerned first of all with treason ('betrayal of the revolution'), although they provided penalties for other crimes as well. Punishments for serious offences had been established by Decree-Law no. 02 of 15 May 1980 issued under the authority of the same proclamation of 8 January 1979, and it remained in force after the constitutional changes of 1981. Examples of the range of sentences established in 1979, and which seem not to have changed during the PRK period, was 10-20 years imprisonment for treason, and 5-15 years for espionage,



sabotage, and subversion. If a person was involved in such activities as leader of a network, or used his official position to further such activities, or if guilty of 'many crimes against the population in the past' (obviously aimed at former DK cadres), the sentence could range from 20 years to death. The first six articles of the law dealt with such crimes against the state; then article 7 established sentences of 10-20 years for murder, 6 months to 10 years for deliberately inflicting bodily injury, 2-5 years for rape, and 20 years to life imprisonment, or even a death sentence, for rape followed by murder. Theft of private property could be punished by 6 months to 15 years imprisonment depending on seriousness of the offence.

According to the constitution, People's Assessors had the same rights as judges in passing sentence, which was decided by majority of the court (article 82), all court procedure must be based on law and on the principle of equality before the law (article 81), and the accused had the right to defense (article 85).

Thereafter, each year saw further development of law codes by the handful of lawyers who survived and chose to work for the PRK, establishment of courts, and training of law personnel. By 1986 four volumes of Collected Law Texts [in Khmer] totalling nearly 500 pages had been published for public distribution. Full new criminal and civil codes were not promulgated by the PRK/SOC, but a law on marriage and family appeared in July 1989.

Little information was available on the functioning of the courts established by those laws in 1980-82. Only a few cases, mainly treason and murder, were reported in the PRK press. In June 1980 there was the case of Hem Krisna and 15 accomplices, given sentences of 3 to 20 years imprisonment for active subversion in the service of the non-communist anti-PRK forces on the Thai border. Just over a year later a group of five men and a woman were tried for subversion and sabotage as 'Pol Pot mercenaries'. The five men had all been DK soldiers and cadres since the period 1970-1973, had fled in January 1979 to DK bases in western Cambodia or the Thai border where they accepted assignments to carry out sabotage in Phnom Penh. They were given sentences of 11 years to life in one case. The woman, who had no political background or, in contrast to the men, education, and who was only guilty of knowingly giving shelter to the saboteurs, was let off with a 2-year suspended sentence. One non-political trial which was reported involved five men accused in May 1982 of robbery and in one case murder, and sentenced to prison for terms of 18 years up to life for the murderer.

In any case, PRK authorities themselves were concerned with defects in legality and their remedy, and throughout 1985 they were giving particular attention to the quality of their legal system. In February a State Council meeting agenda included "examination and decision on 'Law Construction' in 1985", "decision on the request for pardon of a convict", and "review of the trial and conduct of the prosecution in the 'Kratie Province case'"; while in July Justice Minister Ouk Bun Chhoeun spoke in the National Assembly on "democratic Legality".

Also in July 1985, a law was passed to organize a Supreme Court, which would function as a court of Appeal.

When I visited Phnom Penh in May 1986 I interviewed pre-war- trained Ministry of Justice lawyers who explained that in the past some representatives of state authority had made errors, arresting and detaining people arbitrarily, because those officials did not yet understand the party line, and the PRK did not have a law giving clear directions on arrest and detention.\*

To remedy this, on 12 March 1986 State Council President Heng Samrin signed a new Decree-Law No. 27 on "Arrest, Detention, Temporary Imprisonment, Release, and Search of Domicile, Property, and Person". It was published in the Cambodian press in October 1986, and in summary it contains the following provisions.<sup>25</sup>

Arrest and detention may be authorized by the police, the military police, the public prosecutor, and the courts.

Arrests may be made only if a crime has clearly occurred, if there is strong evidence against the suspect, and when there is a warrant or other proper document authorizing arrest.

Arrest and detention are forbidden in civil cases, for criminal offences for which the sentence would not be imprisonment, i.e. a fine, or for minor crimes which do not endanger society.

Warrants for arrest are issued by the chief of police at district, province, or municipality level, with the approval of the relevant People's Revolutionary Committee, that is the organ of civil government; or by the Office of Prosecutor or Court. The latter may also order release of a suspect if not satisfied with the evidence.

When a suspect is arrested, word must be sent immediately to his family, work place, or place of residence in rural areas. This may be delayed if it would hinder the preliminary investigation.

Torture is expressly forbidden in any circumstances; and during detention, prisoners have the right to meet lawyers and family members. Officials of the Prosecutor's Office and the Court may question the suspect, and prison officials must provide adequate facilities for such visits and questioning.

The permitted periods of detention for investigation of suspects are as follows:

At the lowest ward and village levels, a suspect may only be questioned, and within 24 hours either released or sent to district authorities. They may release the suspect, or if the case is serious enough to permit detention for investigation, the person and dossier must be sent up to provincial or municipal level within 15 days. There a further 15 days is permitted for investigation before sending the case to the Prosecutor and Court for trial.

If the authorities believe that longer investigations are required, the police may request a prolongation of detention from the People's Revolutionary Committee in the Province or Municipality. The latter may then allow up to 2 months detention for a crime punishable by up to 5 years imprisonment, or 4 months for a crime punishable by over 5 years; and a further 1 or 2

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\* .The first person here and below refers to Michael Vickery.

<sup>25</sup> [\*An English translation of this PRK law by Michael Vickery, "Criminal Law in the Peoples Republic of Kampuchea", is in *Journal of Contemporary Asia*, Vol. 17, No. 4 (1987), pp. 508-18.\*]

months respectively may be authorized by the PRC if deemed absolutely essential. Thus the maximum permitted periods of pretrial detention for criminal cases are 4 and 7 months.

In *political cases*, however, involving state security, pretrial detention for up to 12 months is possible; and the Council of Ministers may further determine that an instance is a special case requiring more than 12 months detention without trial.

This was the situation when in 1988 the Phnom Penh newspaper *Kampuchea*, no. 462 of 28 July 1988, published a list of 61 lawsuits reported as 'stuck' in the courts, which both confirmed that courts were active, and in its overt implied criticism of the judicial system's efficacy showed a degree of openness in Cambodian society contrary to what mainline western journalism had been asserting.<sup>26</sup>

The 61 cases listed by *Kampuchea* range from the trivial, civil suits for libel and fraud to the very serious--murder and torture by police agents. Included were several cases of murder, rape, physical abuse, non-payment of debts. One was a complaint by an individual against the police and provincial court of Kandal for having released 3 alleged murderers. It is clear that courts in the PRK were functioning according to laws, and that individuals willingly entered into litigation.

One interesting case was that of a lady, who was named, filing suit against the Ministry of Foreign Affairs and a certain ambassador, who was not named, for having dismissed her from employment, for reasons unspecified, but which colleagues thought were sexual in nature. One of the traits which the PRK inherited from its immediate predecessor, but not one of those sometimes wrongfully ascribed to it by the propagandists who have tried to assimilate the PRK leadership to that of DK, is a degree of puritanism much stronger than prevalent before 1975. Unlike punishment in such cases under Pol Pot, which was equivalent for both parties, and so far as can be determined sometimes death, in the PRK nothing more severe than transfer to a less desirable post is imposed, but apparently only on female cadres, with the males going free, and not even named in the ensuing publicity.

Such is standard practice in Southeast Asia's capitalist states, and this is an unanticipated example of the PRK adhering to international norms. I was informed, however, by a former colleague of the woman that in meetings of their organizations Cambodian women were protesting, and insisting that if such behavior is to be punished, both parties should be punished equally. Here was a cause for western feminists--equal punishment, or equal rights, for extra-marital relationships in Kampuchea.

The mere fact of such suits being brought in court, and reported in the press, illustrated a firm intention by the PRK to establish rule of law. It also countered the charges made by certain organizations that judicial procedures were neglected. Moreover, the *Kampuchea* article was an implicit complaint against the authorities that the cases had been 'stuck' in the courts too long, and an example itself of increasing openness in the society.

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<sup>26</sup>. *Kampuchea* was then the press organ of the Front, and was edited by Mr. Khieu Kanharit, now [1995] Deputy Minister of the Press.

The distribution of these cases by year was: 1984-3, 1985-5, 1986-10, 1987-26, 1988-17 (up to July). In comparison with the capitalist countries of Southeast Asia, where accused often sit years in jail waiting for their cases to reach court, this was quite a commendable record. I cannot imagine a newspaper in Malaysia, Singapore, or Thailand complaining, or even considering it was a matter for complaint, that suits brought only in the current or preceding year had not yet been settled.

The list of cases published by *Kampuchea* showed that the provisions of Decree-Law 27 were being applied, and one plaintiff charged specifically that he had been arrested in circumstances which violated that law. Likewise in accordance with Decree-Law no. 27, three provincial or district police chiefs, I was informed, in Kompong Speu, Pursat, and Kandal, had been dismissed and punished for physical abuse of prisoners. In the last case the accused was tried before an open court with loudspeakers outside for people who could not fit into the courtroom, and was found guilty of torturing 9 prisoners and sentenced to 15 years imprisonment.

Later in 1988, in November, I visited Cambodia again and made some effort to discuss laws and courts with relevant officials.

On 24 November I met Mr. Heng Chy of the Ministry of Justice.<sup>27</sup> He emphasized the efforts that had been made to disseminate information about Decree-Law 27 to the public and local authorities, and the intensive training of police and administrative cadres that had been carried out to insure its implementation. According to him trials were open to the public, and when there was not enough room in the court for interested observers, loudspeakers outside transmitted the proceedings to people gathered near the court. Foreigners present in Phnom Penh had not been invited to trials, "because they could not understand the proceedings in Khmer", and when I asked if I could attend a trial, I was informed that none were being conducted at that moment. One of my questions was whether trials were generally reported in the local press [one of the complaints of Amnesty International], and if not, why? I had asked this following his account of the trial and condemnation of a district police chief who had been sentenced to 15 years imprisonment for torturing 9 prisoners, but the case had not been published in the press, although the trial had been public. Mr. Heng Chy said that not all cases were reported in the press (1) because some youth might be incited to follow the examples of the criminals, and (2) in order to avoid hurting the feelings of families of the accused. Obviously there was a degree of disingenuousness in some of Mr. Heng Chy's explanations.

There was no hesitation on the part of Mr. Heng Chy, nor other PRK personnel, to admit that police behaviour in the early years of the PRK had not been up to standard, and for the obvious reasons; but they insisted that the government's intention was to achieve full rule of law and a fair court system. Some statistics which were provided were:

(1) Since 1985 there had been about 400 complaints against officials by the public, with about 80 resulting in decisions (not punishment) taken against the officials concerned.

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<sup>27</sup>. Heng Chy was one of the lawyers engaged by Prince Sirivudh after his arrest in November 1995.

(2) Since 1982, 532 criminal cases (some involving more than one person) had been referred to the Ministry of Justice, and 500 sent to courts for prosecution. The other 32 were new cases still under pretrial investigation. The ministry also received 303 other cases which were not prosecuted.

(3) In terms of individuals involved in the above cases, 918 had been tried, over 700 had been sentenced, over 100 given suspended sentences, and over 20 acquitted. In the remainder there had not yet been a verdict.

In 1988 two new Decrees had been promulgated regarding amnesty or reduction of sentences for those who showed improvement in prison. Seventy persons had been released, and 79 others had had their sentences reduced by 1 year, or several months. With respect to people charged with aiding the enemy, Mr. Heng Chy stressed that the cases in which the Ministry of Justice was involved were not political, but criminal. That is, the persons charged had destroyed or stolen property, and were apprehended and tried for those acts, which were criminal, not political. When I then asked about charges against people caught giving food or supplies to the enemy, but not involved in theft or destruction of property, Mr. Heng Chy said it depended on case-by-case circumstances; even if they were clearly guilty, their treatment depended on social, economic, and personal circumstances.

As I had already heard on previous visits to the PRK, there had been something of a crash programme to train new legal cadres, and to give some legal instruction to all relevant state officials. Thus in 1982 a School for Formation of Administrative and Legal Cadres was opened. It provided short, 5-month courses twice yearly, with 14 courses held up to the end of 1988. The total numbers attending had been 1958 men and 171 women. Students were chosen from among all provincial and lower level administrators, and in principle all had to eventually attend a course, where they got instruction on court procedures in civil and criminal cases. At the next higher level there were three-month courses for students chosen from among those who completed the 5-month course. Some of the instruction at this level had been by Law Professors from the GDR. Up to November 1988 there had been four courses attended by 400 people. An agreement with the GDR to provide legal training was signed in 1980. A different program in existence since 1986 was a two-year legal studies course for students who had completed secondary school. An entrance examination was required, and the first class of 60 graduated 2 months before my interview with Heng Chy. Some of the graduates were supposed to work in the Ministry of Justice, others were to be appointed legal officers in the provinces. About 6 or 7 had been sent for advanced legal studies in the USSR, GDR, and Viet Nam; and some of them were to return by the end of 1988. The instructors in this 2-year programme were Khmer--ministers, deputy ministers, department directors, as well as teachers from universities in Viet Nam.

In another interview, with a Deputy Governor in Kompong Cham, I received the same assurances about the legal situation in general. In addition, with respect to people accused of aiding the enemy, he said they were given two warnings, with short periods of political education

[presumably this means people who have not committed criminal offences], then charged in court if they persisted in subversive activities. If sentenced they were held in ordinary prisons, not special ones. Prisons, he said, do not exist below provincial level. The Deputy Governor also told me that the Peoples Assessors who sit with judges in the courts are taken from a list chosen at *khum* (sub-district, commune) level among people with good reputations. Those picked for any particular trial were chosen from among peers of the accused. Of course, such information may have been valid only for Kompong Cham Province, assuming it was perfectly true there.

By chance I obtained some small confirmation about the process of educating the police. In Kompong Cham, in conversation with two young policemen, I asked them if they ever beat up recalcitrant prisoners. They protested vigorously that it was forbidden to abuse prisoners, thus showing that they had received the new education, but they said finally that in an extreme case, such as a murderer about whose guilt there was no doubt, they might beat him to make him confess. Interestingly this remark was made about presumed murderers, not political prisoners, or people charged with aiding the enemy.

Although there might be legitimate doubt about the quality of the legal training outlined above, in particular from the point of view of the best Western democratic systems, similarly deficient training was being conducted by Western agencies on the other side, in the camps of the FUNCINPEC and KNLFF factions on the Thai border.

