

**CAMBODIA:
THE ELUSIVE PEACE DIVIDEND**

11 August 2000

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CAMBODIA: THE ELUSIVE PEACE DIVIDEND

EXECUTIVE SUMMARY

Almost a decade after the 1991 Paris Peace Agreements,¹ Cambodia is at peace and the government is at last secure enough to contemplate the trials of some Khmer Rouge leaders. The country has a coalition government that is stable, has reclaimed its seat at the United Nations (UN), and has become a member of the Association of Southeast Asian Nations (ASEAN). It is posting 4 per cent annual economic growth rates and making modest strides in economic reform. Clearly the country has moved forward: it is intact, it is without internal or external threats, and it has the necessary framework for good government.

Given the gulf that existed between the political groupings of Cambodia in 1991 when the Paris Accords were signed, and the lack of a liberal, democratic tradition in the country, the existence of a stable coalition government by the year 2000 could be seen as an important first step in achieving the potential offered by the 1991 settlement. But this judgment must remain considerably clouded given the systematic resort to political violence and abuse of process by key players to get to this point. Cambodian politicians could have done better. There is peace but the majority of Cambodians are still waiting for their peace dividend, and many believe that it will never come. Social welfare is virtually non-existent and the national economy has little prospect of supporting the growing adult population.

Cambodia remains a strongman's state, replete with lawlessness, human rights abuses, grinding poverty, bloated security forces and an economy thriving on prostitution, narcotics trafficking, land grabbing and illegal logging. The ruling Cambodian People's Party (CPP), led by Prime Minister Hun Sen, has now achieved long-sought legitimacy but this has come essentially by default – by marginalising political opposition, wearing down donors and diplomats, and maintaining a lock on power through the military and local government offices.

The government has pledged itself to an ambitious agenda for growth and reform, yet it remains to be seen whether the CPP will deliver. There is considerable room to believe that the CCP's public commitment in a donors' meeting in Tokyo in February 1999 to a program of political reform and social welfare is disingenuous. In the most important areas of necessary reform foreshadowed in 1991, the government has made little progress. The likelihood

¹ Nineteen countries signed the Agreements: Australia, Brunei, Canada, the People's Republic of China, France, India, Indonesia, Japan, Laos, Malaysia, the Philippines, Singapore, Thailand, the USSR, the United Kingdom, the United States, Vietnam and (representing the Non-Aligned Movement) Yugoslavia

of large-scale violence or a collapse of government control is relatively low, but all parties cannot ignore the cumulative effects of ongoing abuses by the ruling party or the potentially explosive issues on the horizon. Economic inequalities are increasing, and are being met more frequently with public protests against land grabbing and corruption. Tensions within the armed forces are being exacerbated by attempts to reduce the size of the forces, while attempts to replace old guard local officials may unleash violence against their opponents. One of the most sensitive, if not potentially traumatic, issues is the question of a tribunal for the surviving Khmer Rouge leadership. The ruling party cannot agree within itself on the way forward, and any decision will elicit strong public response. The government has yet to show consistent leadership on any of these major issues despite its commitment to donors to do so.

The international community, deeply involved in pushing Cambodia to the horrors of 1975 and then in trying to bring it back, bears a particular responsibility for the state of the country. Those who signed the 1991 Peace Agreements can take credit for finally drawing the teeth of the Khmer Rouge and bringing an end to the civil war, and those who have kept the country financially solvent in subsequent years can take much of the credit for the limited gains made. But they should all be now honestly reviewing their role in creating and subsidizing the government that today controls the country.

ICG's previous report on Cambodia² emphasised the importance of breaking the cycle of impunity, stepping up preparations for local elections and reforming public finances by shifting excessive military spending to social sectors. These recommendations still hold, although none has been addressed effectively by the Cambodian government or the donor community.

This report makes the following additional recommendations.

Linking Aid and Governance Reforms

1. Donor governments must adopt a more visibly political approach to coordination, solidarity behind agreed goals, and a much more critical eye toward the Cambodian government, being willing to take action if agreed goals are not achieved.
2. The Consultative Group (CG) meetings of donors should include a greater diversity of politicians and Cambodian NGOs. If this is not acceptable to the Cambodian government, the CG should convene a separate meeting with Cambodian NGOs to be held the day before the formal meetings with Cambodian officials.

Land disputes

3. Donors should support the creation of an effective dispute resolution system that maximises representation for farmers and civic activists and minimises the participation of provincial or military authorities.

² 'Back from the Brink', 26 January 1999. This report, like all ICG reports, is available on the website www.crisisweb.org.

4. Donors should prepare immediately to increase aid for food and health care to offset the causes and results of landlessness.
5. Donors should give ongoing assistance to the clearance of landmines as a means of making more land available.

Demobilisation

6. Demobilisation that actually addresses the declared purposes of the program must be a higher priority both for the government and the donor community.
7. Donors should not fund the demobilisation project sponsored by the World Bank as currently envisioned. Efforts should be more focused, and include a strategy for cantonment of weapons, ending the small arms trade on the streets of the major towns and cities, and cutting back the most – not the least – costly parts of the armed forces.

Commune elections

8. Donors should not fund commune elections if the legislation remains as it is and if other practical benchmarks, such as reforming the National Electoral Commission, are not met.

Trials for the Khmer Rouge

9. The UN and other interested parties should be prepared to back the special courts to be set up under Cambodian domestic jurisdiction, but only under the firm condition that all living first-level leaders of the Khmer Rouge are subject to rigorous investigation that conforms to international standards.
10. There should be explicit provision in the legislation for all judges to be able to render public, reasoned dissenting opinions on all matters submitted to them.
11. Agreement should be sought to allow a foreign presence among the investigators apart from the principals identified specifically in the Cambodian bill.
12. International organisations, foreign governments and Cambodian NGOs should be prepared, perhaps through the vehicle of a joint monitoring committee, to document and publicise any weaknesses in the administration of justice under the proposed Cambodian tribunal.

Phnom Penh/Brussels, 11 August 2000



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I. INTRODUCTION

Almost a decade after the 1991 Paris Peace Agreements, Cambodia is at peace and the government is at last secure enough to contemplate the trials of some Khmer Rouge leaders. The country has a coalition government that is stable, has reclaimed its seat at the United Nations (UN), and has become a member of the Association of Southeast Asian Nations (ASEAN). It is posting 4 per cent annual economic growth rates and making modest strides in economic reform. Clearly the country has moved forward: it is intact, it is without internal or external threats, and it has the necessary framework for good government.

Given the gulf that existed between the political groupings of Cambodia in 1991 when the Paris Accords were signed, and the lack of a liberal, democratic tradition in the country, the existence of a stable coalition government by the year 2000 could be seen as an important first step to achieving the potential offered by the 1991 settlement. But this judgment must remain considerably clouded given the systematic resort to political violence and the systematic abuse of process by key players to get to this point. Cambodian politicians could have done better. There is peace but the majority of Cambodians are still waiting for their peace dividend, and many believe that it will never come. Social welfare is virtually non-existent and the national economy has little prospect of supporting the growing adult population.

Cambodia remains a strongman's state, replete with lawlessness, human rights abuses, grinding poverty, bloated security forces and an economy thriving on prostitution, narcotics trafficking, land grabbing and illegal logging. The ruling Cambodian People's Party (CPP), led by Prime Minister Hun Sen, has now achieved long-sought legitimacy but this has come essentially by default – by marginalising political opposition, wearing down donors and diplomats, and maintaining a lock on power through the military and local government offices. The government has pledged itself to an ambitious agenda for growth and reform, yet it remains to be seen whether the CPP will deliver.

The next three sections of this report (covering national political trends, political parties and the national budget) reveal the continuing entrenchment of a highly personalised, authoritarian and ineffective

system of governance. The promise of the Constitution (drafted after the 1991 Paris Peace Accords) to establish a liberal and pluralist state, with basic freedoms guaranteed, and with an effective representative democracy, has not been fulfilled and is fading.

The report then provides an assessment of five topical political issues which are central to the transition that Cambodia has to make, and which demonstrate the massive problems that still lie ahead. These are human rights abuses and use of political violence; the question of land ownership and title after the wholesale population transfers under the Khmer Rouge (KR) government; the 1999 commitment of the Royal Cambodian Government (RCG) to reduce the armed forces by almost two-thirds; commune elections; and bringing to justice the KR principals responsible for the genocide and other serious crimes between 1975 and 1979.

II. EVOLUTION OF NATIONAL POLITICS

The historic national elections of May 1993, mandated by the Paris Peace Agreements and overseen by the United Nations Transitional Authority in Cambodia (UNTAC), yielded a clear victory for Funcinpec,³ the royalist party. But the Cambodian People's Party (CPP), unwilling to play by democratic rules, bullied its way into a coalition government. Cambodia became the only country in the world with co-Prime Ministers, Prince Norodom Ranariddh of Funcinpec and Hun Sen of the CPP.⁴ Each ministry had co-ministers, each of whom had his own staff. In September 1993, Cambodia promulgated its new Constitution and its parliament, known as the National Assembly, began work.

From 1993 to 1995, a spirit of cooperation and relief prevailed, generating the goodwill necessary to make the two-track system of government function. The country re-opened to the world after decades of war. Investment and foreign aid pushed the GDP growth rate to 7 or 8 per cent and the first steps were taken towards rebuilding the country's infrastructure. But it was not to last, and throughout 1996 and the first half of 1997, relations between the Prime Ministers and the two parties frayed. No common ground could be found on critical issues such as sharing power at the local level, coping with the remnants of the Khmer Rouge or approaches to basic economic development. The CPP and Funcinpec paid equally little attention to adapting to the norms of democratic parliamentary governance; rather, they continued to rely on patronage or authoritarian tactics. But the CPP, with control of the armed forces, was in the stronger position.

³ Funcinpec is an acronym based on the full name in French of this party: the National United Front for a Neutral, Peaceful, Cooperative and Independent Cambodia. This acronym is most commonly rendered, as here, in lower case.

⁴ Hun Sen had served as the Prime Minister in the previous Hanoi-backed regime, while the royalists had participated in the coalition government in exile along with the Khmer Rouge, that was based in Thai-Cambodia border area. The royalists were supported by expatriate Cambodian communities in the United States, Europe and Australia.

In March 1997, the uneasy balance was fractured when unidentified assailants threw grenades into the midst of an opposition party rally led by Sam Rainsy, killing seventeen and wounding dozens of others. Tensions came to a head in July 1997, when the CPP ousted Funcinpec in a military coup. Over 100 Funcinpec officials and supporters, as well as members of other parties opposed to the CPP, were killed in three days of fighting. Opponents of the CCP, including First Prime Minister Ranariddh, many Funcinpec MPs and opposition leader Sam Rainsy and his supporters, once again fled the country.

The international community, weary of Cambodian infighting, did not seriously challenge the legitimacy of Hun Sen's new government established by force. Some countries, including France and Japan, accepted the CPP's charge that Funcinpec had brought Khmer Rouge soldiers into Phnom Penh, thus triggering a necessarily military response to ensure national security. Others, such as the United States, froze aid and withheld recognition of the post-coup government. The UN decided in September 1997 that Cambodia's seat should remain vacant until the conflict could be resolved and Cambodia's pending acceptance into ASEAN was similarly deferred.

Despite the less than satisfactory government structure which emerged from the 1993 elections, the international community could not resile from support for new elections to settle Cambodia's political crisis. The July 1998 elections were less violent than their 1993 counterpart, mainly because the Khmer Rouge were no longer a factor and the opposition had been cowed, but the electoral machinery, including the National Election Commission (NEC) and access to the electronic media, was controlled entirely by the CPP. Funcinpec and the Sam Rainsy Party (SRP), just returning from exile, not only had little time to organise and compete but also had to cope with a hostile environment and the recent experience of the coup. Human rights workers and election monitors documented politically motivated murders, widespread intimidation and rampant vote buying in the run-up to the elections.

