



HUMAN RIGHTS IN **CAMBODIA:** THE FAÇADE OF STABILITY

“Few people are fooled by this,
and very few of them are
fooled for long.”

Ian Porter, Country Director,
Cambodia, World Bank Group

REPORT
May 2006



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LICADHO

CAMBODIAN LEAGUE FOR THE
PROMOTION AND DEFENSE OF HUMAN RIGHTS

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A LICADHO Report
May 2006



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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 seven program offices:

- The Documentation and Resources Office compiles case files into a central electronic database, so that accurate information can be easily accessed and analyzed.
- 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 12 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

Newspaper headlines lend a deceptively rosy hue to life in Cambodia today: 13% economic growth in 2005 and reconciliation between long-term political foes.

The reality is far bleaker.

Beneath the veneer of political stability and economic development, the people of Cambodia continue to suffer.

Cambodians are increasingly subject to a wide range of human rights abuses - often committed by State personnel such as police and military - with little recourse to justice in Cambodia's notoriously corrupt and politicized courts. Land conflicts arising from private claims or large economic land concessions are evicting thousands of families from their homes every year, depriving them of education, health services and other essentials while fuelling poverty and discontent.

Cambodia's police and judiciary, universally deemed as rife with corruption and impunity, fail on a daily basis to provide any semblance of justice for victims of human rights abuses.

The release in January 2006, on orders from the Prime Minister, of five civil society leaders whose arrests he had earlier ordered on defamation and other charges, has been taken by some in the international community as a sign that human rights have improved in Cambodia. This is far from the truth. While the releases were indeed welcome, they do not alter the fact that the arrests should never have been made, that criminal charges remain hanging over the five, and that the whole affair has had a grievous long-term impact on free speech and dissent in Cambodia.

Cambodia's space for democratic activities, hard-won by more than a decade of effort by civil society and foreign donors, is steadily shrinking due to sustained, serious attacks on the rights of expression and assembly. The country's power and wealth is increasingly being consolidated into the hands of a small elite, who use their position to expand and solidify their personal privilege, usually at the expense of the poor and dispossessed.

Politically, Cambodia's 'stability' is that of a wobbly-kneed democracy reverting to an increasingly authoritarian State.

Elections have been held and governments formed, but what true democracy can exist in the context of political intimidation, restrictions on freedom of expression, association and assembly, and only the weakest resemblance to rule of law? Elections alone do not create a genuine democracy; an independent, competent judiciary and democratic institutions to ensure accountability of the Government are vital

ingredients absent from Cambodia's 'democracy'. Many of these issues are interlinked, and the lack of genuine reform must be seen as a lack of political will for change.

After decades of conflict and tragedy, Cambodia's 'stability' is often understood as an absence of war and Cambodians are understandably relieved to live in peace. But true stability must be backed by genuine democracy, respect for human rights and rule of law for all. Without these foundations of justice, the aspirations of Cambodians for a pluralistic, tolerant and equitable society can't be fulfilled. Instead, there is only a growing risk of political, social and economic instability fuelled by the discontent of those who find themselves abused and dispossessed by the State.

Since the 1991 Paris Peace Accords, Cambodia has acceded to all major international human rights treaties, as well as numerous optional protocols. Yet, although the Cambodian government regularly breaches its human rights obligations, the international community appears reluctant to speak out. Multilateral and bilateral donors have contributed billions of dollars to Cambodia's development efforts, but international assessments of basic human indicators including health, education and poverty reduction indicate that much of their money and planning have been thwarted by corruption, impunity and a lack of political will to reform.

International efforts to make the Cambodian government accountable for these failures have been sporadic, confused and absent of meaningful enforcement mechanisms to ensure adherence with international norms of conduct and the goals of donor funds.

Despite the Cambodian government's failure to meaningfully comply with the conditions of the Joint Monitoring Indicators for 2005 - aid benchmarks agreed upon by the Cambodian government and 'Consultative Group' of donors in December 2004 - donors increased the amount of aid money for government coffers to a record high.

For donors, diplomats and other members of the international community, a rethinking of attitudes about Cambodia is long overdue and should address the fundamental problem - that the Cambodian government has shown little real commitment to reform. They should recognise that Cambodia's current period of relative political calm is no guarantor of meaningful long-term stability, and that ongoing, systemic human rights violations will to the contrary promote instability.

This briefing paper aims to highlight several of Cambodia's most pressing human rights issues as they exist in 2006. It is intended to encourage a deeper evaluation of the state of human rights in Cambodia and provoke debate. The report is not a comprehensive catalogue of human rights abuses, but aims to provide analysis of key issues and events.

This report also asks some hard questions: Is there real stability in Cambodia? Is Cambodia really a functioning democracy which serves the needs of its people? What role does the international community have in Cambodia's future?

Land

The sharp increase in conflicts over land is one of the most disturbing trends to emerge in recent years, with far-reaching consequences for human rights in Cambodia. Illegal land grabs have been described by the UN as a “frenzy”¹ of those with power and money taking land from people often already living in poverty, and are becoming a growing part of LICADHO’s work. The involvement of government institutions, officials, soldiers, police and wealthy business people in action against poor communities or individuals makes land grabbing an issue that the Cambodian government must take responsibility for and one that the international community must address. A failure to do so will only feed desperation and create a growing and potentially dangerous underclass of people with nothing to lose – a breeding ground for instability.



A Phnong woman affected by a land seizure in Mondolkiri

The numbers are staggering. In 2003, LICADHO was involved in monitoring 25 land grabbing cases, but in the following year this spiked to 112 cases. This remained consistent in 2005, with LICADHO reporting 126 land grab cases which affected 9,832 families.

With an average of just over five members in a Cambodian family, this means roughly 45,000 people were affected just by new cases of illegal land seizure in 2005. It should be noted that LICADHO only operates in 12 of Cambodia’s 24 provinces and thus the total figures may be considerably higher. The fact that many of these land conflicts drag out for years has a cumulative effect, giving rise to an increasing number of “living ghosts” – a colloquial Khmer term for the landless.

The ultra-Maoist policies of the Khmer Rouge voided all land ownership in the 1970s, and Cambodia has been struggling ever since to redistribute land to its people. Unfortunately, institutions and systems set up to tackle this problem have largely failed. The Cadastral Commission structure set up in 2002 as a dispute resolution mechanism to determine land titles is plagued by bureaucracy and corruption. The new National Authority for Land Dispute Resolution (NALDR) creates another level of bureaucracy that further confuses the situation, and undermines the prerogative of the Cambodian courts to definitively adjudicate land cases. In reality, Cambodia’s Land Law (and a patchwork of associated sub decrees) is often manipulated by corrupt officials or totally disregarded.

¹ Miloon Kothari, UN Special Representative for Adequate Housing, September 2005, <http://news.bbc.co.uk/1/hi/world/asia-pacific/4207138.stm>

Broadly speaking, land conflicts begin with two scenarios – the granting of economic land concessions to plantation businesses or the private appropriation of land. In total, 2.7 million hectares, or 15% of Cambodia’s land, has been assigned for land concessions². Blatantly ignoring the Land Law, which limits the size of concessions to 10,000 hectares, the government has awarded concessions of more than 100,000 hectares. In many concession areas, the companies are currently inactive, but the long leases (typically 70 years) mean they can return and start clearing at any time.

The negative impact of land concessions has been well documented, most recently by the former UN Special Representative of the Secretary General for Human Rights in Cambodia, Peter Leuprecht. The Government has signed contracts handing over plots of land up to 176,000 hectares in deals that have been kept secret despite international calls for transparency³. The benefits for the State (i.e. taxation) have been clouded by this secrecy. The legal obligations of the authorities to conduct environmental impact assessments have largely been ignored, while social impact assessments and community consultation were never required to begin with.⁴ As a result, when businesses begin to clear land for plantations (usually of eucalyptus, rubber, teak, oil palm or coconut) they meet resistance from locals who have often lived on the land for more than five years, and so have claim to it under the Cambodian law of ownership via occupation.

