

INTERVIEW:

JUSTICE MICHAEL KIRBY AC CMG

Justice Michael Kirby is Chairman of the Executive Committee of the International Commission of Jurists and President of the New South Wales Court of Appeal. In November 1993 he was appointed Special Representative of

the Secretary-General for human rights in Cambodia. He reports formally and informally to both the UN General Assembly and to the UN High Commissioner for Human Rights. Mr Kirby has so far conducted five missions to Cambodia and another is planned for mid 1995.

In a presentation to the Victorian Council for Civil Liberties in February 1995 Justice Kirby listed issues of the 'new agenda for human rights for the years to come' as identified by the International Commission of Jurists. These issues include:

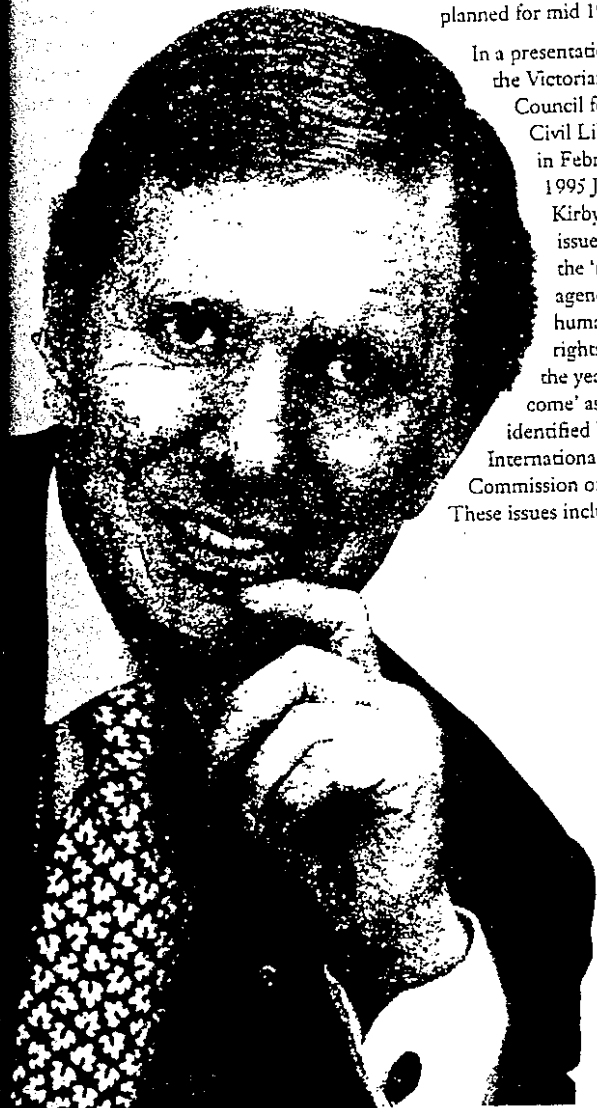
- The human rights of drug dependent persons and drug users;
- The human rights of people infected with the HIV/AIDS virus;
- Human rights and minority peoples - the abiding issue of the self-determination of peoples guaranteed by international law;
- Human rights of disempowered women and children in every land;
- Human rights and the environment - with the issues of deforestation, land mines and the world's population explosion which threatens endemic poverty, mass migration and individual despair; and
- Human rights and the very definition of what it is to be human - the advancing technological impact on human rights.

On that occasion he said, "Those who believe in fundamental human rights of the individual must work in every lawful way to advance their cause and to attract the support of men and women everywhere. It is our right to do so. It is also our duty."

This commitment to a broad understanding of human rights is reflected in Justice Kirby's responsibilities in Cambodia, a war-ravaged country where he has investigated human rights issues across a range of fields.

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February/March 1995
 in *The Situation of Human
 Rights in Cambodia*, Mr Kirby

praised the efforts of the
 Government of Cambodia to
 and protect human rights.
 He suggested measures to improve
 human rights education and in
 the establishment of a functioning system of
 law. However, in expressing
 concerns about other issues,
 he highlighted some urgent areas
 for attention including the use of
 land mines which threaten the
 lives of many citizens.