Not surprisingly, the CPP engineered a change to the formula by which votes translated into seats and obtained through its electoral plurality a majority of seats in the Assembly. Yet it fell short of the constitutionally mandated two-thirds of the National Assembly needed to form a government.⁵ In the days immediately following the election, Funcinpec and SRP complained of procedural violations in the counting process, but these grievances were simply rejected by the NEC and the Constitutional Council, the legal body charged with resolving electoral complaints. The opposition parties organised demonstrations in the streets of Phnom Penh to protest the government's blatant manipulation of the electoral process, leading to a police crackdown in mid-September 1998. The CPP, desperate to form a government, put in place an illegal travel ban to prevent elected members of parliament from leaving the country, thus

⁵ The CPP has 64 seats in the Assembly, Funcinpec has 43 and SRP has 15.

forcing their participation in a swearing-in ceremony in late September. Shortly after the ceremony finished, the ban was lifted and once again many Funcinpec and SRP members, including Ranariddh and Rainsy, left Cambodia to lobby for foreign support to overturn the election results.

In mid-November 1998, Ranariddh abruptly agreed to participate in a coalition government with the CPP and returned to Phnom Penh to broker the deal. Rainsy, whose only alternative was to remain in exile, returned a few weeks later to take up the formal role of opposition leader. The critical vote of confidence took place in early December 1998. Less than two months later, the international community conferred its legitimacy by pledging \$470 million in aid at the donors' meeting in Tokyo. Although the government looked suspiciously like its unsuccessful predecessor, donors described themselves as 'cautiously optimistic' as Hun Sen promised a laundry list of reforms tailor-made to international concerns, including economic and judicial reforms, protection of human rights and the environment, a reduction in the civil administration and military demobilisation.⁶ That spring Hun Sen traveled to New York to assume Cambodia's seat at the United Nations, kept vacant in the wake of the 1997 coup. The final international political victory for Hun Sen came in April 1999 with Cambodia's formal accession to ASEAN.

The government has pledged itself to an ambitious agenda for growth and reform, yet it remains to be seen whether the CPP will deliver. There is considerable room to believe that the CCP's public commitment in the donors' meeting in Tokyo in 1999 to a program of political reform and social welfare is disingenuous. In the most important areas of necessary reform foreshadowed back in 1991, the government has made little progress. The likelihood of large-scale violence or a collapse of government control is relatively low, but all parties cannot ignore the cumulative effects of ongoing abuses by the ruling party or the potentially explosive issues on the horizon. Economic inequalities are increasing, and are being met more frequently with public protests against land grabbing and corruption. Tensions within the armed forces are being exacerbated by attempts to reduce the size of the forces, while attempts to replace old guard local officials may unleash violence against their opponents. One of the most sensitive, if not potentially traumatic, issues is the question of a tribunal to try the surviving Khmer Rouge leadership. The ruling party cannot agree within itself on the way forward and any decision will elicit strong public response. The government has yet to show consistent leadership on any of these major issues despite its commitment to donors to do so.

The instinct to exploit government bodies for party interests persists. The most blatant example since the establishment of the new coalition is undoubtedly the formation of a Senate, established largely to create another legislative chamber to warehouse senior party members for whom

⁶ 'Triumphant Hun Sen vows reform' Associated Press, *South China Morning Post*, December 1, 1998.

other sinecures were not available.⁷ Funcinpec, for instance, had insisted on Prince Ranariddh occupying the position of President of the National Assembly,⁸ but this put CPP President Chea Sim out of a job. The Senate allowed for another Presidency position for Chea Sim as well as jobs for those who had run and not been re-elected.

The National Assembly, the parliamentary chamber provided for in the original Constitution, appears to be meeting more regularly than it did in the 1993-1998 term, but its operations in many ways resemble those of a Soviet or Chinese style parliament rather than the more representative one clearly implied in the Constitution. Even though there is an opposition party with seats in the Assembly, lack of significant opportunities for debate is a measure of its relatively undemocratic character. Members of the Assembly rarely, if ever, visit their constituencies. Sessions are now regularly televised, but the coverage is suspended during debates over controversial issues or if members of the opposition are speaking. This is reminiscent of the CPP's success in blocking opposition access to the electronic media in the preparations for the 1998 elections.

The Assembly has passed about 30 laws during its current term, but many deal with relatively non-pressing issues, such as auto insurance. The Assembly quickly reverts to puppet status whenever dealing with issues on which the ruling party has an interest in stalling, such as legislation that would mandate serious penalties for government officials engaged in corruption. The democratic process is further undermined as legislation continues to be vaguely worded and leaves much of the actual regulating work to be enacted by Ministerial sub-decrees. Assembly members and their staff members have little expertise in drafting legislation, and all legislation under consideration is still initiated by the government. According to the Cambodian Development Resource Institute, the Assembly does not even get the opportunity to review the annual budget but receives it only two weeks before the start of the next fiscal year, 'leaving no time for a proper review'.⁹

The judiciary also remains loyal to the executive branch. The Constitutional Council, which is supposed to monitor adherence to the constitution and rule on potential threats to it, and the Supreme Council of the Magistracy, which is responsible for appointing, removing and disciplining judges, are both dominated by CPP loyalists. Lower-level

⁷ The National Assembly amended the Constitution in March 1999 to approve the formation of the Senate. Parties were responsible for nominating their members, so the 61 members did not have to submit to voter or government approval. Thirty are CPP representatives, 19 are from Funcinpec, seven are from the SRP and the King nominates two. The Senate is charged with reviewing legislation passed by the Assembly, commenting on it and returning it to the Assembly if changes have been suggested. In its one year's existence, the Senate has only disagreed with the Assembly once. It is unclear how members will be chosen in subsequent terms. Samreth Sopha, 'Senators list final,' *Phnom Penh Post*, March 19-April 1, 1999, p. 7.

⁸ Ranariddh, who has never shown much interest in legislating, desired this position because it also entitles him to serve on the Throne Council, the body that will choose the next King.

⁹ Brian Mockenhaupt, 'Parliament Struggles to Play an Important Role,' *The Cambodia Daily*, May 26, 2000, p. 16.

judges have limited training in the law, with some reportedly not having completed primary school. Although new lawyers have been graduating in the last few years, the Bar Association has been slow to process their applications to practise. There is little cooperation between the judiciary and law enforcement officials, further diluting progress toward the rule of law.

Other aspects of governance in Cambodia remain unchanged, especially where official corruption is concerned. Despite the establishment of a government Anti-Corruption Commission in October 1999, a May 2000 survey conducted by the World Bank indicates that one-third of the population thinks official corruption is worse than three years ago – while the remaining two-thirds thinks corruption is much worse.¹⁰ Ministerial appointments are widely seen as opportunities to increase personal wealth and power, not to serve the country. Recently, a multiparty group of legislators ranked the Ministry of Finance, the Ministry of the Interior, the judiciary and the Council of Ministers (the Prime Minister's cabinet) as the most corrupt governmental bodies in the country.¹¹ Although the necessary legislation has passed to establish a National Auditing Authority (NAA) to monitor spending across all government institutions, the CPP has stalled the NAA's establishment until it can ensure its own dominance of the body.¹²

Donors, particularly international financial institutions like the World Bank, are increasingly reciting the mantra of 'good governance'. Yet their criticisms are couched in weak rhetorical terms of 'political will' rather than of corruption, bribery, ineptitude and abuse of state power. Cambodian ministers and legislators will have to work considerably harder to stamp out their own corruption, turn around their economy and earn reputations as genuine legislators and representatives of their people before their country can be considered truly stable.

III. POLITICAL PARTIES

A. Cambodian People's Party

Consistent with its style of rule in the 1980s, the CPP is not simply a political party; it is the governing apparatus of Cambodia. The CPP currently claims a nationwide membership of more than three million, or about one-quarter of the total population. The Party has an extensive and highly organised national network, primarily through village 'cells' and a monopoly on local government offices (see below). At the national level, it has control of the most powerful and lucrative ministries, including:

¹⁰ 'Cambodia Governance and Corruption Diagnostic: Evidence from Citizen, Enterprise and Public Official Surveys,' Prepared by the World Bank at the Request of the Royal Government of Cambodia, May 10, 2000, p. 19.

¹¹ Kelly McEvers, 'Lawmaker Group Singles Out the Most Corrupt Ministries,' *The Cambodia Daily*, June 16, 2000, p. 14.

¹² Lor Chandara, 'Government Audit Watchdog Plan Slowed,' *The Cambodia Daily*, May 30, 2000.

Agriculture, Forestry and Fisheries, Commerce, Environment, Finance, Foreign Affairs, Industry and Energy, Land Management, Urban Planning and Construction, Planning, and Post and Telecommunications. CPP and Funcinpec provide co-Ministers for the pivotal Ministries of Defense and the Interior, but in both instances the Funcinpec members are far weaker than their CPP counterparts.

In the months preceding the 1998 elections, the CPP's rolls had swelled to four million. This was likely a combined result of Funcinpec's demise in the previous year's coup, the Sam Rainsy Party's difficulties organizing in the countryside, and the CPP's practice of forcing enrolment in the electoral register. During the election itself the CPP received less than two and a half million votes, losing almost a million to Funcinpec and half a million to the SRP. CCP insiders attribute the loss to rural dissatisfaction with commune chiefs. Given that most of the party's membership is in the countryside, it will have to be somewhat sensitive to demands for changes in local level leadership. Commune elections (discussed further below) are expected to take place at some point in the next few years, and, in anticipation of that, the CPP is already well underway identifying more popular local candidates.

The CPP tends to make much of its role as the force that liberated Cambodia from the Khmer Rouge and from the Vietnamese, and Hun Sen in particular often refers to the importance of maintaining the country's sovereignty. The Party claims it is devoted to strengthening the country so that it can remain independent, and on improving the standard of living after decades of war. Yet it is incapable of relinquishing highly authoritarian tactics or corrupt practices. Although the CPP's stated agenda focuses on reforming the government – which includes improving the judiciary, paring down the bloated armed forces, improving the quality of governance and fighting corruption – these appear to be priorities of international donors, not of the Party itself. The CPP clearly prefers to stick to the age-old strategy of patronage and intimidation, rather than real reform, to ensure popular support.

Hun Sen continues to be driven by a desire for international legitimacy. He and the CPP were for a decade shunned as puppets of Vietnam, then viewed with suspicion for their bullying tactics through the early and mid 1990s, then once again marginalised after the 1997 coup through the loss of the UN seat and the postponement of ASEAN accession. The CPP's loss at the polls in 1993 came as a serious shock to the Party, and its narrow and tainted victory in 1998 continues to rankle. The Prime Minister likes to view himself as another Lee Kuan Yew and clearly thinks the need for economic development, particularly following the devastating decade of isolation and socialism resulting from Vietnamese rule, requires a firm hand. He is seen as effective, especially when compared to Funcinpec and its leadership, and this has earned him significant support among donors. Few in the international community appear concerned that his effectiveness is driven by a desire to maintain power first and reform the

country second – even if those two strategies are fundamentally incompatible.

The Prime Minister's capacity and inclination to use and abuse his power are painfully obvious. Even worse is his tendency to do it in order to pacify his external funders. Under significant pressure from the donor community to ensure a peaceful election day in 1998, for example, a single directive from Hun Sen suddenly brought an eerie calm to the days preceding the election despite a campaign marred by violence. In his speech to the January 1999 Consultative Group meeting in Tokyo, the Prime Minister pledged to crack down on illegal logging. Global Witness, an environmental watchdog group, claimed that 'incredible changes'¹³ followed, but later noted that in terms of fundamental transformations in this industry, the 'RCG has, by and large, failed to suppress illegal activities by timber concessionaires, both in terms of detection and punitive actions.'¹⁴ Perhaps most grotesque was the December 1999 re-arrest of almost 100 people, as reported 'on the orders of Prime Minister Hun Sen because he disagreed with their original sentence or acquittal'.¹⁵ The Prime Minister continues to use his power like a light switch, flipping it on and off as necessary, and the donor community – ironically – continues to see this as grounds for 'cautious optimism' because power is occasionally exploited to achieve results they want. Given how little Hun Sen has had to do to convince donors that he is committed to reform, it is not surprising that he 'felt happy'¹⁶ about getting the money following the most recent Consultative Group meeting.