In Pursat province, the Pheapimex company (which operates a concession funded by Chinese Government loans) resumed clearing of its 138,963 hectare concession in November 2004^{5,6}, after earlier protests had brought clearing to a halt. Members of the community, who depend on farming and collecting forest products, again mounted a peaceful protest against their looming dispossession. On the night of November 13, 2004, a grenade was thrown into the makeshift camp of the protesting community, injuring eight people. The police failed to find a suspect. Clearing of the land has stopped (the machinery was reportedly moved to Wuzhishan’s Mondulkiri concession) but the community remains concerned that the company could return at any time.

“I warn that if [you] continue to grab land there will be a farmers' revolution... It is time for you to stop before the people lose their patience.”

PM HUN SEN, OCTOBER 2005

One of the most disturbing aspects of these land concessions is that they send a message that the Government is prepared to place dubious business deals above the

² UN Special Representative of the Secretary General for Human Rights in Cambodia, *Land concessions for economic purposes in Cambodia: a human rights perspective*, November 2004, available at: http://cambodia.ohchr.org/report_subject.aspx

³ Pheapimex Co Ltd signed a contract on January 8, 2000 for a 176,065 hectare concession in Kampong Chhnang, and another contract for a 138,963 hectare concession in Pursat on the same day, according to the UN Special Representative’s land concession report. The CG 2004 Priority Monitoring Indicators included the “immediate public disclosure of public contracts and compliance (royalties and other key provisions) of contracts governing economic land concessions...”, available at: <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/CAMBODIAEXTN/0,,contentMDK:20291611-menuPK:293876-pagePK:64027988-piPK:64027986-theSitePK:293856,00.html>

⁴ A later Sub-Decree made social impact assessments a legal requirement, but this was not in place when most concessions were granted.

⁵ UN Special Representative of the Secretary General for Human Rights in Cambodia, *Land concessions for economic purposes in Cambodia: a human rights perspective*, November 2004, available at: http://cambodia.ohchr.org/report_subject.aspx

⁶ Another Chinese-backed concessionaire, Wuzhishan, provided the technical capacity for Pheapimex’s clearing, according to the UN land concession report, 2004.

fundamental rights of citizens. The collusion of police and local government officials backs up this policy.

Powerful individuals are also making dubious claims on land and sometimes using force to evict residents. Those with the money pay for forged land titles or bribe local officials to endorse their land claims, and then claim the tenants to be illegal squatters. The most shocking example of this style of land grab culminated on 21 March, 2005, in Kbal Spean village, near the Thai border in Banteay Meanchey province. During a standoff over disputed land, police and soldiers fired into a crowd of protestors, killing five people and injuring 40 others⁷. What had once been a landmine-strewn plot of unwanted land near the Thai border had been cleared over many years and was becoming increasingly valuable due to its location near casinos.

The village chief who claimed the land was unknown to the community, but used his influence to obtain a provincial court warrant for eviction and the use of 128 police and military police to enforce it. Intense pressure from local non-government organizations (NGOs), media and the international community resulted in arrests, but charges were later dropped and suspects released. While Kbal Spean was an extreme case, similar confrontations are becoming an increasingly regular occurrence.

Many of the instigators of land grabs reported by LICADHO were soldiers, police or local government officials. Threats, intimidation and violence are often used to bring about evictions and fair compensation is all too rarely considered. The Government frequently fails to take responsibility for allowing provincial and district officials, police and soldiers to grab land, use violence and enjoy immunity from prosecution.

NGOs working on land-related issues have faced threats and obstacles to their work. In 2005, London-based environmental watchdog Global Witness had to close its office in Phnom Penh after threats against Cambodian staff intensified. Around the same time, Global Witness faced harassment from the government which included the refusal of entry to Cambodia of a foreign staff member; the “blacklisting” of several others; and the impounding by Cambodian customs of copies of a controversial report naming State personnel implicated in illegal logging. In September, 2004, the Prime Minister himself declared that Global Witness was “finished” in Cambodia.⁸ But just seven months later, the Prime Minister complained that donors were asking him to stop illegal logging without giving him funding for an independent forest monitor – the very role Global Witness had been playing.⁹

Land grabbing is a human rights abuse in itself – it breaches the right to “an adequate standard of living... including... housing, and to the continuous improvement of living conditions” as defined by the International Covenant on Economic, Social and Cultural Rights, which Cambodia has ratified¹⁰.

⁷ Cambodian Human Rights Action Committee (CHRAC), *High Price of Land: The Deadly Eviction of Kbal Spean*, August 2005

⁸ Pinn Sisovann and Lee Berthiaume, “PM criticizes Global Witness, says ‘it’s finished’”, *Cambodia Daily*, September 2, 2005.

⁹ Erik Wasson and Kay Kimsong, “PM to Donors: I alone can reform Government”, *Cambodia Daily*, March 3, 2005.

¹⁰ Article 11, “1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.” (<http://www.ohchr.org/english/law/cescr.htm>)

Illegal land seizures also heighten people's vulnerability to other rights violations. An estimated three-quarters of Cambodians depend on the land for survival¹¹, and dispossessing families of their land takes away their food source and income generation, leading to poverty. As well as farming, access to land also means access to other forestry products for selling (e.g. resin, rattan) or consumption (e.g. fruits). In many cases, homelessness and malnutrition are the result, and people become more vulnerable to human trafficking and other crimes.

Urban migration is often the start of an irreversible slide into deepening poverty. The rising tide of dispossessed Cambodians who have nothing to lose has been noted by the UN's Special Rapporteur on Adequate Housing, Miloon Kothari, and also by the Prime Minister as an element of instability in society. Yet, despite promises to combat land grabs, LICADHO has seen very little evidence of genuine action to stop the rich and powerful exploiting the poor and vulnerable.

Case study: Wuzhishan concession in Mondulakiri province

In 2004, the Cambodian government agreed to give 199,000 hectares of land in Mondulakiri province to the Wuzhishan L.S. Group, a Cambodian-Chinese company, to operate a pine tree plantation. The concession's size is 20 times the maximum allowed under Cambodian law. The government also approved an immediate 10,000 hectares for testing and planting, with the remainder to be given later after further discussions with Cambodia's foreign donors. However, details of the deal were kept secret, and no environmental impact assessment was conducted.

The concession is located in an area inhabited by the Phnong indigenous community, for whom the concessionaire's activities had widespread consequences. Wuzhishan workers desecrated religious sites, including burial grounds and spirit forests, stealing or destroying offerings made at burial sites. Land used by the Phnong to graze cattle in a rotational agricultural system was lost to the company.

Villagers' fruit, vegetables and domestic animals were stolen by Wuzhishan employees. Company representatives sprayed the herbicide glyphosate, linked by the U.S. Environmental Protection Agency to kidney and reproductive organ damage, depriving the Phnong people of useable land and allegedly causing health problems. When the community complained about the concession, they were threatened and intimidated by representatives of the company and by local authorities.

On June 16, 2005, approximately 650 villagers from Sen Monorom and Dak Dam communes in Mondulakiri province launched a protest, which was dispersed by 50 provincial police officers who fired water cannons at the protesters, knocking two women unconscious.

The following day, the Cambodian government issued a temporary injunction against Wuzhishan and ordered Mondulakiri provincial authorities to ensure that local villagers' lands were not included in the plantation concession area. In spite of

¹¹ The 1998 General Population Census found 76.5% of Cambodians were employed in agriculture, forestry or fisheries.

the Government's order, Wuzhishan continued to plant pine trees and local authorities took no meaningful measures to prevent this. Rather, police officers and government officials stepped up their efforts to try to stop Phnong villagers from protesting and blockading company trucks from entering the concession.

