



# **CAMBODIA HUMAN RIGHTS REPORT 2004:** **A BRIEF ON CURRENT HUMAN RIGHTS ISSUES**

**REPORT**  
**July 2004**



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**LICADHO**

CAMBODIAN LEAGUE FOR THE  
PROMOTION AND DEFENSE OF HUMAN RIGHTS

# A BRIEF ON CURRENT HUMAN RIGHTS ISSUES IN CAMBODIA 2004

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**LICADHO**

CAMBODIAN LEAGUE FOR THE PROMOTION  
AND DEFENCE OF HUMAN RIGHTS

## **Cambodian League for the Promotion and Defense of Human Rights (LICADHO)**

LICADHO is a national Cambodian human rights organization. Since its establishment in 1992, LICADHO has been at the forefront of efforts to protect the rights in Cambodia and to promote respect for civil and political rights by the Cambodian government and institutions. Building on its past achievements, LICADHO continues to be an advocate for the people and a monitor of the government through wide ranging human rights programs from its main office in Phnom Penh and 12 provincial offices.

LICADHO pursues its activities through its six program offices:

- The Human Rights Education Office provides training courses to target groups such as government officials, students, monks and provides dissemination sessions to the general public.
- The Monitoring Office investigates human rights violations and assists victims in the legal process. Specially trained staff also monitors 18 prisons to assess prison conditions and ensure that pre-trial detainees have access to legal representation.
- The Medical Office provides medical assistance to prisoners and prison officials in 18 prisons and provides medical care and referrals to hospitals for victims of human rights violations.
- Project Against Torture provides comprehensive rehabilitation services to victims of torture and conducts advocacy against torture.
- The Children's Rights Office educates the public on children's rights, creates child protection networks at the grassroots level, and investigates children's rights violations.
- The Women's Rights Office educates the public about women's rights, investigates women's rights violations and advocates for social and legal changes.

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## Executive Summary

*It is with on-going concern that The Cambodian League for the Promotion and Defense of Human Rights (LICADHO<sup>1</sup>) presents this report on the human rights environment in Cambodia, 2004. Many important strides have been taken in recent years particularly through the hard-work and dedication of human rights professionals, however, Cambodia's human rights record remains poor. It is the hope of LICADHO that reports such as this will stand as testament to the urgent need to address human rights concerns within the country as well as the importance of international recognition and support for the work of independent human rights organisations.*

*The report briefly summarizes the current state of human rights in Cambodia – highlighting and detailing the most pressing issues of concern. Both systemic and specific issues have been identified. As will be made clear, the achievement of improved human dignity and freedom involves confronting factors which are highly complex and often deeply interrelated.*

*The political context in Cambodia is one influenced by a history of violence in which a nascent transition to a more democratic state is developing. This political environment gives rise to two of the most endemic human rights concerns in Cambodia: **corruption and impunity**. These issues together with the **wide gap between rich and poor** and **discrimination against women**, are overarching, systemic human rights concerns which are implicated in all other human rights violations identified in this report.*

*Cambodia has a **poor record of protection of civil and political rights**. In particular, the right to freedom of assembly, association and expression are restricted or denied; political activists, trade union leaders, journalists and human rights defenders suffer arrest, threat, intimidation and – in an a shocking number of cases – murder. Elections have been marred by irregularities and have been conducted in a climate of violence and fear. Torture, a most serious and far too prevalent crime, continues to be practiced. Finally, the majority of Cambodian prisons are woefully overcrowded and some 6000 prisoners are housed in extremely poor conditions detrimental to their health and safety. All of these concerns are exacerbated by a general lack of will to investigate and prosecute human rights violations on the part of the authorities.*

*Numerous **women and children in Cambodia are victims of violence**. Many have been trafficked from their homes and pressed into harsh labour conditions or the sex trade. For many of these women and children – girls and boys, the sex trade is a dead end involvement which may expose them to forced captivity, torture and illness. For such individuals, escape and rehabilitation is extremely difficult. The growing incidence of sexually-transmitted diseases, especially HIV-AIDS, combined with ignorance, fear and prejudice relegates many sex-workers to a life of suffering and shame. Cambodia has a very high incidence of rape which affects women and young girls in particular throughout the country. Domestic violence also remains a major issue of concern affecting entire families.*

*Cambodia has **failed to ensure important economic, social and cultural rights** for its population. Issues which continue to affect the livelihood of individuals in rural areas in particular are the transfer of large concessions of agricultural and forested areas to the private*

<sup>1</sup> Founded in 1991, LICADHO is a non-governmental, non-political local human rights organisation. The Phnom Penh office was set up in July 1992 and 12 provincial offices are now established. LICADHO's programs including monitoring human rights violations, human rights education, medical assistance, project against torture, children's rights, women's rights and advocacy.

*sector and instances of land-grabbing by powerful interests. Cambodians also continue to suffer from substandard access to education and health.*

*Finally, a number of other human rights issues are particularly topical namely: concern voiced over the impartiality and effectiveness of the **Khmer Rouge Tribunal** negotiated with the United Nations, the failure of Cambodia to accept **Montagnard refugees** who face persecution in Vietnam, and controversy over the potential negative impact of Cambodia's accession to the **World Trade Organisation (WTO)**.*

*To address such concerns, Cambodia is in dire need of legal and judicial reform. Current legislation is inadequate, the judiciary lacks competence and independence, and the law for many crimes is unevenly or laxly enforced. Cambodia would also benefit from the development of an independent National Human Rights Commission.*

*Fostering an environment conducive to the protection of human rights is a complex, long and often frustrating process, but a process in which donor organisations play a vital role. LICADHO appeals to its donors and friends to continue their support of its important work and to continue to voice their own concerns over human rights abuses in Cambodia. International attention and pressure is a key mechanism by which the human rights situation in Cambodia can be improved.*

## Part One: Political and Historical Context

Cambodia is a country with a history of violence and political turmoil. Recognising this context is fundamental to understanding the current human rights situation as the roots of modern day corruption and impunity are found in instability and “might as right” of the past. These experiences create mistrust in official systems of administration of justice among the general population and have fuelled the development of clientalist systems which continue to undermine the protection of human rights.

Infamously, 1975 in Cambodia is known as “Year Zero.” It was the year in which the Khmer Rouge rebel movement took hold of a nation in the grips of a coup d’état and suffering from the impact of the neighbouring Vietnam War. Under Maoist inspiration, the Khmer Rouge created Democratic Kampuchea. Cities were emptied, rural communes created and harsh regimes of forced labour were implemented. The Khmer Rouge was brutal. Commanders employed legions of impressionable young soldiers and attempted to erase from them all allegiances to anything beyond the Khmer Rouge. Many members of the educated elite, as well as anyone deemed to be a threat to Democratic Kampuchea were tortured and executed. Under the Khmer Rouge regime an estimated 1.7 million people died from starvation, over-work or extermination.

In 1979, after repeated clashes at the border regions, the Vietnamese invaded Cambodia and ended the rule of the Khmer Rouge. However, the Khmer Rouge remained a presence in national politics and strife until the mid-1990s. Vietnam occupied Cambodia for nearly a decade, officially withdrawing its troops in 1989. During this time Cambodia fell into continued bouts of violence tantamount to on-going civil war.

In 1987, Prince Sihanouk met for the first time Hun Sen and paved the road for the Peace Accords. In 1990, the Permanent Members of the Security Council of the United Nations met with various national coalitions, and a peace deal was brokered. The following year, the Paris Peace Accords were signed and the administration of the country was turned over to the United Nations Transitional Authority in Cambodia (UNTAC). The first general elections, marked by high levels of popular participation, were held in 1993. The Royalist party – FUNCINPEC led by Prince Norodom Ranariddh, took 58 seats in the National Assembly; the Cambodian People’s Party (CPP) led by Hun Sen won 51 seats; the Buddhist Liberal Democratic Party (BLDP) won 10 seats; and Molinaka took the remaining seat. The closeness of results between the two leading parties was resolved by the creation of a coalition government and the appointment of two Prime Ministers – Prince Ranariddh as First Prime Minister and Hun Sen as Second.

In 1997, Hun Sen staged a coup and took control of the country<sup>2</sup>. He appointed a new FUNCINPEC Prime Minister, Ung Huot, but it was Hun Sen who clearly retained the reigns of power. Cambodia’s second general elections were held in 1998 and Hun Sen’s CPP dominated the results. CPP took 64 seats in the National Assembly, FUNCINPEC took 43, and the newly created Sam Rainsy Party (SRP) took 15. While CPP had clearly won the elections, they did not gain the two thirds majority required by the Constitution

<sup>2</sup> For more information on the impact of this coup please see: Human Rights Watch, *Cambodia: Aftermath of the Coup*, August, 1997. On-line at [http://www.hrw.org/reports/1997/cambodia/Cambodia.htm#P31\\_405](http://www.hrw.org/reports/1997/cambodia/Cambodia.htm#P31_405), last visited 5 June, 2004.



to govern the country alone. Weeks and weeks of protests followed the election results and finally, another coalition government dominated by CPP was formed.

In 2002, CPP won the first multi-party commune level elections by a landslide. Most recently, in July of 2003, the third general elections were held. Amongst allegations of irregularities, CPP secured an even stronger grip on power winning 73 seats while FUNCINPEC held on to 26 and SRP won 24. Again however, the CPP victory was insufficient to govern alone. As of the time of writing, negotiations between CPP and FUNCINPEC have resulted in the establishment of a coalition government between the two parties. Despite having won 24 seats in the Assembly and having been part of initial power-sharing negotiations, the Sam Rainsy Party was left out of the new government.

