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Promoting Democracy IN Postconflict Societies

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The US government helped by declassifying vital documents that helped the CEH work.

21. The UN Secretary-General, the UN High Commissioner for Refugees (UNHCR), the UN Children's Fund (UNICEF), the UN Office for Project Services (UNOPS), the UN Development Programme (UNDP), and the International Criminal Tribunal for the Former Yugoslavia (ICTY) all contributed by lending experts to the commission.

22. Examples include the appointment of an expert from the American Association for the Advancement of Science, financial contributions from the Ford Foundation, and the loan of vehicles by the Soros Foundation.

23. One of the projects, called "Everyone for Peace," aimed at promoting respect for human rights among the population; the other one focused on promoting the peace accords. Both were carried out in 1998 and 1999 with funds from the European Union.

24. See http://portal.unesco.org/en/ev.php-url_id=17410&url_do=do_topic&url_section=201.html.

25. This change limiting the role of the army to external security matters was supposed to be included in a series of constitutional changes that were to be made shortly after signing the final peace accords. This was part of twelve constitutional reforms linked to the peace accords. However, after two years of discussions, the Guatemalan congress added thirty-eight reforms, to make an overall "package" of fifty reforms; the package was rejected by voters in a referendum in May of 1999. For further discussion of this event, see Arnson, *The Popular Referendum and the Future of the Peace Accords in Guatemala.*

26. It was not possible to obtain any official statement from the Spanish Cooperation about why assistance had not been renewed for cooperation between the Spanish Civil Guard and the PNC. One reason may be that at a certain point during the FRG administration, new police were coming from the army; this remilitarizing might have been seen by some international donors as an obstacle to the building of the new institution, especially in terms of human rights.

27. MINUGUA, *Twelfth Report on Human Rights.*

28. Kulldorff, *Organizations in Guatemala.*

29. These include the CDHG, CERJ, the Center of Human Rights Investigation, Studies, and Promotion (CIEPRODH), CONAVIGUA, the National Council of Guatemalan Displaced People (CONDEG), and GAM. After the signing of the final peace accords, the ASC was weakened, because there was no specific role for it in the implementation phase. However, the organizations within the ASC did work together on preparing for the May 1999 referendum on the planned constitutional reforms and in the discussions around the fiscal pact.

30. The problem with the Freedom House survey methodology is that it shows overall trends, but hides short-term changes. Although consistent scores of 3 for political rights, and 4 in the case of civil liberties between 1996–2002 indicate that almost nothing happened, in fact some indicators improved while others deteriorated.

31. MINUGUA, *Décimotercer Informe Sobre Derechos Humanos,* p. 19.

32. Stanley and Holiday, "Broad Participation," p. 456.

33. See Azpuru, *La Cultura Democrática de los Guatemaltecos en el Nuevo Siglo.*

34. See MINUGUA and PROPAZ, *Paz y Democracia en Guatemala.*

6

Human Rights Challenges in Postconflict Cambodia

Sorpong Peou

This chapter examines the role of international aid in building human rights institutions in postconflict Cambodia. An underlying premise of this analysis is that domestic institutions can help promote political rights and civil liberties and that donors can contribute to this process. International donor attention, coupled with a history of repression, makes Cambodia a useful case study for examining how human rights institutions can be built and nurtured.

The country has endured outside intervention, political repression, violence, and armed conflict for centuries. Following the end of the Khmer Empire in 1431, several foreign powers, including Thailand and Vietnam, Spain (late sixteenth century), and France (1863–1953), invaded and sought to assert control over the country. From 1953, when Cambodia secured independence from France, to the end of the 1960s, Prince Norodom Sihanouk's paternalistic authoritarian rule prevailed. From 1970 to 1978 the dictatorial Khmer Republican and ruthless Khmer Rouge regimes carried out unprecedented repression and genocidal violence. The Khmer Rouge launched a vast, brutal program of social engineering, forcibly relocating city residents to rural areas. An estimated 2 million people were killed in the process. During the 1980s, Cambodia remained in the tight grip of socialist dictatorial rule.

In 1991, four warring factions—the State of Cambodia (SOC), the Khmer Rouge (officially known as Democratic Kampuchea [DK]), the Khmer People's National Liberation Front (KPNLF), and the royalist party, known as the National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia (FUNCINPEC)—signed the Paris peace agreement on October 23, agreeing to move their armed conflict from the battlefield to the ballot box. The United Nations, on the invitation of the four

armed signatories, launched a mission to organize a national election, which took place in May 1993.

Cambodia subsequently emerged as one of the most aid-dependent countries in the world. Donors, both bilateral and multilateral, have shown varying degrees of interest in promoting human rights and democracy in the country. The total volume of their assistance in various areas, including human rights, over the past decade has been substantial, though perhaps insufficient for a country torn apart by war for so long. Between 1992 and 2000, donors collectively pledged over US$5 billion at the first three meetings of the International Committee on the Reconstruction of Cambodia (ICORC) and the subsequent five Consultative Group (CG) meetings. By 2001 the total disbursement amounted to more than US$4 billion, representing 73.3 percent of the overall amount pledged by donors.[1]

International aid has had a positive effect on the overall human rights situation in Cambodia. But after more than a decade, the process of building rights institutions remains fragile. The country enjoys only nominal freedom despite improvement in political rights and civil liberties. Governmental and nongovernmental human rights organizations remain structurally weak, vulnerable to political control, and financially unsustainable. In the years to come, these institutions will remain anemic unless appropriate measures and actions are taken.

Human Rights Context, 1982–2004

This section briefly examines the overall trend in human rights over the past two decades, covering a period that began with the People's Republic of Kampuchea (PRK) regime in 1982 and ended in 2004 with the Cambodian People's Party (CPP) still in power. The purpose here is to establish how human rights evolved prior to and following the delivery of international assistance.

Political Rights

Before the deployment of the UN Transitional Authority in Cambodia (UNTAC) after the signing of the 1991 Paris agreements, serious human rights abuses persisted, though there had been clear progress since the Pol Pot years. The PRK/SOC regime was far less repressive than the fanatical Khmer Rouge regime, led by Pol Pot, and the PRK adopted a national constitution in 1981 that contained some provisions for political rights and civil liberties. These rights were not clearly defined or specified, however.

