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## **What Democracy Means?**

**Chevening Program**

# **POLICE IN DEMOCRATIC SOCIETY IN CAMBODIA**

### **Sok Sam Oeun**

Chevening Fellow 2007

Director of Cambodian Defenders Project

Attorney at Law

Law Lecturer at Panhasatra University, Phnom Penh

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# **POLICE in DEMOCRATIC SOCIETY**

## **in CAMBODIA**

### ***1. INTRODUCTION***

In past four decades, Cambodia crossed many regimes. Most leaders claimed their regime democratic but they did differently from what they promised. Then, a revolution occurred to throw the regime. As result, the people were suffered and became poor and poor. In many regimes, they had election but those elections did not help for any change. Army and police were used only to crack down opposition or to shut down the mouth of the people.

After peace accord and having general election assisted by the UN in 1993, Cambodia has a new Constitution which adopts the principles of Liberal Democracy and Constitutional Monarchy. Therefore, all institutions and law existed during communist time shall be reformed and replaced by the new ones. Police must be reformed to fit with the democratic society.

In this essay, I will show briefly about historical background of politics and police approach, what the democracy means for Cambodia, current approach of policing and recommendations for police reform.

### ***2. HISTORICAL BACKGROUND***

Cambodia was a country under French colony for 90 years. Cambodia has been completely independent in 1953. In 1970, Cambodia became a republic after a coup d'état made by General Lon Nol throwing King Norodom Sihanouk from power. From 1970 to 1975, Cambodia was under civil war between Khmer Republic and Khmer Rouge. Lon Nol regime was fallen down by Khmer Rouge in April 1975. In 1978 a war between Khmer Rouge and Vietnam was burst and Vietnam invaded Cambodia successfully in January 1979. Vietnam backed a group of Cambodian people who fled to Vietnam called themselves as Khmer Unity and Saving Front to set a government. Then many groups of Khmer Resistance were formed including Khmer Rouge along Khmer-Thai border to fight Vietnamese troops<sup>1</sup>. In 1989, Vietnamese withdrew from Cambodia and peace talk started under assistance of UN. In 1990, a Peace Accord (called Paris Accord) was signed by all Khmer factions and UN decided to

send 2000 troops to Cambodia. A general election was organized by UNTAC. But, Khmer Rouge faction boycotted and did not join election after a group of student beat Khiev Samphan<sup>2</sup> in Phnom Penh. As result, a new Constitution was adopted by the Constituent Assembly. A civil war between second Constitutional Monarchy and Khmer Rouge continued until 1995.

### ***3. POLICING IN THE PAST***

During French Colony, French organized a Police Force in Cambodia like French police style. They also established gendarmeries like in France. This police style still existed until 1975. From 1970 to 1975, Cambodia was divided into two parts. Most cities were controlled by Lon Nol's government and other parts were controlled Khmer Rouge Forces.

In 1972, Lon Nol regime reformed police force. Most police forces were transferred to be military staff and only a small amount of police were still remained. Gendarmeries were changed to be Military Police<sup>3</sup>. In Khmer Rouge controlling areas, Khmer Rouge abolished police forces and established groups of young boys as secret agents or surveillance teams (Kang Chhlorb) in each village. This type of surveillance teams were still existed during Pol Pot time. In Pol Pot time, the surveillance teams had strong power. They could arrest and kill the people in accordance with the order of Chief of Villages or Chief of Commune.

After the falling of Pol Pot regime in 1979, Cambodia became a state of no law and there were many fighting factions. Most territory was controlled by State of Kampuchea's regime. In territory controlled by State of Cambodia, they established security persons in every village, which are called "Militia". Other areas in forest and along the border are controlled by other three resistance forces, Khmer Rouge, KPNLF, and ANS<sup>4</sup>. Each of the three resistance forces had many displaced persons camps. Each camp had its own security system and named differently. In Khmer Rouge camps, they were called Security Unit. In KPNLF's camps, there were called Police in some camps and Military Police in some camps. In Funcinpec, they were called Military Police. In 1989, UN established a judiciary system in camps along Thai Border

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<sup>1</sup> I did not mentioned that the resistance forces did fight against Khmer soldiers from State of Kampuchea because some Khmer Resistance forces such as Khmer People National Liberation Front's army (KPNLFA) had no intention to fight against Cambodian people. However, they did not cooperate with Khmer Rouge.