Also, the new government was formed according to procedures set out in the *Constitutional Additions Act* - a shaky legal manoeuvre passed by the interim National Assembly on 8 June 2004 which allowed the Constitution to be by-passed and the President of the National Assembly and Prime Minister of the new Royal Government to be elected simultaneously in a "package vote" at the National Assembly.<sup>3</sup> This move is indicative of the mistrust between the parties and was designed to ensure that Hun Sen and Prince Ranariddh - the respective leaders of the CPP and FUNCINPEC, retained positions of power. The deadlock prior to the formation of the government lasted 11 months during which time the National Assembly was prohibited from undertaking any major decision-making initiatives, including the inability to pass much needed legislative reform.

## PART TWO: SYSTEMIC HUMAN RIGHTS CONCERNS

Some human rights issues in Cambodia are so pervasive that they should be considered as cross-cutting factors which influence and exacerbate all other specific human rights concerns. Taken together, the issues addressed below create an environment which allows other human rights concerns to exist largely unchecked.

### 2.1 ENDEMIC CORRUPTION AND IMPUNITY

Corruption and impunity exist in Cambodia at the broadest most pervasive levels involving members of the police, army and gendarmerie; persons holding high positions in government or in private sector; and persons with connections to these groups. Corruption and impunity prevent justice from being served in many cases and fosters a general distrust and fear of judicial and legal systems.

The causes of corruption and impunity are varied and complex, however, it is possible to point to a number of significant contributory factors. First and foremost is a lack of political will to deal with the problem at the very top levels of government.<sup>4</sup> This statement is self-evident insofar as it is top officials who benefit most from corruption and impunity. Democratic reforms and the promotion of accountability threaten the

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<sup>3</sup> Also elected at the same time were the Vice-Presidents of the National Assembly, the President and Vice-Presidents of all the Commissions of the National Assembly. This vote was simultaneous with the vote of confidence for the new Royal Government and was conducted by an open show of hands.

<sup>4</sup> LICADHO, ADHOC & Human Rights Watch, *Impunity in Cambodia: How Human Rights Offenders Escape Justice*, June 1999, at 2. [Impunity]

interests of such officials and others who benefit from established political and economic patronage systems.<sup>5</sup> It is therefore unlikely that the same would have any motivation to attack the issue. In fact, the opposite can be seen to be true whereby officials are implicated in hiding corruption and impunity, creating a veil of legitimacy which masks deep systemic irregularities. This phenomenon has been exacerbated by the deterioration of the political system in which the major political parties seek to protect their members from prosecution<sup>6</sup> and is facilitated by low salaries and morale among individuals employed in civil service, making them particularly vulnerable to corruption.

Until recently impunity for civil servants was state-sanctioned. Up until 1999, article 51 of the *Law on the Common Statutes for Civil Servants* (1994) provided that civil servants could not be prosecuted for the crimes they had committed without the consent of the Council of Ministers or the alleged offender's supervising ministry. In practice, consent could take months or even years to be issued during which time the perpetrator was free from detention, leaving ample opportunity to flee, intimidate witnesses, and destroy evidence. While such immunity was granted by default to all civil servants the protection was often also extended to police, security forces and the military.<sup>7</sup> In August of 1999, the article was amended but still requires that should a government servant be charged with a criminal offence, the prosecutor must inform the head of the concerned institution within 72 hours of laying charges. If the government servant is arrested or detained, his/her institution must be informed immediately. The remaining effect is one in which civil servants may continue to benefit from the protection of the government.

Finally, and as will be further discussed in Part Seven: The Need for Legal and Judicial Reform, impunity is heavily influenced by the legal and judicial systems which lack professionalism, neutrality and independence.

It cannot be stressed enough that corruption and impunity are at the root of Cambodia's poor human rights record.

## **2.2 NEGATIVE IMPACT OF THE POVERTY GAP ON JUSTICE**

"Unfortunately, justice is not the same for people who are rich and powerful and people who are poor and weak"

*Peter Leuprecht, UN Special Representative to the Secretary-General for Human Rights in Cambodia*

While government, police and military officials are often able to avoid sanction for human rights violations, the poor are over-represented in prosecution for crime. The overwhelming gap between the rich and the poor creates a double standard by which affluence is a ticket to immunity and poverty

is a barrier to justice.

Perhaps the most glaring example of this is the prevalent use of brokered settlements to "solve" criminal matters. Under Cambodian law, the prosecution of a crime can

<sup>5</sup> *Report of the Special Representative of the Secretary-General for Human Rights in Cambodia*, 19 December 2003, E/CN.4/2004/105 at para 26. [Special Representative Report]

<sup>6</sup> Impunity supra note 2.

<sup>7</sup> Impunity supra note 2 at 23.

simultaneously entertain a criminal action and a civil action<sup>8</sup> (awarding of damages to persons injured by a criminal act). While by law, the determination of compensation is a separate issue from criminal prosecution – that is to say that the award of damages can not in anyway mitigate or absolve an alleged perpetrator from criminal responsibility – in practice judges and prosecutors may use an award of damages as a contract under which a compensated victim is barred from seeking criminal prosecution against the perpetrator. The judge and prosecutor often even take a commission from the victim for the performance of this “service”.

For impoverished persons accused of committing a crime, there is a glaring need for the provision of legal advice and representation. Quite simply, the poor have little or no access to lawyers, and the majority of civil cases in particular are conducted without representation for vulnerable parties. A number of organisations including The Bar Association of Cambodia, Legal Aid Cambodia and the Cambodian Defenders Project provide representation, but they cannot possibly meet the demand.

NGOs can investigate alleged crimes and provide clients with legal information. However, limited resources curb the reach of such organisations. Also, while lawyers interviewing their clients have solicitor–client privileges which allow them to meet in secret, paralegals and NGO representatives invariably find their meetings with detained clients monitored by prison officials. Under such circumstances, clients who fear reprisal may be reluctant to discuss their cases.

### **2.3 EXISTENCE OF A CULTURE OF VIOLENCE**

Immunity and corruption together with Cambodia’s past experiences of systemic political turmoil and genocide have contributed to the creation of a culture of violence<sup>9</sup>. There is a tendency for immediate and often brutal action to be taken against suspected perpetrators of crime either through mob violence, individual acts or violence by authorities.

The culture of violence particularly notable and problematic within the police force and the army where there is little control over the use of firearms and lethal force. In the past, these organisations were given broad, unrestricted powers with the aim of fighting Khmer Rouge guerrillas. Today, the violent mentality persists. For example, of 1152 arrests in Phnom Penh in 1998, 76 people were killed and another 12 were wounded. This amounts to death or injury in one of every 13 arrests.<sup>10</sup> In addition, murder by off-duty officials and extra-judicial killings are rampant. In one 22 month period, 263 reported cases of alleged killings by the police, the military, the gendarmerie, militia members, body guards or local officials were recorded across the country<sup>11</sup>. In none of these cases were the suspected perpetrators brought to justice.

From the perspective of citizens, such violence on the part of authorities and concurrent lack of accountability creates a situation in which political power appears absurd and

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<sup>8</sup> *Law on Criminal Procedure*, arts. 2,5,6,9,10, 12-19, 33, 53 and 54; *Courts Handbook, State of Cambodia Law on Criminal Procedure* arts. 122-23.

<sup>9</sup> Human Rights Watch Interview with Mao Chandra, chief of general staff, Ministry of Interior, Phnom Penh, April 13, 1999. As reported by: Impunity supra note 2 at 3.

<sup>10</sup> Impunity supra note 2 at 3.

<sup>11</sup> *Ibid* at 35. The period recorded was between January 1997 and October 1998. The estimate likely under-represents the true number of cases in that many cases go unreported.

utterly unresponsive to popular concerns. This is a “Catch 22” situation in which distrust and fear of representative officials breeds vigilanteism and mob violence flamed by a disbelief in the effectiveness of the legal and judicial systems.

#### **2.4 PREVALENCE OF DISCRIMINATION AGAINST WOMEN**

The prevalence of discrimination against women in Cambodia means that women are particularly vulnerable to violations of their human rights. While not as often implicated in political violence this is likely a function of the fact that as a general rule, women hold a lower status than men. Women suffer significantly lower levels of literacy (60% compared to 80% for men), receive less overall education, are paid less for their work than men and represent a mere 7% of persons at the ministerial level.<sup>12</sup>

The most glaring implication of pervasive discrimination against women is that while women may be disproportionately the victims of some types of violence – especially rape, domestic violence and trafficking – such cases are less likely to be recognized as “real crimes”, are less frequently reported and rarely acted upon. It is fundamental to bear in mind that behind all the figures presented on human rights abuse is a systemic bias through which the voices of women are too often silenced.

## **PART THREE: VIOLATIONS OF CIVIL AND POLITICAL RIGHTS**

*UDHR Article 20:*

- (1) *Everyone has the right to freedom of peaceful assembly and association.*
- (2) *No one may be compelled to belong to an association.*

#### **3.1 DENIAL OF FREEDOM OF ASSEMBLY**

During the build-up to the national elections in July 2003, the ruling party (CPP) began to restrict freedom of assembly outside of the official campaign period. During the prescribed election period, political parties were generally able to campaign openly and conduct rallies, however, both prior to that time and since, public demonstrations have been disallowed ostensibly because of concerns for maintenance of public order or national security. In one significant incident, a rally held shortly after the elections to protest suspected irregularities was documented as having been disbursed with the use of excessive force.<sup>13</sup> Regarding this event, the United Nations Special Representative to the Secretary-General for Human Rights in Cambodia, Mr. Peter Leuprecht pointedly suggested:

This unjustified restriction on the freedom of assembly constitutes a wider threat to the democratic process in Cambodia and constitutes a “disabling” environment for the conduct of legitimate political activity.<sup>14</sup>

<sup>12</sup> United Nations Development Program, *Human Development Index Statistics*, 2003. On-line at [http://hdr.undp.org/reports/global/2003/indicator/cty\\_f\\_KHM.html](http://hdr.undp.org/reports/global/2003/indicator/cty_f_KHM.html), last accessed 20 May, 2004.

