



Getting Cambodia Ready for Elections

International Crisis Group Report on Cambodia

13 January 1998



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PREFACE

The following report was commissioned by the International Crisis Group (ICG) to provide an initial assessment of the current situation in Cambodia. It is intended to provide a summary of recent developments and offer some thoughts on possible future directions. The report was researched and written by an independent political analyst based in Phnom Penh.

Over the coming weeks and months, ICG will be continuing its investigations into this issue and inviting input and discussion from a variety of sources. The possibility of siting a long-term ICG monitoring team in Cambodia is under consideration. The purpose of such an effort would be to contribute an source of independent, on-the-ground analysis and to develop practical recommendations for implementation by governments, international organisations and others.

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EXECUTIVE SUMMARY

This report, prepared by an International Crisis Group correspondent in Phnom Penh, studies the background to the latest crisis affecting the Southeast Asian nation of Cambodia. It examines current conditions in the country, assesses the key issues requiring redress and offers a number of specific recommendations for international policy-makers aimed at shoring up political stability, ensuring that this year's elections in Cambodia are as free and fair as possible and contributing to the long-term survival of the democratic process in Cambodia.

Just over six years after the Paris Peace Accords were signed and Cambodia's warring factions committed themselves in front of the world community to a cessation of hostilities and the building up of a liberal democracy, Cambodia is once again in a highly precarious position. In July 1997, after months of rising tensions within and outside the coalition government, violence returned to the streets of Phnom Penh as Second Prime Minister Hun Sen successfully toppled his rival, First Prime Minister Prince Ranariddh, in a move widely interpreted by onlookers as a *coup d'Etat*.

This report looks at the factors that contributed to the fall of Cambodia's shaky coalition government and the rise of Hun Sen and examines the implications of both events. It finds that far from easing tensions, Hun Sen's push for power, roundly condemned by most external governments, has coincided with a tightening of restrictions on the exercise of fundamental political freedoms and has heightened the risk of renewed civil conflict overtaking the country.

In the absence of any other obvious way forward, the focus of international efforts to salvage the situation has fallen on general elections due later this year as a panacea for Cambodia's ills. While elections provide an important opportunity to return the country to the democratic path, the report finds that the climate for democracy in Cambodia has become increasingly harsh in recent months. While it would be misleading to say that Cambodian democracy is dead—a free, if muted, press still exists, parliament meets regularly to debate key legislation, non-governmental organisations continue their work—it is certainly under threat. Moreover, the fundamental conditions necessary to support free and fair elections—including a neutral political environment, an effective legislative framework and sound technical and logistical administrative machinery—simply do not exist on the ground. Helping to create those conditions will depend in part on continued, intensive international efforts over the coming months.

The international community, the report argues, is in a unique and powerful position to help. Key external governments which are signatories to the Paris

Peace Accords have both a legal and a moral right to intervene to safeguard commitments made under the pact.

Key recommendations

Making aid conditional on progress...

Policy-makers should be prepared to tie the granting of international assistance to Cambodia's government and state structures to the achievement of specific objectives in relation to the electoral process.

The potential potency of conditionality lies in the fact that the government needs foreign funds to function and to stage the elections and because it also wants the international stamp of approval for the polls.

The key to applying conditionality to the Cambodian situation will be unity. Those nations who signed the Paris Peace Accords must send a clear message to Phnom Penh that they are not prepared to tolerate further violations of the accords provisions. They should join with other donor nations to make it clear to the government that international support for elections will not be forthcoming unless the necessary conditions for a free and fair poll are in place.

...Setting the right conditions

The most important single step that the government in Phnom Penh could take to help improve conditions in the lead up to elections would be to invite Ranariddh to return to Cambodia and run in the elections— without fear of arrest, intimidation or physical attack. As long as Ranariddh remains in exile, prevented from participating in elections, kept away by threat of arrest and a jail term, there can be no free and fair elections in Cambodia.

In addition to bringing Ranariddh back into the electoral process, the Hen Sen government should be required to implement a number of additional measures designed to build confidence. These include:

- issuing written directives to authorities nation-wide allowing all parties to open offices and conduct political activities;
- granting all parties equal access to state broadcast and print organs and permitting them to operate their own media operations without harassment;
- ensuring the independence of the National Election Committee (NEC);
- ordering a transparent investigation into the 30 March 1997 grenade attack and extra-judicial killings that followed the July 1997 fighting; and
- scrapping the current immunity of state employees from prosecution as one means of tackling Cambodia's culture of impunity.

...And bolstering the international community's presence

To help ensure the safety and freedom of movement of returning political exiles, the United Nations should increase the number of UN human rights monitors present in the country.

Extra UN military observers and a small team of expatriate police are also needed to monitor a cease-fire and report on progress towards de-politicising the police and military. The current complement of one Belgian military observer in Phnom Penh is not nearly sufficient for the task.



