

DEMOCRACY AND GOVERNANCE ASSESSMENT FOR CAMBODIA

Framework for Discussion

In the past thirty years, Cambodia has suffered from political devastation, disastrous foreign interventions and a prolonged civil war. Under the so-called Khmer Rouge, who ran the country between April 1975 and January 1979, over 1.5 million Cambodians, or one in five, died from malnutrition, overwork or misdiagnosed diseases. Another 200,000, and probably more, were executed as class enemies or as enemies of the revolution. In less than four years, many Cambodian institutions (such as state-run education, health services and the civil service) were severely damaged. After the collapse of the Khmer Rouge, tens of thousands of educated Cambodians fled the country. The painful and drawn-out process of social, economic, political and cultural reconstruction, which began in 1979, is still in progress.

Cambodia's recent history cannot explain or excuse everything that takes place inside the country in 1999, although many Cambodians, confronted with memories, and encountering corruption, impunity and malfeasance by government officials on a daily basis tend to adopt a fatalistic attitude. They believe that conditions in their country are resistant to change, in part because they have existed for so long. In Cambodia, history is not studied for glorious examples, aside from the heritage of Angkor. Instead, when history is called on, it is used to demonstrate that the evils of government, among other things, are immutable.

At the same time, there are many Cambodians who believe that the country deserves a better political culture than the one it currently enjoys. For these men and women, the task is difficult but not impossible. To achieve the desired changes, building a democratic consensus, establishing rule of law, ensuring competition, promoting inclusion and good governance are crucial ingredients in any strategy that might be developed. These ingredients are discussed in detail below. At the same time, it is hard to analyze Cambodian politics and the country's capacity for democracy and good governance without reference to other preconditions of a democratic process. These include peace, access to health care, sufficient government revenue to pay for salaries and services, an educated work force, robust employment in the urban and rural sectors and a birth rate responsive to national resources. In all these respects, except for peace, Cambodia

falls woefully short. The government recognizes the gravity of these problems but lacks the resources and some would say the will, to address them.

Altering Cambodia's political culture will be an uphill battle both for the Cambodians and for outsiders interested in good governance and democracy. The forces resistant to change are very strong. At the same time, no time in the recent past has provided more opportunities for creative engagement with governmental and non-governmental bodies and actors in the country.

February 1999: a Change in the Weather?

Many people we interviewed expressed cautious optimism about the political climate that prevailed in February 1999. They based their optimism on the fact that for the first time in thirty years Cambodians were no longer killing one another. Of the non-political preconditions for civil society listed above only the first of them, peace - exists in Cambodia today. The phenomenon dates from the negotiations that led to the formation of a coalition government in late November 1998. The collapse of the Khmer Rouge as a politico-military force earlier in the year was also crucial.

Everyone in Cambodia has welcomed peace. All the men and women whom we interviewed agreed that peace is crucial for building self-confidence, mutual trust and communication among Cambodians. "Without peace, nothing is possible", a human rights activist told us. The by-products of peace in turn, may sooner or later assist the development of consensus, remove the threat from competition, and lay the basis for civil society, good governance and the rule of law. In Phnom Penh in February 1999, people were breathing easier, it seemed, than they had at any time in the recent past.

As far as a USAID strategy for democracy and governance is concerned, a window of opportunity appears to have swung open.

Atmospheres change. Windows can slam shut. At the same time, every peaceful day or week adds to the optimism, courage and the momentum of the Cambodians who are committed to positive change in the fields of human rights and the rule of law. These men and women, in turn, are the ones with whom any USAID democracy and governance program will have to work. For the most part, they can be found in the non-governmental sector, although there are important exceptions to this "rule", scattered among government ministries.

One person we spoke to called the current situation the "calm before the storm". Others suggested that unexpected allies and unforeseen opportunities for reform could spring up at any moment, especially responding to equally unexpected initiatives from the top, which is to say from the Prime Minister, Hun Sen.

Events in the last few months past can be used to justify both positions. Pessimists can point to the violent aftermath of the 1998 elections. Optimists might suggest that the agreements forming the coalition government in November 1998 ushered in a strong, responsive government. February 1999 was in any case an anomalous month, culminating in the Consultative Group's meeting in Tokyo, but as this is written (late March) conditions remain stable. During the run-up to the CG meeting, Hun Sen's government was on its best behavior. Its representatives, led by Hun Sen, made the appropriate speeches in Tokyo, and continued to do so after they came home. What will happen over the next few months, as the donors resume funding (or fail to do so) and increase their scrutiny of the country, is anybody's guess. Prospective donors should monitor the government's treatment of local human rights NGOs, legal defenders and the NGO community in general. From an optimistic perspective, it could be argued that it may be harder to demolish good behavior, as time passes, than to continue bad behavior without a break. Good behavior produces allies, also, while the bad behavior alienates donors, frightens ordinary citizens and pushes potential allies into opposition. In other words, continuing good behavior, on the part of the government, might not only encourage outside initiatives in democracy and governance but will also strengthen the government's hand by improving the level of governance which it delivers.

With or without an official American engagement with the Cambodian government, Hun Sen himself is crucial to the country's political future. He is a powerful, astute and unpredictable politician. At this stage in his career, he may be interested in governing the country fairly. As one of the people we interviewed put it; Hun Sen has now lost two national elections. He can no longer plead that his government's woeful record in providing basic services is due to continuing warfare against the Khmer Rouge or to continuing threats from a partially armed and threatening coalition partner. As the person said, "It's up to him, at this stage, to prove to people that he can really govern the country"

There is no quick fix for Cambodia's problems nor is there any assurance that long-term progress in democracy and governance in Cambodia will be as great as optimists might like to hope. To have any chance of success, the governance and democracy strategy that develops, incrementally, needs to be cautious, flexible, nimble and empathetic.

Cambodia's Recent History: Chaos or Opportunity?

At first glance, Cambodia's political history since 1970 or so appears gloomy and chaotic, darkened by enormous, traumatizing experiences that are difficult to match in the aggregate in other countries. These experiences can be encapsulated glibly by the phrases "civil war" and "killing fields", but they were more complex than that. They cloud the memories of most Cambodians over thirty and cast a shadow over the way Cambodia is governed.