*Interview. Focus asked
 Mr Kirby about his role as
 a Representative and
 how his work reflected
 the needs of aid and development? I
 asked Mr Kirby to
 describe his responsibilities.*

Terms of reference approved
 by the General Assembly of the
 United Nations require me to assist the Royal
 Government of Cambodia with
 legal and technical assistance in
 areas relevant to human rights;
 to participate in the coordination of the
 human rights effort of the various
 United Nations agencies working
 in Cambodia and to guide the
 work of the Office of the
 High Commissioner for Human Rights which
 has been established in Phnom
 Penh. That office is the first for the
 region actually established in
 the country. Until now, human
 rights has been traditionally
 regarded as the business of each
 foreign country but increasingly
 we have seen the realisation that the
 protection of human rights and the
 promotion of its principles is an
 important mission of the UN.

I am in virtual daily contact with
 the Office for the Centre of
 Human Rights in Phnom Penh and
 maintain contact with the

Government of Cambodia, with
 human rights groups in Cambodia,
 with donor countries and with
 NGO communities, both national
 and international.

In addition to giving advice and
 technical assistance the work
 involves calling to the attention
 first of the Government of
 Cambodia and then of the
 international community of
 problem areas in the field of human
 rights but it requires me to report
 with dispassionate neutrality on the
 achievements as well as the
 problems. I've endeavoured to do
 that in my successive reports.

The general media would give us to
 believe that all is bleak and that
 only failures had attended the Paris
 talks and the attempts of Cambodia
 to rebuild a rule of law and human
 rights respect in society, but anyone
 who goes to Cambodia will know
 that is not the full truth. There are
 serious human rights problems but
 there have been magnificent
 human rights achievements. There
 are brave people who are working
 for human rights and my job is to
 encourage the good, to advise on
 the bad and to generally assist
 Cambodia on the path to being a
 human rights and rule of law
 respecting society.

*What are some of these
 achievements?*

Many people in countries such as
 Australia think human rights is
 about courts and police stations.
 Yet human rights is also about the
 educational system, women's rights,
 the health care system, the
 protection of cultural treasures and
 the protection of life itself from
 such tremendous problems as land
 mines which have been richly
 harvested in Cambodia.

In Cambodia in January I laid
 particular emphasis upon the
 HIV/AIDS epidemic. One of the
 strange and no doubt unintended
 benefits of Cambodia's isolation in
 the period before the Paris
 Agreement was that it was to an
 extent isolated from HIV/AIDS.
 But it is now in the front line and
 when I went to Cambodia I found
 that there were difficulties in
 communicating about HIV/AIDS
 in the general Cambodian
 community. Government officials
 tended to find discussion about
 sexual transmission embarrassing.
 Women in particular found it
 socially difficult to accept. But as
 experience in Thailand and other
 countries in the region has
 demonstrated, it is very important
 to tackle the problems head on and
 endeavour to inoculate with the
 only vaccine we have at the
 moment - namely information and
 education.

Some difficulties were being
 experienced in these battles in
 Cambodia. I took the problem to
 His Majesty the King, King
 Sihanouk. He immediately saw the
 human rights significance of it and
 immediately agreed to take a
 leadership role in the effort to
 contain HIV/AIDS. I was informed
 that the King summoned members
 of the National AIDS Committee
 to the Palace recently. This is the
 kind of intervention that can
 promote an effective response to
 human rights on the part of the
 Cambodian people themselves. If
 we can protect the Cambodian
 people or at least most of them
 from the ravages of HIV/AIDS that
 will be a very important human
 rights achievement because it will
 be protecting life without which
 other human life becomes
 academic.

Recently you spoke about marginalised communities within Cambodia and the difficulties they have in receiving information and education. Could you elaborate on this issue?

In my Report I described the problems of particular vulnerable groups. They include Vietnamese ethnic Cambodians and women, ethnic Vietnamese, amongst other ethnic minorities, for the usual reasons which exist in every country including Australia, experience the alienation of supposed strangers.

The Khmer have a long historical rivalry with the Vietnamese and there are still serious problems with the treatment of ethnic Vietnamese Cambodians. These problems include the treatment of a group of boat people who have been huddling at the border of Vietnam at a place called Chrey Thon to which they repaired during the election. They went there under the protection of the United Nations flag. My efforts and that of the High Commissioner for Refugees have been to get them back to their villages. The Khmer Rouge plays on its radio upon the fears of the Khmer population about the supposed influx of Vietnamese migrants taking the jobs and performing other alleged acts within Cambodia, so the problem presented to the government is a difficult one in the politics of a democracy. But I believe that representations from the Secretary General, myself and the High Commissioner for Human Rights will lead to the gradual reabsorption of these people into the Cambodian community. I certainly hope so.

What are some of the consequences of war for the women of Cambodia?