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A. INTRODUCTION

The international community commended itself on a job well done in May 1993 after more than four million Cambodians voted in the country's first free and fair elections since independence from France forty years earlier. The landmark United Nations peace-keeping mission can claim credit for some remarkable successes during its 1991-93 mandate—including sowing the seed for the growth and spread of democratic institutions and principles—but it also racked up fundamental failures and left key problems unresolved.

Four years on, those problems returned to haunt Cambodia, when, in early July 1997, the country's fragile coalition government disintegrated amid fighting between forces loyal to the country's joint premiers First Prime Minister Prince Norodom Ranariddh of the royalist FUNCINPEC party and Second Prime Minister Hun Sen of the more powerful Cambodian People's Party (CPP). The two men had been feuding for months and Hun Sen's power grab came as no surprise in a country which has never had a tradition of real power-sharing.

Cambodia's recent past has been characterised by political instability and autocratic rule. The crucial difference with the current situation, however, is that in 1991 the international community made a legal undertaking to guarantee commitments by the country's warring rivals to return to peace, respect human rights and to build up a liberal democracy.

All the major players in the Cambodian drama, including the two leading protagonists, still claim their commitment to these ideals, which are enshrined in the Paris Peace Accords (PPA), but they disagree on how these goals can be achieved. As the debate has become deadlocked, so the focus has fallen on general elections due later this year as a panacea for the country's ills. Yet the climate for democracy in Cambodia has become increasingly harsh. It would be misleading to say democracy is dead—a free if muted press exists, parliament meets regularly to debate key legislation, non-governmental organisations

continue their work—but it is under threat. Trends evident before, during and since the fighting in July have reined in the democratic process and reopened the revolving door of instability.

The international community, which has invested immense resources in trying to resolve Cambodia's tragedy over the past decade, is in a unique and powerful position to ensure that the country returns to the democratic path. Key external governments which are signatories to the Paris Peace Accords, have both a legal and a moral right to intervene to safeguard commitments made under the pact. At the same time the regime in Phnom Penh has actually invited international assistance as the country gears up for elections next year.

Cambodia cannot be expected to establish a flawless pluralistic liberal democracy in a handful of years but there is no reason to accepting steps back towards autocracy.

This report studies the background to the latest crisis, examines current conditions and offers recommendations for the international community aimed at anchoring political stability, ensuring free, fair and credible elections and ensuring the long-term survival of the democratic process in Cambodia.

B. THE SEEDS OF INSTABILITY

1. Background

The violence that shook the Cambodian capital on the weekend of July 5-6 was the latest in a string of tragedies to plague the country in the past three decades. The March 1970 ouster from power of Prince Norodom Sihanouk by U.S.-backed republican Lon Nol signalled the start of Cambodia's modern sorrows.

Civil war and U.S. air raids against Vietnamese and Cambodian communist (Khmer Rouge) forces left an estimated 500,000 people dead by the time the Khmer Rouge won power in April 1975. The darkest chapter in Cambodia's modern history followed as the Maoist regime of Pol Pot turned the nation into a vast agricultural labour camp, leaving up to two million people dead from starvation, execution, disease and overwork before Vietnamese troops invaded the country and installed a client government in January 1979.

Cambodia's woes continued through the 1980s as China and the non-socialist world isolated the Phnom Penh regime in protest at the Vietnamese occupation and helped arm a border-based coalition recognised by the United Nations and spearheaded by the Khmer Rouge.

Peace talks launched in 1987 between Hun Sen and nominal resistance chief Sihanouk culminated in the signing of the UN-brokered Paris Peace Accords by Cambodia's four main warring parties and 19 nations (including the Association of Southeast Asian Nations, the five permanent members of the UN Security Council and important donors such as Japan, Australia and Germany) on 23 October 1991.

These provided for a UN peace-keeping force of 16,000 soldiers and 5,000 civilians to oversee the implementation of the accords and to organise multiparty elections aimed at ushering in a liberal democracy operating under the rule of law. The UN Transitional Authority in Cambodia (UNTAC) recorded some major successes, including setting in place the foundations for a free press and indigent non-governmental organisations to flourish and planting the seeds of democratic thought. However, it failed to disarm the rival factions and ensure the neutrality of the state administrative and military apparatus.

In the run-up to the May 1993 elections, a wave of political violence (mainly attributed to Hun Sen's ruling Cambodian People's Party) swept through the country. Nevertheless, more than 90 percent of registered voters cast their ballot, delivering a narrow victory to Ranariddh's FUNCINPEC party and, above all, demonstrating the people's desire for change despite the intimidation and threats. The CPP, seeing their stranglehold on power at an end, accused the UN of poll irregularities and threatened to plunge the country back into civil war.

2. The FUNCINPEC-CPP coalition government

In the aftermath of the elections, the United Nations gave its support to a doomed compromise agreement. Under the agreement, proposed by Sihanouk, a coalition government was formed, headed by two prime ministers with top administration and security posts divided between the former battlefield foes.