On July 7, about 1,000 villagers tried to protest against the Government's failure to enforce the company's suspension. Up to two hundred demonstrators made it to Mondulkiri's capital, Sen Monorom, where they met with government representatives. The rest were turned back by the police. Two days later, King Norodom Sihamoni visited Mondulkiri to celebrate Arbor Day by planting a tree. In his speech, the King identified with the concerns of the indigenous communities, adding that He and the Royal Family shared the sadness of the affected groups.

Problems continue at the Wuzhishan concession. In March 2006, villagers provided numerous reports to Amnesty International citing theft of cattle and crops in the past year, with no effective action taken by police. The deputy governor of Mondulkiri said he expected new "problems" when the company resumes planting during the rainy season of mid-2006.

Shrinking Democratic Space

The year 2005 and early 2006 have been notable for serious restrictions of the right to freedom of expression and peaceful assembly. These restrictions illustrate increasing efforts by the executive branch to silence dissent.

On 3 February 2005, the National Assembly voted to strip parliamentary immunity from three members of the opposition Sam Rainsy Party (SRP) – Sam Rainsy, Chea Poch and Cheam Channy – in a closed session. This move opened the three to criminal prosecution¹², and was seen by many – including LICADHO – as a political attack on the opposition.

The practice of stripping parliamentary immunity from critical MPs has unfortunate precedents in recent history. In 1995 Prince Norodom Sirivudh, of the National United Front for an Independent, Neutral, Peaceful, and Cooperative Cambodia (FUNCINPEC) political party, and a former Minister of Foreign Affairs and International Cooperation, was stripped of his parliamentary immunity and arrested after being accused of involvement in organizing an armed force, plotting to overthrow the government and terrorism¹³. The charges were flimsy and Amnesty International called Sirivudh a “political prisoner”¹⁴. Ironically, it was Sirivudh – acting on behalf of FUNCINPEC – who in 2005 filed defamation complaints against Chea Poch and Sam Rainsy.¹⁵

“Arrests or threats of arrest of opposition representatives and human rights defenders lead one to believe there is a drift towards authoritarian government.”

INTERNATIONAL FEDERATION FOR HUMAN RIGHTS, FEBRUARY 2006

The lesson from these incidents is that even the fundamental bodies of democracy – the National Assembly is the main forum for debating new laws – are prone to executive interference. Parliamentary immunity exists so lawmakers can undertake controversial discussions for the good of the nation, but in Cambodia this right is seen as a privilege extended –and taken away – by the executive branch. A year later, the three SRP politicians had their parliamentary immunity restored after a deal was struck between Sam Rainsy and Prime Minister Hun Sen. By this time, Cheam Channy had spent a year in prison on unsubstantiated charges of forming a rebel army, and Sam Rainsy – himself sentenced *in absentia* to 18 months imprisonment on defamation charges – had fled Cambodia for a year.

¹² Sam Rainsy and Chea Poch had defamation charges pending against them, and Cheam Channy was accused of forming an illegal armed force and fraud.

¹³ He was

¹⁴ Amnesty International USA, *Kingdom of Cambodia: Right to a Fair Trial Must be Held*, 27 November 1995, <http://www.amnestyusa.org/countries/cambodia/document.do?id=1CAD18FD4505AB8E802569A50071591C>. After his initial detention, Sirivudh was permitted to go into exile, but was convicted *in absentia* of conspiracy and firearms charges and sentenced to 10 years' imprisonment. He later returned to Cambodia, and was given a Royal Pardon, in a political deal.

¹⁵ Letter from Prince Norodom Ranariddh to retired King Norodom Sihanouk, dated 14 February 2005, http://www.funcinpec.org/SKP_Letter_king_02-14-05.htm

Sam Rainsy's return to Cambodia and the rehabilitation of his party came at a high-price to FUNCINPEC, the Cambodian People's Party (CPP's) traditional coalition partner. The Cambodian constitution, already significantly amended following the elections in 1998 and 2003 to help the CPP and FUNCINPEC reach power-sharing agreements, was once again revised. This time, the 2/3 parliamentary majority required to form a government was abolished in favour of a 50%+1 arrangement. Following this latest constitutional amendment, the CPP quickly marginalised its former government coalition partner, dismissing numerous FUNCINPEC Ministers, Secretaries of State, Governors and other officials, and moved to run the country on its own. The constitutional amendment was passed speedily with no public consultation. A nation's constitution is intended to underpin a stable democratic society, and should only be amended after extensive debate, consultation and consideration - not to suit short-term political needs. The disdain which Cambodian lawmakers have shown for this institution bodes ill for the future stability of the Cambodian system of government, and for the concept of transparency and accountability to the public.

The prospect of the Cambodian government signing a border treaty with Vietnam in October 2005 sparked heated debate in the Kingdom. Relations between the two neighbours have historically been volatile and the secrecy shrouding the border treaty made it impossible for the public to assess the merits of the treaty prior to its signing. This secrecy predictably raised fears that the treaty would cede land to Vietnam. Rather than address these fears and prove them wrong, Prime Minister Hun Sen made it clear that criticism would not be tolerated on this sensitive issue. "Accusing Hun Sen of selling territory [to Vietnam] is not funny... From now on I will sue whoever, no matter position he holds. I must sue him," said Prime Minister Hun Sen.¹⁶

However, critics did speak out – and paid the price.

Mam Sonando, a journalist and owner of Beehive radio station, was arrested and detained on defamation charges¹⁷ on 11 October for broadcasting an interview in which his guest - Sean Pengse¹⁸ - criticised the treaty. The day Sonando was arrested, four members - Rong Chhun¹⁹, Chea Mony²⁰, Ear Channa²¹ and Men Nath²² - signed a statement in their capacity as members of the Cambodia Watchdog Council calling on Cambodians to "participate in mourning for the serious danger to the territorial integrity of Cambodia" and calling on legislators and the King not to approve the treaty. On the orders of the Prime Minister, the four were charged with defamation

¹⁶ By Pin Sisovann, Phann Ana and Lee Berthiaume, *PM Says He'll Sue Anyone Over Borders*, Cambodia Daily, 13 October, 2005

¹⁷ The original charge was defamation, but charges of incitement and disinformation were added later.

¹⁸ President, Cambodia's Border Committee (based in France)

¹⁹ Rong Chhun is also president of the Cambodian Independent Teachers' Association.

²⁰ Chea Mony is also president of the Free Trade Union of Workers of the Kingdom of Cambodia.

²¹ Deputy Secretary General, Student Movement for Democracy

²² President, Cambodian Independent Civil Servants Association

and incitement²³. Rong Chhun was arrested and detained, while the other three sought protection outside the country.

Other border critics charged in the crackdown on dissent were Prince Sisowath Thomico and Say Bory, an advisor to retired King Norodom Sihanouk. Legal experts said the justification for defamation charges was deeply flawed since the defendants' comments focused on a policy rather than an individual, and in the case of Sonando, a broadcaster indicted for the views of his guest.

The prosecutions amounted to a systematic repression of freedom of speech, a fundamental human right. The border treaty issue was one of legitimate public interest and the lack of transparency or debate about the treaty smacks of authoritarianism. The crackdown also yet again demonstrated a long-standing trend of the executive openly interfering with the judiciary in Cambodia.

On December 10, non-government organisations gathered in Phnom Penh's Olympic Stadium to celebrate International Human Rights Day. The Cambodian Centre for Human Rights (CCHR) had put up several banners in their booth including one which had been used prior to the 2003 national election, on which villagers had scrawled handwritten comments. One of the messages allegedly referred to the Government as a "traitor regime that sells territory to Vietnam". When police began to photograph the banner, CCHR staff promptly removed it, fearing reprisals.

Not quickly enough, apparently.