When UNBRO (United Nations Border Relief Operations--dominated by Americans) and the Catholic COERR assigned American lawyers to teach basic law in the camps of the Coalition Government on the Thai border, they explicitly recognized that considerable leeway had to be allowed. As one of the lawyers said, "Many of these things [police practices in the camps] fly in the face of what we believe about the law...But...we came here as a 'liaison'. Who are we to challenge basic Khmer concepts of justice and fair play?". Those 'liaison' lawyers were attempting to introduce a new code, "the backbone" of which is "an allowance for Khmer tradition ... 'accordance with Khmer practice'", for "We don't want to force anything on the population here", certainly not, at least, the standards which Amnesty International thought they were entitled to impose on Phnom Penh.<sup>28</sup>

Further progress toward the rule of law was noted by Amnesty International in 1990. This included the release of over 500 political prisoners, abolition of the death penalty, and recognition by central authorities that local authorities sometimes exceeded the limits set by law.<sup>29</sup>

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<sup>28</sup>. Tom Nagorski, "Wanted at Site 2: Law and Order", *The Nation* (Bangkok), 9 June 1989, p. 25. After the formation of the post-election government in 1993 at least one of the lawyers quoted by Nagorski, Ken Bingham, moved, along with his students, to teach law in Phnom Penh under the auspices of Asia Foundation.

<sup>29</sup>. Amnesty International, "Cambodia, Recent Human Rights Developments", AI Index: ASA 23/07/90, December 1990.

## APPENDIX IV

### Human rights

#### **Some additional comments**

##### (A). Historical background

As in other colonial countries, little was done to inculcate the best values of the West. Although the French babbled on about their *mission civilisatrice*, and the British, under protest, went through motions of establishing democratic forms, what Asians saw of modern western society was simply a new, and foreign, ruling class, as rapacious economically and as exclusive socially as the old. In front of the fine rhetoric were brutal officials, secret police, imprisonment without trial, partisan justice, and political pay-offs. If these negative features have been prominent in newly independent former colonies, it is not just 'traditional' society reasserting itself, but also imitation of the West as seen in its practice in Cambodia, Vietnam, Burma, etc. In fact, Cambodia, because of the peculiar nature of its Protectorate, may have been imbued with the worst possible mixture of the negative features of both types of society.

Any discussion of human rights, or accusation against an organization or government of violation of human or civil rights implies a standard against which the offending party is being measured. Human and civil rights are always relative, and if this were not true, if there were no, at least implicitly, agreed standard there could be no discussion.

The standard is that of ideal principles and practice in the most developed western capitalist or post-capitalist democracies; and the standard has only gradually emerged along with the emergence of conditions which that type of society has brought about.

This is clear if we consider the first principle which the standard assumes--equality before the law. That is, no one by virtue of birth, social position, wealth or office is by right above or outside the law. Such a principle cannot pertain in a society structured in classes with inherently differing rights and privileges. It could not prevail under Feudalism or Absolutism in Europe, and only gradually came to be recognized as a new class, the 'bourgeoisie', came to dominate European society, and as with the development of capitalism inequalities of acquired wealth replaced inequalities of inherited privilege or ascriptive class position.

The standard also assumes written, codified law rather than personalized, capricious decisions by rulers or judges. Another assumption is the right to fair trial and defence. Torture, either for the purpose of obtaining information or as punishment is not condoned; and penalties are to fit the seriousness of the offence. Of course, the relative seriousness of offences and appropriateness of diverse penalties is culturally conditioned, as can be seen without going beyond western Europe and the United States. Conditions of imprisonment should meet certain conditions of humane treatment, but this too will depend on cultural norms, and prisoners in very poor countries will inevitably have to endure harsher conditions than those in wealthy societies with high levels of judicial and police behavior. The prison conditions in Sweden might seem like luxury housing to poor Cambodians.

All societies, including those where practices are most in conformity with the ideal standard, have in practice recognized categories of political offences, and the necessity for suspending some of the normal procedures under certain political conditions, as in wartime. Then some civil rights are inevitably suspended, and innocent peacetime activities, such as political gossip, may become treasonable--spreading rumors favorable to the enemy.

The mere existence of laws against treason, for example, is not reported as a human rights violation, for such laws are considered normal in western liberal capitalist societies. Neither is punishment for treason reportable, so long as proper western liberal capitalist judicial procedures are followed. Treason, however, is the most subjective and political of offences, and its decriminalization might be reasonably argued.

This type of legal system was imposed, usually by force, on most of Asia and Africa during the period of colonial expansion. 'Human rights' were imposed at gun-point on societies where equality before the law would have been revolutionary if truly applied, but where it appeared as the most hypocritical device of political manipulation used to maintain the position of a new, and foreign, ruling class.

In Indochina the people soon learned 'liberté', 'égalité', 'fraternité', and learned at the same time that those fine words were not for them. The French regime in Indochina was one of the most brutal and corrupt of colonial powers, where western principles of justice were only for the ruling Europeans, and not always even for them.<sup>99</sup>

In the political prison of Pulou Condore ethnic divisions were utilized for the benefit of French control. Most of the political prisoners were Vietnamese, while Cambodians tended to become informers, trustees, and torturers.<sup>100</sup>

When Cambodia became independent in 1953-54, the French police and judicial systems, both in practice and personnel were inherited and adapted to a society in which the principle of equality before the law was not recognized in the culture. Cambodia was still a society with ascriptive class differences, with increasing degrees of privilege, including freedom from the law. As a true protectorate, the Cambodian administration, under the king, was left largely in place by the French, and independence brought relief from whatever restraints on class privilege French officials might have tried to impose.

Throughout the 1950s and 1960s Cambodians were convinced that police were routinely brutal, judges almost universally corrupt, and the legal system a dangerous spiderweb for the ordinary citizen.

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<sup>99</sup>. For a case of judicial interference with Europeans as well as Cambodians, see "the assassination of *Résident Bardez*", in David P. Chandler, *A History of Cambodia*, Second Edition, Boulder, Westview Press, 1992, pp. 156-59.

<sup>100</sup> This is reported in a book by a Cambodian political activist imprisoned in Pulou Condore in the 1940s: Bun Chan Mol, *Kuk niyobay*.



(B) The Press, propaganda, and censorship

(1) After UNTAC's own house journal, *Free Choice*, had reported that an American political organization had imported an El Salvadoran Death Squad organizer, a vice-president of the ARENA party, to help teach democracy to the Cambodians, the journalistic community in Phnom Penh did not pay much attention. That self-conscious standard bearer of Free World journalistic principles to the Khmer, *Phnom Penh Post*, reported on "U.S. Political Opponents [IRI and NDI] Team Up to Train Khmers", demonstrating, so it went, that in the West rival parties cooperate to promote democracy rather than shoot one another. Nothing was said about the involvement of ARENA (this scandal was also ignored by Göran Leijonhuvud, the Asian correspondent for *Dagens Nyheter*).<sup>101</sup>

(2) One of the first cases of media censorship after Cambodia acceded to the 1991 Paris Agreement was against then FUNCINPEC politician Sam Rainsy by the UNTAC Information and Education Component. On 12 April 1993 Timothy Carney, Director of that component censored the script of his election broadcast. "Rainsy said he referred to the *Yuon* in four points...firstly the fact that the present regime was installed by the *Yuon*. Secondly, the regime was therefore indebted to the *Yuon*. And thirdly, this meant it must give compensation to the *Yuon*. His fourth point was that the leaders of the regime will not pay back the debt themselves but will use the sweat, blood, wealth and territory of Cambodia to pay, in order to stay in power and maintain the support of the *Yuon*". A UN official said it was "racist and extreme...incredibly racist stuff". UN spokesman Eric Berman said "the text did not take into account the responsibilities involved in the freedom of expression". Berman said, "The freedom of expression also has responsibilities. If we make our airwaves available, we go over the text beforehand. And if we feel that information is used in such a manner as to incite or destabilize the political environment, then of course we have to explain [to the parties] that they wouldn't be allowed to use the airwaves in such instances".<sup>102</sup>

(3) On 7 September 1994 Non Chan, editor of the Khmer-language newspaper *Samleng yuvachon khmer* ('Voice of Khmer Youth') was shot as he rode his motorcycle in downtown Phnom Penh and killed. Before his death he had written several articles critical of the government, in particular First Prime Minister Ranariddh. Many people, including the foreign journalistic community, wished to assume that the political figures he had insulted were responsible for the murder. The *Phnom Penh Post*, in its issue of 29 September-6 October 1994, published translations of two of Non Chan's June 1994 editorials which were insulting to Prince Ranariddh, which proves awareness at *Phnom Penh Post* of the content of Non Chan's newspaper. Strangely they did not publish, nor even mention, an article written just before his death (published in the issue of 23-26 August 1994

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<sup>101</sup>. The article was by Michael Hayes, Editor of *Phnom Penh Post*, in its volume 2, number 5, 26 February-11 March 1993. I made an effort to interest Leijonhuvud in the story, but he protested that he was not a Latin American expert.

<sup>102</sup>. See *Phnom Penh Post*, Vol. 2, No. 9, 23 April-6 May 1993, p. 4; "Rainsy Bemoans Censorship, UN Cites Racism".

of his newspaper) in which he profiled well-known Thai-Chinese-Cambodian businessman Teng Boon Ma, calling him a major drug dealer with a record going back to the 1970s. In those business circles, as the bloody history of journalism in Thailand shows, assassination is the usual fate of offensive journalists. That the *Post* may have been aware of Non Chan's article, but chose to ignore it at the time, is seen in Nate Thayer's *Far Eastern Economic Review* article of 23 November 1995 which refers to it.

In 1994, Thayer, PPP, and FEER wanted to discredit Ranariddh, and thereby the Cambodian government. Now they wish to undermine Cambodia by linking the government to drug traffic.

### (C) The Sam Rainsy case

When Sam Rainsy was expelled from the National Assembly, Amnesty International issued a statement that "international legal experts expressed the opinion that the expulsion was illegal", without, however, naming the experts or where their opinions were published.<sup>103</sup>

In answer to a request for further detail about the international legal experts and their expert opinions, Amnesty answered with a clipping from the newspaper *The Cambodia Daily*, published in Phnom Penh. It quoted Michael Kirby, "chief UN human rights representative to Cambodia and the top legal adviser during the ...elections", as saying, "removal of a Member of the National Assembly would cause concern to the many friends of Cambodia"; and it also quoted the opinion of V. Krishnadasan, "UNTAC's senior legal adviser", that "dismissal or expulsion (due to expulsion from the Party or otherwise) does not appear to be specifically provided for" in any of the relevant documents, that is, in the Constitution, Electoral Law or Internal Rules of Procedure of the National Assembly. Krishnadasan also wrote that, "it is opined that a member of the National Assembly cannot be expelled from the National Assembly unless specific legislation is adopted in this regard in accordance with the relevant positions of the Constitution", and that the Constitution emphasizes the "representative nature" of the National Assembly.<sup>104</sup>

In a letter accompanying the *Cambodia Daily* clipping Amnesty also cited an opinion of Reginald Austin, head of UNTAC's Electoral Component, that, in the words of the Amnesty writer, not quoting Austin directly, "expulsion or resignation of an elected MP from the Party upon whose provincial list he was placed, is not a proper or sufficient ground for his replacement by the Parliament under the electoral law".<sup>105</sup> Given Prof. Austin's well-known precision and care for accuracy, Amnesty must have garbled his words, for according to the Electoral Law, resignation, at

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<sup>103</sup>. AI Index: ASA 23/11/95, 22 June 1995, "Kingdom of Cambodia Concern for the safety of elected representatives".

<sup>104</sup>. Gretchen Peters, "Kirby, Krishnadasan Back Rainsy's Fight", *The Cambodia Daily*, 2 June 1995.

<sup>105</sup>. Letter from Amnesty International, Ref: C-GCF, dated 4 October 1995, signed by Kelly Dowling, Southeast Asia Team.

least, of an elected MP was "proper and sufficient grounds" for replacement, and if not specifically "by the Parliament", by his party, as was done in the case of Rainsy. Immediately after the election there was a "proper and sufficient" test case, the mass resignation of 32 elected CPP candidates, who were replaced by their party. Likewise, when just before the election Son Sann told UNTAC that Ieng Mouly's name should be removed from the list of candidates, "UNTAC officials said that Mouly would have to be expelled from BLDP for him to be removed as a candidate".<sup>106</sup> Ranariddh has expressed the view that, "it is Funcinpec's right under UNTAC Law and the internal regulations of the National Assembly which is a sovereign and independent organization".<sup>107</sup>

The opinions expressed by Kirby, Krishnadasan and Austin are considerably weaker and more nuanced than Amnesty's dramatic claim that legal experts called the expulsion "illegal under the electoral law". They very carefully avoided saying any such thing. There do indeed seem to be contradictions between the UNTAC Electoral Law and the Constitution. The latter (art. 76) first implies election of individual deputies, but then concludes with, "the organization of the elections and the type of balloting is determined by a law", allowing the possibility for future elections by party slate. As for the "representative nature" of the Assembly, to which Krishnadasan alluded, it only relates to the position of the Deputies as representatives of the entire nation, not just of their own constituencies (art. 77), and has no bearing on the question of expulsion. Krishnadasan would seem to be playing with words in denying that there was any provision for expulsion. Article 80, which gives Deputies the usual parliamentary immunity, says that Deputies may only be accused, arrested or detained "with the consent of the Assembly" or its Standing Committee, but it would seem that accusation, arrest and detainment, if approved by the Assembly, imply expulsion. One more relevant provision is Article 95, which says that "In case of death, resignation, or loss of the quality of member of the Assembly [my emphasis--MV] at least 6 months before the end of the term, the election of a replacement must be carried out according to the procedure contained in the Internal Rules of Procedure and the Electoral Law".

In its comment on this case, the report of the UN Centre for Human Rights also shows lack of precision about the constitution. In suggesting that Rainsy's expulsion was not strictly legal, the report said article 95 of the Constitution "provides for only three cases of removal...death, resignation and departure (i.e. from the National Assembly)".<sup>108</sup> The third circumstance, however, is not 'departure', but loss of the quality of member of the Assembly, as I noted above. There is no specification of the ways in which that quality may be lost. Since the report of the Human Rights Centre accepts, "that the issue is one of internal politics of Cambodia", it would be better not to mix

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<sup>106</sup>. *Phnom Penh Post*, 4/19, 22 September-5 October 1995.

<sup>107</sup>. Ranariddh, "Vital Issues", dated 3 August 1995, published in PPP 4/17, 25 August-7 September, pp. 8-9.

<sup>108</sup>. "Human rights Questions: Technical Cooperation in the Field of Human Rights", A/50, September 1995, p. 19.

it up with Human Rights. Advice could be given, however, in bringing about agreement among the Constitution and other relevant documents, and inserting language relating to such cases.

**APPENDIX V**  
**Ethnic minorities**  
**Pre-UNTAC situation**

Theravada Buddhism is no barrier to ethnic violence or to politico-militaristic chauvinism. Buddhism, as much as Christianity or Islam, can be adapted to violent political and military ends; and the three nastiest regimes in modern Southeast Asia have emerged in traditional centers of Theravada Buddhism--Cambodia, Burma, and Sri Lanka.

