

NATIONAL CONFERENCE ON PEACE, NATIONAL RECONCILIATION AND DEMOCRACY BUILDING: TEN YEARS AFTER THE PARIS PEACE AGREEMENTS.

Government Palace

Phnom Penh

21-23 October 2001

From Hope to Reality

Democracy, Human Rights, and Civil Society in Cambodia – the first 10 years revisited.

Progress, achievements, prospects, and challenges.

Causation and Remedies -- Toward a Social Science of Human Rights

Relatively little of the literature on the Cambodian human rights situation explores causation -- why particular incidents happen, why certain trends emerge, and why overall conditions are as they are. To simplify somewhat, the norm seems to be an essentially legal analysis of where local practice does or does not conform to international or domestic law standards. Deficiencies are noted, sometimes in harsh terms, followed by recommendations to adhere to the established standard. These reports are generally addressed primarily to the Government, as the repository of official authority and only possessor of overall responsibility for the country, although of course sectors of society outside the Government can also affect human rights performance.

Treating human rights questions within a legal framework is a long-standing and valuable tool for human rights organizations. It provides a standard means for measuring human rights performance, and a structure for dealing with problems uncovered.

However, treating human rights essentially as a legal issue also has its limitations. Three will be discussed here.

First, the legal model does not necessarily inquire into the causes of human rights violations. It lacks explanatory power. Rather, the rationalist legal model implicitly contains the cultural assumption that violations are due to free-will disobedience towards the law. And, as in law-breaking within a local jurisdiction, the willful human rights violation is judged, condemned, and sometimes punished. (Moreover, the international human rights community sometimes seems to be staffed exclusively by "hanging" judges -- the defendant never, or very rarely, gets acquitted.) It is unsurprising that the targets of such judgments resent the implication of criminality and question the authority of the "judges".

More attention to the **causes** of human rights violations could lead to insights and creative or alternative solutions of human rights problems. The study of human behavior more generally is obviously not limited to the law. Rather, a whole host of disciplines -- psychology, anthropology, sociology, criminology -- have grown up to explain aspects of human behavior, and have provided useful tools for dealing with dysfunctional behavior.

There is no reason why human rights could not be the subject of similar multi-disciplinary scrutiny. This would mean creating a **social science of human rights**, complementing the legal discipline that already is well-established.

The second limitation to a legal approach is the underlying assumption that presenting a case or dossier in this framework will have a strong impact almost everywhere. In some places the legal approach is effective. Where there is a full and tested body of laws, the public commitment by the public and leaders to the rule of law is high, and the judicial system functions relatively well, a legal approach can be expected to have real weight and get results.

In contrast, in countries where the commitment to the rule of law is weak or nonexistent, the laws themselves are few or deficient, and the judicial system works poorly, a legal approach to human rights questions may have limited impact. The appeal to legal standards and obligations can fall on uncomprehending or unappreciative ears. Even if the appeal is understood and accepted as valid, there may be no good system of legal redress to carry out the necessary correctives. As a result, the legal model for dealing with human rights violations may indeed be least effective precisely in those countries in the direst need of improvement.

Thirdly, the legalistic human rights approach necessarily focuses on civic and political rights. They are more obvious, but just as compelling should be economic, social and political rights – after all what matters first to people is personal security of shelter, water, food together with well-being for loved ones. If this simple premise is accepted then there needs to be a much stronger linkage between human development and human rights. When human rights are considered in this way, it is less likely to arouse suspicions and hostility with authorities. This is why the Cambodian Institute of Human Rights advocates "rights-based development" as part of its "constructive engagement" philosophy. The legalistic approach will always keep government and conventional human rights organizations at some distance to each other. Neither side's cause can be advanced.

Hence this paper suggests a broader approach: investigating the causes of human rights conditions in addition to a legal analysis, and seeking solutions which go beyond appeals to adhere to legal standards.

Several aspects are worth exploring:

- 1) The rational calculus of particular human rights-related behavior (say, a policeman beating a suspect) and how it can be modified.
- 2) Human rights-related behavior within the context of bureaucratic or institutional systems.
- 3) Human rights related behavior as a reflection of broader culture.

There are means of addressing problems in all three areas.

The rational calculus of individuals can be changed in some instances. For example, a leader about to make a decision may be persuaded that a decision which respects human rights is as effective as one which may not. Lobbying efforts may fall in this category. Rational calculus is influenced by criticism of human rights behaviors, or the fear of punishment. But limiting intervention to trying to influence people's rational calculations about their behavior is an enormous task, and not wholly satisfying, since each decision must be addressed anew.

Institutional systems can also be changed, though sometimes with great difficulty, to produce an environment more conducive to human rights. Programs of prison reform are an instance of institutional change; an appropriate system of justice will go far toward churning out judicial decisions which promote human rights.

Finally, at the level of culture, a process of education, broadly construed, can turn the norms in a society toward greater respect for human rights. Here, the ideals of democracy and human rights

through formal and informal education, television, radio, and print media can infuse the wider society with the ideals of human rights and democracy. Human Rights, to use another approach, must be mainstreamed to be a recurring feature of all policies, plans, and projects that affect people's lives.

