

8. The challenge for human rights in Cambodia

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This chapter makes three main arguments about the human rights situation in Cambodia. The first is that it has improved when put in a historical context, especially when compared to the period from 1970 to 1991, which began with a brutal civil war that led to the Khmer Rouge regime's reign of terror and ended with the subsequent socialist regime's agreement to turn the battlefield into a ballot-box. Still, human rights challenges remain. Although socio-cultural rights have been generally protected, socio-economic rights have often been abused, and political rights and civil liberties have been threatened. The second argument is that human rights violations have largely stemmed from a weak system of institutional checks and balances. Civilian and military members of the executive branch of government have ruled practically unchecked. The third argument is that cultural, historical and ideological legacies help to explain the persistence of institutional weaknesses. More importantly, the political elites' relentless struggle for political supremacy has hampered institution building efforts by the international community, whose willingness and ability to take collective action for human rights remain limited because of security politics within Cambodia and the East-Asian region.

CAMBODIA'S COMMITMENT TO HUMAN RIGHTS AND THE LIMITS OF COMPLIANCE

On 23 October 1991 four Cambodian armed factions and 18 other foreign states signed the Paris Peace Agreements, turning their battlefield into a ballot-box. The armed factions in question were:

- the royalists known as FUNCINPEC (National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia),
- the Khmer People's National Liberation Front (KPNLF), whose

political party was called the Buddhist Liberal Democratic Party (BLDP),

- the Khmer Rouge, known as Democratic Kampuchea (DK), and
- the State of Cambodia (SOC), whose party came to be known as the Cambodian People's Party (CPP).

On that day, the Cambodian signatories also made, among other things, a formal collective commitment to the protection and promotion of human rights.

After the 1993 election that took place under the authority of the United Nations Transitional Authority in Cambodia (UNTAC) the parties that won seats formed a coalition government, led by First Prime Minister Norodom Ranariddh of FUNCINPEC and Second Prime Minister Hun Sen of the CPP. This government adopted a liberal democratic constitution that ensured the protection and promotion of human rights. Chapter III of the constitution specified a wide range of Khmer (not Cambodian) citizens' rights and obligations (including political, legal, social, cultural and economic rights). The country also became party to various international human rights instruments, such as the genocide and racial Conventions. Based on one legal interpretation, that the country should adhere to relevant human rights instruments, Stephen Marks contends that '[t]he interpretation of "adherence" to mean "accede" . . . resulted in Cambodia becoming bound by more human rights treaties than practically any other Southeast Asian countries' (Marks, 2001b, p. 248).

In more recent years, the Cambodian government has taken additional formal steps toward institutionalising justice. By the mid-2000s, the country had become party to the six main international human rights treaties and signed the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (November 2001) and the first Optional Protocol to the International Covenant on Civil and Political Rights (27 November 2004). It has collaborated with the UN in an effort to prosecute Khmer Rouge leaders for crimes allegedly committed from 1975 to 1978. In October 2004 the National Assembly ratified the Khmer Rouge Tribunal Law establishing a hybrid criminal court. The government also established a human rights committee. On 23 October 2000 the government signed the Rome Statute establishing the International Criminal Court and ratified it on 7 January 2002. As of 2008, Cambodia was one of the four countries in East Asia to have ratified the Statute (Peou, 2009a). In April 2007 Cambodia also ratified the Optional Protocol to the Convention against Torture, which requires it to create an independent national preventive mechanism.

Overall, however, the human rights situation remains far from ideal.

From 1991 to 2003, political violence remained the most dominant form of human rights violations. During the transitional period under UNTAC (1992–93), political violence occurred in the forms of ethnic discrimination and hostility, political intimidation, and politically motivated killings. The Khmer Rouge faction not only pulled out of the electoral process, but was also mainly responsible for violence against ethnic Vietnamese. The CPP was the most responsible for violence against political opponents and critics.

More recently, however, the overall level of violence against ethnic minorities has declined. The violent riots in Phnom Penh against the Thai embassy and Thai business groups early in 2003, for instance, may be considered a form of ethnic violence, but it has never recurred. Discrimination against ethnic Chams (Muslims) became more evident following the terrorist attacks on the United States on 11 September 2001. Overall, however, violent discrimination against ethnic minorities decreased.

The overall level of violence allegedly committed by members of the government against political opponents has also declined in recent years, although the forms of violence have changed over time. Throughout the 1990s, violence had been committed against anti-government elements or powerful critics of government leaders and policies, such as Sam Rainsy (a former Minister of Finance), Kem Sokha (head of the National Assembly's Human Rights Commission, who became a target of condemnation by the Prime Minister), and their supporters (some of whom received death threats and endured physical abuse). On 30 September 1995, for instance, a party meeting organised by the BLDP fell victim to a grenade attack that injured between 30 and 50 people.

However, the human rights situation did not seriously begin to deteriorate until the coalition government fell apart, starting in 1996. According to reports by the UN and other human rights organisations, that year marked a turning point for Cambodia's new found democracy. In March 1997 about 200 supporters of the opposition leader, Sam Rainsy, gathered in a park near the National Assembly building in Phnom Penh and came under a grenade attack, which killed at least 16 people and injured more than 100. Between 2 and 7 July, Hun Sen successfully staged a violent coup against Prince Ranariddh. A report by the UN Special Representative provided evidence of up to 60 politically motivated extrajudicial executions following the coup and described evidence of torture and the incineration of large number of corpses (Hammarberg, 1997).