Since 1990, other bewildering changes have swept through Cambodia. They can be subsumed by the word "modernization". We are no longer confronted (as many analysts were in the 1960s, for example) with an apparently timeless, isolated and static social model. Cambodia has been flung into a larger world, and shares the problems that globalization brings in its train. Moreover, with half of Cambodia's population under fifteen years of age, the traumas of the 1970s and 1980s are losing some of their importance, while the challenges of living at the end of the 20th century absorb nearly everyone's time. These rapid and far-reaching changes are difficult to measure and sometimes even escape one's notice. Concentrating on "modernization" when we analyze Cambodia today presents challenges and may produce rewards that focusing on Cambodia's history, and the pessimism that doing so induces, cannot.

That said, the forces of modernization, like so much else in Cambodia, need to be placed in an historical context. History, as much as modernization explains Cambodia's politics in 1999 and many of the fears and hopes of ordinary Cambodian men and women.

For several centuries after the collapse of Angkor in the 1400s, Cambodia was repeatedly invaded, protected or threatened by its stronger neighbors, Thailand and Vietnam. Since 1860, the country has been an absolute monarchy, a French protectorate, a neutralist, constitutional monarchy, a pro-American republic, a Maoist - inspired state, a Vietnamese protectorate, an ex-Communist peoples' republic boycotted by the UN, a UN protectorate and, once again, a constitutional monarchy. Since 1946, it has had five constitutions. On three occasions in the last thirty years, newly installed regimes have condemned their predecessors to death.

The chaos imposed on the country by Democratic Kampuchea (1975-1979) came close to wrecking the country, severely damaged its institutions and permanently scarred millions of survivors. The horrors of the period are impossible to exaggerate, and so are the courage and resilience of the people who endured them.

Another legacy of the DK period is that most members of Cambodia's small professional and educated elite were either Khmer Rouge cadre or were decimated by the regime or took refuge abroad after 1979. Deaths, emigrations, warfare, funding shortages and inertia have left Cambodia woefully short of men and women with experience, education and skills. The country's educational system, severely strapped for funds, has never regained the strength or social status that it enjoyed before 1970. According to some sources, illiteracy in Cambodia is increasing. Health care also deteriorated.

The Vietnamese protectorate of 1979-1989 isolated Cambodia from Asia's economic boom and blocked off access to notions of democracy, capitalism and civil society. Cocooned by Vietnamese protection and faced with international hostility, the Peoples' Republic of Kampuchea and its successor, the State of Cambodia, based their legitimacy on the idea that they had rid the country of the Khmer Rouge and had kept the country from being invaded by foreign powers. Like Cambodian governments before and since, the leaders of these regimes saw themselves as legitimized by their strength and their exemplary conduct, rather than by elections or by the responsiveness to popular pressure. Although Marxism-Leninism was abandoned as an ideology soon after the withdrawal of Vietnamese troops in 1989, the Communist notion of an unchallenged ruling party, and the idea that political opposition was tantamount to treason, remained in place.

In this period, to be sure, the mass killings and chaotic economic policies of DK came to an abrupt end. Politics lost its racist tinge. Moreover, many of the institutions abandoned by DK such as education, Buddhism and markets were allowed to re-emerge. At the same time, the country remained at war, and the Cambodian forces arrayed against the Phnom Penh regime enjoyed widespread international backing. DK's leaders had based their policies, in part, on their belief that enemies surrounded them. The leaders of Cambodia after 1979 followed suit. Thousands of Khmer (and Vietnamese) were killed and maimed in the fighting while the Cambodian economy stumbled along under often inept, supposedly centralized and poorly funded supervision.

One byproduct, historically, of the last half century is that the Cambodian Peoples' Party (CPP), is Cambodia's longest serving political group. The CPP draws much of its strength from its capacity, built up in the 1980s, to dominate every aspect and every level of government. Partly because it faces no systematic challenges from other political groups, the CPP has acted as if its members were above the law. Because opposition in Cambodia has for centuries been identified with treason, the CPP has never punished those who have defended the party and its leaders from attack.

Although threatened by the possibility of pluralism in the UNTAC period and in the aftermath of the 1998 elections, the CCP managed to retain control over all crucial government services throughout the 1990s. Many people we interviewed spoke of the CCP's tight grip on provincial, district and communal affairs, often through officials who have held office since the Vietnamese protectorate. The possibility that commune officials might be subjected to electoral scrutiny in 1999 or 2000 may be a means whereby the CCP cements its control over this level of administration. Some of our interlocutors found the prospect of elections at the commune level distressing evidence of the CCP's dictatorial style; others noted that communes in fact have less power than district and provincial officials and do not loom large in peoples' daily lives.

The government has begun a process that it has labeled as decentralization, including the conduct of local elections. While the government's move toward "decentralization" may be a puppet show staged to please foreign donors, the commune elections might also offer a genuine possibility to introduce responsiveness and competition at the commune level. Innovations in Cambodia's top-down style of governance, insofar as they lead to increased participation in rural areas, are certainly to be welcomed.

The political transition of late 1998 and the coalition government that took office at that time may have marked a turning point in Cambodia's history. The coalition seems to have been genuinely negotiated, rather than forced onto any of those now participating in it. To say that Cambodia's political culture has altered in the process would be premature and naive, but it would be unjust to deny Cambodians the capacity or the will to improve their political culture, here and there, little by little and now and then. A peacefully established coalition that reflects the balance of votes cast in 1998 seems like a sensible beginning.

For improvements to work in the medium and long term, they must be acceptable not only to outsiders who demand them but to the Cambodians who carry them out. We would argue that an essential way to improve Cambodian political culture is to remove the impunity now enjoyed by Cambodian civil servants including soldiers and police.

Article 51 of the 1994 Law on Civil Servants provides that except in cases of flagrante delicto no civil servant may be arrested or prosecuted for any crime unless the concerned minister gives his consent in advance. Human rights NGOs, the UN Office of Human Rights and officials in the Ministry of Justice are all hoping that this provision will be repealed in the near future. Several people we interviewed said that as far as the culture of impunity was concerned, repealing Article

51 was an extremely high priority. Indeed, repealing the law would be a giant step forward toward building national confidence, diminishing impunity and laying the basis for the establishment of a civil society. It would provide an important element of accountability for government officeholders that have not previously existed. Another way to improve political culture in Cambodia would be for the government to co-operate with local human rights NGOs to investigate complaints brought by victims of land expropriation, politically motivated violence, and child trafficking.