Women present a particular issue in Cambodia. As a result of war, women constitute a majority of the Cambodian population. Good estimates suggest that women make up about 60-65 per cent of the population. They are particularly prevalent in the rural areas where they have to perform heavy manual rural work. Female education is significantly lower than male, and cultural as well as economic factors resulting in disempowerment of women is contrary to international human rights norms.

My efforts have been to encourage the participation of women in human rights groups, to listen to the problems of every kind that I attend to with a particular eye on the issue as it affects women, and to encourage Cambodian women to speak to me themselves.

On one notable occasion in Battambang I sat down with a group of Cambodian women who had been gathered for my education by Sister Joan Healey, a sister of the Josephine order. She brought them to speak to me about the processes of education in human rights. The notion you have rights and particularly that women have rights in a society that is war-ravaged and has suffered so much as Cambodia has, is one which truly astonishes many upon first hearing it. But I was very impressed with the way in which these women spoke of the assertion of a change in the business of choosing village heads. In the past it has been by appointment by a village official in turn appointed by the King or government. The women were insistent that in future this would be by election within the village.

This represented a significant breakthrough in the understanding of the essential dignity of each human being and it is an important development.

I asked Sister Healey whether as an Australian nun she ever took time, in what was until recently a profoundly Buddhist community but where spiritual values had to a large extent been eroded by genocide and war, to teach the message of Christ. She looked at me with astonishment and said "Oh Lord, no! I simply find out what they want."

She teaches by her example and by her life. There are many such Australians in Cambodia, loved by the Cambodian people, who work by their example for building human rights in Cambodia..

Another such person was an Australian soldier. Not a ranking general. Just an ordinary soldier - Craig "Shorty" Coleman. Though short in build he is big in heart. He has spent a lot of his time instructing Cambodian workers on de-mining and he showed me their operations - the painstaking steps they have to go through to clear the very rich alluvial soil in which the mine has been laid. He has a very good success record in protecting his workers from injury and in clearing the land. It is an awfully slow process.

LANDMINES

When I was in the Commission on Human Rights recently I called for a new initiative on two levels: Firstly, the legal level to try to promote reform of the International Convention on weapons such as land mines and anti-personnel mines. But I also called for the same ingenuity from science and technology in mine clearance that has led to the

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opment of these dreadful
ons that maim and kill
ren, women and animals. It
to be possible to develop
sort of hovercraft that could
by explosion landmines over
sensitive area because
odia really doesn't have the
to clear the land centimetre by
metre.

It intend to give up and I'm
ng a forthcoming international
ference on landmines will be a
for the review going on under
initiative of the Secretary-
eral.

*How do the media contribute to
an rights education in
odia, or are they part of
the problem?*

Media is another important
edient in building rights in
odia.

In the media in Cambodia there
od and bad news. The good
is that the newsstands are full
are journals - weekly and
more than 30 newspapers in
ish, French and Khmer, and
national journals come into
country freely. In many ways
of the free media than

anywhere in the region which
is a democratic
country. On the other hand there
are some concerning developments
in the number of editors,
journalists,

and the quality of media personnel
are regarded as civil
rights. The introduction of
the National
will continue
use of

is a first step to call
civilisation and
provisions for such
the case of
inscriptions.

There are many defects
of the media in

Cambodia. That's not entirely
surprising given that until recently
there were very strict limitations on
access to publications and
broadcasting. That being the case
you have a group of inexperienced
and to a large extent untrained and
often unprofessional journalists
who publish a mixture of fact and
opinion without differentiating the
two; they publish offensive
cartoons which would probably
pass by without too much notice in
a robust democracy such as
Australia but which have caused
deep offence in Cambodia largely
for the offensive treatment of
members of the families of
politicians. These are the kinds of
problems that my own efforts and
those of UNESCO including an
excellent Australian officer, Sue
Aitken, have been directed to:
encouraging a code of ethics and
instructing journalists of the need
to lift their standards not simply in
the hope of avoiding a harsh press
law, but because that is what
professionally a modern media
requires.

*Is there evidence of development?
How fundamental are human
rights to development?*

Human rights includes the right to
development, but that right will
only be truly fulfilled when the
economy is in a healthy state. The
improvement of the economy is a
major effort of the Cambodian
government. One of the problems
presented by the attacks on
foreigners and their Cambodian
guides has been to discourage the
inflow of capital. Notwithstanding
this, anyone who has been in
Cambodia and returned in a year
sees enormous improvement in
the economic infrastructure of the
country. The statistics show that
there is a distinct improvement in
economic lift-off. If that continues
and is distributed to

way it will give people a stake in
their country and in the building of
institutions for stable government
in the country. It is in that way that
economic renewal is interrelated.