<sup>13</sup> Special Representative Report supra note 3 at 8.

<sup>14</sup> Ibid at 8-9.

In January of 2003, following upon anti-Thai rioting in Phnom Penh in which more than 60 people were injured and the Thai Embassy damaged, the government began to crack down even more tightly on public gatherings and the Phnom Penh municipality imposed a ban on all public gatherings except the ones organized by the ruling party. Since then, non-violent demonstrations and gatherings such as those organised by female garment workers have been refused permission and/or forcefully disbursed. The authorities even refused to grant permission for a peaceful gathering of survivors of domestic violence who wished to meet their elected members in order to discuss the new Draft Law on Domestic Violence (May 2003).<sup>15</sup> In June 2003 permission was refused for a parade to celebrate World Environment Day.<sup>16</sup>

### **3.2 RESTRICTION OF FREEDOM OF ASSOCIATION**

In Cambodia, opposition parties are legally sanctioned but unofficially, their members are subject to harassment, intimidation and violence. Similarly, NGOs are allowed to function, however, those seen to be involved in political issues such as the defence of human rights, or criticism of the government, are subject to harassment.

“If we win by the law, then we win. If we lose by the law, we still must win.”

*Alleged instructions given by representatives of the CPP to government controlled election monitoring organizations prior to the June 2003 election.*

Further, some NGOs have been used as a guise to support government agendas. For example, during the elections of July 2003, some 76 NGOs registered with the Ministry of the Interior to monitor the independence of the elections had affiliations with the ruling party, the CPP. These same NGOs and had allegedly been given instructions to

the effect that “If we win by the law, then we win. If we lose by the law we still must win”<sup>17</sup>. Operating under the guise of independence, government NGOs are used to mislead the general public, foreign governments and international donors into believing that the government is working in pursuit of human rights ends.<sup>18</sup> Currently, while at least 400 NGOs are registered with the Ministry of the Interior, many maintain strong links with, or are funded by political parties.

### **3.3 RESTRICTION OF FREEDOM OF EXPRESSION**

*UDHR Article 19:*

*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

Since the Peace Agreements signed in Paris in 1991, the number of media outlets has increased. Currently, there are 166 newspapers, 19 bulletins, 36 magazines, 26 radio stations, and 41 television channels.<sup>19</sup>

However, the reality is that there are few newspapers which are published regularly,

<sup>15</sup> LICADHO, *Briefing Paper: Threats to Human Rights Defenders in Cambodia*, December 2003, at 2. [LICADHO Human Rights Defenders Briefing Paper]

<sup>16</sup> *Ibid.*

<sup>17</sup> “CPP plan to ‘open the blood way’ in case of dispute” *Phnom Penh Post*, August 1-14, 2003, p 6.

<sup>18</sup> LICADHO Human Rights Defenders Briefing Paper supra note 20 at 7

<sup>19</sup> See Ministry of Information, *Cambodia Culture and Information: Ministry of Information*. Online at <http://www.moi-coci.gov.kh/info/default.htm>, last visited 4 June 2004.

and of those, few are readily available outside of urban centers. Many papers are biased, have low ethical standards or provide false information. All television channels are under government control. A number of radio stations have been banned or have been interfered with by the authorities, and like newspapers, may not reach remote areas. Officials have gone to great lengths and have resorted to violence to silence opposition parties' use of the radio to critique the government.<sup>20</sup>

In addition, members of the press remain subject to harassment. Khmer journalists have been both arrested and murdered with impunity. Others have received death threats.<sup>21</sup>

### **3.4 VIOLATIONS OF THE RIGHT TO LIFE, LIBERTY AND SECURITY OF THE PERSON**

*UDHR Article 3:*

*Everyone has the right to life, liberty and security of person.*

*UDHR Article 12:*

*No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.*

#### **3.4.1 VIOLENCE COMMITTED BY AUTHORITIES**

Armed authorities - such as the police, military and gendarmerie - as well as civil authorities and persons with connections to either of the former groups far too often resort to violent abuse of their power. Of the 745 cases of human rights violations investigated by LICADHO in 2003, it is estimated that 35 percent were committed by members of the military, police or military police; 18 percent by civil servants; and just under 2 percent by authorities of the court. In a further 15 percent of cases perpetrators were unidentified or were a mixture of civilians and authorities.<sup>22</sup>

The bodyguards of a provincial governor in Kompong Speu catch a 16 year old boy who has scaled the wall of the governor's compound to steal chickens. They tie him up, torture him, and then pump more than ten machine gun bullets into his body, killing him instantly. No action is taken against them.

*23 February 1998. As reported in ADHOC, LICADHO & Human Rights Watch, Impunity in Cambodia, June 1999, p 31.*

One of the most serious implications of impunity and corruption in Cambodia is the lack of political will to punish authorities. As such, officials may benefit from *de facto* protection for crimes they commit. LICADHO estimates that the majority of authorities are not held liable for the crimes they commit. In hundreds of cases of violence committed by authorities, either politically motivated or against ordinary citizens, no effective action has ever been taken to investigate or prosecute the crimes.<sup>23</sup>

#### **3.4.2 VIOLENCE AGAINST POLITICAL ACTIVISTS, JOURNALISTS & HUMAN RIGHTS**

<sup>20</sup> Human Rights Watch, *Human Rights Watch Overview: Cambodia*, Jan 2004. Online at <http://hrw.org/english/docs/2004/01/21/cambod6974.htm>, last visited 4 June 2004.

<sup>21</sup> See Amnesty International, *Cambodia: Freedom of Expression Under Attack*, 10 February 2003. Online at <http://web.amnesty.org/library/Index/ENGASA230022003?open&of=ENG-KHM>, last visited 20 May 2004.

<sup>22</sup> LICADHO Monitoring Office, Investigation Section, unpublished statistics on human rights violations from January to December 2003.

<sup>23</sup> Human Rights Watch, *Cambodia: Human Rights Overview*, January 2004. On-line at <http://hrw.org/english/docs/2004/01/21/cambod6974.htm>, last visited 5 June 2004.

## DEFENDERS

Political activists, journalists and human rights defenders are all subject to harassment and varying levels of violence.

A number of political activists, especially those in opposition to the current governing party, have received threats, intimidation and in an unfortunate number of cases, have been murdered. In perhaps the most notorious example of such violence, a peaceful demonstration by supporters of the Sam Rainsy Party on 30 March 1997 was viciously attacked<sup>24</sup>. Four grenades were thrown into the crowd killing at least 12 and injuring approximately 200 more. It is believed that Sam Rainsy was a main target of the attack. He was nearly killed when a grenade exploded close by and was saved only when one of his bodyguards threw him to the ground. The bodyguard was killed by the grenade.<sup>25</sup>

An extremely disturbing trend of late has been the intimidation and murder of labour leaders whose actions threaten both political and private sector interests. Labour leader Chea Vichea was shot dead in Phnom Penh in a staged "robbery" on January 24, 2004<sup>26</sup>. A similar murder of another labour activist, Ros Sovannareth, took place on May 10, 2004.<sup>27</sup>

Journalists are also particular targets of intimidation and violence. In one recent example, two journalists were arrested following anti-Thai rioting in Phnom Penh in early 2003. The event was sparked when a Thai actress was reported to have claimed that Ankor Wat belonged to Thailand. On January 30, 2003 Morn Sonando, the owner of Beehive Radio was arrested. The following day, In Chan Sivuthra, Editor-in-chief of Reasmeay Ankor newspaper was also arrested. Both were charged with having provoked the rioting and were held in custody until February 11. Concern has been raised that the arrests of both journalists were highly selective and appear to be an attempt to use them as scapegoats.<sup>28</sup>

While physical violence against human rights defenders is less prevalent than in the past, they continue to regularly suffer threats and intimidation especially when their work affects the economic interests of others. This type of violation may be less violent but is nonetheless insidious on a psychological level. Police and prosecutors are often complicit in such violence either observing attacks without taking any

In April 2002, a senior official with the independent forestry monitor Global Witness is beaten and kicked near her office. The next day she is sent an e-mail instructing her to "QUIT." Global Witness considers the attack as an intimidation tactic from logging interests who are threatened by their investigations that revealed the on-going practice of illegal logging.

LICADHO, *Threats to Human Rights Defenders in Cambodia*, December 2003 at 15.

<sup>24</sup> See Cambodia Politics, *March 30, 1997 Grenade Attack*, Online at: [http://cambodiapolitics.org/doc\\_30\\_march\\_1997/30\\_march\\_97.htm](http://cambodiapolitics.org/doc_30_march_1997/30_march_97.htm), last visited 5 June 2004.

<sup>25</sup> At the time of writing, another attempted murder against a member of the Sam Rainsy Party was reported. For more information please see: Sam Rainsy Party, *An Attempt on Life of Opposition Member*, 2 June 2004. On-line at [http://www.samrainsyparty.org/national\\_assembly/2004/06/an\\_attempt\\_on\\_life\\_of\\_opposition\\_member.htm](http://www.samrainsyparty.org/national_assembly/2004/06/an_attempt_on_life_of_opposition_member.htm), last visited 5 June 2004.

<sup>26</sup> See Human Rights Watch, *Labour Leader's Murder Fosters Fear*, 24 January 2004. On-line at <http://hrw.org/english/docs/2004/01/23/cambod7019.htm>, last accessed 25 May 2004.

<sup>27</sup> Asian Political News, *Gunmen kill Cambodian Labour Activist in Central Phnom Penh*, 10 May 2004. On-line at <http://web2.westlaw.com>, last visited 5 June 2004.

<sup>28</sup> The Committee to Protect Journalists, *CPJ Expresses Concern over Arrest of Journalists*, 6 February 2003. On-line at <http://www.cpj.org/news/2003/Cambodia06feb03na.html>, last visited 5 June 2004.

action<sup>29</sup> or through lack of will to conduct investigations.

