

CENTRE FOR ASIA-PACIFIC INITIATIVES

**INSTITUTION BUILDING, CAPACITY DEVELOPMENT,
AND THE PROMOTION OF HUMAN RIGHTS
IN SOUTHEAST ASIA**

**An Invitational Workshop held at the
University of Victoria, Victoria, BC on
April 12-13, 1996**

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I. INTRODUCTION

On April 12 & 13, 1996, the Centre for Asia-Pacific Initiatives hosted an invitational workshop on institution building, capacity development, and the promotion of human rights in Southeast Asia.

The participants explored the thesis that a number of countries in Southeast Asia have constitutional human rights provisions, but there is often a large gap between these constitutional rights and their practical implementation. Western criticism of these shortcomings is often dismissed by Asian's with arguments of cultural relativism. Institution rebuilding and capacity development can present a positive and less confrontational approach to helping to raise human rights standards in Asia. These activities also have the potential to provide an area of common ground for private enterprise and human rights activists in the region, both of whom will be better served by more reliable and transparent government institutions operated by competent civil servants.

A primary objective of the workshop was to provide a chance for Canadian organizations and individuals active in the field to share experiences. We were pleased that over 50 representatives of government, non-governmental organizations, the legal profession and academic institutions with an interest in the topic were able to attend. A list of the participants is included in Appendix I.

The workshop program is in Appendix II. The presentations opened with a panel that set the scene by discussing the general aspects of the topic: constitutionalism, the CIDA

perspective on capacity development, and the role of the new Bureau of Global Issues and Culture in the Department of Foreign Affairs and International Trade.

This was followed by panels, comprising participants with experience in each of four countries in the region: Indonesia, Thailand, Vietnam, and Cambodia. While organized on a country-specific basis, the discussion included lessons learned in each case that had relevance beyond the specific project and country. We were fortunate that so many representatives of Canadian initiatives in this area were able to attend and share their experiences.

The presentations of each panel, and some of the discussion which followed, are summarized here. Panelists were not asked to prepare a formal paper, but in cases where participants did provide written material, these have been included as appendices.

We extend our thanks to all of the participants, some of whom travelled a long distance to be with us. We hope that this workshop will be the beginning of ongoing dialogue among the Canadian individuals and organizations who are doing such good work in this area.

Kathryn Neilson, Q.C.
Workshop Leader

II. SUMMARY OF PROCEEDINGS

GENERAL CONCEPTS - INSTITUTION BUILDING AND CAPACITY DEVELOPMENT IN SOUTHEAST ASIA

Ted McDorman, Associate Professor, Faculty of Law and CAPI Associate, spoke on *Constitutional Structures and Human Rights in Southeast Asia: Cambodia, Indonesia, Thailand and Vietnam*. He provided an overview of the constitutional history and documents in each country, pointing out that the colonial legal legacy, cultural features, and the role of the military have all had some influence on constitutional structures in Southeast Asia.

Thailand is notable for the number of constitutions, coups, and elections which it has had in the last 64 years. However, the upheaval suggested by this is contrasted with underlying consistency in the main tenets of the country's constitutional structure with respect to the monarchy, civilian government, and an independent judiciary. There are a number of rights in the constitution, but these may be qualified by legislation.

Vietnam exhibits a socialist orientation in its constitution. As such, it is not seen as a timeless document enshrining important political or philosophical values. Rather, a new constitution is developed at each stage of the revolution to set forth objectives for the next stage. The constitution sets out a catalogue of both rights and duties of citizens, but the state retains an ability to limit those rights. There is no provision for an independent judiciary.

Indonesia's constitution dates back to 1945. It is brief and more restrictive, giving predominant power to the central government. The guiding philosophy is *Pancasila*, which

promotes a religious and nationalistic basis at the expense of democracy. Compared with the other countries, the Indonesian document sets out few rights.

Cambodia adopted a new constitution in 1993, as part of the UN-brokered peace agreements of 1991. This constitution establishes a western style liberal democracy with an impressive catalogue of rights, modelled on international human rights instruments. It is questionable how suitable this model is for Cambodia, given that the impetus for it came from the international community rather than internal sources.

There are three reasons why human rights are written in constitutions. The first is the external influence of international human rights documents. The second is the external influence of constitutional examples from other states. The third is traditional influences within states that are consistent with human rights.

Written constitutions are necessary and useful state instruments for a number of reasons: organization, legitimacy, unity, ideology, aspiration, and as a source of restraint on the authority of the state. These features can be seen in the constitutional documents of the countries under consideration, to varying degrees. However, there is little intent that the rights provisions in the documents are to have an operational effect, at least insofar as restraining government action is concerned. In fact, such rights would be seen to conflict with the other constitutional purposes listed above. Hence, the gap between constitutional "guarantees" of human rights, and the practicality of human rights protection.

Henri-Paul Normandin, Senior Governance Specialist, CIDA, spoke on the CIDA perspective on capacity development. CIDA approaches the question of human rights protection and development through constructive policy dialogue, recognizing that the

opportunity for movement rests in the investment of political will by host governments and non-governmental organizations. The key element in CIDA's commitment to sustainable institutional development is to speak about capacity building, depending upon the mutual respect for economic, social, environmental, cultural and political values. Capacity development is seen in continuum or a process over time. Its flexibility helps CIDA to design responsive and tailored program interventions.