<sup>2</sup> Former Head of State of Democratic Kampuchea (Khmer Rouge).

<sup>3</sup> Therefore, right now military police are functioning like police. They also can arrest, search, seize and investigate the cases like normal police.

<sup>4</sup> National Army Sihanoukist which later changed to be FUNCINPEC.

and trained Cambodia Police in those camps. Among those camps, only Site 2 Camp established a Khmer Police Training School<sup>5</sup> and trained more skills to the Cambodian Police.

#### ***4. What does the Democracy mean?***

In accordance with the Constitution, Cambodia must adopt the principles of Liberal Democracy<sup>6</sup> and the provisions relating to liberal democracy cannot be amended. It means that Cambodia must adopt this principle forever; no one can amend or change it<sup>7</sup>. But what does it mean for Cambodia?

Cambodia is a parliamentary system. So, the people elect the parliament and parliament selects Prime Minister and his cabinet. They need right persons to represent us to select Prime Minister and his cabinet to run the country effectively and efficiently. Running the country does mean that the government only tries to find money or generate income to support ministers and government staffs only. The people need them to provide public services for them and allocate national budget efficiently. In short, the government shall responsible to guarantee basic human rights of the people which stated clearly in the Constitution of most countries, in particular clearly in the Cambodian Constitution<sup>8</sup>.

The people have different ideas about democracy depending on the need, what they already have and situation in each country. In India, the Legislature, Executive and Judiciary should work in tandem for the success of democracy, the Chief Justice of Karnataka High Court, Cyriac Joseph (2007/www.hindu.com), has said. However, Indians are proud of their court of justice.

In a lecture at Hilla University in Iraq organized by Stanford University in 2004, Professor Larry Diamond (2007/www.stanford.edu) defines democracy as a form of government with four keys of elements:

1. A political system for choosing and replacing the government through free and fair elections.
  
2. The active participation of the people, as citizens, in politics and civic life.

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<sup>5</sup> I was appointed by UN as the Director of that school. I trained around 2000 police officers. There were three types of courses, Basic Training (2 months), Basic Prosecution Skills (2 months), Criminal Investigation Skills (4 months) and Basic Prison Skills (one month).

<sup>6</sup> Preamble and article 51 of the Constitution.

<sup>7</sup> Article 153 new of the Constitution.

3. Protection of the human rights of all citizens.

4. A rule of law, in which the laws and procedures apply equally to all citizens.

Chief Justice Joseph focuses on structure, in particular separation of power and independence of judiciary. Diamond does not focus on structures like Chief Justice Joseph but he focuses more on process of democracy.

But, through experience happened in last half century in Cambodia, there are four ways of how to analyze the elements of Democracy, Institutional Approach, Electoral System Approach, Rights Based Approach and Public Service Delivery Approach.

#### **4.1. Institutional Approach**

Institutional Approach looks deeply on the roles and functions of all actors in the society. In this approach, we need to have Separation of Powers, Independence of Judiciary, Neutral Bureaucracy and Armed Forces, and Independent Bodies.

The Executive and Legislative must be separated and can control each other. However, these two institutions are not clearly separated because Cambodia adopts the Parliamentary System and Prime Minister and his cabinet's members, are also members of National Assembly. Even though Cambodia has the Senate but it also is under influence of Political Party. It is different with system in UK and US, Cambodian senators all are elected through proportional party list system. In this system, senators and National Assembly members will lose their seat if they have lost their membership or dismissed from the party<sup>9</sup>.

I do not want to analyze in detail on other actors, but I want to focus more on the neutrality of bureaucracy and armed forces. The bureaucracy, army and police of Cambodia are not neutral. All of them are politicized by appointment and promotion through nominating by ruling political parties<sup>10</sup>.