Consensus

The Political Game

There is consensus in Cambodia about the way the political game has always been played. That consensus may be weakening as a side effect of the elections of 1993 and 1998, which suggested to millions of people that the political game might possibly be altered, through voting, with unpredictable results. In the first free and fair elections in Cambodia's history several million voters expressed their disapproval of an armed, incumbent government. The freeness and fairness of the elections and the voters' behavior on Election Day were unprecedented and unforeseen, both by those in power and by many informed observers.

Under pressure from voters and the international community the government of Cambodia has been asked to govern under an altered set of rules. How long the Hun Sen government is willing to do so remains in doubt. Some observers spoke to us of a honeymoon period extending into the year 2000.

However, since the time-honored game of politics is in many senses still alive and well, we should review the way it works. The game has always had as its objective obtaining, exercising and keeping as much political power at as many levels and in as many arenas as possible. Players agree that the rules, followed to the letter, will leave the losers co-opted, in exile, or dead. The risks of indulging in opposition are almost as great as the rewards that accrue to the incumbent, and so the only challenges worth attempting are those that promise complete success.

The fact that ordinary people were seldom involved in the game, except as mercenaries, victims or spectators, and even more rarely profited from the game as it was played by faraway people, meant that the elections of 1993 and 1998 were not called by Cambodia's newly enfranchised voters. However, once voter education had taken hold, and voters believed that balloting would

be free and fair, the alterations to the game were widely welcomed. Similarly, ordinary people's awareness of "human rights" (as opposed to human rights abuses, which many of them experienced on a daily basis) went hand in hand with the innovation, introduced in the UNTAC period, that victims could find an outlet for complaints and might even be protected. This has shifted the terms of political discourse if not those of political practice. All thirty-nine parties contesting the 1998 election included "human rights" in their platforms.

Moreover, there are at least two Cambodias. In one, those with financial and political power and their clients play the traditional Cambodian game. For government workers, as incumbents, this takes the form of systems maintenance, and surveillance of possible opponents. In the other Cambodia, people who are relatively poor and powerless go about their daily lives as best they can. Because of the culture of impunity that flourishes throughout the country, the police and the armed forces are important elements of the "first" Cambodia.

The other "Cambodia" can be broken into urban / rural, male/ female, elder /younger and agricultural/manufacturing/service segments, to name a few. Over 80 percent of the country's people inhabit it. They tend to be very poor, in poor health and with little access to education. Most females are found in this Cambodia. The second Cambodia has for centuries been ignored mistreated or manipulated by nearly all Cambodia's political actors.

It would be misguided to romanticize the second Cambodia or to demonize the first. It would be naive to suggest that given the chance to play the political game, less privileged people would opt for being honest, transparent and accountable. Nonetheless, given the enormous gaps between the first Cambodia and the second, we would argue that those outside the political game deserve more attention, and more justice, than those who are playing the game intensely, with impunity, at the top.

Both Cambodias are real; both are Khmer. They overlap, sometimes in a single family. Many inhabitants of the first Cambodia are open to new ideas; many of those in the second have neither the capacity nor the will to change. On balance, however, to abandon or foreclose a program in the governance and democracy sector would be to take the easy road of punishing everyone for the perpetrators' behavior, and denying the potential beneficiaries of civil society the opportunity to form one.

The Boundaries of the State

There is general consensus among Cambodians about the boundaries of the state, who is a citizen, and about the way the political game has traditionally been played. Nobody questions where the contest will take place. Some Cambodians claim that parts of southern Vietnam, once controlled by the Khmer and still containing substantial Khmer-speaking populations, should revert to Cambodian control, but these notions have not been articulated publicly for many years. Areas of Thailand with Khmer speaking minorities have not been subject to irredentist claims. As we will see in the discussion of inclusion below, ethnic Vietnamese in Cambodia have been denied citizenship and full rights, and minority populations, especially in the northeast, have been subjected to sometimes unwelcome "Cambodianizing" projects. These forms of mistreatment have existed in Cambodia since it gained its independence, and arguably are deeply rooted in the distant past.

The Rule of Law

Neither Cambodia nor its population, in the middle of 1999, is subject to the rule of law. Many important laws have not been written. Most of the existing laws are routinely overridden or ignored. The constitution of 1993, which contains lofty guarantees of human rights, is no match for the onrushing exercise of power. Judges are ineffective, poorly trained, badly compensated, often politicized and in many cases corrupt. The overall situation is grim, and a high official of the government opened his interview with us by saying, in Khmer, "Justice in Cambodia is zero".

Because the rule of law represents the glue that binds a democratic order together, that expresses the basic consensus about the way society is organized and governed, efforts to establish, nourish and strengthen the rule of law in Cambodia deserve the highest priority. This would involve working with the NGOs already engaged in rule of law work and, ideally, it would involve re-engaging with elements of the Cambodian government to support those people in the government who favor judicial and legal reform. Other efforts, by comparison, amount to working at the margins. Without legal protection, anyone acting in the interests of civil society, insofar as these collide with those of people holding power, does so at his or her own risk. As anti-government demonstrators in March 1997 and September 1998 discovered, the risks of confrontation can be high, while those inflicting mayhem on demonstrators go unpunished. It is difficult to conceive of a civil society, and much less good governance, flourishing in the absence of the rule of law. This absence, at present, struck us and many of our interlocutors as the chief stumbling block facing any feasible, multi-faceted strategy for democracy and governance

The immunity from prosecution of public officials, enshrined in current Cambodian law, undermines any possibility for an effective system of justice and a systemic defense of basic human rights. The UN Special Representative of the Secretary General for Human Rights in Cambodia Thomas Hammarberg, opening his report to the UN in November 1998, wrote: "The phenomenon of impunity continues to be the most serious problem in Cambodia in particular with regard to unlawful acts by the military and the police".

In interviews and in our informal conversations "impunity" was repeatedly cited as the country's major problem in the field of human rights. As long as a culture of impunity suffuses Cambodian life, it is premature to speak of good governance or civil society. At the same time, as long as the culture persists, the protection of victims of human rights abuses becomes another high priority, comparable in importance to encouraging, as best we can, the rule of law.