When Lon Nol formed his Khmer Republic after the overthrow of Sihanouk in 1970, he advanced the idea that the war against the Vietnamese which he enthusiastically entered alongside the United States was a 'War of Religion', and he even had a series of pamphlets published under that title. In this propaganda, he said the Vietnamese were the *Thmil*, the traditional enemies of true Buddhist believers. That term derives from *Tamil*, who are portrayed in ancient Ceylonese literature as invaders and enemies of Buddhism, and has been taken into Southeast Asian Theravada Buddhism to designate enemies of the faith, or of the faithful. A member of the Thai minority of the Southwestern Cambodian province of Koh Kong published a book about the DK regime, assimilating it to '*Thmil*'; as did other victims of DK.

Under the Khmer Republic (1970-75) [emphasis added] and DK the Vietnamese, who had constituted about 6% of the total population, were nearly all expelled or killed, and a smaller number returned in the 1980s. The Chinese, another 6% of the population before 1975, were not especially disadvantaged under any regime [\*reports that about 50% were killed by the Khmer Rouge are false\*], but may have emigrated in disproportionate numbers since 1979. Both of these groups, to the extent they remain in Cambodia, inhabit the same areas and engage in the same occupations as before.

The Cham, were defined before 1975 as 'Islamic Khmer', while the name 'Upland Khmer' (*khmer loeu*) was given to Mon-Khmer and Chamic hill and forest groups who were a majority in the two northeastern provinces of Ratanakiri and Mondulkiri, and who also populated much of the southwestern mountains, and parts of the North. If such definitions implied equality, as they were intended, they also, by assimilating the designated peoples to the majority Khmer, removed any need for special consideration for their cultures and languages. Before 1975 the Cham may have been considered as not quite first-class citizens by many Khmer, but active ethnic discrimination was rare. During DK, however, severe measures were taken to suppress Cham culture and religious practices.

During the PRK/SOC period the Cham were the ethnic group in which the state took the greatest interest as a national minority. Their religion, Islam, was the only religion other than Buddhism to be expressly tolerated, and it was clear from press and public pronouncements that a greater effort than under any previous regime was being made to integrate the Cham into Cambodian society, and to make them feel that they were first-class citizens.

With respect to the other minorities, the official view today may be similar to that prevailing before 1975, at least insofar as it concerns their integration into Khmer society and transformation of their own cultures to conform to it. There is little detailed information available about these groups since 1975, but policy toward them was stated in a resolution of the National Cadres Conference in November 1984 entitled 'Policy toward Ethnic Minorities', which was related mainly to the northeastern groups.<sup>109</sup>

This resolution began with "the minorities are always considered as an integral part of the Kampuchean nation", and the first concern expressed was solidarity of the minorities with the rest of the population in the interests of national defense. Point 2 continued the theme of "promoting the solidarity between ethnic minorities and the majority through making them all into a single community of brothers and sisters". This involved "suppression of all differentiation and inequality which still existed and the end of 'majoritism' and chauvinism ... and opposition to any act of discrimination against the minorities".

As part of the effort to achieve equality and solidarity, the minorities should be "encouraged to participate in collectivization ... to join solidarity groups"; and the state should give them facilities for adopting a "sedentary way of life". Gradually "monoculture and individual production" should give way to collective organization of "more stable and modern" agriculture; and the resolution expressed an intention to modernize communications in the minority regions in order to facilitate their integration with the rest of the country and its markets.

Thus an important aspect of state policy was the transformation of the minorities into good Khmers, and this was to be facilitated by the movement of Khmer settlers to the minority areas. The resolution spoke of granting "facilities for settlement and production to all who volunteer to live in the Northeast region for the first years of their life [there]"; and all state employees appointed to the Northeast for a long term were authorized to take their families, and to receive special aid and a "salary worthy of their merits".

Point 5 of the resolution called for the elimination of illiteracy and the training of teachers from among the minority groups. "The language and the literature of each minority, if such exists, " are to be respected, so that these groups may "write, speak, and teach in their own languages". "The use of the minority languages is equal with the Khmer language". It was not clear from this, however, whether new writing systems were to be developed and taught where none existed previously, or whether it referred only to those minority groups in which literacy already existed.

Depending on the interpretation, the last point may represent a new development in state policy. When, shortly before the Cadres Conference resolution had been published, I asked Education Minister Pen Navuth about the development of literacy and educational materials in minority languages, he said that it might be possible in the future to support education in Cham and Thai, which already possess their own scripts and literatures, but there was no plan to develop

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<sup>109</sup>. Published in SPK [French version cited], 17 November 1984.

literacy in any of the other minority languages. Members of those groups, that is the 'Upland Khmer' would be expected, he said, to learn Khmer in school and to use it wherever literacy was required. As an example of that policy, it was reliably reported to me in Phnom Penh that Vietnam had offered to train northeastern minority medical personnel in their own languages, for some of which Vietnam has already developed scripts and trained personnel, but this was rejected by the PRK authorities.

There was thus no question of any systematic official discrimination, nor any doubt of PRK sincerity in treating all such groups equally, but there was an assumption that all minorities will gradually be transformed into 'modern' agriculturally-settled Khmer, retaining only those features of their traditional cultures which are not in conflict with the transformation. There is also, no doubt, an assumption that such development is what the minority groups themselves desire. Assimilation of the minorities to the mainstream Khmer may not in fact cause any problems. We do not know how the events of the past 25 years have already transformed those regions nor what is left of traditional cultures. It is clear from the examples of Southeast Asian minorities which are accessible, as in northern Thailand, that they want lowland commodities, that their cultures may be modified in the acquisition of new products, and that their integration with lowland markets, in particular via such products as opium and timber may transform them as much as benevolent state intervention.

At least, under the PRK, if the Cambodian minorities had cause for grievance, they, in contrast to similar groups in Thailand, had powerful representatives to whom they might turn. After 1979 members of local minorities were appointed to responsible administrative positions--in 1981 they were province chiefs in Mondulhiri, Ratanakiri, Stung Treng, and Preah Vihear; and they occupied some of the top positions in the armed forces. Certainly the PRK had a better record than any previous Cambodian regime in giving responsible positions to non-Khmers. Unfortunately there are signs that the new Royal and Capitalist government may be less active in support for minorities.

**Comments by Michael Vickery**  
**on**  
**the SIDA seminar, 29 April 1996**  
**on**  
**"Democracy and Human Rights in Cambodia"**  
**by Michael Vickery and Ramses Amer**

5 July 1996

This is a response to the comments on the report of Ramses Amer and myself, "Democracy and Human Rights in Cambodia", discussed at the SIDA seminar in Stockholm on 29 April. It is to be understood that these are my own comments and that Ramses Amer is free to dissent from or add to them as he wishes. I had hoped to prepare these comments sooner, but I continued travelling in Europe until the end of May, and was then faced by unexpected obstacles on my return to Penang.

I shall treat the written comments of Anne Bruzelius, Laura Summers, Joakim Öjendal, and Reginald Austin, which we received after the seminar, and from which the oral comments by Laura Summers and Reginald Austin derived; the oral comments not accompanied by a written text delivered by Dennis McNamara; and a few other comments and non-comments which we noted at the seminar.

It is to be regretted that those people invited to comment on our report did not receive copies of our "Terms of Reference" in advance, for it would have obviated those comments which were irrelevant, because outside our terms of reference. They would have been more fully aware of what we were doing and those who tried to make constructive comments would have had their task facilitated. They would have understood that given the strict limit of 50 pages for the basic text, many subjects useful to a reader had to be omitted, and some subjects required in the terms of reference had to be summarized more than we would have liked. This explains the long appendices, left to our discretion, and where we tried to place such information. It was probably an error on our part not to include the Terms of Reference in the report, but until a couple of weeks before the seminar I believed that our Draft Report would only be discussed within SIDA where the Terms of Reference were available.

The work of the seminar would also have been facilitated if the written comments on our report had been forwarded to SIDA in time for Ramses Amer and I to study them before the seminar. We could have then seen that some of the oral comments which we found incomprehensible were because of unfamiliarity with the Terms of Reference or because our language had lacked clarity and such points could have been disposed of to the greater understanding of all, and would not need to be included here.

Regrettably all the written comments showed signs of hasty, even careless, reading of the report and in writing about it, and this was the source of some of the incoherence both in oral presentation and in the written comments themselves.

Since three of the writers of written comments felt obliged to comment on my alleged well-known lack of objectivity and bias (Bruzelius)<sup>1</sup>, or historically misplaced sympathies (Summers), or

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<sup>1</sup>. "Vi vet och visste, att MV inte är helt objektiv eller 'unbiased' i sina uppfattningar om Kambodja och dess regimer...kanske mer kontroversiell än många andra", ["We know and knew that MV is not entirely objective or unbiased in his opinions about Kampuchea and its regimes...possibly more



use of allegedly "political propaganda" terminology, because "Vickery's position is well known" (Öjendal), I do not feel that I am going beyond the bounds of legitimate discussion in remarking in return on the inherent bias in the composition of the seminar panel. In the announcements before the seminar the presence of "a couple of internationally-known Cambodia experts" was promised, yet except possibly for Lao Mong Hay, who did not appear, there was no one who would be accepted in the milieu of Cambodia specialists as an internationally-known Cambodia expert. Prof. Reginald Austin, whose comments were the most valuable, is an expert on the election process of 1993, but as he generously acknowledged, not on Cambodia in general.

Moreover, Lao Mong Hay, who because of his participation as a Cambodian in the political struggles since 1979 is an expert, was also a member of an extremist political tendency (KPNLF > BLDP), which for 12 years wished to rely on American political and military support to install itself in Phnom Penh, and which second only to the Khmer Rouge, as Prof. Austin noted, adopted anti-Vietnamese xenophobia as a major element in its propaganda; and Laura Summers is famous in the milieu of Cambodia studies as an activist for a quarter century in support of an even more extreme Cambodian political faction, Democratic Kampuchea—'Khmer Rouge Regime' (see below). Had there been a desire to balance this bias in the seminar panel, someone from the PRK-SOC-CPP wing of Cambodian politics should have been invited, for example Khieu Kanharith [\*2011 current Minister of Information\*].

I shall proceed from the less significant, even frivolous comments to the more significant and constructive contributions..

First, we were very surprised that certain comments were not made. Two of the participants at the seminar, Ing-Britt Trankel and Jan Ovesen, had earlier submitted a written critique of our report, which I had answered in writing. Their remarks had been very severe, in fact accusing us of making propaganda for the PRK. I had assumed that they would wish to raise these matters again in the seminar so that a larger number of persons could engage in the debate. Since they said not a word, I assume that they have either been convinced by the responses I provided in my written answer to their critique, or that the latter was frivolous, and that they have implicitly withdrawn their earlier attacks, which we may now ignore.

A similar answer may be made to the remarks of Dennis McNamara. Much of his attention was focused on our lack of treatment of his Human Rights Component of UNTAC, which was outside of our Terms of Reference, and since he neither provided a written critique, nor stayed afterward to discuss certain other points with us, I assume that we may consider them as made in haste and not warranting our effort to revise any part of our report on that basis. I find it regrettable that McNamara, although unwilling to engage in discussion or to submit attributable written comments, saw fit to privately tell a SIDA official that the report should not be published. This is an example of back-door ideological censorship contrary to the principles of transparency and free discussion which SIDA presumably supports and which UNTAC pretended to inculcate in Cambodia.<sup>2</sup>

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controversial than many others'] remarks which would be unacceptable in either quality journalism or academic writing without detailed presentation of evidence, and which reflect a narrow propaganda bias on the part of Ms. Bruzelius.

<sup>2</sup>. Although it is irrelevant to our report, it is worth noting that normally reliable sources have informed me that the UNTAC records at UN Headquarters in New York have been embargoed for research for 20 years. I am still trying to ascertain if this is indeed true. If so, what is UNTAC trying to hide?

At one point in his presentation McNamara, *à propos* of nothing, said his UNTAC component had not been biased against the PRK; and in answer I described one incident of just such bias. I suspect that most of those present did not fully understand what was at issue, and I therefore append the following text, which was prepared for a different context.

"The UNTAC bias showed up again in a Human Rights conference organized in the last week of November 1992. The bias there was somewhat surprising because in June 1992 Dennis McNamara, chief of the Human Rights Component, told me he thought there was perhaps more risk for human rights activists in Malaysia [where he had worked] and Singapore than in Phnom Penh. Among the invited foreign participants were representatives of all the western SOC-bashing organizations--Lawyers Committee, Amnesty, Asia Watch--while specialist students of Cambodia who have written frequently about human rights there, but with sympathy for Phnom Penh, were not only not invited, but two of them who happened to be in town were denied permission to sit in as observers.<sup>3</sup> Indeed, except for the opening ceremony, the conference was closed to all but those invited, apparently to prevent the raising of questions embarrassing for UNTAC.

"I suppose it was inevitable that the opening ceremony, to which journalists were admitted, began with a long incantatory plea for the release of Aung San Suu Kyi, even if the relevance for the business of establishing guarantees for human rights in Cambodia was not clear. It might seem that one purpose was to suggest that the Phnom Penh-SOC government was the equivalent of SLORC, which would have been grossly inaccurate propaganda. It could not have been intended as a call for improvement in human rights in Southeast Asia, for not a peep was heard about the longest-serving political prisoner in Southeast Asia, perhaps in the entire world, Singapore's Chia Thye Poh, who after 22½ years imprisonment without trial, without even being charged with an offence, was transferred to restricted residence in May 1989 two months before Aung San Suu Kyi was subjected to similar, but more comfortable, house arrest. But of course, Chia Thye Poh is not a middle-class glamour person. He is a real leftist who, before being put away in 1966 was saying very nasty things about the Americans in Vietnam. Not the sort of political prisoner to whom UNTAC would wish to call attention, with their Singapore police component, and subservience to American Vietnam policy".<sup>4</sup>

Another oral comment made to us after the seminar by one of the participants, who must remain anonymous, was that in the treatment of women's problems our report was 'phallogentric'. Having subsequently re-read the relevant sections word by word, I can only say that such an opinion requires a hyperactive phallogentric imagination. [\*Now, 2011, we can see this as a manifestation of

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<sup>3</sup>. They were Ben Kiernan and myself.