The electoral process itself was exclusionary. Only candidates from the communist CPP could be elected, instead of being elected by the people in multiparty competitive elections. True to the spirit of "socialism," the electoral process barred citizens from forming rival political parties that might challenge the CPP. This one-party system was designed to prevent opposition groups from competing in the political arena.[2]

During the period following the UN intervention, respect and protection of political rights improved. Plurality in the media sector began to emerge, and political violence and intimidation against journalists declined. Multiparty elections became more competitive, particularly the 1993 election. Opposition parties published their own newsletters and bulletins,[3] and some twenty political parties were registered to take part in the electoral process. There was a healthy element of uncertainty before polling day. The CPP could not be sure that it would garner all the votes, and did not seem invincible. But after the 1997 coup that reversed the 1993 election outcome, the CPP successfully consolidated its power. Subsequent government leaders were elected in 1998 and 2003, but these national elections were generally less free than the 1993 vote. The CPP-dominated coalition governments formed after the 1993, 1998, and 2003 elections failed to operate in an accountable, open manner though the military and security apparatuses never directly controlled the state.

Civil Liberties

Civil liberties improved over the period 1992–2004, but remained subject to abuse and prohibitions. Before this period, freedom of expression and belief had been severely restricted. Under the PRK/SOC regime, Buddhism flourished but remained under state control. Independent media were prohibited, academic freedom was extremely circumscribed, and political organization outside official state channels was banned. Local human rights organizations were not permitted to operate inside the country.

Since 1992, freedom of expression has improved to a relative degree. Some 100 newspapers are now privately owned and tend to be allied with different political parties. The government continues to dominate broadcast media, which is the main source of information for the largely rural population. The government has denied a radio broadcast license to the main opposition party, the Sam Rainsy Party (SRP). News organizations operate in a climate of fear. Journalists who issue critical reports face potentially lethal risks. A deputy editor of a radio station allied with the opposition FUNCINPEC was shot dead in 2003.

Freedom of assembly has fluctuated since 1992 but worsened in recent years, with greater restrictions imposed after early 2003. After 1991, this right was guaranteed by the constitution and the International Treaty on Human Rights, ratified by Cambodia, but limits persisted in practice. Those organizations perceived as a threat to the regime have been denied official recognition, such as the Students Movement for Democracy Organization. Political rallies and marches, demonstrations and strikes, meetings and

seminars have been officially permitted, but numerous constraints and pressures still apply. The March 1997 grenade attack on an opposition party demonstration provides a clear example of the risks attached to open dissent. Local nongovernmental human rights organizations are allowed to exist but face intimidation and threats. In January 2003, new restrictions were imposed on freedom of assembly, with the government citing vague threats to national security and public order. Throughout 2004, police violently dispersed at least twenty public demonstrations.[4]

Minority rights have improved, but many problems and challenges remain. Although better represented in government, women remain underrepresented in all branches of government. By the end of the twentieth century, two women were serving as cabinet ministers (minister of women's and veterans' affairs, and minister of culture and fine arts) among the twenty-five ministries, compared to none in the period 1993–1997. Ethnic minorities enjoy more freedom than previously, but still face repression. Some 200,000 to 500,000 Vietnamese often suffer from racial discrimination by both political officials and throughout mainstream society, especially during election periods.

Individual economic freedom has improved since the early 1990s, though violations continue. Since the early 1990s, the right to private property, particularly to own land, has been revived and improved. However, military and police officers often illegally confiscate lands, and land disputes are not resolved in a legal manner. According to a UN report, the absence of a proper land-title registration system and corruption by vested interests are to blame.

Deep inequalities, with a small wealthy elite living among an impoverished majority, continue and are worsening. According to the UN Development Programme (UNDP) in its 2004 Human Development Report, Cambodia remains one of the world's poorest nations, ranking 130th out of 177 countries. The number of people living below the poverty line (US50¢ per day) increased from about 36 percent in the late 1990s to about 43 percent (about 5.6 million) in 2002.

The UN Special Representative for Human Rights repeated his calls on the Cambodian government to address problems of meager and slow disbursement of national budget allocations, citing the negative effect on health, education, and judicial reform. He cited an example of the total health budget for 2003, of which only 10 percent had been released for the first half of the year.[5] Government indifference to poverty and corruption remains endemic. The World Bank has issued scathing reports describing rampant corruption.

The Fragile Rule of Law

The judiciary under the PRK/SOC regime in the 1980s was rudimentary and lacked independence. The rule of law did not prevail in civil and criminal matters. Not only was the court system newly established, but it also faced a severe shortage of professionally trained staff. Judges, prosecutors, and defense lawyers had "a very limited legal background."[6] Judicial decisions were mainly settled through conciliation mechanisms, and the courts lacked the capacity to handle numerous cases efficiently.

Other public organizations that could ensure the protection of human rights were extremely weak and highly politicized. The security apparatus was far more powerful than the judiciary. At the time of the 1991 Paris agreements, the SOC claimed to have a 47,000-strong police force, whose members were as heavily armed as soldiers, but barely trained for professional duties. According to Amnesty International, the regime employed long-term detention of political prisoners (including prisoners of conscience) without charge or trial, summary use of the death penalty, and systematic torture. Some political detainees died under dubious circumstances while in custody.

The UNTAC mission led efforts to introduce the rule of law in a country with no democratic tradition. Until 1991 the country had been at war, and the state faced challenges from resistance movements seeking to undermine its authority. In the months leading up to the 1993 election, human rights violations included the senseless slaughter of ethnic Vietnamese, abuse of prisoners, and incidents of politically motivated murder. Although the number of extrajudicial executions decreased to two in 1995, the human rights situation worsened in 1996 and deteriorated rapidly in 1997, when four people died as a result of torture and at least twenty-seven people, including six children, were arbitrarily executed. During and after the coup in 1997, scores of FUNCINPEC members were extrajudicially executed, while hundreds of others were detained without charge or trial. By the end of 2003, none of the perpetrators of these crimes had been brought to justice. Prisoners are often placed in overcrowded cells and given inadequate food with little or no nutrition. According to a UN report, "over-crowding is terrible—people are like sardines, and there are prisons where they can't lie at the same time, so they do it in turns. While some sleep, others have to stand up."[7] The situation worsened in 2004, with the number of prisoners increasing by 30 percent to a total of 7,840, aggravating overcrowding problems. In addition, rampant corruption persists among prison officials.[8]