In more detail, capacity building refers to the process by which individuals, groups, organizations and institutions in a society enhance their abilities to identify and meet development challenges in a sustainable manner. Thus, capacity building programs employ a multidisciplinary approach. Linkages are encouraged between community organizations and official status groups. For example, CIDA's Indonesia program involves the Human Rights Commission, local NGOs and specialist NGOs active in community development and human rights. Environmental protection projects, on the other hand, now look more holistically at reform objectives and would, for example, employ the latest in alternative dispute resolution training, technical standards experts, legal drafters and other resource persons skilled in compliance monitoring. Others with backgrounds in community education, business education and public service training might also be involved in the project.

There are seven key considerations employed by CIDA in designing capacity building programs:

1. A systems perspective which entails looking beyond the immediate, for example, with land tenure questions, going beyond the basic question of a fee simple title;

2. Understanding the context (the five pillars of sustainable development - economic, social, environment, cultural and political);
3. Ensuring local ownership, partnership and identification with the program;
4. Process - the essence of capacity building;
5. Sustainability;
6. Allowance for future growth and development; and
7. Keeping an eye on the long term.

In the same vein, capacity building initiatives, particularly in the human rights area, have a number of key elements or inputs - they are not all usually found in the same program but here is a road map or checklist:

1. What are the precise objectives? For example, to clarify and identify the role/political responsibilities of a Member of Parliament.
2. Has political will been committed to the program?
3. What societal values are being recognized and promoted by the program?
4. Will the program contribute to local knowledge and an information base in the subject area? For example, the development of a network on leadership in the public sector.

Mr. Normandin cited the case of the Indonesian Legal Aid Foundation which received a small CIDA grant in 1995 to develop an electronic network and technical capacity to share information on legal rights in the Indonesian legal system. This was really a resources investment to assist the Foundation's capacity development as the principal legal information NGO in the country. In a hypothetical example, Mr. Normandin referred to a sample case of a Charter of Rights drafting request by country X Ministry of Justice. A 'bad' project

would involve a number of parachutist experts combining forces with MOJ drafters to produce the perfect result. Compare that process with a preferred project (under CIDA guidelines) involving a needs assessment study by a small team of foreign and local experts that try to identify other players and interests. The project would be managed by local people, perhaps with the help of two or three Canadians, involving wide public consultations, perhaps the involvement of a parliamentary committee and the technical support of the Ministry of Justice drafters. The end result would more likely be sustainable and infected with local ownership.

A key consideration for CIDA in this area is to understand the full context within which it conducts its work in Southeast Asia. This means a healthy respect for Asian diversity, recognition of a substantial existing capacity for institutional development in the region and the immense importance of involving the right local partners. CIDA practises 'apolitical politics': very mindful of different Asian approaches to local issues, the limited adaptability of Canadian experience to specific cases and the deserving reputation of Canadian credibility for effective and sensitive human resource development programs in the region.

At the same time, CIDA is well aware of the difficulties in mounting effective human rights programs in any region. Canadians probably still underestimate the context within which they are working in the region. Sometimes small projects may not be necessarily relevant in terms of effecting change. Expectations for change must be seen in more incremental terms. Finding the right partners is not an easy task. Greater care must be made to avoid overlapping with the work of other aid agencies. Multidisciplinary work is

particularly challenging to staff and its parameters are rarely settled. At the end of the day, CIDA is trying to make a change for the better in partnership with host governments, parliamentarians, community leaders, educational institutions and non-governmental organizations.

Lucie Edwards, Director General of the Bureau of Global Issues and Culture, of the Department of Foreign Affairs and International Trade, spoke on the mandate of this bureau. Good governance and a respect for human rights go hand-in-hand. Where technical assistance and similar aid programs are involved, Canada's foreign policy is to reach out to both state and non-state agencies and organizations to strengthen democratic institutions. A strong example is the significant overseas role played by Elections Canada, which has become a brand name for the organization and monitoring of first democratic elections. In other examples, projects endeavour to encourage the development of a free and impartial judiciary, and the establishment of parliamentary agents like the Ombudsman, Auditor-General and Human Rights Commission. Canada takes these advisory projects to countries where it is invited to offer assistance with the aim of reinforcing civil societies. Support is also given to strengthening the local human resource infrastructure required for membership in regional and multilateral organizations, such as ASEAN and APEC. In these activities, Canada is one of approximately 20 nations in the international community who are active in governance-directed outreach programs and activities. These donor countries in turn are the very mature economies facing funding crises in the provision of governance programs, in providing peace keepers, etc.

Discussion:

Given CIDA's many changes of policy and direction over the past 30 years, one participant asked if capacity building is simply a rationale for defending aid at a time when the first priority of the federal government appears to be the promotion of Canadian business interests overseas?

Mr. Normandin replied that capacity building is not just rhetoric. It is a genuine attempt to understand how good development happens. CIDA is committed to human rights and its obvious relationship to governance and institutional development. When governments see the value of public consultations in mega project developing, then they buy into it. This is what capacity development is all about.

