



February 17, 1999

Ambassador Kenneth Quinn
Embassy of the United States of America
#27 Street 240
Phnom Penh, Cambodia

Dear Ambassador Quinn,

The Lawyers Committee for Human Rights writes to you in anticipation of the meeting of the Consultative Group on Cambodia to be held in Tokyo on February 25-26.

We are aware that since 1997, statutory restrictions on U.S. assistance to the Cambodian government have resulted in a significantly reduced assistance package which is now directed to the non-governmental sector. However, we also note that the United States has traditionally placed great emphasis on promoting development in the area of judicial and legal reform and we believe that the United States can continue to play a critical role in the upcoming Consultative Group meeting by identifying to the Cambodian government the particular steps that it can take to build confidence that future assistance is warranted in this area. With other donors, the United States can seek to make a strong statement of principles regarding the promotion of the rule of law so that the decision of any donor to renew or expand its assistance is not understood as a relaxation of core concerns about human rights and democratic process.

In the following paragraphs we highlight some recent cases which illustrate that the well-recognized problems of the independence of the judiciary, the culture of impunity and the protection and promotion of civil society are still prevalent in Cambodian society.

1. The independence of the judiciary

The Lawyers Committee urges the U.S. government to seek from the Cambodian government a demonstrable commitment to promote judicial independence.

We applaud the government's recent pledge to reaffirm its commitment to bring about judicial reform. The Lawyers Committee shares the view expressed by the United Nations Special Representative that rebuilding the judicial system must be an extremely high priority for the new government. However concrete actions must give meaning to the government's promises. While serious limitations on human and financial resources

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hamper every aspect of the legal system, political interference continues to be a major obstacle to the protection of basic legal rights in Cambodia.

The recent arrest and prosecution of Kim Sen and Meas Minear of the non-governmental human rights organization LICADHO illustrates some of the obvious weaknesses in the justice system. First, the two men were arrested without a warrant after demonstrations against the dumping of toxic waste in Sihanoukville. Then, the prosecutor and investigating judge charged the men with robbery before reviewing the evidence against them. Mr. Kim and Mr. Meas' application for pre-trial release was denied although they met all relevant criteria. Furthermore, defense lawyers were not granted access to the evidence against the two for more than three weeks after their clients had been charged. The arrest attracted significant international attention, and the two men then successfully appealed the bail denial.

There is reason to believe that the evidence presented by the prosecution in this case has been fabricated, and that Cambodian officials have encouraged this prosecution in retaliation for LICADHO's legitimate work on the toxic waste issue and other problems arising in the region. In fact, it is difficult to avoid the conclusion that the prosecution of the LICADHO employees is due to political manipulation of the criminal justice system, and that the successful bail appeal is an example of officials relenting in the face of international concern rather than impartial judicial enforcement of the legal rules that should have prevented the arrest in the first place.

The judiciary is guaranteed independent status under the Cambodian Constitution. However, it appears that, whether the case is celebrated or relatively unknown, judges often feel illegitimate pressures from litigants as well as government officials. There are technical measures that can be taken, including the training of judges and lawyers, developing secure and independent channels through which complaints by or about judges may be heard, and ensuring greater access to adequate counsel who can insist on procedural transparency and accountability. However, an essential element of this process is demonstrated support for judicial independence at the highest levels of the Cambodian government.

2. Impunity

The Lawyers Committee urges the U.S. government to call for the repeal Article 51 of the Law on Civil Servants as a concrete move toward official accountability in Cambodia.

Accountability of government and civilian officials for crimes and human rights abuses is a fundamental step in the process of rebuilding a nation. Yet in Cambodia, the vast majority of human rights violators are not properly investigated or prosecuted. Lack of capacity (low wages, training and technical levels) is part of the problem. However, a lack of official will to pursue human rights violations by State agents is also major factor.