The CPP is well known for its party discipline, and reliable information on factions within it or divided loyalties is not readily available. Nevertheless, it is unlikely to be the monolithic entity that its public face reveals. Since the formation of the 1993 government – and indeed, even before that – rumors have periodically circulated about fissures within the CPP, though some believe that the Party itself encourages these rumors. Deputy Prime Minister and Co-Minister of the Interior, Sar Kheng, is often cited as a rival to Hun Sen. Despite his oversight of the notably thuggish police, Sar Kheng achieved a degree of favor from the international community through his involvement, then perceived to be a positive role, in the late 1996 and early 1997 preparations for elections. While some of this goodwill evaporated as a result of the coup and the subsequently problematic elections, Sar Kheng can still be seen as an alternative power centre within the CPP. Other CPP leaders periodically cited as potential challengers to Hun Sen include Chea Sim, president of the Party and of the newly created Senate, and Ke Kim Yan, Commander-in-Chief of the Royal Cambodian Armed Forces (RCAF). Despite these tensions, there is little evidence of a faction with enough support to oust Hun Sen.

¹³ 'Chainsaws speak louder than words,' Briefing Document by Global Witness, May 2000, p.3.

¹⁴ Ibid, p. 4.

¹⁵ Chea Sotheacheath, 'Hun Sen's hundred languish in jail,' *Phnom Penh Post*, June 9-22, 2000, p. 1.

¹⁶ 'Cambodia Gets Foreign Aid Pledges,' Associated Press, May 29, 2000.

Over coming years, the divide within the CPP is more likely to be between 'old guard' members and technocrats returning from overseas than between the military and civilians. The Party can no longer exist solely through brutality and authoritarian rule; if it is to develop at all, or advance reforms, it will require increasing assistance from those who have been educated abroad. CPP members who have remained in Cambodia or Vietnam have had little opportunity to develop the skills necessary for modern trade, banking, computing, urban planning or infrastructure development. These returnees tend to occupy advisory positions to Ministers and Secretaries of State and, while nominally committed to the CPP, are clearly uncomfortable with the Party's authoritarian tendencies. In the future, the Party may be faced with either losing this badly needed base of knowledge or becoming more accommodating to its changing membership.

B. Funcinpec

Funcinpec's traditional appeal has been based on the party's connection to the monarchy and to religion. Prince Norodom Ranariddh, now President of the National Assembly, is the son of King Norodom Sihanouk, who is still viewed with great reverence by most Cambodians. Funcinpec's victory over the CPP in the 1993 elections and its moderate showing in the 1998 elections are attributed to this connection. The party includes among its legislators, ministers and other party officials about a half-dozen other members of the royal family.

Despite a seemingly natural advantage in a deeply traditional society, Funcinpec has failed miserably to develop itself as an effective political party. It is currently unclear on its own national membership and regional strengths. If the party has tactics for attracting new supporters, they are unclear. Funcinpec's agenda is broadly committed to reform and economic development, but it lacks a plan for implementation as the party struggles to make use of the ministries it controls, such as Education, Information, Inspection and Anti-Corruption, Justice, Public Health, Rural Development and Women's Affairs. Funcinpec tends to blame its weaknesses on the intimidating tactics – directed at local and national level supporters – of the CPP and on its responsibility for under-funded social welfare ministries, but the party's inept leadership must also be considered. Prince Ranariddh's very agreement to form a coalition with the CPP in late 1998 appeared to take a number of Funcinpec members by surprise, and it is actions such as these that lead observers to conclude that the Prince is uninterested in governing or party development beyond what is necessary to secure his own personal power. Ranariddh is often outside the country and, despite having insisted on the position of President of the National Assembly, often misses sessions.

Privately some senior Funcinpec members bemoan this predicament and express the hope that Ranariddh will become the next king, thereby allowing for a successor to Ranariddh to rejuvenate the party. The person mentioned most often as successor is Prince Norodom Sirivudh, a step-

brother to the King as well as former Foreign Minister and Funcinpec secretary-general until his expulsion, arrest and exile in late 1995. Sirivudh returned to Cambodia in 1999 despite strenuous opposition and threats from the CPP (including a threat to shoot down any plane known to be carrying him). As leader of the party, Sirivudh would have the potential to rejuvenate it. Sirivudh currently serves as an adviser to the King, but it is expected that he will at least run as a Funcinpec candidate for the National Assembly in 2003 if not make a bid for a senior party position.

The more effective Funcinpec ministers make some progress in their respective sectors but are challenged with the most daunting of Cambodia's problems and little money. Mu Sochua, Minister of Women's and Veterans' Affairs, is credited with trying to manage effective programs with almost no resources, while other observers cite Minister of Justice Ouk Vithun's efforts to improve the judiciary. Other senior members of the party appear to be content with titles and positions and show no real interest in effecting political or social change. Accusations of corruption are made against Funcinpec as often as they are against the CPP. Between these charges and those of Funcinpec's rudderlessness, the party has also lost the confidence and support of the donor community.

The party's lack of cohesion and direction is unlikely to cause a split, but it also virtually guarantees Funcinpec will never mount an effective challenge to the CPP until there is a change in leadership.

C. Sam Rainsy Party

The SRP currently estimates its active supporters to number about 500,000. Founded and chaired by former Funcinpec Finance Minister Sam Rainsy in 1995, the party holds 15 seats in the National Assembly, and seven in the Senate. This must be seen as a remarkable achievement, given that the SRP has only been in existence for a few short years. Most of the SRP's support is to be found in Phnom Penh and surrounding areas, though the party managed to win the single-member seat of Pailin, a longtime Khmer Rouge stronghold, in the 1998 elections. The SRP is currently focused on trying to develop a nationwide network of party activists to help expand its reach in preparations for commune elections. Although the SRP includes other prominent politicians, such as MPs Son Chhay and Tioulong Saumura, critics of the party accuse it of being driven by a single individual.

Since it is the SRP that has borne the brunt of the CPP's hostilities, Rainsy's popularity may in the long-term be the more serious challenge to the CPP. Its pressure on the SRP has included the most absurd administrative harassment, such as a court challenge to force the party to change its name in 1997, as well the most lethal, such as the 1997 grenade attack. Violence and intimidation directed against the SRP is not uncommon: a later grenade-attack on Rainsy in 1998, the ongoing intimidation of party supporters, and attempts to frame party members for

crimes are evidence of that. That no one has been arrested or tried for any of these offenses seems to send a very clear message to opposition supporters that not only are they putting themselves in jeopardy but that they can also expect no justice.¹⁷

Although both the SRP and Funcinpec were labelled by the CPP and some donors as the opposition parties in the 1998 elections,¹⁸ it is only the SRP that has fully embraced this role since Funcinpec joined in a coalition government. Unlike Funcinpec, the SRP has dutifully – if pedantically – followed parliamentary procedure to try to elicit information from the government about its practices and policies. In the past 18 months, SRP has submitted over 100 questions to the National Assembly (the standard method of examining government policy) and none have been answered. Although the SRP tries to make best use of its positions in the Assembly, the legislature's failure to function properly thwarts Rainsy's attempts at enforcing government transparency.

In addition to pushing his agenda through the legislative system, Rainsy is also known for his very public political gestures. The SRP regularly organises demonstrations, marches, strikes and memorial services, marking everything from the murder of its supporters to the need for environmental protection legislation. In doing so, Rainsy often employs inflammatory rhetoric that, while less harmful than the violent tactics employed by his opponents in the government and security forces, loses him support in the international community. The most well-known example was his use of virulent anti-Vietnamese rhetoric, guaranteed to incite popular Cambodian sentiment, during the post-election demonstrations in September 1998. The issues on which Rainsy focuses are of course pressing matters – with corruption there can be no development, with violence there can be no democracy, without environmental safeguards the country's ability to support even subsistence agriculture may be jeopardised – but he is impatient with his allies and opponents alike. Transforming the fundamental governing structure of an authoritarian regime to a fully functional parliamentary democracy is no quick task and time will tell whether Rainsy is in this battle for the long haul.

Donors in Cambodia appear to have a high threshold for overt political violence but an extraordinarily low tolerance for what they consider 'destabilizing' behavior. Diplomats will privately admit that they find Rainsy arrogant and irritating, accusing him of fabricating threats to himself and his supporters and 'crying wolf.' While some of Rainsy's tactics and statements are at best unreasonable, it is unclear why donors

¹⁷ It is worth noting that the United States Federal Bureau of Investigation (FBI) has been no help in this respect. The FBI was called in to investigate the grenade attack because an American citizen was injured. Despite repeated requests from the SRP, the press and Congressional offices over the past three years, the FBI maintains that its report, which likely implicates the CPP and/or its supporters, cannot be released because the investigation is 'ongoing.'

¹⁸ Funcinpec had of course won the 1993 elections and was 'only' ousted by a coup.

who claim to support non-violent, democratic rule find his efforts so distasteful by comparison with outright government abuses.

The SRP's limited geographical appeal will in the short term make it no challenger to the CPP. In the longer term, however, the party may well erode traditional support for Funcinpec, particularly among younger voters. In order to survive, though, Rainsy and his colleagues will have to live with a constant threat of political violence from the CPP and others.

IV. SOCIO-ECONOMIC CONCERNS AND THE NATIONAL BUDGET

After seven years of relative peace and almost \$3 billion in foreign aid,¹⁹ Cambodia remains in dire socio-economic straits. According to the 1998 National Health Survey, more than one in nine Cambodian children die before their fifth birthday.²⁰ Infant mortality is on the rise, an estimated 180,000 people are HIV-positive,²¹ and the World Health Organisation has ranked Cambodia 174th out of 191 countries for health care delivery.²² The Cambodian Women's Crisis Centre estimates that there are 50-55,000 prostitutes, one-third under the age of 18, employed in brothels across the country.²³ Pedophile sex tourists make their intentions plain on a daily basis in Phnom Penh with impunity from prosecution. Average life-span is 54 years, yet the population of 11 million is expected to double by 2020.

These figures give just an indication of the breathtaking socio-economic challenges Cambodia continues to face. But government expenditures, which should serve as the acid test for the coalition government's commitment to reform, do not reflect these concerns: funding for education has declined²⁴ while spending on health has only increased from 4.3 to 5.3 per cent of government outlays.²⁵ The World Bank notes that these ministries often cannot make full or efficient use of the resources they are allocated. The Ministry of Defense, on the other hand, continues to be given almost 40 per cent of the annual budget and regularly utilises more than 100 per cent of that amount. These relative expenditure shares have remained consistent for the past three years, illustrating just how disingenuous are the government's pledges to reform and develop.

¹⁹ Public sources on the value of foreign aid disbursed to Cambodia vary. A compilation of amounts pledged at donor group meetings suggests the total figure is \$4 billion since 1991. Another estimate of total official flows suggests the figure may be as high as US\$6 billion. OECD Development Assistance Committee (DAC) statistics on actual disbursements report the flows at only US\$3 billion by the end of 1998. Less than half a billion dollars was pledged for 1999. See DAC Online Databases (www.oecd.org), accessed 12 July 2000.

²⁰ National Health Survey 1998, National Institute of Public Health, Ministry of Health, Phnom Penh, July 1999, p. iii.

²¹ NGO Statement to the 2000 Consultative Group Meeting on Cambodia, Paris, May 24-26, 2000, p. 41.

²² 'WHO Report Finds Cambodia Near Bottom,' *The Cambodia Daily*, June 22, 2000, p. 8.

²³ Speech to the First National Conference on Gender in Development in Cambodia, Chanthol Oung, Director, Cambodian Women's Crisis Centre, Phnom Penh, September 7-9, 1999.