Further discussion raised questions of whether there is a danger that capacity development is simply too nebulous a concept? What are the performance indicators? A partial answer to that query came in the observation that Women in Development programs (WID) still lack meaningful measures in many cases. So the difficulty of establishing performance indicators is hardly limited to capacity development in human rights or other governance programs.

In response to a question whether it is possible to develop an inclusive set of values to measure the universality of human rights, Professor McDorman replied that he is very dubious about terminology debates but it must be admitted that any study of comparative constitutional experience must take into account the different meaning of terms like "democracy" and "rights". Ms Edwards observed that the constitutional drafting experience in Uganda, involving 14 translations, had produced an equal number of different definitions of 'democracy', including the best which was "heaven". Mr. Normandin added that

terminology can be very important. In one CIDA project, the host government accepted the words "public management" which everyone knew was really referring to governance and human rights. It is sometimes important "to be practical to be effective" in delivering human rights programs.

INDONESIA

Christopher Dagg, Project Director, Eastern Indonesia Universities Development Project, Simon Fraser University, spoke on *Perspectives on Human Rights in Indonesia*. He presented a concise overview of the historical, social and political context of human rights in Indonesia, followed by a look at current activities. There are three levels for the discussion: 1) the place of human rights in society and the constitutional framework; 2) the degree of their embodiment in the law; and 3) implementation of legal imperatives. Contrasting states which are based on law, where human rights are inherent, natural and inalienable, with states where such rights are only as provided by law, Mr. Dagg reflected on the possible purposes of a constitution. The primary purpose of the Indonesian constitution was to establish and maintain unity within its very diverse ethnic and geographical makeup. This imperative is manifest in *Pancasila* which has five operating principles: belief in one God, just and civilized humanity, unity of Indonesia, democracy guided by inner wisdom arising out of deliberations amongst representatives, and social justice.

Criticism of the human rights record of Indonesia is often seen as an attack on fundamental cultural principles including basic family values, the need for consensus and

the right to development. International human rights standards are seen as characterized by cultural relativism. Therefore pressures to be resisted include unbalanced individual rights or rights divorced from responsibility and rights contributing to destructive forces, as is seen in North America.

In looking at the current laws themselves, they provide inadequate protection in human rights areas. Some of this is due to the inherited Dutch legal system. There has however been some progress in the formulation and application of such concepts as natural law and the accountability of government agencies in areas of oversight and the provision of legal aid. There have been improvements in the body of the law in the areas of habeas corpus, accountability of the military for human rights abuses, and labour rights, as well as in the handling of rural grievances, regional disputes and the tolerance of NGOs.

An increasingly important role as change agent is being filled by the growing middle class. The "commercial class" has not traditionally had a major voice and has been subject to racial discrimination. Similarly, labour and the rural peasantry has remained weak but as each of these classes are seen as important in maintaining stability, they enjoy some mutual support. The urban middle class has particularly begun to be more active, relatively, including the participation in other political parties with the potential to shift significant support away from the government party. All of these groups are pressing for change and the government is increasingly responsive. In 1997 there will be general elections to the legislature, followed in 1998 by executive elections.

The result is that it is internal rather than international forces that are driving the pressure for change. Change will be gradual and will evolve through indigenous processes.

The role of those on the outside should be focused on how they can support local agents of change in Indonesia.

A major mechanism for having a positive influence is implementation of human rights principles in the practice of current internationally partnershiped projects within Indonesia. For instance within a current project of teaching basic science, there is an emphasis on bottom up, participatory planning decentralized into the regions rather than developed at the centre. The project encourages autonomy at the university level, aims to provoke widespread discussion, and makes heavy use of Indonesian resources, such as the involvement of local NGOs, in research. The aim is to find ways through new and existing projects, seemingly in and of themselves far removed from human rights, to engage in capacity development by implementing human rights principles in project operations.

Yves Lafontaine, President, Quebec Human Rights Commission, spoke about *Technical Assistance to the Indonesian Human Rights Commission*, which is being provided by the Canadian Human Rights Commission. On the one hand, Indonesia has a totalitarian government with a strong military role and on the other, an increasing NGO presence calling for human rights institutions, which has resulted, for example, in the Indonesian National Human Rights Commission (INHRC). Who will succeed President Suharto is a central issue, and dissatisfaction with the status quo manifests itself in various ways, including labour unrest and land rights debates in the midst of widespread human rights abuses.

While the INHRC will soon move to new permanent offices, it is hampered by very limited resources, little or no computer support and staff that do not have backgrounds in

human rights. It is dominated by academics, and members and former members of parliament, all holding other full-time positions, and has little contact with NGOs.

Mr. LaFontaine explained the history of this project to provide technical assistance to the INHRC by the Canadian Human Rights Commission. In recognition that human rights is a legitimate subject for international cooperation, several meetings were held both in Canada and in Indonesia to exchange information and to explore issues of mutual interest and the potential for constructive cooperation between the two institutions. The parties identified several areas of potential cooperation including: the provision of assistance in the preparation of human rights lectures to be given by Indonesian personnel; access to Canadian materials including teaching material for primary and secondary levels; exchanges of personnel; expansion of existing human rights centres in Indonesia; and research support. More help included assistance in the development of a computer based complaint management system and the training of staff. In addition, the Human Rights Research and Education Centre at the University of Ottawa will help to establish self-supporting human rights centres at Indonesian universities. All of this is subject to levels of funding to be provided by CIDA.