<sup>4</sup>. Kenneth Roth, "Exile in Disneyland" ("The 5th Column"), FEER, 7 September 1989, pp. 24-26; letter from Chia Thye Poh, FEER, 16 November 1989; Nick Cummings-Bruce, "Prisoner of Conscience on Singapore's Holiday Island", *Aliran Monthly* (Penang), no. 12, 1992, pp. 28-29, republished from *Philippines Newsday*, 12 December 1992. Chia Thye Poh was arrested on 29 October 1966 after a demonstration by the Barisan Sosialis ('Socialist Front') political party against the United States in Vietnam. At the time he and eight other Barisan Sosialis Members of Parliament had boycotted parliament to protest the lack of democracy in Singapore. He has been offered complete freedom if he confesses to, and renounces, the communist party and violent overthrow of the government, positions which he says he has never held. He has thus exhibited the same firm adherence to principle as Aung San Suu Kyi, but has not received nearly the same sympathy and support.

the Anna Ardin syndrome (re: Julian Assange- Wikileaks), of which I had already noted prodromes during two months at Uppsala University in 1988)\*]

### **Anne Bruzelius**

In her written remarks Anne Bruzelius, who had accompanied us for two weeks of the project research in Phnom Penh in December 1995, said our report was 'biased', 'polemical', and 'speculative', and in particular emphasized that it is well known that "MV is not entirely objective or 'unbiased'". No example of those evils, least of all 'speculation', was provided, nor was there an attempt to show any factual inaccuracies. Thus it is impossible to try to correct for such alleged bias. I suspect that the problem is that our approach and tone do not reflect the general view of Cambodia as seen in a certain superficial foreign community in Phnom Penh, and as reflected in most of the journalism which has its roots there. The differences between our report and those views were deliberate, for I consider that they are biased; and the comments of Anne Bruzelius merely reflect her preference for those biases. No doubt judgements of 'bias' are very subjective, and not amenable to proof. In a number of publications, however, I have argued my views of 'bias' and 'truth' in some detail, and if I am to take seriously the opinions of others about my alleged bias, they must provide details and arguments to show that their positions are less biased. [\*see now, 2011, <http://michaelvickery.org/vickery2010kicking.pdf>\*]

One specific criticism was that we were too historical, and as an example she took the section (p. 8 in the body of the report) on Sam Rainsy and Prince Sirivudh. The only historical comments there, however, are one sentence about each on their backgrounds as emigrés. Certainly this is relevant to an understanding of their problems; and Anne Bruzelius' reaction is an example of the emotional bias concerning these personalities in a certain foreign milieu in Phnom Penh. Having followed as much as possible the Rainsy and Sirivudh affairs in the press before the visit to Phnom Penh, largely in the *Phnom Penh Post* whose biases I rarely share (no other press organ had the same amount of detail), I was nevertheless shocked, even horrified, to find that the Phnom Penh milieu in question, to which Ms. Bruzelius seemed to be close, was judging the Sirivudh case on the basis of their acquaintance with his 'charming' wife, lovely children, and the children's caring British nanny' (shades of 1870s Russia as seen through the eyes of Tolstoy in *Anna Karenina*). Other, more politically mature milieux in Phnom Penh, some of whose representatives spoke to me confidentially, saw things differently. One of them was even quoted by Ms. Bruzelius, but in her haste to condemn us she failed to recognize one of her own contributions to our report, a quotation from her interview with UNDP officials, probably one of the better-informed milieux in Phnom Penh, which was in agreement with our assessment of the Raingsy and Sirivudh cases (see p. 55 and footnote 64).

Anne Bruzelius also objected to our remarks about provisions in the Convention on the Rights of the Child which are inappropriate in Cambodia, and which showed our lack of qualifications for writing on Human Rights (our writing lacked perspective ["verkar något perspektivlos"]), although she admitted that our writing reflected accurately the information from our sources.<sup>5</sup> Would she have preferred a report on Human Rights which did not reflect the relevant sources? That, I would say, would be a clear sign of bias. In writing on the Child Convention,

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<sup>5</sup>. "...jag tycker , att rapporten väl fångat den 'confusion' som råder på lagstiftnings/tillämpnings-området...och samstämmigt rapporteras av de källor vi talade med under fältarbetet". 'I feel that the report has grasped well the 'confusion' which prevails in the area of legislation/application...and in the same way reported by the sources with whom we spoke during field work'

however, I was supported by Ms. Bruzelius' interview with one of the international experts in this area in Phnom Penh, Margaret de Monchy. I am surprised that Ms. Bruzelius did not recognize my quotes from her report on that interview (p. 45, "As one UNICEF expert recognized", not cited in a footnote). Ms. Bruzelius' failure to take account of her own reporting, in one case from a source with which she is very sympathetic, shows the carelessness with which she read our report and over hasty eagerness to undermine it. In general our remarks about the situations of women and children followed what was expressed in our interviews with relevant Khmer women, and are in line with both the public comments, and an interview with us, of the newly appointed Minister for Women's Affairs, Mu Sochua.

As an example I append here one of the first public statements by the new minister, which corresponds almost precisely to our paragraph, p. 42, beginning with, "Answers to the question, 'What are the main problems facing women now?'" In an interview after her appointment as the new Minister of Women's Affairs, Mu Sochua identified the "priorities" as: "universal education; health care, looking specifically at safe motherhood, which includes access to primary health care, which includes the prevention of HIV/AIDS and STDs; economic development and others...lastly, we must look at access to legal services...". Two months later she said, "My four priorities are to ensure gender equality in education, equal opportunity in economic development and free access to health care and legal services".<sup>6</sup>

It seems to me that Anne Bruzelius wanted to see certain slogans and mantras which we did not use--deliberately, for the thoughtless circulation and regurgitation of those slogans and mantras is impeding understanding of Cambodia's problems, which, to refer again to one of Ms. Bruzelius' complaints, cannot be understood without a historical perspective.

Finally, I again draw attention to Ms. Bruzelius' statement that "We know and knew that MV is not entirely objective or 'unbiased' in his opinions on Cambodia and its regimes...MV is perhaps more controversial than many others". Ms. Bruzelius is speaking here as a SIDA official, and I am curious to know why SIDA engaged someone whom, according to her, they distrusted. And in this connection what was the role of Anne Bruzelius in accompanying us in our research in Phnom Penh? Was it, as indeed it sometimes seemed, to collect expatriate gossip which would contradict the information we gathered and reported "in agreement with the sources we spoke with during the field work" [see f.n. 5].

### **Laura Summers**

Although it is obvious that Laura Summers did not like our report, I find, to my surprise, having been familiar with her own Cambodian political biases since 1971 (see below), that most of her comments are in agreement with ours, but more loquacious and bombastic than our Terms of Reference permitted, or just ideologically opposed to our attitudes and language while acknowledging the substance of our remarks. Thus there is no serious disagreement with us in what she says about our pessimism, the attention to elite factionalism, and the influence of a weak economy. She agrees with us that Cambodians do not always see 'corruption' where we do; and she agrees with us that the "state itself, is too 'weak' to protect the people, their land and children...".

She is mistaken in asserting that we "urge 'foreigners' not to take 'the side' of the press". Our intention was to urge that foreigners not blindly take the side of sections of the press which are anti-

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<sup>6</sup>. Mu Sochua: the long fight for women's rights", *Phnom Penh Post*, 22 March-4 April 1996, p. 7; Pang Yin Fong, "Mu's vision for a new Cambodia", *New Straits Times, Life and Times*, p. 1, 30 May 1996.

government, just because they are anti-government, and even when they would be in violation of press laws in Western European democracies. Ms. Summers here seems to be advocating what I oppose, the misuse of 'civil liberties' arguments to undermine the Cambodian Government.

Ms. Summers did not like our treatment of NGOs, although she accepted the factual accuracy of much of it. All I can say is that is the way I read the situation; and I would add that her allusion to a "historically misplaced preference for PRK/SOC state socialism of the 1980s, contrasted positively to the 'legal morass'" now constitutes 'bias' on her part, reflecting her own, in my view "historically misplaced preference" for another Cambodian regime (see below). Since Ms. Summers is unable to undermine the substance of our remarks, I can only assume that she wishes, because of her own political bias, to support those NGOs whose activities we felt required closer monitoring and rationalization.

She then went on to suggest we should have included some consideration of what Democracy should mean in Cambodia. Not only was this a subject which the limits of the Terms of Reference did not allow, but we assumed that readers would understand that the democracy in question was that which was the objective of UNTAC, that is the simplest form of basic western liberal political democracy, involving regular free multi-party elections, with the widest possible participation of the population as voters, and governments formed on the basis of those elections. Indeed, this is the essence of her remarks on the subject. It is obvious that Cambodia today falls short of the ideal in many respects, but I considered that given Cambodia's peculiar recent history, our purpose should not be to simply catalogue the defects and blame them on the iniquity of bad leaders, as the conventional wisdom would have it, but to situate the defects within the historical situation.

Ms. Summers becomes confused, even devious, however, in continuing from this to "an extremely brief discussion of the power-sharing dispute" (which, incidentally postdates the period in which we researched and wrote our report, and is therefore irrelevant to discussion of the report, although it constitutes over 25% of the content of her remarks). There is implicit criticism of the CPP for anti-democratic reluctance to 'share power', yet the power sharing in question was the integration of thousands of new FUNCINPEC and BLDP members into the civil service. This so-called power sharing is something to which the IMF and World Bank, along with CPP, and perhaps Ms. Summers, all object because it would further inflate an already too large bureaucracy. This is a perfect example, which I had not perceived, of a point I wished to make, that the government, and in particular the CPP, have been placed by foreign intervention in destabilizing situations and are then blamed for not finding ideal solutions. I thank Ms. Summers for this example, which I shall use, with due acknowledgement, in any revision made of our report, or other subsequent writing on the subject.

Since Ms. Summers took it upon herself to evoke our "historically misplaced preference for PRK/SOC state socialism", I consider that I may, without impropriety, remind her and our readers of some of her 'historical preferences', which have no doubt influenced her view of our report.

One example of the type of democracy which she has 'historically' considered relevant for Cambodia, as seen in her public statements during the years (nearly a quarter century) she performed as an activist concerned with Cambodian politics, is in her statement at the "Third International Conference on Kampuchea, 25-26 July, 1987", in Bangkok, where the "Opening Statement" was by Thai Foreign Minister Siddi Savetsila, who was followed by the leading Cambodian participants, respectively Khieu Samphan, Norodom Ranariddh, and Son Soubert, when they were all in partnership in the Coalition Government of Democratic Kampuchea (CGDK). The desire of all those people at the time was to displace, if possible militarily destroy, the PRK in

Phnom Penh, and install the CGDK. In her statement on that occasion Ms. Summers also called for international recognition of the CGDK, alluding to the virtues of the Thatcher government in supporting the CGDK, and ending, "From England, the motherland of parliaments, we wish you [CGDK leaders] well".<sup>7</sup>

This would seem to be a suggestion of the type of democracy Ms. Summers would like to see in Cambodia; and I thought I detected a hint of this in her remark in the seminar that ideally democracy would not exclude any group, and as expressed in her written comments, "there should be no exclusion of significant minority populations and the suppression, or 'outlawing', of 'extremists' must be exceptional and very carefully considered", which I interpret as meaning that the 'Khmer Rouge' should not be excluded, as they are now, after having been outlawed in July 1994. But in her answer to my question at the seminar Ms. Summers preferred to avoid discussion of this, and accepted that no significant group is at present excluded. I take this as documentation that she is now on record as agreeing that the outlawry and exclusion of the PDK is acceptable.<sup>8</sup>

If any one should suggest that our report erred in not criticizing this exclusion of the 'Khmer Rouge', my answer would be that they excluded themselves under the rules set by UNTAC, and were finally outlawed because they continued an armed insurgency against the new government. It is certainly not the business of any foreign aid agency to call for their reintegration into the body politic, other than on terms set by the Cambodian government. If my refusal to try to subvert the Cambodian government in favor of their enemies is what some consider a sign of bias, then I must plead guilty.

### **Joakim Öjendal**

Öjendal begins by supporting three of our main points (1) there has been exaggerated criticism of the SOC-CPP, (2) socio-economic development should be prioritized to achieve democracy, (3) the Cambodian government has been put in a position where it is required to fulfil a certain standard of governance, without having a reasonable chance of doing so; but then he says our methods are "sometimes confusing". In this connection he objects to "the habit [my emphasis--MV] of using words like 'interventionists', 'manipulators', 'enemies', 'anti-SOC'. But my computer search found 'interventionists' and 'anti-SOC' twice, and 'manipulators' once, surely not excessive nor indicative of a 'habit'. The word 'enemies' does occur several times, but in each case it is a technical term applied to groups who were indeed enemies. I suggest that, as in the case of Anne Bruzelius noted above, Öjendal's hyper-sensitivity to these terms is because he is used to thinking about Cambodia in the framework of different slogans and mantras, which I deliberately reject.

This is followed with a list of critical points, which I shall take in his order.

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<sup>7</sup>. I assume readers know that the CGDK consisted, first, of the 'Partie of Democratic Kampuchea', the so-called 'Khmer Rouge', along with minor partners FUNCINPEC of Prince Sihanouk and KPNLF of Son Sann. The information cited here is from an official publication of some of the speeches of the conference printed in a booklet issued by the "Department of Press and Information of the Ministry of Foreign Affairs of the Coalition government of Democratic Kampuchea", dated August 1987.

<sup>8</sup>. Of course she does not really agree, and the deviousness of her performance with respect to this matter on 29 April is underscored by her participation as one of the principal speakers in a conference in Paris on 24 February 1996, organized by Le Comité Cambodgien de Vigilance, at which two of the salient themes were reintegration of the Khmer Rouge without conditions and denunciation of Vietnamese.

i) there is too little space ("*ten lines*") on assassination and imprisonment of journalists and too much space, "almost one full page" on Nate Thayer's writing in *FEER* and *PPP*. Unfortunately Öjendal is here a victim of the lack of our Terms of Reference. The long section on Thayer's writing in *FEER* and *PPP* is in one of the Appendices, which were inserted at our discretion to provide information which the page limit did not permit including the body of the report. However, had it been possible, I would have put it in the main report, because of the evidence for selective and dishonest treatment of one of the murder cases. And what more does Öjendal want said about the murdered and imprisoned journalists. Within our page limit the subject was adequately treated. I would not agree that the result was a "different situation for the entire press in Cambodia".

ii) "It is difficult to believe that the Sirivudh affair was a planned assassination discovered by chance". There was no such suggestion on our report, nor did we ever claim that his arrest was followed by a "neutral process as a consequence of existing laws". Öjendal should have read more carefully. He suggests "Sirivudh was set-up". Even if we agreed, this is not something, being pure speculation, which could be put in a report like ours. Unlike Anne Bruzelius, who accused us of too much speculation, Öjendal seems to want more. I repeat again with emphasis that our purpose was to argue that the Sirivudh affair was something in which foreign organizations in Cambodia should not get involved. In itself, it is not significant for the future development of democracy.

iii) "The statement that the new press law that has been passed is *milder*...will hardly find any support among...the press corps". This is irrelevant. It is a fact that it is milder, whether or not it is precisely what the press corps wants.

iv) Öjendal seems to be fantasizing in his allegation that we "depict[ed] UNTAC as one-sidedly anti-CPP [which] is to deal carelessly with facts". He should have cited the contexts, for although I do consider that UNTAC was generally biased against the CPP, discussion of that matter was outside our terms of reference; and the case of UNTAC political intervention to which the most attention was given in our report was the censorship of Sam Rainsy, certainly not an act against the CPP.

