

# Cambodia New Vision

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## AIDE MEMOIRE: An Analysis on Seeking a Formula for Bringing Top KR Leaders to Trial

Handed over to H.E. Ambassador Thomas Hammberg, the UN Secretary General's Special Representative on Human Rights in Cambodia, by Samdech Prime Minister Hun Sen during the meeting on January 21, 1999.



- Over the past weeks, after the return to the fold of the nation as simple citizens of Khiev Samphan and Nuon Chea on December 25, 1998, there emerged public opinions and positions that deserved to take into consideration. First of all, everyone welcomes this event and considers that:
- This event confirmed that the Khmer Rouge organization had come to an end. The national reconciliation in Cambodia, which was the source of peace and stability, had been fulfilled once and for all, and this peace and stability, in turn, would bring new national development to Cambodia. The Royal Government of Cambodia (RGC), which is the executive power, has succeeded in carrying out its tasks in solving the issues of national reconciliation, finding peace, bringing about stability, and leading the country towards a new development in accordance to the policy approved by the National Assembly. RGC is now controlling all corners of the country, which

yet succeeded before. The threats of the return of the genocidal regime that was in existence within the past 20 years had come to an end.

- At the same time, there existed opinions that demand for an urgent trial. Some even called for the arrest of the Khmer Rouge leaders, treating them as prisoners of war, upon their return to the fold of the nation. There existed also counter-opinions. Both opinions and counter-opinions have prompted an inquiring atmosphere that whether ten thousands of former Khmer Rouge soldiers and their families who thus far defected have any concern for their fates in the future.
- At present, there is an assessment that the last stage of the national reconciliation is very significant. It may lead Cambodia to a long lasting peace and development, or it may plunge Cambodia into instability and insecurity. Those with this assessment are in the position that a trial is inevitable, and that there must be a full guar-

antee for social issue and economic development within stable and peaceful environment of Cambodia. The two topics, to seek a formula for the trial and national reconciliation, must be taken into consideration simultaneously, without intending to prioritize one over another. This means that the two topics deserve concurrent consideration within the context of national reconciliation and inviolability of Cambodian sovereignty. They wish to see that the RGC continues to make efforts in line with this tendency, and are prepared to provide assistance to the latter. Several questions have also been raised:

- What is an appropriate tribunal to be established? International or national? A mixed of both? Or other form of tribunal?
- How will the offences be charged? In which periods? From 1970? Only between 1975 to 1979? Or between 1979 to 1998? Those demand a consideration for the nature of the fact pattern from 1970 to 1998 stressed that it is an inseparable set of facts.
- Therefore, the following issues need to be properly considered in the context of seeking a formula for a tribunal to be set up and providing the opportunity for lawyers to review all legal aspects.

### 1) Court of Law

- The main request, for establishing a court of law to try criminals of genocide, is to guarantee that jus-

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- justice is done for Cambodian people, and responsible people are punished. It is not at all for the purpose of revenge, but for both justice and non-recurrence of crime of genocide – assuring that no more Cambodian will be killed or victimized.
- It is unavoidable to consider the suggested period from 1979 to 1998, since after carrying out crime of genocide from 1975 to 1979 and being expelled from power, the Pol Pot political and military organization still existed and continued to be the vital threats to Cambodian people. The massacre of innocent citizens in various regions, including areas under their control, and the killing of foreigners and personnel of UNTAC were natures of crime against humanity. It is therefore necessary to conduct investigations on crimes and offenders of each stage, and define the causes and legal aspects of each period:
    - From 1970 to 1975 - what kind of offense to be considered and charged?
    - From 1975 to 1979 - what kind of offense?
    - From 1979 to 1998 - what kind of offense?
  - Who committed crimes? There were different crimes in each period. One needs to consider also that if the criminals and the victims are Cambodian and the crime took place in Cambodia, then what kind of court of law would suit both legal and moral aspects? If it is a mixed court, there must be legal provision approved by the national assembly, and joined training among lawyers to guarantee the legal effectiveness. Shall there be an international court, it would be established by the United Nations. Would the United Nations Security Council be able to establish it?
  - Whatever the court will be, it has to look into related causes and effects from the beginning to an end. Therefore, the successive periods mentioned above, as sounded out by public opinions, will have to be taken into consid-

eration, as it is the basis to guarantee for justice of the trial.

- In August 1979, the Kampuchean People's Revolutionary Court conducted a trial and issued a verdict specifying the period from 1975 to 1979. An upcoming court to be set up should consider this verdict.
- Besides the Kampuchean People's Revolutionary Court of August 1979, there were two trials to be mentioned. The first trial was in July 1970 held by the Martial Court of the former Khmer Republic. It passed an unjust death sentence on His Majesty the King, Samdech Preah Norodom Sihanouk, and a life imprisonment sentence on Samdech Preah Reach Akak Mahesei Monineath Sihanouk, after the coup that was overthrowing him in March 1970. The second trial was held at the beginning of 1975 by the National United Front of Kampuchea and passed death sentences on seven individuals; namely, Lon Nol, Sirik Matak, Cheng Heng, In Tam, Long Boret, Sosthene Fernandez, Hang Thunhak -- among whom only In Tam and Sosthene Fernandez are still alive. The Khmer Rouge killed Sirik Matak, Long Boret, and Hang Thunhak, whereas Lon Nol and Cheng Heng died of diseases.

