

By Lao Mong Hay

Cambodia's Agonising Quest:

*Political progress amidst
institutional backwardness*

Since independence in 1953, Cambodia has been ruled by a diverse array of governments which have successively claimed to be monarchist, republican, revolutionary, socialist and, most recently, democratic in nature. The political orientations of these governments have varied widely, as has the impact of their policies on the fortunes of Cambodians. Despite these seeming shifts, a more consistent aspect of Cambodia's political life has been the retention of power in the hands of elites. The provisions made, in the better of Cambodia's first five constitutions, to safeguard citizens' rights have never given rise to effective legal checks on the use of power.

In theory, Cambodia's 1993 Constitution, based on liberal democratic principles, goes further than preceding ones in preventing the abuse of power. But the system of 'checks and balances' it provides for is sharply at odds with Cambodia's deeply conservative political culture and its authoritarian underpinnings. While politics in Cambodia today are in some ways more open, pluralist and accountable than ever before, at the same time they have never been so

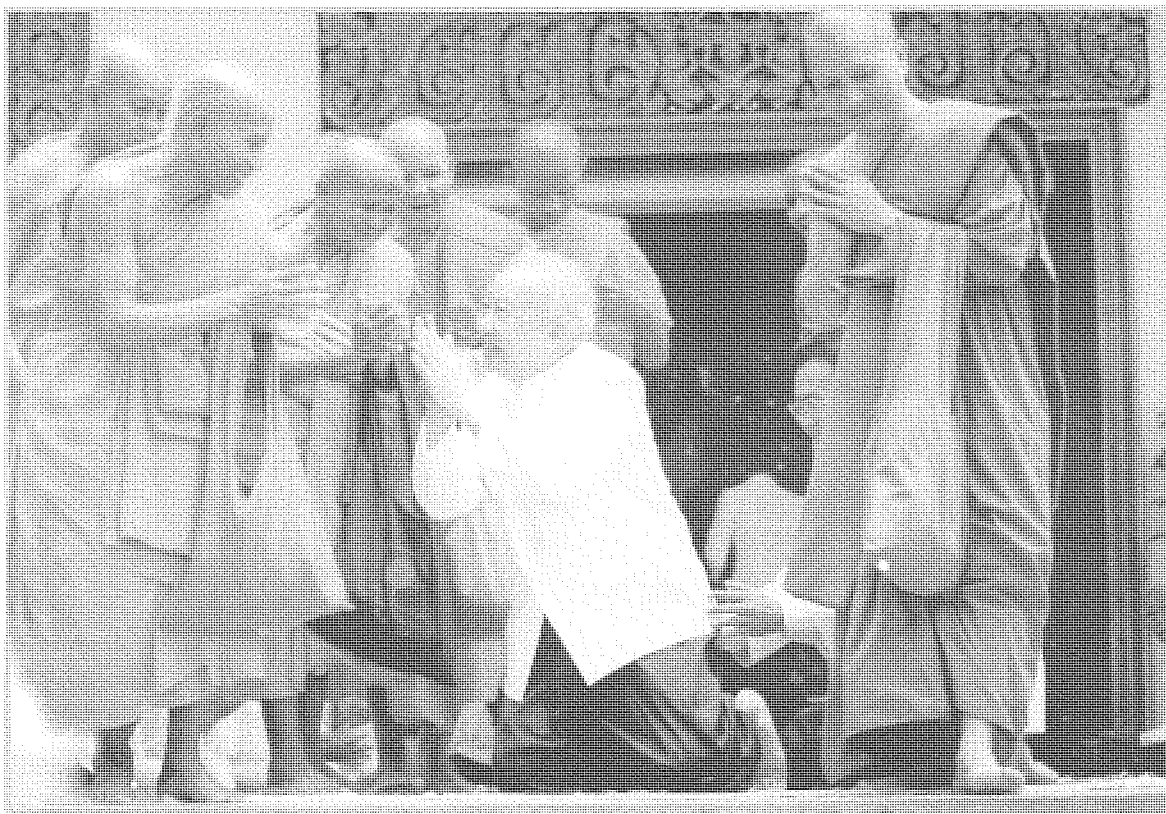
violent or corrupt. Public awareness regarding the functioning of democracy has surged in recent years, yet Cambodians still face an uphill struggle to have their Constitution respected as the supreme law of the land.