Within a month, Kem Sokha, President of CCHR, Pa Ngoun Teang, Director of CCHR's Voice of Democracy radio program and Yeng Virak, Executive Director of the Community Legal Education Centre (CLEC) were charged with defamation in relation to the banner and detained. Again, the arrests demonstrated executive interference in the judiciary, as well as the use of defamation to jail and thereby silence critics. With many of Cambodia's key civil society figures behind bars or in self-imposed exile, the defamation suits left civil society fearful and in disarray.



Crowd awaiting arrival of the five individuals released on bail on January 17, 2006

In January 2006, with mounting pressure from the international community and local groups, first Yeng Virak was released from jail on bail, later followed by Mam Sonando, Kem Sokha, Rong Chhun and Pa Ngoun Teang. Their bail was granted at

²³ There was little pretence of judicial independence. In an October 14 speech in which he announced the government had sued Rong Chhun and his Cambodia Watchdog Council colleagues, Hun Sen made it clear that he had no doubt what the court's action against them would be - "they will be in prison and they will not be very happy", he said. Hun Sen made his disdain for the law apparent in an October 17 speech -- in which he also threatened to fire any official who did not follow his instructions -- by stating: "If I did not abide by law, the armed forces are in my hands, no-one can object."

the explicit request of Prime Minister Hun Sen, following a meeting between he and Ambassador Christopher Hill, US Assistant Secretary, Bureau of East Asia and Public Affairs.

The charges against the five men, however, remain in place. This follows a strategy of using pending charges as a lingering threat to critics of the Government. For example, previous charges brought against Mam Sonando in the wake of the 2003 anti-Thai riots in Phnom Penh are still before the courts. While this defies principles of due process and timely justice, the pending charges remain even though under Cambodian law Mam Sonando can no longer be tried on those charges²⁴.

The timing of these releases was crucial, occurring in the weeks leading up to the March Government-Donor Consultative Group (CG) meeting, during which aid agencies pledge their contributions for the coming year. The releases were hailed by donors and diplomats, and \$601 million was pledged for 2006. But although the move was welcomed, the release of people on bail who should never have been charged and detained to begin with should in no way be seen as meaningful progress. Instead, the initial arrests and detentions (as well as the subsequent releases) clearly illustrated executive interference in the judiciary; it should be noted that the Prime Minister's order to release showed just as much executive interference as the original arrest order. The crackdown on dissent highlighted the fragility of freedom of speech, rule of law and human rights in Cambodia.

The Prime Minister has not followed through on his surprise call shortly before the CG meeting to decriminalise defamation. While welcome moves were subsequently made to remove prison sentences, defamation remains a criminal offence for which people can be arrested, convicted and subject to criminal fines. In addition, the removal of prison sentences does not eliminate the government's legal means to imprison its critics. Some of the civil society leaders arrested over the border affair were charged not just with defamation but also with incitement (despite a gross lack of evidence that they had incited anyone to commit any crime), and Mam Sonando also with disinformation - both of which carry even longer prison sentences than the criminal defamation charges. Furthermore, as Cambodian law allows for the imprisonment of debtors, there is nothing to prevent the courts imposing unreasonably high financial penalties in defamation cases and thus ensuring prison time.

It also remains to be seen whether custodial sentences remain for criminal defamation in the forthcoming revised Criminal Code, which has already been criticised for its poor regard to fundamental freedoms and democratic space (for example, a draft provision to allow prison sentences for criticising judges). Other pieces of repressive legislation currently threatened include a harsh new law on public assembly that threatens to restrict most gatherings to government-assigned "Freedom Parks", and a proposed law on NGOs that may greatly limit the operating abilities of Cambodian human rights groups and other associations.

²⁴ The UNTAC Law (Article 21) states that "Any accused person, whether or not in detention, must be judged no later than six months after arrest."

At present, the Cambodian government continues to use its own failure to prevent the anti-Thai riots of January 2003 as the pretext for banning nearly all peaceful protests, rallies and marches. In 2005, LICADHO recorded 40 cases of peaceful demonstrations being refused permission or being dispersed by police.²⁵ Eighteen protests were related to land conflicts and nine were factory strikes or union gatherings. According to LICADHO and media sources, 16 of the events involved serious violence by police or the military.



Riot Police were ordered to keep factory workers out of central Phnom Penh on Labour Day, 2006

The restriction of basic freedoms continues in 2006, with hundreds of riot police blocking all major roads into Phnom Penh in an effort to stop garment factory workers (mostly young women) from celebrating Labour Day in the capital. Restrictions on freedom of movement have also been experienced by community activists in the border provinces of Rattanakiri and Mondulakiri who have been required to ask local authorities for permission to leave their village. Unauthorised travel has

resulted in threats, harassment and intimidation. These restrictions violate basic rights enshrined in international law and Cambodia's Constitution.

The arrests of NGO leaders and government critics, and the ongoing repression of freedom of assembly and expression, have had a chilling effect on the fledgling union movement, NGOs in general and civil society at large. All are well aware of the ease with which the Government can order the jailing of critics, and this implicit threat affects their willingness and ability to publicly comment on critical issues and government policies. Similarly, the lifting of parliamentary immunity of the three SRP MPs, and the imprisonment of one of them for a year, bodes ill for the opposition's ability to operate freely as the country gears up for its next elections, with Commune Council polls scheduled for April 1, 2007, and National Assembly elections set for 2008. Without the freedom of discussion and debate, democracy in Cambodia is merely a façade underpinned by fear and repression.

²⁵ LICADHO, *Restrictions on the Freedom of Assembly in Cambodia*, Briefing Paper 2005

Impunity

The absence of effective action to prosecute police, soldiers and government officials who commit human rights violations continues to deeply undermine any sense of justice in Cambodia. That impunity instead systematically promotes an environment in which powerful individuals see themselves as above the law and are treated as such.

The existence of pervasive impunity and its chilling effects on democracy and human rights have been amply documented²⁶. One recent case was the shooting of five villagers in Kbal Spean, referred to previously. Despite hundreds of witnesses, no-one has been brought to justice for the killings. The Battambang provincial court eventually dropped charges against three policemen and released them from pre-trial detention. The case is effectively closed and the clear message for the Kbal Spean villagers – as well as others involved in land disputes – is that violence is an acceptable method of conflict resolution.

Cambodia's recent history is littered with similar incidents.

In February 2004, the United Nations Cambodia Office of the High Commissioner for Human Rights (UNCOHCHR) office sent a list of 178 cases of human rights violations documented by the Special Representatives for Human Rights since 1992.²⁷ The “representative” (i.e. not exhaustive) list contained politically-motivated killings, torture and human trafficking, and taken together showed “a consistent pattern of delay and unwillingness in the investigation, prosecution and trials of those concerned”²⁸.

This pattern was confirmed by the response from the Ministry of Interior in November 2004²⁹. The Ministry told the COHCHR that 25 cases were related to the coup of July 1997 (implying that they were therefore somehow outside of the mandate of the legal system), four cases took place in Khmer Rouge controlled areas and claimed two cases did not occur, and therefore no action would be taken. Of the 61 cases that made it to court, 17 charges were dropped, nine suspects escaped and 16 were convicted (although some in absentia, equating in reality to a ‘suspended sentence’ while others were sentenced inappropriately, according to the UN). The other 19 cases were still before the courts and a further 64 cases were under continuing investigation – years after they occurred.

²⁶ For example, see UN Special Representative of the Secretary-General for Human Rights in Cambodia, *Continuing patterns of impunity in Cambodia*, October 2005 and also ADHOC, LICADHO and Human Rights Watch, *Impunity in Cambodia: How Human Rights Offenders Escape Justice*, June 1999, page 14.

²⁷ UN Special Representative of the Secretary-General for Human Rights in Cambodia, *Continuing patterns of impunity in Cambodia*, October 2005, page 14.