Since 1997, LICADHO has documented incidences of murder<sup>30</sup> and physical assault; death threats and threats of physical violence; actual and threatened unlawful arrest; unfounded criminal charges and civil lawsuits intended to intimidate; harassment, surveillance and other intimidation against both human rights defenders and journalists.<sup>31</sup> Such violence and intimidation has been experienced by members of LICADHO's staff, endangering their safety and challenging their ability to work safely and effectively. When such intimidation is carried out publicly it undermines both the faith of citizens in human rights and in the ability of human rights defenders to affect change.

### **3.5 TORTURE**

*UDHR Article 5:*

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*

The practice of torture during the time of the Khmer Rouge has been well documented. Unfortunately, this practice did not end with the fall of the regime and continues to be suffered by individuals both in state custody and in a civilian context for example through trafficking, prostitution and domestic violence. (Torture in a civilian context disproportionately affects women and as such will be further addressed in Part Four: Violations of Women's and Children's Rights.) Torture in state custody may be inflicted for the purposes of extracting confessions or other information, punishing perceived wrongdoers, or simply extorting money from detainees or their families.<sup>32</sup> As well as leaving deep physical and emotional scarring, this type of torture causes social dysfunction, mistrust and fear because the torture is conducted by the very individuals who are supposed to protect society – police officers, soldiers, government bodyguards and others in positions of authority.

As in cases of police brutality, lack of legal accountability for perpetrators who hold power or influence is the single biggest reason why torture continues to flourish in Cambodia.<sup>33</sup> While torture is prohibited by international conventions to which Cambodia is party<sup>34</sup> as well by in domestic law including the Constitution of 1993, prosecutions of police or prison officers, for example, are extremely limited. To the best of LICADHO's knowledge, only one case exists in which a police or prison official has received both a conviction and a prison sentence. The case involved a military police officer who beat a teenage boy to death in his custody.<sup>35</sup>

Victims may be reluctant or psychologically unable to talk about their experience, may fear repeated exposure to violence by the perpetrator should they reveal the incident, or

<sup>29</sup> See for example Human Rights Watch, *Cambodia: Armed Threat Against Human Rights Workers*, 3 October 2000. On-line at: <http://www.hrw.org/press/2000/10/cambodiathreat.htm>, last accessed 25 May 2004.

<sup>30</sup> See for example Human Rights Watch, on-line at <http://www.hrw.org/press/1999/jan/camb0112.htm>, last accessed 25 May 2004.

<sup>31</sup> LICADHO Human Rights Defenders Briefing Paper supra note 21 at 2.

<sup>32</sup> LICADHO, *Less Than Human: Torture in Cambodia*, June 2000 at 1. [Less Than Human]

<sup>33</sup> *Ibid.*

<sup>34</sup> Most notably the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

<sup>35</sup> *Less Than Human* supra note 36 at 2.



may refuse to bring the incident to the attention of authorities at whose own hands the victim was tortured. As such, many cases remain hidden and unreported.

### **3.6 ELECTION IRREGULARITIES, VIOLENCE AND INTIMIDATION**

*UDHR Article 21:*

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.*
- (2) Everyone has the right of equal access to public service in his country.*
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.*

Following upon commune level elections in 2002, Cambodia held its third general elections since the 1991 Paris Peace Accords in July 2003. While overall levels of violence and intimidation were lower than in previous elections,<sup>36</sup> the levels of such violence remained unacceptable. Some 17 murders and suspicious deaths of political activists in connection with the commune elections were brought to the attention of the Special Representative of the Secretary General for Human Rights in Cambodia. Between those elections and the general elections, a further 13 murders of “special concern” were reported.<sup>37</sup> The intent of such killings and other assaults is not simply to eliminate political opponents but to foster a general environment of fear in those who exercise their right to freedom of expression. As such, in addition to physical violence, political activists are often verbally threatened or receive threatening messages. Politically motivated attacks and intimidation persist beyond the election period and justice for the victims and their families remains elusive. Of all the cases cited above, only four convictions have been made, all of which were of questionable legitimacy.<sup>38</sup>

### **3.7 POOR PRISON CONDITIONS**

*CCPR Article 10:*

- 1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.<sup>39</sup>*

*CRC Article 37*

- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;<sup>40</sup>*

Human rights conditions in Cambodia’s prisons continue to deteriorate due in large part to increasingly severe overcrowding.<sup>41</sup> Attempts to alleviate overcrowding have been undertaken including the rebuilding of facilities, but the problem remains grave. The problem is particularly severe at the prisons in Kompong Thom, Bantaey Meanchey and in Sihanoukville. In Kompong Thom, each prisoner has approximately 0.93 m<sup>2</sup> of living

<sup>36</sup> Special Representative Report supra note 3 at 7.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid. Figures correct as of December 2003.

<sup>39</sup> All references to “CCPR” cite to International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

<sup>40</sup> All references to “CRC” cite to Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990.

<sup>41</sup> LICADHO, *Human Rights and Cambodia’s Prisons: 2001 Report on Prison Conditions*, 2001 at 3.

space, a decrease from 1.70 m<sup>2</sup> in 1998. The prison, designed to hold 40 persons is shared by 120 inmates.<sup>42</sup> Contributing to overcrowding is a tendency to excessively resort to pre-trial detention for even minor crimes. Also, detainees are regularly held beyond the detention period provided by law. The law allows detainees to be held for a period of four months while the investigating judge researches the case. If by the end of that period there is not enough evidence against a detainee, he/she must be immediately released. The only exception occurs if the Investigating Judge files a formal report stating reasons which would justify further detention in which case a detainee may be held for a maximum of two more months.<sup>43</sup>

Inmates and detainees suffer from extremely limited resources. They are issued a pittance of a per diem of 1000 riel (approximately 0.25 USD at the time of writing) from which they must pay for food, water and utilities. In some cases corrupt officials may also pocket a portion of this per diem. The result of both overcrowding and impoverished conditions leads to malnutrition and poor health amongst the prison population.<sup>44</sup> The majority of deaths in prisons are the result of disease. A number of inmates and detainees are also the victims of torture at the hands of prison officials.<sup>45</sup>

Of a total national prison population of approximately 6000, the vast majority of inmates and detainees are male, with a minority of women and disturbingly, a number of children. The children are brought to live with their incarcerated mothers because there is no one else to take care of them.<sup>46</sup>

## PART FOUR: VIOLATIONS OF WOMEN'S AND CHILDREN'S RIGHTS

*CEDAW Article 2:*

*States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women [...]*<sup>47</sup>

### 4.1 THE SEX TRADE - TRAFFICKING OF WOMEN AND CHILDREN

*CEDAW Article 6:*

*States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.*

*CRC Article 35:*

*States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.*

*UDHR Article 4:*

<sup>42</sup> Ibid.

<sup>43</sup> Article 14.4 UNTAC Law of Criminal Procedure.

<sup>44</sup> For a detailed account of this issue, please see LICADHO, *Human Rights and Cambodia's Prisons: 2001 Health Report*, July 2002.

<sup>45</sup> Ibid.

<sup>46</sup> For a detailed account of this issue, please see LICADHO, *Innocent Prisoners: A LICADHO Report on the rights of children growing up in prisons*, June 2002.

<sup>47</sup> All references to "CEDAW" cite to Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981.

*No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.*

Trafficking and forced prostitution are forms of slavery where individuals may be sold, held captive, and tortured.<sup>48</sup> Cambodia remains the site of a large sex trade as well as a source and destination of women and children trafficked to other regions. Sex-related trafficking exposes individuals to violence, psychological trauma, prejudice and disease and is probably the fastest growing form of torture in Cambodia.<sup>49</sup>

Since the early 1990s, the number of sex workers in Cambodia has increased while disturbingly, the age of sex trade workers has decreased.<sup>50</sup> Varied by region, it is estimated that some 30 to over 50 percent of sex workers are under the age of 17. Street children are especially vulnerable to coercion into the sex trade.<sup>51</sup>

Poverty, lack of education and economic opportunity, domestic abuse, corruption and lax law enforcement all contribute to the trafficking of women and children.<sup>52</sup> Most significant is the failure of the judiciary to enforce the law. Victims who approach the court may have their claims dismissed, they may be treated like criminals and in 94 percent of trafficking cases, the court failed to punish those responsible.<sup>53</sup> Further, when a conviction is made, it is generally against perpetrators at the lowest levels of the trade.

The Ministry of Social Affairs, which has responsibility for providing and coordinating services to victims of trafficking, remains under-funded and the vast majority of services available are provided for by NGOs.<sup>54</sup>

#### **4.2 EXTENSIVE INCIDENCE OF RAPE**

In 2002 LICADHO received and investigated 179 complaints of rape and indecent assault. Of these 71 were brought to trial resulting in 63 convictions and 8 acquittals. In 2003 the number of complaints was 177.<sup>55</sup> Victims are overwhelmingly women and girls. The majority of cases brought to the attention of LICADHO were those in which a child was the victim, some as young as 5 years old. This fact may underscore the reality that many rape victims are ashamed and/or afraid to talk about the incident. They may be blamed by others or may blame themselves for the rape. Child rape however, is a crime so socially unacceptable that it may be more frequently reported.

There are serious concerns regarding the prosecution of rape and indecent assault. Particularly problematic are investigative weakness by prosecutors and the routine brokering of unlawful compensation settlements in return for the victim not pressing criminal charges.<sup>56</sup> Judicial misinterpretation of relevant laws – fueled by lack of professionalism and corruption – has produced unjust case resolution. LICADHO has

<sup>48</sup> Less Than Human supra note 36 at 63.

<sup>49</sup> Ibid.

<sup>50</sup> Human Rights Task Force on Cambodia, "Prostitution and Sex Trafficking: A growing threat to the human rights of women and Children in Cambodia" (1996) 6 *Asian Human Rights Commission Human Rights Solidarity* 4. Online at: Asian Human Rights Commission, <http://www.ahrchk.net/hrsolid/mainfile.php/1996vol06no04/219/>, last visited 27 May 2004.