Major reports by the UN Special Representative for human rights in Cambodia paid close attention to the National Assembly elections in 1998 and 2003, as well as the commune elections in 2002 and 2007. The reports documented political intimidation and violence, political killings and other

instances of violent deaths, and limitations on the opposition's access to the media, especially during election time. During the 1998 election, widespread political intimidation and abuse was documented (Hammarberg, 1998). The 2003 National Assembly election was also marked by political intimidation and violence. In the period preceding the commune polls on 3 February 2002 and after, intimidation and violence remained serious (of the 19 people who were murdered, 17 were political activists affiliated to FUNCINPEC and the Sam Rainsy Party (SRP)).² Between the 2002 commune election and the 2003 national election, 13 political activists were murdered. The 2003 election also witnessed intimidation of voters and political activists across the country. During the election process, at least 14 killings were documented. During the period leading to the commune election in 2007 and the national election in 2008, cases of political intimidation against political activists were reported to have increased. The 2008 election witnessed a decline in the overall level of violence against members of the opposition, but this positive trend may have resulted from the use of threats to coerce opponents into joining the CPP. In March 2008, for instance, an SRP member was charged with illegal confinement (after he had provided assistance to a distressed former colleague who had allegedly defected to the CPP), arrested and put in prison.³

The freedoms of expression, strike and demonstration have been subject to further restriction. The print media became freer than the broadcast media to criticise government officials and policies, but the CPP and its supporters continue to own and operate radio and television stations, as well as newspapers. In July 1995, the government adopted a new press law that left open the possibility of prosecuting individuals for possession of material that might negatively 'affect national security or political stability'. The SRP has been denied the right to open a radio station. In the pre-2008 election period, an independent radio station was closed down because it had allowed airtime for opposition parties. The government has also imposed restrictions on what members of parliament can say. The Law on the Status of National Assembly Members, amended in August 2006, 'imposes extensive qualifications on their immunity in respect of freedom of expression'. The law 'subjects Members whose comments are deemed to abuse an individual's dignity, social customs and national security to the same legal penalties that already restrict the freedom of expression of Cambodian citizens'.⁴

The government has also taken more legal action to punish its opponents by either suing them for defamation or counterclaiming against those who filed lawsuits against government officials. In December 2005 and January 2006, several critics of the new Cambodia-Vietnam border treaty were arrested, charged with criminal defamation, and detained.

Meanwhile, Sam Rainsy was convicted of defaming Hun Sen and Prince Ranariddh. As recently as 2009, Hun Sen counterclaimed against an SRP lawmaker, Mu Sochua, for defamation and the court found her guilty. Her lawyer was also subject to threats of possible criminal defamation and expulsion from the Cambodian Bar Association.⁵

Legal action against individuals critical of the government was not, however, limited to politicians and their supporters. In September 2006, for instance, a university lecturer was arrested, detained and charged with disinformation in connection with his work on 'political philosophy', which was reported to have been critical of government officials. Journalists who were members of the SRP or sympathetic to the party were subject not only to legal action, but also to assassination and death threats. For instance, the editor of *Moneakseka Khmer* (Khmer Conscience, an SRP-affiliated newspaper) was found guilty and ordered to pay the state \$2000; he was also ordered to pay an additional \$2000 to Deputy Prime Minister Sok An, who had filed a complaint against the journalist for his article published on 13 June 2006 which alleged tensions among CPP members resulting from Sok An's growing concentration of power and corruption. In June 2008, another SRP candidate, who was also the editor of *Moneakseka Khmer*, was arrested after the newspaper reported allegations that the Foreign Minister had been part of the Khmer Rouge regime.

After 2003, the government imposed more restrictions on the rights to strike and to demonstrate. Following the national election in that year, the government denied opposition parties permission to protest against election results. When a small party (Khmer Front Party) decided to go ahead with a protest, it was dispersed by police (armed with electric batons), who also arrested 21 party members and forced them to sign agreements that they would never demonstrate again. Subsequent demonstrations were met by excessive force on the part of the police. In 2007 the CPP-led government adopted a law that required demonstration organisers to provide local authorities with five days' notice and held them accountable for any misconduct. Requests for public demonstrations were usually rejected. In May 2008, for instance, ethnic village minorities in Ratanakiri province were prohibited from leading a peaceful march in protest against land confiscation. Any demonstration that went ahead was usually forcibly dispersed. Even peaceful demonstrations by Buddhist monks were not tolerated. In February 2007, for instance, heavily armed police dispersed a demonstration led by a number of monks protesting against religious and ethnic persecutions in Vietnam. Although there were fewer protests in 2007, this trend may have resulted from the government's attempts to make it harder for protest organisers to take action. In October 2009 the

National Assembly passed a law prohibiting any public demonstration led by more than 200 people.

Other violations of human rights include arbitrary arrest, excessive pretrial detention, and torture during arrest in police custody and in prison. Reports by human rights organisations continue to reveal that sex workers, homeless people and street beggars often encountered night-time raids and arbitrary arrests. Cases of excessive pretrial detention, often exceeding six months, remain 'commonplace'.⁶ In addition, according to a UN report, 19 per cent of 2228 prisoners interviewed claimed to have been tortured while in police custody. The number of reports of excessive violence used by police during arrest has also increased.⁷ Prisons remain overcrowded and shackles are still used in some. The Cambodian League for the Protection and Defense of Human Rights (LICADHO, an NGO) has also documented cases of torture in police custody and in prison. According to its report, 'a significant proportion of detainees arrive in prison having been tortured at the hands of the police after their arrests' (LICADHO, 2001, p. 11). Torture may have resulted in a prison escape in Kampong Cham province that led to the killing of 19 prisoners in March 2005. In February 2008 a police officer involved in a land dispute was arrested, beaten, and detained without a court order.

