



PRESS RELEASE

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Addressing Significant Human Rights Issues
During the Visit to Cambodia of Mr. Thomas Hammarberg,
Special Representative of the UN Secretary-General
for Human Rights in Cambodia

The visit to Cambodia of Mr. Thomas Hammarberg, Special Representative of the UN Secretary-General for Human Rights in Cambodia, from 1 to 13 December 1996, entailed the gathering of information on the present human rights situation in Cambodia. During the process of gathering information, Mr. Hammarberg recognised significant human rights issues which required special attention. To ensure that the process of gathering information was productive, Mr. Hammarberg met with several government officials, court members and representatives of organizations working with the people of Cambodia. They included His Majesty the King, the President of the National Assembly, the First Prime Minister, Ministers, Judges, Provincial Officials, National Police and Prison Officials, Ambassadors, Representative of UN Agencies, Funds and Programmes and Representatives of Cambodian and International NGOs.

The following are significant human rights issues which Mr. Hammarberg addressed during his visit.

The functioning of the justice system is a major aspect of human rights. Here, there are problems in Cambodia today. The courts are badly equipped and under-resourced in all respects. Court officials, including the judges, are badly paid and have to seek supplementary sources of income -- which, in turn, endangers the independence of the system.

Very few judges or prosecutors have formal legal education. The Judicial Mentor Program of the UN Centre for Human Rights does, however, offer a valuable on-site training and advice to the judiciary, raising the professional standards. The Minister of Justice has requested that the judicial mentors also provide training to local police, prison staff, military police and local authorities about human rights and the administration of justice, focusing on the primary role of the courts. In this way, an integrated approach to building the Rule of Law has begun at the local level.

A crucial challenge facing the judiciary, the Rule of Law and the promotion and protection of human rights in Cambodia is impunity. Impunity is today both *de facto* and *de jure*. *De facto* impunity seems to be the result of entrenched power of the military, police and other armed forces. The impression given is that there are some "bad elements" within these ranks who are powerful or dangerous and therefore do not face prosecution.

Institutionalised, *de jure* impunity is more the result of a passage in the 1994 Law on Civil Servants. Article 51 of this law provides that, except in cases of *flagrante delicto*, no civil servant may be arrested or prosecuted for any crime unless the government or the concerned

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Minister consents in advance. It has happened in a number of cases that requests for authorisation for arrest or prosecution have been denied or just not answered.

Mr. Hammarberg has been told by judges and prosecutors that article 51 undermines the basic principle of equality of all persons under the law and that it contributes to a climate of lawlessness in which persons in the police or the military were not held accountable for their acts even when these included murder, rape, robbery or ransom. In view of this, it is important that both Prime Ministers have told Mr. Hammarberg that they support the repeal of article 51.

One of the most distressing examples of impunity has been the attacks and threats against judges and prosecutors in response to attempts to prosecute members of the military or police. Attacks on the courts in Kompong Som, Battambang, Svay Rieng, Stung Treng and Kampot provinces have gone without prosecution.

Violence against journalists and party activists, including cases of brutal murder have not been investigated as thoroughly as required. Mr. Hammarberg has asked the government to focus on this serious problem and take steps to ensure that such crimes do not go unpunished. Speaking of killings with a possible political motive, he has also reacted against the murder of Kao Samuth and emphasised the necessity of swift and determined action to investigate the crime and bring the one or ones responsible to justice.

There are also some important structural problems in the administration of justice which ought to be addressed. The Supreme Council of Magistracy which was set up in 1994 has still not convened. This body is to appoint, transfer and discipline judges and prosecutors as well as to review all draft legislation related to judicial affairs. Mr. Hammarberg suggests that the Supreme Council be convened as early as possible.

This, in turn, means that the Constitutional Council cannot be formed, as the Supreme Council of Magistracy is one of the bodies to appoint members to the Constitutional Council. Also, no specific law has been drafted to define the organization and operation of the Constitutional Council. The result is that there is no legal forum in Cambodia today to determine the constitutionality of various law proposals. Nor has any draft law been submitted to the National Assembly on the status and functioning of the judiciary itself.

It is the impression of Mr. Hammarberg that the government is deeply concerned about these problems relating to the Rule of Law and the independence of the judiciary. This is a field where international support is welcome; contributions, already provided from Japan, Australia and other friendly governments have been appreciated.

Justice, of course, does not exclude amnesties and pardons. Releases of prisoners for humanitarian reasons are also welcome from a human rights point of view. Such decisions are the more justified if prison conditions are severe, if a prisoner is of precarious health or if children suffer as a result of the detention of a care giver. The discussion here in Phnom Penh about amnesties in such humanitarian cases is important; Mr. Hammarberg hopes that effective procedures for such decisions can be agreed before soon.

Mr. Hammarberg would also like to state his opinion about amnesties in cases of serious human rights violations in the past.

A recent history of gross human rights violations or grave breaches of humanitarian law cannot be set aside, and political agreements should not grant or endorse amnesty for such crimes in a way

that prevents investigation, the establishment of the historical truth, and prosecution through fairly conducted legal proceedings. It is essential that truth and responsibility be established. However, the UN does not advocate particular solutions -- including the type of punishments, or forgiveness -- to the question of accountability for past human rights violations. This is a matter for national debate and decision.

To debate the past may appear to be an obstacle to political agreements in the short term. But in the longer term, reconciliation is more likely if serious violations of human rights are investigated and responsibility is attributed to individuals, rather than continuing to be seen as the collective action of entire political (or in some cases, ethnic) communities.

Human Rights are based on some fundamental principles which should be upheld also when this might be politically complicated or inconvenient. Otherwise, a negative signal would be given to future generations. Rule of law will be difficult to establish if impunity has been accepted in cases of the grossest crimes.

A well-conducted investigation into the past can be an important exercise of public education. Investigation by an impartial commission of enquiry and criminal judicial prosecution should not be seen as alternatives, but rather as two parts of a single process and as essential elements in the construction of a just society. When such procedures are difficult or impossible at national level, solutions with an international dimension should be sought.

Mr. Hammarberg expects to return in March and June of 1997 to continue his mission of assisting the Royal Government in ensuring the protection of Human Rights of all people in Cambodia.