Rapid social change

At the time of the 1991 Paris agreements, Cambodia had been closed to the outside world for a period of almost two decades. With the arrival of the United Nations Transitional Authority in Cambodia (UNTAC), charged with implementing the agreements, Cambodia was opened up to a world experiencing rapid economic growth, a dramatic revolution in information technology, and the seeming triumph of democracy over communism. The Paris agreements envisaged that integrating Cambodians into this radically different, 'free' world would alert them to their fundamental rights and freedoms and help consolidate the country's fledgling peace.

Under the watchful and protective eye of UNTAC, Cambodians created or joined polit-

King Sihanouk, in self-imposed exile in Siem Reap,
following the July 1997 coup



Source: Mak Remissa

ical parties, and many more attended political rallies. In the May 1993 elections Cambodians voted *en masse*, the majority of them calling for a new government and an end to their long war. While Cambodians were still perhaps unclear about the exact mechanism by which their votes would translate into political change, they were more hopeful than at any time in recent memory that the changes which lay ahead would be positive.

In the years following UNTAC's departure, many Cambodians came to enjoy the benefits of the information revolution. The local media played an important role in informing and mobilising public opinion, as did local NGOs which provided thought-provoking criticisms of government policies and offered alternatives for the public to consider. As a consequence, Cambodians not only became more aware of events and developments in their country and the wider world, but also began to have opinions on them. During this period, many Cambodians actively followed parliamentary debates and listened to political speeches. The people began to notice that their

leaders, while seeking to cultivate their support, were also increasingly dependent on it to stay in power.

While UNTAC had enabled this initial political awakening to take place, Cambodians were subsequently emboldened to seek to influence government policy. After 1993, growing numbers of Cambodians demonstrated for better conditions in the factories where they worked, submitted complaints to the parliamentary Human Rights Commission and protested in front of the National Assembly to demand political reforms. Cambodian society became more dynamic and was moving ahead rapidly, though too fast for some.

The March 1997 grenade attack in front of the National Assembly which killed 16 demonstrators was a dramatic indication that the freedoms conceded to Cambodia's people during the UNTAC era were gradually being curtailed. It became clear that the lack of any meaningful mechanism to activate the grand provisions enshrined in the constitution could not protect even the most basic of human rights.

Constitutional provisions for a separation of powers

Article 1 states that 'Cambodia is a Kingdom with a King who shall rule according to the Constitution and to the principles of liberal democracy and pluralism.'

Article 51 of the Constitution provides for a separation of powers between the executive (the Royal Government), the legislature (the National Assembly) and the judiciary. The Constitution also provides for specific roles to be played by the King, the Constitutional Council, the National Congress and the Supreme Council of the Magistracy in order to ensure the separation of powers is maintained.

The King is the head of the Royal Government, though the important principle is that he 'shall reign but shall not govern'. He appoints the Prime Minister and the Council of Ministers which govern. They are collectively responsible to the National Assembly and can be dismissed by it. The King also has the right to initiate amendments to the Constitution and to grant amnesties.

The National Assembly has the exclusive responsibility to make laws and it is only laws adopted by it that the King is required to promulgate. The Royal Government executes and implements these laws. The National Assembly must also approve all rules made by government authorities under any laws passed by it.

The judiciary is an independent power and includes the Supreme Court and all of the lower courts. Under the Constitution, the legislative or executive branches, including the Ministry of Justice, have no judicial power. Only the Supreme Council of the Magistracy, which is an independent body chaired by the King, has the right to appoint, transfer or remove judges. The King has the sole power to serve as guarantor of the independence of the judiciary.

An absence of checks and balances

Cambodia's 1993 Constitution today remains little more than a proclamation of intentions. Article 51 stipulates that 'all powers belong to the people' and that they will 'exercise these powers through the National Assembly, the Royal Government and the Judiciary'. The establishment of these three branches of government corresponds closely with the liberal democratic spirit of the Paris agreements though in practice there is not yet a separation of powers. This can be seen most clearly with regard to the National Assembly which was directly elected by the people.