²⁸ *Ibid.* page 33.

²⁹ *Ibid.* page 14 and Annex B.

The COHCHR report concluded that “Cambodia had yet to develop neutral State institutions, checks on executive power, and the means to enforce rights guaranteed in the law and the Constitution.”³⁰ While this list of 178 cases focussed on the highest profile examples of impunity in the last decade, many of the findings are consistent with LICADHO’s day-to-day experiences in 2006.

Impunity in Cambodia thrives on a symbiotic relationship between those with political and economic power and the armed forces and police.

High-ranking government officials, wealthy business people, senior military and police officers use the security forces to target their personal or political opponents, or conduct other illegal activities.³¹ In return for their loyalty, those same lower-ranking police and soldiers are granted leeway by their patrons to break the law without fear of legal sanctions. The people at the receiving end of these human rights violations are usually the poor or those who threaten the political dominance of the ruling elite. Police and military often act as guns-for-hire to those with money or influence, abasing the concept of fair law enforcement for all citizens.

Systematic abuses by the police, such as torture and extortion, are common in the investigation of suspected crimes.

Between January 2000 and November 2005, LICADHO received complaints of 145 incidents of torture by law enforcement and other state actors. However, LICADHO is aware of just one case in the past five years in which convictions were secured. This was in Svay Rieng province, where three policemen were convicted of physical assault and received three month suspended prison sentences in April 2002 for torturing two children.

Historically, such lenient sentences are the norm in the very few cases in which police officers are convicted of torture. The last known case of a policeman actually serving prison time as punishment for committing torture was in 1995, when a Prey Veng military policeman spent four months in prison for beating a 13-year-old boy who died during interrogation.

Many police officers continue to believe that beatings and other forms of torture are legitimate methods to extract confessions. Torture or its threat is also used by the police to extort money from arrested persons for their release. The primary reason why torture continues to be used by police (and also by prison guards, particularly as punishment of prisoners who attempt to escape) is that they can get away with it. This is encouraged by the lack of prosecutions of torturers, and the courts’ unquestioning acceptance of confessions made under duress.

Corruption helps facilitate impunity.

³⁰ Ibid. page 33.

³¹ For an insight into the interdependence of the political elite, military and police in the area of illegal logging, see Global Witness, *Taking a Cut: Institutionalised Corruption and Illegal Logging in Cambodia’s Aural Wildlife Sanctuary*, November 2004.

Police and court officials regularly extort money from both victims and suspected perpetrators in criminal cases; “justice” goes to the highest bidder. While petty thieves receive lengthy jail terms or violent extrajudicial retribution, perpetrators of serious crimes are routinely allowed to escape justice through out-of-court settlements with victims or their families. Police or local government officials often broker these pay-offs and take a commission for themselves.

This is particularly common in rape cases. For example, in September 2005 a 19-year old woman was raped in Kandal province by her neighbour. She came to LICADHO for assistance in filing a complaint to the police. However, the perpetrator negotiated an unlawful compensation settlement with the victim and her family. He paid her \$700 and in exchange the victim withdrew her complaint from the police and also told LICADHO that she no longer needed assistance. The police received \$100 for their part in the negotiation.

This practise reinforces a tradition of impunity for those with money, undermines any sense of justice and actively promotes repeat offending. A rapist who has raped once and got away without any serious punishment is that much more likely to rape again. The payment of a few hundred dollars compensation for crimes such as rape or even murder diminishes the public’s perception of the severity of these offences and of the sanctity of human life. Court, police and local government officials regularly fail to offer support to victims who wish to seek justice in court, and to ensure a fair trial for human rights victims.

The failure to investigate crimes – particularly those involving State personnel and/or politically-motivated crimes – is often blamed on incompetence and lack of resources within the police force and judiciary. It is certainly true that both these institutions lack money, equipment and training to carry out sophisticated investigations, yet this is also an excuse offered to paper over a lack of will to investigate.³² In many cases that LICADHO has monitored, police or investigating judges make little effort to conduct a proper inquiry or simply ignore evidence that could lead to a conviction of well-connected, wealthy individuals.

“Simply put, with impunity there is no protection of human rights.”

UN IMPUNITY REPORT, OCTOBER 2005

The high-profile August 2005 trial of Born Samnang and Sok Sam Oeun for the murder of trade unionist Chea Vichea (see below, under Judiciary) is just one recent example of courts accepting confessions allegedly extracted with beatings and ignoring defendants’ alibis. However, on a day-to-day level, police fabricate evidence, and judges regularly ignore procedures or overlook a complete lack of credible evidence in order to extort bribes from the accused. The presumption of innocence—a constitutionally guaranteed right that prohibits the conviction of a person unless proven guilty beyond reasonable doubt— is routinely ignored by the courts.

³² UN Special Representative of the Secretary-General for Human Rights in Cambodia, *Continuing patterns of impunity in Cambodia*, October 2005, pg 33.

For example, in Pursat province a man bought a small amount of beef at the local market in 2006. At that time, cows had been stolen nearby and the man was arrested on suspicion of stealing the cattle. Despite protests from more than 100 members of the community, who saw him buy the meat, the man was imprisoned until he paid officials USD\$500, more money than many Cambodians earn in a year. LICADHO's provincial files are full of similar examples.

Despite many promises made by the Cambodian Government, the lack of rule of law and the existence of fundamental power structures that allow such impunity to flourish remain essentially unchanged 13 years after Cambodia's emergence as a supposedly democratic nation. There is little evidence of any decrease in corruption within the courts in that time; to the contrary, it may well have grown worse, become more institutionalized and widely accepted as "normal".

The Cambodian government has a responsibility to control the police, military and military police. Imposition of such control requires the end of the tradition of a security force beholden to the whims of the ruling elite, and instead the implementation of true rule of law. The international community needs to demand more than empty promises from the Government in regards to impunity; promoting legal reform, economic growth and other worthy development objectives in a country underwritten by impunity is tantamount to stacking a house of cards.

Case Study: The powerful vs. the powerless

One case exemplifies the persistent culture of impunity by the well connected and powerful in Cambodia.³³ A relative of high ranking official was identified by several witnesses as having opened fire upon a crowd gathered around a traffic accident in October 2003, killing two people and wounding four others. Relatives of the victims were paid sums in the amount of \$8,000 and later refused to testify; the judge and prosecutor were widely alleged to be biased in favour of the accused, and the Phnom Penh Municipal Court held a trial which was neither open to the public nor announced. The judge accepted his uncorroborated claim that a mysterious second man, who has never been found, was responsible for the killing, and that he only touched the gun in order to try to wrestle it out of this man's hands. He was convicted of a lesser charge of involuntary manslaughter, and sentenced to 18 months imprisonment. However, five months later the Court of Appeal overturned the sentence and acquitted him of all charges, laying the entire blame for the shooting on the second man.

The impunity of this person is all the more chilling when one considers the harshness of the justice system for normal Cambodians. Kul Vinlay, the next person tried in the Phnom Penh Municipal Court on the same day of the powerful's original trial, was sentenced to four years in prison for stealing 2,700 Riels (\$0.65) after his mother was unable to pay the \$1,000 that had been sought in exchange for his release.³⁴

³³ Amnesty International, "Cambodia: getting away with murder", AI Index ASA 23/010/2004, at <http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?tbl=RSDCOI&id=42ae988a0>.

³⁴ UN Office of the High Commissioner for Human Rights, Asia-Pacific Region, quarterly report, February 2005.

Judiciary

Cambodia's judiciary continues to be characterised by corruption, incompetence and political bias, while institutional changes made in 2005 have brought the courts further under control of the executive. The judiciary continues to be used as a tool of the government in political cases, and as a theatre of corruption.