The presentation concluded with a summary of the mandate of the Canadian Human Rights Commission.

Barbara Duffield, Assistant Director, CAPI, spoke on *Grass Roots Participation: a Key Building Block for Institutional Strengthening*. The participation of all groups at the grass roots level, the essence of democracy, is essential for progress towards human rights and democratic development in Indonesia. NGOs can play an important and effective role

in both encouraging such participation and in serving as vehicles for change. As such, they are important targets for donor support.

Significant individual participation at the grass roots level, however, faces substantial barriers. These include heavy state control by the ruling, commercial and military elites, economic development that flows primarily to the benefit of these elites, maintenance of "stability" by strong military control, and the general engendering of a fear of political activity.

More specific characteristics of the Indonesian situation are: (1) authority flows from the top down through membership in organizations and associations that define an individual's limited participation in governance; (2) surveillance over individuals at the neighborhood level; (3) banning of political organization at the local level; (4) control by government over access to information, including the ban of targeted magazines and newsprint coupled by media self-censorship; (5) expropriation of land for public and non-public purposes; and (6) workers limited to joining the government sponsored union which does little to protect their rights. As a result of these and other constraints, social unrest is increasing.

NGOs can provide an important counterweight to state and commercial interests. They currently have a fair amount of influence and can be a greater force in the future providing that they are supported in building their capacity for action. Past and current foreign aid to NGOs is primarily directed toward the alleviation of poverty. NGOs are numerous, diverse in their activities and philosophies and tend to be small in scale. They are not mass organizations. Very few work in the human rights area but as Indonesians strive to gain

control over their lives, there have been increasing advances in human rights. Advocacy groups, though few in number, monitor the government and provide a flow of information to grass roots levels.

Institutionally, NGOs operate in a difficult environment. They must register with the government, recognize *Pancasila* as the only legitimate philosophy and submit to state supervision, including the need to seek government permission to receive foreign funds. While there are many obstacles, NGOs are becoming more adept at finding ways around them. Using "development" as a legitimizing theme, teaching/training programs are designed as vehicles for sharing information. For instance, domestic workers who are otherwise isolated and unprotected are attracted to cooking and craft lessons where human rights-related information is provided. NGOs are becoming bolder in challenging the government, which, however, increases the exposure and therefore the risk for foreign donors.

The Indonesia-Canada Forum (ICF) is an attempt to support grassroots level participation through the strengthening of NGO capacities. After a lengthy gestation period of seven years, the project, fostered and funded by CIDA, began in 1991. It recognized that the development of marginalized society required change on a variety of levels. The project aims at networking and coalition building among Indonesian NGOs as well as with Canadian NGOs. Integral to the project is input from the Indonesian parties and the implementation of democratic processes characterizes its operation. Control of the project is now largely in the hands of Indonesian NGOs. The majority of funds are allocated to Indonesian NGOs,

while a smaller portion is utilized within Canada to facilitate learning about and support of the Indonesian NGOs.

Several successes have emerged to this point. Indonesian NGOs have come together under the sponsorship of ICF and are working with increased coordination of individual efforts. A recently published book entitled "The Indonesian NGO Agenda: Toward the Year 2000" preserves the proceedings of an important conference. The project has encouraged significant interaction between Canadian and Indonesian NGOs with both sides teaching and learning. An increased attention to the relationship between human rights and development has linked the two sides in an ongoing dialogue. Finally, an ICF homepage will soon provide a forum for further interaction.

In conclusion, Ms. Duffield emphasized that we can provide significant and effective support to grass roots participation by supporting NGOs institution building and capacity development work for human rights.

Discussion:

In response to a question from the floor, Mr. Lafontaine commented that while the Indonesian National Human Rights Commission did need to be linked with the government in order to have some real power, heavy government involvement was a source of substantial conflicts of interest. As mentioned earlier, many Commissioners also hold other government posts, with human rights interests usually of lesser priority in cases of conflict. On another point, it was seen to be to the Canadian Human Rights Commission's advantage in not being

government run in that it facilitated involvement in discussion which would not be possible otherwise.

A commentator from the floor mentioned the importance of understanding the cultural environment of the host country. As NGOs represent the idealism of their particular society, it might for instance not be consistent with achieving sustainable change to seek to introduce values that are inconsistent with indigenous values. A response from the panel pointed out that while there was an "Asian" values debate, there are clearly broad areas of fundamental human rights that coincide between East and West and on which there is no debate. A second response admitted that it would be impossible to have sustainable change in the human rights situation without support coming from social, cultural and legal institutions.

THAILAND

Micheline Levesque from the International Centre for Human Rights and Democratic Development (ICHRDD) spoke on *Democratic Development Strategy in Thailand*. She gave a brief history and profile of the ICHRDD. Its distinguishing feature is its independence from Canadian government imperatives and foreign policy. This political freedom enables greater flexibility, and sometimes achieves more positive responses from foreign governments. The ICHRDD works in three areas: policy and development research, advocacy and public education, and partnerships with human rights and democratic institutions.