During its first term, the National Assembly was unable to exercise its legislative powers effectively or to control the government as foreseen by the Constitution. Not a single private bill was considered by Assembly members, let alone adopted; all legislation passed was drafted by the government. Rarely did the Assembly question either Prime Minister, or indeed any minister at all. In most of the debates which took place, the same few members of parliament took the floor and most deputies toed the lines imposed by party leaders. The National Assembly, in short, quickly became a 'rubber stamp' of the government.

While the effectiveness of the National Assembly was undermined by a packed legislative schedule and the lack of technical expertise needed to draft laws, the real problem was the absence of conditions conducive to open debate (see article page 65) and the blatant disregard by both the CPP and FUNCINPEC for constitutional procedure. Party leaders regularly suppressed debate on sensitive issues or delayed the passage of legislation which threatened the stability of the fragile governing coalition or personal interests.

The generally tense political climate did not favour the creation of other bodies intended to serve as checks and balances on the use of power. The National Congress during the 1950s and early 1960s, was an annual open-air meeting at which the population received gov-

ernment reports and raised issues of concern with their government. In the 1990s it could have served as an outlet for popular grievances, and as a way for the people to interact directly with their representatives, but it has never been convened.

The role of the Constitutional Council was to interpret the Constitution and ensure the legality of all laws made by the government. It was not established until May 1998 when international pressure mounted on the government to ensure that there would be a legal mechanism to adjudicate disputes arising from the July 1998 elections. Even then the independence and legitimacy of the council was quickly called into question because it had not been formed in accordance with the procedures outlined in the Constitution.

The Supreme Council of the Magistracy, for its part, was intended to assist the King in ensuring the independence of the judiciary. It has only met once and, as a consequence, the promised reform of the judiciary has never come about. Most current judges were appointed before 1991, more on the basis of their political loyalty to the CPP than on merit. Few have adequate legal training or are considered impartial. Moreover, in blatant contravention of constitutional provisions regarding the separation of powers, the Minister of Justice — a government official — controls the judiciary.

Underlying this problem has been the inability of the King to effectively guarantee the independence of the judiciary as called for by the Constitution. In the face of a tendency by certain officials to interpret his every action as 'political interference', the King has consistently refrained from exercising his legitimate powers to the extent that is possible. Instead, he has been content to make general proclamations calling for human rights to be respected or expressing his disapproval of unfolding political events. The King's ability to check abuses of power has thus been greatly undermined and the monarchy's future role in Cambodia's political life is being called into question (see box overleaf).

Centralisation of power

In the absence of functioning checks and balances, state power has fallen increasingly into the hands of individuals. This was especially true following the ousting of Prince Ranariddh by co-premier Hun Sen in July 1997. Since that date, no one has been able to challenge Hun Sen who has consolidated control over the government, the National Assembly and the judiciary. He is also the sole commander-in-chief of the armed forces, meaning that political power in Cambodia is effectively controlled by a single individual.

A key consequence of the centralisation of power has been the institutionalisation of a culture of impunity in Cambodia. Both the powerful who can secure protection and the rich who can afford bribes remain above the law. They are able to secure out-of-court settlements or win law suits even when the case against them is well founded. In short, there are different rules for those with access to political power and those without. Even on issues of interest to the international community, such as drug trafficking and flagrant human rights abuse, Cambodia's powerful remain immune to outside pressure.

Another consequence is that the public service is far from politically neutral as called for by the Constitution. The 'dual' CPP/FUNCINPEC administration which emerged after 1993 was sharply divided along political lines. Even with renewed CPP domination of the bureaucracy, public interest still comes second to party or personal interests. Low salaries have forced public servants to hold second jobs and to extort bribes in order to make a living. With the complicity of corrupt superiors, public positions have in effect often been turned into private enterprises, leaving public servants trapped in a system of patron-client relations with little will or capacity to act in the public interest.

The post-1993 period illustrates that the political notions and practices of an earlier era do not simply come to an end with the promulgation of a new Constitution. Despite their rhetoric of democracy and human rights, the