LICADHO assists human rights abuse victims in their efforts to find justice through the courts. All too often, they face corruption, bias from police and military, and insensitivity towards victims of traumatic crime, such as rape. Despite compelling evidence in many cases, legal means resolved just 21 cases (6.1%) out of 343 human rights abuses reported to LICADHO in 2005.³⁵ In other cases, out-of-court settlements or bribes allow the perpetrators to buy their way out of trouble, or else police and court staff fail to follow up and the case gets lost in the judicial system.

Two of the most high-profile miscarriages of justice in 2005 were the case of Cheam Channy (see case study) and the sentencing of two men for the assassination of trade union leader Chea Vichea in January 2004. There was no convincing evidence to suggest that either of the accused, Born Samnang or Sok Sam Oeun, had anything to do with the murder; it is widely believed that they were scapegoats prosecuted in order to protect the real killers. An initial confession by Born Samnang was retracted a day later amid claims police had beaten, threatened and bribed him to extract the confession. During the trial of the two suspects, several witnesses testified that Born Samnang was elsewhere at the time of the killing. Human rights workers interviewed persons who could have provided an alibi for Sok Sam Oeun as well, but they did not appear in court for fear of reprisals.

The investigating judge for the case, Hing Thirith, dropped the charges on lack of evidence on March 19, 2004. Days later, he was dismissed by the Supreme Council of Magistracy from his position at the Phnom Penh court, and subsequently reassigned to Stung Treng province. His ruling in the Chea Vichea case was overturned by Appeals Court presiding judge Thou Mony³⁶. These actions sent a clear signal to judges that Born Samnang and Sok Sam Oeun were expected to be convicted despite the absence of credible evidence and repeated allegations by Born Samnang of



Villagers of Rusey Keo display anger towards authorities after receiving eviction notices

³⁵ Of the 343 cases LICADHO worked on in 2005, 21 were resolved by legal means, 106 by "other means" (primarily out-of-court monetary settlements), 201 were pending and 15 were not resolved.

³⁶ By Lee Berthiaume, *2004 The Year in Review*, The Cambodia Daily, 1-2 January 2005.

coercion and bribes offered to him by the police. In August 2005, both men were convicted of murder and sentenced to 20 years in jail. Numerous local and international human rights groups condemned the decision and Vichea's brother, Chea Mony, publicly stated that he thought the real killers had not been caught. High-profile cases such as this reinforce the fact that in Cambodia the courts are prone to political interference, and the rule of law is applied unevenly.

A consequence of the judiciary's corruption and incompetence is that citizens continue to take the law into their own hands in street retributions, known as mob killings or "people's courts".

In 2005, LICADHO collected information on 17 mob killings from across the country.³⁷ It's likely there were more that went unreported. Typically, the victim is accused of theft (most commonly of motorcycles, but also bicycles, cattle and in one case, a ladder), apprehended and beaten to death. In seven cases, police were present, but did not intervene, and in a case in Kampong Speu province soldiers were reported to have joined villagers in chasing and fatally shooting a suspected thief. None of the people involved in these attacks were prosecuted. Mob killings are a gross violation of the right to a fair trial and a violent vote of no confidence in the ability of the police and courts to provide justice.

The Supreme Council of Magistracy (SCM) was established under the Constitution to protect the independence and integrity of the Cambodian judiciary. In May 2005, the Secretariat of the SCM was transferred to the authority of the Ministry of Justice. While the council was never regarded as independent - comprised of members mostly affiliated to the CPP who almost always appointed judges who were loyal to the CPP³⁸ - the shifting of the Secretariat was seen as a consolidation of power by the Executive. "[Now] the Minister of Justice is the gateway to the Supreme Council of Magistracy," Prime Minister Hun Sen told the press. "So the Minister of Justice is also close to the Prime Minister."³⁹ The lack of separation of powers between the Executive and the judiciary branch seriously challenges the independence of the courts of Cambodia.

Prime Minister Hun Sen's "iron fist" policy has left certain judges and clerks scrambling to hold onto their jobs and is another example of executive interference in the judiciary. In March 2005, the Prime Minister announced a campaign to tackle judges accepting bribes to release suspected criminals. He promised to use his "iron fist" to clean up the courts. Soon after, three judges, three prosecutors and three court clerks were charged with corruption. In addition, three civilians were charged with bribery related to the corruption charges levelled against the court staff. In August, the SCM disciplined one prosecutor with a warning, and suspended or fired the other five judges and prosecutors.

³⁷ LICADHO Monitoring Office, *Mob Killings Report 2005*, internal report.

³⁸ A 2003 Ministry of Justice list of judges, prosecutors and other senior judicial staff clearly indicated each person's political affiliation: 189 were CPP, 11 were FUNCINPEC.

³⁹ By Prak Chan Thul and Lee Berthiaume, *Power shift puts Judiciary Under Gov't Control*, The Cambodia Daily, 9 May 2005.

Months later, the Battambang provincial court sentenced all but two of the court staff to prison terms, giving the appearance that Cambodia was tackling judicial corruption. However, the judgement was made *in absentia*, as they did not attend the trial and had not been arrested or detained beforehand. The *in absentia* convictions provided a simple case for a retrial, which was held on 21 April 2006. All the court officials previously convicted were acquitted at the re-trial.

Interestingly, the initial *in absentia* convictions of the court officials were made on 21 December, in the run-up to the crucial March Government-donor CG meeting on Cambodia, at a time when the government faced intense international scrutiny over the imprisonment of supposed border treaty critics. The subsequent re-trial, at which the court officials were acquitted, was held seven weeks after the donor meeting.

One consequence of the so-called “iron fist” policy is that judges now feel obliged to hand down harsh sentences and have less room to consider mitigating circumstances or leniency.⁴⁰ There is also the perception that the campaign has increased the powers of the police, who often complained about the release of suspects they had arrested. This is worrying because it suggests that evidence presented by police – often confessions extracted using torture or threats – will be accepted even more unquestioningly by nervous judges. While efforts to curb corruption in the legal system are to be welcomed, the “iron fist” policy has in effect strengthened the executive and police influence over the judiciary and undermined judicial independence, while failing to address the fundamental problems with the Cambodian court system.

In 2004, the donor community called for the swift passage of eight key laws aimed at updating legislation introduced during the UN transitional period in the early 1990s and strengthening legal institutions and procedures.⁴¹ In fact, the international community has been calling for these laws since at least 1994.⁴² The lack of legal reform must be seen not as a failure to achieve set development targets but as a deliberate policy to maintain the patchwork of legislation and vague procedures that make it easy for the law to be manipulated. The slow pace of reform also ensures the courts are malleable, and will remain so unless the Cambodian Government makes genuine efforts to reform the judiciary and guarantee its independence, as enshrined in the Constitution.

In addition, corruption and a lack of fair legal recourse continue to deter legitimate, long-term foreign investment in Cambodia, thereby hindering economic development desperately-needed for poverty alleviation. Currently economic growth is high – due largely to international protection for Cambodia’s garment industry and seasonal agriculture fluctuations – but these factors are neither predictable nor sustainable. While its neighbours adapt to a globalized market, Cambodia’s economy is undermined by corruption and lawlessness.

⁴⁰ Asian Human Rights Commission, *Cambodia: judge and prosecutor of Rattanakiri must be sacked and tried for corruption*, 27 March 2006.

⁴¹ The key laws were: Criminal Code, Code of Criminal Procedure, Civil Code, Code of Civil Procedure, Organic Law on the Organization and Functioning of Courts, Code on Amendments to the Law on the Supreme Council Of Magistracy, Law on the Status of Judges and Prosecutors, Law on Anti-Corruption.

⁴² UN Special Representative of the Secretary-General for Human Rights in Cambodia, *Continuing patterns of impunity in Cambodia*, October 2005, pg 12-13.

