

February 23, 2006

Dear Consultative Group Member,

Recent events have demonstrated that the Government of Cambodia has yet to make a genuine commitment to good governance, human rights, the rule of law, and political pluralism. The arrests and imprisonment of government critics, attempts to weaken and silence civil society and the main opposition party, and the continuing pillaging of Cambodia's land and natural resources all fly in the face of commitments the government has made over many years to the Cambodian people and donors alike.

Economic development, good governance, and respect for the human rights of Cambodia's people are inextricably linked. The failure of the government to live up to its promises and the recent repressive acts raise questions about whether the Cambodian government is an effective development partner.

The Cambodian government is now at a crossroads. It can either take steps to develop institutions and policies that will enhance the welfare of Cambodia's population and protect their fundamental human rights, or it can continue to govern without accountability and with impunity.

Donors have a major role to play in determining Cambodia's future by continuing their assistance to civil society, supporting the decriminalization of freedom of expression, and insisting that the government fully comply with commitments made at the 2004 Consultative Group (CG) meeting to address corruption and misuse of natural resources.

The government's crackdown on the political opposition and civil society has shown how fragile the situation is. The release from prison of people who never should have been arrested and jailed in the first place should not be seen as constituting meaningful progress. To the contrary, the events of the past year have dealt a significant blow to human rights, the rule of law, and political pluralism.

The detentions and subsequent releases of civil society leaders Cheam Channy, Mam Sonando, Kem Sokha, and others—directly on the orders of Prime Minister Hun Sen—have highlighted Cambodia's longstanding lack of an independent judiciary and rule of law. The unpredictability of the government's policies poses an ongoing threat to the ability of individuals and

organizations to exercise their basic human rights. Opposition party, trade unions, news media, human rights and other civil society organizations regularly operate in a climate of uncertainty and fear, knowing that they may be jailed at any time in the future should they displease Cambodia's leaders, especially given the decade-old pattern of such attacks.

We welcome the Prime Minister's recent statement in support of decriminalizing defamation. We urge that this specific pledge be promptly put into action, and also that the government respect the broader issues of freedom of expression and assembly, and in particular, citizens' rights to criticize their government's policies.

The drama surrounding the recent arrests and displays of prime ministerial largesse have served to divert attention from a host of pressing issues in Cambodia—including poverty reduction, rampant land grabbing, and endemic corruption—which the government has consistently failed to meaningfully address.

In tandem with greater restrictions on political freedoms, there has been an increase in the misuse of natural resources and other public assets by elite families and crony companies. Over the past year Cambodia has seen a steep rise in land conflicts to the detriment of the rural poor. Several of the most serious center on economic land and industrial concessions controlled by foreign firms and private individuals, and even some senators.

Villagers opposed to concessionaires' activities have been attacked, threatened, arrested, or prohibited from airing grievances in public. Widespread land seizures by officials and powerful families have likewise been accompanied by human rights abuses, including the shooting to death of five villagers in Banteay Meanchey in March last year during a forced eviction. Villagers are now being jailed on charges of destruction of property or defamation when they protest against the loss of their land.

The government has failed to meet its CG commitments to cease allocating economic land concessions and prevent illegal land sales. Donors, meanwhile, have concentrated their land programs on technical and legal reforms that have not addressed corruption, abuse of power, and the conflicts that result.

Violence and intimidation against local activists and NGOs working in the environmental and forestry sector have continued. At the same time, syndicates comprising relatives of senior officials and elite military units continue illegal logging operations with impunity, frequently under the guise of economic land concessions. As with land alienation, forest crime impoverishes the rural population, a high proportion of which depends on forest products as a source of household income.

The government has failed to meet its pledge to cancel illegal concessions, military development zones, and exploitation permits encroaching on forest and protected areas. It has also effectively subverted the official logging ban through its allocation of new 'special coupe' logging permits.