²⁴ NGO Statement, p. 25.

²⁵ Oung, Speech to the First National Conference on Gender in Development in Cambodia, p. 16.

The economy is still struggling to find natural prices and taxation rates following the spikes generated by UNTAC's presence and the presence of a large international contingent for the 1998 elections. About half of the annual budget comes from import duties and the sale of state resources, the other half from foreign aid. Cambodia has few competitive exports, at least of a legal variety. Foreign-owned garment factories are forming a fledgling industrial base, but currently favorable tariffs offer a protection that will drop in the coming years. Individual income taxes are still unheard of. The government is currently contemplating an income tax on foreigners in Cambodia (many of whom work for aid agencies) in preference to taxing its own citizens. Civil servants are still paid a meager wage of \$20 month, a salary so low it virtually forces them to engage in corrupt practices.

According to the World Bank, Cambodia has one of the lowest revenue collection rates in the world. In an effort to increase revenue, a 10 per cent value added tax (VAT) on goods and services went into effect in January 1999. The tax, however, is specifically geared towards about 400 companies, primarily hotels, restaurants and tour companies, thus placing more of the burden of increased costs on foreigners.²⁶ Moreover, the main industry that produces revenue for the government – textile production – is exempt from the VAT. Government revenue has increased from 9 to 11 per cent of GDP, or about \$60 million, but it is unclear whether this can be attributed to the VAT imposed on external sources of cash or to selective crackdowns on particularly lucrative industries or wealthy individuals.

The cost of not reforming is indeed high. Research contracted by the Asian Development Bank predicts that if the reforms pledged at the 1999 donor meeting are completed, Cambodia's GDP growth will rise from 4 to 7 per cent by 2020, thus increasing per capita income from \$274 to \$1,522. Without reforms, growth will stagnate and per capita income will increase a mere \$16 over the coming two decades.²⁷ The same report, however, notes 'the difficulty of breaking the cycle of decision-making by small groups of powerful people and establishing more participatory governance practices'.²⁸ While Cambodia's growth rates in the aggregate show an improvement, poverty at the micro-level has actually worsened. This brief growth spurt may soon be over if the government continues to financially neglect the sick, the poor and the uneducated.

²⁶ Phelim Kyne, 'Cambodia's VAT attack: More pain than gain?' *Phnom Penh Post*, March 19-April 1, 1999, p. 14.

²⁷ 'Cambodia: Enhancing Governance for Sustainable Development,' Cambodian Research and Development Institute, Phnom Penh, January 2000, p. 13.

²⁸ *Ibid*, p. 8.

V. CURRENT ISSUES

A. Human Rights Abuses and Political Violence

The combination of an authoritarian regime and widespread poverty contribute to ongoing problems with human rights and political violence. Despite the aspirations of the 1991 Peace Agreements and the commitments to peaceful, pluralistic politics in the Constitution, several domestic Cambodian NGOs continue to document a seemingly unmitigated stream of abuses, working with the UN's Cambodia Office of the High Commissioner for Human Rights (COHCHR), as well as international organisations such as Amnesty and Human Rights Watch. At the same time, public frustration with the government is increasingly being seen in public demonstrations.

Since July 1999, Licadho, one of a half-dozen respected Cambodian human rights group, reports receiving no less than 40 complaints per month. In the first half of 2000, Licadho has investigated over 300 cases, including 39 killings, 18 incidents of torture, 31 illegal arrests and detention, 61 physical assaults and 81 rapes. The real numbers are likely much higher, given people's reluctance to file complaints. In few cases are just settlements to be found through the court system, which continues to be weak and subject to political bias.

The 'culture of impunity' (freedom from retribution for major crimes) is often cited as the root cause of Cambodia's problems. For all the attention paid to the issue, little has changed in the past few years. Like the government, the law continues to be seen and used as a tool to be manipulated by the powerful, not as a means for all citizens to protect themselves. A June 1999 report by two Cambodian human rights groups and Human Rights Watch documents how those with connections to the power structure regularly evade prosecution, even when they are clearly guilty of serious crimes like murder and rape. The report cites the partisan, unprofessional and often brutal behavior of the armed forces and the judiciary as the sources of perpetual impunity. 'Now more than ever,' the report concludes, 'it is incumbent upon the government to provide more leadership, vision, and action in order to bring violators to justice.'²⁹ Yet rights groups say little has changed despite the government's purported commitments to improving the legal system.

Nowhere is this more evident than in the treatment of prisoners in state custody. One in four prisoners report being tortured, though the real figures are likely far higher.³⁰ In an effort to bring Cambodia '...more in line with international prison-management standards', a late May 2000 government decree states that civil servants, not police officers, will in the

²⁹ 'Impunity in Cambodia: How Human Rights Offenders Escape Justice,' Adhoc, Licadho and Human Rights Watch, Phnom Penh, June 1999, p. 35.

³⁰ 'Less than Human: Torture in Cambodia,' Licadho Project Against Torture, Advance Copy, Phnom Penh, June 2000, p. 13.

future guard prisoners, though it is unclear when this shift will actually take place.³¹

Public protests are on the rise, indicating not just dissatisfaction with the government's inability to protect and provide for its citizens, but also a growing willingness to express those sentiments publicly. A few short years ago, it was unusual to hold public marches, particularly those directed against the government and especially without permission from the municipal authorities. The SRP can take some credit for starting this trend, but students, the landless, the homeless, garment workers, motor scooter taxi drivers and others have now adopted this form of political expression and do not always seek permission first. Most recently, Phnom Penh has seen a wave of protests by garment factory workers against low wages and poor working conditions. These have been violently dispersed, most recently with private security forces as well as police shooting at strikers.³² The government clearly does not resist from using disproportionate force against peaceful, unarmed crowds.

Vigilante justice, another expression of the frustration with security authorities, has also been on the rise. Petty thievery – be it real or perceived – is increasingly dealt with by civilians administering severe beatings. The *Phnom Penh Post* has run at least three grisly series of photographs documenting mobs of angry civilians capturing and beating thieves. On at least one occasion, police actually released a suspected thief into the arms of a waiting mob, only to stand back and watch him be bludgeoned, before the police killed him.³³ It is difficult to tell whether the mobs' hostilities are born specifically of frustrations with the police, but the practice – and the attendant police complicity – is chilling.

Through 1999 and this year, there has been a quantitative decrease in violence directed against government opponents, but this should not lead observers to conclude that the government or the CPP has qualitatively changed its ways. Rather, the reverse may well be true: with one party clearly in charge of the country – and in possession of most of the weapons – few were willing to mount challenges. In addition, since the violence was in the past part of a pattern of electoral thuggery, the absence of an election has itself contributed to a decrease in the numbers. A COHCHR report to the UN Secretary-General in December 1999 pointed to repeated incidents of harassment and intimidation directed towards SRP members, including the dubious detention of two SRP officials in connection with an alleged assassination attempt on the Prime Minister and other government officials in September 1998.³⁴ The

³¹ Kevin Doyle and Phann Ana, 'Prisons To Be Guarded By Civil Servants,' *The Cambodia Daily*, June 2, 2000, p. 1.

³² 'Striking workers shot,' *Phnom Penh Post*, June 23-July 6, 2000, p. 1.

³³ 'Why is this man dead?' *Phnom Penh Post*, October 29-November 11, 1999, p. 3.

³⁴ 'Role of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights: Report of the Secretary-General,' United Nations Economic and Social Council, E/CN.4/2000/108, December 22, 1999, p. 9.

January 2000 final report of Thomas Hammarberg, the outgoing Special Representative of the Secretary-General for Human Rights in Cambodia, emphasised repeatedly the problems of impunity in human rights abuses, noting that '...thorough investigations have not taken place in several cases where the perpetrators of violent acts are known to be members of the police or the armed forces'.³⁵

The persistence of these types of abuses is bound to affect people's involvement in politics. Although local level elections are still at least eighteen months away, parties have begun identifying local candidates, and this has resulted in predictable hostilities. In early June, a prospective Funcinpec candidate for a commune council and his wife were murdered in Kampot Province, and although the investigation has not attributed the killings to political affiliations, the message sent to local people is clear nonetheless. The SRP and Funcinpec may have trouble attracting candidates and supporters because, as one villager put it, 'People do not have a right to support any parties except the ruling government party'.³⁶

The COHCHR's reputation for strenuously defending human rights and investigating abuses has waned. The office, which is constantly under pressure from the government to close its doors, has managed to extend its mandate through to March 2002. The COHCHR's most recent director, however, has earned the scorn of other human rights workers, as well as diplomats and donors, for suggesting in a March 2000 interview that violence has persisted in Cambodia because '...it has become incorporated into their genes'.³⁷ While the office's work in monitoring abuses and providing assistance in drafting laws is still well regarded, the COHCHR as a whole is not the strong supporter of human rights it once was. This in turn puts more pressure on the domestic human rights groups, which, while tough and effective, are still far more subject to government harassment than a UN body.

B. Land Ownership: Protests and Poverty

The most urgent problem Cambodia faces today is one of the most fundamental in any political order: right to the possession of land. Heated debates and physical assaults associated with a new regime for land title and tenure are playing into other big political issues, such as demining, population growth, refugee resettlement, property ownership and the consequences of new economic development strategies. Given that more than 80 per cent of Cambodia's population survives on subsistence

³⁵ 'Situation of human rights in Cambodia: Report of the special Representative of the Secretary-General for human rights in Cambodia,' United Nations Economic and Social Council, E/CN.4/2000/109, January 13, 2000, p. 4.

³⁶ Phann Ana and Seth Meixner, 'Killing Has Chilling Effects on Candidates,' *The Cambodia Daily*, June 21, 2000, p. 13.

³⁷ Peter Sainsbury, 'UN Human Rights Center Gets New Chief,' *Phnom Penh Post*, March 17-30, 2000, p. 7.

farming but less than 15 per cent have formal ownership of their land,³⁸ this issue has the potential to be explosive.

Few Cambodians have ever held actual titles or deeds to land, regardless of the nature of the regime. In addition, the past three decades have seen significant population shifts around the country. Under the monarchy, all land traditionally belonged to the king, but those who cultivated a given area for a number of seasons were considered to have tenure to it. The Khmer Rouge annexed all property and forcibly relocated significant numbers of people around the country. The subsequent Vietnamese-backed regime (1979-1989) adopted the premise that all land was owned by the state, but in practical terms made little effort to administer any sort of tenancy laws. During that decade, some people attempted to return to their home provinces, while continuing civil war in the northern and western parts of the country uprooted others. UNTAC repatriated over 350,000 refugees, primarily to the northwest, in 1992 and 1993. Since the cessation of hostilities in 1980, Cambodia's population has grown rapidly and is expected to double by 2020. Each of these factors has contributed to confusion over land ownership and disrupted traditional patterns of land tenancy. The existence of huge numbers of uncleared landmines in many parts of the country is a further complication to both land tenure and resettlement.

In this environment, economic growth – so badly needed in Cambodia – has produced a negative side-effect in skyrocketing land prices. With a highly speculative economy, a well-reasoned distrust of savings banks and limited alternatives for development, land has become the primary focus of investment. Cambodia's rich and powerful have begun snapping up large tracts of land for sale or long-term leases. The military appears particularly egregious in its land grabbing through forcible eviction of current occupants, particularly in more remote areas. Often poor farmers are simply kicked off their land, which is then occupied by the military or other authorities, resold to developers, leased to logging concessions or used for other purposes. In few cases has there been any – let alone sufficient – compensation.

Preliminary research recently published by Oxfam suggests that 43 per cent of more than 4,000 landless families surveyed had once owned land but had lost it. Among these cases, the causes of the loss of land were reported as follows: 44 per cent as a result of illness forcing a sale or surrender of land;³⁹ 18 per cent a result of a lack of food; and 13 per cent a result of expropriation.⁴⁰ Within the last category, '...provincial and military authorities were cited as being responsible for 74 per cent of

³⁸ 'NGO Statement to the 2000 Consultative Group Meeting on Cambodia,' p. 50.