No short term solution to impunity is in sight, although progress is conceivable, as suggested above, should those in power see it in their interests to lift the immunity from prosecution now enjoyed by civil servants, punish some known offenders and investigate some serious crimes. In the meantime justice is for sale to the highest bidder. The political will to punish offenders affiliated with those in power is non-existent. The amnesty for Nuon Chea and Khieu Samphan, following secret negotiations, suggests that impunity may even extend to the Khmer Rouge leadership who presided over the deaths of over a million of their compatriots.

In Cambodia, life, liberty and property are not bounded by the rule of law, personal security is guaranteed to citizens on paper but seldom in practice and public security forces are generally immune from prosecution. In court cases, judgements are rendered in response to bribes by the plaintiff, the defendant, or both. Indigent litigants invariably lose, while those having access to powerful allies and cash are consistently favored over those without.

Under these circumstances, it is probably premature and naive to speak of an independent judiciary in the country, or to predict that one will take office in the near future. The vast majority of judges and magistrates began working well before 1993, and membership in the CPP was a criterion for employment. They have never been paid a living wage, and they are not widely respected in the community, whose members suspect them as being biased in favor of the ruling party. In fairness, it should be noted that in the colonial period and under Sihanouk and Lon Nol, the judiciary system earned little respect. Under Pol Pot, there was no judicial system at all.

While actuarial calculations would guarantee that at least some judges are persons of integrity, very few of them have legal or judicial training and none of them is adequately paid. The priority given to justice by the new coalition government can be inferred from the fact that the Ministry of Justice, for its work throughout the country, has been allocated less than half of 1 percent of the national budget. On the other hand, as we argue below, recently installed officials in the ministry are eager to press for reform. Trying to improve Cambodia's judicial culture, and reduce the culture of impunity while cold-shouldering the people who might effectuate the desired reforms seems counter-productive. Without prolonged and multi-faceted engagement with the existing government, no mid- or long-term governance and democracy strategy for Cambodia can succeed. Incorporating potential allies within the government in a common effort to change the system of justice both sustains the process of change and as results are achieved may serve as well to sustain alliances formed with these internal allies. Such engagement can and should be incremental, tested through results achieved. This sort of strategy involves risk, but risk-taking is essential to move beyond the status quo.

An approach to enhancing the system of justice that needs to be explored further is based on the traditional system of village justice, the use of local authorities (a village elder, a Buddhist monk) as arbiters of disputes. During the Vietnamese protectorate such a system of traditional justice was extended to urban areas. That extension may have put strains on the legitimacy and acceptability the system. But, this system of alternative dispute resolution, based on a tradition that extends all the way up to a role for the King in the settlement of land disputes, may represent another avenue for expanding the availability of an acceptable justice system.

The challenge is great, the work is crucial and the chances for success in the short term are probably not great. If the political atmosphere continues to improve as rapidly as it has done over the last few months, however, there are grounds for hope.

Competition

While the word "competition" hardly describes the fight to the death that characterizes Cambodian political culture, it is worth noting that Cambodians in Phnom Penh at least speak more freely and critically than citizens of many authoritarian countries. This has been true for several years. Direct attacks on those in power, such as those that followed the 1998 election are

dangerous for participants and rare because demonstrators cannot rely on being protected from arbitrary arrest, torture and even execution.

Opinions, on the other hand, are freely expressed and freely exchanged. In the capital at least, political sophistication is increasing. Although only the English language print media can be characterized as impartial, the newspapers financed by political groups or by powerful business leaders reflect a wide range of different points of view. While Cambodia is by no means "a vibrant civil society in which pluralism is encouraged" we know as much as we do about the place because it is visited so often by human rights workers, journalists, NGOs and consultants taking the country's pulse.

Many people we interviewed spoke of the importance of the Khmer service of the Voice of America to thousands of Cambodian listeners. Others pointed to the range of television programs, and videos, that are beamed all over the country. Innovative programming in the human rights area by groups such as the Women's Media Center have raised public awareness, helped to educate voters, and sped up the flow of information.

While the openness and vibrancy of media and private citizens in Phnom Penh is commendable, this openness and vibrancy are probably deceptive if we consider the country as a whole.

Competitive arenas are not accessible to most Cambodians, who live in scattered villages that are administered, insofar as they are monitored at all, by the CPP. People in the countryside who vocally oppose to CPP, as experience has shown, are taking their lives into their own hands.

Freedom and fairness in the political arena outside of internationally monitored national elections have not been demonstrated in Cambodia so far. For competition in Cambodia to be "free and fair" one assumes the existence of monitoring mechanisms on a national scale. These might include an independent judiciary, and independent media. As already noted, the judiciary is certainly not independent nor is the media freed from direct pressure by the powers that be.

Finally, there are no "publicly acceptable rules and norms" governing political behavior in Cambodia. Power belongs to those who hold it. When Cambodians use the phrase "to hold power" they often clench their fist, as if clutching power inside it. Cambodia's experience with questioning the status quo is very short. Those questioning it include many of the people whom we interviewed. They are courageous and, in the long run, optimistic. At the same time it would be unrealistic to expect "rules and norms" to sprout from Cambodian political culture overnight.

Inclusion

Unlike the other countries of Southeast Asia (excepting Brunei and, to a lesser extent, Singapore) Cambodia is ethnically and linguistically homogenous. Less than 500,000 of its inhabitants speak languages other than Khmer, and these minorities (Cham, Chinese Vietnamese, and mountain people) are increasingly fluent in Khmer. Cambodia is the only nation state that can be roughly identified on an ethnolinguistic map of Southeast Asia. As far as we are aware, the only formally disenfranchised group in Cambodia are those ethnic Vietnamese unable to prove protracted residence. Under the Khmer Republic and Democratic Kampuchea, ethnic Vietnamese were subject to harassment, and persecution. Hundreds were massacred under Lon Nol, and hundreds of thousands were made to leave the country after the Khmer Rouge seized power. In the guerrilla war waged by the Khmer Rouge in the 1980s and 1990s, Vietnamese were targeted for killing. In the disorders following the 1998 election, opposition political figure Sam Rainsy, in a series of inflammatory, irresponsible speeches, stirred up anti-Vietnamese sentiment to no useful purpose except to display an element of his political character hitherto concealed from his supporters.