I can only respond that if there were volunteers who left because "they felt that the election was only a charade to *keep CPP in power*", they must have come to Cambodia intoxicated by a certain type of propaganda which had dominated most Western news media during the 1980s, and hoping that UNTAC's purpose was to be a kind of crusade to get rid of the CPP (in fact I met one or two who expressed themselves in almost such extreme terms). Öjendal expresses shock that CPAF (Phnom Penh government) soldiers guarded the polling stations during polling. Who did he want to guard them? Has he forgotten that just a week before the election Akashi made an announcement about a new, stronger, better-equipped Khmer Rouge who were believed to be planning to attack polling stations? UNTAC's own forces were admittedly unprepared to face such a task. The entire foreign community panicked and many fled to Bangkok. In the end such attacks did not occur (as least in significant numbers), and Akashi's statement proved to be untrue. At the time it was accepted that the efficient protection of the polling places by the CPAF was one reason for election security.<sup>9</sup>

v) Öjendal objects to our discussion of the defects ("dis-coordination") of NGOs, while not "discussing the same phenomena in the state administration". This seems to me an irrelevant comment. Analyzing dis-coordination in the state administration was not part of our task, and would

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<sup>9</sup>. I would speculate that Akashi was set up by some of his experts. If it is true that UNTAC documents now in New York have been embargoed for 20 years, things like this may be among the reasons.

have required much more time and space unless we just repeated gossip and speculation. A critical look at NGOs was part of our task.

Continuing beyond the numbered comments, I fail to understand the relevance of Öjendal's evocation of Lon Nol to our remark that, as he quotes it, "mishaps of elite politicians' should be disregarded". First, what we wrote was "Moralizing and concentration on vague 'human rights', especially the mishaps of elite politicians [in reference to Sam Rainsy and Sirivudh], should be avoided", and I continue to stand by this statement, with emphasis on 'moralizing' and 'concentration'. The foreign community in Phnom Penh became entirely too absorbed by the Sam Rainsy and Sirivudh cases. I am entirely in agreement with Öjendal that "another mishap like [the Lon Nol regime] should not be repeated", but I fail to see the relevance of that to anything in our report, or in the present political situation.

With respect to local elections, what do we know of a "recent local political legitimacy crisis", which he thinks may be solved via local elections, other than through the announcements of FUNCINPEC and BLDP, who as Laura Summers pointed out (see above) were trying to have thousands of their members placed in the bureaucracy.

If "In sum: the connection of democracy > efficient governance > socio-economic development > democracy/human rights seems to be under-emphasized" (as Öjendal thinks is the case in our report), it may be because I am not convinced of the efficacy of that model, especially in the situation of Cambodia today. Democracy, if it is to mean more than the strictly formal facade of electionism instituted by UNTAC in 1993, has never functioned except where the level of socio-economic development is rather high. I would rather emphasize socio-economic development > efficient governance > democracy/human rights. The election facade model, which UNTAC instituted in Cambodia, is quite compatible with socio-economic incoherence and gross inequality, chaotic governance, and outrageous human rights violations.

This is perhaps the place to take note of a comment in the seminar by Hans Antlov. In response to my statement that Cambodian values are not conducive to democracy, he said that values can be changed, as though he meant that such change could be effected in a short period, such as within a few months from the 1993 elections. The history of the development of democracy throughout the world indicates the contrary, that changes in values which promote democracy take generations and involve more or less violent class conflict, revolutions, forcible removal of kings and aristocracies, and certain forms of economic development. Besides those types of conflict, democracy has successfully evolved where economically rising classes saw the formalities of democracy (elections, representative assemblies, etc) as favorable to their class interests; and at each stage the new class, following success in manipulating the formalities of democracy in its own favor, then tried to limit the use of such formalities by the next lower class trying to improve its situation. Transferring these preconditions to Cambodia would mean first the removal of Sihanouk and the rest of the political royalty, then (just as ad hoc suggestions) the organization of private business groups ('bourgeoisie', 'capitalists' ?) as a class to further their group interests via election of their representatives as members of parliament, a procedure entirely foreign to rising business groups in Cambodia in earlier times or to business groups in Southeast Asia now, where the preferred mode of operation is not via elections and parliamentary activities, but through payoffs securing privileged access to resources, tax breaks, import-export preferences, favorable court decisions, etc. Then, in Cambodia, there should be a wide organization of farmers/peasants as a class to put their representatives in parliament to work there for economic policies favorable to the majority of Cambodia's population. Then one might see a change in Cambodian political values. That type of development of democracy, as it came about in the West, has been absent in Southeast Asia,



because, I would say, of its historical background quite different from Europe. And there is no reason now to expect that such Western institutions may be stuck on to Southeast Asian societies, least of all in Cambodia, and quickly produce what is acceptable as democracy in Sweden.

Öjendal continues with a section, "*Text comments*".

-[ref our p. 4] In the provinces lists of candidates in the election were posted in Khmer. I thank Öjendal for this information, and shall include it in future writing.

-[ref our p. 9] Should the tape recording of Sirivudh's alleged threat be treated in court "as legal proof material"? We made no comment on this; and moreover, not being lawyers, nor having heard the recording, could we have offered any opinion. Strictly as a speculation, it seems to me that even experts would not be able to decide on this until the tape was examined in court. Our purpose in citing the tape was to emphasize that Hun Sen had reason to fear that a plot existed, whether or not all the evidence would be acceptable in court. Sirivudh's defenders offered the excuse that he was only joking, but joking about, for example, killing the President can lead to arrest and investigation in the United States, and in the tense political atmosphere of Cambodia, where there had already been two coup attempts with royal participation, there could easily be overreaction even if it had all been just a joke.

-[ref our p. 13] With respect to lack of public participation in the democratic process, Öjendal thinks we should have gone into detail about the "causes, consequences, what can be done, and what should (if anything) be done to increase that". We did offer as much discussion of these points as permitted by our page limit. To provide more would have involved a long historical treatment quite outside our limits. Öjendal continued this with a strange statement, "...that Cambodians should take part in the running of Cambodia seems to be more evident. The question is how?" Does he doubt that Cambodians are now running Cambodia; or did he just mean that more of the Cambodian population should become politically active?

-[ref our p. 16] A very silly comment is, "It seems odd that *Phnom Penh Post* is so discredited at the same time as the report itself is to a substantial degree based on reporting in that paper". Has Öjendal never heard of using a periodical one may dislike as a record of events, while criticizing its editorial policy or ideology? What other press organ would Öjendal prefer that we use for current events in Cambodia? Even the Bangkok English-language papers are less complete. If we had had access to the complete files of all major wire service dispatches from Phnom Penh, we perhaps could have put the same references together without referring to *Phnom Penh Post*, but one purpose of such references is to provide access to readers, few of whom, I suppose, have greater access to raw wire service reports than we had. Even FBIS and SWB are unavailable in Penang where most of the writing had to be done. Unfortunately, *Phnom Penh Post* is the best single western-language source of news from Cambodia.

-[ref our p. 16ff] Öjendal's paragraph on "The crusade against NGOs seems largely unmotivated" reflects nearly deliberate misunderstanding. One of our tasks was to discuss the role of the NGOs as foundations of civil society. We were not concerned with whether "all good ideas and attempts are coordinated with each other" in any society, nor whether it is "their right to work politically". Our findings, which I still support, were that in general the NGOs do not have a base in Cambodian society, and are thus not a good basis on which to develop a new 'civil society' (whatever that neologism may mean). Both politically and socially too many of them reflect foreign interests imported without regard for Cambodian needs.

-[ref our p. 43] Another piece of silliness: "The Chinese do have a 'national homeland', but are still largely avoiding discrimination". If this is meant as criticism, it should be directed to Khmer chauvinists, not to us. All discrimination is irrational, and we were merely quoting one of the

arguments of Khmer chauvinists. There is, however, an important difference between the situations of the Chinese and Vietnamese, in that most Cambodians do not view the resident Chinese as really foreign, but as an integral, if somewhat different, part of local society. Intermarriage and assimilation have been common and easy for generations, and the Sino-Khmer, who are accepted as real Khmer, are proud of their background.

-[ref our p. 45] Still more silliness: "The road to Kompong Cham may be 'safe' but certainly not free of road tolls". So what? We were not trying to say it was. Our comment on the road was in a section on gradual improvements in security over the past 2-3 years. Does Öjendal have a problem acknowledging any improvement at all?

Finally, in his *Conclusions*, Öjendal says "it is not fair to the Cambodian people to say that they did not want change". Nowhere did we say that. Öjendal then lists a number of things which he says the people wanted, and for which, he says, they voted. The trouble with this argument is that several of the things he says they wanted, they had before 1992, or at least the defects were less salient than they became after 1993. In general under the PRK, they had "law and order", the local police and military were not widely involved in extortionary activities, there were many "civil servants that cared for the development of the country", people could "travel outside their village without being robbed" (except of course in war zones), they were "able to send their children to good schools" (at least as good as could be expected in the country's economic circumstances; the decline in schooling began with Cambodia's enforced leap into the free market).

Among Öjendal's list of problems which "The Little People" allegedly voted to have corrected, only the halt in the civil war was something which people might have thought the results of the election would bring about. Of course, in this they were conned, and this is a perfect example of why that election was a facade. As former UNTAC and western-power officials never tire of reminding us, it was not the purpose of UNTAC to 'enforce' peace. Perhaps "The Little People" also hoped that the election might lead to a halt in corruption. Here also they were misled. A steep increase in corruption was guaranteed when Cambodia at the end of the 1980s found itself forced to move rapidly into a free market economy, and this trend was reinforced with the Paris Agreement and UNTAC. Because of this SOC was permeated with corruption, but the major opposition parties carried back into Cambodia by the Paris Agreement had even worse records in this respect. No election result could have contributed directly to diminishing corruption. Öjendal romanticizes, "for the first time in Cambodia 'The Little People' was given a chance to directly participate in national politics...[but] the importance and consequences of this is very little noticed in the report". Öjendal's view here is historically false. The circumstances of participation of the 'little people' in the 1993 election hardly differed from previous multi-party elections in the 1950s or in 1966. In fact the modalities of the 1993 election, such as party slates and, except for the CPP, mostly unknown candidates, may have meant more mystification for the 'little people' than on the previous occasions. At least in the 1950s party differences were more clearly enunciated.

Speaking for myself, and leaving Ramses Amer the possibility to comment otherwise if he wishes, there was no reason to emphasize the meaning of the election for the 'Little People', because in the end it was rather meaningless, and, I would say, was so designed.

### **Reginald Austin**

Prof. Austin's comments were of a quite different type. The intention was to be helpful, although here too some remarks were of dubious relevance, because of lack of access to the Terms of Reference, a point which he noted.

I take note with pleasure of his support, on pages 5-8, of a number of our arguments: (1 [numeration mine]) legitimation by the international community of traditional Cambodian politics when they insured the return of Sihanouk; "the bad habit of employing non-democratic methods as political shortcuts is a formula for disaster and back-sliding, and "this tendency towards the Quick-Fix should be discouraged"; (2) "...the need to respect the sovereignty of individual states", meaning, "from those who are richer, more stable and more powerful, a need to be patient and to search for ways of involvement which will have longer term benefits and will result in shared values"; (3) "'uncertainty and confusion' or non-existence of the law, must be urgently dealt with"; (4) "Democratic interchange between representatives and voters has apparently been possible in the PRK days [my emphasis--MV]", and "Here again means can be devised to achieve this, to put the process of democratic dialogue where it should be, in Cambodian hands"; (5) evocation of "problems of understanding both national and international law as it relates to the media...Hence things are done for which the government is criticised". Wider exposure would be useful. "Equally, if there is an unusual degree of irresponsibility among the press, training and exposure for them should be examined"; (6) "In the area of freedom of association a totally unreal situation has been either allowed or encouraged to develop. A law on associations is not an impossible piece of legislation. Many countries face concerns over the NGO explosion....The orderly work of this sector can be of the greatest assistance to the government, as the PRK apparently discovered in the '80s"; (7) "Human rights training for the Police and Military is advocated as a priority over public education which is often pitched in generalities which mean little. I would endorse this as a priority..."; (8) "The concept of a Civil Service is alien in the current Cambodian reality...what is needed is to take steps to train and orient those whose services should be civil". UNTAC made no effort. (9) "The Judiciary and the Rule of Law...an extraordinary catalogue of subjects for potential assistance. All of them are matters where the recipient can maintain control of the product and need not be overwhelmed [emphasis mine, MV]. "...as the 1980s [i.e., PRK] showed, if there is a serious commitment by the Cambodians, a great deal can be achieved in a short time".

In answer to many of Prof. Austin's critical remarks, I can only respond, pending much more detailed discussion, that we must agree to disagree. Obviously, if I thought that what we wrote was "a highly tendentious argument and special pleading" (p.2), I would not have written it, and if the points in question are "very well taken and important", it seems to me tendentious to talk of "special pleading", without detailed specification.

Neither, without more specifics, can I respond to the argument that we were "revisiting past battles whose rehearsal seem unlikely to teach us much" (p. 2). Our Terms of Reference called for a Historical Appendix, and I considered that some brief historical background was needed at certain places in the body of the report. I realize that there are legitimate differences of opinion over historical details, perhaps more legitimate with respect to Cambodia than to better-known areas, but I think that my interpretations of Cambodian history are as authoritative as any others, again in the absence of detailed argument.

I do not fully understand what Prof. Austin meant by, "the politicians whom the arguments seek to 'defend' have moved from those trenches [which trenches?] and adopted new and more flexible tactics" (p. 2). If he means Hun Sen, who is indeed one of those whom we 'defended', I would agree that he has moved from the trench of single-party socialism of the Soviet type to the more flexible tactic of manipulating some of the levers of Western party politics as he has been able to observe them.

As for my principled positions (ref Austin p. 2), I do, on the one hand, think that "bourgeois democracy and 'human rights'" "are desirable states which can however only be achieved in variable

forms influenced by their particular social and historical contexts, and with much difficulty in a society such as Cambodia". On the other hand, I also consider that "bourgeois democracy and 'human rights'" as they have been pushed onto Cambodia are to a large extent myths, and that moreover, the historical experience of Cambodians since the French Protectorate makes it difficult for them to see those slogans as much other than myths.

Continuing, along with Prof Austin's comments (p.2), my "apparent acceptance of the ongoing arbitrariness in Cambodia is the product of a reluctant realism in the face of a situation" which exists as a result of Cambodia's particular historical situation. I would like to see it change, but do not believe it will change rapidly, and in particular I cannot envisage any likely foreign political intervention, however benign in intention, which would hasten change in a desirable direction. I do feel that this "arbitrariness" is "traditionally Cambodian", but would not on my own authority argue that it is "also what is best for Cambodians". It may be worth noting, however, that among my Cambodian friends there are some whom I believe to have understood Western democratic principles better than most of their countrymen who do think that certain aspects, at least, of the arbitrariness are what is best.

It is easy to agree with Prof. Austin that "all poor and powerless Khmer would welcome a life free of arbitrary violence, indignity and deprivation". Who wouldn't? But just saying that is hardly worth the effort. At least Prof. Austin, contrary to most other who say such things, states that "I also believe that much of the leadership now in place shares that ambition and would welcome sensible, unarrogant assistance to achieve it". On this point Prof. Austin is in agreement with me, and I am surprised that this statement is in a context where it implies criticism of our report. I considered that the parts of our report related to this subject were directed at arrogant and senseless attempts at intervention.