The concessions made to the CPP under the post-poll coalition agreement were interpreted by many Cambodians as a betrayal of the people's will. The country's political problems, rather than being confronted, had been swept under the carpet and not for the first or last time. Cambodia, with Sihanouk as king, became a constitutional monarchy in September 1993 and the coalition leaders got down to work.

For the first two years of the coalition government, the arrangement seemed to be working reasonably well. But the

blue blood Ranariddh and the farmer's son Hun Sen were like oil and water and the fundamental dilemma of mistrust between them never evaporated. The state apparatus was used to serve the interests of political parties and clans rather than the nation, while the armed forces were never fully integrated and de-politicised. Hun Sen, who had forced the coalition on FUNCINPEC, was soon sniping at the power of the royalists and testing the resolve of the international community to uphold their commitments under the PPA. He took every opportunity to exploit rifts in the rival camp and engineered the downfall of FUNCINPEC's brightest stars, former finance minister Sam Rainsy and party secretary general Prince Norodom Sirivudh.

The strategy was clearly to boost the chances of a legitimate CPP victory at the next elections. The weakened Ranariddh, who had shown few true leadership qualities, threw down the gauntlet in March 1996, threatening to pull out of the government if his party was not given a greater share of power at all levels. His relations with Hun Sen would never recover despite a brief rapprochement to persuade Khmer Rouge guerrillas to join the government. Indeed, soon the two premiers were engaged in a deadly rivalry for the allegiance of the guerrillas in what was at heart an issue of personalities rather than policy or ideology.

Tensions escalated in early 1997 after Ranariddh formed an alliance with pro-democracy groups, including the opposition Khmer Nation Party (KNP) of Sam Rainsy. A deadly 30 March grenade attack on a KNP rally fuelled the ill-feeling and was followed by a CPP-engineered split in FUNCINPEC ranks. Hun Sen has denied charges that he was behind the grenade attack, which left at least 16 people dead outside parliament, but independent investigations have pointed the finger at his bodyguards. The two premiers embarked on an arms race,

while Ranariddh moved to bring Khmer Rouge hard-liners into his alliance to counter those won over by Hun Sen to the CPP cause. Skirmishes between forces loyal to the two leaders flared into all-out hostilities on 5 July, when Hun Sen's bodyguards moved to disarm Ranariddh's men at their military base near Phnom Penh. The conflict soon spread to the city and after two days of heavy fighting Hun Sen was in sole charge of the government, winning by force the prize he had failed to win by the ballot four years earlier. The fighting broke Ranariddh's military and military intelligence capabilities and also targeted and eliminated the threat posed by the KNP of Sam Rainsy, though both men were safely overseas.

3. The Paris Peace Accords

The Paris Peace Accords¹ have been invoked by one side or another, or all sides simultaneously, in virtually every political crisis in Cambodia since 1991. But while everyone pays lip service to the accords, few heed their fundamental messages or honour commitments made in signing them.

Three key commitments are enshrined in the Accords:

- i) The concept of peaceful resolution of conflicts
- ii) The establishment of a true multi-party liberal democracy
- iii) Respect for human rights

The aim of the Accords, at heart, is to prevent a drift to dictatorship and a return to the horrors of the Khmer Rouge rule and signatories to the PPA have a duty and moral obligation to point out when these principles are not being respected.

Hun Sen and Ranariddh have given their own spin on July's fighting, condemned by some as a *coup d'Etat*, defended by pragmatists as a trial of strength and described by others as "the incident". The former partners have accused each other of violating the accords while defending their own actions as faithful to the PPA. Hun Sen, backed by CPP mandarins, has insisted he was responding legitimately, and in the nation's interests, to a bid by Ranariddh and hard-line Khmer Rouge guerrillas to seize power by force. Ranariddh says he was ousted by *coup d'Etat*.

There is some truth in both arguments, as reflected in the international community's polarity over the issue. Both men must share responsibility for the breakdown in communication and rise in tension. But the question of whether the events of July 5-6 should be classified as a coup or a trial of strength is ultimately irrelevant since Hun Sen clearly violated key principles of the Paris Peace Accords and the country's constitution by using force to oust his rival and change the composition of the government.

The violent ouster of Ranariddh immediately deepened Cambodia's crisis, compounding problems of political instability

¹ *The Paris Peace Accords commit their Cambodian and foreign signatories to certain principles, including building up a liberal democracy operating under the rule of law. The Accords also recognise the right of the Cambodian people to choose their government through free and fair elections - a principle that is taking on key significance. The PPA is an instrument of international law, which supersedes national law, and it does not have a "sell-by-date" despite the impression given by some that they believe it is dated and irrelevant - the PPA is central to the issue of foreign involvement.*

and uncertainty. Hun Sen's violation of the PPA gives the international community both the excuse and obligation to intervene to try and unravel the current crisis. Foreign nations must respect Cambodia's sovereignty, but they underwrote this sovereignty by signing the PPA and have a right to intervene whenever the terms of the accords are broken.