It is critical that Cambodia's international donors remain focused on securing real progress, rather than mere promises, to tackle these and other key issues.

After billions of dollars of donor support over the past 14 years, it is time for a clear and unambiguous signal to be sent to the government. Donors should make it clear that they can no longer accept previously unmet promises.

Thus, we urge that at the forthcoming Consultative Group meeting, donors directly address the following issues:

1. Support for civil society

We urge increased assistance through non-governmental channels to promote human rights, development, the rule of law, counter-corruption, and media freedom. This must be matched by donor and other international agency frankness in public about the current situation in Cambodia.

The international community sends the Cambodian government very mixed signals when development agencies praise government initiatives in the justice field and related sectors, even as the government is using the justice system to jail and repress independent voices. The IMF's December 23 announcement of debt relief, just after the conviction of political opposition leader Sam Rainsy, illustrates this problem. Rosy rhetoric and ill-timed rewards by donors and international financial institutions encourages the government to deny its human rights violations and anti-democratic actions. The CG and development agencies should publicly express the strongest possible concern over threats to civil, political, economic, social and cultural rights by the government.

2. Forthcoming aid

We believe that the negative trends since the last CG meeting, together with the failure of the government to keep the agreements it made in December 2004, must be addressed. Promises made must be kept. Donors must insist that joint monitoring indicators agreed to at the last CG meeting be rolled over where they have not been met, and make it clear that continued assistance will be contingent on meeting these indicators.

Development assistance and budgetary support should be contingent on the government meeting the following conditions:

- Ceasing to harass and threaten civil society activists and opposition party members; withdrawing all outstanding criminal defamation charges; repealing the defamation, libel, disinformation, incitement, and other provisions in the criminal law that criminalize freedom of expression as protected by international law.

- Guaranteeing the rights of individuals and organizations to defend and promote human rights, including the right to peacefully criticize and protest government policies, in accordance with the International Covenant on Civil and Political Rights and the 1998 United Nations General Assembly Declaration on Human Rights Defenders.
- Creating an independent and restructured National Election Committee.
- Liberalizing electronic media ownership rules, including allowing transmitters of private, critical media to be as strong as those of pro-government private stations.
- Complying fully with 2004 CG commitments to address corruption and misuse of natural resources and other state assets. These include public disclosure of information concerning management of land, forests, mineral deposits and fisheries, as well as the location of military development zones. Donors should specify in writing exactly what information must be disclosed. The government must also meet its commitment to cancel concessions and exploitation permits that have been granted illegally. In addition, the government must pass asset disclosure and anti-corruption laws that meet international standards and appoint an independent, international external auditor for government finances.

Donors should set an appropriate timeframe by which the Cambodian government must meet the conditions listed above or budgetary support to the government will cease and these funds will be reprogrammed to further support humanitarian and development assistance by non-governmental organizations, human rights, fighting corruption, the environment and a free and independent media.

We believe that these measures are necessary. Despite the veneer of political pluralism, Cambodia has been moving for many years now to an increasingly repressive state. The arbitrary arrests and prosecutions since the formation of the coalition government in 2004 highlight that state power is being exercised without accountability or respect for basic rights.

Year after year donors have asked the government for promises and action on good governance, the rule of law, judicial reform, corruption, proper management of natural resources, and year after year the government makes the requested promises—but does little or nothing, or, as in the past year, even reverses hard-won progress on civil society freedoms and political pluralism. The chart that follows illustrates the problem.

Donors have been providing aid equivalent to roughly half Cambodia's national budget for over a decade. As donors have noted, good governance is directly linked to a country's pace of development. There is little doubt that Cambodia's development continues to be slowed by the country's poor governance.

Now, donors must generate momentum for real reform. Improvements in human rights and related issues must be emphasized, and not marginalized. This will not be easy. Years of lowered

*FORUM-ASIA, Asian Human Rights Commission, Human Rights Watch, Global Witness,
and the International Federation for Human Rights*

standards have allowed for the institutionalization and routinization of repressive and illegal practices, including high- and low-level political violence and petty and massive corruption.

