

“Reforming the judicial system”

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Human rights are about justice. Everyone has the right of equal treatment under the law. People committing crimes should be punished and victims have their rights restored. If the justice system functions it not only punishes, it prevents crime.

Experience has taught us that certain requirements are important for building a good system of justice:

There should be a clear legal framework, both for the procedures and the substantive law.

The independence of the judiciary should be firmly established – and recognised and respected by all authorities in society, including the political powers. Court decisions should always be implemented by the police and prison authorities.

People should be able to see that justice is done at the courts. Court staff should be educated and competent. There should be means for professional preparation of the cases, including calling witnesses and visiting crime sites.

There should be a spirit of serving the people. Corruption within the court system must be made impossible and bribery effectively sanctioned.

Judges and prosecutors should protect their status in society – and be helped in building respect for themselves. They should be disconnected from party politics. Their salaries should match their importance and make them financially independent.

There should be an effective mechanism to remedy bad practices and incompetence. The functioning of the system should be overseen constantly. In Cambodia this is a task for the Supreme Council of Magistracy which also appoints new judges and prosecutors.

There should be a system of legal aid to make it possible for poor people to defend themselves in court or bring their grievances there.

This checklist could be made longer. A problem in several countries is that security forces in reality are untouchable, the system of justice is prevented from taking up their misdeeds. Another problem is confusion on the role of the military courts: what type of cases should be brought to them?

Important for people's perception of the justice system is the conduct of the law enforcement personnel, not least the police. People should be able to go to the police in trust, not in fear. The individual policeman should be impartial and professionally competent – a protector of human rights, not a violator himself. Excessive use of weapons and violent interrogation methods must be stopped. This, in turn, requires independent inquiries and strict disciplinary action in cases of policemen not respecting the rules.

This checklist could perhaps be seen as an agenda for the discussion on how to put an end to the problem of impunity. What remains to be done? – Clearly there are still many deep problems, a number of the inherited from earlier times.

When travelling in the country I have had discussions with judges at the provincial courts and they have defined a number of remaining difficulties. There are gaps in the legal framework; the absence of, for instance, a code of criminal procedures is a serious drawback. New generations of lawyers have been graduated but there is still an educational gap. The Supreme Council of Magistracy has not fully taken its lead role to oversee the judicial system,

including through appointments and disciplinary actions. It is not always clear which cases should be brought to military court and which ones to a civilian.

The judges have also pointed at resource problems. Crucial law texts and case references are not always available in the courts themselves. Facilities for investigations are limited, including forensic equipment and means of transport to crime sites. This has contributed to the serious problem of excessive pre-trial detention; people arrested are kept in prison waiting for a trial longer than the maximum six months allowed by the law. Salaries to court staff continue to be low, even after the increase recently, which may in turn encourage bribery. All these factors hinder the important task of elevating the status of judges.

Another problem mentioned by some judges is the lack of respect for the independence of the judiciary. It has happened that a court case against a military officer could not be pursued because of armed threat against court personnel. It has also happened that a warrant of arrest could not be enforced by the gendarmerie because the culprits had district-level protection. This is of course a serious undermining of the endeavours to build a society ruled by law.

The more important that the Royal Government now does address these problems. In its platform it has pledged to introduce judicial reform and to give this priority. I have been informed about the plans within the Ministry of Justice for a Criminal Procedures Code, a Statute of Magistrates and a Statute on Court Clerks, all of which are essential for the proper functioning of the judiciary.

Efforts will also be made, I am told, to ensure the fundamental principle of equality of all before the law. In that context, it was important that the National Assembly recently amended article 51 of the Co-Statutes on Civil Servants, and hopefully the change will be understood and lead to new practices. The previous article 51 had prevented justice in a number of cases and had almost become a symbol of impunity.

The co-Ministers of Interior have informed me about efforts to professionalise the police forces when these now are reorganised and trimmed down. The use of weapons by police and security forces is a matter of concern to many. The ambition of the Prime Minister and the co-

illegal use was certainly welcomed.

Further and serious efforts are required to investigate and bring to justice those responsible for the serious acts of politically-related violence during recent years. The fact that there has been no resolution of most of these cases does undermine the respect for the system of justice. Many Cambodians have also told me how essential it is that those responsible for the most serious crimes during the Khmer Rouge rule are brought to trial. The experience from other countries is that it is important that investigations into such cases be thorough, transparent and brought to a conclusion. Failure to do so does severely undermine people's sense of justice.

These were my impressions of the situation now. I may have misunderstood some aspects and not been fully informed about some progress – for which I apologise. Still, what remains is an enormous challenge for the Government, the Parliament and the interested non-governmental organisations. The reforms so far outlined are urgent and I appeal to the international community to be available when requested.