10 *CIHR's Approach: Culturally Sensitive Education*

The Cambodian Institute of Human Rights concentrates most of its efforts in the third area -- changing culture through education. This is consistent with its view that human rights is more than a legal discipline and that we must look at the cultural origins of behavior to deal effectively with human rights. Education may be directed at particular groups, like military or Buddhist monks. It may intend to help develop a human rights culture within the institution or within the broader society. The Institute considers that this educational process, permeating the entire society, is one of the most effective means of ensuring that a culture of human rights and democracy is firmly and permanently implanted in Cambodia.

Here we would like to address the contention of various authors that Cambodia is not fertile soil for human rights and democracy.¹ There is little point to promoting human rights, after all, if the local culture is impervious to the concept. In one sense, the authors have a point. The Cambodian people have for over a thousand years been governed by mostly dictatorial regimes. There are also strong hierarchical aspects to traditional society. The last twenty years have been particularly destructive, since the social fabric was badly torn during the Khmer Rouge period and traditional values fostering good behavior and social harmony were swept aside.

This paper would argue, however, **that there are important concepts in traditional Cambodian culture which reflect respect for human rights and democracy**, and which only need to be emphasized and developed to flourish. Most notable among these is the Theravada Buddhist religion, in which many, if not all, of the basic human rights found in international law find expression in one form or another, although typically phrased as duties, obligations, or values rather than rights per se. For example, the Buddhist injunction against killing is, in its effect, the same as the right to life. The Buddhist prohibition on doing harm surely prohibits torture. The injunction against theft recognizes property rights, and so on. The entire notion of mutual respect embedded in traditional Cambodian culture is one that naturally leads to treating others with dignity and with due regard for their rights. Similarly, the concept of democracy, or making decisions by consensus, is an old one among the communities of monks in Theravada Buddhism. At village level as well, a customary way of making decisions, on a community development project, for example, is for the villagers to meet, discuss the issue and reach agreement. This is, in essence, grass-roots democracy in two of the institutions of greatest direct meaning to the average Cambodian. The Cambodian Institute of Human Rights uses these Buddhist precepts in its teaching of human rights and finds that Cambodians see the concepts phrased in this way to be both familiar and acceptable.

11 *Reconciliation*

There is still debate about whether Cambodian Society is beginning to reconcile itself 10 years after the Paris Peace agreements, or whether more should be done. Some observers have suggested that as well as or instead of a Khmer Rouge trial there should be a South African style "Truth and Reconciliation Commission". This could work in Cambodia but would need guidance from venerable spiritual leaders, as the Christian basis of sin, repentance, and forgiveness underlying the South African model could be at slight variance to Buddhism and the concept of retribution. What would be appealing would be

¹See, for example, Sidney Jones and Dinah PoKempner, "Human Rights in Cambodia: Past, Present, and Future" in Frederick Z. Brown (ed.), *Rebuilding Cambodia Human Resources, Human Rights, and Law*, Johns Hopkins Foreign Policy Institute (1993) p. 43-48. Also Francois Ponchaud, "Elections et Societe Khmère" in Christian Lewchery and Richard Petris (eds.), *Les Cambodgiens face a Eux-Memes? Les Amis d'Une Ecole de la Paix a Grenoble* (1993) pp.145-151.

public statements of regret and apology by leaders still living and this may emerge from the Khmer Rouge trial.

In practice today most Cambodians are reconciled sufficiently to live and work together. The day-to-day business of making a living means they must work alongside family and neighbors who were associated with past abuses. And then older Cambodians remember that it was intense conditioning that drove people to commit those abuses. Most had no choice but to conform or perish. Full reconciliation will take time. The greatest threat to reconciliation would be a resumption of fighting in the quest for power, and therefore democracy is absolutely essential to preserve the peace. Reconciliation will come if Cambodia keeps the peace, builds respect for the law, improves the lives of all its citizens, and all school students grow up learning about what constitutes good human rights

12 *Recommendations*

Recommendations can be formulated in various modes. One -- a typical one for human rights -- is to emphasize the meeting of international standards, usually by improving the legal process and punishing abuses vigorously. This is essentially one aspect of the legal model for human rights mentioned above.

A second approach, and one that will be emphasized here, is to look more broadly at the reasons for human rights conditions and to devise means to address them.

In this case, focusing on the cultural aspects of human rights is especially important. Cambodia is still an infant democracy overlying an authoritarian tradition of more than a thousand years. In the last quarter-century Cambodia has been afflicted with some of the worst human rights violations known to humanity and suffered war and political violence on a huge scale. It is not unreasonable to expect that it will take a generation to heal and to instill values of human rights, democracy, and peace in the population.

In this decade, the Cambodian Government has been faced by numerous comprehensive recommendations from many sources. It is a daunting task just digest them, never mind acting on them. If one of the economics phrases can be borrowed, here is a classic case of "too many targets and not enough instruments!" This paper will restrict itself to advice on a few points. These, moreover, are intended to be somewhat distinct from the standard legal approach -- they incorporate practical suggestions rather than exhortations to adhere to international human right standards. Some of them have the virtue of being "quick fixes" -- things which democratic governments may favor because they can be done quickly and please voters before the next elections. Others will yield results only after a period of years.