<sup>51</sup> Ibid.

<sup>52</sup> *Report of the Special Representative of the Secretary-General for Human Rights in Cambodia*, 18 December 2002, E/CN.4/2002 at 63. [hereinafter Special Representative Report 2002]

<sup>53</sup> Figure from 2001. Ibid at 66.

<sup>54</sup> Ibid at 68.

<sup>55</sup> LICADHO, *Briefing Report on Rape and Indecent Assault*, March 2004 at 1.

<sup>56</sup> Ibid.

documented cases in which a charge of child rape was reduced to indecent assault because “the penetration was not deep enough”, in which a rape was deemed not to have occurred because the victim and perpetrator were in a romantic relationship, and in which sentences were reduced because the perpetrator did not ejaculate.<sup>57</sup> This leads to increased unwillingness of victims to pursue legal action and pursue remedies they are entitled to under the law.

The conviction rate for rape cases in which the perpetrator is related to the victim has a conviction rate which is three times higher than rapes carried out by non-family members. The fact that the courts more vigorously prosecute rapes perpetrated by family members is an indication that the courts are capable of prosecution but fail to do so.<sup>58</sup>

### **4.3 WIDESPREAD DOMESTIC VIOLENCE**

Domestic violence affects many families across Cambodia. In one study carried out by independent researchers in Cambodia, 16 percent of women interviewed stated they suffered from domestic violence and ten percent of men admitted to beating their wives.<sup>59</sup> In addition to physical injuries to the direct victim, domestic violence can cause psychological scarring for victims, their children and other family members. The physical abuse suffered by victims can be prolonged and very serious – there are many parallels with torture insofar as a person in a position of authority repeatedly inflicts violence upon someone whom they consider to be in their control.<sup>60</sup>

“It’s none of your business! I’m only hitting my wife!”

The response of one man to a police officer who told him to stop his violence against his wife. The police officer did nothing more.

LICADHO, *Less Than Human*, June 2000

Domestic violence in Cambodia is widely considered a family affair in which police and other authorities are reluctant to ‘interfere’. As with rape, judges may believe that in some or all scenarios, domestic violence is not a real crime. Further, social stigmas held against women who want to leave their husbands, even if abusive as well as a lack of resources and services to help families suffering from domestic violence means that many women remain trapped in situations in which they are repeatedly hurt and victimized.

### **4.4 CHILD LABOUR**

The right of Cambodia’s children to be protected from economic exploitation is not yet adequately enforced.<sup>61</sup> Widespread poverty exacerbates the incidence of child labour, making kids a cheap and readily available source of labour. Child labour found in a commercial context is qualitatively different from that in a traditional agricultural setting. While exploitation can certainly be found in the former, the commodification of child labour removes children from working alongside their families to industries in

<sup>57</sup> Ibid at 5.

<sup>58</sup> Ibid.

<sup>59</sup> Cathy Zimmerman, Sar Samen and Men Savorn, *Plates in a Basket will Rattle: Domestic Violence in Cambodia*, December 1994 as reported by *Less Than Human* supra note 36 at 71.

<sup>60</sup> *Less Than Human* supra note 36 at 70.

<sup>61</sup> LICADHO, *Child Labour in Cambodia*, September 1996 at 1.

which there may be no protection of their basic needs. Child workers are easier to control and, thus, are more susceptible to bonded labour and exploitative situations.<sup>62</sup>

## PART FIVE: ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Economic, social and cultural rights are positive rights. That is, they are rights which require states to *act* in order to achieve them. Negative rights, such as most civil and political rights, require states to *refrain* from violation. The positive nature of economic, social and cultural rights makes their achievement somewhat more challenging in the context of a developing country such as Cambodia. It may simply be beyond the means of Cambodia to provide universal health care and education to its population. Nonetheless, there is an obligation upon states to progressively realise such rights under international human rights law.<sup>63</sup> Also, in some instances, such as access to land, economic rights could be better achieved simply through change in government policies.

### 5.1 LAND-GRABBING AND CONCESSIONS

UDHR Article 17:

- (1) *Everyone has the right to own property alone as well as in association with others.*
- (2) *No one shall be arbitrarily deprived of his property.*

The Cambodian government has undertaken a policy of granting large-scale concessions to private interests in a non-transparent manner affecting some 2.7 million hectares of land.<sup>64</sup> This policy largely benefits a very small group of elite individuals and has created few jobs and made little positive contribution to the welfare of Cambodian people. Recently, the Minister of Agriculture withdrew approval for the creation of five new concessions and promised more cancellations to follow. However, there remain several concessions which continue to exist despite breach of contract and Cambodian law. In one particularly egregious example, a concession ten times the size allowed by law was awarded to a private company a mere three months after the passing of the same law<sup>65</sup>. In other instances, local villagers have been violently removed or tricked into giving up their land.<sup>66</sup> Beyond the obvious issues of corruption and criminality, this type of activity robs Cambodian citizens of their natural heritage and perpetuates already endemic poverty.

### 5.2 POOR ACCESS TO ADEQUATE HEALTH CARE

CESCR Article 12:

1. *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*<sup>67</sup>

According to the Special Representative on Human Rights in Cambodia, the number of Cambodian women who die during childbirth, as well as the number of children who

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<sup>62</sup> Ibid.

<sup>63</sup> See art. 2 (1) of the Covenant on Economic, Social and Cultural Rights.

<sup>64</sup> Special Representative Report supra note 3 at 41.

<sup>65</sup> Ibid at 45.

<sup>66</sup> See for example Human Rights Watch, *Cambodia: Verdict a Setback for Indigenous Land Rights*, 30 March 2001. On-line at <http://www.hrw.org/press/2001/03/landrights0330.htm>, last visited 27 May 2004.

<sup>67</sup> All references to CESCR cite to International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976.

die from easily preventable diseases, remains high. The statistics are overwhelming: one in five deaths of Cambodian women is attributable to pregnancy or pregnancy-related problems and nearly one in every ten Cambodian children die within their first year of life.<sup>68</sup> A number of structural issues including poor or unequal access to health care, inadequate budget disbursements, long distances to medical facilities, heavy transportation costs for patients, an unregulated private sector, and a narrow focus of external aid on specific diseases as factors which limit efforts to improve the state of health care.<sup>69</sup>

### **5.3 POOR ACCESS TO ADEQUATE EDUCATION**

*UDHR Article 26:*

*(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.*

It is estimated that during the 2001–2002 academic year, 13 percent of school-aged children were out of school.<sup>70</sup> The Ministry of Education, Youth and Sport has increased efforts to build schools and hire new teachers, but such efforts have not kept up with the increase in the student population.<sup>71</sup> As of the end of the 1998 school year, the Ministry reported that there were 5,026 primary schools, 350 lower-secondary schools and 125 upper-secondary schools across the country. Of the total number of primary schools, the Ministry estimated that 50 percent do not offer the complete range of grades.<sup>72</sup>

Lack of professionalism and low salaries among some teachers is problematic. A common effect of this pressure on students and their families is to pay extra fees. A study by ADHOC, a Cambodian human rights NGO, suggests that nearly two-thirds of a group of 297 students in Phnom Penh were required to pay some sort of fees to their teachers.<sup>73</sup> Other students reported having to attend private part-time schooling in order to be allowed to attend regular classes. Repercussions reported by the students for not attending the private lessons included threats by teachers to reduce their marks, withholding of record books and threats to prevent the students from sitting examinations.<sup>74</sup>

Both structural issues, as well as social pressures such as poverty, limit children's access to primary education. Children who live in rural areas may not have easy access to a school.<sup>75</sup> Also, rather than attend school some children may be required to work.

<sup>68</sup> Special Representative Report supra note 3 at 51.

<sup>69</sup> Ibid.

<sup>70</sup> Ministry of Education, Youth and Sport, Informatics Centre for Information Management and Planning, as reported by ADHOC, *Human Rights Situation Report 2003*, January 2004 at 25.

<sup>71</sup> Ibid at 24.

<sup>72</sup> Ministry of Education, Youth and Sport, *Country Education Profile*, 15 December 1999. Online at <http://www.moeys.gov.kh/profile/profile.htm>. Last visited 5 June 2004.

<sup>73</sup> ADHOC supra note 69.

<sup>74</sup> Ibid.

<sup>75</sup> Ministry of Education, Youth and Sport supra note 69.

## PART SIX: TOPICAL HUMAN RIGHTS ISSUES

### 6.1 KHMER ROUGE TRIBUNAL

On 17 March 2003, after a lengthy and broken negotiation process, the United Nations General Assembly adopted an agreement to establish a tribunal to prosecute the highest officials involved in the Khmer Rouge genocide. During the negotiations, the proposed tribunal was strongly criticized by human rights organisations including Amnesty International<sup>76</sup> and Human Rights Watch<sup>77</sup> for failing to meet international standards for fair trials. The tribunal relies on the Cambodian legal system with assistance from the international community – a compromise which is feared will not serve the ends of justice. Among other concerns, criticism points to the potential for the lack of an independent and impartial prosecutor, an independent and impartial court applying law of an international standard, balanced and honest judicial process, effective witness protection and the sustainability of the judicial mechanisms created within Cambodia.

### 6.2 DENIAL OF MONTAGNARD REFUGEES

*UDHR Article 14:*

*(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.*

Vietnamese repression of Montagnard peoples<sup>78</sup> has led to a situation in which persons have sought refuge within Cambodia. Despite its obligations under the 1951 Convention relating to the Status of Refugees Cambodia has largely refused to accept the Montagnards as true refugees. They have been characterized as persons coming to Cambodia to seek better economic conditions and have been forcibly returned by the authorities. A United Nations High Commission for Refugees camp in Mondulhiri province was closed and destroyed in April 2002.