The ICHRDD has chosen to focus its activities on a few core countries in each region. In Asia, these countries are Thailand, Burma, and Pakistan. It views democracy and human

rights as two sides of the same coin: democracy is a society in which all human rights are implemented and respected. A strong civil society is viewed as the key to achieving that goal. Civil society is broadly defined as including all non-family social institutions autonomous and independent of the state.

The ICHRDD has developed a strategy in promoting these goals in its core countries. The first step is research into the country's situation and needs in the areas of human rights and democratic development. The second is holding a forum for broadly based groups of government, NGO, and other interested parties to identify two or three key areas for future development. The third step is to identify appropriate partners in the country and design projects with them to advance the key areas.

This process has been followed in Thailand. The researchers used four topics as indicators in their approach: security, participation, welfare, and non-discrimination. Following completion of their paper, a forum was held in November 1994. The researchers presented their study to over 100 participants from a broad cross-section of Thai society. The three key issues for future work which were identified were the following: promotion of women's rights, establishment of a human rights commission, and decentralization and promotion of local government.

Work is now proceeding with local organizations to develop plans and programs in these areas. The lessons which have been learned in the course of implementing this strategy in Thailand are the following:

1. Women's rights should not be separate but must be integrated in all components of society;

2. A stronger link between democratic development and human rights must be developed;
3. The influence of religion and culture is key in developing the strategies;
4. Democratic strategy is a process, not a result;
5. There are limitations to being proactive, and it is important to listen to the local partners;
6. Partnership is for better or for worse: it must sometimes involve supporting local partners in initiatives which the foreign funder may not view as paramount, in order to maintain an optimum relationship.

Errol Mendes, Director of the Human Rights Research and Education Centre (HRREC) at the University of Ottawa, was the second speaker. He presented a case study on the Thai Ombudsman Project. He began with a brief summary of the recent political history of Thailand, concluding that political stability and economic growth have been purchased at the cost of public participation, and Thailand is a technocracy rather than a democracy. The strong ties between government, business, and the military, as well as continuous scandals, affect the credibility of the political establishment in the eyes of the majority of Thai people.

The challenge facing Thai democracy is therefore essentially a problem of legitimacy. A key objective in institution building and capacity development must be identification of endeavours that impact in a meaningful way on participatory democracy and human dignity.

The Thai Ombudsman Project was initiated in November 1993 as a result of a CIDA-sponsored workshop held by the Parliament of Thailand's Justice and Human Rights Committee, on increasing the accountability of the civil service to Parliament. Canadian

expertise at the workshop resulted in interest in follow-up activities to examine the establishment of a Thai Ombudsman office.

Members of the Justice and Human Rights Committee visited Canada. Ultimately a partnership was struck between that institution and the HRREC and the Parliamentary Centre in Canada to work toward the establishment of an Ombudsman Office in Thailand, with financial support from CIDA. The concept of an ombudsman was chosen as a non-adversarial method of resolving human rights complaints which was more in keeping with Thai culture. It was recognized that the process would be a slow one, starting with small steps to build knowledge and trust on both sides. An effort was made to work with volunteer advisors to preclude the project being taken over by the traditional Thai technocracy.

Visits took place between appropriate Thai and Canadian representatives, and ultimately the Thai committee produced a first draft of legislation to create the office. This was circulated to Thai and Canadian experts for comment, and a three day seminar was held in August 1994 to discuss the draft legislation. This was effectively a public hearing and was attended by a broad representation of Thai civil society, particularly the NGO segment.

In October 1994, as part of a series of constitutional amendments, the requirement to have an Office of the Ombudsman was entrenched into the Thai constitution. Intervening political events prevented further progress until October 1995, when the JHRC asked the Canadian partners for help in the establishment of the office of the ombudsman.

This request led to two round tables in Thailand, in December 1995, which were also attended by regional representatives from Cambodia and Indonesia. The result was

strengthening of the plan in Thailand, as well as the conception of a regional network for human rights institutions.

In this project a number of small steps developed by Canadian initiatives have resulted in the giant step of entrenchment of an ombudsman in the Thai constitution, and legislation to implement this is almost certain.

The third speaker was **Isabel Kelly**, Development Consultant and CAPI Associate. She addressed the issue of *Genderization in Institution and Capacity Development*. She introduced the original concept of "women in development" as the recognition of the need to include women and their experience, approach, and interests in development issues such as health, child care, and social issues. Ultimately, the CIDA/Canadian orientation changed to gender relations: the relationships and differences between women, and men and women, and how these affect outcomes.

Other organizations are also moving to recognize gender strategies and policies. The Human Development Index now has a gender dimension. Interestingly, while Canada ranks lower when gender is factored into the index, Indonesia, Thailand, Vietnam, and the Philippines increase their ranking.

CIDA and Canada have had a constructive role in supporting women's initiatives in Thailand. It is necessary to appreciate the role of women in Thai society to be effective. While the importance of women is acknowledged, men are seen as having the dominant role to play. Women's duty - to family, extended family, and superiors - is seen as paramount. Women effect change by manipulation, not confrontation.