Another disturbing trend is violence against trade union leaders and activists. In 2004 labour leader Chea Vichea was murdered. Another labour leader, Hy Vuthy, was shot dead in February 2007. Strikes organised by factory workers who demanded better wages and better working conditions often resulted in various forms of harassment, physical attack and unfair dismissal: for instance, in May 2007 riot police dispersed 1000 workers in Kandal province protesting against the firing of workers who sought to organise a union at a factory. Workers at a garment factory in Phnom Penh, in February 2008, led a strike demanding that the fired union representatives be reinstated, but police and military responded by using force to disperse them.

Since the mid-2000s, the UN Special Representative for human rights in Cambodia has been focusing on the growing problems associated with economic land concessions negatively affecting human rights, land-grabbing and forced eviction. Illegal land concessions were awarded to high-ranking members of the government and foreign firms, which in turn contributed to the 'alarming rate of land alienation'. People in rural areas depended primarily on agricultural production as a source of sustenance and identity, but continued to witness deforestation, diminishing access to traditional lands and loss of livelihood. Forced eviction also became a growing challenge to human rights. In recent years, over 150000 people (85000 people in Phnom Penh alone) have been forcibly evicted, and

another 70 000 are facing forced eviction. According to a recent report by Amnesty International (2008), those evicted have had no opportunity for genuine participation and consultation beforehand, did not have the benefit of legal protection, and received incomplete and inaccurate information on the planned evictions and resettlement packages.

In short, the human rights situation may have become less violent over the last two decades, but it remains dismal when seen in the light of international standards. The bloody civil war and the Khmer Rouge killing fields during the 1970s saw some of the worst of what humans could do to each other in the twentieth century. Human rights violations persisted in the 2000s. As the opposition weakened, the CPP turned away from the use of armed violence and began to tighten media control and resort to legal measures aimed at silencing voices critical of government officials and policies. Prison conditions remain appalling. Both land-grabbing and forced evictions became new human rights challenges. As will be discussed next, state authorities still seem to be capable of abusing human rights, but incapable of effectively protecting or promoting them.

A WEAK SYSTEM OF INSTITUTIONAL CHECKS AND BALANCES

This section advances the argument that a system of institutional checks and balances was established, but never became strong enough to prevent abuses of power. The executive branch of government emerged as the dominant power, controlled by members of the political elite who also relied on the support of the military and security apparatus and other informal institutions, and together they have effectively ruled unchecked, having kept the legislature and the judiciary institutionally weak.

The CPP's successful consolidation of power initially resulted from its ability to weaken the opposition. At first, it managed to get FUNCINPEC to agree to a power-sharing deal and to integrate former resistance forces into the national armed forces. After the coup in 1997 the royalist forces were decimated, and the Khmer Rouge movement disintegrated. This spelled the beginning of the CPP's power consolidation.

Although they have recently become better organised and trained, the police remain under-institutionalised. Police could still take matters into their own hands. For instance, they were often sympathetic toward people who carried out mob justice or street retribution, and incidents of mob violence continued to take place with their acquiescence or even participation. The local authorities usually took no action against those involved in street justice and even took the opportunity to gain popularity among

people involved in such incidents by not intervening or punishing those who committed acts of violence. Authorities even accused civil society groups of offering protection to thieves who were subject to mob violence (ADHOC, 2008, p. 13). In collaboration with government officials who did business with local and foreign companies and company security forces, local authorities (such as the police and military officers) have even often sought to place restrictions on villagers and social activists; this was particularly true in cases relating to land and natural resources.⁸ Moreover, police and military officers have operated beyond the law in their clandestine involvement in lucrative transnational crimes, such as smuggling and human and drug trafficking. Police officers have operated and profited from such trafficking.

In addition to tightening control over the security apparatus, Hun Sen established additional institutions to ensure his personal security and to carry out attacks on political opponents. During the grenade attack on the SRP demonstrators in March 1997, he deployed his personal bodyguard unit (Brigade 70), apparently for the first time, at the site of the demonstration. Various reports, including those by the UN Special Representative (UN, 1998) reveal that this military unit not only failed to prevent the attack but also opened up its lines to let the grenade-throwers escape and even threatened to shoot those who tried to pursue the attackers. The use of bodyguards also meant that Hun Sen did not initially have full control over the armed forces. During the coup in July 1997, in another instance, the military led by commander-in-chief, General Ke Kim Yan (CPP), and the CPP Minister of the Interior, Sar Kheng, refused to go along with Hun Sen.

More recently, the CPP has successfully tightened control over the military. In early 2009, General Ke Kim Yan was dismissed, apparently because he was deemed to be disloyal to the Prime Minister. The new commander-in-chief, General Pol Saroeun, was one of Hun Sen's staunch allies. In addition, Hun Sen appointed seven new deputy commanders-in-chief – Generals Chea Dara, Mol Roeu, Meas Sophea, Hing Bun Heang, Kun Kim, Ung Samkhan, and Sao Sokha – all of whom were loyal to the Prime Minister. The CPP also sought to achieve full control of the Ministry of Defence led by General Tea Banh. Reforms of the military establishment have so far proved to be a disappointment.