International Assistance for Human Rights, 1992–2003

Bilateral and multilateral donors involved in the promotion of human rights in Cambodia included outside governments, multilateral organizations, and international nongovernmental organizations (NGOs). The United States, Australia, and Japan were among the main bilateral donors providing such

assistance. A leading multilateral donor was the European Commission (EC), which made efforts to promote human rights through a variety of strategies. When it began its trade negotiation with Cambodia in 1996, the EC stated that the agreement would be conditional on the latter's respect for human rights. On November 7 of that year, a joint declaration was made, stating that the agreement could be suspended in the event of serious human rights violations. International NGOs, such as Human Rights Watch and Amnesty International, also played an influential role. Above all, the United Nations represented the most important actor in human rights. Apart from the UNTAC mission, stationed in the country between 1992 and 1993, the UNDP's office in Cambodia and the Cambodian Office of the High Commissioner for Human Rights (COHCHR) also led efforts to protect human rights.

Regulatory Reforms

The Paris agreements laid a foundation for promoting human rights in Cambodia, based on the recognition that the country's "tragic recent past requires special measures to assure protection of human rights, and the non-return to the policies and practices of the past."

The human rights component of UNTAC played a crucial role in providing international assistance to help protect political rights and civil liberties in general. The component consisted of a small group of specialists on human rights, including international lawyers, charged with monitoring and investigating human rights issues as well as providing training, education programs, and information. The office adopted regulations relating to the judiciary and criminal law procedures during the transitional period before the election of the Constituent Assembly. It also established the Prisons Control Commission, leading to the release of political prisoners and prisoners detained without trials, improved jail conditions, and enrolled prisoners to vote. As part of the long-term objective to protect human rights, UNTAC established the UN Human Rights Trust Fund, which was used to support international and regional nongovernmental organizations working with Cambodian counterparts in a variety of education and training activities.

Foreign governments provided further assistance for specific legal projects. Beginning in 1999, for instance, Japanese legal experts worked on drafts of a civil code and a civil procedure code. French legal experts also worked on preliminary drafts of the penal code and the criminal procedural code and completed them in September 2000.

Legal Training and Judicial-System Reform

UNTAC pursued an ambitious agenda for judicial reform. Its human rights component conducted training courses for judges, defense lawyers, and public prosecutors. UNTAC once considered the possibility of importing foreign judges and lawyers, but this idea was never put into practice. UNTAC also assisted in the process of translating the various human rights instruments from English into Khmer and distributing them to government officials and human rights activists. In addition, UNTAC provided assistance to Cambodia's Supreme National Council (SNC) in accepting seven international human rights instruments, including the Convention Against Torture and Other Forms of Cruel, Inhuman, and Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; and the Convention Relating to the Status of Refugees and its protocol.[9] Unfortunately, most of the judicial reform initiatives by UNTAC were considered unsuccessful, due in part to the limited time frame, political disputes among the four Cambodian signatories, and the complexity of the task at hand.

Following UNTAC's departure shortly after the 1993 elections, donors showed a heightened interest in promoting human rights. They pressed for judicial reform at various annual Consultative Group meetings and pledged assistance for human rights. In March 2000, Japan pledged up to US$20 million. In Paris in May 2000, donors expressed continued concern about human rights abuses and the culture of impunity in Cambodia. The European Union (EU) offered a US$5.2 million grant set aside for judicial and administrative reform. Efforts by donors to promote human rights were also directed at building relevant local organizations.

Assistance for State-Run Human Rights Institutions

At the state level, efforts were made to promote enforcement of human rights through building institutions in the executive, legislative, and judicial branches of government. The UNDP, while focusing mainly on economic development, sponsored training for judges and court staff to assist the judiciary and the courts to act independently, uphold the rule of law, and ensure equity and access to justice. Key projects sponsored by the UNDP included the "Human Rights Training Project" and "Education on Human Rights." It also gave support to the Cambodian Human Rights Action Committee (CHRRCC), a national human rights network that monitors rights abuses and provides training for rights activists. The COHCHR worked on human rights issues in cooperation with government ministries and agencies, parliamentary commissions, law professors, and the prosecutor general's office.

International NGOs also played an active role in efforts to bolster human rights. The International Human Rights Law Group provided technical training to judges, prosecutors, clerks, prison authorities, civilian and military police, and local officials on human rights, domestic law, and the role of the judiciary. Human Rights Watch/Asia consistently lobbied donors to insist on accountability and transparency in Cambodia's judicial system.

Establishing the Khmer Rouge Tribunal

Donors also put pressure on Cambodia to establish an international criminal tribunal with the aim of bringing Khmer Rouge leaders to justice for their crimes against humanity. Among the international actors, the UN was the most active in lobbying Cambodia to establish the tribunal. After several setbacks, the UN and the CPP government finally signed an agreement on June 6, 2003, to establish extraordinary chambers capable of exercising jurisdiction in accordance with international standards of justice.

The European Parliament was among the international bodies pushing for justice against Khmer Rouge leaders. In April 1999 it passed a resolution condemning the Cambodian government for any attempts to prevent the establishment of such a tribunal and calling on EU member states and the European Council to support the cause.

Countries such as the United States, Japan, and Australia as well as major international organizations took the lead in pushing for action on the tribunal's establishment. During his visit to Cambodia in 2000, Australian foreign minister Alexander Downer urged Cambodia to meet international judicial standards and announced that his government would offer a two-year US$20.8 million (Aus$28 million) aid package including funding for a criminal judicial assistance project. On a visit to Cambodia in January 2000, Japanese prime minister Keizo Obuchi also told government representatives that his government would not lend support to any tribunal lacking an endorsement by the UN, and urged Cambodia to cooperate fully with the world organization.

As of early 2006, the international community is still expected to provide financial assistance to the tribunal (made up of Cambodian and foreign judges, prosecutors, and staff), covering the bulk of the estimated total cost of US$57 million. For its part, the Cambodian government is required to contribute US$13.5 million to these costs.