Prof. Austin then devotes several paragraphs to the Paris Agreement, UNTAC, and the modalities of the 1993 election, some of which is directly relevant to our remarks, some of which is not.

He starts with "a very basic point which needs to be clear...Is Cambodia bound by the international instruments it has become a party to?". This puts it in the most simple, legalistic way. For me, there is another basic point which needs to be clear to all foreigners interested in Cambodia. Not only "that Paris was accepted by the S.O.C. under duress", but that Paris was the culmination of twelve years of largely Western pressure to destroy a Cambodian government which was making good progress under the greatest handicaps, and replace it with other parties whose records were less admirable. This is part of the historical background which informs the views of 'bourgeois democracy' and Western pressure for 'human rights' held by Cambodian political leaders.

Of course, Cambodia, to the same extent as its neighbors in Southeast Asia, should be held bound by the international obligations it has undertaken. I might note as an aside that there is rarely the same high decibel outcry when a journalist is abused or murdered in Indonesia or Thailand, as when it occurs in Cambodia. Prof. Austin in this context emphasized the establishment of multi-party democracy and respect for human rights. I assume, however, he is not as naive as much of the current foreign community in Phnom Penh who attack the government for not immediately being able to establish perfect political pluralism and full human rights immediately after the election.

I accept that we may have been sloppy in using 'UNTAC' to cover the provisions of the Paris Agreement as well as the organization of the election, and I will make certain that the two are clearly distinguished in future writing. But with respect to Sihanouk, the point at issue stands. The choice of Sihanouk as king, or chief of state, or something of the sort, was imposed before the election, and the Cambodian people had no choice in the matter. This is not an insignificant matter,

for it is easy to show that half, or even more than half, of the people voted for parties which either were by their platforms, or historically had been, non- or anti-royalist.

Of course, in the end, Sihanouk's position was also "the result of a deal...between the Khmer factions", and that, of course, was their business. As foreigners, we should not lose sight of the "whatever persuasion by others", in particular, considering the strong foreign opposition to an attempted pre-election coalition between FUNCINPEC and CPP, and the actual coalition under Sihanouk which followed the election. It would seem that the "others" involved in pre-election "persuasion", had envisaged Sihanouk as a guarantee against the CPP.

I fail to understand Prof. Austin's comments on the Proportional Representation system. Of course, it was part of the Paris Agreement, not an UNTAC decision, but, what we wrote, "The UNTAC election law prescribed proportional representation by province", was correct. That statement in no way implies "an UNTAC conspiracy". I cannot accept, however, that the purpose was simplicity, that calculating the proportional results was easier than determining simple majorities or pluralities. I maintain my argument, of course based on inference, not documentary proof, that the reason proportional representation was made part of the Paris Agreement, against CPP protests, was the belief that it would weaken the CPP, whose electoral position was believed to be much stronger than proved to be true.<sup>10</sup>

Neither can I accept that the "Provincial Party List", for which people voted, rather than for individual candidates, "was a deliberate attempt to mitigate Party dominance and reduce candidate anonymity", nor that the concern was "the K.R. putting Pol Pot on the top of a Provincial list without revealing the fact to the voters". The way to reduce candidate anonymity would be to oblige voters to choose individuals, and any listing of candidates, which UNTAC could have enforced, would have prevented unwitting election of Pol Pot.

Here, however, in contrast to the matter of proportional representation, I could understand a rationale for party slates on the grounds that counting votes for hundreds of individual candidates would have overtaxed the system. But at least, let us not try to disguise the fact that this constituted a breach of strict democratic procedure and reinforced party dominance. I would note, ironically (tendentiously?) that some well-meaning foreigners in Phnom Penh are now 'concerned' that the government coalition may use the same UNTAC device in the 1998 election.

I appreciate Prof. Austin's remarks on the racism of FUNCINPEC and BLDP in the election campaign, and hope to use them when we prepare a revised and expanded version of our report, or in other writing on the same subject.

On the question of lists of candidates and voters' knowledge of their identity, I take note of Prof. Austin's statement that lists had been made in Khmer (see Öjendal's evidence above), but were not published because of fear of some small party candidates for their safety if their candidacy were known. I did not know, and was unable to find out from the Electoral Component (although I did not question Prof Austin himself on this), that such Khmer-language lists existed. I was told by one of Prof. Austin's officers that UNTAC provided only romanized lists of names, which I obtained, and that it was the parties' responsibility to draw up lists in Khmer if they wished.

Of course, this information about the situation of Khmer lists reinforces my supposition that many voters may not have known for whom they were voting.

The argument about safety, however, does not stand up if the romanized lists of candidates were disseminated, as they seemed to be. Certainly anyone planning murders could decipher even

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<sup>10</sup>. This is another subject which may be among the reasons for an embargo on research in the UNTAC documents now in New York.

the romanized names, in spite of garbling. On this, Prof. Austin writes, "there was no doubt that handling the Khmer language...was difficult, not made easier by the fact that every 'Khmer expert', whether indigenous or foreign, would offer different 'correct' transliterations...". Although there is truth in that, many candidates' names had 'official' romanizations, in that they had been used by the persons concerned for years and had appeared frequently in the French and English press. There was no excuse for the way they were mangled, although I take Prof. Austin's point that this may well have been irrelevant in the election.

There is no point, however, in emphasizing that "no complaints were received regarding identification of candidates" in the voting. Of course not, for people did not vote for candidates but for parties, and the ballots contained only party symbols, not candidates' names.

On one point Prof. Austin has seriously misunderstood us, and I could not imagine what he meant when he brought it up during the seminar discussion. That is, our alleged "suggestion in the paper that, starting with the villages there should be 'open' voting", in contrast to secret ballot (p. 6). There was no intention to suggest any such thing. The question of open voting came up once in our report, when we described a new village development project in which open voting had already been used, and the results of which had pleased the organizers. We made no comment on the relative desirability of open voting, nor was that description placed in any kind of relationship with national elections. Obviously no policy extrapolation may be made from voting in a small village where all participants know one another intimately, to voting procedures in a national election.

I would have hesitated to impute this misunderstanding about 'open voting' to over-hasty, careless reading, were it not for another error, to which I strongly object, and which can only be attributed to careless reading, the imputation that we are soft on anti-Vietnamese xenophobia because it is part of Khmer tradition ("The authors seem at times to be very selective in calling tradition in as a defence, but not referring to it when it is less useful. The most glaring case to my mind is that of racism, especially anti-Vietnamese xenophobia [sic]").

Indeed, I feel so strongly about this that I append the passages, with page numbers, from our report concerning anti-Vietnamese chauvinism.

(1 [Exec. Summary, p. vi]) The Vietnamese face real prejudice and abuses, although the past year has seen improvement compared to 1992-1994. This is partly because of traditional attitudes which were revived by the anti-SOC political parties who were able to return with UNTAC. Under the PRK/SOC from 1979 to 1989 a special effort, for the first time ever, was made to establish good relations with Vietnam, and between Khmer and Vietnamese populations.

(2 [p. 8]) The name of the party ['Khmer Nationalist Party'] together with that date is a challenge to the very legitimacy of the government, and the tactic, reminiscent of his [Sam Rainsy] father 30 years ago (see Appendix I, Historical Appendix), suggests that Rainsy is more interested in provocation than meaningful parliamentary opposition. One of the themes of his party program is an extreme chauvinist position against Vietnamese, a very dangerous policy.

(3 [p. 14]) UNTAC incorporated its own press regulations, which were quite harsh, including penal sanctions, into its law on criminal procedure. One of its victims was Mr. Sam Rainsy. He was refused permission to broadcast one of his election speeches because it was considered too racist in his attacks on Vietnamese.<sup>11</sup>

(4 [pp. 15-16]) "An example of covert editorializing [in *Phnom Penh Post*] was in an article in their first issue on Vietnamese within Cambodia. Interviewing only representatives of FUNCINPEC

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<sup>11</sup>. *Phnom Penh Post*, Vol. 2 No. 9, 23 April-6 May 1993, p. 4; "Rainsy Bemoans Censorship, UN Cites Racism". for more detail see Appendix IV.

[royalists], BLDP [Son Sann's party], and PDK ['Khmer Rouge'], whose anti-Vietnamese positions were well known, *Phnom Penh Post* repeated without comment their assertions, such as, "UNTAC is ignoring the reality of Cambodian history", it was the Vietnamese presence which was causing the war, "we have to get our country back from foreign occupation", "we just cannot mix with these people...the Vietnamese are warmongers", "at stake here is the issue of a 'Cambodian' Cambodia, and not a 'Vietnamized' Cambodia where foreigners were to be given the right to take part in the elections".<sup>12</sup> There were no opinions from Cambodians or foreign Cambodia specialists known to be more sympathetic to Khmer-Vietnamese friendship.

(5 [p. 19]) "...new leadership at the Preah Sihanouk Raj Institute to counter an emigré from the United States who arrived in 1993 with an intense anti-Vietnamese prejudice and the belief that nothing had been accomplished in Cambodia during the 1980s. By March 1996, further leadership conflict at this institute seemed to have caused its collapse."<sup>13</sup>

(6 [pp. 43-4]) "The only ethnic minority which suffers from discrimination as such is the Vietnamese. Most Cambodians do not consider them an ethnic minority, but a foreign group, the distinction being based on the fact that Vietnamese have a national homeland in Vietnam, whereas real national minorities have no other homeland, and are recognized as belonging in Cambodia."

(7 [p. 44]) "The PRK was the first independent Cambodian government which actively strove for friendship with Vietnam and eradication of hostility toward Vietnamese, rather than institute ethnic hatred of Vietnamese as a bedrock of patriotism as in the Kingdom of Cambodia (1954-1970), the Khmer Republic (1970-75), and Democratic Kampuchea (1975-79), a position which some irresponsible political figures have tried to revive since 1993."

Perhaps Prof. Austin was disappointed that we did not make any suggestions for a SIDA or other foreign input against anti-Vietnamese racism. This is an area in which I see little scope for direct foreign influence, particularly given the tendencies of foreign intervention during the 1980s. It should not be forgotten that the driving principle in the foreign backing for anti-PRK/SOC groups during the years of international pressure leading to the Paris Agreement and UNTAC was opposition to Vietnam, much of it just bloody-minded American hatred of a small country which had defeated American aggression. It is no wonder that anti-Vietnamese Khmer chauvinists considered that the Paris Agreement and UNTAC meant an open season on Vietnamese. The new post-1993 concern by certain NGOs, international organizations, and sections of the foreign press for the fate of Vietnamese in Cambodia is another example of forcing Cambodia into a difficult position and then blaming them for not immediately finding the perfect solution.<sup>14</sup>

Perhaps there could be a clause in all new aid agreements that aid was conditional on improvement in ethnic relations. Perhaps the foreign community could show more positive interest in those Cambodian political figures who have a record of promoting good inter-ethnic relations. At present, however, the darling of the Phnom Penh foreign community and most of the international press is Sam Rainsy who is the most vocally violent among the anti-Vietnamese crowd. I emphasize

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<sup>12</sup>. Sara Colm, "Factions, UNTAC Debate Electoral Law", quoting respectively Ieng Mouly of the BLDP, Veng Sereyvuth of FUNCINPEC, and Khieu Samphan of the PDK, *Phnom Penh Post*, 1/1, 10 July 1992. See also Sara Colm, "What's in a Name? A Not So Neighborly Debate", *Phnom Penh Post*, 1/9, 6-19 November 1992, p. 9.

<sup>13</sup>. Jason Barber, "Academy falls apart with bitterness", *Phnom Penh Post*, Vol. 5, No. 6 (22 March-4 April 1996), p. 3.

<sup>14</sup>. I published a letter on this subject in *The Nation* (Bangkok), 12 February 1994.

again, that the only modern Cambodian regime which tried to minimize anti-Vietnamese chauvinism was the PRK under Hun Sen, Heng Samrin, and Chea Sim.

One more subject which is not in the written comments, but which was evoked during the discussion, and then later at lunch with Prof. Austin, concerned the government coalition, which some, both Cambodians and foreigners, have treated as illegitimate, because FUNCINPEC 'won' the election. In our paper we noted that a coalition was required by the constitutional provision that the new constitution be ratified by two-thirds of the new parliament, that is 80 out of 120 members. Only through a voting coalition of FUNCINPEC and CPP could that total be reached. FUNCINPEC plus BLDP together had only 68 seats. [\*added 2011, here I neglected an important detail, that the election was solely to form a Constituent Assembly to write a new constitution, a task for which they could take up to three months, after which a new government could form according to the structure set forth in the new constitution. It was not intended to immediately result in a new government. See details in Michael Vickery, *Cambodia: A Political Survey*, Phnom Penh, Funan Press, 2007, pp. 78-83\*]

In conversation with us, Prof. Austin objected to our treatment, saying that coalition could have been brought together in a parliamentary manner, that is by allowing FUNCINPEC to form the first government, then negotiate with CPP over the modalities of sharing under which CPP would support FUNCINPEC on the crucial vote.

Regarded simply and legalistically, that seems unobjectionable. The CPP had reason, however, to mistrust both FUNCINPEC and sections of the foreign community, to feel that if the coalition was not nailed down first, they might be deprived of even the strong minority position they had won in the election.

At the time of Sihanouk's first effort to form a coalition right after the election, one of the top American UNTAC officials had remarked, "to do what we want in Cambodia we don't need Sihanouk, and we don't need the CPP. We have 90 million dollars to hold the officials and soldiers of SOC and to buy the CPP Assemblymen needed to get a two-thirds majority and set up the coalition we want".<sup>15</sup>

Of course this did not happen, and US policy on Cambodia may have changed, as there are other signs that it did. But the CPP should not take all the blame for extra-parliamentary arrangements, when they had every reason to suspect that their enemies, both domestic and foreign, were preparing extra-legal measures against them.

### **Jan Ovesen and Ing-Britt Trankell**

Although, as noted above, Ovesen and Trankell remained silent during the seminar and did not offer written comments afterward, they had written critically of our work in advance, in their preliminary draft report "When Every Household is an Island", and then in their reaction to comments I had written about that report.

My response to "When Every Household is an Island" was:

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<sup>15</sup>. Raoul Jennar, "Cambodian Chronicles (X)", 29 June 1993. Jennar told me this earlier in a personal conversation, then he stated it publicly in a large NGO meeting, before publishing it in his "Chronicles". Even if, for lack of witnesses or other proof, Jennar can never reveal who the official was, I consider Jennar's report credible, and the identity of the American transparent.



Comments on "When Every Household is an Island", Preliminary Draft Report by Jan Ovesen, Ingrid Trankell, and Joakim Öjendal, cited hereafter as 'O-T-Ö'.

Michael Vickery  
20 January 1996

### Ancient History

Although "even early history may contain lessons for the present" (p. 1), very much remains to be cleared up about Cambodia's early history before the correct lessons may be read. As the writers are not specialists, it is not surprising that they are not up to date in their use of published sources, since much new work is still scattered among journal articles and theses. Citing D.G.E. Hall and G. Coedès is no longer adequate. For example, the latest studies of *devaraja* indicate that it was not the king, but a category of local protective deities, of whom there could have been several at the same time.<sup>16</sup> The term *devaraja* is found in only one inscription, and seems to have been a translation of a more commonly used Khmer expression. This is an example of the major problem of all traditional study of early Cambodia. It was based entirely on the Sanskrit inscriptions, whereas it is the Khmer inscriptions which contain the most important details about society, administration, etc.