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<sup>8</sup> Article 31 of the Constitution.

<sup>9</sup> On 6 December 2000, three Senators, HE Chhang Song, HE Phay Siphon and HE Pov Savath, were removed from senate after they had been dismissed from CPP party. It is different with system in UK which the MP or Member of House of Lord will not lose seat from any house.

<sup>10</sup> Not only in police, the leaderships of all departments including court system, are shared in quota between ruling parties. All Presidents of Court and Prosecutor Offices, they were shared between CPP and FUNCINPEC.

*Therefore the neutrality and professionalism of all three institutions are very important in realizing democracy. And so, the police reform is essential in realizing democracy.*

## **4.2. Electoral System Approach**

In past four decades, Cambodia has many kinds of election. In Khmer Rouge time, there was also one election for its parliament on 20 March 1976<sup>11</sup>, but it was not democratic. Therefore, election is not democracy. However, if it is conducted with free and fair, it can be used to strengthen democracy and become a way to share power peacefully. In his lecture, Professor Diamond mentioned this point. However, in accordance with experience of election in Cambodia, only free and fair are not enough. The election must be done with real and high competition between at least two political parties<sup>12</sup>. That means it must be firm. The voters must know the candidates, election system and political manifesto when they are casting the vote. If the voters cast their vote without knowing clearly who they vote for or if after the election winner can get his or her seat, the election means nothing. We can say no fruitful. In summary, the Election must be **Free, Fair, Firm and Fruitful**.

Relating to police institution, police must be neutral otherwise the election cannot be done perfectly. Police has important roles to make sure the election can be free, fair, firm and fruitful. So it is very important to make the people trust and having confidence on police. *Therefore, police reform is very important to realize and sustain the democracy.*

### **4.1.3. Right Based Approach**

This approach focuses on freedom, equality and participation in decision making. The level of freedom depends on the compromise between the state and the people. However, Cambodia needs to have many new laws relating to freedom<sup>13</sup>.

Police must be used to protect the people rights and help them to implement their rights peacefully. Police must not be used to band or crack down people's freedom.

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Ex: President of Supreme Court, HE Dith Munthy, is from CPP. General Prosecutor of Supreme Court, HE Ouk Vithun, is from FUNCINPEC.

<sup>11</sup> I myself was called by Khmer Rouge to vote. There was only one candidate with one picture only. I knew nothing about him. They gave us one afternoon break from working but they forced us to see movie of its victory on Lon Nol regime.

<sup>12</sup> "Cambodia must be a liberal and plural democracy", the Constitution states.

<sup>13</sup> In 2006, the Community Legal Education Center organized a series of workshops cooperated with Ministry of Interior to draft new law on Demonstration. In 2006, the Women Media Center, Cambodian Defenders Project, some other members of civil society and Ministry of Information formed a working group to draft Law on Access to Information.

#### **4.1.4. Public Service Delivery Approach**

This approach focuses on how efficiency of public delivery service. Decentralization is a mean in democracy to make sure the public services are provided efficiently to the people. In his concept, police shall be sure to provide the people their services and assistance quickly and efficiently. Even though in developed world, they requested for police reform continuously<sup>14</sup>.

### ***5. Policing in Current Approach***

After peace accord, all fighting factions are integrated. The armed forces and police from all factions are integrated. Many soldiers have been transferred from military to police. Therefore, many of them have no legal back ground or trained as civilian police. Therefore, many of them are working based on their common sense and past habit. Since French Colony, the public did not trust police. Many crimes were not informed to police. In general, the torture, beating to obtain confessions and brutality are reduced, but they are still happened in many cases. In some cases, police still use gun, electric batons and excessive force to crack down demonstrations, to deport asylum seekers and to evict the people.

As example, police shot to the people in Kbal Spean while they were resisting against their eviction<sup>15</sup> on 21 March 2005. In this case, many people were shot to death including young children (CHRAC, 2005)<sup>16</sup>. On July 25, 2005, Police used excessive force by hitting, slapping and pointing the gun on their shoulder montagnard asylum seekers to deport them to Vietnam while they were gripping each others' arms<sup>17</sup> to avoid being taken away.