Assistance for Human Rights NGOs

International donors delivered financial, technical, and political assistance to numerous local nongovernmental organizations working in the sphere of human rights. In 1997 the Swedish International Development Agency (SIDA) approached the Swedish NGOs Diakonia and Forum Syd with the aim of funding local NGOs. As a result, Diakonia and Forum Syd provided financial assistance to support the annual budgets and activities of various Cambodian human rights groups.[10] In July 1999 the US government announced an aid package of US$3.4 million to Cambodia's local human rights NGOs. The Asia Foundation also played a crucial role by mobilizing citizens to monitor human rights abuses, improving investigation and legal

representation, and bolstering advocacy efforts aimed at securing the Cambodian government's commitment to protecting human rights. The foundation worked in partnership with the Cambodian Health and Human Rights Alliance and the Cambodian League for the Promotion and Defense of Human Rights (LICADHO). It funded other local human rights NGOs, such as the Cambodian Defenders Project and Legal Aid of Cambodia, both active in providing legal representation to poor Cambodians. The Japanese Federation of Bar Associations also provided assistance for legal training to law graduates.

Several other international organizations helped build, protect, and strengthen human rights NGOs in Cambodia. Some organizations, such as Forum Asia and Amnesty International, focused on monitoring human rights in Cambodia. Others, such as the COHCHR, cooperated closely with Cambodian human rights NGOs and other civil society groups to help promote national policies and practices consistent with Cambodia's international obligations. Its staff also took part in regular meetings held by the Human Rights Action Committee (a coalition of eighteen local NGOs that met and coordinated work on human rights).

The Impact of Assistance and Remaining Challenges

How would Cambodia have evolved without international donor assistance? One good indicator is to look at its former socialist allies in the region, Laos and Vietnam. Both remain repressed, one-party states. It is hard to imagine multiparty elections, the emergence of indigenous human rights organizations, and other relative progress since 1991 in Cambodia without the support and presence of international donors.

International assistance for human rights over the past decade clearly has contributed to the promotion of human rights norms in the country. Moreover, the number of human rights organizations grew during the 1990s and played a positive role in protecting as well as promoting human rights. However, the overall impact of international assistance has failed to meet expectations. Human rights institutions remain fragile and require long-term attention.

Institutional Growth of Human Rights Institutions

The emergence of new human rights NGOs represents one of the positive legacies left by the Paris agreements and UNTAC. In 1992 the Cambodian Human Rights Action Committee had only four founding members but subsequently expanded to eighteen.[11] In 2000 the total number of NGOs that

focused on human rights issues had increased to approximately forty.[12] This was a remarkable achievement, as none existed before 1991.

Human rights NGOs undoubtedly made a positive contribution to the protection and promotion of human rights norms, engaging in monitoring, advocacy, education, and training efforts. In the capital, Phnom Penh, human rights education also had an impact on government officials. LICADHO reported that its training and education initiatives helped raise awareness among civil servants about human rights. Such awareness resulted in the improvement of legal procedures and decreased incidents of torture in prison. Other organizations helped train government staff on political rights and civil liberties, due process and procedure, and substantive and procedural law.

Official Recognition of Human Rights

Even if it has failed to build and strengthen human rights, the Cambodian regime has at least formally recognized their importance. The National Assembly established its own human rights commission, and the Senate has one as well. The Council of Ministers' Administrative Reform sought to protect government employees from arbitrary prosecution. The Ministry of Justice created a human rights committee, overseen by Prime Minster Hun Sen's senior adviser, Om Yenthieng. The primary function of the committee is to provide remedy for legal issues involving the government and its agencies.[13] The Ministry of Women's and Veterans' Affairs (MWVA) also has a unit created to address gender discrimination through advocacy and outreach activities.

Legal institution building in other areas also has continued. Several state-run institutions were recently established, including the Center for Training of Lawyers (which began at the end of October 2002) and the Royal School for Training Judges and Prosecutors. Criminal justice has been pursued, if halfheartedly. On April 11, 2002, Cambodia ratified the Rome Statute of the International Criminal Court (ICC). By the end of 2004, it was one of only two countries in East Asia, the other being Timor-Leste, to have ratified the statute. The Khmer Rouge tribunal marked an attempt by Cambodia to promote justice, albeit under considerable pressure from the international community. The tribunal is seen by proponents of human rights and opposition party leaders as one way to help end the persistence of impunity. By late 2005, however, the entire process was still at the early stage: only the director and deputy director of administration had been appointed; the process of selecting judges and prosecutors remained unfinished. It was unclear how the process would eventually contribute to institution building in the justice sector. This looked like a missed opportunity.

Persistence of Corruption and Impunity

Apart from the positive effects of international assistance, a number of challenges relating to the efficacy and conduct of state institutions have yet to be adequately addressed by donors. Corruption, for example, remains endemic in Cambodian society. Despite numerous assistance and training programs, the judicial system remains corrupt and subservient to powerful interests. The UN Special Representative for Human Rights in Cambodia has stated that "justice is not the same for people who are rich and powerful, and people who are poor and weak."[14] In his view, "impunity lies at the centre of problems in the administration of justice." He added that "impunity for those responsible for human rights violations, especially the police and military and those in positions of political and economic influence, remains a serious problem."[15] King Sihanouk also mourned: "In today's Cambodia, the God of impunity reigns side by side with the King of corruption."[16] Even the prison system is highly corrupt. Some families are required to pay prison guards for lawful access to prisoners, according to a UN report.

The state spends a paltry amount on the judicial and penal systems. The Ministry of Justice's 2003 budget was only US$2.4 million (0.3 percent of the US$707.4 million national budget). According to a 2002 UN report, "This already inadequate amount is often not even fully paid to the Ministry of Justice and the courts. When other ministries overspend their allocated budgets, funds are diverted from the Ministry of Justice to compensate."

In addition, the three human rights commissions within the Ministry of Justice, the National Assembly, and the Senate lack independence and are virtually incapable of addressing complaints involving human rights abuses. Even the National Assembly's human rights commission was kept politically weak and subordinate to the interests of powerful individual politicians within the ruling party. With the exception of budget allocations for a few institutions, such as the Supreme Council of Magistracy, the Supreme Court, and the Appeal Court, the budget earmarked for the judiciary remained under the control of the Ministry of Justice.