Racist feelings in Cambodia, like those fanned among ethnic Malays in Malaysia are based on hostility toward often more prosperous immigrants and privileging the people who presumably have always inhabited the country. Hostility toward Chinese in Cambodia, however, is rare, and Cambodians, by and large, are a tolerant people. Minority populations in the northeast are discriminated against in an unsystematic way, and so are women and to a lesser extent children throughout society (another reason for encouraging the rule of law) but our evidence for these charges is anecdotal. Mistreatment generally occurs outside the political arena.

Participation in the 1993 and 1998 elections was extraordinarily high. In both cases, over 90 percent of the eligible voters registered to vote, and over 90 percent of those registered showed up on Election Day to cast their ballots. The election results indicated that high participation, to a large extent, reflected dissatisfaction with the system and their longings for peace.

On the basis of voter turnout, a key ingredient of inclusion, and as an indication of popular participation in government, Americans have nothing to teach the Khmer.

Other Institutions and Arenas

The vast majority of Cambodians are subsistence farmers who belong to no institutions aside from the pro forma membership of many of them in the CPP. On a national scale, some of the institutions are clearly more important and more viable than others. One such powerful institution is the Buddhist monastic order, or *sangha*; another consists of the armed forces. Both institutions are hierarchically organized and both command the loyalty of those attached to them. They represent alternate centers of political gravity to the political machine established over the years by the CPP and by Cambodia's prime minister, Hun Sen, whose military background goes hand in hand with what appears to be his indifference to Buddhism and its teachings. In rural areas, the army pays for itself by engaging in illegal logging and other commercial activities. Without engaging in these activities, the soldiers would not be paid and the generals would not get rich. Other institutions outside the established political parties that would reward analysis would be the rapidly expanding garment industry (which provides 90 percent of Cambodia's exports) the universities and high schools, which have been loci of resistance to government excesses.

While it is unlikely that the armed forces will ever try to overthrow the government by force, it is also unlikely that the moral precepts of Buddhism or the idealism of many students and teachers will ever be powerful enough, by themselves, to alter Cambodia's ruinous and pervasive political culture. Indeed, one of the people we spoke to insisted that change in political culture could only come from the top; others suggested that the place to look for constructive change, or at least the rudiments of good governance, was at the village level, where conflicts were resolved in peaceful, traditional ways and where people were living as best they could beyond the reach of the state and outside the corrupting influence of those in power. The role of monks and respected elders in the village has always been crucial to these efforts.

While it is impossible to say whether top down or bottom up efforts at easing Cambodia's transition to democracy will be more successful, the beneficiaries of the transition must be those who are suffering most under the current political culture. A transition to democracy must address the needs of those unprotected by the rule of law, by wealth or by links with the ruling party. Those most at risk, as we have already suggested, are those who vocally oppose the status quo.

In our view, no holistic, incremental and long term strategy can succeed, unless the current restrictions on government-to-government relations, as they affect the mission, are modified or lifted. These programs are meritorious in many ways, and worth continuing, but they offer few prospects of substantial, long-term results in a country where government is so pervasive and

where the long-term objective of a democracy and governance program is to alter the country's political culture. That change requires, in part, a change the government's modus operandi and the way in which government officials view the world.

The Current Context and Democracy Programming

Given the political situation and problems outlined in the preceding pages, how does the current state of play in Cambodian politics, as we encountered it very in early 1999, offer opportunities for a USAID governance and democracy strategy with any prospect of success?

Our interviews, informal conversations and background reading have led us to be cautiously optimistic, but also to be tentative and prudent. Our proposals are laid out in the next section. Our optimism about setting the strategy in motion is based on a range of factors, developments or events:

1. A change in the political atmosphere and political dynamics, following the relatively free and fair elections of July 1998, the peaceful establishment of a genuine coalition government at the end of the year and the collapse in 1997-1998 both of the Khmer Rouge and of Cambodia's long-standing civil war. Threats to this improved atmosphere include the possibility of unrest and demonstrations against the government in Phnom Penh, worsening economic conditions in the countryside, increasing lawlessness, the possibility of violence in the upcoming commune elections and the conceivable enactment by the government of an NGO law that would, among other things curtail the work of NGOs in the areas of rule of law, women's issues and human rights.
2. Increasing pressure from international donors to link their assistance to governmental reform and a corresponding willingness on the part of certain elements of the new government to improve its performance. If the government believes it can obtain funding without reform, or by carrying out cosmetic reforms, it will proceed to do so. Many members of the ruling party see continuing scrutiny by donors, and demands for reform, as violations of Cambodian sovereignty.
3. Related to this, it is likely that Hun Sen and his associates in the army and the key ministries directed by his technocratic associates have made the connection between the civil violence of 1997-1998, almost entirely initiated by the CPP, and donor resistance and Cambodia's isolation from international bodies on the other. Membership in ASEAN and the UN and continuing

foreign assistance are more precious to the leadership than any rewards that might accrue from repeated acts of violence.

4. The existence of a vibrant, experienced, highly motivated and increasingly professional NGO community, prepared to work long and hard in the fields of human rights, women's issues and the rule of law, aided by a growing number of actors from outside government (e.g. in the media, private law practice, UN agencies and foreign embassies, Cambodians returning from overseas) concerned with issues related to democracy and governance. The performance of NGOs depends not only on continued funding from overseas donors but also on the tolerance of those in power. A punitive NGO law could stop a great deal of valuable work in the areas of democracy and governance.
5. A range of newly installed government officials and newly elected representatives in the National Assembly who appear to be interested in promoting and accelerating change. Encouraging these potential allies to retain their momentum will be a crucial challenge to American diplomacy in the months ahead and a key ingredient of USAID policy should the mission be allowed to re-engage with the government in the foreseeable future. If these plausible reformers are muffled, punished or co-opted by the government, it is unlikely that spokespeople for reform would spring into view elsewhere.
6. The fragile possibility that political actors opposed to the ruling CPP, led by but not limited to Sam Rainsy and his followers, will act responsibly to check and balance the government's unaccountable power, through constructive criticism, within the National Assembly, to which several of them have been elected. It is very unlikely, however that Sam Rainsy will be willing to play this relatively muted role until the next National Assembly elections.