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<sup>14</sup> Minister of Interior of France Nicolas Sarkozy submitted a proposed reform of French criminal law to strengthen the powers of the Police and introduces harsh punishments for beggars, prostitutes and other socially deprived groups (World Socialist Website). In 2001, in UK, the Police Standards Unit (PSU) was set up with aim of improving police performance through accurate monitoring, targeted support and promulgation of good practice.

<sup>15</sup> Report of the Cambodian Human Rights Action Committee on Kbal Spean Case.

<sup>16</sup> "My husband tried to run away from the road but while he was about 10 m away he was shot one time by a man called/named Saron with police uniform then Saron added 2 more shots. My husband was very seriously injured and he died at provincial hospital. During the eviction, Saron, who is the subordinate of Banh Leng, was ordering the heavy equipment to destroy the houses with saying that who dares (fight) against us those would be killed. I was pointed (at) by the gun by Saron, who stopped me not to go nearby my husband." a lady told the investigator of the Cambodian Human Rights Action Committee.

<sup>17</sup> Reported by Human Right Watch, Cambodian Human Rights Action Committee and many international newspapers.

## **5.1. National Police Structure**

The General Department of National Police is one of the three General Departments of Ministry of Interior. It is headed by a Police Commissioner General, HE. Hok Lundy<sup>18</sup>. Under the General Department of National Police, there are five Central Departments, 21 Provincial Police Commissariats and four Municipal Police Commissariats.

## **5.2. Judiciary Police**

There are two terminologies for police in Cambodia, Police and Judiciary Police. Not all police are judiciary police and not all judiciary police are police. Judiciary Police are the ones whom the law gives power to arrest, entry, search and seizure, such as military police, investigation judges, prosecutors, Commune Chief, forestry inspectors, environment inspector, and custom officers. While an investigating judge or a prosecutor is conducting his or her investigation, they act as Judiciary Police. Some of Judiciary police has only legal power but they have no capacity to do that. For example, Commune Chiefs are judiciary police but they will not investigate the cases. They must send the arrestee to the nearest police station for further investigation or asks or gives authority to administrative police or ordinary police to take action on behalf of him or her. In summary, even though many legal experts said that Cambodian police is copied from French but in fact, it is not true. In France, Judiciary Police is a division of French National Police<sup>19</sup> (wikipedia, 2007) that has special skills and trained on criminal investigation and working under the order of the Judiciary and in Cambodia the judiciary police in National Police are police chiefs.

## **5.3. Problems in National Police Institution:**

### **5.3.1. Police Officers are not Law-Enforcement Officer:**

As mentioned above, if only the chiefs are judiciary police and other has not power at all, the non-judiciary police cannot enforce the law. They can act only in according to the order of his or her superior. If it is so, they are not Law-Enforcement Officers. They are only Order-Enforcement Officers. In practice, ordinary police are the one who do policing, no judiciary police arrest or search by themselves. In short, the

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<sup>18</sup> Former Governor of Svay Rieng Province. He is son-in-law of Samdech Heng Sam Rin, Honorary Chairman of CPP and currently President of National Assembly.

<sup>19</sup> In French called *Direction Centrale de la police judiciaire*.

practice and the law are different. It is not **a rule of law but it is only a rule of habit or rule of order.**

### 5.3.2. Political Influence:

#### 5.3.2.1. Promotion through Political Party:

At present time, the key positions are appointed by sharing quota between ruling parties. Some people were promoted two to three levels at once. So, loyalty to the major political party or more donations to the political party or to its election campaign can help the people keeping his or her position or rank<sup>20</sup>.

#### 5.3.2.2. Police Officers are pressured to be member of Ruling Parties:

In accordance with Law on Political Party, no political party can establish any political structure within armed forces and police forces. But in practice, this law can be used to punish opposition party only<sup>21</sup>. Police Chief trusts and uses only his people from same party<sup>22</sup>.

