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**LICADHO**

CAMBODIAN LEAGUE FOR THE PROMOTION  
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## **Is it time for an independent rights commission?**

by Doctor Kek Galabru, President of LICADHO, January 2000

There is a growing behind-the-scenes debate within Cambodian political and donor communities over the merits of establishing a new, independent National Human Rights Commission by law, similar to such bodies set up in other Asian countries.

The need for an effective mechanism to protect Cambodians' human rights is self-evident. Virtually every day in Cambodia, serious rights violations are committed by State employees such as police, soldiers, bodyguards and civil servants. People are murdered, beaten, raped, or have their land taken. More often than not, the perpetrators do not face justice.

An indication of the scope and severity of the problem is provided by the June 1999 report "Impunity in Cambodia", a joint publication by two local human rights groups, Adhoc and Licadho, and the US-based Human Rights Watch. At least 263 people were allegedly killed by members of the police, military police, military, militia, bodyguard units or civil service between Jan 1997 and Oct 1998, according to the report. By June 1999, not one of the 209 suspected perpetrators had been brought to justice.

Such statistics vividly show that Cambodians' human rights are not being adequately protected by the existing judicial, parliamentary and government structures in the Kingdom. The Cambodian judiciary is in a state of crisis, with prosecutors and judges regularly failing to fulfil their statutory duties to prosecute criminal offenders.

In this context, the proposal to create a National Human Rights Commission, whose mandate and independence would be enshrined in law, would appear to have merit. But is another national human rights body really the answer? Cambodia already has two Human Rights Commissions - one at the National Assembly and another at the Senate - as well as the government's own National Human Rights Committee headed by a senior Prime Ministerial advisor.

These existing institutions are, to a lesser or greater extent, politicized bodies which have displayed little practical power or willingness to use it. Why should a new National Human Rights Commission be any different? Without the political willpower to safeguard its independence, neutrality and effectiveness, the creation of a new commission will be futile. In particular, such a commission will be a toothless tiger unless it is given the appropriate powers - including jurisdiction to initiate prosecutions against human rights offenders.

Precedents for the establishment of a National Human Rights Commission have been set throughout Asia and the Pacific. The Philippines, Indonesia, Sri Lanka, India, Fiji,



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Australia and New Zealand all have such independent commissions, established by law or by Constitutional amendment. Thailand recently passed legislation to establish a similar commission. The independence and effectiveness of such commissions, however, varies considerably; some countries' commissions are not truly independent and are little more than public relations fronts for the government.

Licadho supports the establishment of such a National Human Rights Commission in Cambodia only if it is guaranteed the independence and the prosecutorial teeth to enforce its mandate properly. In 1997, Licadho prepared a draft law which contains the necessary fundamental requirements for an independent human rights commission. The following criteria (which the existing three human rights institutions in Cambodia do not meet) are some of the necessary bare minimums for any new commission to be an effective body.

#### **A Good Law**

The legislative framework for an independent commission must be strong. The commission should preferably be established by a Constitutional amendment, to emphasize the independence and importance of the commission's work. The Constitutional amendment and the law governing the commission's operations must be democratically and transparently drafted and reviewed. Once drafted, there should be a period of at least two months for public submissions. Furthermore, there must be clear political willingness to make amendments to the drafts to address public and NGO comments and concerns.

The mandate of the National Human Rights Commission must be broad, and based upon the promotion and protection of human rights as stipulated in Cambodia's Constitution and in the international conventions and covenants to which Cambodia is a party. In particular, the commission should be empowered to:

1. **Investigate complaints:** to receive and investigate complaints of human rights violations, made by individuals or any group or body; to make public its findings and recommendations; to recommend prosecutions of perpetrators by the Cambodian judiciary and, if necessary, to initiate prosecutions of alleged perpetrators itself.
2. **Monitor the human rights situation:** To identify particular institutions and areas where human rights violations frequently occur, and take action to monitor and deter such abuses (for example, to regularly inspect prisons, police stations and other places of detention).
3. **Liase with other institutions and groups:** To cooperate and raise human rights complaints and issues with the relevant judicial, government and non-government institutions and bodies, including the courts, the Supreme Council of



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Magistracy, the Constitutional Council, the National Assembly and the Senate, and international and domestic human rights organizations.