At the same time, Cambodia has made a clear request to donor countries and the United Nations to help it stage and legitimise elections next year. Both factors give the international community, which invested vast resources and finances in the 1991-93 peace-keeping operation, a clear opportunity to play a conflict resolution role.

C. DEMOCRACY UNDER FIRE

1. Renewed fighting

While the violent collapse of the Ranariddh-Hun Sen coalition clarified the second prime minister's de facto leadership of the country, it did not resolve Cambodia's problem of political instability.

The fighting of 5-6 July dealt a major blow to Ranariddh's military capabilities but while many of his top officers were killed others managed to escape to Thailand. They included armed forces deputy chief of staff Lieutenant General Nhiek Bun Chhay, who swiftly formed an unholy alliance with hard-line Khmer Rouge guerrillas based around the northern stronghold of Anlong Veng. He has portrayed the guerrillas as defectors to the legal government headed by Ranariddh. Meanwhile, in the western region of Samlaut, former Khmer Rouge defectors have also launched a rebellion against the administration. Fighting in these areas has so far forced 65,000 civilians to flee across the border into Thailand.

Calls by Nhiek Bun Chhay for at least a temporary cease-fire have been rejected by Hun Sen, who has said he will only accept a cease-fire when his foes have agreed to lay down their arms, informed the government of their whereabouts and cut all ties with the Khmer Rouge. Hun Sen pledged an offensive on Anlong Veng and the resistance-held border town of OôSmach during the dry season (November-June), when movement of men and heavy weapons is much easier. A fresh offensive was launched against OôSmach in mid-December and seemed destined to go the same way as earlier failed attempts since August 1997 to dislodge the Ranariddh loyalists from the small mine-encircled market town. The government has also moved

more troops, weapons and support equipment into the Samlaut region.

While the anti-government forces on the border cannot expect to receive diplomatic or military help from overseas, they can probably rely on hidden arms caches to continue holding out for some time. The prospect of a long drawn out border-based guerrilla war is viewed with concern by overseas governments since a nagging conflict in the small nation could affect the security of the region as a whole.

2. Eclipse of the Opposition

The bloody disintegration of the coalition also signalled the elimination of a viable opposition or alternative voice within the country, with almost 20 members of parliament and other leading political figures fleeing overseas to join Ranariddh and Sam Rainsy.

Many of those who fled formed an alliance called the Union of Cambodian Democrats and were soon actively lobbying for support overseas, urging governments to recognise Ranariddh as the continuing, legitimate head of the government and to sanction the Hun Sen government until the status quo was restored.

Not all FUNCINPEC politicians have stuck with Ranariddh, however. The party had begun to fracture earlier in the year and many high profile members stayed on after Hun Sen's take-over and continue to serve in the government, maintaining that their coalition with the CPP is alive.

Hun Sen has repeatedly cited the continuing alliance with FUNCINPEC as further evidence backing the legitimacy of his actions and his government, but in reality the royalist party no longer participates in any meaningful sense in the exercise of power.

The premier is widely believed to have orchestrated the controversial national assembly votes on 6 August that removed Ranariddh's parliamentary immunity from prosecution and elected Foreign Minister Ung Huot to replace him as first prime minister. A military tribunal completed the disgrace of Ranariddh two days later by issuing warrants for his arrest on charges of crimes against national security and illegal purchase and import of weapons.

The indictment has been cited by the CPP as proof of its commitment to upholding democratic principles and upholding the rule of law, but such pronouncements hold little water in a

nation where the judiciary has shown repeatedly that it is far from independent. It must also be noted that Hun Sen is widely believed to have engaged in precisely the same behaviour that Ranariddh has now been charged with, including colluding with the Khmer Rouge and building up his personal forces.

While Cambodia maintains the veneer of a multi-party democracy, the remaining members of FUNCINPEC and of the third largest parliamentary group, the Buddhist Liberal Democratic Party (BLDP), remain powerless. Worse, some of their offices in the provinces have been forced to close and their party organisations continue to fracture. FUNCINPEC renegades have split into at least two groups since July and are likely to form new parties ahead of elections.

An independent study conducted by a local non-governmental organisation shows that CPP officials have taken over almost complete control of provincial administrative and security structures at the expense of FUNCINPEC since early July—thus creating a further deterrence against the emergence of opposition activities or criticism.

While some important critics of the government, including Sam Rainsy, have returned to test the waters there is no opposition working freely inside Cambodia and the environment for dissenters is still dangerous. Moreover those who do return have few outlets for getting their message across. Non-CPP aligned radio and television stations have been shut down, while the government has stopped giving out radio frequencies to other parties. Hun Sen recently pledged that shuttered stations would be handed back but CPP channels still rule the airwaves. An ostensibly vibrant print media continues to function but what remains of the opposition press has become much more circumspect in what it reports. Several journalists have fled to Thailand.