Case Study: Cheam Channy

One of the most blatant examples of the judiciary acting as a tool of the Government was the case of opposition MP Cheam Channy.

On February 3, 2005, the National Assembly moved to strip three Sam Rainsy Party (SRP) members of their parliamentary immunity, thereby opening them up to criminal prosecution. Party president Sam Rainsy and Chea Poch immediately fled the country, fearing arrest. Cheam Channy was arrested later that day, questioned by a military prosecutor and held in a military prison - despite the fact that Channy is a civilian.

He was accused of trying to form an "illegal army" due to his role as head of a SRP shadow cabinet committee on defence issues. Such 'government-in-waiting' portfolios are legal and common in parliamentary oppositions around the world. Channy was denied bail and charged with organized crime (in relation to allegations of forming an illegal armed force) and fraud.

The August 8 trial, held in the Military Court, drew widespread criticism.

Cambodian law clearly states that the Military Court is for military personnel who commit offences regarding their roles in the armed forces. The court had no legal jurisdiction to try Channy. From that shaky foundation, the trial quickly became a farce. The key prosecution witness, Long Serey, claimed in court he had recruited 40,000 members to the alleged illegal army - contradicting a previous written statement that he had recruited 300 - and yet could present no evidence to back this up.

When Serey's testimony became confused and damaging to the prosecution, General Ney Thol (the presiding judge and also president of the Military Court) cut short the defence's cross-examination of him and limited the testimony of four other witnesses for the prosecution to just a few minutes each, allowing no cross examination by the defendant's lawyers. After testifying, Long Serey joined other witness to the side of the courtroom, where he was criticised by them for his inconsistent story. Serey was overheard to say, "Don't worry, we are going to get lots of money for this."⁴³ Channy's defence was repeatedly denied permission to present its own witnesses⁴⁴.

The next day, Channy was convicted and sentenced to seven years in the military prison. Outside the courthouse, the prosecutor gave a one-line media interview, saying simply: "Cambodia has Cambodian law."

Faced with this total disregard for law and procedure, Channy decided not to appeal, telling his lawyer that he "had no trust or hope the court will provide justice" and added that an appeal "will enrage Prime Minister Hun Sen and there will be no good future for me." Instead, he requested a royal pardon from King Norodom Sihamoni.

However, the Prime Minister stated publicly that Channy's wife would have to publicly denounce Sam Rainsy before such a request would be considered. This

⁴³ Phnom Penh Post, *Cheam Channy: The Trial*, 12-15 August, 2005.

⁴⁴ Ibid.

comment indicates the level of executive interference in this case. Within months of Cheam Channy's conviction, SRP leader Sam Rainsy was himself convicted (*in absentia*, having fled the country) for defamation of the Prime Minister and of FUNCINPEC leader Prince Norodom Ranariddh, and sentenced to 18 months imprisonment. A similar case was filed against SRP MP Chea Poch.

Channy was named a "prisoner of conscience" by Amnesty International. The UN Working Group on Arbitrary Detention (WGAD) examined the case, concluding that his detention was indeed arbitrary and violated both Cambodian and international law, requesting the Cambodian government to take steps to remedy the situation⁴⁵. With international pressure solidly behind Channy, a deal struck between Sam Rainsy and Hun Sen led to his release by royal pardon on 6 February 2006, a year and three days after his arrest. Both Channy and Sam Rainsy were granted Royal pardons, and parliamentary immunity was later restored to the two of them and to Chea Poch.

⁴⁵ WGAD Opinion No 29/2005 (CAMBODIA), 25 November 2005

Role of the International Community

The elections of 1993, brokered by the United Nations Transitional Authority in Cambodia (UNTAC), made Cambodia the world's biggest experiment in post-conflict transition to democracy. Since then, the international community has contributed billions in aid money, accounting for roughly half the Cambodia budget in recent years⁴⁶. Some of this money has helped Cambodia develop its shattered society and some has been squandered through corruption and lack of Cambodian government will to implement reforms. Real reform has been slow and key indicators show – at best – modest progress for such an outlay of aid money.⁴⁷ The heavy involvement of donors, especially in the area of elections, lends credibility to the Cambodian State. However, the international community has a responsibility to wield its power wisely, insisting that the Cambodian government behave as a genuine development partner, and to recognise that respect for human rights is vital to sustainable development.

Firstly, it must be noted that the international community is not a homogenous group. Amongst the multilateral donors (i.e. World Bank, Asian Development Bank), bilateral donors (with Japan topping the list), diplomatic missions, United Nations agencies, international non-government organisations and others, there are often different political and economic interests at play. Embassies are answerable first and foremost to their home countries and therefore tread lightly to maintain friendly relations within the Cambodian government. However, they often have close links with bilateral aid programs, which spend taxpayers' money. Development banks must disperse money in the form of grants and loans, and should consider the fact that one day those loans must be paid back by this developing country.

In March 2006, the Government-Donor Consultative Group meeting announced that aid money would total \$601 million for the year. This was an increase from the pledge of \$504 million for 2005. The boosting of aid was seen as a gesture of confidence in Cambodia and its Government.⁴⁸

The timing was crucial.

In the months leading up to the CG meeting in March 2006, there was significant concern about the political situation, especially the jailing of critics of the Government. The leader of the opposition was in exile, facing an 18-month prison sentence in Cambodia, and a senior SRP leader was behind bars on baseless charges.

⁴⁶ A World Bank assessment of aid between the years 1996 and 2001 put at "external assistance flows" at \$2.7 billion, compared to "Treasury executed expenditure" of \$2.1 billion. (World Bank, Cambodia at the Crossroads: Strengthening Accountability to Reduce Poverty, November 2004).

⁴⁷ "One would have to conclude, by any objective measure, that progress was indeed modest." Ian Porter, Country Director, Cambodia, The World Bank Group, during his closing remarks at the December 2004 CG meeting.

⁴⁸ "The request was for \$513 million, but the pledges have amounted to \$601 million... donors have praised his achievements under Hun Sen." Keat Chhon, Minister of Economy and Finance, in his concluding remarks at the 2006 CG meeting. Phnom Penh Post, *RGC counts \$601 million blessings*, March 10-23, 2006.

Political stability was precarious and investors (be they business or humanitarian) do not like pouring money into a cracked pot.

However, shortly before the meeting was scheduled – it had already been postponed due to the political upheavals – the executive shifted from a hardline approach to one of compromise. Supposed border critics were released on bail (although the charges remained and bail was guaranteed by the Prime Minister himself) and a deal was struck with Sam Rainsy, allowing him to return and restoring the parliamentary immunity for himself and his colleagues. Cheam Channy and Sam Rainsy received royal pardons at the Government's request. However, the release from prison of people who should never have been there to begin with should not have been seen as progress. Rather it was a case of two steps backwards, one step forward.

Shortly after the CG meeting, a stinging evaluation of the human rights situation by the newly-appointed UN Special Representative of the Secretary General for Human Rights in Cambodia, Yash Ghai, drew the ire of the Prime Minister who later publicly said Yash Ghai was “deranged”⁴⁹ and that the COHCHR staff were “long term tourists” in Cambodia, who were only tolerated because Cambodians made money renting them houses. The Prime Minister indicated that the UN envoy would no longer be allowed to meet with Cambodian ministers. Although the Prime Minister's relationship with previous UN human rights envoys has never been cordial, this outburst represents a new low point in Government-COHCHR relations. Again, the Government's intolerance of dissent and criticism made it willing to intimidate, insult and sever links with even those in the international community who publicly acknowledge rampant corruption and human rights abuses.

Donors have spent millions of dollars on aid projects in Cambodia. Yet, for ordinary Cambodians, the progress has been meagre.