³⁹ Land transfers are being made in some cases where families have no money for health care, and doctors are fast becoming land-owners of large tracts of land as a result

⁴⁰ 'Interim Report on Findings of Landlessness and Development Information Tool (LADIT) Research, September 1999 to April 2000,' Oxfam GB, Phnom Penh, June 15, 2000, p. 12.

these cases' – some 390 individual cases of seizure of land by government officials.⁴¹

The Prime Minister included solving land disputes as one of his target reforms in his 1999 reform agenda. The government's movements in this direction are at first glance encouraging. Having decided that the primary problems lay with provincial authorities, the government established Provincial Commissions for Resolving Land Disputes, which are to be monitored by a National Commission. Yet in five provinces surveyed by Oxfam, military and other officials dominate the Provincial Commissions, which likely discourages complaints being brought by or successfully resolved in favor of the farmers. Oxfam has estimated that one in eight families has no land, and one family in 30 is involved in some form of land dispute.

Cambodia is facing an imminent political crisis arising from the government's inability to combine land distribution, food security, the judicial process as well as abuses of state power.

First, the potential for legal disputes to overwhelm the courts is high. On top of the judiciary's notorious lack of independence from CPP control, it also lacks the administrative capacity and clear legal guidelines to adjudicate disputes. In addition, the very authorities with the power to grab land have equal power to control the courts, further hampering opportunities for appropriate legal recourse. The Provincial Commissions have reportedly been successful in keeping cases out of court, thus denying even the semblance of an opportunity for legal recourse to farmers and increasing the possibility that settlements will consist of insufficient payments. If judicial reform and the rule of law are truly government priorities, solving land disputes through the court system will indeed be a trial by fire.

Secondly, the Ministry of Land Management, Urban Planning and Construction is currently revising a draft land law. This law, expected to go before the National Assembly in the middle of 2000, aspires to enshrine a system of land titling, ownership and registration. In a heartening move this draft has been opened to significant input from domestic and international NGOs. But if a ministerial regulation (called a sub-decree) of February 2000 to clear the way to establish a land register is any indication, the procedures do not bode well for poor, illiterate farmers who have little experience dealing with officialdom and little time to spare on formal court proceedings.⁴²

⁴¹ Ibid, p.13.

⁴² 'Sub Decree on the Procedure of Establishing Cadastral Index Map and Land Register,' Cambodia Cadastral Project, General Department of Land Survey and Geography, February 11, 2000, p. 1. According to the decree: 'Both demarcation and adjudication are done on a voluntary basis. However, if there is a dispute on the boundaries or on ownership, the [Ministry's] officers have a right to decide the matter the way they consider just... Anybody who disagrees with the decision may dispute it during the public display period, when the Court will make the final decision.'

Other complex and explosive issues, such as protection of tenancy for current occupants, have reportedly not yet been finalised in the draft land law. The NGO community advocates the provision of *de jure* land rights to farmers and occupants, but it remains to be seen whether the final version of the law will respect this request.

Thirdly, access to land has proved to be a focal point for popular protest throughout history, and Cambodia is already showing that it will be no different. Over the past six months, groups of landless people from a variety of provinces have made their way to Phnom Penh to protest their losses outside the National Assembly. On several recent occasions, the government's response was to disperse the protests with police and water cannons. The people's grievances went unanswered, and at no time during the visit to Phnom Penh of the protesters did the relevant Assembly members from the CPP or Funcinpec, or the Ministry of Land Management, make efforts to meet with them.

Even worse is the response to those who protest in rural areas, who are often subject to serious harassment by the military or provincial authorities. In late June and early July, nine people were arrested in Banteay Meanchey for resisting eviction from their homes by military police, who were seizing the land to give it to military officers and business people. Local officials claim to have made other land available, but the villagers say the land is remote and laden with land mines. A UNHCR official in Cambodia has confirmed forced relocations into mine-infested areas of villagers whose land was seized by the armed forces. If this is the manner in which the RCG intends to handle land disputes, alongside the rising tide of popular protests, the issue could spark a nationwide movement.⁴³

Fourthly, disrupting agriculture has the potential to cause serious problems through food shortages, and this will affect not just rural populations but urban dwellers as well. The government, which still owns roughly 80 per cent of the country's land, must take immediate measures to ensure that the already-widening gap in inequalities does not become yet worse. There is no margin for error on this issue – Cambodian peasants cannot live on less than what they currently have.

If the government is truly committed to anti-poverty measures, it should be cracking down on its own members or affiliates who are grabbing land. Moreover, if the CPP wants to be seen as the party of the people, it should be devoting far greater resources to helping poor farmers – not refusing to hear their grievances.

⁴³ Lor Chandara, 'Poipet Evictions, Arrests of Protestors Decried,' *The Cambodia Daily*, July 3, 2000, p. 3.

C. The Military and Inadequate Demobilisation

The CPP's longtime power base is in the security forces. This includes the Royal Cambodian Armed Forces (RCAF), the police, the gendarmerie (paramilitary police) and numerous bodyguard units. Cambodia's armed forces total about 160,000 personnel, while there are an additional 60,000 police and 10,000 gendarmes. With the demise of the Khmer Rouge and a lack of external threats, the government has recognised that there is no longer a need for such a large force. In May 2000, the Prime Minister publicly committed to halving the army as part of a donor-funded demobilisation program. But paring back the military could threaten its loyalty to the CPP, particularly as the demobilisation has been forced upon RCAF.

In order to maintain the allegiance of the military and proximity to its profits from illegal logging and trafficking, Hun Sen has reshuffled top leaders such that the three branches of the military are all now headed by CPP loyalists.⁴⁴ Starting in January 1999, Hun Sen himself stepped down as Commander-in-Chief and awarded that position to General Ke Kim Yan. General Tea Banh has remained in his position as co-Minister of Defence. In November, CPP loyalists moved into other significant positions, as Kun Kim became Deputy Chief of Staff, while Chea Sophara has been promoted from Deputy Governor to Governor of Phnom Penh. In December 83 officers were promoted to the rank of general, apparently in part to pacify Funcinpec members who had been overlooked in the past.⁴⁵ In addition, there is unofficial discussion of creating a separate Ministry of Security, to be headed by Hok Lundy, by taking the police functions away from the Ministry of the Interior, theoretically to weaken CPP Deputy Prime Minister and Co-Minister of the Interior Sar Kheng, considered one of Hun Sen's rivals.

In 1994, a group of donors identified paring back the military as essential to the country's development. Although the RCAF was still engaged in fighting the Khmer Rouge, the armed forces, made up predominantly of CPP and Funcinpec troops, were theoretically unified and no longer challenged by a serious external threat. Yet the army was absorbing over 60 per cent of the annual budget. But slimming the still-polarised military forces was not at the time politically desirable to the CPP or to Funcinpec, so the program was deferred. With the demise of the Khmer Rouge and firm CPP control over the military, spending has decreased slightly and donors are once again placing demobilisation at the top of their agenda. The IMF, citing the acute need for cutting excessive expenditures and devoting more funds to social services, has been particularly vocal on military reform. But due to the inflammatory nature of the project, poor donor coordination and a high price tag (figures range from \$45 million

⁴⁴ '1999 in review,' Phnom Penh Post, December 24, 1999-January 6, 2000, p. 9.

⁴⁵ Anette Marcher and Yin Soeum, 'Ministry of Defense commissions 83 new generals,' *Phnom Penh Post*, December 24, 1999-January 6, 2000, p. 3.

over three years to \$80 million over five years), the effort has been slow to generate donor confidence. In addition, the estimated savings to the government will only be about \$7 million per year.⁴⁶

At base there is still no consensus within the military, between the military and the government, or among the donors and the government about the future of the RCAF. Many crucial questions have been raised but have gone unsatisfactorily answered: why will only provincial troops, who are less costly to the government, get demobilised and not elite forces kept in Phnom Penh? Without considering demobilisation in the larger context of Cambodia's economic development, what prospects will ex-soldiers have? Will it put more weapons on the street? Arguably most important, will it really compel the government to decrease military spending and transfer these large allocations to social services, particularly as long as the military continues to form the CPP's base of support?

Despite these unresolved issues, a General Secretariat of the Council for Demobilisation was established in 1998. Its chairs are the Minister of the Council of Ministers, Sok An, and Advisor to the Prime Minister, Svay Sitha. That both these men are civilians, not RCAF, indicates that the military has had to be persuaded to engage in the endeavor. RCAF participation was likely ensured through the initial World Bank program, which envisioned simply dismissing soldiers with a payment of \$1200, or about five times the average per capita income. Clearly the RCAF thought it could make a tidy profit through this process, and as word filtered out through the provincial chain of command, military enrolment increased and, according to one World Bank official, local military commanders accepted payment of \$50-\$100 to add names to the list of those to be demobilised, and these new draftees would then receive \$1200 for being discharged immediately. The program also suffered a blow to its credibility when a World Bank official working on the program within the Ministry of Defence was seriously harassed by the government for exposing corruption associated with the program. When the Bank's proposal was met with deep resistance from the donor community, however, the RCAF began to back out. Tensions between the military and the General Secretariat rose and the project almost collapsed in late 1999.

While the World Bank went back to the drawing board to re-tool the program through the Spring of this year, enough funding was accumulated to conduct a census of the armed forces. This provided the first complete list of troops in recent memory and totalled approximately 161,000. Through the registration process, in which soldiers were issued identification cards, over 20,000 'ghost' soldiers were removed from the payrolls. This included soldiers who had been killed but whose families were still collecting their salaries and those who had been injured or disabled. Those in the latter category were transferred to the Ministry of

⁴⁶ Chheng Sopheng and Kay Johnson, 'Soldiers paid out to redirect funds,' South China Morning Post, May 8, 2000.

Women's and Veterans' Affairs, though that Ministry has received no additional money to handle its approximately 12,000 new cases.

Having removed the 'ghosts' from the roster, the current program envisions demobilizing 31,500 soldiers by 2004. Some 11,500 are to be cut by 2000, followed by 10,000 each in 2001-2002 and 2003-2004. A pilot project aimed at 1,500 soldiers in the provinces of Kampot, Kompong Thom, Banteay Meanchay and Battambang is almost complete. In a two-stage process, a soldier is first demobilised by surrendering his weapon and receiving discharge papers from the Ministry of Defence; he is then reintegrated by receiving \$250 (about a year's salary), a three-month supply of rice and fish for a family, and a number of basic household utensils from the World Bank, German donor GTZ and the Carere and Seila programs funded by the United Nations Development Program (UNDP).

Although the World Bank should be congratulated for its attempts to hone the project, serious problems have already emerged from the first pilot provinces. First, no weapons have yet been confiscated. In a status report to the May 2000 donors meeting, the Bank admitted that the disarmament of soldiers when they are discharged has 'still not been clearly defined along with guidelines on what to do with any surplus weapons' and called for both the donors and the Government to define effective disarmament in a way 'that is consistent with accepted international standards'.⁴⁷ In the same document, the Bank explains that it will pursue 'risk management' by encouraging 'strict adherence and document compliance to comprehensive weapons/munitions control procedures'.⁴⁸ Obviously those procedures are not in place; more importantly, there appears to be no penalty on the project if this problem is not solved.

Project insiders say that the Ministry of Defence is reluctant to force soldiers to give up their weapons. The Ministry has apparently chosen to conduct the pilot program with 'Category Two' soldiers – those who have been unfit for service for some time and have in theory already turned in their weapons. Thus the pilot project does not address one of the most difficult aspects of demobilisation. Cambodia is already awash with weapons – experts suggest one in every twelve citizens owns a gun despite an April 1999 gun ban⁴⁹ – and past attempts to canton weapons at the Ministry of the Interior has resulted in their resale in local markets. A project that does not reduce the number of weapons cannot be considered successful.