1. It is suggested that the **government and the media look for common ground on the question of freedom of the press** in order to put to an end to the tension and conflict that marks their relationship.
2. The government, government political parties, non-government political parties and parties in formation could **seek an accommodation enabling all parties or would-be parties to register and agree on common rules to apply** and then to legally engage in full, normal political activities. This accommodation should be arranged long before elections, not just a few weeks before when time is of the essence and other priorities intervene.

A satisfactory resolution of these two issues will do much to assuage domestic and international human rights concerns about Cambodia.

3. The Government, foreign governments and NGOs, and local NGOs should continue and even intensify their very valuable **training and educational activities** to instill the concepts of human rights, democracy, non-violence, and good governance in the population. The training should be integrated with community development, so that rights are automatically incorporated. Constructive engagement and partnership should replace partisanship and competition. Training is especially important for the judiciary, law enforcement, and other officials who come into contact with the public. Over the long term, this will help create a dominant culture of democracy and human rights within these institutions. Leaders of the government should continue to help by giving frequent, visible, public and private support to human rights.

4. Recognizing and using fully the enormous educational power of the broadcast media would be an important accomplishment for the government. One cost-effective method of educating the public would be to create a non-partisan and funded **public broadcasting system** for radio and television, the purpose of which would be to produce and broadcast programs to educate the population in a systematic way about human rights, democracy, development and other public issues of great concern. This public service system should be like the UK's BBC with editorial freedom guaranteed. Radio and TV can reach millions of people at low cost. Well-done programming, using commercial techniques, could have a great impact. To start, at least a few hours per day should be devoted to such programming, if necessary, in lieu of Chinese soap operas, cartoons, and the like. Many local NGOs could be helpful in creating materials for broadcast, but the government should also deploy its own resources to provide studio and air time.

5. The Government, especially the Information Ministry, should **reexamine the way the mass media, namely radio and TV, exercise their freedom**. In a democracy, freedom of information is highly upheld. At the same time, the exercise of freedom must always be in conformity with the law and moral values. Freedom without morality is harmful to human societies.

6. The government might re-explore the question of establishing a truly independent human rights body. Such a body could establish clear policies, goals, and responsibilities, coordinate government actions affecting human rights, monitor improvements in various sectors, and carry out initiatives. Above all, it would be credible and that would remove many of the doubts. This body might also be authorized to act as an ombudsman attempting to resolve individual complaints.

7. The government needs to find ways to give government officials immediate and progressive **pay rises** until it is enough to live on. The average wage is too low. As a result, government employees often work two or more jobs, detracting from their government performance. And some will be tempted by corruption in order to have enough money to feed their families. There are undoubtedly serious budget concerns involved, but this is a problem that needs close attention and resolution.

8. Many human rights advocates have customarily recommended prosecution and punishment of human rights violators in whatever country they may occur. There is nothing wrong with this advice except that its recipients often find it very difficult, for a host of reasons, to act on it, leading to further reports from Amnesty or other groups about recommendations ignored. Nonetheless, the government could examine whether, despite a judicial system that remains in development, the prosecution of exemplary or notorious cases (or other sanctions like demotion or transfer, where applicable) should be conducted. This would be mainly salutary for the deterrent value on other people. At the same time, it is suggested that **the government make full use of the positive incentives it can provide for good performance by officials: promotions, desirable transfers, and awards** should be considered to help create a work environment in which respect for human rights and good governance is valued and rewarded. This is all part of fostering a culture in which positive behavior is the expectation and the goal. Senior government leaders frequently give out money for good causes -- why not target some for worthy officials?

9. The international community, including governmental, inter-governmental and non-governmental organizations, **should stay engaged in Cambodia** as the Paris Agreements envision. It should realize that the process of building democracy and human rights in Cambodia is not instantaneous -- it will take a generation at least. It should make, if it can, the commitment to longer-term, steady moral and material support, lasting a decade and more, if it wants democracy and human rights to take deep root and succeed. Aid should include counsel and encouragement, development assistance, and institution-building in human rights, democracy, and good governance.

The United Nations and international community invested about two billion dollars and 22,000 peacekeepers to bring about the 1993 elections. Lives of 18 UNTAC personnel were lost from hostile action. But regardless of this very real sacrifice, one externally-organized and one internally-organized election do not indicate a democratic transformation. Expertise, financial support, and encouragement will continue to be needed. The international community would do well to protect its investment in Cambodia.

10. **Election education must be a continuous process, not done just before elections.** The 2002 local and 2003 national elections will be the critical test of whether the Cambodian people are able to carry forward democracy on their own. It is vital that these elections be conducted well. Not only the Government, but also the citizens, must be prepared to carry out their responsibilities effectively. That is why an early start to election education is important. The Royal Government, the international community, and local NGOs will all have key roles to play.