All this suggests that the military and security apparatus, and other extra informal institutions established to protect the personal interests of CPP members, especially Prime Minister Hun Sen, have become instrumental to the regime in general and to individual leaders in particular. The CPP's commitment to the protection and promotion of human rights has clearly been overcome by its leaders' pursuit of elite and personal security at the

expense of human rights. Those military and police officers who violated human rights have either escaped justice or been rewarded for their alleged crimes. One of the new deputy commanders-in-chief, Hing Bun Heang, for instance, had served as deputy commander of Brigade 70 at the time when its members were alleged to have been involved in the grenade attack on the SRP demonstrators in 1997. Huy Piseth, commander of Brigade 70 at the time, was appointed an undersecretary of state at the Ministry of Defence. Overall, this form of security politics reveals that the military and security apparatus remain politicised and still subject to security politics.

There hardly exist any institutional checks and balances within the system of government. The National Assembly elections that took place in 1998, 2003 and 2008, and the commune council elections in 2002 and 2007, allowed the CPP to consolidate its power within the executive and legislative branches. The commune elections left the CPP with a near monopoly of power over the communes across the country. The CPP has increasingly dominated the National Assembly, having won 51 seats in the 1993 election, 64 in the 1998 election, 73 seats in the 2003 election, and 90 out of 123 seats in the 2008 election. The bicameral legislature has increasingly been turned into a state institution willing and ready to rubberstamp the executive branch's decisions.

The judicial system has also failed to become sufficiently strong to check the military and executive power. Members of the armed forces have abused power more often than have government officials, especially when involved in individual disputes, and authorities at the local level often found themselves unable to intervene on the behalf of the victims. More often than not, the authorities would protect the perpetrators belonging to their group or party. They did not subject themselves to the law and had almost exclusive control of power (ADHOC, 2008, pp. 13–14). Judges were often unwilling or unable to enforce the law against military offenders who fell under the jurisdiction of the civil courts for offences involving civilian matters. Military commanders often preferred to administer justice to their troops in their own ways. There are cases where judges and prosecutors were forced to flee from trials being disrupted by armed military personnel (Neilson, 1996, pp. 13–14) and had concerns about their security, especially when dealing with cases involving high-ranking officials and security officers. According to the UN Special Representative for human rights, even '[l]aw enforcement officials often fail to enforce court orders and judgments, and sometimes act in open defiance of their terms'.⁹

The judicial system itself remains subject to political control. The Constitutional Council (CC), responsible for protecting and interpreting the Constitution, remains 'largely inactive, effectively leaving the country without an institution to rule on the constitutionality of legislation'.¹⁰

Moreover, the CC is reported to have 'shown a marked reluctance to challenge government legislation on the grounds that it violates human rights guarantees'.¹¹ It is also a well-known fact that six of the CC's nine members are also members of the CPP. More can be said about the Supreme Council of Magistracy (SCM), which is tasked with the responsibility to protect the independence and professional integrity of judges and prosecutors. The SCM remains 'largely ineffectual, effectively leaving Cambodia without an institution to discipline its judges'.¹² A further UN report confirms that the Council 'was not effective in discharging its responsibilities to safeguard the independence and professional conduct of judges and prosecutors'.¹³ This is to be expected, given that all members of the SCM, except one, are CPP members, and two of them are still on the CPP's Central Committee. The Council was chaired by the king, but the other members include CPP officials: the Minister of Justice, the President of the Supreme Court, the General Prosecutor at the Supreme Court, the General Prosecutor at the Appeals Court, the President of the Appeals Court, and three judges elected by their peers. Almost all judges were appointed by the ruling party. Subsequent UN reports revealed little progress in efforts towards judicial reform.¹⁴

Observers of Cambodian politics also tend to agree that the courts remain ineffective in performing their role and that there is still little institutional development. Many prosecutors do not meet national and international standards that require investigations and prosecutions be pursued with impartiality and integrity, and in the public interest. Judges can hardly enjoy their independence: they remain unprotected by the law (laws on the organisation of the courts and on the status of judges and prosecutors have yet to be finalised) and are thus subject to political interference. Cambodian courts are known to take sides with the powerful (especially members of the executive branch) and the rich (especially those affiliated with the CPP). The UN Special Representative for human rights has repeatedly pointed to the judiciary's 'lack of independence and its inability to secure an effective remedy for violations of human rights' and to the fact that it 'has not been able to exercise restraint against executive power'.¹⁵ Courts often failed 'to provide elementary justice, especially in cases where powerful interests [were] involved'.¹⁶ 'Complaints filed by government officials, even when based on weak or unsubstantiated evidence, [were] prosecuted with vigor, while the vast majority of the populace [had] little hope or expectation of having their grievances taken up by public prosecutors.'¹⁷ One good example was the case involving Hun Sen's nephew, Nhim Sophea, who was accused of having opened fire on a crowd after a traffic accident in October 2003, killing two people and wounding four. The charges against him were reduced to involuntary manslaughter,

and he was sentenced to 18 months in prison. In August 2004, the Appeals Court dismissed all charges, but the prosecutor did nothing to appeal against that decision. Another case shows a depressingly striking contrast: a man charged with stealing US\$0.65 was sentenced by a court to four years in prison because his mother could not pay the US\$1000 demanded in exchange for his release.¹⁸

A 2006 report points out that 'the judiciary continued to be subject to executive interference and open to corruption from interested parties'.¹⁹ In March 2005, for instance, Hun Sen launched his 'iron-fist' policy, leading to the re-arrest of seven armed robbers after judges had ordered their release in return for bribes. Another instance of political interference in the judicial system was when royal decrees, issued on 9 August 2007 at the request of the executive branch, led to the replacement of the President of the Appeals Court and appointment of four new SCM members (ADHOC, 2008, p. 47).