## 2) Prosecution, Instability, National Reconciliation, and Peace

- National reconciliation and peace are indispensable requirement of the Cambodian nation and people, and the trials of offenders to find justice for Cambodian are the goal and obligation to be fulfilled.
- Morality and justice are of significant foundation and driving force for the current situation in Cambodia during its transitional period from national reconciliation and democracy to stability and long lasting peace.
- There must be due consideration before taking any action, avoiding any action that would jeopardize national reconciliation in Cambodia. **We need both peace and justice.**

- From many years of experience, when war was erupted we neither could find justice for the people nor could we protect them from being killed and destructed, and it was always the Cambodian people who were victims. Peace that we achieved at the moment is stemming from the will of the Cambodian people after two billion US dollars had been spent by the United Nations. We welcome and continue to appreciate the moral and material assistance extended by the international community for safeguarding and assuring peace, national reconciliation, and development in Cambodia.
- Since instability or peace is the vital issue for the Cambodian nation and people, the National Assembly that represents the will of the people has important responsibility and decision to make on what to do to reflect the sovereignty of Cambodia that leave Cambodian to decide their destinies by themselves.
- The above mentioned issues are collective public opinions which deserved consideration from the legislative body, executive body, the court of Cambodia, and concerned international community.
- We do not want to fall in a plight like a Cambodian saying, **"the boat sinks when it reaches the shore."**

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armed forces to serve as faithful defenders and servants to the people. They must refrain from doing any harms to the people, but assisting them in time of need and justly implementing the mottos of Nation, Religion, and King;

- Must transparently implement tasks concerning the respect of human rights by providing training to armed forces to ensure an understanding by everyone that soldiers, policemen, and military police are the people who protect, preserve, and respect human rights, but oppose all forms of violations.
- Must neutrally carry out tasks towards all legal political parties in the Kingdom of Cambodia, by providing safety for their leaders, members, and offices.
- 3. Must effectively control weapons, ammunitions, and explosives, manage the budget, material, equipment, and property of the units, respond to the demand for livelihood of the armed forces, and reduce expenditure while making effort to raise productivity to improve the living standard of the armed forces.
- 4. Must successfully implementing military and police reform within the next five years. The armed forces must be reduced by 55,000, and the police must be reduced by 24,000. This reduction leads to three benefits to the nation. First, a reduction of national defense and security budget. Next, the budget deducted from the national defense and security can readily be transferred to education and healthcare. Finally, demobilized forces will participate in creating new jobs, which will not only improve the livelihoods of their individual families, but also increase in production for the society. Example, if the 79,000 deducted forces were to serve in the agricultural sector, they could cultivate at least 50,000 to 70,000 ha.

In order to guarantee the effectiveness of the military downsizing programme, there are urgent tasks that must be carried out. First, there is a need to

control the number of the military. Next, there is a need to launch a campaign to remove from the payroll the soldiers and police who exist only the names "ghost soldiers." Finally, there is a need to have a procedure to demobilize forces stage by stage with well defined numbers of forces and the available vocational training programme, job-seeking assistance programme, and capital provision for starting up new careers. The reduction of the armed forces and police is to create new jobs for those to be demobilized. RGC will make efforts to seek financial assistance for carrying out these important tasks.

5. With the new structure resulted from the reform, the Commander-in-Chief of the Royal army should discuss with the Ministry of National Defense to carry out a reform of the unified armed forces by making effort to downsize the number of divisions of the regular forces. It is aimed to strengthen their effectiveness and to decrease the expenditure while paying attention on the adjustment of the regional armed forces, and to the downsizing of the number of militia at the grass root level. Commander-in-Chief should cooperate with the Ministry of Interior and the Director General of the National Police to strengthen the local police administrative networks in providing security to the people.
6. The limit of the armed forces, at the moment, is not only to carry out national defense and national security, but also obligates to assist other institutions in implementing the policy of the RGC. The important issues here are to put an end to bad elements in the armed forces – those who perform illegal businesses or backed up illegal businessmen particularly in illegal logging and its transportation, the tax evasion by the armed forces or backed up by the armed forces, ....etc;

To launch a campaign to assist the Ministry of Agriculture and the Environment to crack down and put an

end to an anarchy in logging; to help the Ministry of Economy and Finance to eliminate the tax evasion problem bring about national revenue; to strictly apply discipline on anyone in the armed forces who perform illegal businesses or support illegal businessmen. If they were not punished by the court of law, at least, they would be removed from their positions so that they can no longer use their influences to continue to commit the offenses that could be detrimental to the honor and dignity of the national armed forces.