Of these six factors, the first is the most important, because only if Cambodian political culture alters and only if the country remains at peace can any realistic strategy be set in motion. The fifth factor, given the volatility of the actors in question, may be the least likely to succeed.

These bases for optimism need to be set against the country's woeful economic condition, its poor health and such uncontrolled phenomena as corruption, the HIV/AIDS pandemic, the trafficking in women and children, and a poorly performing education system. These bases also need to be weighed against the culture of impunity that persists throughout Cambodia, the incompetence and corruption that affects the judicial system, and the winner-take-all character of Cambodian politics throughout the country's history.

The key to the political game in Cambodia today, if we reduce it to a personality, as Cambodians generally do, is the country's 48-year old prime minister, Hun Sen. He is a crafty, energetic, supple and despotic politician, almost immune from the checks and balances that exist, in theory and on paper, in the judicial system, the national assembly and in competing branches of government.

Hun Sen has been Prime Minister of the country since the mid-1980s. His understanding of political culture, strategy and tactics is remarkable. So is his grasp of international realities, and of the places where he can form alliances in order to maintain himself in power. Although he was a Khmer Rouge military cadre for seven years and absorbed a good deal of Marxism-Leninism, perforce, under the Vietnamese protectorate, Hun Sen, it would seem, has never been a fervent Marxist. Unlike many Cambodian politicians, he is not a prisoner of the past. Unfortunately, his enormous talents are overshadowed by his failure to investigate any of the politically motivated killings that occurred in the grenade incident of March 1997, the incidents of July 1997, and the run up to then national elections of 1998.

In spite of the long shadow that Hun Sen casts across Cambodia's political landscape, it would be naive to reduce Cambodian governance to one man. Many people we spoke to mention that other leaders and fiefdoms in Cambodia, without challenging Hun Sen directly do not owe their prosperity to his patronage. These men and fiefdoms are immune from any pressures, other than outright violence, that Hun Sen might be prepared to exercise against them. Some regional military commanders, it seems, fall into this category, and so do some of Cambodia's most prominent businessmen. Although Hun Sen has been a member of the CPP and predecessor parties (including the Khmer Rouge) for nearly thirty years, there is no evidence, from his behavior since 1993, that he responds swiftly to party discipline or that he commands loyalty throughout the ranks of the party. Those elements in the CPP itself, especially that associated with its old-line leadership, operate at a distance from Hun Sen and follow strategies of their own. The strength of this faction, if it were called that, seems to lie in the Ministry of the Interior and the local government networks which the ministry controls in rural districts. This is especially the case in the eastern part of the country, that were closely linked to Vietnamese-instigated resistance to France in the 1950s and to disaffected factions in democratic Kampuchea. However, it should be added that quarrels in the CPP are not carried out in the open, as they are in other Cambodian political parties, and much of what is said about "factions" in the CPP amounts to speculation or perhaps even to wishful thinking.

The loyalties of the armed forces, cultivated for many years by Hun Sen, are difficult to gauge. They will become clearer with the demobilization of the army over the short and medium term. The power of factions inside the CCP who are hostile or indifferent to Hun Sen may well become clearer in the aftermath of the commune elections, which will be dominated by the CCP and supervised by the Ministry of the Interior. If commune leaders hostile or indifferent to Hun Sen or leaders loyal to other patrons take office throughout the country, the Prime Minister's provincial power base, always weaker than his military, technocratic and entrepreneurial ones, will weaken even more. The elections in any case may bring some of these internal rivalries to the surface.

Hun Sen's control over the government, for the foreseeable future at least, is not at risk. even though Prince Rannaridh's FUNCINPEC and Sam Rainsy and his eponymous party contest it. Both men have sought foreign backing, but Rannaridh's campaigns for support have been hampered by his inconsistent policies, his hands-off approach to party organization, his unpopularity and his often-lackadaisical political style.

Sam Rainsy has presented himself, in the United States and elsewhere, as the only political figure in Cambodia committed to democratic principles, expressed primarily by his courageous but often vicious and maladroit public statements. These have included expressions of anti Vietnamese racism that stirred up some of his followers. His assertions that Hun Sen is a 'Communist' have pleased Rainsy's supporters overseas. Although cast by some optimists following the formation of the government at the end of 1998 as representing the loyal opposition, Rainsy's loyalty to the government is minimal and in speeches outside the country he has called for its removal from office. His stance is understandable because he is convinced that Hun Sen tried to have him killed in March 1997, but his credentials as a democrat were tarnished by his conduct following the election, by his calls for foreign support in his campaign to overthrow Hun Sen and by his refusal to co-operate with any other political figures. Ironically, though some of his behavior suggests that he is the most up-to-date of the actors in Cambodia's political game, the tactics he has chosen represent a throwback to the past. These include seeking powerful foreign patrons, rekindling racist hatred, and denying the validity of an election which he failed to win.

For the first time in a half-century, Norodom Sihanouk is not a major actor in Cambodia's political game. His health is failing and he lacks the energy to carve out a place for himself in the continuing drama. Since 1992, bereft of arms, he has shown himself to be an astute and vigorous campaigner for what he perceives to be Cambodia's welfare. He encouraged Amnesty International to visit the country. He has objected to many of the excesses of the coalition, and he brokered the agreement that put the government together at the end of 1998. It is impossible to

imagine someone else performing these duties. Ironically, a former absolute ruler represents the only consistent check and balance against Hun Sen's ongoing drive to power. Less ironically, this relatively powerless old man is the only political figure in Cambodia who is widely respected and loved. While it is likely that the monarchy as an institution will die with him, given its value as a check against the runaway power of the state it is worth recalling Sihanouk's unique position in Cambodian history as a ruler whose genuine fondness for the "second" Cambodia often exceeded his attachment to the first.

Building a Democracy Program

The analysis contained above suggests certain broad problems that need to be addressed in building democracy in Cambodia. Those problems are:

- A justice system that is plagued by the impunity of public officials, inadequate codes, the lack of judges, of support staff, of infrastructure and the lack of an ability to educate judicial personnel and a history of disregard of human rights violations.
- A political culture that does not accept the notion of 'loyal opposition', that is a political culture that does not accept a vital part of a democratic consensus, the idea of free and open competition for political office.
- A need to broaden effective participation, to include 'the second Cambodia', the approximately eighty percent of the population that has historically been excluded from any effective voice in the political process.