There is a strong women's NGO movement, and the Women's Secretariat in the civil service is now being upgraded to a Department. Women are visible at senior levels of small and medium size businesses, but most work in family-owned enterprises. They are not very visible in politics, but there are a number of women in the civil service, although not generally in the high positions. The first woman general in the military will be appointed shortly: the nurse in charge of military hospitals. Overall, there is a basis for cautious optimism in the small and steady progress on gender issues.

It is important to recognize that women are not a homogeneous group in terms of age, ethnicity, religion and economic status. The emphasis must be on working with women in the context of the whole family. Feminism has a different face in Thailand. At the same time, global issues like AIDS, industrial health and safety, and trafficking and prostitution have a large impact on Thai women.

There are generally four barriers to good gender integration in projects:

1. Lack of experience, commitment, or confidence in this field on the part of project staff;
2. False assumptions about what local partners are prepared to accept in this area;
3. Failing to insist on gender strategy as a priority in early planning;
4. Assigning gender issues to one woman in the project, regardless of her position, when they should be the concern of all participants, and especially those at the senior level.

Two successful Canadian initiatives in this area have been a seminar held for all women village leaders in conjunction with the run-up to the elections, and a grant to the

National Commission on Women's Affairs which has encouraged better liaison with NGOs in the field.

It is important to select areas where Canada has expertise to contribute, and facilitate indigenous leadership to take the initiatives forward. Strategies in achieving social goals cannot succeed without the participation of women.

Discussion:

Political legitimacy in Thailand comes from two sources: the King himself, and politicians not abusing their power. It is not a concept of legal legitimacy. Interestingly, the most authoritarian Prime Minister was also the most respected.

Part of the problem is the political marginalization of people in Thailand, but there was some consensus that things are moving in the right direction and there has been real progress over time.

With respect to gender issues, one promising aspect is the increase in women in university positions in Thailand.

VIETNAM

The first speaker, **Christopher Lee**, Research Associate, Centre for Asian Legal Studies, University of British Columbia, spoke on *Viable Approaches to the Development of Respect for Human Rights in the Legal System of Vietnam*. Mr. Lee noted that the Vietnamese Constitution of 1991 now includes the basic human rights which are generally to be found in international human rights documents. There is very little anthropological or historical evidence available and very limited research to provide any baseline, but it appears there is

no established tradition of respect for human rights to fall back on in Vietnam. As the government shifts from a communist, socialist regime to an open market economy, the government is quite preoccupied with promoting economic progress yet maintaining strong social and political control over the activities of its citizens. This has an obvious impact on the extent and scope of human rights in Vietnam. In regard to the actual implementation and protection of human rights, Vietnam lacks the staff and infrastructure to provide for enforcement mechanisms. For example, the Ministry of Justice has overall responsibility for law reform activities, but it is still a very small department with very few resources and limited training. Not surprisingly then, there is a significant gap between rights on paper and rights in reality. Notwithstanding Vietnam's limited economic resources, Mr. Lee pointed out that Vietnam has a high degree of self-confidence in identifying the problems they face and the directions they want to pursue. In that respect, Vietnam is not looking for mentors to tell them how or what to do, but rather partners "who will help them get to where they want to be".

The second speaker, **Bill Neilson**, Director of CAPI, spoke on *Governance Prospects in ASEAN's Newest Member State*. Professor Neilson began by observing that the adoption of the "rule of law", in Vietnam in recent years has principally meant "rule by law" which means that the exercise of all state authority should be grounded in some specific law. Thus *Doi Moi* and other reform initiatives have resulted in a plethora of law-making in Vietnam. This rush to law-making has occurred in a harried, sometimes haphazard fashion, and seldom with adequate concern for methods and costs of implementation of the laws. A comprehensive picture of the Vietnamese legal system is also hard to access since it

involves, in decreasing order of accessibility, laws, decrees, ordinances, edicts, circulars and policy statements.

Professor Neilson pointed to a number of lessons to be learned from working with the Vietnamese:

1. Partners are everything. It is critically important to seek out the right partners. However, it is not easy for newcomers to select the right partners since there are a myriad of institutions which are associated with various ministries and agencies. One needs a holistic view of the system and good intelligence work in order to pick appropriate partners.
2. Foreign aid donors' expectations should not be too high. Reform will only occur in incremental stages. The Vietnamese are very adroit at receiving advice separately and independently from various countries on the same subject matter and then picking and choosing bits and pieces from each advisor/consultant in order to cobble together a politically viable solution for Vietnam at this stage in their development.
3. One has to appreciate that there are some vested interests in the current state of legal confusion. The uncertainty, overlapping jurisdiction and wide discretion may not be desirable to investors, but it does provide a source of power and revenue for Vietnamese bureaucrats and party officials.
4. Vietnam's entry into ASEAN is more likely to assist in the ultimate provision of institutional structures for the delivery of social, economic, and perhaps even some political rights, than would otherwise occur if Vietnam was outside of ASEAN. The

wealthier ASEAN countries are already providing technical and human resource training for Vietnamese officials involved in a broad range of governance issues.