Technical assistance is clearly needed, however there are some obvious steps that the government could take to remove obstacles to official accountability. For example Cambodian law unduly restricts prosecution of public officials. Article 51 of the Law on

Civil Servants requires the prior permission from the head of the relevant Ministry to prosecute a low ranking civil servant – including police, military and other law enforcement officials. The Council of Ministers must grant a waiver of immunity in the case of higher-ranking officials. In practice, permission for prosecution is rarely given. As applied, this law is clearly inconsistent with the relevant international norms governing official redress for serious human rights violations.

The December murder of Pourng Tong, a human rights worker from the group ADHOC, after he helped several families to resist an illegal eviction, directly illustrates this concern. Recent information suggests that the primary suspect is a police officer who may have been paid by the landowner to carry out the murder. The Lawyers Committee will watch developments in the police investigation closely. Meanwhile, donors should insist that the investigation be prompt and thorough, and if evidence supports the prosecution of any public official, that the Cambodian government not obstruct the prosecution by its application of Article 51.

3. Promotion of civil society and freedom of association

The Lawyers Committee urges the U.S. government to emphasize the importance of creating an environment in which development can flourish and encourages the U.S. government to support the advocacy efforts of those who seek to ensure that new legislation does not hinder the ability of the NGO community to carry out their vital work.

The Cambodian government is in the process of promulgating a law to regulate non-governmental organizations. Although there is speculation that a new proposal is being developed, the draft law that has been made public contains provisions which would cripple the Cambodian NGO community. For example, Article 11 prohibits any foreign funding of local non-governmental organizations, and Article 13 grants an extremely broad power to the Ministry of the Interior to dissolve associations for, amongst other things, activities affecting the “good tradition of Khmer society”. Article 25 permits dissolution upon breach of the NGO law itself and Article 26 provides that the founder of an organization may be imprisoned for up to six months for failing to register an NGO. Such provisions run counter to the acknowledged best practices, as well as the emerging norms, in this important area.

It is widely recognized that the existence of a civil society dedicated to the promotion and protection of the human rights of its population is inextricably linked to the success of a nation’s economic development. The World Bank has long understood this principle and has considered and rejected a distinction between foreign and local funding for NGO. Of course, as a practical matter, if the draft statute were to become law, it would appear to make much, if not all, of the current U.S. assistance package illegal.

The proposed restrictions on foreign assistance to NGOs are also rejected by new international instruments which have begun to give specific legal backing to NGO activities. For example, Article 13 of the recently adopted UN Declaration on Human Rights Defenders expressly supports the right of non-governmental groups to “solicit,

receive and utilize resources”, and recognizes no distinction between local and international sources. The Declaration also prohibits undue restrictions on the right to form and maintain associations. Furthermore, the Declaration reaffirms relevant provisions of the International Covenant on Civil and Political Rights, which guarantees freedom of association. As a member of the United Nations General Assembly which adopted the Declaration by consensus, and a State Party to the Covenant the Cambodian government should respect and promote the principles recognized in those instruments. These norms also give specific meaning to Article 42 of the Cambodian Constitution which guarantees the right to freedom of association.

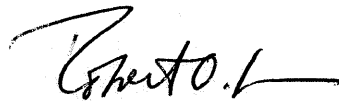
The United States has demonstrated its support for non-governmental actors through its assistance program to the NGO community. We urge it to make a clear statement in favor of a legal environment which allows such groups to function without fear of undue government interference.

4. Conclusion

The Lawyers Committee for Human Rights recognizes that addressing the weakness of the Cambodian legal system and fostering an appropriate legal environment for civil society will require years of work. The Cambodian government should not be expected to do this alone. For this reason the Consultative Group meeting provides a powerful opportunity for the U.S. government to raise issues which are critical to ensuring that international cooperation produces positive developments.

Please do not hesitate to contact myself or Vanessa Lesnie at (212) 845 5200 for further information.

Yours faithfully,



Robert O. Weiner
Director of Protection

cc: Willard J Pearson Jr., Mission Director, USAID-Cambodia
Mr. Brian Aggeler, Cambodian Desk Officer, US Department of State
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Ms. Ann van Dusen, Deputy Assistant Administrator, Bureau for Asia and the Near East, USAID