The impunity of officials, the lack of an effective opposition that results from the lack of a democratic consensus and the limited participation of the citizenry all come together to make governance in its broadest sense unaccountable to the citizenry.

All of these problems need to be faced to enhance the quality of democracy in Cambodia. Realistically, a USAID democracy strategy with a time horizon of five years can only begin to address these issues, all of which require longer-term solutions. We will examine each of these problem areas with a view toward exploring what can be done within that five-year time horizon. We will look at the constraints that USAID faces in responding to these three sets of issues, and then we will present a proposed prioritization of actions, taking into account those constraints.

Strengthening the Rule of Law

As we have already noted, strengthening the rule of law and the institutional capacity to implement it are vital to the future of democracy in Cambodia. There are multiple requirements that need to be met.

- **New criminal and civil codes need to be developed.** There are inadequate criminal procedures and codes. As already noted, the only operating code is UNTAC's effort, limited to 75 articles that do not cover the full range of concerns. The French have provided limited technical assistance in the drafting of a new criminal code, but much more remains to be done to complete the task. There is also no adequate civil code although this is an area where assistance is being provided through the Japanese. They have recently signed an agreement to provide long term expertise to complete the task over the next two or three years. There is, therefore, a need to ensure that the task of developing adequate codes and related procedures is completed, although not necessarily using USAID resources.
- **Institutional capacity has to be strengthened.** This means training key players such as judges, prosecutors and defenders. This is in large part a long-term educational process, but there are short-term remedies that can be employed such as the development of on the job training for all components of the administration of justice and developing bench manuals and other guides to rationalize procedures and decision-making criteria. It may mean creation of para-legals to assist in both prosecution and defense. It means getting the Government of Cambodia to provide additional financial resources to pay more adequate salaries for judges and other personnel involved in the administration of justice. It also means evaluating and if practical implementing a revived system of alternative dispute resolution. This is, as already mentioned, something that can build on the traditional approach to dispute resolution involving community authorities.
- **Human rights protections need to be enhanced.** Cambodians have been able to secure some basic human rights. They can more freely express themselves, above all if they live in the capital. The media are able to provide a measure of information regarding political, economic and social conditions. The fear that dominated political life under authoritarian rule has diminished. But, much still remains to be done. Public officials can violate citizen rights without fear of reprisal. Women and children are often treated as chattels rather than as human beings. Property rights of the many are not respected for the benefit of a few. NGOs

have done a good job, supported by international donors, to afford individuals channels to publicize these abuses. Support should continue to be provided to NGOs in their role as defenders of human rights. Mechanisms such as the creation of an endowment fund need to be explored to ensure the long-term viability of democracy NGOs. But, all of these specific human rights issues and more need to be addressed by the Government of Cambodia (GOC). They have to become significant government as well as civil society concerns.

As will be discussed further below, a process of US government re-engagement with the Government of Cambodia in part is related to the commitment of the GOC to deal with human rights issues. GOC support of the right of NGOs to publicize human rights abuses and to secure support for change becomes part of a justification to re-engage as well as a demonstration of a positive outcome of such re-engagement.

- **Immunity for public officials from prosecution needs to be ended.** Impunity grew out of the authoritarian origin of the current regime. It reflects an extension of the party-centered, and prior to that royal sovereign-centered, government which assumed that an extended version of sovereign immunity was a necessary part of Cambodia's political system. This impunity is inappropriate to a government of laws that ensures basic human rights. It both creates a privileged class exempt from the law and represents a justification for broader depredations of the human rights of all Cambodians. Eliminating this impunity would be a powerful tool for enhancing human rights and a powerful message that the Government of Cambodia is serious about strengthening the rule of law.

Developing a Political Culture of Competition

Elections are the best, most obvious form of political competition. Cambodia has had two recent encounters with elections that were at least partially free and fair. These experiences have demonstrated that the citizens of Cambodia, the residents of the 'second' Cambodia, can be educated voters, making choices even when the electoral process is not carried out on a fully level plain. This suggests that there is a basis for building a political culture of democratic competition from the bottom up.

On the other hand, the political elite has little sense of this culture of competition and certainly has demonstrated little inclination to put it into practice. None of the three major

political parties have demonstrated a commitment to democratic principles of competition. Each is a microcosmic example of Cambodia itself. The PPC, divided into factions, is the organizational expression of a group of individuals and their followers who, while they may once have been driven by ideology, are now driven only by a desire for power and its perquisites. FUNCINPEC, of course, never really had an ideology. Sam Rainsy has also demonstrated a lack of many of the values that support a free and fair competitive process. The only possibility of altering the attitudes of the elite seems to rest in the fact that the power-holders starting with Hun Sen appear to have learned that there are disadvantages to acting in a non-competitive, non-democratic fashion, particularly given the reaction of the international community. There is the possibility to build on the elections, through a process of re-engagement with the GOC, to promote opportunities for further competition. This will be a difficult process because of the weakness of the agents of electoral competition, the parties themselves.

Fostering the growth of competition and a political culture that supports it requires:

- ***Supporting a policy dialogue with the GOC*** to emphasize approval of the choice that has been made to reinstate and abide by the process of electoral competition represented by the recent elections. Such a policy dialogue should be linked with re-engagement as the necessary carrot to underscore the advantages of maintaining electoral competition;
- ***Looking for opportunities to strengthen alternative arenas of competition.*** Developing the institutional capability of the judiciary is one, long term element of this approach. Strengthening the capacity of the legislature to act as an oversight body of the executive is another element. Maintaining the capacity of the NGOs to act as a public voice of alternative political positions is another element. (Absent effective political parties, the NGOs may serve some of the functions that rightly belong to political parties.)
- ***Looking for alternative arenas for political competition.*** The process of communal elections may open up the possibility of developing alternative political power bases. If in fact this is the case, then support for developing the capacity of local government

may strengthen the opportunities for new leaders to emerge (even within the structure of the CPP) that might invigorate the competitive process.