⁴⁷ 'Cambodia Consultative Group Meeting, May 24,26, 2000, Paris, France: Military Demobilisation Program, Current Status and Key Issues,' prepared by the World Bank in consultation with the Government and Development Partners, p. 19.

⁴⁸ Ibid, p. 11/14.

⁴⁹ Jody McPhillips, 'Guns or No Guns, Cambodians Don't Feel Safe,' *The Cambodia Daily*, June 15, 2000, p. 1.

Secondly, the pilot project envisions a critical distinction between two different kinds of soldiers but has in practice failed to address it. There are those who have been effectively demobilised for several years and who have homes, small farms or small businesses. For these soldiers, demobilisation merely means a bonus of cash, food and goods. For those who have been living in barracks and subsisting on typical \$15/month salaries for years, however, demobilisation is a catastrophe and the severance package is insufficient for them to begin new lives. Reports have begun to filter back to Phnom Penh about these kinds of ex-soldiers joining bandit groups. If this is a common occurrence, and the project does not force the surrender and cantonment of weapons, demobilisation could turn into the beginning of a phenomenal crime wave. The Cambodian military is already well known for its involvement in crime, prostitution, torture and trafficking; allowing ex-members to freelance could have alarming consequences, particularly in rural areas.

Thirdly, a 100,000-member army is still not small or inexpensive, particularly if the police and gendarmerie force remains as large as it is. Military analysts suggest that the 100,000 figure is not unreasonable for a force that relies heavily on manpower rather than high-tech weapons, but that a figure based on real threats to Cambodia's national security would likely be closer to 50,000. This suggests that the process of downsizing the army to a truly appropriate size will not really be complete within the next few years. Demobilisation will likely mean little until the more politically difficult step of paring down the elite troops comes to pass – and as a result observers can be assured that military expenditures may still remain overly high for years to come.

Fourthly, the demobilisation program has been a magnet for new forms of corruption...

Despite these problems, the World Bank has encouraged donors to 'start preparing themselves to commit to funding the overall demobilisation program as soon as possible without waiting for the pilot to be fully implemented'.⁵⁰ In the light of the problems the pilot project has exposed, if donors take the Bank's advice, they will likely be exacerbating tensions between the CPP and the military, subsidizing a rise in banditry and doing precious little to achieve the desired budgetary cutbacks. Hun Sen has announced that the government will proceed with the program regardless of donor support.

D. Decentralisation: Fraud and Violence in Commune Elections

Communes are the lowest official level of government in Cambodia. As such, those in charge of the 1,600-plus communes have the greatest ability to influence the day-to-day existence of most people. Today, all

⁵⁰ 'Cambodia Consultative Group Meeting, May 24,26, 2000, Paris, France: Military Demobilisation Program, Current Status and Key Issues,' prepared by the World Bank in consultation with the Government and Development Partners, p. i-ii.

commune chiefs are individuals appointed by the Hanoi-backed CPP regime of the 1980s and early 1990s or the CPP-enforced coalition government of the mid-1990s. Although neither the 1991 Peace Agreements nor the Constitution require that these positions either exist or should be open to multiparty competition, commune elections should have followed within one or two years at least after the 1993 national elections. Cambodia simply could not be considered a liberal democracy, as the Constitution suggests it should be, without them. It is through exclusive control of these commune level offices that the CPP maintains its grip on power nationwide.

Yet these local-level elections have been repeatedly postponed, and a post-1993 national election agreement between the CPP and Funcinpec to split commune offices evenly was never honored. Some analysts suggest that then-First Prime Minister Prince Ranariddh's March 1996 speech at a Funcinpec party congress insisting that this agreement be fulfilled triggered the downward spiral that ultimately led to the 1997 coup d'état. Although commune elections were expected to have taken place in advance of the second national elections, they were postponed in favor of an election that would address political uncertainty at the national level. Clearly the intransigent party in this issue is the CPP, which has wanted to maintain the backbone of its network of support throughout the country, particularly in the run-up to the problematic 1998 elections. The Prime Minister has publicly committed himself to decentralizing power to the communes in order to decrease poverty and improve economic development, yet doing so will clearly eat into the CPP's power base.

In the aftermath of the 1998 elections, there seemed to be even fewer legitimate reasons to hold off on local level elections. Progress, however, has been slow. Efforts to develop appropriate legislation began as early as 1995, yet drafts have only just received serious scrutiny in the past few months. The legislation is currently divided into an administrative law, which defines the functions of a commune council as a means of decentralisation, and a local election law, which outlines the actual electoral process. The administrative law is now at the National Assembly stage and will soon be debated, while the election law is at the Council of Ministers stage.

The first clear threat to the integrity of a commune election is the National Election Committee itself. Ironically, the NEC, which is the implementing agency of the election law, has surpassed expectations in terms of administrative capacity, but domestic and international observers pointed to the NEC's lack of political independence from the government in 1998 as a major drawback to considering that election truly legitimate. Today the NEC is unchanged, still consisting of the same eleven members nominated by the CPP and approved by the National Assembly. The 1997 national election law, which gives the NEC control over local elections, states that the NEC is to include representatives of all parliamentary parties, but the current membership has representatives of two parties that no longer exist (Molinaka and the Buddhist Liberal Democratic Party),

representatives of Funcinpec and civil society chosen by the CPP, and no representation from the SRP. Three well-regarded Cambodian election watchdog organisations, Comfrel, Coffel and Nicfec, have confronted the three party leaders with a demand that the NEC be reformed, but Hun Sen has insisted that the eleven members must serve out their five year appointments, which run through to 2003.⁵¹ Privately, at least one NEC member has confessed to trying to stall the passage of the laws in order to delay the elections so that he can step down from the NEC before its next debacle. Similar problems persist regarding the independence of the Constitutional Council and the Supreme Council of the Magistracy.

Secondly, the draft laws themselves have already proved problematic. The draft administrative law claims to focus on decentralisation but establishes few clear linkages between the communes and the district and provincial authorities. The draft's description of an eligible candidate also states that he or she must have 'Khmer nationality by birth,' although this contravenes the Constitution's definition of a citizen and could prevent the participation of other Cambodian ethnic minorities. Moreover, the draft leaves several critical decisions, such as the delineation of constituencies and the exact size of each council, to be resolved by decree or proclamations by the Ministry of the Interior. This clearly leaves a considerable amount of control to a CPP ministry. Although the law has not yet been passed, the Ministry has already begun drawing constituency boundaries and the Party has started identifying candidates in those constituencies. It is manipulations such as these that threaten the integrity of the process from early on.

In addition, the draft administrative law dictates that a council will be elected and that the councilors will among themselves choose a chief. Most observers had, at least up until late 1999, expected that a single chief would be elected and would then choose a council to advise him. Electing councils instead will allow the CPP to dominate the structure, as any popular non-CPP members are likely to be outvoted on a council and therefore have little power. The government's explanation is that electing a council will allow for greater participation and a less polarised campaign; yet it does not appear to take into account whether such a large group is necessary for the envisioned functions.

Another serious flaw of the draft commune administration law is its insistence on election to the council through proportional representation,⁵² which implies that a party list system will be employed. SRP, Funcinpec and the watchdog organisations have all endorsed individual candidates, arguing that individuals will be more accountable and responsive to their communes. In addition, they suggest that communes are small enough for the candidates to be well known and therefore a party affiliation is not

⁵¹ 'Top Political Leaders Support Individual Candidates, Women's Participation, NEC Reform,' Statement to the press by Coffel, Comfrel and Nicfec, Phnom Penh, June 23, 2000, p. 2.

⁵² Article 15, Draft Law on Administration of Communes (Khum/Sangkat), Second Draft received by the National Assembly, Phnom Penh, June 19, 2000.

needed. More importantly, they feel that removing party identification from the process will dramatically reduce the level of violence and intimidation. The CPP, however, is committed to using party lists and to continuing to use the same formula for allocating seats that favors larger parties. When specifically confronted on this issue, Hun Sen reportedly claimed that he was, 'personally much in favor of voting for individual candidates,' but that he had, 'reservations...as to how it could be implemented in technical terms.'⁵³ In addition, the Ministry of the Interior stated that to change such a provision would add at least six months on to the passage of the election law; implying that not only has a decision already been made but that the government is highly unlikely to respect this proposal.

The draft election law has at least two serious problems. First, it imposes on parties competing in the commune election similar requirements to those standing for national elections. These measures, which include submitting petitions signed by thousands of supporters and making monetary deposits with the NEC, will virtually guarantee that any small, locally oriented party will be unable to register. Secondly, the draft election law also envisions counting ballots at the polling station. While this is likely to minimise concerns raised in 1998 about the security of ballots during transportation to counting centres, it is equally likely to raise concerns about retribution against areas that unexpectedly vote against the ruling party.

Thirdly, although commune elections appear still to be far off, observers should focus on the potential for violence in this contest. In the 1998 election, Funcinpec and the SRP were forced to compete under far less than ideal conditions. Looking forward to the commune elections, little appears to have changed in the political environment or the electoral machinery. Commune chiefs who have held their positions for decades will face their first real challenge and are likely to use all possible means, including intimidation and violence, to retain their jobs. Given the close relationship between commune chiefs and the local police and militia, a threat to the chief may also be seen as a threat to the local authorities. Not only does this increase the possibility of violence, it is also conceivable that the CPP might not be able to control these commune chiefs. There is also a possibility that commune chiefs who lose may become the targets of retribution, but this is hardly an improvement to an electoral environment. Moreover, it is unlikely that enough well-trained election observers will be available to provide an independent check on the quality of the process at the polling stations. If the international community feels compelled to subsidise another election in Cambodia, its support should go exclusively to independent, domestic monitors and other measures to ensure a campaign in which it is safe for everyone to participate.

⁵³ 'Top Political Leaders Support Individual Candidates, Women's Participation, NEC Reform,' Statement to the press by Coffel, Comfrel and Nicfec, Phnom Penh, June 23, 2000, p. 1.

E. Justice and the Khmer Rouge

Cambodia has long been a party to the Genocide Convention. In the second half of the 1990s, with precedents set by war crimes tribunals for Rwanda and the former Yugoslavia, and the surrender or capture of surviving leaders of the Khmer Rouge (KR), domestic and international pressure on the Cambodian government to convene a tribunal to bring to account those responsible for the Cambodian genocide has increased.⁵⁴ This is not to say that the CPP was not aware of the need to bring KR leaders to trial.

In 1979, in the immediate wake of the Vietnamese invasion and toppling of the KR government, Pol Pot and Ieng Sary were tried in absentia in Phnom Penh on charges of genocide, found guilty and sentenced to death—a sentence unable to be executed because the accused could never be captured. This trial was politicised to the point of legal farce, however, with the defence lawyers echoing government condemnations of the accused during the trial.

In 1991, moreover, the CPP pressed heavily for international guarantees against the return of those guilty of genocide and for punishment of senior KR leaders as part of the peace negotiations preceding the Paris Agreements. They had to be strongly dissuaded from insisting on the latter on the grounds that it was a matter more appropriately left to the new Cambodian government to be formed after the UN-supervised elections. The real reason, of course, was that any attempt to include such provisions, let alone to capture and imprison KR leaders, would have immediately threatened the achievement of the peace accords and provoked the continuation of civil war — a factor which had in effect undermined earlier peace proposals.⁵⁵ The fact that KR leaders stayed in areas beyond government control, with some even being protected by the military authorities of a neighbouring state, was a further important reason why trials were not practicable.

Through the second half of the 1990s, the viability of a renewed KR threat receded as the government scored a number of notable political victories. For example, in October 1996, Ieng Sary, a key member of the Democratic Kampuchea leadership in the horror years, surrendered to the government. Despite his 1979 conviction, the price for his surrender was the grant of amnesty, a move which disgusted many Cambodians but which to political observers was the only viable course if the KR was to be dismantled.

⁵⁴ One catalyst for this was undoubtedly a US law passed in April 1994, called the Cambodian Justice Genocide Act, making it US policy to support efforts to bring members of the KR to justice for their crimes against humanity.