In March 2004, the Ministry of Foreign Affairs and Ministry of Interior sent a letter and an unsigned Aide Memoire to UNHCR Cambodia accusing the office of “smuggling and trafficking Vietnamese Montagnards”. The same month, more than 90 Montagnards found refuge in Phnom Penh but nearly two hundred, including women and young children, were reported to be hiding in the forests of Mondulhiri and Rattanakiri provinces, ill with malaria, malnutrition and serious digestive problems.

As of the time of writing, UNHCR Cambodia, in cooperation with representatives from the Ministry of Interior and provincial authorities and with the assistance of ADHOC, a local NGO, and Human Rights Watch, have been able to provide protection to 181 asylum seekers. However, a time-limit of one month has been placed on this process after which the Cambodian Government has stated that the asylum seekers will be

<sup>76</sup> See Amnesty International, *Special Khmer Rouge Tribunals in Cambodia: Justice is not served by diluting international standards*, 17 December 2002. Online at: <http://web.amnesty.org/library/index/ENGASA230122002>, last visited 20 May 2004.

<sup>77</sup> See Human Rights Watch, *UN: Khmer Rouge Tribunal Flawed*, 30 April 2003. Online at: <http://www.hrw.org/press/2003/04/cambodia043003.htm>, last accessed 20 May 2004.

<sup>78</sup> See for example Human Rights Watch, *Vietnam: Violence Against Montagnards*, 14 April 2004. On-line at <http://hrw.org/english/docs/2004/04/14/vietna8430.htm>, last visited 27 May 2004.

deported back to Vietnam. On Sunday July 25, the head of ADHOC's office in Rattanakiri, an unidentified civilian, one local journalist from Radio Free Asia and one foreign journalist from Cambodia Daily were detained, under unknown legal basis, and transferred to a military post in the province of Mondulakiri along with a group of 17 asylum seekers that they were accompanying. The status of the 17 is as of yet undetermined, however on Tuesday July 27, the spokesperson from the Ministry of Interior stated that they will be handed over to UNHCR and the four persons would be released.

### **6.3 POTENTIAL HUMAN RIGHTS IMPACT OF CAMBODIA'S ACCESSION TO THE WTO**

In 2003, Cambodia became the first Least Developed Country to join the WTO. The potential impact of the commitments made by Cambodia in order to gain membership on social, economic and cultural rights has generated some controversy. Namely, accession to the WTO involves the reduction of protections to Cambodia's agricultural sector. It has been agreed that tariffs on foreign agricultural products will be frozen at 60 percent which is less protection than that given by nations like Canada, the United States as well as the European Union to their agricultural sectors.<sup>79</sup> Cambodia has also agreed to eliminate all agricultural subsidies. The resulting potential for influx of cheap foreign agricultural products threatens Cambodian farmers who currently make up 80 percent of the labour force. In addition, accession requires Cambodia to extend intellectual property rights protections to essential goods such as medicine by 2017 and effect an immediate halt to the sale of affordable generic versions of medicines starting in 2007. There is some concern that this measure will impede Cambodia's ability to most effectively address health issues such as HIV/AIDS.

## **PART SEVEN: THE NEED FOR LEGAL AND JUDICIAL REFORM**

*UNHR Article 7:*

*All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*

*UDHR Article 8:*

*Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.<sup>80</sup>*

Cambodia's legal and judicial systems are in dire need of reform. At the very root of the problem is that in a number of instances, the ideal of law is poorly captured in current legislation. Many amendments to existing law must be made and new legislation remains to be drafted. However, such reform cannot be undertaken until the current political deadlock is overcome and the National Assembly can meet to consider

<sup>79</sup> See Inter Press Service News Agency, *WTO: Cancun - Cambodia's "Jungle" Trial*, 13 September 2003. Online at: <http://ipsnews.net/interna.asp?idnews=20121>, last accessed 20 May 2004. See also, World Trade Organisation, *Ambition Achieved as Ministers Seal Cambodia Membership Deal*, 11 September 2003. On-line at: [http://www.wto.org/english/news\\_e/pres03\\_e/pr354\\_e.htm](http://www.wto.org/english/news_e/pres03_e/pr354_e.htm), last accessed 20 May 2004.

<sup>80</sup> All references to "UDHR" cite to Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).



legislation.

Beyond legislative inadequacies, problems with the administration of justice are rife. Ineffective legal and judicial processes result in the routine failure to provide even elementary justice, a reality which fuels the related problems of impunity and corruption.<sup>81</sup>

### **7.1 INADEQUATE OR PROBLEMATIC LEGISLATION**

A number of significant problems remain with regards to Cambodia's current legislation. This undermines the effectiveness of the judicial system, for without an adequate legislative basis, the courts can not run effectively and consistently. In turn, this diminishes faith in the rule of law.

In particular, parts of the Civil and Criminal Codes await enactment.<sup>82</sup> There remains no law which clearly defines the roles of trial judges, investigating judges, prosecutors and clerks; no law to set forth the qualifications required for such positions; and no law to determine ranks and salaries. Further, there are no regulations governing membership in political parties or conflicts of interest for judges and other court officials.

Further, Cambodia's obligations under international human rights law, including the ratification of the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination Against Women; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Rights of the Child; largely remain to be adequately linked to government policy.<sup>83</sup>

### **7.2 LACK OF INDEPENDENT JUDICIARY**

*UDHR Article 10:*

*Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*

The judiciary is simply not independent. It suffers from judicial and prosecutorial corruption, lack of neutrality or political bias, delays, and

interference from the government, police and military. For example, the majority of judges and prosecutors have affiliations with a political party and in many cases yield to

On 6 August 2003, an opposition activist's daughter was murdered. Only after considerable pressure did the authorities arrest the sole suspect, a village chief. The judge improperly brokered a compensation deal between the perpetrator and the victim's family. During the subsequent trial suspicions were raised regarding alteration of witness statements and judicial bias. Despite evidence of premeditated murder, the village chief was charged with voluntary manslaughter, acquitted of this charge and then convicted of involuntary manslaughter for which he received a two-year suspended sentence. An appeal has been launched and it is hoped that the Supreme Council of the Magistracy will pursue appropriate disciplinary proceedings against the judge and prosecutor.

*As reported in The Report of the Special Representative of the Secretary-General for Human Rights in Cambodia, 19 December 2003, E/CN.4/2004/105.*

<sup>81</sup> Special Representative Report supra note 3 at 11.

<sup>82</sup> Ibid at 9.

<sup>83</sup> Ibid.

pressure issued by top government officials. This undermines the principle of separation of the executive and judicial branches of government and is a serious impediment to the development of a state based on the rule of law.

The judiciary lacks a high degree of professionalism. The genocide undertaken by the Khmer Rouge targeted members of the elite leaving Cambodia with only a handful of judges. Rebuilding a system of justice is a difficult and politicized process. Currently, the judiciary lacks training, competence and resources. In addition to susceptibility to corruption, the effect of this is that fundamental procedures are often not followed and basic principles such as the presumption of innocence and the importance of evidence in determining guilt are misunderstood or ignored.<sup>84</sup>

“A transparent, independent, competent and effective judiciary is of primary importance for securing human rights under the rule of law”

*Special Representative of the Secretary-General for Human Rights in Cambodia, 19 December 2003, E/CN.4/2004/105.*

There are insufficient institutional checks on the power of the executive to assume judicial activities and on inappropriate judicial procedure. Article 109 of the Cambodian Constitution provides for judicial independence and subjects all judges to the review of the Supreme Council of the Magistracy (SCM) however, the members of the SCM themselves include representatives from the executive branch such as the Minister of Justice. Further, the SCM rarely meets. The result is that the Ministry of Justice often takes on the role of disciplinary authority, for example, by issuing circulars which are treated as law. This violates the principle that only the legislative branch has the authority to make law as protected by Article 90 of the Constitution.

Finally, police, judges and prosecutors who investigate controversial cases may be subject to intimidation and may fear retaliation for a judgement which is not in the favour of a powerful party. In a number of incidents documented by LICADHO, the judiciary was subject to armed attack whilst attempting to render judgement.<sup>85</sup>

### **7.3 POOR LAW ENFORCEMENT AND CRIMINAL ADMINISTRATION**

*UDHR Article 9:*

*No one shall be subjected to arbitrary arrest, detention or exile.*

*UDHR Article 11*

*(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. [...]*

Like the judiciary, law enforcement suffers from lack of independence, corruption and low levels of professionalism. There is poor coordination between the police and the courts, including a lack of collaboration, trust and respect. Police may be reluctant to pursue the investigation of a case, may fail to enforce existing laws, refuse to intervene in instances of mob-justice, and refuse to enforce court orders.

<sup>84</sup> Impunity supra note 2 at 19.

<sup>85</sup> Ibid at 21.

When the police do take action, criminal procedures set out in law are rarely followed adequately. Cases of arrest without warrant, torture and arbitrary detention are frequent. Due process is often sabotaged. Rather than collecting evidence, investigating and supporting impartial trials, the focus of police often falls to extraction of confessions and convictions.

As in other sectors discussed, impunity within the police and other armed forces is rife, such that security forces are unable or unwilling to conduct independent investigations into instances of misbehaviour within their own ranks.

## PART EIGHT: THE NEED FOR AN INDEPENDENT NATIONAL HUMAN RIGHTS COMMISSION

<sup>86</sup>The creation of an independent National Human Rights Commission (NHRC) in Cambodia would be an important step towards ending impunity and promoting greater respect for human rights in the nation.

Currently, a Cambodian Human Rights Committee exists but it is headed by an advisor to the Prime Minister and is hardly independent of political influence. Many human rights abuses involve state actors such as the police, military, court officials or powerful individuals with connections to such actors. The governmental Human Rights Committee is in a position of conflict of interest to investigate allegations of abuse among its own agents.