There is no recent evidence to suggest that the judiciary have become less subject to political interference. The courts have almost always found critics of the government and members of opposition parties at fault and guilty. By the end of 2008, nine journalists had been killed, but the perpetrators had not been brought to justice. In 2005 Sam Rainsy was convicted *in absentia* of defaming Hun Sen and Ranariddh and was sentenced to 18 months' imprisonment. Cheam Channy, another SRP MP, was charged with transnational crime and fraud, arrested, held in military detention, tried before a military court (although he was a civilian), found guilty, and then sentenced to seven years in prison. According to a UN report, '[t]he Military Court failed to observe his basic rights. The judge prevented defense counsel from calling witnesses to testify, and prevented cross-examination of all prosecution witnesses.' Moreover, '[n]o evidence was presented to substantiate the charges that [he] had organized weaponry or plotted in a concrete way with the intention of toppling the government'.²⁰ Meanwhile, Hun Sen filed criminal defamation lawsuits against at least six critics of the new border treaty between Cambodia and Vietnam. In 2009, after Mu Sochua (a SRP MP) sued the Prime Minister for making derogatory remarks about her, he filed a counterclaim. Her parliamentary immunity was then lifted. On 10 June 2009 the Phnom Penh Municipal Court dismissed her lawsuit and, on 4 August, found her guilty of defaming the Prime Minister, convicted her, and then ordered her to pay him about \$4100 in fines and compensation.

The Extraordinary Chambers in the Court of Cambodia (ECCC), established in 2004 to try Khmer Rouge leaders for their alleged crimes against humanity, further reveal that the Cambodian court system was subject to political interference and was notoriously corrupt. During its

negotiations with the UN after 1997 (in an attempt to bring Khmer Rouge leaders to justice), the government actively sought to limit the UN role and succeeded in getting the international community to agree on a formula that allowed Cambodia to have a majority of its judges and prosecutors. By late 2008 only one Khmer Rouge official had been put on trial, but the costs of this criminal process exceeded the original budget of \$56.5 million. Meanwhile, the ECCC has often been subject to the threat of termination by the Cambodian government. Lawyers for defendants have also been subject to threats of legal action by Cambodian judges who rejected their calls for investigation of corruption in the Chambers.²¹ Far from clear is whether or not the criminal process has done much to educate Cambodian citizens and their leaders, or has substantially helped to strengthen justice institutions in the country.

Even the Cambodian Bar Association has become politicised. In recent years, the Association received donations from politicians and admitted some of them as members, including Prime Minister Hun Sen, two deputy prime ministers and a secretary of state in the Ministry of the Interior, even though none of them had any legal education or academic credentials or met professional requirements. Growing politicisation within the Association includes its claim in July 2007 that lawyers could neither be legally employed nor provide legal services unless the organisations that employed them signed an agreement with the Association. After Mu Sochua's conviction in 2009, Ky Tech (President of the Association, the government-backed candidate for president, and Hun Sen's lawyer) claimed that 'the verdict [was] justice. The court complied with the law . . . [and gave] justice to my client . . . a victim' (*Cambodia Daily*, 5 August 2009, p. 30). As noted earlier, even her lawyer was threatened with expulsion from the Association.

THE CHALLENGES OF LEGACIES AND SECURITY POLITICS

What explains the weak system of institutional checks and balances in Cambodia? A majority of writers tend to attribute the persisting violations of human and democratic rights to the country's political culture. Cambodians have a tendency to commit themselves to certain causes (such as peace, democracy and human rights), but rarely intend to make good on their commitment. Abdulgaffar Peang-Meth, for instance, writes from a socio-psychological-cultural perspective contending that the 'Khmer are alienated from one another' and that '[t]here is an overriding Khmer tendency to say what is expected, not what may be true'. He goes on to point

out that ‘Khmer from different political spectrums . . . smiled politely and courteously . . . and declared *Bat, Ban* (“yes, can do”), and hugged and showed friendliness in public, only to duel behind closed doors, with *Awt Ban* (“cannot do”)’ (Peang-Meth, 2001, p. 333). Although they are Buddhists, the Khmer have a warrior heritage. Their ancestors were valiant Angkor soldiers, fighting for their emperor, who believed in their own invincibility and ended combat against their foes only in death. In Peang-Meth’s words, ‘the core of this warrior heritage is the concept of one sun, one emperor, one nation in one universe. Compromise is thus an alien concept’ (2001, p. 333).

Other cultural explanations regard Buddhism, Cambodia’s dominant religion, as a cultural source that promotes tolerance of evil deeds and political reconciliation. As Stephen Marks puts it, the country ‘lacks the legal traditions to expect courts to settle matters fairly and it has a religious tradition that teaches reconciliation without accountability’ (Marks, 2001b, p. 256). Others, however, regard Cambodia’s cultural tradition as one of absolute power (Peou, 1997a, 2000, 2007), and one of ‘disproportionate revenge’ based on the norm of ‘a head for an eye’ (Hinton, 2002).