⁵⁵ Australian Foreign Minister Bill Hayden in 1984 made some constructive proposals for UN intervention but pressed simultaneously for an international tribunal to try KR leaders: this at the very least alienated China and effectively undermined prospects for a peaceful settlement at that time.

The amnesty granted to Ieng Sary was catalyst for the adoption in the UN Human Rights Commission on 11 April 1997 of a resolution which, *inter alia*,⁵⁶ called on the Secretary-General to examine any request from the Cambodian government for assistance in responding to past serious violations of international law.⁵⁷ This resolution was adopted without a vote, meaning that even one-time allies of the KR like China did not actively oppose it. In response to the resolution, the co-Prime Ministers of Cambodia, Hun Sen and Prince Norodom Ranariddh, citing the well-known weaknesses of the Cambodian judicial system, wrote to UN Secretary-General Kofi Annan on 21 June 1997 requesting assistance in conducting a tribunal. The UN General Assembly subsequently adopted a Resolution (52/135) calling on the Secretary-General to examine the request. On 17 April 1998, the UN Commission on Human Rights again expressed its concern that no KR leaders had been brought to account, on this occasion recommending the creation of a panel of experts to advise on the means of 'bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability'.⁵⁸ On 31 July, the Secretary-General appointed a panel of three experts for this purpose.

Before the expert panel was able to report on 18 February 1999, events on the ground in Cambodia moved quickly. In late December 1998, other senior KR leaders, such as Khieu Samphan and Nuon Chea, also defected

⁵⁶ The resolution addressed a systematic pattern of abuse of human rights in Cambodia and a general collapse of the legal system.

⁵⁷ The text of the relevant parts of Commission on Human Rights Resolution 1997/49 is as follows:

11. Welcomes the efforts by the Government of Cambodia to promote peace, strongly urges the remaining Khmer Rouge to cease fighting, reiterates concern about serious abuses committed by remaining Khmer Rouge, including the taking and killing of hostages, and demands that any hostages be released immediately;
12. Requests the Secretary-General, through his Special Representative for human rights in Cambodia, in collaboration with the Centre for Human Rights, to examine any request by Cambodia for assistance in responding to past serious violations of Cambodian and international law as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability;

⁵⁸ The relevant section of the 1998 resolution reads:

19. Endorses the comments of the Special Representative that the most serious human rights violations in Cambodia in recent history have been committed by the Khmer Rouge and that their crimes, including the taking and killing of hostages, have continued to the present, and notes with concern that no Khmer Rouge leader has been brought to account for his crimes;
20. Requests the Secretary-General to examine the request by the Cambodian authorities for assistance in responding to past serious violations of Cambodian and international law, including the possibility of the appointment, by the Secretary-General, of a group of experts to evaluate the existing evidence and propose further measures, as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability;

There is a certain irony in the fact that in 1991, the CPP had pressed unsuccessfully, in the course of the peace negotiations, for '[international] fact-finding missions to investigate the crimes of the past and in present days'. (Drawn from a confidential paper presented to Western negotiators by then CPP/SOC Vice Minister Sok An on 22 April 1991.)

to the government from what had then more visibly become a dying rebel movement. Once again the government made no immediate move towards a trial for these men, stating that doing so might re-ignite the civil war. When the panel of experts did report in February 1999, they recommended the creation of an international tribunal and truth commission to judge the crimes of the KR.

After the group had reported, in March 1999, government forces captured Ta Mok,⁵⁹ a KR leader who had refused to accept the Paris Accords or recognise the new government. One month after the capture of Ta Mok, the whereabouts of the former director of the notorious Tuol Sleng prison, Kaing Kek Iev (also known as 'Duch'), were made known, and the government arrested him after several weeks delay. In April 2000, the UN Human Rights Commission urged the Cambodian government to bring KR leaders to account merely in conformity with international standards of justice, and not specifically under an international tribunal.⁶⁰ In this way it copied its earlier resolutions which had avoided any reference to a tribunal.

Since the group of experts reported, the Secretariat has sent numerous missions to explore the prospects for a trial and to negotiate arrangements with the government, but doubts have been raised about Hun Sen's current commitment to the trial process. On one occasion, when pressed to explain how the country could heal from the trauma of the Khmer Rouge era and move on, Hun Sen instead suggested that the country simply needed to 'bury the past in a deep hole'. Some observers charge that the amnesties, like efforts to reintegrate KR forces in the RCAF, were designed to conceal possible exposure of misdeeds by government leaders or officials who had served with the KR.⁶¹ Prime Minister, Hun Sen, had himself been a relatively low-level member. Most analysts believe that Hun Sen himself has little to hide given his rank in the KR, his early defection to Vietnam and his sustained struggle against the KR beginning in the later 1970s. The bigger problem for Hun Sen will

⁵⁹ Unlike his former Khmer Rouge colleagues, now living in comfortable retirement, Ta Mok showed no interest in reintegration or amnesty, choosing instead to carry on with the Khmer Rouge's revolutionary work. This includes an ongoing suspicion of the CPP as Vietnamese agents, the Khmer Rouge's long-time enemies.

⁶⁰ The relevant extract from the Resolution reads:

13. Appeals strongly to the Government of Cambodia to ensure that those most responsible for the most serious violations of human rights are brought to account in accordance with international standards of justice, fairness and due process of law, takes note with interest of the progress of the recent talks between the Government of Cambodia and the United Nations Secretariat aimed at guaranteeing such standards and procedures, encourages the Government to continue to cooperate with the United Nations with a view to reaching an early agreement, and welcomes the efforts of the Secretariat and the international community in assisting the Government to this end;

⁶¹ At the time that the CPP/SOC presented its proposals for the punishment of KR leaders in 1991, there was a strong view amongst international negotiators that this proposal was aimed at scuttling the peace negotiations, rather than reflecting a strongly-held view amongst CPP leaders, most of whom had been KR cadres at one time.

be that trials will throw the spotlight on former KR members integrated into the CPP and the government through the 1990s. The holding of trials would also increase pressure on the government to revoke the amnesties granted to Ieng Sary and others.⁶²

As talks of a trial for KR leaders has progressed, special attention has focused on the likely critical role of Duch. His position between 1975 and 1978 gave him extensive access to the Khmer Rouge leadership and to the meticulous records they kept. In recent years, Duch has converted to Christianity and upon being identified agreed to testify against all his former colleagues. Without his testimony, it may be difficult to find sufficient evidence to convict even the most senior leaders. Extensive work to date by academics and documentary researchers in Cambodia, Europe and the U.S., has not turned up the sort of direct evidence needed to convict some of the leaders. The testimony of Duch, as well as Ta Mok, could change that.

Disagreements between Cambodia and the UN have focused on whether the tribunal would be inside Cambodia or elsewhere, whether judges would be Cambodians or foreigners and what the scope of the investigations and prosecutions would be. Many human rights advocates felt it would be impossible to have a fair tribunal inside the country, but the potential logistics of holding such an event elsewhere proved untenable. Many Cambodians and non-Cambodians involved felt that the country's notoriously corrupt judiciary was not up to the task and specifically requested a panel of foreign judges. There were also disputes about who should be indicted by a tribunal (only first-rank leaders or lower level commanders as well), about the time period to be covered by any special tribunal, and which actions would fall under its jurisdiction. UN legal experts felt it best to confine the scope of the tribunal to the KR leadership and their activities from 1975-1979.

Hun Sen has dragged his feet through these negotiations, citing concerns over violations of Cambodia's sovereignty. Moreover, he initially insisted that a tribunal ought to be broadened to focus on war crimes and should date back to include episodes such as the American bombing of Cambodia and therefore potentially indicting senior US officials, such as Henry Kissinger, for their part in the decision to bomb Cambodia in 1969.

In August 1999, the RCG again rejected the UN's proposal on the grounds that it violated national sovereignty. At the same time, Funcinpec and

⁶² The government has on one occasion given the appearance of bowing to some international pressure when it arrested in January 2000 a former KR officer, Chhouk Rin, who had been charged with the kidnap and murder of three foreign tourists in July 1994. Chhouk Rin had, well after the murders, surrendered to the government and been made a colonel in the RCAF. At his trial on 19 July 2000, however, he was acquitted precisely because of the Cambodian amnesty law despite strong evidence of his involvement in the kidnapping of the tourists. His former commander, Nuon Paet, who had been arrested without defecting, was convicted in June 1999 of the crime and sentenced to life imprisonment. Another senior former KR officer implicated in the crime, Sam Bith, now an RCAF general, remains at large.

CPP legislators agreed – in contravention of international norms on detention without trial and in order to further stall movement toward a tribunal – to extend Cambodia’s pre-trial detention period to three years such that Ta Mok and Duch could not be released. Another factor may well have contributed to the RCG’s renewed reticence: the pledge of more than US \$200 million in aid and interest-free loans from China, the one external power eager to avoid a tribunal.

In the meantime, the Cambodian government was working on draft legislation to establish in Cambodian jurisdiction, within the existing legal system and structures, a set of trial and appeal chambers⁶³ to bring to trial senior leaders of Democratic Kampuchea and those who were responsible for crimes and serious violations of Cambodian penal law, international law and custom, and international conventions recognised by Cambodia, and which were committed during the period from April 17, 1975 to January 6, 1979.⁶⁴

On 20 December 1999, Cambodia sent a version of the draft bill to UN Secretary-General Annan for consideration, giving him only four days to comment. Even after the draft bill was amended twice in the subsequent month, Annan was reportedly not satisfied with the revisions. In a letter dated 8 February 2000, he is reported to have called for guarantees for the arrest and surrender of indictees; a ban on amnesties or pardons for persons accused of genocide or crimes against humanity; an independent, international prosecutor and investigating judge; and a majority of international judges appointed by the office of the Secretary-General.⁶⁵

Responding to considerable international pressure, Cambodia remained in negotiations, though seemingly on an ‘on-again, off-again’ basis, throughout the first half of 2000. Nominally, the number and powers of the judges was the primary stumbling point, and in particular whether foreign investigating judges or prosecutors would be able to issue indictments independently of their Cambodian counterparts. The CPP, clearly concerned about the potential scope of an unfettered inquiry, insisted on a majority of Cambodian judges and that arrests and indictments had to be unanimously approved. A whirlwind of meetings in New York, Havana and Phnom Penh between Prime Minister Hun Sen, Secretary-General Annan, US Senator John Kerry and other officials in April yielded an agreement in May regarding the composition of the bench for each of the three chambers. In this deal, a majority of each bench could be Cambodian but with the proviso that an indictment could be blocked only by a ‘super-majority’ (one more than a simple majority). In theory, this would require a foreign judge to join with Cambodian judges

⁶³ The chambers to be set up for the KR trials would match those in the Cambodian court system.

⁶⁴ See unofficial translation of draft law, <http://cambodia-parliament.org/Legislative.htm>.

⁶⁵ See Lawyers Committee for Human rights, Open Letter to Kofi Annan, dated 24 April 2000.

to block any indictment, thereby leaving them without veto power over an indictment.⁶⁶

The latest available draft of the bill provides for a panel of three Cambodian and two foreign judges in the trial court; seven judges in the appeals court (four Cambodians and three foreigners); nine judges in the supreme court (five Cambodians and four foreigners); one Cambodian and one foreign co-prosecutor; and one Cambodian and one foreign co-investigating judge. All foreigners would be chosen by the Cambodian government from lists supplied by the UN Secretary-General. It would appear to be the case that the co-investigating judges will be the ones with the real power to determine whether an indictment proceeds at the initial stage.