Politicization of Human Rights Institutions

Closely related to the problem of impunity and corruption is the tendency of most governmental human rights institutions to defer to the dominant political party, respond to issues in a passive manner, and slavishly defend government policies. The government's human rights committee was mandated to investigate political killings during and after the violent coup in 1997, but did little to bring those responsible to justice. Details of some

investigations were documented, but only three people involved in two cases of extrajudicial killings were tried, convicted, and sentenced to jail terms. No details of the trials were divulged, however.

Other government institutions designed to promote human rights also lacked real political influence. Judicial rulings are subject to interference, especially when dealing with politically powerful individuals. In August 2001, for instance, a provincial court's refusal to comply with the governor's instruction led to a public demonstration that intimidated the court and eventually forced it to comply with the governor's wishes. In December 1999, Prime Minister Hun Sen ordered the rearrest of prisoners released by courts. The Ministry of Justice then suspended two senior judges.

The judiciary is deeply politicized and clearly subservient to the ruling party. Judges have been quick to punish members of opposition parties, impoverished criminal suspects, and other powerless individuals, while avoiding prosecuting suspects loyal to the ruling party. In April 2002, for instance, a judge found guilty a journalist who was working for an opposition newspaper, fined him US$18,000, and then threatened to put him in jail if he failed to pay. The ruling came after the journalist reported that two former Khmer Rouge generals and a wealthy pro-CPP businessman were involved in illegal logging.[17] In contrast, judges have convicted few of those suspected of killing opposition party members, and have almost always argued that such killings lacked any political motivation or context. Judges remain inadequately trained and have also been appointed on a partisan basis, mostly by the CPP. Even the Supreme Court avoided considering cases related to political rights.

The Supreme Council of Magistracy is plagued by a lack of transparency. A draft bill to amend legislation on the magistracy's organization and functioning has been blocked. According to a UN report, "COHCHR has provided comments on the draft Bill. A group of NGO leaders . . . forwarded comments with recommendations for larger reform of the Council. However, the lack of transparency that dogs most draft laws means that no public discussion has yet taken place despite the repeated commitments of the Government to encourage public consultations in the law making process."[18]

With strong links to the Ministry of Justice, the Supreme Council of Magistracy, entrusted by the constitution (through Articles 132–134) with the task of helping the king ensure judicial independence and disciplining judges and prosecutors, is far from independent. According to a report in August 2003 from the UN Special Representative for Human Rights, the Council "is largely ineffectual, effectively leaving Cambodia without an institution to discipline its judges," while the executive remains reluctant to empower the judiciary.

Limited Influence and Institutional Weakness of Cambodian NGOs

Domestic human rights NGOs are plagued by a number of weaknesses. Despite the rise in the absolute number of human rights NGOs during the mid-1990s, the number of genuinely independent human rights NGOs decreased over time. Few maintain high degrees of political independence, institutional accountability (through effectively functioning boards of directors), or transparency. Most lack significant influence. Political leaders choose to ignore their requests for action or investigation and even threaten NGO activists. Following the grenade attack on an opposition party rally in March 1997 and the violent coup of July 1997, human rights NGOs encountered greater open hostility from authorities and scaled back their activities, fearing government reprisals. According to Sara Colm of Human Rights Watch, human rights NGOs in Cambodia face "an uncertain future," even if human rights workers developed a sense of courage and optimism. She indicated that most local human rights groups hesitate to confront the state, hoping to avoid political retaliation. In her words, "most rights groups [did] not employ activist tactics such as conducting demonstrations or organizing communities affected by a problem to advocate for change."[19]

By 2004, most local human rights NGOs scarcely functioned. Only a few could now be said to have a promising future: the Documentation Center of Cambodia (DC-CAM), LICADHO, and the Cambodian Human Rights and Development Association (ADHOC). However, only two, LICADHO and ADHOC, seem ready to perform regular human rights duties. However, both organizations lack adequate institutional resources, and heavy reliance on international assistance presents a long-term challenge. Perhaps most worrying, however, is that some in the human rights NGO community say morale is declining and that the sector is "losing heart."[20]

Limiting Factors

There are a number of factors that explain why the impact of international assistance on human rights has been so limited in Cambodia. These limitations can be described as domestic challenges, regional influences, and shortcomings of donor assistance.

Domestic Challenges: Culture, Politics, and the Economy

Cambodia's cultural values have made it difficult to promote a new liberal culture of accountability and transparency based on the concept of human

rights. Respect for individual human rights has never been part of the country's political culture. Traditionally, the concept of "divine rights" associated with the idea of a "god king" with spiritual links to the Hindu god Shiva dominated Cambodian society for many centuries. This traditional concept was later replaced by a more liberal model of individual rights after Prince Sihanouk was ousted from power in 1970. But individual rights soon gave way to republican authoritarianism under the leadership of President Lon Nol and then to collective obligations under the socialist-oriented regimes of the Khmer Rouge and the PRK/SOC.

Ignorance about human rights principles also naturally hampered its development. Education efforts failed to reach much of the rural population. Approximately 85 percent of the population knew little about individual political rights and civil liberties. The average citizen had inadequate access to international and local rights organizations. Even if access was possible, most were not encouraged to register complaints due to the fear of political reprisals. This lack of public participation and awareness held back the advance of human rights and related organizations.

The dominance of one political party at the expense of pluralism posed another serious challenge to the development of human rights. When the CPP and FUNCINPEC dominated the first coalition government after the 1993 election with no serious opposition, the parties increasingly resisted international efforts to pursue judicial reform. While still prime minister, Prince Ranariddh adopted an indifferent stance to the idea of making the judiciary independent from the CPP and the Ministry of Justice.