Cultural arguments have some merit. They shed some light on the persistence of practices that can be regarded as cruel. From the eleventh to the thirteenth centuries (a period that saw their great empire reach its zenith), for instance, the Khmer practised various forms of violence against slaves and criminals. Slaves found at fault bowed their heads and received ‘beating without daring to make the slightest movement’ (Zhou, 2006, p. 39). Other methods of punishment included putting criminals in ditches, filling them ‘with earth’, and impacting them ‘with stones’, cutting off the toes and hands, and amputating the nose. When caught, a thief would be imprisoned and tortured, in accordance with ‘a remarkable procedure’: if he denied the charge against him, ‘oil [was] boiled in a pan and the suspect [was] made to place his hand in it. If he [was] found guilty, his hand [would come] out in shreds; if not, the skin and flesh [would be] as before’ (ibid., p. 49).

Cruel practices still persisted in more recent Cambodian history. When still in power as head of state, Prince Norodom Sihanouk, for instance, mounted verbal and physical attacks on his opponents and was complicit in his security agents’ use of terror as a weapon against them. Rebels such as those involved in the *Samlaut* peasant revolt in the late 1960s, for instance, were harshly dealt with. The heads of some villagers accused of participating in the revolt were severed and these ‘gristly trophies’ were brought to Phnom Penh ‘as evidence of the army’s success’ (Osborne, 1994, p. 192). Of all the regimes in living memory, the one presided by the Khmer Rouge revolutionaries was by far the most ruthless (Peou, 2000).

Accused enemies of the state were arrested without warrant and lived in festering hells of lost hope and in inhumane squalor. They were never put on trial, were extrajudicially executed, or tortured in various cruel forms, such as beating with whips of thin rattan and lashing with tripled electric wires. The Khmer Rouge prison, known as S-21, was most notorious for such forms of torture.

Meanwhile, the Cambodians are known to have shown little or no interest in building a sound administrative state structure or developing long-term policy, strategy and tactics. During the Angkor period (802–1431), even the Khmer empire's army is said to have gone 'both barefoot and unclothed' and 'had neither tactics nor strategy' (Zhou, 2006, p. 99). There also seems to be 'little difference between the way Cambodia was governed when the French turned the country into its colony in the 1860s and the way Angkor had been governed almost a thousand years before' (Chandler, 1993, p. 142). The French colonists, for instance, learned that the Cambodian King, Norodom, behaved in 'an arbitrary, authoritarian way' and 'was drawn less by the idea of a sound administration than by the imperatives of personal survival' (ibid.). Under French rule, Cambodian monks and elites (royalty and officials) also 'resisted institutional change' (1993, p. 148), and, until the early 1940s, the French had done virtually nothing 'to train Cambodians to replace Frenchmen in the administration' (ibid., p. 164).

Cultural explanations, however, have serious limitations. Critics of the Hun Sen regime can make valid criticisms, but the political realities remain. From a historical perspective, the Cambodians have had only about 10 years free from warfare and less than 20 years in which to build modern institutions capable of protecting human rights. The learning process within such a cultural and historical background no doubt poses a big challenge to Cambodians, especially their top leaders, most of whom received little formal education, operating without the modern institutions put in place early in the 1990s. It is hard to imagine how a people whose country had been decimated by war and violence for centuries could learn quickly and how to behave in a way that would fully meet international human rights standards. Government leaders have come under pressure from the international community to become party to many international human rights treaties, to adopt countless legislative enactments, and to respond to a variety of demands from their citizens.

While such considerations help to explain the persistence of human rights violations rooted in a weak system of institutional checks and balances, cultural and historical perspectives cannot explain variations of violence and institutional development. Political regimes in this country did not violate human rights in equal degrees. Some abused human rights

far more extensively than others and, as noted, the Khmer Rouge regime was no doubt the most violently repressive. Historical evidence shows that insecure regimes or leaders tend to be prone to violence and, by comparison, the murderous Khmer Rouge was the most insecure. The thesis that racialism was the main cause of genocide under the Pol Pot regime has little explanatory power (Peou, 1997b). It overlooks the fact that the number of ethnic Khmer who perished under the regime far exceeded those of other ethnic minority groups. The Extraordinary Chambers in the Court of Cambodia did not charge any Khmer Rouge leaders with genocide. It may also be worth noting that Khmer Rouge leaders could not trust one another and sought to destroy each other. The politics of survival was extremely intense, to say the least. Pol Pot perceived his enemies to be widespread. On 20 September 1976, just over a year after the Khmer Rouge's victory, he decided to step down as Prime Minister for health reasons, but his strategy may have been to deal with his internal enemies believed to have tried to assassinate him. Massive purges of those involved in the revolutionary movement during the civil war (1970–75) intensified (Peou, 2000). The racialism-based thesis ignores the fact that security politics was probably the deepest root cause of the Pol Pot regime's atrocities.

