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## **We need an independent National Human Rights Commission**

by Doctor Kek Galabru, President of LICADHO, May 2004

During the recent political negotiations between Funcinpec and the CPP, one of the contentious issues has been Funcinpec and the Sam Rainsy Party's (SRP) demand for the creation of an independent National Human Rights Commission. One of the obstacles to an agreement between the parties has been Funcinpec and SRP's demand that the existing government-controlled Human Rights Committee be dismantled.

Human rights NGOs have long seen the need for a truly independent and effective National Human Rights Commission. An NGO draft law to establish such a commission has been in discussion by a group of NGOs since 1997, when it was written, and the fact that it is still being discussed today indicates its importance in ensuring human rights in Cambodia. The controversy that it has generated in negotiations reveals the power that the proposed commission would hold to challenge human rights abuses in the country.

There can be no doubt that a credible commission to address human rights abuses is still needed, despite 12 years of the best efforts of NGOs like CWCC, ADHOC, CDP, KKKHRA, the Cambodia Human Rights Action Committee, NICFEC, COMFREL and LICADHO. Full political rights remain a distant goal, as structural factors such as the failure to create a truly neutral National Election Committee contribute to a climate of impunity for political offenders. Some human rights abuses, such as rape, seem to be increasing, while other abuses such as land grabbing remain as persistent as ever. A large number of women and children fall victim to human trafficking, while abuses such as mob killing remain a blot on Cambodia's international reputation. Citizens widely report endemic corruption, which affects the proper functioning of the police and courts as well.

In the past 12 years, human rights NGOs have achieved many objectives on behalf of the Cambodian people, particularly in the areas of investigation and promotion of human rights through educational activities. While these NGOs have had the freedom to investigate sensitive cases, they are limited in other ways.

In addition to the fact that NGOs in Cambodia have no legally defined power, and hence are only in a position to advise the government, human rights defenders have also been the target of intimidation and even violence. Threats of physical violence, surveillance, the threat of arrest, and arbitrary criminal and civil lawsuits, compounded by a culture of impunity, have dogged human rights workers attempting to carry out basic human rights activities. All of these forms of intimidation hamper NGOs and human rights workers in their efforts to reduce and prevent human rights abuses.

Some readers may be familiar with the government's Cambodian Human Rights



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Committee, headed by one of the Prime Minister's advisors, and wonder why Cambodia needs another similar institution. By definition, human rights abuses often involve state agents such as the police, military or court officials, as well as powerful individuals with connections to officials in the government. Thus it is a conflict of interest and improper for a governmental committee to investigate potential abuses by its own agents.

Further, the governmental Human Rights Committee has failed to meet basic requirements for a National Human Rights Institution as determined by a long formative process conducted by the United Nations. The members were not appointed through a proper and transparent procedure, nor do they represent a cross-section of Cambodian society. Perhaps most significantly, the Human Rights Committee has not been very active, conducting few investigations or educational activities, sending few reports to the UN Committees or to the National Assembly, and barely ever acknowledging any human rights violation or wrongdoing by the government. This governmental committee is not accountable to the Cambodian people and is mostly inaccessible to citizens in rural areas.

The proposed National Human Rights Commission, guided by the principles derived under the UN's auspices, would avoid many of the shortcomings of the government's human rights committee. First and foremost, it would be independent from the government. In addition, its procedures would be set up to make it transparent to the public and mechanisms to ensure accountability would be put in place. Finally, the Commission would be granted a broad mandate and sufficient budget to carry out its significant tasks.

### **History**

The international impetus for creating national human rights institutions began in 1946 when the Economic and Social Council of the UN 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 at a seminar on the creation of such instruments at the national and local level. In 1992, the "Paris Principles", which described the status and responsibilities of the National Human Rights Institutions, were endorsed by the United Nations Commission on Human Rights, and adopted by the UN General Assembly in 1993. In the same year, the World Conference on Human Rights in Vienna encouraged nations to establish and strengthen National Human Rights Institutions.

Since then, these Paris Principles have become the organizing framework for countries which choose to create such institutions to promote and protect their citizen's rights. Several countries in the ASEAN region have chosen to create National Human Rights Institutions (NHRI), including the Philippines, Indonesia, Malaysia and Thailand. Different countries may choose different structures for the NHRI, including a National



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Human Rights Commission, and/or Office of the Ombudsman and/or specialized national institutions designed to promote and protect the rights of specific vulnerable groups, such as women, children, indigenous groups, minorities, etc.

The Paris Principles, the culmination of 45 years of deliberation about the NHRI, specifically describe how they must be structured.

### **Independence and Creation of the Commission**

First and foremost, the NHRI must be independent from intervention from the government or other agents to be able to fairly handle human rights complaints and issues. To achieve this it should be set up by a law and when necessary a Constitutional Amendment which establishes its legitimacy and spells out its structure. The new law and/or the Constitutional Amendment itself must be drafted and reviewed in a transparent way, including a period of several months for the public and civil society to provide feedback. The lawmakers must then show the political willingness to modify the law to reflect the comments and concerns provided by the public and civil society.