There is at present a major controversy about Angkor agriculture; was it based on large-scale irrigation or not? Good arguments have been presented that it is not, and the matter must rest with historically-oriented hydraulics experts, perhaps with better use of aerial photography and archaeology. At least all interpretations based on the old standard view that Angkor was a hydraulic state whose hydraulic system collapsed in the 15th century must be suspended [\*Now, however, 2012, there is increasing awareness that something like that might have happened, but in a different way\*]. The figures for population and quantities of rice adduced on p. 4 are entirely speculative and not coherent, as the authors recognize. Things like this should be omitted.

### The Colonial period

Given their recent entrance to the field of Cambodian history, it would be better for the authors to avoid inappropriate wisecracks, such as the "superficial, but 'politically correct' anti-colonialist view that the French prevailed on the king...", and "a fantasy of French gunboats coming up the Mekong" (p. 5). At the signing of the first protectorate treaty in 1863, the Cambodian king indeed hoped to use the French against the Thai, but the second treaty in 1884 was a real gunboat-type affair. Whether the French were reluctant or not, depends on which events one views. At least they had tried unsuccessfully to get a treaty with Cambodia as early as 1856.

The accuracy of the French colonial PR that "in effect the French protectorate saved Cambodia from probable absorption by the kingdoms of Siam and Vietnam" might be questioned. At least it is not true with respect to Vietnam. The earlier French occupation of parts of southern Vietnam had already saved Cambodia from that side; protection from Vietnam did not require further French intrusion into Cambodia. Perhaps then protection against the Thai was needed, but one must be careful not to look at Cambodian-Thai relations from the point of view of the modern state system. A hierarchy of states, not equality, was normal. Is it more 'politically correct' now to be pro-French colonialist than anti-? For this period there are better treatments than Martin, whom O-T-Ö have cited frequently.

### Independence

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<sup>16</sup> See for example, Clade Jacques, "The Kamraten Jagat in Ancient Cambodia", *Indus Valley to Mekong Delta, Explorations in Epigraphy, Explorations in Epigraphy*, 1985

It may be true that "along with this socio-economic deterioration [under colonialism]...the symbolic and cosmological significance of the king had been undermined..." (p. 7), but this is not the view of those historians who are prominent in study of colonial transitions. Harry Benda, for example, in his "The Structure of Southeast Asian History", argued that in indirect colonial systems, such as Cambodia and the Malay States, the local rulers lost political and military power, but their symbolic and cosmological roles were enhanced; and I do not know of any work which has challenged that judgement. Whatever the final decision on this, I do not believe it can be argued that Sihanouk's prestige was in any respect "undermined by the Geneva Agreement (1954)", by which France recognized the independence of the three Indochina countries, after having granted it to Sihanouk in 1953. Rather the contrary. Geneva enhanced Sihanouk's prestige as 'father of independence', a role he usurped, for the real struggle for independence had been mostly led by others. It was not Geneva which prepared the ground "for widespread popular mistrust" (p. 7). Of course O-T-Ö are right (note 7) that Sihanouk's electoral victories after 1955 do not prove his popularity. The elections were won by force and fraud and suppression of competing political parties, however, not by *devaraja* glory, a serious misconception which O-T-Ö derived from out-of-date literature.

Lon Nol was hardly inexperienced politically, although he was to prove incompetent. He had been a rather highly placed official since the 1940s, had founded a political party in 1948 to support Sihanouk against the 'left', and had been an important Sihanouk supporter until 1970.

#### Pol Pot

In their introduction, p. 2, O-T-Ö explain that they have ended their historical survey short of Pol Pot. Fine, but in their note 11 on page 15 they say they prefer to use this personal name, rather than 'Khmer Rouge', "in keeping with Khmer usage"; and they wish to avoid the official name, Democratic Kampuchea as it abuses the notion of democracy. Well and good, but it must be realized that these choices assume an historical judgement about the Pol Pot period. Local Khmer usage, and mainstream American regime and journalistic practice, have preferred to personalize ('Pol Pot') the negative aspects of DK in order to avoid analyzing them as emerging from real conflicts in Khmer society, or from destructive external impacts, such as American aggression. This has been effective propaganda, but it is bad history and social science. As for "Green Khmers", I do not know what they are referring to. In the 1960s 'Green', or 'Blue Khmer', depending on translation, was used by Sihanouk for the modernizing non-communist opposition to his rule.

#### The Hindu-Buddhist Legacy (pp. 8-9)

The three principal classes of Khmer society should not be confused with Indian castes. The Indian caste system did not take hold anywhere in Southeast Asia (p. 8). Nor did the ancient Cambodians, so far as the evidence goes, ever practice *sati*, ritual burning of widows (p. 58, and see further below). In fact, the whole conception of Indianized societies in Southeast Asia, rather than local societies which adapted some Indic cultural traits, should be rejected.

The non-development of a Khmer trading class is one trait which I think may be traced back to Angkor, when the political-economy was agrarian and large-scale trade unimportant. Chou Ta-Kuan, whom O-T-Ö cite, remarked that his mission had been sent by a new Chinese government to attempt to revive trade relations with Cambodia which had lapsed for around 500 years. There is a considerable literature on this type of society, examples of which are known from Southeast Asia to Turkey. It was not that "Cambodians...have not encouraged the development of an indigenous entrepreneurial class", a rather meaningless statement since that is not the way such things happen, but that in such societies the emergence of an independent trading class was blocked by the relations among the agrarian classes, different from the western feudal situation. That is why the "economic

niche for merchants" was occupied by foreigners, in different places, Greeks, Armenians, Jews, Chinese.

It is nonsense to say that the large role of Khmer women in trade is "related to the lower cosmological position, and thus the relative symbolic impurity of women, compared to men" (p. 9). Prominence of women in trade is a general Southeast Asian characteristic, probably a sign of the historically higher status and greater independence of women, compared to China, India, or Turkey. The earliest Khmer inscriptions of the 7th century show the high ritual position of women, and signs of their social independence caught the eye of Chou Ta-Kuan in the 13th century, whom O-T-Ö cite.

Later on, p. 17, O-T-Ö recognize that the true situation of Khmer women is more nuanced. The position of women (p. 10)

The description of proper female behavior, "talk slowly and softly, be so quiet...one cannot hear the sound of their silk skirt rustling, shy...protected", etc., and obeying the rules of the "Code for Ladies", is only accurate for very prosperous families where women did not have to work outside the house, that is for a very small minority of mostly urban families. Rural agricultural women did not, and could not, fit that stereotype, nor could those who dominate market trade. [\*added 2012: young women now, who have to read that in school, laugh about it.\*]

With respect to the 'unpacking' of etymologies, following Chandler, O-T-Ö (p. 12) should have been guided by their own sensible judgement on p. 43, that the use of '*mee*' ('mother') "in various constructions of the sense of chief, head, leader" has nothing to do with female power. For the terms on p. 12, it is best to stick to their literal glosses. And before printing "*prey*...forest...associated with both disorder, danger and absence of cultivation and civilization" (p. 12), or "on the margins of the Khmer world are the *neak prey*, the forest people...indigenous tribal minorities...looked down upon as 'savages'..." (p. 14), they should have thought carefully about the remark they quote from the French expert on Cambodian agricultural life, Delvert, "'le Cambodgien est un homme de la forêt' a *neak* [person] *prey*" (p. 33). In fact, I think both Chandler and Delvert are wrong on this point. Chandler, whom they cite on p. 12, went off on exaggerated idealistic speculation, while Delvert, I think, was victim of a linguistic confusion, which it would take too long to explain here. But in any case, it was always easy to observe that rural Cambodians who lived near forests comfortably made use of them, without any particular fear, and if the term '*prey*' also serves as an adjective meaning 'wild', that is simply a language convention into which too much should not be read. There is a task here for the new generation of anthropologists: observe the relationship between Khmer rice cultivators and the forest milieu, where it exists, rather than depend on armchair cultural speculation based on imaginative readings of Khmer literature.

#### Page 16

"While the political system since Angkorian times has been highly centralized, one aim of Swedish efforts is a decentralization of the administration". I do not know if that is true with respect to Swedish policy, but in any case the subject is worthy of comment.

Often in Western circles concerned with Third World development 'decentralization' seems to be some kind of shibboleth, accepted as good, without questioning the precise circumstances. In the West the process of development out of feudalism toward capitalism plus democracy, required a stage of increased centralization to break the power of local notables before democracy could take root. In Southeast Asia the clearest similar relevant example is Thailand, where a very decentralized state system had to go through rapid, and sometimes relatively violent centralization in the 1890s to prepare the way for a modern bureaucracy, modern education, and a society in which a modern economy and political system could evolve. In the 1970s American state intellectuals and political

scientists were preoccupied with projects to decentralize Thailand, quite obviously to facilitate American penetration. [\*See "Blueprint for the Future of Thailand" by an anonymous group of western social scientists in Bangkok, published in six parts in the *Bangkok Post* between 15-25 February, 1976. They included Jeffrey Race, who continued the same themes in "The Future of Thailand", *Pacific Community*, Vol. 8, No. 2 (January 1977), 303-325\*]

It is often the case that local notables who dominate in decentralized systems are more despotic, more greedy and less competent than the officials of the central government. An excellent example is from the United States, where in the 1960s, in order to begin the process of destroying racial segregation, the central authorities had to violate one of the sacred principles of the US constitutional system, States Rights, that is decentralization. Only the use of central authority could break through the local despotisms.

In Cambodia there is the example of the Governor of Battambang, whom Western interventionists have desired removed since UNTAC. He runs the province very independently, and it is possible that the central government would find it difficult to remove him, even if it desired. Of course sufficient military force is available, but the violence involved might be counter-productive. Removing him means increasing the degree of central control of a province, and decentralization would increase his authority. There are similar situations in other provinces, and Western aid to Cambodia should not be linked to simple-minded recitation of the buzzword 'decentralization'.

Relative independence of provinces has always been a problem in Cambodia. It is not true that "the political system since Angkorian times has been highly centralized" (p. 16). In the Angkor period relatively little is known for certain, for reasons discussed above. The present consensus at present is that the central government was rather weak faced with powerful local families who governed their regions with a large degree of independence. I maintain agnosticism on this question, pending more detailed study of the relevant records. These records, the Khmer inscriptions, have not yet been studied by the writers who have expressed the opinion for decentralized control. Their opinion has been made on *a priori* ideological grounds against the straw man of Wittfogellian Oriental Despotism, which they have mistakenly identified with discussion of Angkor in terms of the Asiatic Mode of Production, which itself does not depend on either strong central, or strong decentralized administration.

At least the very decentralized character of indigenous Cambodian administration is certain just before the establishment of the French Protectorate. Then each province, corresponding in general to today's districts (*sruk*), was under a local notable recognized by the central authority, and the provinces were divided into five different departments, each under, and owing tax money and products to, a different figure in the capital--the king, the queen mother, and one or another of three ministers.

The formal centralization which one sees today was introduced by the French, who drastically reduced the powers of local governing notables, combined the *sruk* into *khaet* (modern 'province'), and made them all subordinate to the Ministry of Interior after the general European model. Incidentally, the most decentralized modern regime was the PRK/SOC (1979-1993), as O-T-Ö recognize in another context (p. 45, "before 1994 they [provinces] retained a high degree of economic autonomy") and the return to Kingdom of Cambodia since 1993 has brought an intention to recentralize, which has not gone far because of lack of funds and personnel.

Pages 17-19

The remarks on the complexity of the category 'female headed households' are well taken, and merit further development. See also page 41.

The rest of p. 17, and p. 18, lack coherence, and require rethinking and reformulation. It is not clear whether O-T-Ö agree or disagree with Bernander about the limit for emergency and rehabilitation. Should that type of aid be continued, or should one move into development aid? I sympathize with their cynicism about optimism based on "rampant liberalization and unrestrained greed". Should the SIDA reaction be to renounce "an ideological commitment to a liberal market economy", and to try to build democratic socialism? In principle I would like that, but the current mood in Cambodia, both among Khmer and in the foreign community, would be strongly opposed.

The remarks on imposition of foreign values and world view deserve attention. The "Khmer world view and the Development world view" may in many ways be incompatible (p. 19). Although it seems reasonable that when "foreign agencies take upon themselves the responsibility to implement social and economic change...they should have both the right and the obligation to make decisions as to what elements of a set of cultural ideas and values will...have to go", this implies a kind of colonialist attitude. Of course, good colonialism! But many of the old colonialists also thought they were doing good.

If it is permissible to intervene actively against certain cruelties (f.n. 12), foreign agencies have no business trying to influence the structure of provincial organization in Cambodia. In December 1995 many foreigners seemed to be concerned about the projected commune election scheduled for 1997, and worried that it might not be carried out. This is certainly not their business. Commune elections are not prescribed by the constitution, and were never part of Cambodian politics before. If the Cambodians now wish to introduce this novelty, that may be good, but if they decide 1997 is not the time, it should not be our concern.

Because international pressures forced Cambodia into the Paris Agreement, followed by the UNTAC election, the country is full of foreign agencies which arrived in a neo-colonialist manner. Most of them have never thought of the questions evoked in this section by O-T-Ö, and in general the foreign community is now making new demands on Cambodia while making it difficult for Cambodia to satisfy those demands.

#### The Ethnic Situation.

There is not much to say here. O-T-Ö have accurately followed the existing literature. As they note the northeastern minorities may be in danger because of concessions given for logging and plantation development. Regarding anti-Vietnamese prejudice (p. 23), I think we should remember that the existing royalty and elite represent the heirs of the pro-Thai royalty and elite who won out over their pro-Vietnamese cousins in the wars of the 1830s-40s, and all extant historical traditions present the pro-Thai point of view. Moreover, all Cambodian regimes, except the PRK/SOC who followed a policy of friendship with Vietnam, whipped up anti-Vietnamese feelings as a bedrock of patriotism.

#### Rice agriculture (p. 25)

It seems an exaggeration to call Cambodia in the 1960s "the grain basket of Southeast Asia". By the end of the 1960s population increase was rapidly eroding exportable surpluses, and the very poor quality of Cambodian soils meant that increases in yields were, and are, problematic. By now, not only is total production less than in the 1960s, but the population is one-third larger (10 million against 7 million in 1970), which means that even a good 1960s yield might just suffice for the population now.

Some foreign rice experts, for example at IRRI, maintain that Cambodia has no future as a rice producer, that sufficient inputs of irrigation, fertilizer and pesticides would not be worth the output. Others, in December 1995, claimed much success for new varieties of seed which trebled or

quadrupled output. Cambodians imagine their country contains great wealth, including in rice, just waiting to be released.

