

LEGAL AND JUDICIAL REFORM IN CAMBODIA

A LICADHO Briefing Paper
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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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Introduction

During 2005, the Cambodian Government did not demonstrate satisfactory progress toward legal and judicial reform, and hence failed in its stated aim of strengthening the rule of law in Cambodia. The concept of 'rule of law' prevails where (i) the government itself is bound by the law, (ii) every person is treated equally under the law, (iii) the human dignity of each individual is recognized and protected by the law and (iv) justice is accessible to all. This widely accepted legal principle is intended to safeguard against arbitrary rulings and misuse of power, and is vital to the healthy functioning of a viable democratic Government and State.

The Government has had the entire year of 2005 to take action on agreements made during the December 2004 Consultative Group (CG) meeting. Yet the initiatives taken by the Government were disappointing. The minimal efforts made towards creating a healthy legal system that promotes liberal democracy and human rights were heavily outweighed by the retrograde steps that saw freedom of expression curtailed and government critics imprisoned.

LICADHO again recognizes the development of the Legal and Judicial Reform Strategy that was published by the Government in 2003. It reiterates its great interest in seeing the effective implementation of reforms set out in this document.

Key Issues

Strengthening of Legal Institutions

LICADHO calls upon the Government and National Assembly to reform and strengthen the institutions that are meant to uphold the rule of law and protect human rights in Cambodia, and to encourage respect for the Cambodian Constitution.

To this end, we reiterate the view that the Supreme Council of Magistracy and the Constitutional Council - established under the Constitution to guarantee the independence of the judiciary and the compatibility of laws with the Constitution - need to be strengthened and safeguarded against executive interference. The Supreme Council of Magistracy and the Constitutional Council must be independent and non-partisan in nature and membership. All members of these key institutions must fully and transparently end all their political affiliations. It is of still further concern that a key institution created by the Constitution has yet to be convened at all. Chapter 14 of the Constitution states that the National Congress must meet once a year "to enable the people to be directly informed on various matters of national interest and to raise issues and requests for the State authority to solve". An effective National Congress would improve public participation and encourage transparency in State matters.

Enactment of Key Laws

Many of the laws used today in Cambodian courts were enacted prior to Cambodia's accession to the major international human rights treaties and the adoption of the current Constitution in 1993. As a result, many of these laws are inconsistent with Cambodia's international treaty obligations and legal principles enshrined in the Constitution. In order to enhance the rule of law and to establish a comprehensive legislative framework, the Government agreed in 2004 at the Consultative Group meeting (CG) that eight key laws would be adopted by the Council of Ministers and submitted to the National Assembly by the end of 2005. In accordance with the agreement, these laws should be in compliance with the Constitution and international standards embodied in the international human rights treaties to which Cambodia is party. The eight laws were the Civil Code, the Code of Civil Procedure, the Criminal Code, the Code of Criminal Procedure, the Law on the Organisation and Functioning of the Courts, the Law on the Status of Judges and Prosecutors, the Amendments to the Law on the Supreme Council of Magistracy and the Law on Anti-Corruption.

By the end of 2005, only one of these essential laws had been submitted to the National Assembly.

Protection of Fundamental Freedoms

Especially troubling during 2005 have been the continued threats to freedom of speech and freedom of association; rights that are guaranteed under the Constitution. Repression in these areas continues to take the form of arbitrary denials of peaceful protests, along with the abuse of criminal defamation laws to silence legitimate political opposition and commentary. LICADHO calls on the Government to demonstrate the respect for freedom of speech and freedom of association demanded of it by the Constitution.

Recommendations

LICADHO is optimistic that the Government will accept the following recommendations for the benefit of the whole nation:

- Continue, without undue delay and in close cooperation with civil society, the enactment of the eight key laws essential to the establishment of the rule of law in Cambodia, as agreed upon in the December 2004 Consultative Group meeting.
- Create an environment that allows the Supreme Council of Magistracy and the Constitutional Council to carry out their constitutional mandate independently and impartially for the benefit of a judicial system that is free from external interference.
- Convene the National Congress once a year as stipulated in the Constitution to enhance public participation and transparency in State matters.
- Guarantee the fundamental freedoms enshrined in the Constitution and the international human rights instruments applicable in Cambodia, in particular the right to freedom of speech and the right to freedom of peaceful association and assembly.