4. **Review and propose legislation:** To examine existing and draft laws and/or sub-decrees to review their effectiveness in protecting human rights, and to make recommendations for amendments or the introduction of new legislation.

In order to fulfil its mandate, the commission must be given the necessary legal authority, including the powers to:

1. **Subpoena and arrest:** To summons witnesses and alleged perpetrators to appear before the commission; to issue arrest warrants, including for the purpose of apprehending suspects and compelling the attendance of witnesses.
2. **Prosecute offenders:** To initiate prosecutions in those cases in which the commission's prior recommendations to the courts to prosecute suspects have not been followed; the commission should be given the same powers as a public prosecutor, to prosecute alleged offenders under existing criminal law through the normal court system.
3. **Search:** To conduct searches, according to the same laws applicable to the police and judiciary, of premises where the commission has reason to believe that evidence or documents relating to an investigation may be found.
4. **Protect complainants and witnesses:** To take action to protect any complainant or witness as the commission deems necessary; in particular, to temporarily suspend or transfer alleged suspects, without prejudice, while awaiting completion of investigations, to other duties where they will have no power over witnesses or complainants.

### **Independent and qualified human resources**

The independence, neutrality and quality of the commission's membership must be guaranteed and enforced according to the Constitutional amendment and law. In particular, there must be:

1. **Independent membership:** Commission members must not only be neutral, but be seen to be neutral. A strict membership criteria must be applied, including most importantly the prohibition of people with political or government affiliations from being members. Specifically excluded should be anyone who is, or has been in the past three years: a Royal government employee (including police and military); a member of the National Assembly; a judge or prosecutor; or an office-holder in any political party.
2. **Qualified, broad and representative membership:** Commission members should be selected on the basis of their educational qualifications, neutrality and integrity. Women and minorities must be represented within the commission, as must NGOs.



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3. **Explicit appointment and dismissal procedures:** Commission members should be appointed for a fixed term, and should be dismissed only under well-defined criteria such as mental incapacity, engaging in politics, conflicts of interest, and failing to fulfil their duties. Members should be subject to a code of ethics, breaches of which will lead to dismissal.

### **Guaranteed financial resources and autonomy**

The commission must be given the resources to do its work, free from the possibility of intimidation or hindrance caused by a lack of resources. Specifically, there must be:

1. **Guaranteed funding:** Adequate and continuing funding, guaranteed by law and approved through a fast-track process by the National Assembly and the Senate; disbursements of funds by the Ministry of Finance without delay.
2. **Financial autonomy:** The commission must be given the autonomy to set its own priorities and to allocate funds to them; there should be no ability for the government or legislative bodies to influence funding for particular elements of the commission's mandate, such as investigation and prosecution.

As well as the criteria listed above, there are other requirements necessary for a National Human Rights Commission to be a fair, effective and respected institution. It must be accessible and visible to members of society including, most importantly, victims of alleged human rights violations. The commission must furthermore operate in a demonstrably fair and transparent manner. All suspected human rights perpetrators, and judicial or government officials accused of failing to fulfil their duties in regard to a complaint, must be given reasonable opportunities of being heard in the investigation and to present evidence in their defence. The findings of all the commission's investigations must be made public, as well as the commission's recommendations for action by the Royal government or concerned authorities. The comments of the government or authority should be sought beforehand, and publicly released along with the commission's findings and recommendations.

Were these prerequisites to be guaranteed in law and in practice, a National Human Rights Commission could be a valuable step toward improving Cambodia's poor human rights situation. Certainly, there is an urgent need in Cambodia for a truly independent and powerful mechanism to investigate human rights violations and hold the perpetrators accountable.

However, the obstacles to the establishment of such an independent, effective National Human Rights Commission are obvious to all. Indeed, it may simply not be possible given the current political climate. Cambodia has a poor track record of establishing independent statutory bodies; the Constitutional Council, the Supreme Council of Magistracy and the National Election Commission, for example, have all been plagued



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by allegations of political interference and lack of transparency in their work.

The creation of a National Human Rights Commission should not be embarked upon, and should not be supported by the national and international communities, unless there is a clear and concrete display of political willpower to meet the necessary prerequisites to ensure its independence and effective power. To establish a weak and politicized National Human Rights Commission will do nothing for Cambodia's human rights climate, and indeed will only hinder efforts to provide justice to existing victims and to prevent new ones.

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