Following the 1998 election, when it emerged as the country's dominant party and successfully consolidated its political, military, and economic power, the CPP strongly opposed reforms meant to make the judiciary more accountable, transparent, independent, and sustainable. Moreover, in June 1998 the government sought, albeit unsuccessfully, to tighten control over human rights NGOs by drafting a new law that complicated registration requirements, prohibited international assistance, and barred international associations from receiving any government funding. While the security atmosphere beginning in 2000 improved compared to previous years (as the war had ended in 1998), "public officials issued strongly worded warnings to NGOs," according to Human Rights Watch.[21]

As the CPP grew more powerful, it also grew more resistant to international pressure on human rights issues. In August 1999, Prime Minister Hun Sen called for the closure of the Office of the UN Secretary-General's Special Representative in Cambodia when his mandate expired in January 2000. In addition, Cambodia sent no delegation to the examination by the UN Committee Against Torture of Cambodia's initial report in April 2003. The UN Special Representative for Human Rights in late 2003 noted recent efforts, apparently by Cambodian government officials, to describe the UN involvement in human rights as "a kind of harassment" and to "reduce the UN involvement" in this area.[22]

Depressed economic conditions have hindered efforts to promote human rights and to make human rights organizations sustainable. There has been some modest increase in funding judicial reform and training. Judges and prosecutors recently received increased allowances, and training schools for judges, prosecutors, and legal practitioners also began to operate. However, courts remain poorly funded and often have to borrow money from local authorities to pay for basic necessities such as electricity. Widespread poverty has made it all the more difficult for Cambodians to build, strengthen, and sustain human rights organizations. Impoverished citizens concerned with daily survival could not provide active support to human rights organizations or afford to buy publications produced by human rights organizations. ADHOC, for example, was forced to adopt a policy to cancel sales of its biweekly magazine to recover costs. As a result, the association continued to depend entirely on international assistance.

Cambodian leaders also have sought to hold back human rights activities by justifying undemocratic behavior on grounds that they need to focus first on providing food and basic needs to the population, even though they have not done much in this regard. Economic development has been presented as a higher priority than promoting political rights and civil liberties. The Cambodian leadership has employed the argument that rights should be defined in economic rather than in political terms. According to the political leadership, grinding poverty justifies state-sponsored violence as a tool to restore or maintain order. The state, citing poor economic conditions, has made no effort to provide funding for the bar association and the few NGOs active in providing Cambodians with legal representation and advice.

Regional Challenges

States in the region have had a negative influence on the limited respect for human rights of Cambodia's government. Instead of promoting human rights, regional governments have actively discouraged human rights protection and dismissed reports of widespread abuses. China, Vietnam, and Myanmar (Burma) remain undemocratic states and have never sought to defend human rights at home or abroad. These countries exert real influence over Cambodia and have maintained close bilateral ties with the country. Although both the French government and the Australian federal police ran training or "cooperation" projects with Cambodian police, the Cambodian government also continued to send the majority of its security forces to Vietnam for training.[23] Until the early 2000s, the Association of Southeast Asian Nations (ASEAN) had little to say about human rights and made no attempt to raise concerns. Malaysia has opposed intervention in the affairs

of other states, even if a regime clearly violates human rights. In 2002, when asked if his country would intervene in another country controlled by a notorious figure such as Pol Pot, Malaysian prime minister Mahathir Mohamad replied, "There will be ways of intervening that don't amount to actually interfering with their administration."[24] When asked a similar question, Singaporean prime minister Goh Chok Tong said: "The principle idea is not to comment or interfere in someone else's domestic affairs."[25] The most democratic state in ASEAN, the Philippines, never adopted a policy to promote human rights outside the UN system.[26]

ASEAN leaders have maintained that human rights values defined in individualistic terms are based on Western culture and ideas and cannot be universally applied. They have embraced the notion of cultural "relativism" and "particularism" to defend their stance. ASEAN even admitted Cambodia into the regional group as a member in 1999 after its government had seriously violated human rights norms. Within ASEAN, there was no formal requirement for a government to display accountability.

China defended the Cambodian regime throughout the 1990s. Beijing "was the most consistent and outspoken opponent of an internationally managed or supervised tribunal for former Khmer Rouge leaders," based on the defense that any "internationally controlled tribunal would infringe upon Cambodia's national sovereignty."[27] Beijing was known for being "unwilling to support a Security Council resolution under Chapter VII of the U.N. Charter"[28] to bring surviving Khmer Rouge leaders to justice. As Sino-Cambodian ties expanded, the CPP regime exhibited a growing opposition to human rights efforts.

Donor Limitations

Donors seemed unable to promote accountability and transparency in Cambodia. UNTAC was criticized by international human rights organizations, such as Human Rights Watch, for tolerating the bombing of opposition party offices during the period leading up to the 1993 election, for encouraging Khmer Rouge leaders to take part in the election, and for failing to stem the climate of impunity.

In the post-UNTAC period, donors used "carrots" rather than "sticks" to encourage the Cambodian government to promote human rights. The UN Special Representative for Human Rights was among the few outspoken international officials who demanded that Cambodian leaders end the prevailing impunity and introduce accountability. For many other donors, human rights issues were not high on their agenda.

In the mid-1990s, most donors had continued to pledge their faithful support for the Cambodian government. At the 1996 Consultative Group meeting, the main donors promised to provide Cambodia US$501 million in unconditional aid. Even after the grenade attack on an opposition party rally in March 1997, the European Parliament's Committee on Development and Cooperation recommended approval of a proposed cooperation agreement with the Cambodian government. At the July 1–2, 1997, CG meeting, the donor community pledged to give Cambodia an additional US$450 million. As Cambodia's largest donor, Japan protested Hun Sen's call for the closure of the COHCHR in April 1995, but always maintained "a low profile on human rights issues." After Cambodia joined ASEAN in 1999, Japan avoided linking aid to human rights progress and instead focused on the restoration of political stability. Until recently, Japan tiptoed around the issue of Khmer Rouge trials, apparently because it wanted to avoid tensions with China and the United States. Officially, the United States seemed active in promoting justice in Cambodia, but the reality was not as straightforward. At the end of 2004, the United States chose not to join three countries—Australia, France, and Japan—that pledged financial support for the planned Khmer Rouge tribunal. Even the three pledging countries offered only small amounts that fell far short of the US$57 million that the tribunal would need: France with US$1 million, Australia with US$2 million, and Japan with US$3 million.