All of these areas are possible lines of action for USAID/Cambodia to follow in furthering the development of a more competitive and as a consequent more accountable political system.

Expanding Political Participation

The two Cambodias, the universe of the political elite and the universe of the masses, have to be united in a single polity if democracy is to become effective. The process of building a single political nation is a long term one. But, within the next five years, USAID can support this process in several areas:

- ***Looking for opportunities to extend the areas of effective free political discourse beyond the capital.*** The actions of the media and widespread exposure to the outside world through electronic and other media has provided alternative sources of information, largely confined to the capital. Expanding access through programs designed to strengthen the media and other agencies of dissemination such as the NGOs engaged in political education may serve to open greater opportunities for political involvement of the bulk of the country's citizenry.
- ***Supporting greater democratic local governance directly.*** If the commune elections indicate that an opportunity for a further democratic opening exists and if there is re-engagement, than a program directly aimed at building a democratic opportunity for participation would be a reasonable instrument for including more Cambodians in the political process. Such a program should use the forms of fostering participatory planning directed at citizen involvement in community development that have demonstrated their value in the Philippines, in Latin America and elsewhere. Such programs raise levels of citizen involvement at the same time that they address issues of rural poverty. Such an approach presupposes re-engagement.
- ***Supporting greater democratic local governance through other development programs.*** Alternatively, if re-engagement is not possible, then USAID needs to look at programs it supports through NGOs and other non-governmental mechanisms to add a democracy component to these programs. Such a democracy program has been successfully used

elsewhere to bring participatory procedures into community based decision-making in areas such as food security, health and the environment. Even absent formal involvement with local government, democratic forms of decision-making can be included as a conscious focus of such USAID programs in Cambodia through such mechanisms as assigning enhanced responsibility for program administration at the local level to user groups or interested community members.

Donor Constraints

The principal constraint facing USAID is the congressionally mandated prohibition currently existing on its ability to re-engage with the Government of Cambodia. As has already been noted, to the extent that the current government of Cambodia is interested in and willing to participate in political reforms, it would be productive for the United States to re-engage with the government. Re-engagement would give the Hun Sen government a positive signal that reinforces the negative message it received after July, 1997.

Re-engagement will strength the ability of USAID/Cambodia to engage in a policy dialogue with the government of Cambodia to explore opportunities to strengthen the institutional bases for greater accountability and to implement such programs to foster greater accountability. Only through such re-engagement can USAID have an impact in the short to medium term on the institutional capacity of the process of administration of justice through such approaches as in-house training of judges and prosecutors. Re-engagement will allow USAID to assist the Cambodian legislature to develop a capacity to conduct oversight of the executive and thereby enhance the possibilities of developing a viable culture of opposition. It will allow USAID to take advantage of opportunities to promote democratic local governance, which would serve as a means of extending arenas of competition as well as providing an opportunity for broader political participation.

Such a re-engagement requires a demonstration on the part of the government of Cambodia of its commitment to the democratic process. One concrete step in that direction would be for the government to eliminate the impunity now afforded public officials. This will require a policy decision and the necessary implementing legislation. The former is obviously more difficult to

achieve than the later, given the limited power displayed to date by the National Assembly. Such a decision could be linked to and be part of a policy dialogue with the Government of Cambodia, with broader re-engagement as an outcome. A deterrent to re-engagement would be the passing of legislation by the GOC that limits the scope of activity of democracy NGOs—in effect limiting the possibility of developing greater competition and accountability.

Re-engagement has to be approached as a both an opportunity and a challenge--an opportunity for the US to reinforce the message it sent regarding the importance of democracy and a challenge to the Cambodian government to demonstrate its continued interest in moving toward greater accountability and greater competition.

Priorities for Action

To sum up the strategic approach suggested in this assessment, we believe that there is a window of opportunity has opened as a result of recent events including the end of the civil war to promote democracy. We believe that USAID can exploit that window of opportunity to promote greater justice and human rights, to assist in building a culture of competition and to expand political participation. Re-engagement between the GOC and the USG will result in the most effective democracy program since re-engagement opens the possibility of strengthening the capacity of key elements of a more competitive, more participatory political process. While the possible lines of implementation for USAID/Cambodia shift depending on whether or not re-engagement takes place.

With Re-Engagement

- **Strengthening the rule of law.** Emphasis should be on building institutional capacity. This could include supporting pilot actions to strengthen alternative dispute mechanisms built on traditional norms. A policy dialogue to end immunity for public officials from prosecution needs to be a part of this process as does continued support for NGOs engaged in human rights protection and in support of public defender programs.
- **Building competitive processes.** Emphasis should be on strengthening the principal institutions for expressing competition. This means support for a more effective legislature. It means support, if commune level elections indicate the value, of democratic local governance

as alternative set of arenas for political competition. This would include continued support for the NGOs that support transparency in the electoral process as well as those that engage in aggregating and expressing citizen demands.

- **Expanding political participation.** Principal emphasis should be on building opportunities for more democratic local governance by providing support of participatory processes at the local level (through pilot programs). This should be done directly, incorporating local authorities. Additionally, USAID programs in other sectors should build in mechanisms for citizen participation in their implementation. Emphasis should also be placed on expanding free expression through the media and through NGO civic education programs beyond the capital.
- **Program sustainability.** To ensure continued NGO capacity to support democracy concerns, USAID, together with other international donors, should establish mechanisms such as an endowment that would serve to support democracy NGOs after direct donor funding diminishes or disappears.

Without Re-Engagement

- **Strengthening the rule of law.** Without re-engagement, the focus will have to be on enhancing and supporting the role of NGOs engaged in human rights and justice functions. Pr
- **Building competitive processes.** Here again the focus will have to be on the role of NGOs in strengthening competitive processes including such roles as ensuring greater electoral transparency and information.
- **Expanding political participation.** Principal emphasis should be on building opportunities for more democratic local governance by providing support of participatory through USAID programs in other sectors. Emphasis should also be placed on expanding free expression through the media and through NGO civic education programs beyond the capital.
- **Program sustainability.** As is the case under re-engagement, USAID, together with other international donors, should establish mechanisms such as an endowment that would serve to support democracy NGOs after direct donor funding diminishes or disappears.

ANNEX I

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National Election Committee

ANNEX II

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