On 8 January 1998, the Information Ministry suspended six opposition newspapers on charges of violating Cambodia's press law by allegedly printing defamatory remarks, false information and information harmful to national security and political stability. Information Secretary of State Khieu Kanharith, who in late December 1997 threatened to expel a Canadian TV journalist for "unfair reporting" in a year-end review on Cambodia, justified this latest government move on the ground that journalists needed protection from those likely to be enraged by inflammatory reporting.

3. A climate of fear and impunity

A cycle of violence and impunity has helped create a tense and anxious mood among Cambodia's population. A number of

incidents have heightened the sense of fear and insecurity, most notably the 5-6 July fighting and the 30 March grenade attack on a rally called to protest against the judiciary's lack of independence. But these incidents are not isolated. Long-running intimidation of political opponents and the still-unsolved murder of several journalists have also taken their toll.

Public fears were raised again following the publication of an official United Nations report² that at least 45 people, almost all of them FUNCINPEC security personnel, had been extrajudicially executed in the wake of the July violence. Those killed in July include Secretary of State for the Interior Ho Sok, shot

dead in the interior ministry shortly after his arrest on 7 July, and two FUNCINPEC generals tortured and executed after trying to flee the capital with their men.

The UNCHR and human rights groups have documented more recent killings of FUNCINPEC members, including a colonel shot dead on 25 September despite being reintegrated into the army after the factional fighting. They report continuing intimidation and human rights abuses in the provinces, while the climate of fear in battlefield provinces has been further heightened by forced conscription and extortion.

Hun Sen has condemned the violence of vendetta but his government has done nothing to solve and bring to justice those responsible for the March 30 attack and the murders of FUNCINPEC members, action which would show sincerity in addressing abuses and help to build the confidence needed for reconciliation. He and Ung Huot reacted angrily to UN charges of continuing abuses and of failure to tackle the culture of impunity, accusing UN human rights envoy Thomas Hammarberg of unfair, politically biased and unsubstantiated charges in a report to the UN General Assembly last November³.

Cambodia's culture of impunity is deeply entrenched and reflects the weakness of the judiciary and the impotence of the rule of law. Those guilty of rights abuses, particularly military and police personnel, apparently continue to receive the message that they will never have to account for their actions.⁴

² *Cambodia Office of the United Nations Centre for Human Rights, 21 August 1997: Memorandum to the Royal Government of Cambodia - Evidence of Summary Executions, Torture and Missing Persons Since 2-7 July 1997.*

³ *UN General Assembly: Report to the Secretary General - Situation of Human Rights in Cambodia. Ref. A/52/489.*

⁴ *Impunity is even enshrined in law. Article 51 of the Law on Civil Servants provides that, except in cases of flagrante delicto, no civil servant may be*

Cambodia's leaders seem to lead the way by example, having been allowed to violate their commitments under the PPA by the *laissez faire* attitude of the international community. There can be no real progress in alleviating fear and moving towards democracy until people, from top to bottom, realise they must be accountable for their actions.

4. Economic disruption

Cambodia's economy is in the doldrums and getting worse, with foreign investors and tourists still staying away despite the return of normalcy in urban centres. Some countries and international organisations, including the International Monetary Fund and the World Bank, have suspended or cut aid and the country faces a massive budgetary shortfall as a result of the July events. The government, which relies on outside aid for more than 40 percent of its budget, has cut expenditures and may be forced to use foreign reserves to stave off a financial crisis.

On 31 December 1997, parliament approved a \$US 419 million budget for 1998 that increased military and security spending and relied less on foreign aid. The defence (\$US 83 million) and interior (\$US 40 million) ministries were given almost 30 percent of the budget, while most ministries had their budgets cut because of a loss of revenue following the July turmoil. Customs revenues have fallen 35.7 percent and domestic tax returns have sunk 12.3 percent since July 1997. Overall, total state revenues ended the year 11 percent down. Foreign assistance was estimated in the budget at \$US 110 million against \$US 147 million for 1997. Minister Keat Chhon estimated Cambodia's gross domestic product (GDP) grew by 2 percent in 1997 against 6.4 percent a year earlier. GDP growth was forecast to edge back up to 3.5 percent this year, still significantly down on the 1996 performance.

The dire situation, including rising inflation, has been exacerbated by the financial ill wind blowing through Southeast Asia. The decision by the Association of Southeast Asian Nations (ASEAN) to defer Cambodia's application for membership has put more favourable trade ties with neighbours on hold and major regional development plans (land access to Vietnam, Mekong Basin) have also been hit by Cambodia's problems. The regional body, angered and frustrated by the violence and conscious of its international image, made the decision on 10 July. An upsurge in fighting has added to the

military budget and cut into other areas which should hold a higher priority. Lingering economic disruption could cause further political and social instability as disgruntled civil servants and soldiers demand unpaid wages from a government that has shown itself remarkably incompetent at raising revenue on its own.