Further, the existing committee fails to meet the basic requirements for a National Human Rights Institution as set out by the United Nations. For example, contrary to the UN requirements, members are not appointed through a proper and transparent procedure, nor do they represent a cross-section of Cambodian society. The Cambodian Human Rights Committee has not been very active, is not accountable to Cambodian citizens and is inaccessible to those in rural areas.

The creation of a NHRC would bring Cambodia in line with international impetus for the creation of national human rights institutions. As far back as 1946, the Economic and Social Council of the United Nations urged member states to “consider the desirability of establishing Human Rights Committees within their respective countries.” In 1978, guidelines for the functioning of the National Human Rights Institutions were created. The 1992 “Paris Principles” describe the status and responsibilities of National Human Rights Institutions and were endorsed by the United Nations Commission on Human Rights. They were subsequently adopted by the General Assembly in 1993.

There is support for the creation of an independent NHRC within Cambodia. FUNCINPEC and the Sam Rainsy Party (SRP) support the initiative and have demanded that the existing government-controlled Human Rights Commission be dismantled. A draft law establishing such a commission was developed by NGO activists who have been discussing the issue since 1997.

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<sup>86</sup> This section adapted from: Dr. Kek Galabru “We Need an Independent National Human Rights Commission”, *Phnom Penh Post*, May 21 - June 3, 2004, at 6.

An independent NHRC would be a powerful tool to promote the protection of human rights in Cambodia. Human rights workers and NGOs have made many important achievements towards the creation of a culture of respect for human rights in Cambodia, particularly through the investigation of and intervention in individual cases of human rights violation, documenting human rights issues and promoting education and awareness of human rights across the nation. However, their activities are limited to a certain extent. NGOs, for example, have no legally defined power and thus can only act to advise governments. Further, NGOs and human rights workers have been the target of intimidation and violence.

The proposed NHRC would be able to take the protection of human rights to levels that are difficult for NGOs to reach. To make certain that it does not suffer from the same pitfalls as the existing committee, all efforts must be made to ensure that, first and foremost, the NHRC is independent from the government, that it has transparent procedures, a broad mandate and budget sufficient enough to carry out its tasks.

## PART NINE: THE ROLE OF DONORS

*"Donors are one of the most important sources of pressure we have on Cambodia."*

Mike Jendrzeczyk, Washington Director of Human Rights Watch.

The seriousness and pervasiveness of human rights concerns in Cambodia, coupled with a climate of impunity and corruption, makes it vitally important that donor organisations continue to support the work of non-governmental organizations (NGOs). Despite harassment and intimidation, NGOs are uniquely situated to monitor, report and intervene in human rights abuses putting pressure on the government to respect human rights and promote democracy in Cambodia. In turn, donors are uniquely situated to provide powerful and independent support to the realisation of shared human rights concerns. LICADHO calls upon our donors and friends to coordinate our efforts to better address the human right issues outlined in this brief.

## ANNEX A: TIMELINE OF POLITICAL EVENTS

THE YEARS UP TO INDEPENDENCE	
1600 on	<ul style="list-style-type: none"> <li>▪ Cambodia maintains its status as an independent nation through careful concessions with its strong neighbours Thailand and Vietnam.</li> </ul>
1863	<ul style="list-style-type: none"> <li>▪ King Norodom I signs a treaty of protectorate with France.</li> </ul>
1941	<ul style="list-style-type: none"> <li>▪ Prince Norodom Sihanouk becomes king.</li> </ul>
WWII	<ul style="list-style-type: none"> <li>▪ Japan occupies Cambodia and takes direct control over the country during the war.</li> </ul>
1945	<ul style="list-style-type: none"> <li>▪ The Japanese occupation ends.</li> </ul>
Post WWII	<ul style="list-style-type: none"> <li>▪ France re-claims Cambodia as a protectorate. It declares Cambodia an autonomous state within the French union but retains a large degree of control.</li> <li>▪ Internal political tension as well as the Franco-Viet Minh War in Vietnam and Laos creates a situation of instability in Cambodia.</li> <li>▪ King Sihanouk dissolves parliament, declares martial law and begins to campaign for international support for independence.</li> </ul>
1953	<ul style="list-style-type: none"> <li>▪ <b>Independence is declared.</b></li> </ul>

THE RISE AND FALL OF THE KHMER ROUGE RULE	
1955	<ul style="list-style-type: none"> <li>▪ King Sihanouk abdicates the throne to his father to become a politician. He establishes Sangkrum Reas Nigum (People's Socialist Community Party) and is elected Prime Minister.</li> </ul>
1960	<ul style="list-style-type: none"> <li>▪ Sihanouk's father dies leaving Sihanouk head of state.</li> </ul>
1965	<ul style="list-style-type: none"> <li>▪ War between the North Vietnamese and the South Vietnamese backed by the US spreads to Cambodia as the North Vietnamese set up bases in the country.</li> </ul>
1970	<ul style="list-style-type: none"> <li>▪ Military regime led by General Lon Nol overthrows Sihanouk's government and sends forces to battle the North Vietnamese.</li> <li>▪ Sihanouk, exiled in Beijing, forms a resistance movement.</li> <li>▪ Khmer Rouge guerrillas become increasingly powerful.</li> <li>▪ US and South Vietnam invade in order to attack Viet Cong and North Vietnamese fighters based in Cambodia.</li> </ul>
1975	<ul style="list-style-type: none"> <li>▪ <b>"Year Zero"</b></li> <li>▪ Communist Khmer Rouge rebels headed by Saloth Sar (Pol Pot) overthrow the increasingly inept Lon Nol regime and establish <b>Democratic Kampuchea</b>.</li> <li>▪ Prince Sihanouk returns to Cambodia and is briefly the Chief of State. He resigns and is held under house arrest at the Royal Palace. He is later returned to Beijing.</li> <li>▪ Pol Pot, fearful of dissent and of outsiders, attempts to eliminate Vietnamese trained fighters, supporters of Sihanouk and previous members of Lon Nol's regime within his own ranks. The Khmer Rouge terrorise the nation in an effort to maintain control.</li> </ul>
1977	<ul style="list-style-type: none"> <li>▪ The Khmer Rouge forces clash with Vietnam at the border regions.</li> </ul>

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|------|--|
| 1978 | <ul style="list-style-type: none"> <li>▪ December: Vietnam invades Cambodia.</li> <li>▪ <b>The brutality of the Khmer Rouge social restructuring involving forced evacuation of cities, the creation of communes, and harsh forced labour results in the death of at least 1.7 million people from 1975 until 1978.</b></li> </ul> |
| 1979 | <ul style="list-style-type: none"> <li>▪ January: The Khmer Rouge is pushed to the Thai border regions by the Vietnamese army and by domestic resistance. The country is renamed the People's Republic of Kampuchea.</li> </ul>  |

#### CIVIL WAR AFTER THE KHMER ROUGE

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|------|--|
| 1979 | <ul style="list-style-type: none"> <li>▪ The Vietnamese re-establish a degree of normalcy to Cambodia, however, they will continue to occupy Cambodia for over a decade.</li> <li>▪ As a result of the violence of previous years, the destruction of crops and loss of life, Cambodia is plagued by massive famine.</li> </ul>  |
| 1981 | <ul style="list-style-type: none"> <li>▪ The Kampuchean People's Revolutionary Party wins National Assembly elections however, they are not recognised by the international community. As such, the exiled government which includes the Khmer Rouge and Sihanouk retains its seat at the United Nations.</li> </ul>   |
| 1982 | <ul style="list-style-type: none"> <li>▪ A coalition of resistance to the Vietnamese controlled Phnom Penh government is formed by Sihanouk and his loyalists in the Royalist FUNCINPEC Party, the Khmer People's Liberation Front (non-communist) and the Khmer Rouge.</li> <li>▪ The coalition receives international support from the US, Britain, Malaysia and Singapore.</li> </ul> |
| 1985 | <ul style="list-style-type: none"> <li>▪ Hun Sen become Prime Minister.</li> <li>▪ Fighting continues throughout this period primarily between the Vietnamese and Khmer Rouge forces. The resistance coalition slowly builds military strength. Hundreds of thousands become refugees.</li> </ul>  |
| 1987 | <ul style="list-style-type: none"> <li>▪ First meeting between Prince Sihanouk and Hun Sen in France.</li> </ul>   |
| 1989 | <ul style="list-style-type: none"> <li>▪ Vietnam announces the withdrawal of all troops from Cambodia.</li> <li>▪ Hun Sen ends socialism and the country is renamed the State of Cambodia.</li> <li>▪ The resistance coalition, dominated by the Khmer Rouge, launch offensives against the remaining Phnom Penh government forces.</li> </ul>   |

#### UNTAC TO TODAY

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| 1990 | <ul style="list-style-type: none"> <li>▪ The Permanent Members of the Security Council of the United Nations meet with the resistance coalition and the Phnom Penh government in Paris with the aim of brokering peace.</li> <li>▪ The Supreme National Council (SNC) with representation by all parties and under the leadership of Sihanouk is formed. <b>The United Nations Transitional Authority in Cambodia (UNTAC)</b> supervises the administration of the country until elections can be held.</li> </ul> |
| 1991 | <ul style="list-style-type: none"> <li>▪ <b>Peace Agreement signed in Paris.</b></li> </ul>  |
| 1993 | <ul style="list-style-type: none"> <li>▪ UNTAC's official mandate ends with the <b>first general elections</b> with high levels of popular participation. The Khmer Rouge boycotts the</li> </ul>  |

elections.