In 2004, an estimated 35% of the population lived in poverty.⁵⁰ To put this in context, the World Bank's definition of the poverty level for Cambodia is 1,826 riel (approximately US \$0.45) per person per day, of which 80% is for food.⁵¹ In May 2006, at Phnom Penh market prices, this roughly translates to just 500 grams of rice (600

“In some countries governments and their international development partners go through a ritual. Governments pretend to reform and their development partners pretend to support such reforms while everyone pursues their own private agenda. Few people are fooled by this, and very few of them are fooled for long.”

IAN PORTER, COUNTRY DIRECTOR, CAMBODIA, THE WORLD BANK GROUP, OPENING REMARKS AT THE DECEMBER 2004 CG MEETING

⁴⁹ BBC News, *Cambodian PM denounces UN envoy*, 29 March 2006, <http://news.bbc.co.uk/1/hi/world/asia-pacific/4856718.stm>

⁵⁰ The World Bank estimates that in 1993/4 the poverty level was around 39%, but that only applied to accessible areas, less affected by the civil war. The World Bank estimates the country-wide poverty level in 1993/4 to have been between 40% and 50%. World Bank, *Frequently Asked Questions About Poverty in Cambodia*, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/CAMBODIAEXTN/0,,contentMDK:20720197-pagePK:141137-piPK:141127-theSitePK:293856,00.html>

⁵¹ Ibid.

riel) and 100 grams of fish (1,000 riel). In health, Cambodia's infant mortality (below one year of age) rate has actually increased from 80 deaths (per 1,000 live births) in 1990 to 97 deaths in 2004. The figures for child mortality (up to five year age) show a similar increase. Other development indicators show Cambodia making painstakingly slow progress out of poverty.⁵²

One way to encourage the Government to apply political will to the development objectives is to set benchmarks, or performance monitoring indicators, to assess annual achievements. Such benchmarks were set at the December 2004 CG meeting and were accompanied by strong words from donors expressing an increased desire to see real progress. Some donors went as far as to link their money to performance indicators, although most did not. The majority of the key benchmarks set in 2004 were not reached.⁵³ Regardless, donors continue to pour money into Government partnerships that year after year appear to go nowhere. LICADHO urges donors to set performance monitoring indicators and insist that real progress is made to meet these goals.

Adding to the historical lack of political will from the Government is the changing role of China in Cambodia's development. In April 2006, China signed agreements for an estimated \$600 million in grants and loans to the Kingdom – almost exactly matching the CG commitment – and the Prime Minister took the opportunity to thank the Chinese for their lack of performance indicators. “No condition was imposed, no benchmark was set... China talks less but does a lot,” said Hun Sen.⁵⁴ The growing role of China as a ‘silent partner’ in Cambodia's development, as well as a major private investor⁵⁵, could shift the balance of influence between the CG group and other donors.

In many areas, the objectives of development agencies and those of human rights advocates dovetail. The endemic corruption that retards business growth also facilitates the practice of impunity, and breeds poverty and discontent among the population. This is directly against many of the stated objectives of Cambodia's foreign donors: to promote rule of law and improve health, education and other vital services to Cambodians. For example, at the same time as donors pump millions into improving Cambodia's education system, land-grabbing by the powerful creates a new wave of poverty-stricken Cambodian parents unable to afford to send their children to schools. Stability is another common goal, especially after the years of fighting and the damage that has inflicted on Cambodian society. Yet stability will only exist alongside rule of law and the recognition of human rights.

⁵² Various development indicators can be found at UNICEF (http://www.unicef.org/infobycountry/cambodia_statistics.html) and World Bank (<http://devdata.worldbank.org/external/CPPProfile.asp?CCODE=KHM&PTYPE=CP>)

⁵³ FORUM-ASIA, Asian Human Rights Commission, Human Rights Watch, Global Witness and the International Federation for Human Rights, *Appendix: Donor Conditions and Actual Results*, open letter to Consultative Group Members, 23 February 2006.

⁵⁴ Cambodian Television Station Channel 9, *PM Hun Sen thanks China for not reprimanding Cambodia when giving aid*, http://www.tv9.com.kh/news/news_1.html

⁵⁵ “Investments by Chinese companies in Cambodia were worth some US\$240 million (€197 million) last year, more than from any other nation.” Associated Press, *China pledges US\$600m in aid for Cambodia*, 8 April 2006, viewed at http://en.ce.cn/National/Politics/200604/08/t20060408_6640451.shtml

Conclusion

LICADHO maintains that there can be no genuine stability without human rights and rule of law. When power is concentrated in the hands of a few, stability can easily tend towards authoritarian rule by a minority who abuse and exploit the majority. When the Government restricts freedom of expression and assembly, the result is not a stable political environment, but merely the absence of audible dissent. Real debate is critical to the development of good government policies, to better serve the people of Cambodia, and to promote real social, economic and political stability. Elections held in a climate of fear, caused by targeted attacks and intimidation, cannot be free and fair, regardless of voter-turnout. A society without recourse to justice is a society at the mercy of armed thugs and the ruling elite. As one LICADHO monitor in Kampot said recently, how can there be stability when people live in fear of rape and killing?

The impunity so often granted to human rights abusers undermines the rule of law, as do corruption, incompetence and political bias in the judiciary. The growing tide of people dispossessed in land conflicts does not add to stability - these people have nothing and therefore nothing to lose. Stability cannot be provided by adding to the legions of the desperate and poverty-stricken - this is a recipe for social, political and economic chaos.

LICADHO urges the international community to look behind the façade of stability and consider the real state of human rights in Cambodia - and what that really means for the country's future.

Recommendations

Recommendations to the International Community

1. Strengthen the international message on human rights

- Improve coordination within international community and demand the Cambodian government meet its international human rights obligations in a unified voice, particularly on freedoms of expression and assembly
- Raise human rights issues at the diplomatic level and speak out publicly against major human rights abuses in Cambodia
- Ensure human rights agenda is linked with other international initiatives, by integrating the promotion of human rights into development efforts and by ensuring that international companies operating in Cambodia comply with national and international laws
- Maintain support for national Cambodian NGOs to monitor human rights abuses and advocate for social and legal reforms
- Continue regular dialogue with Cambodian civil society organizations and support human rights defenders
- Insist that Cambodian government extend and support the UNCOHCHR mandate and encourage the work in Cambodia of UN Special Representatives, Rapporteurs and Working Groups on human rights

2. Set clear goals and performance indicators, and insist the Cambodian government meet them, including:

A. Improving the constitutionality of legislation

- Pass key legislation (Criminal Code, Code of Criminal Procedure, Civil Code, Code of Civil Procedure, Organic Law on the Organization and Functioning of Courts, Code on Amendments to the Law on the Supreme Council Of Magistracy, Law on the Status of Judges and Prosecutors, Law on Anti-Corruption), fully complying with Cambodia's constitution and international human rights standards
- Ensure criminal defamation is abolished
- Uphold current law that the military court can only prosecute military personnel, remove provisions in draft legislation allowing the military court to try civilians

B. Strengthening the independence and integrity of judiciary

- Modify the laws defining the composition and functioning of the Supreme Council of Magistracy and the Constitutional Council

C. Ensuring the rule of law is enforced and applied evenly

- Enforce the provisions of the 1997 Law on the General Status for Military Personnel, and the 1994 Law on the Co-status of Civil Servants, and develop a new Police Act to ensure the neutrality of civil servants and security forces

- Ensure the political neutrality of the Supreme National Council for Anti-Corruption
- Implement existing Land Law and sub-decrees relating to land, draft a sub-decree defining the roles and limitations of the National Authority for Land Dispute Resolution, and strengthen the Cadastral Commission and courts to ensure stable land tenure
- Undertake thorough investigations and prosecutions of members of the security forces and government officials – especially senior officials – implicated in human rights abuses and corruption, including out-of-court settlements for crimes
- Encourage police forces to investigate perpetrators of mob killings, and discipline members of the security forces who participate in or encourage such actions