The fact that the overall human rights situation has now improved cannot be adequately explained by cultural and historical legacies. The role played by local human rights NGOs has proved to be a major positive factor. Supported by international organisations (such as the UN High Commission for Human Rights), local NGOs – such as the Cambodian League for the Promotion and Defence of Human Rights (LICADHO) and the Cambodian Human Rights and Development Association (ADHOC) – have worked hard to protect and promote human rights. They have also formed networks, such as the Cambodian Human Rights Action Committee (comprising 18 local NGOs) whose joint task is to protect and promote human rights, to scrutinise governmental actions and to call for an end to impunity and for the Khmer Rouge trials to be credible.

Despite their positive contributions, human rights NGOs also have faced challenges. As members of the executive branch have succeeded in consolidating political power, they have behaved in a more authoritarian way and also worked to limit human rights activities. Human rights NGOs and activists, especially those involved in the protection of the poorest urban and rural communities' land rights, 'have come under increasing pressure'.²² Political authorities, mostly at the local level, have imposed arbitrary restrictions on freedom of assembly, expression and movement. They have also used intimidation and legal action, or threats of legal action, under various pretexts, to deter human rights activists from doing their work, even accusing them of incitement. According to a UN report,

'the accusation of incitement has become a frequent motto of government facing NGO criticism or popular protests against their policies and practices'.²³

Political authoritarianism is not the only source of human rights violations, but political regimes and leaders tend to become increasingly prone to violence when they perceive insecurity to be growing. The current regime in Cambodia, under the leadership of Hun Sen, is comparatively the least repressive, evidently because it has enjoyed far more security than previous regimes. This does not mean that the regime has enjoyed perfect security. There are good reasons why the CPP leadership has felt insecure. Top CPP leaders like Hun Sen, Chea Sim (the CPP President and President of the Senate) and Heng Samrin (Honorary President of the CPP) were former Khmer Rouge cadres. They were among the survivors of the massive purges conducted by the pro-Pol Pot forces. Efforts by the international community to bring surviving Khmer Rouge leaders to justice also seem to have intensified the threat to their personal security. It is true that the Hun Sen-led government initiated the idea of seeking justice for victims of the Khmer Rouge regime by writing to the UN Secretary-General in 1997, asking for assistance. But it is also true that the idea of justice was not to try all former Khmer Rouge leaders, especially those associated with the CPP and numerous Khmer Rouge commanders who were later integrated into the national armed forces.

The fears of prosecution among government officials evidently remain widespread. The UN Group of Experts wrote that 'both of the principal political parties [FUNCINPEC and CPP] have over the years had strong connections with the Khmer Rouge and include former Khmer Rouge among their members, including some who might be targets of any investigation into atrocities in the 1970s'. It adds: '[t]he current Prime Minister [Hun Sen] and many of his colleagues in the . . . CPP . . . were once members of the Khmer Rouge before defecting to Vietnam.' Moreover, 'FUNCINPEC and other parties were closely allied with the Khmer Rouge in the struggle against Vietnam and the PRK/SOC' (UN, 1999, p. 29). Foreign Minister Hor Namhong sued three journalists over allegations that he was put in charge of prisoners in a camp where innocent people were tortured and executed. They were found guilty and ordered to pay the minister \$6500 in compensation and \$1280 in fines to the state.²⁴ In June 2008 Dam Sith, a candidate of the Sam Rainsy Party and editor of the *Khmer Conscience* newspaper, was arrested because he questioned the role that the foreign minister allegedly played during the Khmer Rouge period.

Although there is no criminal evidence against Hun Sen, files compiled by the Documentation Centre of Cambodia are said to provide

'enough evidence to indict CPP President and Senate Speaker Chea Sim and CPP Honorary President and National Assembly Deputy Speaker Heng Samrin for crimes against humanity and/or war crimes'. Chea was a district chief under the Khmer Rouge regime and 'could be accused of mass killings'. Heng Samrin also 'could be held responsible for gruesome massacres of civilians', since his 'unit was engaged in fierce battles against the Vietnamese along the border' (Khmer Intelligence, 2002). At the 29th anniversary marking the Khmer Rouge's January 1979 downfall, Chea Sim warned against politicising the Khmer Rouge trials, calling those with the intent to do so 'absent-minded elements' and 'ill-willed political circles' who were opposed to the process of reconciliation after years of civil strife. In his words, '[w]e condemn any acts to use the courts with the aim of creating instability or disrupting society' (Agence France-Presse, 7 January 2008). Hun Sen has also repeatedly rejected any idea of bringing more Khmer Rouge officials (in addition to the few already in custody) to justice, citing instability and the potential for civil war as the reason for his rejection.

For security reasons rooted in their Khmer Rouge background and the recent violence they have committed against their political opponents, top CPP leaders and their supporters within the armed forces simply could not afford to give up power. Perceived insecurity helps to explain why Sen Hen and other members of the CPP have sought to keep justice institutions weak or to prevent the judiciary and legal system from becoming more politically independent and capable of administering true justice. The annual budgetary allocation to the judiciary remains far from sufficient (usually less than one per cent of the national budget) and much less than that allocated to the armed forces. Winning at all cost thus remains the only option now available to the CPP elites, the only guarantee of their security. Hun Sen said he intended to stay in power until he was 90 years old.