In short, the reasons of joining ruling party are:

- For promotion or maintain his or her position,
- Fear of political discrimination from their chiefs,
- Fear of excluding from the group, and
- Fear of transferring to remote provinces.

#### 5.3.2.3. Consequences:

As consequences, each police officer does not focus on his or her job but he or she only works to please his boss from his or her political party only. The officers who are not members of ruling party or neutral, they are discouraged to work. Forcing high rank officers to contribute the election campaign with their small salary is forcing or permitting them to involve corruption.

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<sup>20</sup> During election all police chiefs are active in election campaign. They shall also responsible to pay for the campaign (The source did not dare to discover their identity).

<sup>21</sup> HE Cheam Chany, a Parliament Member from Sam Rainsy party, was arrested because of his organizing network within army and police forces.

<sup>22</sup> One police officer who was my former police in Site 2 Camp told me while I met in a training course in 2006 at Phnom Penh Police Headquarter, One judge told me that: "Even though I joined his party but they still do not trust me. So I am working only waiting until my retirement and get some pension only." (He did not dare to discover his identity)

#### **5.4. Police are not called to be witness:**

In accordance with SOC law, all statements made by police shall be presumed truthfulness. Therefore, the appearance of police as witness in trial is not important for the court. Most trial has no police appeared as witness. Some lawyers tried to force the judge to call police to trial as witness. But only police chief come to the court, not who involved with the case. In a workshop organized by the Cambodian Defender Project in 1999, Col. Luy Savun<sup>23</sup> (CDP, 1999), said that he did not know that police can be the witness in court.

#### **5.5. Lack of Capacity:**

As mentioned above, many police officers are transferred from military, so they know almost nothing about criminal law and criminal procedure. They conduct some training courses (Short and crowded in each class) but their capacity as professional law-enforcement officers are still limited.

However, there have been some improvements relating to capacity building. A Royal Police Academy has just been established and Ministry of Interior invested a lot of money for many buildings in the school compound. Besides the Royal Police School, the Department of Training also established six regional police schools. Some schools are using some rooms in police station as class rooms.

#### **5.6. No Police Code:**

At present, Cambodia has no special law on police (police code). They have only a sub-decree made by Prime Minister and Ministerial Internal Regulation only. Therefore it is easily for political interference<sup>24</sup>. However, Ministry of Interior is reviewing the draft of Police Code.

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<sup>23</sup> Now he is a two-star general and is Vice Chairman of the Royal Police School, Cambodia.

<sup>24</sup> In September 2005, H.E. Em Sam An, Under Secretary of State of Ministry of Justice, asked me to draft a Police Code for Ministry. I finished the draft and gave him in September 2006. Now, it is still reviewed by Ministry.

### **5.7. Corruption:**

Because there are no clear rules in promoting, transferring and disciplinary action, the corruption is a norm and perceived as a way of living within police institution. Who want a good post should pay bribe his or her chief and pay monthly. Corruption by police can be easily seen on the road. The Draft of Anti-Corruption Law is drafting since 1994 but still not been sent to the National Assembly<sup>25</sup>.

### **5.8. Relation between Police and Prosecutor:**

In according with SOC Law, the Prosecutor is the one who leads the criminal investigation but if the case is on the hand of investigation judge, he cannot interfere at all. He can review only the investigation has been finished and sent to him or her for review. He or she has only three day to review. Therefore, prosecutor can assist and cooperate with police only if police informs him or her before the arrest and after arrest for 48 hours.

### **5.9. Relation between Police and Investigation Judges:**

In accordance with the SOC law, the Investigation Judge can order or request to the police for further investigation. But, at present, the cooperation between investigation judge and police are bad. There are some following reasons: corruption<sup>26</sup>, time constraint, too busy<sup>27</sup>, presumption of guilt<sup>28</sup> judge and lack of means. However, for some cases and for some provinces or municipalities, the cooperation between police and investigation judge is good.