The third panelist, **Geoffrey Hainsworth**, Director, Centre for Southeast Asian Research, University of British Columbia, spoke on *Economic Reform and the Impact for Ethnic Minorities*. Professor Hainsworth noted that it is important for foreign aid providers to examine the need to decentralize their capacity building efforts by ensuring that some of their aid goes into regional centres to build policy-making capacity in those regions. Professor Hainsworth briefly described plans for a new project he is undertaking to look at the impact that economic reform in Vietnam is having on ethnic minorities there. Two study groups, one in the central highlands and one in the northern highlands, will collect baseline data on the social and economic impact that *Doi Moi* is having on the ethnic communities. He has a real concern that the shift from a centrally controlled socialist state (where the state provided at least some benefits to all individuals) to an individualistic, market economy system (which ethnic minorities are not well positioned to participate in) will have potentially disastrous effects on the continued existence and well-being of these minorities. Professor Hainsworth pointed out that 13 percent of the total population in Vietnam are ethnic minorities. Although they are fully recognized as equal citizens under the Constitution, from a cultural point of view they are still viewed as backward, uneducated and in need of protection and guidance, much like children are. The illiteracy rate in general in Vietnam is 8 percent, whereas it is 20 percent for ethnic minorities. There is substantial poverty and malnutrition in many ethnic minority villages. Many Viet people (Kinh) are

being resettled in traditional ethnic minority areas. In addition to displacing the ethnic populations there, the Viet people, who are generally from the lowlands, have transported their lowlands technology into the highlands, which has been destructive of long-term sustainability and has led to increased tensions between the Kinh and other ethnic groups. Professor Hainsworth suggested that foreign aid donors must look more carefully at the impact of economic development (which is supported by their foreign aid dollars) on the long term standard of living and viability of these ethnic minorities.

The fourth speaker, **John Evans**, Senior Associate at the International Centre for Criminal Law Reform and Criminal Justice Policy at the University of British Columbia, spoke on *An Overview of the Criminal Justice System in Vietnam and its Future Needs*. Mr. Evans pointed out that the great rush to write and reform the laws in Vietnam will have little or no effect if Vietnam, and its foreign aid providers, do not pay greater emphasis to concerns about the creation of programs, institutions, and infrastructures to implement these laws. In the area of criminal law reform, Vietnam has altered its laws of criminal procedure and are in the process of making substantial reforms to its criminal laws. These reforms are ones which would be quite familiar to western countries. The due process safeguards which are built into the criminal justice system however, will be little more than paper rights if there are not adequate efforts made to inculcate the values underlying those reforms into justice officials throughout the entire system. Without a strong tradition of an independent justice system, it is all the more important to concentrate on methodologies for implementing the laws. Passing laws is the first and easiest part; implementing the laws, as we know from our own experience in Canada and elsewhere, is a long-range, difficult and expensive

proposition. Mr. Evans indicated that foreign aid sponsors must be committed to change "over the long haul". For example, in Canada, it has taken 20 years of government efforts to begin to change police, prosecutorial and judicial attitudes, and citizens attitudes, to concerns about domestic violence. In Vietnam there is a great need for education, training, resources and coordination of the various agencies working in the field. Regarding coordination between various agencies, Canadian foreign aid providers should learn from our own experience that to provide funding to individual, separate ministries is likely to simply build higher walls between bureaucracies, whereas what is really needed is for bureaucracies to remove the walls and work together toward solving crime and criminal justice problems. The lesson to be learned here is to support aid projects which work on a multidisciplinary or multipartner basis.

CAMBODIA

The panel opened with **Martin Collacott**, Foreign Service Visitor to the Centre for Asian Legal Studies, University of British Columbia, and former Ambassador to Cambodia, presenting an overview of the current environment and the Canadian role. Since the 1991 Paris Peace Accord, Cambodia has, on paper, a clear commitment to democracy and human rights. As signatories to the Accord, the international community also has an obligation to follow through on the implementation of these goals. The United Nations Centre for Human Rights and the Special Representative, Mr. Michael Kirby, provided the focus for this implementation.

However, Cambodia's prospects for democracy and human rights may be slipping. The judiciary remains open to political influence. The plethora of newspapers in Phnom Penh are practicing self-censorship to survive. Parliamentary democracy following UNTAC still is largely centred in the population's voting rights. Meanwhile, the two parties are learning to work as a coalition. Democracy, in the Cambodian sense, does not include opposition to the government within the legitimate framework of governance but rather accepts the concept of pluralism. The opposition is Pol Pot.

Donors may exercise some influence, especially the larger donor countries, but they are also captive to their own agendas. For example, government revenue may be misspent, and bear upon the disposal of aid funds, but the donors ignore the implications for their own work. Canada has an active democracy and human rights program in Cambodia, operating from the perspective of making small interventions relevant. Canada's particular advantages are our bilingual status, parliamentary expertise, and familiarity with both civil and common law.