D. RECENT DEVELOPMENTS

Signs of some softening in Phnom Penh came on October 22 when Hun Sen and Ung Huot wrote to UN Secretary General Kofi Annan affirming their commitment to multi-party, free and fair elections and undertaking to guarantee the security and safety of all exiled MPs and political leaders who wanted to return home. The letter also pledged that all political leaders would be exempt from persecution or prosecution and invited the United Nations to monitor these undertakings.

Meeting on the sidelines of the APEC summit in late November, the ASEAN troika and Ministers from major donor countries, including the United States, Germany, Japan, France and Australia, expressed cautious optimism about the situation in Cambodia and said the government in Phnom Penh seemed to be more accommodating about the return of the exiles.

The atmosphere is certainly improving and several exiles, including Sam Rainsy and a UCD delegation, have put their faith in these pledges and returned to the country. Significantly, however, almost none of the returned former-exiles have felt free enough to restart active political campaigning⁵, while the return of Ranariddh, and his participation in politics, remains a sticking point. Hun Sen, who has held cordial talks with Sam Rainsy and other returnee politicians, adamantly refuses to include Ranariddh in his goodwill gesture and says he must first face a court trial and would need to ask for and receive a royal amnesty if he wishes to run in elections.

Ranariddh, knowing that he cannot expect a free trial in a country where virtually all the judges and prosecutors are CPP members, and with no guarantee that any amnesty would be honoured by the government, has held out against this formula and offered counter-proposals rejected by Hun Sen. The prince was prepared to return home in January 1998, apparently ready to accept a compromise proposal put forward by the King to pardon him unilaterally if convicted. However, in the face of opposition from Hun Sen, the King

⁵ Sam Rainsy, however, tested the waters with a massive peace march from Phnom Penh to a rural temple in early December in early December 1997 and followed this up a week later with a well-attended congress of his Khmer Nation Party in the capital. He also visited the provinces as KNP leader.

abruptly reversed his decision and flew out of the country aboard a commercial flight on 5 January 1998, putting Ranariddh's return plans in doubt.

Ranariddh has not done himself any favours with misguided attacks on countries he believes have been too accommodating with Hun Sen. He has cited Japan and France as obstacles to peace, reconciliation and the holding of free and fair elections. The prince has also taken a swipe at his former patron China, while his military commander has resurrected the language of the 1980s civil war by accusing Hun Sen of being a puppet of the Vietnamese.

The situation in the provinces, where personal rivalries and ambitions often overshadow the politics of Phnom Penh, has not improved under international pressure. The neutral environment necessary for free and fair elections and for an opposition to function without harassment simply does not exist.

In a semblance of normality, parliament reopened after the feud between Hun Sen and Ranariddh had kept it shuttered for months. Despite token debate it remains a rubber stamp. Many MPs remain in hiding or overseas. It has responded to international concern by passing some amendments to election legislation, but has ignored other important recommendations.

Sihanouk's decision to remain as king and to return home in August has been an important and stabilising link of continuity with the past. The king is clearly depressed and frustrated about the turn events have taken in his country. He has often spoken of abdication and recently said he had thought of suicide. But he still has an important mediating role to play and he is about the only Cambodian that everyone has to listen to, even if they do not follow up on his advice.

Hun Sen has spurned his efforts at peace-making but understands the importance of the king in helping resolve the current crisis. He was lukewarm to Sihanouk's proposal for informal talks under his chairmanship between representatives of the government and the politicians in exile, but he has proposed that the problem of Ranariddh be solved in conjunction with the king.

There is a danger that the king will move further away from his unifying and neutral role as constitutional monarch if he is led to believe that he has nothing more to offer. Sihanouk's sudden departure on 5 January, should it be due to diplomatic rather than medical illness, does not bode well for the future.

E. RESTORING DEMOCRACY—TOWARDS ELECTIONS

1. Preparing for elections

Free, fair and credible elections—and subsequent cross-party respect for the outcome of such elections—hold the key to Cambodia's return to the democratic path it embarked upon in Paris on October 23, 1991. The international donors and the Cambodian parties declare support for elections, to be held in 1998.

The original tentatively scheduled date for elections was 23 May 1998. After a review of conditions, the timetable was, wisely, amended in December 1997. The poll is now due to take place on 26 July 1998. In fact, it remains unlikely that technical preparations will be finished or that the political conditions necessary for free and fair polls will be in place—even by July—and it is more important to get the elections right than to stick to an arbitrary date for the sake of appearances. The option of a further delay should, therefore, be kept in mind, even as preparations for July elections continue.

The government can afford to take its time as the term of the National Assembly does not run out until 23 September 1998 while the constitution allows for this to be extended by one more year. More time should improve the chances of sound elections and the delay need not be indefinite.