## ***6. Policing in Democratic Societies and Recommendations for Police Reform in Cambodia***

Primary tasks of police are protecting people's life and properties, enforcing the law and maintaining peace and order of the society. In democratic society, police shall be neutral and professional and must be free from political influence and interference. Police must

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<sup>25</sup> I am one of the members of Drafting Committee. It was the first time that the government allow representative from civil society be member of the drafting committee. However, we can only give them our view and comments we have no right to vote or make decision.

<sup>26</sup> If the judge is corrupted, he or she can dismiss the case based on lack of evidence presented by police. So he or she does not need to cooperate with police.

<sup>27</sup> Most cases are delaying several months and then rushed to conclude, therefore, the investigation is not done properly.

<sup>28</sup> There is no presumption of innocence in practice and the accused must be examined first.

not be used to threaten the people, protect powers of politician, to crack down demonstration but should be used to protect the people's life and properties, protect the people's rights, and to assist the people to enjoy their rights guaranteed by Constitution. Professor Gary T. Max (2007/web.mit.edu) defines "*Democratic police as a publicly accountable police force subject to the rule of law embodying respect for human dignity which can intervene in citizen's lives only under limited and carefully controlled conditions in an equitable fashion.*"

Therefore, in order to be an institution of democratic society, police must be changed and reformed from:

- Police Forces to Police Service,
- Watchdogs to Legal Advisors for the people,
- Masters to Servants,
- Human Rights violators to Human Rights Defenders,
- Political Party/Military Police to Civilian Police,
- From far to work closely with the Community (Community Policing), and
- Reactive to Proactive.

A number of recommendations for police reform are following:

1. Put clear and enough powers for all police officers in the new Penal Code and Criminal Procedure Code,
2. Put clear definition of each crime in new Penal Code<sup>29</sup>,
3. Make Police Code with clear police structure, staff policies and code of ethics,
4. Police Structures should be reviewed and changed,
5. Reorganizing police staffs:
  - a. Decrease police number but putting old police officers retired, clean ghost police and increase police salary,
  - b. Transparent recruitment policy<sup>30</sup>,
  - c. Reform police ranks.

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<sup>29</sup> Even though in France which their police are strong, the French Government still submitted a proposed reform of French Criminal Law (on October 23, 2002) that strengthens the powers of police (See Article Police Reform in France by **Marianne Arens and Francis Dubois**, 2002, and see: [http://www.wsws.org/articles/2002/Nov2002/fran-n18\\_prn.shtml](http://www.wsws.org/articles/2002/Nov2002/fran-n18_prn.shtml)).

<sup>30</sup> At present, their recruitment is not transparent and with political discrimination.

6. Stopping appointing and promoting through quota of political parties,
7. Providing more fund to police training department,
8. Developing new curriculum of police training,
9. Improving management and curriculum of Royal Police School, and
10. An Independent Council for Police Discipline shall be established which members are comprised from High Police Officials and Non-police Dignitary Persons.

## **7. CONCLUSION**

In country which its legal system is strong, the people do not realize that the roles of police are important to strengthen the democracy. They only know that police is an institution to protect and maintain order. But, the neutrality and professional police are more important to sustain the democracy. If police are not neutral and cannot perform their duties with free from any interference, they will be used to obstruct the practice of democracy and crack down the opposition only. The government must take care and support police so that they can perform their function efficiently.

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- What is Democracy**, a lecture of Professor **Larry Diamond** teaching at Hilla University for Humanistic Studies, Iraq, on 21 January 2004. Larry Diamond is Senior Fellow at the Hoover Institution, Stanford University, and founding co-editor of the Journal of Democracy. At Stanford University, he is professor by courtesy of political science and sociology, and he coordinates the democracy program of the Center on Democracy, Development, and the Rule of Law (CDDRL), within the Freeman Spogli Institute for International Studies (FSI). This article is retrieved on 1 February 2007. See also [www.stanford.edu](http://www.stanford.edu/~ldiamond/iraq/WhaIsDemocracy012004.htm) and <http://www.stanford.edu/~ldiamond/iraq/WhaIsDemocracy012004.htm>.