Madame Nin Saphon, Member of the National Assembly of the Kingdom of Cambodia and Deputy-Chairperson of the Commission on Human Rights, spoke about the situation in Cambodia and the work of the Commission. Cambodia remains in a low intensity war with the Khmer Rouge, which understandably has an effect on human rights. The National Assembly established the Commission on Human Rights and Reception of Complaints to address issues of violence and human rights abuses. The seven Commission members are politicians, with Mr. Kem Sokha, from the Buddhist Liberal Democratic Party as Chair, and other members include Madame Nin Saphon from the Cambodian People's

Party (CPP), Madame Sam Kanitha, a member of FUNCINPEC, as Secretary, and two MP's from FUNCINPEC and two from CPP.

The Commission's responsibilities include undertaking fact-finding missions around the country, leading the legislative effort to bring Cambodian law into conformity with Cambodian human rights commitments, and teaching about human rights.

The Commission received over 2000 complaints in its first two and a half years, a remarkable number since there is not a tradition of public complaints to the National Assembly, and reflects the high expectations of the Cambodian people for the National Assembly. Most complaints relate to land disputes, while other issues are trafficking of women and girls, killings and other violent acts, domestic violence, unfair trials and judicial corruption.

A lack of funds handicaps the Commission in fulfilling its mandate, especially investigating cases, but the UNDP and EU have agreed to provide some assistance. With hard work and in time, the Commission is dedicated to being a primary force for the improvement of human rights in Cambodia.

Robert Miller, Deputy Director of the Parliamentary Centre, Ottawa, spoke from his perspective as an NGO providing advice to the Canadian Parliament and now sharing that expertise with other nations. Over the past eighteen months, the Centre has participated in about ten initiatives to assist the Secretary General of the National Assembly. Critical to the success of these projects was a clear vision of the type of help needed on the part of the Secretary General, and the building of trust among the parties to facilitate an iterative process of listening, reflecting and information gathering.

The proliferation of aid projects from a variety of donors to different parts of the parliamentary system increases the risk that the overall goal may be undermined. Sometimes institution strengthening can have the opposite effect on capacity development. For example, in allocating funds to strengthen the Human Rights Commission, the funds could be delivered to NGOs to gather the information or alternatively to Parliament. In the former case, the capacity of the Cambodian people would be strengthened and links made with their own system, which is a critical component of the implementation of human rights. In the latter, the institution of Parliament would be strengthened instead of the capacity of the people.

Andrew Pirie, Faculty of Law and **Catherine Morris**, Executive Director of the UVic Institute for Dispute Resolution, explained their project on alternative dispute resolution. A challenge is how to approach conflict situations using alternative dispute resolution approaches in a different cultural milieu. The project focusses on public policy dispute resolution, on such issues as human rights, land and environmental conflicts. Training on the concepts of alternative dispute resolution with senior government officials and NGOs was followed by more technical workshops.

Six lessons learned were described. First, become involved at the invitation of the Cambodian's, although networking to find key people is appropriate, and ensure that the partner can be effective in implementing the project. Second, encourage a wide range of people and institutions to become involved, reflecting the diversity of interests in the area. Third, with the obvious differences between Canada and Cambodia, allow sufficient time to build the relationship and data base. Close collaboration between the partners and

recognition of the iterative nature of the process helps. Fourth, build a multidisciplinary team and ensure that a cultural informant is part of the team. Fifth, be committed, keep promises and hold your partners to their promises, while being realistic. Sixth, facilitate networks, train people to be trainers and build the infrastructure so that Canada's role diminishes and Cambodians take over the job.

Kathryn Neilson, Senior Associate, CAPI, served with the UN Centre for Human Rights in Cambodia and, with a local team, established an office in the province of Siem Reap. The Centre was the first of its type for the UN, with the mandate to build national institutions, especially the justice system, to sensitize people about their rights and to support NGOs in their human rights work. The Centre was able to build from the UNTAC mission, with skilled people and systems already available. The challenge was to not only establish the office but to begin immediately to deal with the issues. Strengths included links with NGOs and credibility with the government, and the Centre was able to provide advice in drafting legislation and training people in the justice system.

An unresolved tension arose with lack of clarity as to the extent of the mandate to protect human rights. When abuses were exposed, the Centre's role as a guest of the government hindered an effective response. For example, the Centre wanted to support NGOs that brought forward investigations yet were unable to provide that support and still maintain good relations with the host government. It is difficult to build institutions to promote human rights, but turn away from reported abuses.

Little human rights work is being done in the provinces or rural areas of Cambodia compared with the capital. Yet 90% of the population lives in rural areas. The provinces

need support. Opportunities for corruption are rampant because the provincial governors hold so much power over the lives of their populations. With poorly paid civil servants, poverty, no infrastructure, a low literacy rate and an inability to discuss politics within the school system, there is a poor climate for building a human rights culture. The average rural person understands democracy as voting in an election every five years, and has no relationship with that elected person until five years later.

NGOs undertaking development work are fearful of raising human rights issues as it is too political. They must be educated and supported to realize that they may need to confront the system at times, and have a role to play in the development of a culture of human rights.

The panel raised many interesting issues and lessons learned about their work in Cambodia. As a country relatively recently coming into the western domain of aid and investment and with a history of grief and tragedy, it is critical that intervention be effective. The starting point for democracy and human rights was low and the obstacles numerous. Clearly, progress is needed on many fronts and at many levels.

III. APPENDICES