



ASIAN HUMAN RIGHTS COMMISSION

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December 7, 2005

Ms Louise Arbour
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Open letter to the UN High Commissioner for Human Rights to mark International Human Rights Day 2005

Dear Ms. Arbour,

Re: the bleak human rights situation in Cambodia, twelve years after the peace process

The Asian Human Rights Commission (AHRC) directs your attention to the bleak human rights situation in Cambodia, twelve years after the peace process. The massive UN and international intervention of that time accomplished little in the way of improving the rights of ordinary Cambodian citizens. The last two years has worsened the situation and increased citizens' fear through state propaganda and suppression. Political imprisonment has begun with the arrest and sentencing of Cheam Channy, a member of parliament from the opposition party, whose leader Sam Rainsy has fled the country in fear of his life.

It is time to courageously admit that over ten years of trying to assist the Cambodian people to rebuild their lives within the framework of law and justice has not taken root within the country. Fear, tyranny and dictatorship continue despite the government's rhetoric of the rule of law and liberalism. The UN Special Representative of the Secretary General on the situation of human rights in Cambodia has made numerous recommendations to the government on the rule of law and human rights since 1993. However, none of these recommendations have been implemented. Under these circumstances, it is time for the UN and international community to question whether further recommendations should continue to be futilely made, or whether it would be more useful to examine where things have gone wrong and what can be done to remedy the situation.

One area where some progress was made after the work of the United Nations Transitional Authority for Cambodia, was the growth of civil society movements, including human rights organisations. In this area as well, continued tyranny and repression are having an adverse impact. Many human rights activists have been assaulted or threatened, resulting in some fleeing the country. Demonstrators have been warned through state media that serious repercussions will follow their participation in such activities.

In consideration of the above factors, the AHRC requests you to review all the recommendations made by UN authorities since 1993 and to pursue more fruitful ways to improve the human rights of the Cambodian people. The international community should also be encouraged to take a more proactive role in establishing the rule of law in the country, by providing the necessary assistance to the police, prosecution and judicial institutions.

Yours sincerely,

Basil Fernando
Executive Director



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FOR IMMEDIATE RELEASE

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A report by the Asian Human Rights Commission (AHRC) marking International Human Rights Day 2005

CAMBODIA: Twelve years after peace process, Cambodia in human rights limbo

During recent years the Cambodian government has taken many steps pushing the country backwards, away from the limited developments that took place with the intervention of the United Nations Transitional Authority for Cambodia and the adoption of a constitution based on the principles of liberal democracy.

The comprehensive human rights concepts encompassed within Cambodia's 1993 Constitution are unable to be realised. This is because the attempt to introduce principles of human rights, while with great UN and international support, was not accompanied by attempts to improve the basic institutions of justice--the police, prosecution and judiciary. These institutions continue to function in a similar way to that during 1980-1992, when large parts of the country were controlled by the Vietnam backed State of Cambodia (SOC). At that time, under a framework of socialist law, all three institutions were subordinate to the ruling party, with no institutional independence.

This situation continues to exist today, despite the rhetoric of the rule of law and liberalism used by the Ministry of Justice as well as other state agencies. Cambodia's police force is a direct instrument of the party in power. Its officers are little educated, and the force is highly unorganized, unable to coordinate as a single unit. The majority of the country's police stations are primitive and often do not have the necessary paper and other materials to record complaints. Furthermore, there is no code or mechanism by which disciplinary inquiries can be made. Corruption exists at all levels of policing and Cambodian citizens distrust and fear police officers. Under these circumstances, little coercion or intimidation is needed to obtain confessions. If it can be proved that a confession was obtained through the use of torture or other illegal means, it cannot be used in court. However, the lack of forensic and other facilities make it impossible to prove that a victim was tortured. Moreover, the nexus between the Cambodian courts and police will ensure that no attempt to prove police torture or abuse will succeed.

To ensure the independence of the judiciary, the UN Special Representative of the Secretary General on the situation of human rights in Cambodia has made numerous recommendations to the government since 1993. Observations have also been made regarding the total subordination of the judiciary to the executive. Far from taking note of these observations and recommendations however, the Cambodian government has instead pursued a policy of severe intimidation of judges. For instance, when judges have released detainees on the grounds of insufficient evidence, they are accused of taking bribes. Such allegations are often publicly made by the prime minister himself. Other judges have been removed from office for giving judgments adverse to the executive. There is hence a general observation by human rights groups that the courts are unable to protect due process and the rights of those seeking justice.

Attempts to suppress pluralism are a hindrance to the development of Cambodia's basic institutions. The country's well known dissident politician, Sam Rainsy had to flee the country when attempts were made to arrest him and some of his party members after removing their parliamentary immunity. Another party member, Cheam Channy, who was also a member of parliament, was arrested and sentenced to seven years rigorous imprisonment on charges of criminal defamation for making comments deemed defamatory by the government. These acts are an attempt to create fear and dismantle political opposition.

Similar attempts have been made by the government to suppress the increasing number of trade unions being formed. Workers in recently established factories suffer from low wages and poor working conditions. Prominent trade unionist, Chea Vichea was killed in 2004 and until now no proper inquiries have been conducted. Two persons were later arrested, but claimed the allegations against them were fabricated. Human rights groups concur, and have suggested that the arrest was a response to international criticism. After carefully examining the evidence, the instructing judge concluded that the allegations were fabricated and released the suspects. The judge was then accused of corruption and later suspended from office. Thereafter, the two suspects were immediately arrested again and sentenced to 20 years imprisonment. Despite the doubt and suspicion surrounding the case, there is no possibility of review within the Cambodian legal framework. In cases of political interest therefore, a clear message is sent that no independence on the part of the judiciary will be tolerated.

Within the human rights community as well, there is widespread skepticism and fear. Many activists have been subjected to intimidation, while others have been assaulted and warned to give up their activities. Death threats via computers and telephones are also common. The situation has resulted in many activists leaving the country.

In Cambodia we find the contradiction between the principles of democracy and human rights and the reality. In reality, Cambodia lacks even an elementary foundation for the rule of law. Numerous countries and development agencies have poured large sums of money into Cambodia to encourage its development of democracy and human rights. However, no such development is taking place. This is hardly surprising, given Cambodia's lack of elementary rule of law and its defective policing, prosecution and judicial mechanisms. For all those concerned with Cambodia's democracy and human rights, both locally and internationally, it is time to review this situation seriously. Not only is the current limbo a waste of vast resources, but it is prolonging the suffering of the Cambodian people, who are commonly acknowledged to have suffered a terrible catastrophe. Until an effective strategy to improve the basic social and legal framework of the country is worked out, their suffering will not end.

The present international discussion about a tribunal for surviving Khmer Rouge leaders will not evoke much response amongst the ordinary Cambodians who are unable to obtain basic justice for the violations they suffer now. Until they are able to see developments in their current justice system, they will have little faith in the possibility of obtaining justice for crimes against humanity suffered in the past. Removing the current justice system from the control of the executive and allowing it to develop into a system able to protect the rights of the people is the only way that justice will have any meaning for Cambodians, now and in the future.

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About AHRC The Asian Human Rights Commission is a regional non-governmental organisation monitoring and lobbying human rights issues in Asia. The Hong Kong-based group was founded in 1984