In recent years, the donor community has begun to express more public concern about human rights abuses and indignation at the climate of impunity. Donor governments have agreed to set up a working group to focus on judicial reform and corruption. In July 2004 the World Bank led a group of donors on good governance, which comprised the United States, the EU, Germany, Britain, the UNDP, the Asian Development Bank (ADB), and the COHCHR. Overall, however, the United States has remained "ambivalent" about Khmer Rouge trials, apparently because of its involvement in the Cambodian war in the 1970s and the indirect support provided to the Khmer Rouge movement during the 1980s.[29] Moreover, the United States likely would prefer to avoid angering China on this issue, especially since the beginning of the war on terrorism in autumn 2001. The George W. Bush administration's opposition to the International Criminal Court also did not help in this regard.[30]

Donors have tended to attach a lower priority to promoting more accountable management within human rights NGOs. Although generous, the donors have been accused of failing to exercise proper oversight over human rights NGOs and accounting for the assistance granted. "Shame on the donors that condone these practices and do not investigate the organizations they give money to," one researcher wrote in 2002.[31] Donors chose not to encourage reform in the NGO sector: "Sponsors knew all along that some rotten apples existed, yet this did not affect their funding practices."[32]

Part of the problem was that donors lacked effective international coordination. Donor governments often funded human rights NGOs with similar activities without setting out a clear division of labor. Diakonia, Novib, Oxfam America, Oxfam Belgium, Oxfam Great Britain, Oxfam Hong Kong, the British embassy, the Australian embassy, CIDA Canada, and the Asia Foundation all funded ADHOC, while most of these donors also funded LICADHO. This aid was delivered even though several of ADHOC's and LICADHO's programs and target groups were similar and overlapping. Donors haphazardly supported whatever programs they admired rather than adopting a complementary, long-term approach.

The Future of Human Rights in Cambodia

Prospects for the development of human rights are mixed, at best. Regional developments, the attitude of international actors, and economic conditions will help shape how human rights evolve. The regime's political will to promote human rights has never been strong and may weaken further given the ruling party's increasingly dominant position. The tendency for human rights NGOs to rely on charismatic leadership instead of more efficient and accountable management will have to change if these organizations are to survive and thrive.

It remains unclear what kind of impact the global economy will have on Cambodia and human rights promotion efforts. The UN Special Representative for Human Rights in Cambodia has already expressed concern that Cambodia's recent entry into the World Trade Organization (WTO) could influence the human rights situation. Together with Nepal, Cambodia is the first least-developed member of the organization. Landlessness, which has become a growing source of social conflict and human rights violations, might be exacerbated. While WTO membership might bring benefits from trade liberalization, it might also adversely affect a majority of the population and increase the burden of human rights NGOs, in that they would have to address more rights cases related to healthcare systems, rural lifestyles, rural employment, and food security.[33]

With human rights NGOs remaining weak and the ruling party growing stronger, the government will likely face no immediate pressure to answer for rights abuses or to explain its actions. Local human rights activists have even grown somewhat pessimistic about the future of their organizations. As noted earlier, directors of human rights NGOs appear to be losing momentum and hope. If this attitude becomes entrenched, the future of local human rights activism could be jeopardized. The role of international donors will be a crucial factor in the development—or deterioration—of human rights.

Lessons and Recommendations

Given Cambodia's tragic past, it is not surprising that the rule of law has yet to take root and that efforts to protect and promote human rights face numerous obstacles and difficulties. Some of these obstacles reinforce each other. The first barrier grows out of cultural attitudes and historical experience that places little value on human rights. Authoritarian, undemocratic practices throughout the region provide an additional destructive influence. The stifling of political pluralism and democratic competition among different parties places human rights organizations and institutions in a perilous situation, vulnerable to state manipulation and coercion. International pressure has become less effective as Cambodia's dominant party has consolidated its power and felt less of a need to display a cooperative attitude. Deeply rooted poverty and social inequality make it difficult for human rights organizations to become self-sufficient. Once reliant on international aid, these organizations are likely to stay dependent on such assistance. Poverty itself is cited by the regime as a rationale for delaying and devaluing the protection of human rights.

Still, some obstacles are more easily addressed than others. The following are constructive suggestions as to how donors and domestic actors might build human rights institutions in a more effective manner.

Toward More Effective, Better-Managed Human Rights NGOs

There has been an ongoing debate in Cambodia as to whether local human rights NGOs should adopt a confrontational or a low-profile approach toward the state. This debate is unhelpful and seems to miss the point. Either of these approaches runs the risk of weakening the power of human rights activism. The nonconfrontational approach could weaken the legitimacy of human rights NGOs, as it could be seen as bowing to government pressure. On the other hand, the confrontational approach has its limits, especially when it threatens the very existence of human rights NGOs.

Local human rights NGOs need to focus on practical steps that could make their organizations more effective. Instead of relying on improvisation and personal charisma, these NGOs need to improve their internal organization and management. These NGOs should themselves practice the values they preach: accountability, democracy, and transparency. Too often, leading activists perform their duties based on personal popularity that results from their resentment of the state or from pleasing donors. Some operate on a humanitarian basis, but do not have the faintest idea how to build effective and influential institutions. For long-term sustainability, human rights NGOs need to give thought to staff development and leadership succession. Human

rights NGOs may also need to improve their division of labor to avoid duplication and wasted effort.

Donors could play a constructive role by providing incentives to NGOs for more professional, accountable management. Donors should continue to demand that human rights NGOs promote internal management reforms, administrative accountability, and operational transparency from boards of directors down to lower-level staff. Future funding should be based on NGOs' willingness or commitment to submit self-evaluation reports and concrete future plans about long-term institutional development. Adopting a firmer stance with the NGOs on accountability issues need not be perceived as taking away their policy initiative or institutional autonomy.

Donors should only fund human rights NGOs that can attract public support, thus ensuring institutional legitimacy and long-term sustainability. Without a solid social foundation, human rights institutions cannot be influential or effectively sustained.

The Need for a National Human Rights Commission

Better coordination among independent human rights NGOs remains an important challenge of domestic human rights activism. Nevertheless, there is still a genuine need for a nationwide human rights commission that will promote effective dialogue and mutual understanding between the state-run human rights committee and local as well as international human rights NGOs. It was understandable that leading local human rights NGOs wished to keep a healthy distance from the state, largely because of the legitimate belief that working with the latter would compromise their activities. But a national commission for human rights might benefit Cambodia if it would also officially associate with the UN Commission for Human Rights and other international human rights organizations. The government might not show any interest in this initiative, as it once rejected LICADHO's proposal and showed no interest after late 1997. Still, it would be useful to explore the possibility and examine the potential benefits.