The CPP has shown greater interest in the past in preparing for elections, reflected in the fact that foreign governments and aid agencies have invited more CPP than FUNCINPEC officials on courses to study electoral models and principles. This further reinforces the view that Hun Sen's party is determined to be seen to win elections legitimately.

But preparations for elections, in particular the drafting and approval of elections legislation, were already way behind targets set by the government and foreign experts by the time of the factional fighting in July. The legal framework is now in place, but voter registration, establishment of a national committee, hiring and training of staff and computerisation will all take much more time. Release of foreign aid and co-ordination of international observers will also take time.

The government has taken steps to speed up the process and has asked the international community to foot the \$21 million bill for the next polls. The United Nations and the donors have welcomed the government's commitment to hold elections but want to see certain conditions met before committing themselves to supporting the polls process and releasing funds.

The European Union has, conditionally, pledged \$12 million for voter registration and transportation costs for an election observation unit. The United Nations and the envoys of nine PPA signatory nations (Australia, Canada, France, Germany, Great Britain, Japan, the Philippines, Thailand and the United States) have handed the government a list of guidelines⁶ aimed at ensuring free and fair polls. These include pre-election measures such as a cease-fire, establishment of an independent election commission, creation of a neutral political environment, a fair and effective voter registration process, informing voters of their right to vote freely, full respect of human rights by all sides, free campaigning and equal access to the media. Principles listed also included no use of the state apparatus to the benefit of any party, freedom to vote without intimidation and in secret, use of fully trained electoral officers, integrity of the ballot boxes and transparent counting of the vote, international observation of the election process and acceptance of the results by all candidates and parties.

Foreign agencies helping the government with election preparations have held up the Inter-parliamentary 1994 Declaration on Criteria for Free and Fair Elections as a model for Cambodia.

2. Elections Legislation

Legislation is key to successful elections. Without laws in place, an election committee cannot be created and registration of voters, computerisation of the polls process and the hiring and training of staff cannot proceed.

The National Assembly, despite the absence of some MPs, has adopted election legislation drafted by the Interior Ministry, but has failed to heed some of the recommendations of overseas experts. It has passed a law⁷ establishing procedures for parties to register for and run in the polls and approved the election law, providing for proportional representation.

The political parties law retains clauses regarded as unconstitutional by overseas experts, including an article making the registration of political parties dependent on a proven membership of 4,000. This high target could prove difficult for parties in opposition to the government to reach given the current political climate, while it runs counter to the spirit of the constitutional right of every citizen to set up a party.

⁶ Contained in a non-public paper submitted to members of the National Assembly, 10 November 1997.

⁷ UN Centre for Human Rights: The Law on Election of Members of Parliament (*unofficial translation*).

Another controversial article allows members of the judiciary, police and military to join political parties, jeopardising their neutrality and attempts at their de-politicisation. The law also provides jail terms of up to 15 years for party leaders who disregard the results of the election.

International concern about the election law has centred on the structure and composition of the National Election Committee (NEC) and on criminal provisions that could be used to bar Ranariddh from the elections. The draft tabled before parliament compromised the independence at all levels of the NEC, which will be given enormous power in administering the entire electoral process, including registering voters, drafting regulations, controlling polling stations and counting ballots.

The deputies responded to international pressure by giving parliament, rather than the government, the authority to confirm composition of the 11-member committee. They decided this confirmation must only be by majority vote, despite fears this would make it easier for the CPP to control the committee composition in the face of a divided FUNCINPEC. The three-thirds majority advocated by a handful of MPs would have required a consensus.

The NEC will be led by a permanent chairman and deputy experienced in politics and government and will include two ordinary voters, a representative of non-governmental organisations, an Interior Ministry official and members of the four parties represented in parliament. The establishment of the committee is being held up by a row over who is to hold the seats reserved for the divided FUNCINPEC and BLDP, while the CPP-linked aid worker elected to the NGO slot on the NEC has been accused of buying votes.

UN human rights officials had called for a permanent election committee with no political party presentation on it to ensure neutrality while the government advocated in the draft that all registered parties be allowed on it. The national assembly also agreed that convicted criminals, who have not been rehabilitated, should be barred from running in the elections, ignoring international calls that the article should specify that a royal amnesty would allow anyone in this category to take part.

The law as it stands leaves open the possibility that Ranariddh will not be allowed to take part in the elections if he faces trial and is convicted. The assembly's refusal to heed international concerns on this, and other key points of the two electoral laws, leave question marks about the government's sincerity and commitment to free and fair elections.

Another necessary piece of legislation is the Law on the Constitutional Council, which has responsibility for resolving disputes over the election of members of parliament and ruling on the constitutionality of legislation. There will be no legal mechanism for resolution of contested seats if this law is not passed before the polls.

3. A neutral political environment

Atmospherics are as important for free and fair elections as the technical aspects. Creating a neutral political environment in which the parties can compete effectively for public attention and approval must be a priority in the months ahead.