The National Assembly had been expected to debate the legislation by July 15, but in mid-June Assembly President Prince Ranariddh speculated that the legislation might not get addressed until 2001. Hans Correll, the UN's chief legal counsel, visited Cambodia from 5 to 7 July to discuss the details of the draft law with the government's team, led by Minister without portfolio, Sok An. The two sides confirmed the super-majority proposal but according to a diplomatic source, there has been no movement by the Cambodian side on the key issues raised by Annan in February: guarantees for the arrest and surrender of indictees; a ban on amnesties or pardons for persons accused of genocide or crimes against humanity; an independent, international prosecutor and investigating judge; and a majority of international judges appointed by the office of the Secretary-General. On his departure from Cambodia, Correll stressed that if the draft law is passed, the tribunal would 'not be a UN Operation, but a 'national court, with an international presence'.⁶⁷ The provision that all Cambodians appointed as clerks or officials in the extraordinary chambers be civil servants is not unusual in comparison with other jurisdictions but here it would appear to be intended to keep out special interest groups such as Cambodian human rights advocates and NGOs. By early August, the amended draft legislation was still not publicly available, though some sources have suggested that the UN and Cambodia are reviewing new amendments, and that the delay is being caused by the need to translate (and check) either the amendments themselves or key points of discussion arising from them.

From time to time, some UN officials have put some distance between themselves and the tribunal as conceived by the Cambodian government, but the UN is obliged to support it. The proposed process is, after all, not too different in theory from that in a number of jurisdictions that provide for national prosecutions for war crimes or crimes against humanity wherever they occurred. But in practice, since the Cambodian legal system as it now operates is not able to deliver justice with even minimal

⁶⁶ Kay Johnson, 'UN to hammer out genocide trial details,' *South China Morning Post*, June 21, 2000.

⁶⁷ Puy Kea, 'UN Legal Team Leaves Cambodia', *Kyodo*, 7 July 2000.

consistency, the UN will ultimately face the dilemma of deciding whether to accept the Cambodian tribunal as its work evolves.

Even after a year of negotiations there are doubts about Hun Sen's willingness to allow trials to proceed. Clearly there is hesitation within the CPP but the source of this is not so much the expectation that current members may be indicted as the knowledge that their past misdeeds will be exposed to scrutiny. Even if the legislation is passed, some senior CPP officials have expressed the view that it could take years for a tribunal to process its work, perhaps as much as ten to twenty years. Experience suggests that unless Hun Sen is confident he can control the actions of the tribunal, he is likely to continue to stall either on delivery of the legislation or on its vigorous and timely implementation.

Notwithstanding claims by several former KR leaders as recently as 18 September 1999 that a tribunal would provoke a return to civil war, this remains highly unlikely, given the almost-total collapse of the KR following Pol Pot's death, the defection or arrest of its leaders, and its prolonged isolation from any external support.

But the holding of trials for the KR may provoke violence of another kind. If it begins to appear unambiguous that trials will be comprehensive in both their investigation procedures and selection of indictees, then this may exacerbate conflicts within the CPP. Conflict could arise between older members of the CPP who were once members of or affiliated with the KR and younger members who wish to immortalise the CPP's anti-Khmer Rouge stance by seeing the perpetrators of the genocide face justice. The tribunal itself could become a flashpoint for violence.

On the other hand, if the tribunal is seen to be too weak and not vigorous in its pursuit of appropriate indictees, large-scale demonstrations might be organised which would almost certainly be suppressed with force by the police. In a letter to the UN on 7 June 2000, seventeen Cambodian human rights organisations stressed the importance of security for those participating in a tribunal, noting that, 'Fear about physical security would be most likely to impact on the decisions of judges on the bench. An adequate protection program, managed by both the UN and Cambodian personnel, must be provided for all judges, prosecutors, investigators and other court officials, especially the Cambodians, and their families residing in Cambodia. Long-term security should be provided as needed'.⁶⁸ The depth and breadth of this recommendation, from those who deal daily with human rights abuses and a corrupt judiciary, should send a strong message about the difficulties of persuading essential people to be involved with a tribunal. Judges and witnesses know they will be targets, but without their full participation a tribunal would be farcical.

⁶⁸ 'Human Rights Groups Emphasise Need for Fair Trial,' Press Release, Cambodian Human Rights Action Committee, Phnom Penh, June 7, 2000.

If a tribunal does move forward, the international community must be prepared for a long, rocky and expensive road. Many procedural issues remain to be worked out and standards for those should be no lower than the standards for the basic framework. Civil society organisations have already developed recommendations covering issues as diverse as the role of a chief administrator to the right to an appeal. These should be incorporated in any further discussions. Significant funds will have to be committed to security for those directly involved with the tribunal, as well as to ensuring public order during and after a tribunal.

In terms of process, it will be important for the international community, especially the UN, to monitor the effectiveness of the foreign representation at all levels. The fundamental assumption of the proposed approach is that foreign officials (judges, prosecutors) are necessary to give credibility to the Tribunal. It is therefore important that the foreign officials not be impotent figureheads, but that they have the means to make their presence felt. For instance, it should be explicit that judges can render public, reasoned dissenting opinion on all matter submitted to them. There is also a need, to ensure that the facts are brought out in a thorough and impartial manner, for a foreign presence among investigators apart from the principals identified specifically in the Cambodian bill. Without guarantees of foreign investigators, the current framework allows for a situation where the judges will be presented with a narrow range of options which will force them to rubber-stamp a process in which they will have little confidence. This then would put them in the dilemma of criticising from the inside or resigning, thereby jeopardizing the entire enterprise. It would be better to insist at the outset on minimal guarantees of an impartial structure, including funding. The worst case scenario would be to put in international figureheads with no real impact or influence on the trial process: no trial at all would be better than that.

VI. CONCLUSIONS

It is difficult to avoid the conclusion that the RCG's commitment to reform is disingenuous. The CPP, which dominates the government, must be held accountable for the lack of improvement in the everyday life of Cambodians. It is clear that the CPP wields considerable power over the country and if it were to choose to effect real progress it could do so. The international community, which has partially bankrolled this government for almost a decade, must also share some blame for its failure to deliver some of the promise of the Paris Accords in the area of protection of human rights and promotion of democratic governance.

Of course the country is in better condition than it was in 1975, 1979 or 1991, but these points of comparison are increasingly less useful as an excuse for policy failure given the amount of time that has passed since the 1991 Accords and the even longer time since the most serious fighting ended. Cambodia, wrote the New York Times recently, 'has settled back into the everyday misery of a land of poverty, injustice and continuing

brutality.⁶⁹ The goals of the Cambodian government and of the international community are clearly spelled out in the Peace Agreements, in political platforms and in every aid package. The international community ought to carefully consider whether its \$3 billion in ODA has been worthwhile, both for its own purposes and for its achievements for ordinary Cambodians. The most prominent bilateral donors – Australia, China, France, Japan and the United States – as well as multilateral organisations such as the European Union, the IMF, World Bank and the UNDP, should conduct especially careful reviews.

Foreign aid and leverage. The international community will, through its aid, continue to have some leverage over the domestic policy agenda in Cambodia. Though history suggests that this leverage will not be great, the window of opportunity must be exploited. The extreme difficulty of using aid for leverage in domestic policy reform should be taken as a measure of how much more vigorous and more creative aid policy must be, rather than as an admission of defeat. Donor governments are simply wasting their taxpayers' money if they do not work more effectively to exercise what leverage they can. The Cambodian government is ignoring the severity of its social welfare problems and the depth of corruption, especially in the administration of justice and protection of ordinary citizens. Walking away from Cambodia is not an option for donors, but more ways for distributing assistance without going through the government must be found, and the non-performance of the government in the most basic political reforms must be held up to international examination and criticism more vigorously.

Donor governments must adopt a more visibly political approach to coordination, solidarity behind agreed goals, and a much more critical eye and voice toward the Cambodian government. Donor governments should also establish some basic benchmarks of good governance in Cambodia as a precondition for staged delivery of aid. Examples might include an end to violent political harassment by government agencies or a clear commitment to the prosecution of senior officials for corruption.

All information related to the Consultative Group meetings for donors, including past and present donor pledge lists, should be made public and easily accessible. The World Bank and the UNDP can do more in this regard. (A number of Ambassadors in Cambodia have complained about the difficulty of getting a complete picture of Cambodia's foreign aid.)

Political and governmental development. The international community also has the power to help cultivate more democratic leadership in Cambodia by extending political support to those who practice non-violence, adhere to the rule of law and demonstrate a commitment to reform.

⁶⁹ Seth Mydans, 'Fragile Stability Slowly Emerges in Cambodia,' *The New York Times*, June 25, 2000.

The Consultative Group (CG) meetings of donors should include a greater diversity of politicians and Cambodian NGOs. If this is not acceptable to the Cambodian government, the CG should convene a separate meeting with Cambodian NGOs to be held the day before the formal meetings with Cambodian officials. The need for this is dictated by the ease with which the small handful of officials who have been involved in this for several years now are able to have their false descriptions of circumstances in Cambodia parroted in the records of CG meetings without appropriate correctives. If participation in the CG does not become more diverse, then much of the international budget support for Cambodia will continue to be misdirected and this small opportunity for leverage will continue to be underexploited.

The Cambodian Office of the High Commissioner for Human Rights (COHCHR) has been vital to the life of Cambodian human rights NGOs, and the UN High Commissioner should ensure that its role in monitoring abuses be restored and strengthened.

Land disputes. This issue is likely to not only persist but also worsen in the coming years. This will add to Cambodia's already severe problems with poverty, hunger and homelessness. Donors should prepare immediately to increase aid for food and health care not just to offset the effects of people being forced from their land but also to reduce pressure on them to give up their land simply to obtain food or medical treatment.

More constructively, donors should support the creation of an effective dispute resolution system that maximises representation for farmers and civic activists and minimises the participation of provincial or military authorities.

Approaching the issue in another way, there should be ongoing assistance to the clearance of landmines as a means of making more land available.

Demobilisation. Without extensive reform of the military, Cambodia will never rectify its imbalanced budget, cut down on corruption or have another political party in power. Demobilisation that actually addresses the declared purposes of the program (to cut the armed forces by almost two-thirds) must be a higher priority both for the government and the donor community. Efforts must be more focused, and should include a strategy for cantonment of weapons, ending the small arms trade on the streets of the major towns and cities, and cutting back the most – not the least – costly parts of the armed forces. The money provided for the demobilisation would probably be better administered by a new independent agency than by the armed forces themselves.

Commune elections. The lack of progress towards decentralizing government and opening local level offices to multiparty competition is inexcusable. This issue alone is an indication of the CPP's lack of interest in democracy and reform. Donors should not fund commune elections if the legislation remains as it is and if other practical benchmarks, such as

reforming the National Electoral Commission, are not met. There must at least be visible distance between the top management of the Commission and government leaders (who are candidates).

The Khmer Rouge Tribunal. The RCG has a mixed record and ambiguous intentions toward the conduct of a tribunal for the perpetrators of the Cambodian genocide. There should be no diminution of the international effort to maintain pressure on the RCG to reach a satisfactory outcome.

The UN and other interested parties should be prepared to back the special courts to be set up under Cambodian domestic jurisdiction, but only under the firm condition that all living first level leaders of the Khmer Rouge are subject to rigorous investigation conforming to international standards. Moreover, if the evidence suggests that a larger number of people should be indicted than those six or eight leaders most commonly named, then this option should not be avoided. There may be some virtues in avoiding a large back-log of prosecutions, but to hand-pick just a few people for indictment, when their actions were matched by up to a hundred others who remain beyond prosecution, may defeat the purpose of the tribunal.

It cannot be assumed that the mere presence of international figureheads will ensure a successful trial process. They should have the means to make their presence felt. In particular, international judges should be able to render public, reasoned dissenting opinions on all matter submitted to them. And there should also be a foreign presence among investigators apart from the principals identified specifically in the Cambodian bill.

International organisations, foreign governments and Cambodian NGOs must be prepared to document and publicise weaknesses in the administration of justice under the proposed Cambodian tribunal. Some NGOs are already doing this in respect of the preparations to some degree, but more will need to be done. The establishment of a multi-party working group (NGOs and some governments) to monitor the conduct of the trials would be a useful form of further pressure to dilute political interference. This group should issue regular public reports.