It is also worth recalling that the main reason why the Khmer Rouge became the key spoiler in the peace process, by refusing to cooperate with UNTAC, also had much to do with perceived insecurity (Peou, 1997a). UNTAC was unable to create a political environment that ensured full security for the former resistance movements, especially the Khmer Rouge. Another reason was that the Khmer Rouge could hardly expect to win seats in the 1993 election. Because of the heinous crimes they committed from 1975 to 1978, they found it more useful to lend support to FUNCINPEC, hoping that this former ally would win. Perhaps most threatening to them was the fact that the disarmament plans to be implemented by UNTAC would eventually place them in a defenceless position where they could be subject to prosecution in the future. With an

international commitment to making sure that they would not return to power and would be eventually punished, their fears were justifiable at the time (Marks, 2001b, pp. 245–7). The ongoing trials of Khmer Rouge leaders validate these original concerns.

International politics and regional security dynamics in East Asia also help in explaining the ongoing obstacles to human rights protection and promotion in Cambodia. Even UN agencies operating in Cambodia have been unable to work collectively on human rights issues. The UN Human Rights Commission has done a great job in protecting and promoting human rights, but others have preferred to work with the Cambodian government. I have discussed this point elsewhere (Peou, 2007, 2009b), but it is worth stressing that Cambodia is located in a region where most states still do not have respectable human rights records. As a member of the Association of Southeast Asian Nations (ASEAN), whose members do not have good records of human rights protection, Cambodia may also have learned to combine various methods of repression from other ASEAN states, such as New Order Indonesia's crude techniques of repression, Singapore's sophisticated legalistic techniques, or Malaysia's methods of detention without trial and tight control over television stations and newspapers. ASEAN recently established a regional human rights commission, but it remains toothless.

The CPP has also developed closer ties with the Communist Party of China and maintained close ties with the Communist Party of Vietnam, neither of which has served as a role model for human rights protection. The Cambodian armed forces consider China and Vietnam to be its best friends. China, which began to assist the Cambodian armed forces in 1999 (with no strings attached), emerged as the biggest source of military assistance (estimated to be more than five million dollars a year) to the CPP government. Vietnam continued to provide Cambodian soldiers (up to 500 of them a year) with military training.

Even democracies, such as the United States and Japan, which have done much to help Cambodia build democratic institutions, have often found themselves limited by the pursuit of their national security interests. Rivalry between China and the United States, and especially with Japan, has limited efforts to ensure better respect for human rights by CPP leaders. Anti-Khmer Rouge external pressures helped to prevent the return of the murderous regime, but it has also indirectly helped the CPP to succeed in its struggle for political supremacy by engaging in hegemonic politics.

In short, security politics within Cambodia and the region show that state leaders have considered threats to their personal survival, their regime or state security to take precedence over human rights (Peou,

2009a). But recent struggles for security remain far less intense than those during the Cold War. Almost all governments, democratic and non-democratic, have preferred to work with the Cambodian regime, fearing that antagonising the latter would benefit their rivals. This explains the sense of greater security felt by the current Cambodian regime. Thus it is less prone to violence and more willing to allow human rights organisations to play a limited role.

CONCLUSIONS

The overall situation of human rights in Cambodia over the past ten years has improved noticeably. Human rights violations have, however, persisted. There is still no effective system of institutional checks and balances. Members of the executive branch and the armed forces, which remain under-institutionalised as power has been increasingly concentrated in their personal hands, continue to operate above the law. It comes as no surprise that 'since the early 1990s the vast majority of the many murders of politicians, journalists, trade unionists and other Cambodians active in political and public life have remained unresolved'.²⁵ Cultural and historical legacies help to shed light on the contemporary politics of violence, but they alone have limited explanatory power and cannot explain why some political regimes were more abusive towards human rights than others. Throughout Cambodian history, perceived insecurity has been a key obstacle to the process of institutionalising respect for human rights. As regime leaders became increasingly insecure, they became more prone to violence. Political pressure, rather than the threat of punishment, is thus more likely to encourage respect for human rights. The system of institutional checks and balances remains weak; economic growth generates and widens socio-economic inequality, conducive to unrest, and does not reduce poverty; and security politics at the domestic and regional levels remains intense. Hence prospects for the promotion of human rights remain far from bright.

NOTES

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2. UN Doc. A/57/230, 27 September 2002, p. 6
3. UN Doc. A/HRC/12/41, 5 August 2009, p. 10
4. UN Doc. A/HRC/4/36, 30 January 2007, p. 12

5. UN Doc. A/HRC/12/41, 5 August 2009, p. 9
6. Ibid., p. 8
7. UN Doc. E/CN.2/2001/103, 24 January 2001, p. 11
8. Note 4 above, p. 19
9. UN Doc. A/58/317, 22 August 2003, p. 9
10. Ibid., p. 11
11. Note 4 above, p. 7
12. Note 9 above, p. 12
13. UN Doc. E/CN.4/2006/105, 24 January 2006, p. 13
14. UN Doc. E/CN.4/2006/110, 8 February 2006, pp. 10–12; UN Doc. E/CN.4/2006/110/Add.1, 8 March 2006, pp. 7–8; UN Doc. A/HRC/4/36, 30 January 2007, pp. 7–10
15. Note 4 above, p. 9
16. UN Doc. E/CN.4/2004/105, 19 December 2003, p. 11
17. Note 4 above, p. 9
18. UN Doc. E/CN.4/2005/116, 20 December 2004, p. 10
19. Note 13 above, p. 13
20. UN Doc. E/CN.4/2006/110/Add.1, 8 March 2006, p. 15
21. Note 5 above, p. 9
22. Ibid., p. 11
23. Ibid., p. 11
24. *Cambodia Daily*, 15–16 September 2001
25. Note 4 above, p. 13

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