- The first coalition government is formed. **FUNCINPEC (led by Prince Norodom Ranariddh) wins 58 seats in the National Assembly; The Cambodian People's Party (led by Hun Sen and representing previously communist government) wins 51 seats; the Buddhist Liberal Democratic Party (BLDP) wins 10 seats; and Molinaka wins one.** This close result combined with pressure from the powerful CPP leads to the appointment of two Prime Ministers – Ranariddh as first Prime Minister and Hun Sen as second.
  - 24 September Constitution comes into effect.
  - Monarchy re-established.
- 1994**
- Khmer Rouge is outlawed and thousands of guerrillas surrender in return for amnesty. However, the Khmer Rouge maintains resistance to the Coalition government. Attacks continue including the kidnapping and execution of several tourists.
- 1995**
- Finance Minister Sam Rainsy is ousted from FUNCINPEC. It is widely believed his removal was due to his vocal opposition to corruption within the party. He starts the Sam Rainsy Party (SRP). He later narrowly escapes death and flees to exile after SRP demonstrators are killed in a targeted grenade attack in 1997.
- 1996**
- Khmer Rouge leader Ieng Sary is allowed to form a political party and is granted amnesty by King Sihanouk.
- 1997**
- **Hun Sen (CPP) stages a coup and takes control of the country.** Hun Sen appoints a new FUNCINPEC First Prime Minister, Ung Huot. However, even as the CPP Second Prime Minister, Hun Sen clearly holds the reigns of power.
  - Cambodia's seat at the UN is frozen, membership to ASEAN is denied and all foreign aid is halted.
  - FUNCINPEC forms a truce with the remaining Khmer Rouge forces who are especially strong in the North. However, killings continue and many high level FUNCINPEC officials, including Prince Ranariddh, flee the country.
  - At the end of the year, the CPP wages attacks against the forces in the North and eventually the Khmer Rouge falls. Amidst this, Pol Pot dies in his sleep.
- 1998**
- Despite the violence of 1997, preparations for Cambodia's **second general elections** are made by the National Election Committee (NEC)
  - Ranariddh is convicted in exile of charges of arms smuggling and collusion with the Khmer Rouge. On request by Hun Sen, he is pardoned by King Sihanouk and returns to Cambodia to lead FUNCINPEC. Sam Rainsy, returned from exile in late 1997, leads the SRP. A loose alliance is formed between SRP, FUNCINPEC and a number of smaller parties called the National United Front (NUF).
  - **The elections result in 64 seats to CPP, 43 seats to FUNCINPEC and 15 seats to SRP.** Unlike the prior elections, CPP clearly dominated, but did not gain the two thirds majority required by the Peace Accords to govern the country alone. Weeks and weeks of demonstrations contesting the results ensue.

- 2001

  - King Sihanouk brokers a deal which sees a coalition government dominated by the CPP.
  - The remaining Khmer Rouge guerrillas renounce their posts in return for amnesty. The Khmer Rouge effectively ceases to exist.
- 2001

  - The Senate approves a law to create a tribunal to try the leaders of the Khmer Rouge.
  - Five members of the Cambodian Freedom Fighters are charged for complicity in attacks in 2000 and are sentenced to life in prison.
- 2002

  - **The first multiparty local (commune level) elections are held.** The CPP wins by a landslide.
- 2003

  - January: Comments attributed to a Thai TV star that Angkor Wat belongs to Thailand spark rioting, attacks against the Thai Embassy and the evacuation of more than 500 Thai nationals.
  - **July: Cambodia holds its third general elections. CPP wins 73 seats, FUNCINPEC wins 26 and the Sam Rainsy Party takes 24.** Despite holding the most seats, CPP does not take the 2/3 majority required to govern alone.
  - Negotiations on the sharing of power and government policy remain deadlocked.
- 2004

  - Cambodia and Nepal are the first developing states to be admitted as members to the World Trade Organisation.
  - **July: Coalition government between CPP and FUNCINPEC parties is formed.** Despite having won 24 seats in the National Assembly, only 2 less than FUNCINPEC, Sam Rainsy is left out of the new Government. The government is formed according to a “package vote” procedure which arguably violates the Constitution.

*Sources:* BBC, *Timeline: Cambodia*, 12 September 2003. Available On-line at <http://news.bbc.co.uk/1/hi/world/asia-pacific/1244006.stm>, last visited 29 May 2004; CIA, *The World Factbook: Cambodia*, 18 December 2003. Available on-line at <http://www.cia.gov/cia/publication/factbook/print/cb.html>, last visited June 5, 2004; Ministry of Information, *Who's Who in Cambodia: Business Reference Book 2003-2004*, (Media Business Network: Phnom, Penh, 2004).



## ANNEX B: HUMAN DEVELOPMENT INDICATORS

Human Development Index Rank : 130

### Human development index

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Life expectancy at birth (years), 2001	57.4
Adult literacy rate (% age 15 and above), 2001	68.7
Combined primary, secondary and tertiary gross enrolment ratio (%), 2000/01	55
GDP per capita (PPP US\$), 2001	1,860

### Demographic trends

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Total population (millions), 1975	7.1
Total population (millions), 2001	13.5
Total population (millions), 2015	18.4

### Status of major international human rights instruments

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International Convention on the Elimination of All Forms of Racial Discrimination, 1965	●
International Covenant on Civil and Political Rights, 1966	●
International Covenant on Economic, Social and Cultural Rights, 1966	●
Convention on the Elimination of All Forms of Discrimination Against Women, 1979	●
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984	●
Convention on the Rights of the Child, 1989	●

● Ratification, acceptance, approval, accession or succession.

Source: UNDP Development Indicators, 2003<sup>87</sup>

<sup>87</sup> United Nations Development Program, *Human Development Index Statistics, 2003*. On-line at [http://hdr.undp.org/reports/global/2003/indicator/cty\\_f\\_KHM.html](http://hdr.undp.org/reports/global/2003/indicator/cty_f_KHM.html), last accessed 20 May, 2004.

## ANNEX C: HUMAN RIGHTS AGENDA FOR CAMBODIA'S DONORS

### *Human Rights Watch*

#### **Human Rights Agenda for Cambodia's Donors**

(New York, May 23, 2000) -- Human Rights Watch today called on Cambodia's international donors to put human rights high on the agenda during the Consultative Group on Cambodia (CG) convened by the World Bank, scheduled for May 24-26 in Paris. Prime Minister Hun Sen will participate in the meeting.

"Donors are one of the most important sources of pressure we have on Cambodia," said Mike Jendrzeczyk, Washington director of Human Rights Watch. Jendrzeczyk also urged the donor governments to press the government to fully comply with international standards in its negotiations with the U.N. on the creation of a tribunal for leaders of the Khmer Rouge.

Human Rights Watch continues to strongly favor unconditional -- and increased -- funding and other assistance for humanitarian, human rights, and democracy-building projects through nongovernmental organizations (NGOs) in Cambodia.

However, the rights organization strongly urged both bilateral and multilateral donors -- including the World Bank and Asian Development Bank -- to strictly condition any direct assistance to the Cambodian government on its demonstrable progress in prosecuting human rights abusers, strengthening the rule of law, implementing judicial reforms, initiating anti-corruption measures, and bringing Khmer Rouge leaders to justice.

Human Rights Watch also called on donors in Paris to establish an official working group on human rights and rule of law. "So far, only an informal donor group has met to discuss issues of good governance and rule of law," said Jendrzeczyk. "In order to establish clear benchmarks and mark the Cambodian government's progress, donors should set up an official human rights working group. This should be a major priority for the CG."

At this year's CG meeting the Cambodian government is expecting pledges of U.S. \$500 million in aid, an increase from the \$470 million aid package pledged at the last donors' conference in February 1999 in Tokyo.

Among the recommendations that Human Rights Watch urges donors to raise with the government at the CG meeting are:

Steps to end impunity: Depoliticize the Supreme Council of Magistracy and the Supreme Court, pass critically-needed laws including a new law on criminal procedure and a new criminal code, enact legal prohibitions against out-of-court financial

compensation for major criminal offenses, and conduct independent judicial inquiries about police actions that involve death or injury to suspects.

**Addressing Corruption:** Press for increases in salaries of government officials, advocate for the periodic rotation of police and court personnel to different departments or geographical locations, and insist that the SCM Disciplinary Council discipline or dismiss court officials for failure to prosecute cases and for law enforcement officials to be disciplined for failure to investigate and report on cases.

**Protecting Political Rights and Freedom of Association:** Provide funding and speak up in defense of Cambodia's domestic human rights monitors, as well as the Cambodia Office of the High Commissioner for Human Rights; press the Cambodian government to insure the rights of all persons, regardless of political affiliation, to free assembly and membership in political parties of their choice; and insist that the government bring to justice perpetrators of violence and intimidation against human rights workers and individuals expressing peaceful political opinions.

**Preparing Free and Fair Commune Elections:** Insist that the government set clear benchmarks for electoral reform in advance of the commune elections, including reformulating the National Election Commission as a neutral and non-partisan body, providing equal access to the media to candidates, and providing for adequate numbers of trained local and international observers. Take immediate steps to disarm and dismantle the commune militias and dissolve the People's Protection Units, which could be used to implement political violence by the ruling party. Encourage the government to pass a Commune Election Law in which candidates would run on an individual basis and not as political party member, in order to reduce political violence.

**Bringing the Khmer Rouge to Justice:** Donors should express their support for the U.N.'s role in any international tribunal of the Khmer Rouge and make clear to Prime Minister Hun Sen that they will not provide funding, technical assistance, judges, or other support until minimum standards of justice are guaranteed. The U.N. Secretary-General must be empowered to approve all judges and prosecutors who participate in the tribunal, the majority of whom should be non-Cambodians. The proposed arbitration panel to settle conflicts between co-prosecutors should be abandoned and prosecutors given independent authority to indict. Rules of procedure should be patterned on the rules and statutes of the international tribunals for former Yugoslavia and Rwanda, and other relevant international treaties. The law should include a well-conceived protection plan -- under the auspices of the U.N. -- to ensure that witnesses and all participants in the process have adequate guarantees for their personal security.

*Source: <http://www.hrw.org/press/2000/05/camb0523.htm>*