The donors must press upon the government the need to take urgent measures to reverse the deteriorating situation and to adopt measures that will bring about systemic change. If there is to be a chance for a new beginning, friends of Cambodia must take difficult decisions that will help the Cambodian people enjoy basic freedoms and participate in genuine development. We look forward to you taking up this challenge.

Yours Sincerely,

ANSELMO LEE, Executive Director, FORUM-ASIA

BASIL FERNANDO, Executive Director, Asian Human Rights Commission

BRAD ADAMS, Asia Director, Human Rights Watch

PATRICK ALLEY, Director, Global Witness

SIDIKI KABA, President, International Federation for Human Rights

Appendix: Donor Conditions and Actual Results

Donor conditions	Cambodian Government promises	Actual results
<p><u>Good Governance</u> “Promoting good governance for poverty reduction” was the theme of the 7th CG meeting.</p>	<p>“Our firm commitment and adherence to democracy has been the major influence in our achieving internal peace and security. [This was only possible because] of the maturity of the rival political parties who have placed the Cambodian cause above narrow, short-term political interests and gains.” (Prime Minister Hun Sen, opening address to 6th CG meeting.)</p>	<p>The government has failed to introduce basic aspects of the rule of law, independence of the judiciary, an impartial civil service, and rudimentary checks and balances. As the World Bank said, “Detentions of leading figures from the political opposition, trade unions, the media and NGOs and the use of criminal law in cases of expression of dissenting opinions on matters of politics and policy... risk undermining Cambodians’ faith in their Government’s commitment to good governance.” (World Bank statement, January 9, 2006.)</p>
<p><u>Democratization</u> Free and fair elections; freedom of the press and news media.</p>	<p>Cambodia’s three major achievements are “peace, political stability and democratisation.” Cambodia now has “a multitude of print and electronic media working without restrictions.” (Prime Minister Hun Sen, opening address to 6th CG meeting.)</p>	<p>Independent and opposition print media has now all but disappeared, and television remains under total control of the government or the Cambodian Peoples Party (CPP). The survival of independent radio broadcasting hangs in the balance. The government has continued to deny new radio licenses on the spurious grounds that there are no frequencies available.</p>
<p><u>Anti-corruption and accountability</u> Reported cases of corruption to be investigated Anti-corruption law to be enacted More transparency</p>	<p>“Good governance will ensure that corruption be reduced to the minimum.... Implementation is crucial because laws, regulations, and codes of conduct are</p>	<p>Although a few public servants have received administrative sanctions or been prosecuted, and an anti-corruption law is being drafted after years of delay, few cases of corruption have been investigated or prosecuted. While there have been a few corruption</p>

<p>of government expenditure Increased accountability (5th, 6th and 7th CG meetings)</p>	<p>not sufficient to successfully fight corruption.” (Rectangular Strategy of the RGC, July 2004.)</p>	<p>prosecutions (of judges, and police and forestry officials), they have been of low to mid level officials; in each case, more senior officials who were almost certainly also involved in corruption have escaped prosecution.</p> <p>The law on Anti-Corruption (5th CG benchmark) has been submitted but still remains in draft form. Donors still lack much data on government disbursements, and there is no external auditing of budgets and finances. Assets of government officials still unknown.</p>
<p><u>Legal and Judicial Reform</u> Legal and judicial reform to promote the independence of the magistracy Ensure the legal promotion and protection of human rights (5th, 6th and 7th CG meetings)</p>	<p>“The RGC will respect and promote the independence and neutrality of the judicial system and thus the independence of the Supreme Council of the Magistracy shall be vigorously upheld and protected.” (Rectangular Strategy of the RGC, July 2004.)</p>	<p>Courts are still politically controlled and not independent. The Supreme Council of the Magistracy has not been restructured and still is politically controlled. Disciplinary action and prosecutions of judges (including the investigating judge who initially dropped the charges against labor leader Chea Vichea’s alleged killers) have been conducted without any transparency and on the orders of the government. The amendment to the law on the courts’ organization and functioning has still not been passed. Political interference and pressure on the judiciary remains apparent, most recently demonstrated by the defamation prosecutions against members of the opposition and human rights activists. Both the detentions and the subsequent release of the activists made clear that the prime minister interferes directly in the work of the courts.</p>
<p><u>Sound Management of Cambodia’s natural resources</u> This has been a recurrent theme in CG meetings. Particular focus has been placed on</p>	<p>“Illegal logging, wildlife smuggling and encroachment have been reduced... The RGC’s entire approach to resource management... is aimed in large part at preventing crime.” (RGC, Implementing the</p>	<p>Illegal logging continues across most forested regions of the country. Forest crime remains dominated by elite families, notably relatives of senior officials as well as the military. The independent forest monitoring framework established in 1999 has been weakened and is no longer effective in deterring forest crime.</p>