To ensure transparency and independence, the Commission's members should be chosen by a selecting committee using a transparent appointment procedure which can be reviewed by the public or other concerned groups. The members must also enjoy a secure tenure for a fixed term, free from interference from any branch of the government. To protect the members of the Commission when they are investigating sensitive cases which potentially involve members of the government, they must be given immunity from prosecution while they are exercising their duty. To serve society properly, the Commission should reflect the social composition, and thus be composed of a certain number of representatives of both sexes, minorities, different religious groups, and other groups representing a cross section of society (pluralistic representation).

### **Broad Mandate**

To truly protect the rights of the nation's citizens, the Commission must have enough power and responsibility guaranteed to it by the Constitution and the defining legislation. For example, it should have the power to conduct investigations, summon witnesses, conduct searches and seize materials for prosecution, and make recommendations to the courts for compensation to victims or punishment to perpetrators. If the courts do not follow the recommendations of the Commission, it would have the power to assume the role of prosecutor to press charges against offenders. The Commission would not replace the country's courts, however.

The Commission is also responsible for conducting broad education about human rights to make sure that all citizens are aware of their rights and responsibilities. This also serves the purpose of giving the Commission visibility among the diverse target groups-



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the public, specific social and ethnic groups, as well as all parts of the state, such as the military, police, civil servants, and members of the government, the National Assembly and Senate.

International human rights conventions, such as the Convention on the Rights of the Child, and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), have been one strategy used worldwide to try to guarantee that certain basic rights are upheld in vastly different locations. Cambodia has ratified most such conventions, but they are not in fact enforced in the real context.

The NHRC would be responsible for overseeing the enforcement of the international conventions to which Cambodia is a signatory. National legislation must be created and revised to conform to the conventions (a process which is far from complete in Cambodia). The Commission would also urge the government to prepare regular reports to the UN Committees about Cambodia's progress in implementing such conventions, something which the government has failed to do in almost all instances thus far. Finally, when the UN Committees for each convention provide feedback to Cambodia about its implementation, the Commission would take the initiative to urge the government to implement these recommendations.

### **Accessibility**

To avoid being just another bureaucracy, and to avoid the trap of being irrelevant to the needs of Cambodian people, the Commission must be accessible. The true strength of the Commission lies in its ability to reach people in remote and rural areas, who are most vulnerable to human rights abuses. With this objective, the Commission must open offices in these remote areas and conduct outreach in the countryside, as many people lack the means even to travel to a provincial office. To be more accessible, it must coordinate with local NGOs and the media to raise public awareness of the Commission, and publish in local languages. Of course, to fulfill this mandate of accessibility, it must have a sufficient budget commitment from the government and other sources of funding.

### **Linkage**

To fulfill its mandate and be a force to effect change in Cambodia, the Commission must be linked with existing national, regional and international organizations and institutions. To operate properly, the Commission must closely coordinate with, but remain independent of, the judiciary. The Commission in fact plays a key role, operating as a bridge between the government and civil society. NGOs also contribute to the process by identifying issues and channeling complaints to the commission. For these linkages to be effective, they must occur in the context of a functioning democracy, in which the judiciary is independent. To maximize linkage while avoiding overlapping jurisdiction, the role of the different sectors and institutions should be clearly defined.



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### **Adequate Resources**

The Commission must have sufficient funding to undertake all of these activities, otherwise it will be unable to fulfill its mandate. The level of funding allocated by the government is a strong measure of the commitment of the government to human rights. To make the National Human Rights Commission more accountable to the people, it should receive funding through the legislature and not the executive branch. The Commission should also have a legally defined right to obtain funding from external sources. And, to guarantee independence, the Commission must be able to make its own decisions about spending and budget allocations without interference from the government.

### **Accountability**

Perhaps most importantly, to be credible and win the support of society, the Commission must operate in a transparent way and be accountable to the people. For example, free access to its proceedings and records must be granted, while findings and recommendations to the government should be published. The commission should make periodic reports to parliament and be open to evaluation by the legislature or civil society.

During the Khmer Rouge genocide and the ensuing civil war, Cambodia's people suffered greatly, and these two catastrophic events have contributed to a climate of continued human rights abuses today. Because of Cambodia's unique history, its citizens need a strong National Human Rights Commission with the power to promote and protect human rights and the rule of law. Despite the existence of the Governmental Human Rights Committee, and additional commissions in the Senate and National Assembly, human rights abuses such as political killings, corruption, land grabbing, human trafficking and rape are, sadly, still all too prevalent.

If the Cambodian government shows real political will and a strong commitment to set up such a credible National Human Rights Commission, the International Community will surely support these plans. Now the time is ripe for Cambodia's people, civil society, and government to work together to create a truly independent and empowered National Human Rights Commission to realize the vision of an improved human rights situation for all Cambodia's citizens.

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