My urgent request to H.E. Commander-in-Chief of the Royal army, after accepting the new position, is to launch total operation against illegal logging. All means must be used, including the use of military, against businessmen who operate illegal businesses in Cambodia.

This operation must be succeeded within three months period, at the longest. With your experience in putting an end to the political and military organizations of the Khmer Rouge, I hope that you will succeed in the war against illegal logging to safeguard our natural resources for our nation and people.

RGC can not successfully achieve its political goal without the support and contribution from the armed forces./.

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## Hun Sen: "Four Reasons Why I Step down from the position of Commander-in-Chief of the National Armed Forces"

### First Reason

The disintegration of the Khmer Rouge political and military organizations through defection and surrender have led to the end of war and seceded zones, while peace is prevailing throughout the country. The time has become the most favourable for Cambodia for its socio-economic development. The maturity of leadership, management, and wisdom of our officers are now adequate that there is no longer a need for direct command of the Prime Minister.

### Second Reason

The effort to promote neutralization of the national armed forces of Cambodia is an important context for liberal pluralistic democracy. Stemming from true peace and political will for a political reform, I and H.E. General Tea Banh must advance our steps, by leaving powerful positions, to establish a firm foundation for a state of liberal pluralistic democracy, which we, the elder generation, have to prepare for the younger generation.

To be quite frank, no one could by any means strip or demote me from the ranks. However, for the long-term future of the nation, I am obligated to seek for an approval from His Majesty the King, in order to put an end, from now on, to the situation in which a Prime Minister is given an additional position as Commander-in-Chief of the National Armed Forces. According to the Constitution, a Prime Minister is to be appointed from a political party that wins the election. If he were the commander of the armed forces, one may observe that there is a political role of a political party attached at the top level, while the armed forces are meant to be neutral before all political parties. For this reason, I called it a political reform bearing a nature of a must that I have to do it from the top-down in accordance to the political programme pushing for the neutralization of the national armed forces and the civil administration. It is also to distinctively separate between political and public functions to avoid the intertwining

between the two.

### Third Reason

The fact that I am not the Commander-in-Chief of the national armed forces does not mean that the Prime Minister of the Royal Government has no responsibility toward the armed forces, or that they are distanced from the RGC. The armed forces are under the control of the RGC, and must apply the political programme of the RGC that bounds by the chain of the constitution and state laws. The Ministries of National Defense and Interior, responsible for the policy of national defense and security, are the RGC's institutions that oversee the policy and supplies of armed forces. The differences here lies in the point that the Prime Minister, Ministers, Secretaries of State, Undersecretaries of State of the Ministries of National Defense and Interior are politicians who will be changed according to the term of the RGC. Commander-in-Chief, Deputy Commander-in-Chief of the Royal army downwards, the Director General, Deputy Director General of the National Police downwards, the Commander, Deputy Commander of the National Military Police downwards, who are in the public functions, are not subjected to the change according to the term of the RGC. Whichever political party wins future elections thereby takes over the governing power, it has to offer their protection and implementation of the policy of the elected Government. Transferring, promoting, or demoting the posts will proceed by their own procedures and norms that are different from those of the political functions. Political or religious belief should not be the reason or obstacle for the promotion or demotion of positions in the armed forces. However, the virtue, morale, capacity, and experiences are the conditions for the promotion or removal from positions. These are the different aspects between political and public functions that we have been carrying out. If we continue to adhere to the above policy which is abandoning the political quota principle, and making no attachment to political belief, we will certainly have armed

forces that are free from political alignment. It thereby safeguards the unity of the armed forces, and the authentic neutrality of the national army, the backbone of the liberal pluralistic democracy, which in turn support any political party elected to lead the Government. On the contrary, it would be dangerous if they attach political belief to any appointments or removals of public function officials in the armed forces. Similar case also exists in the civil administration.

### Fourth Reason

I have participated together with armed forces, national institutions, and the entire population to put an end to the war and to bring about peace, particularly through the win-win policy and pacification during the past recent year. My leaving from the position as a Commander-in-Chief of the national armed forces of Cambodia is to focus my time and energy on social and economic development that is the top priority to fight against poverty. It is a time to withdraw from being a Commander-in-Chief to fight against the return of the Pol Pot genocidal regime and to find peace for Cambodia, but to become a Commander-in-Chief to lead a fight against poverty in accordance to the direction of the economic-oriented Government.

With a new National Assembly, a new Royal Government, and a new situation at its entry into a new millennium, there exist many tasks to be fulfilled. On behalf of the RGC, I appeal or order the armed forces as follows;

1. Must strictly conduct readily issued orders, among them, the eight-point measures issued on August 18, 97, the seven-point measures issued on October 22, 98 to maintain security and social order -- cracking down armed robberies, kidnappings for ransom, drug trafficking, armed sales, illegal use of weapons, sex trafficking, ...etc.
2. Must strictly implement the discipline, morality, and virtue of

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