The Necessity of International Pressure

Donors should not naively assume that Cambodia will sooner or later become "enlightened" to the extent that it will respect human rights and uphold the rule of law. The cultural, political, and socioeconomic conditions within Cambodia and the region as a whole will ensure that any Cambodian government will avoid a voluntary embrace of human rights. Strong and constant pressure on the Cambodian state from donors is absolutely necessary. Unless there is an effective system of checks and balances, any personal promises by political leaders to promote human rights and uphold the rule of law will be easily broken.

Improving Donor Coordination

Donors need to speak with one voice on human rights issues and to agree on a clear division of labor. Although they may have expressed concerns about the problems of impunity and lack of judicial reform, they have proven unable to coordinate their activities effectively.

Coordination in judicial reform remains essential for improving the judiciary as a whole. Cooperation among donors should focus on the prevention of duplication and overlapping projects. It makes no sense to fund local organizations with similar or identical programs and activities. Donors need to be clear on what those local organizations plan to achieve and whether those tasks are complementary.

With better coordination, donors can strengthen their collective demands that local partners undertake specialized tasks in the field of human rights and cooperate rather than compete with each other. The time has come for donors to help consolidate the few remaining domestic human rights organizations that still have potential.

In Cambodia as in other postconflict societies, it is crucial that donors adopt a comprehensive, long-term approach to building human rights institutions. As part of a successful strategy, donors must place sustained pressure on the Cambodian government, especially at a time when one party rules to the exclusion of other political factions and open debate. Donors should also ensure that recipients of human rights assistance promote internal democratic governance as well as work toward successfully constraining the state's abuses of civil liberties. Building respect for human rights is a long, arduous process in a country that has experienced such traumatic repression and violence. It is vital that donors and rights activists retain their determination to persevere and to gradually establish a more solid foundation for human rights.

Notes

1. Council for the Development of Cambodia, *Development Cooperation Report 2001*, p. 11. For an analysis of pledging-disbursement gaps, see Peou with Yamada, "Cambodia."

2. Political opposition to the ruling party was not permitted until after the Paris agreements were signed. In May 1990, a number of government officials were detained without any charges or trials. They were arrested after making an attempt to publish the charter of a new political party. Amnesty International, "Cambodia" (1991), p. 54.

3. FUNCINPEC had a significant media system. It must be acknowledged that the media sector was far from independent; it operated freely along party lines. For more detailed analysis, see Marston, "Cambodia News Media in the UNTAC Period and After."

4. ADHOC, *Human Rights Situation Report 2004,* pp. 1, 9.

5. UN Doc. A/58/317, August 22, 2003, paras. 44–45. This chapter draws on UN reports, documents, and press releases on Cambodia that are too numerous to cite in detail.

6. UN, *Report of the United Nations Fact-Finding Mission on Present Structures and Practices of Administration in Cambodia,* p. 114.

7. Cited in *Phnom Penh Post,* November 22–December 5, 2002, p. 6.

8. ADHOC, *Human Rights Situation Report 2004,* pp. 17–18; LICADHO, *Cambodia Human Rights Report 2004,* pp. 12–13.

9. Duffy, "Toward a Culture of Human Rights in Cambodia," pp. 273–274.

10. For detailed background, see Karistedt, *Cambodian Human Rights and Democracy Organizations.*

11. The eighteen human rights NGOs that composed the Cambodian Human Rights Action Committee included the Cambodian Human Rights and Development Association, the Cambodian Center for the Protection of Children's Rights, the Cambodian Defenders Project, the Coalition of Human Rights Advocates for the Khmer Muslims in Cambodia, the Cambodian Health and Human Rights Alliance, the Cambodian Women's Crisis Center, the Mission of Generous Cambodian Alliance, the Indradevi Association, the Khmer Human Rights and Against Corruption Association, the Khmer Institute of Democracy, the Khmer Kampuchea Krom Human Rights Association, the Khmer Students Association, the Khmer Youth Association, Legal Aid of Cambodia, the Cambodian League for the Promotion and Defense of Human Rights, the Cambodian Human Rights Task Force, and Human Rights Vigilance of Cambodia.

12. Neou, *Human Rights in Action,* p. 17.

13. After the violent incident in 1997, Hun Sen accused the UNHCHR of false reports and announced that he would set up his own human rights committee to investigate abuses.

14. Cited in *Phnom Penh Post,* December 20–January 2, 2003, p. 15.

15. UN Doc. A/58/317, August 22, 2003, para. 27.

16. Cited in *Phnom Penh Post,* July 19–August 1, 2002, p. 10.

17. *Phnom Penh Post,* April 12–25, 2002, p. 5.

18. Cambodian Office of the High Commissioner for Human Rights, "Note on Legal and Judicial Reform for the Mid-Term Consultative Group of Donors Meeting, January 2003" (undated manuscript).

19. Colm, *Cambodia,* p. 13.

20. Author interview with Kek Galabru, president of LICADHO, August 30, 2003.

21. Human Rights Watch, "Cambodia," p. 203.

22. UN Press Release GA/SHC/3762, November 10, 2003.

23. According to the *Phnom Penh Post,* "the majority of police training seems to come from Vietnam, whose law enforcement instructors work in the [Ministry of the Interior]'s Department of Training. Around 30 high-ranking officers travel annually to Vietnam for police training." *Phnom Penh Post,* February 28–March 13, 2003, p. 7.

24. "ASEAN 2002," *Cambodia Daily,* November 4, 2002, p. 29.

25. Ibid., p. 52.

26. President Gloria Macapagal Arroyo, for instance, commented the following: "As a leader of a democratic country, I feel that all countries are ready for democracy. But whether I would interfere and impose my values on another country outside the UN system is another thing. ASEAN has different cultures, different political systems, different histories, different religions, and different social organizations. And one country cannot impose its system on another." "ASEAN 2002," *Cambodia Daily,* November 4, 2002, p. 26.

27. Ciorciari, "Great-Power Posturing and the Khmer Rouge Tribunal," p. 1.

28. Marks, "Elusive Justice for the Victims of the Khmer Rouge," p. 713.

29. Drachman, "The War in Cambodia and the Case for Judicial Enforcement of Human Rights Conditions on Foreign Aid."

30. See Ciorciari, "Great-Power Posturing," p. 3.

31. See *Phnom Penh Post,* April 26–May 9, 2002, p. 10.

32. Vijghen, "Guilty by Association," p. 9.

33. UN Doc. A/58/317, August 22, 2003, paras. 65–68.