Cambodia's political climate has certainly improved in the past few months. More and more prominent politicians are returning to the capital with blessings and encouragement of Hun Sen and the MPs back in Phnom Penh have been ready to argue against legislation in the house and speak their mind on other issues. This is all positive, however, it would be at the very least premature to conclude that anything like a neutral political environment exists in Cambodia today. It does not.

The atmosphere is still not conducive to genuine and organised opposition activities or campaigning, particularly in the provinces where very little dent has been made in the climate of intolerance and the CPP and its satellites are the only party in a position to get their message across as they control the broadcast media and most of the print media. The Information Ministry has prevaricated, claiming all remaining FM radio frequencies have been allotted to planned provincial radio stations which do not go on air before the turn of the century, but FUNCINPEC has been promised that it will get its radio and television stations back.

The opposition, including high profile returnees such as Sam Rainsy and BLDP member Son Chhay, will continue to look over their shoulders until the government addresses the backlog of human rights crimes, particularly the March 30 attack and the killings of Ranariddh supporters.

The immunity from prosecution granted to state employees under the Civil Servants Act is also not conducive to the holding of free and fair elections.

A neutral environment requires the independence of the judiciary and the political neutrality of the armed forces and police—voters will not cast their ballot freely at polling stations if

they feel the guardians of law and order are on the side of one party as is the case today.

F. NEXT STEPS

Cambodia's coming elections offer an important opportunity to put Cambodia on to a more stable and democratic footing. However, at this point, the conditions required to support free and fair elections, which include a neutral political environment, an effective legislative framework and sound technical and logistical administrative machinery—simply do not exist.

Helping to create those conditions will depend in part on continued, intensive international efforts over the coming months. If necessary, a further delay in the election timetable should be considered if it becomes clear that the country will not be ready for elections in July 1998.

Making aid conditional on progress

One of the most important instruments of influence open to the international community remains aid conditionality. Policy-makers should be prepared to tie the granting of international assistance to Cambodia's government and state structures to the achievement of specific objectives in relation to the electoral process. In implementing such an approach, some differentiation will clearly need to be made between such forms of government to government assistance and humanitarian relief—which should continue to flow unhindered by current political considerations.

The potential potency of conditionality lies in the fact that the government needs foreign funds to function and to stage the elections and because it also wants the international stamp of approval for the polls. The key to applying conditionality to the Cambodian situation will be unity. At present a debate continues regarding the effect of pressure on Phnom Penh. Some argue that pressure will only isolate Hun Sen and push Cambodia towards the model of Burma. Others say the leverage of the international community has been so ineffective to date that it has nothing to lose by being frank and tough. A divided international response will only strengthen the hand of the CPP. Those nations who signed the Paris Peace Accords must send a clear message to Phnom Penh that they are not prepared to tolerate further violations of the accords provisions. They should join with other donor nations to make it clear to the government that international support for elections will not be forthcoming unless the necessary conditions for a free and fair poll are in place. They must warn the Cambodian government that even if these conditions are achieved, final approval of the outcome of the elections will depend on satisfaction that voting

has been conducted in an appropriate manner and that the results have been accepted by all participants.

Setting the right conditions

The most important single step that the government in Phnom Penh could take to help improve conditions in the lead up to elections would be to invite Ranariddh to return to Cambodia and run in the elections—without fear of arrest, intimidation or physical attack. As long as Ranariddh remains in exile, prevented from participating in elections, kept away by threat of arrest and a jail term, there can be no free and fair elections in Cambodia.

In addition to bringing Ranariddh back into the electoral process, the Hen Sen government should be required to implement a number of additional measures designed to build confidence. These include:

- issuing written directives to authorities nation-wide allowing all parties to open offices and conduct political activities;
- granting all parties equal access to state broadcast and print organs and permitting them to operate their own media operations without harassment;
- ensuring the independence of the NEC;
- ordering a transparent investigation into the March 30 grenade attack and extra-judicial killings that followed the July fighting; and
- scrapping the current immunity of state employees from prosecution as one means of tackling Cambodia's culture of impunity.

The international community should also energetically push for King Sihanouk to be given a greater peace-making role, specifically his proposal to host informal talks between the rival parties.

Bolstering the international community's presence

The international community should continue to encourage political exiles to return to Cambodia. To help ensure the safety and freedom of movement of returnees, the United Nations should increase the number of UN human rights monitors present in the country.

Extra UN military observers and a small team of expatriate police are also needed to monitor a cease-fire and report on progress towards de-politicising the police and military. The current complement of one Belgian military observer in Phnom Penh is not nearly sufficient for the task.

While the United Nations should continue its efforts to secure progress in Cambodia, Cambodia's neighbours in the region, in particular ASEAN, should be far more vigorous in their efforts to broker a solution than is presently the case.

International Crisis Group
Phnom Penh
13 January 1998