#### Patronage

The problems of patron-client inequality, which O-T-Ö accurately note, have increased after 1993, and two of the elements of "the recipe for the dismantling or defusing of patron-client relationships: Promotion of economic, social and political equality [and]...creation of...village solidarity" (f.n. 37) were among the active practices of the PRK.

#### Buddhism

The Lon Nol regime did "address its policy in Buddhist terms" (p. 55). Lon Nol proclaimed his war against Vietnam as a "War of Religion", and had pamphlets published to explain this concept, identifying Vietnamese with the *thmil* (<Tamil), the enemies of the true faith in old Sinhalese lore.

#### Widows

I was surprised at the prejudices O-T-Ö found against widows, perhaps because of the increase in their number since the war and revolution. There did not seem to be prejudice against widows before the war. Depending on personal characteristics and wealth they could remarry, and of course many rejoined their relatives. Whatever the reason, it is certainly not because "the socio-cosmological view of women which this cultural principle expresses, is a legacy of the ancient Indian influence on Khmer society. It reflects the idea of *sati*" (p. 58). That part of Indian culture never permeated Cambodia, and utilizing it now is complete nonsense. It is certainly unexpected that O-T-Ö found that "even if a widow can pay for male labour for ploughing, neighbors are often not very keen to help", and I do not have an answer. I certainly reject, however, the notion that "it goes against the grain of culture, and ideally the wretched woman should be dead".

This question deserves further study. Was it peculiar to the area studied by O-T-Ö, and for special local reasons? A suggestion that comes to mind, given the large number of widows and the surplus of females over males anyway, is that widows may now be seen as sexually threatening.

#### A final comment

I noted in the beginning one unfortunate resort to a wisecrack when O-T-Ö were confronted with somewhat contradictory sources on a situation which they did not fully understand.

That tendency went much further in two citations from my own work (their pages 6 and 31) which in the most generous interpretation can only be seen as extremely careless, almost deliberately misleading, readings. This is not serious for Cambodia specialists, who will recognize these gaffes for what they are, but newcomers, for whom I suppose this report is intended, may be confused both about the history and the textual contexts cited. With respect to their page 6, do O-T-Ö wish to argue about the facts? Do they pretend that the rare peasant resistance in the 20th century did have "serious political consequences"? It would make an interesting argument, against a consensus of historians to the contrary. On page 31 do they wish to argue that the "Western nutritional rationality" is wrong, and that "the Cambodian 'folk' notion that nourishment comes first of all from white rice" is correct? That would put them at odds with nutritionists all over Southeast Asia who for years have been troubled by the local preference for polished white rice from which most food value has been removed.

If O-T-Ö are experiencing ideological anger, let them go about it in an intellectually honest way, rather than trying to confuse newcomers to Cambodia studies.

They present their work as "mainly based on literary sources" (p. 1), a number of which I have not read, and I hope I have not been misled in my interpretation of those sources by equally bizarre readings of them by O-T-Ö.

At least, I think it is fair to suggest that their failure to record the source for the information at the end of page 56, about the recreation of the Sangha in 1979, which I would otherwise have considered too petty to note, was deliberate, not an oversight. The source was (Vickery 1986: 161-2).

Ovesen responded to my comments with "Reply to Michael Vickery's comments", dated Uppsala, January 30, 1996.

- Reply to Jan Ovesen's "Reply to Michael Vickery's comments"  
by Michael Vickery without consultation with Ramses Amer  
5 April 1996

I am writing this without consultation with Ramses Amer because of difficulty in communication during the short time period until the Stockholm seminar. Ramses may if he wishes make his own comments, and dissent from anything I have said.

Ovesen starts with my reaction to "critical comments on parts of his work", which are found on pp. 6 and 31 of O-T-Ö's report. I indeed consider that those comments lacked intellectual honesty. They were, moreover, so bizarre that a person whom I had never met nor heard of, but who had access to the report of O-T-Ö, and may not have realized that I also had it, faxed me immediately to inform me and ascertain my reaction. In fact he faxed twice, first when he had read page 6, and then a couple of days later when he had seen page 31.

I followed up my reaction to those two contexts with comment on what I considered O-T-Ö's lack of sourcing on another point, concerning the re-establishment of the Sangha in 1979. Ovesen now says they did not depend on my work, but on Yang Sam. I have not seen Yang Sam's publication, but note that according to Ovesen Yang Sam "gives the Foreign Broadcasting Information Service as his source, while Vickery cites Summary of World Broadcasts by the BBC". As I stated in my footnote, (p. 196, Chapter 10, note 9), the radio broadcast summary did not provide the information that the delegation from Vietnam was involved in re-ordination. That only came from a PRK law on "Ordination", the text of which I cited. If Ovesen consulted only Yang Sam on this subject, his treatment suggests an interesting relationship between Yang Sam's work and mine, particularly if Yang Sam did not cite the same law text. Someone as sensitive to academic niceties as Ovesen pretends to be should have taken care to cite the earliest work on a given subject, particularly when it is obvious that he had thoroughly combed it for other purposes.

At least, I think it is fair to suggest that their failure to record the source for the information at the end of page 56, about the recreation of the Sangha in 1979, which I would otherwise have considered too petty to note, was deliberate, not an oversight. The source was (Vickery 1986: 161-2).

In re-reading what I wrote, I do not see how Ovesen can imagine I tried to "portray [him/them] as pro-French colonialist". I intended to portray them in that context as frivolous, and as lacking in understanding of what constituted pro- or anti-colonialist positions; and I maintain that was a reasonable interpretation. His reference to my use of 'ideological anger' is taken entirely out of context and thus gives support to the inferences I made. Ovesen's problem may be the frequent Western sensitivity to critiques of colonialism, as seen in his bluster about "blaming contemporary gender inequality mainly on the colonial past, which may be expedient, etc.", which is strictly his own invention, and not at all what we were doing. Many Westerners can still not overcome the view, which has a long and respectable background, that Asiatic societies need to be broken up under the

Western capitalist impact before they can themselves make the transition to 'progressive, democratic capitalism'. They may be right, but that theory must be argued, not assumed a priori.

Ovesen, page 2, says, "the general impression is that the report is overly apologetic towards the PRK". If Ovesen is referring to the historical parts of the appendices, it is true that sympathy for the PRK against its opponents appears, because of the opinion of the authors, which they are willing to defend, that the PRK was from 1979 to 1991 more deserving of support than its opponents. The body of the report, however, deals, except for short introductions to the various sections, with the post-election government of Cambodia with which Sweden signed an aid agreement, which the authors support, and which aid they wish to encourage. There are also references to PRK policies designed to aid post-UNTAC newcomers to understand the superiority of PRK policies over the post-UNTAC situation, for example concerning the situation of women. Would Ovesen have been happier if our report reflected sympathy for the post-1993 enemies of the Cambodian government?

As for our being "extremely parsimonious in their references to documentary evidence for their various claims", we can only wait for Ovesen to specify the 'claims' he has in mind. As I see it, there is no parsimony in our references to documentary evidence. Where we are deliberately parsimonious is in references to interview information. This is because nearly every source, of whatever political tendency, and whether Cambodian or foreign, at some point in the interview said, "you must not quote me on this". Thus we decided to quote no one, unless the information was already in print, or in material which had been distributed publicly.

Then Ovesen objects to our denial that there is nothing 'specific' in Cambodian culture, religion and law which is a barrier to the equality between women and men. I accept that our wording was perhaps too vague, and I have replaced it, pending discussion with Ramses Amer and other interested persons, with, "There are no explicit formal barriers to gender equality in Cambodian law, religion or custom" [Executive Summary], and "There are no formal, explicit restrictions in Cambodian culture, religion or law to equality of women and men, although there are ingrained habits which work to the disadvantage of women in certain situations" [main text of report].

The meaning should be obvious. There are no formal, explicit rules that women may not get equal education, engage in equal employment, may not worship equally with men (in contrast, for example, to Islamic practices), may not take part in public activities, and do not have equal rights in marriage. Ovesen should also indicate how he thinks Theravada Buddhism formally and explicitly disadvantages women. In their comments on "Buddhism: The Official Ideology" in their report, pp. 13-14 there is nothing about this.

There is nothing about the role of Buddhism in our report, because it was not at all relevant to our terms of reference, but I would agree, if that is what Ovesen wishes to say, that there is danger of the current revival of Buddhism playing a reactionary role. I think, however, that the serious issue is not Buddhism's alleged gender inequality, but the class inequality which was nurtured by Buddhism as practiced in Cambodia. I would here again refer favorably to the PRK. Their original policy on religion was very much that of modern Western states. Freedom to worship, but no encouragement of religion by the state.

As for empirical evidence that colonial laws were disadvantageous to women, and one of the consequences, I offer my own participatory research in Cambodia during 1960-64, when to my surprise, I discovered the information which I provided in the report. The fact that Ebihara did not provide the same information is irrelevant. Ebihara's data is from one village not far from Phnom Penh; mine was first from Battambang. It is possible that there were regional differences, although having heard that information, I subsequently asked about it elsewhere, and received the same



answers. Perhaps Ebihara did not ask the right questions. I did not in the first instance get that information by asking questions either. It came by chance, listening to people discuss family affairs.

Ovesen's reaction to our comment that there seem to be different perceptions of women's problems depending on the background of the informants indicates more ideological anger than I inferred from their original report. It should not surprise an anthropologist that persons of different class backgrounds perceive social problems differently. And dragging in "a pile of skulls" in this context cannot be termed anything other than intellectual dishonesty. Does Ovesen wish to deny that under the PRK there were more women in responsible positions than now, and that policy and practice in the PRK encouraged equal participation of women and men in more areas than before 1975? Or does he wish only to declare it irrelevant? From my own observations and conversations during visits to the PRK between 1981 and 1991, I am willing to state that both in principle and practice gender equality was greater than before 1975 and greater than at present.

It is interesting to note now that the newly appointed female Minister of Women's Affairs, Mu Sochua, herself of urban bourgeois and emigré background, although returning early (1980) to work first with refugees, then within Cambodia before UNTAC, and of FUNCINPEC rather than PRK party tendency, stated in her first interview that "...the priorities are: universal education; health care, looking specifically at safe motherhood, which includes access to primary health care, which includes the prevention of HIV/AIDS and STDs; economic development and others...lastly we must look at access to legal services...Legal protection will give women their guarantee to be a part of this society..." (*Phnom Penh Post*, 5/6, 22 March-4 April, 1996, p. 7).

Perhaps Ovesen is just suffering from Western sensitivity to the notion that at times in the past there may have been greater gender equality in parts of Asia than in the West. But that is just part of the historical record. Yet Ovesen (O-T-Ö report, p. 9) went farther back in history than I did and cited evidence of Cambodian female activity in the public sphere in Angkor times; and a full reading of Chou Ta-Kuan reveals still more evidence of female emancipation in Angkor. Having cited that evidence, and the continuing importance of women in trade, O-T-Ö had to explain it away negatively as "related to the relatively lower cosmological position, and thus the relative symbolic impurity of women, compared to men. There is a certain irony in the fact that the traditionally subordinate role and inferior cosmological status of women in Khmer culture has in the present economic climate made it possible for many of them to assert themselves economically with a vengeance".

That is utter nonsense; and I would also say it is intellectually dishonest to first posit inequality and then when evidence of equality surfaces to dismiss it with a negative philosophical twist. Do O-T-Ö imagine, or hope, that when Cambodian women have achieved full equality they will withdraw from commerce? Would O-T-Ö dismiss the achievement of gender parity in a parliament or in ministerial appointments as evidence that parliamentary democracy was an inferior political system?

There is no evidence that trading was considered impure in ancient Cambodia, although in the national economy of Angkor commerce may have been a relatively minor sector. Most students of Southeast Asia, not only Cambodia, consider that the prominence of women in market commerce, and because of that their active public life, are signs of their relatively high status in Southeast Asia compared to many other parts of the world.

I acknowledge that it was an oversight not to cite Cathy Zimmerman, the reason being that her paper was misplaced when sending material from Phnom Penh to Penang. We shall certainly consult it for the final report. O-T-Ö's citation of Zimmerman (their report, p. 11), however, is not encouraging. I wonder whether she is taking an Orientalist position that *Chbap srey*, 'Code for

Ladies' is an empirical description of life in modern Cambodia, and worthy of encouragement, rather than an ideal of conservative circles at least a century ago. It seems to me that the 'Code' is reactionary and oppressive, and that most Cambodian women had already escaped its restrictions before 1975. Should the goal of new foreign intervention, such as SIDA's, be to protect reactionary traditions or overcome them? The PRK tried to overcome them, but the anti-PRK post-UNTAC newcomers seem to be trying to resurrect them.

Certainly when I get access to a copy of Zimmerman I shall pay close attention to her sources, and I think I may still find them 'anecdotal'. In the 150 pages of Judy Ledgerwood's "Analysis of the Situation of Women in Cambodia" there is no evocation of domestic violence as a particular problem. Of course that study was done in 1992, and, as I have emphasized in other connections, things may have changed since then. It is worth noting also that Ledgerwood, an anthropologist who speaks Khmer, emphasized the different backgrounds of her sources as accounting for different slants to information, in particular contrasting the nonsense she got from Khmer women in the United States with the real world views of women living in Cambodia (see her pages 5, 12). Or perhaps Ledgerwood just happened to do her research in non-violent communities, like, apparently O-T-Ö. Although they managed to discover all sorts of difficulties faced by widows and poor women, thus demonstrating their access to those disadvantages groups, they do not report a single case of domestic violence in the community they were studying, but evoke that problem based on Zimmerman.

Ovesen is troubled that we cited his/their draft report twice. Since our report, like his, was a draft for the same organization, SIDA, and not for publication, it seemed both useful and helpful to refer to the work of SIDA colleagues, when appropriate, particularly as I understood that all our work was to be integrated into a large master report. I reject any suggestion that this was academically improper. If Ovesen now, because of our references, wishes to withdraw what he and his colleagues wrote, we will be happy to remove all references to those comments from our report. That would be a pity, though, for the two matters we cited are worthy of notice. After our draft had been written and sent, I felt regret that we had not cited several other matters from the report of O-T-Ö, with which we agreed and which our conclusions supported. Now, however, it seems just as well, for Ovesen might wish to suppress those details also.

There are two reasons why mention of Ms Greve's political sympathies are of some interest. One, I agree, is not relevant to our report, but is relevant to a general survey of Cambodia during and after UNTAC. That is the eagerness of UNTAC to engage known anti-PRK personnel. The second, which is relevant for our reports, is that the predominance of land disputes among human rights complaints was contrary to what UNTAC, and in particular anti-PRK personnel, had expected. Thus their recording of this detail gains in weight.

If our inference about the meaning of their recording of people playing off some officials against others is empirically wrong, then it can be rewritten, but I do not think it was an improper inference from the information given, compared with information we had from other sources.

As for Ovesen's final comment about the occasional use of the first person singular pronoun, when the plural would have been more appropriate, I do not think that the division of labor, or its attribution, in a draft report, should be of concern to anyone but the authors themselves.