<p>combating illegal logging and land alienation.</p>	<p>Rectangular Strategy, November 2004.)</p> <p>“Increase transparency of state management of natural resources through immediate public disclosure of existing contracts and compliance status (royalties and other key provisions) of contracts governing economic land concessions, mining concessions, fishing lots and continued disclosure of status of review of forest concessions.” (RGC-donor agreement, December 2004 CG meeting)</p>	<p>The RGC has not met fulfilled this basic requirement. The Ministry of Agriculture has only released incomplete records of certain economic land concessions – a fraction of the information slated for disclosure. RGC is now seeking to excise specific public disclosure measures from the 2006 CG targets.</p>
<p><u>Poverty Reduction</u> After 14 years of international assistance, totaling more than US\$7bn, some evidence of poverty reduction. “The need to translate strategies, policy pronouncements and the passage of laws into... the achievement of the Millennium Development</p>	<p>“The RGC is fully committed to achieve the Cambodia MDGs that rapidly become the cornerstones of our development policies and strategies.” (Prime Minister Hun Sen, quoted by UNDP, March 24, 2004)</p>	<p>Despite all the international assistance, poverty remains high and key parts of the economy stagnant. Predatory levels of corruption are a key factor, as is the government’s distorted spending priorities.</p> <p>In 2006 the UN reported that with respect to the reduction of child mortality in Cambodia (MDG number 4) “under-five mortality has risen over the last 10 years. We are now counting 124 deaths per 1,000 live births among Cambodian children under the age of five, as compared to 115 deaths ten years ago.”</p> <p>As a Cambodian think-tank put it, "Primary</p>

<p>Goals (MDGs)". (6th CG meeting)</p>		<p>analysis shows that the national budget has not played an instrumental role in achieving development goals in Cambodia, because the budget suffers every year from ineffective implementation... the allocated budget for priority sectors [education, health, agriculture and rural development] has been frequently under-funded in actuality. It must be inferred that the government does not have a real interest in prioritizing these expenditures, given the fact that the authorized funds for them have been easily and early diverted to other expenses." Economic Institute of Cambodia (Economic Review Vol. 1 No. 6: Cambodia's National Budget Implementation, 2005).</p>
<p><u>Improve Social Sector Disbursements</u> (6th and 7th CG meeting)</p>	<p>Cambodia will increase revenue and allocation for social or human-development sectors (Prime Minister Hun Sen, opening address to 6th CG meeting.)</p>	<p>Central budgetary disbursements are not matching the commitments made. A breakdown of the budget shows that highest proportion of government expenditure still goes to security spending even though the war ended long ago. In 2004, central government spent 24.23 percent of its budget on defense, 18.68 percent on education, 11.01 percent on health, and 1.87 percent on social security and welfare. Spending on justice and human rights is so low as to be almost invisible.</p>