*Is there a place for the linking of
aid and development funds to
progress in human rights?*

Whether I think so or not, the fact
is that is the approach of the donor
countries. Headlines from the April
meeting of the donor countries
made it clear they made their
position plain to the Cambodian
government. Their interest in
supporting these efforts of the
Cambodian government to rebuild
the economy, the military, the
infrastructure are interrelated with
their respect for human rights
protection, reduction of oppression
and the removal of corruption.
Donor countries sometimes express
concern that the commitment
which they discerned at the
beginning of the process of
rebuilding Cambodia following the
elections has waned under the
pressure of living day by day in a
difficult and sometimes dangerous
situation and fighting a form of
civil war.

There is a natural impatience from
time to time on the part of
governments and officials at the
pressure of the human rights
groups. Even in Australia and
countries like it during war time
there were severe restrictions on
civil liberties. It is difficult to fight
an enemy with the Marquis of
Queensberry's rules when the
enemy is laying land mines and
performing acts of banditry and
murdering innocent tourists. This
is the difficulty the Cambodian
Government has. I understand that
difficulty. My own view is that the
United Nations and human rights
NGOs have to appreciate the real
world in which human rights are
being rebuilt in Cambodia.

While one recognises the profound obstacles in the way of development in Cambodia, aid cannot be refused in the name of progress which may eventually restore human rights principles, even though those principles may not yet be in place?

It's a delicate exercise. It's not my exercise. My exercise is to provide technical advice and assistance to the Royal Government and to the United Nations but obviously I report publicly on what I find. My life as a judge for twenty years has prepared me to speak with neutrality, honesty and integrity. I've done that in the past and I will continue to do it in the future. I will expose wrongs where they occur. For example in my recent Report I reveal I have received three complaints from members of the National Assembly that they have been threatened in the performance of their duties. That is obviously a very serious development.

I report with candour and I tell the good news with the bad and in a way I'm the eyes and ears of the United Nations, but I'm not a policeman. I'm there to be constructive and positive in my outlook.

Your reports are all-embracing. What other issues have they covered?

The reports concentrate on priorities but are not confined, as many western analyses are, to civil and political rights, although they are included. I refer in my reports to problems of press law, civil rights, the serious wrongs wrought by drought; logging that contributes to soil erosion; the lack of reforestation; the burden on the health care system. Cambodia

actually reduced its budgetary allowance on health care to one dollar per person per year - one of the lowest, if not the lowest in the world.

There are now many new problems in including HIV/AIDS and problems of street children

There are old problems as well. On the old relief carvings on the walls of Angkor one can see the continuity of history. The weapons have changed - the chariot is now replaced by the land mine; the problem of the plague is replaced by the problem of AIDS, but many of the carvings show life goes on. Work in the field continues; difficulties with ethnic minorities are portrayed on the walls; the disadvantaged place of women is portrayed, and in many ways the issues of human rights are abiding challenges in every society.

Cambodia has suffered more than virtually any other country in the world from war, revolution, genocide and invasion and from isolation and by its suffering it has brought the attention of the international community.

I gave my report to the Commission on Human Rights in Geneva on the very last day that the last American soldier left Somalia and it presented a kind of metaphor: in Cambodia we might do better than in Somalia. In a real sense, Cambodia presents a challenge to the United Nations 50th Year. Does it have the staying power? I believe it does.

What is the potential for similar Special Representative functions in other situations such as those found in Africa?

The office of Human Rights in Phnom Penh was followed by a similar office in Malawi, and the visit of the High Commissioner for Human Rights in Rwanda was followed by the establishment of an office there. There has also been established a Chamber of the International Penal Court to deal with the issues of Rwanda. That court will have its seat in Tanzania, not in The Hague. I understand there has been a lack of financial support - votes come thick and fast for activities but they are rarely supported by the funds necessary to perform the activities.

We are living in a world very different from the world of the end of the Second World War. We were propelled into this different world not only by the holocaust of the war and the flash of Hiroshima, but also by a realisation of our common humanity and our shared concern about human life.

I believe we are making progress. I am optimistic about Cambodia and I feel privileged myself to be a small journeyman and worker in this very important global effort. We will not live to see its perfection but our duty as educated and civilised people, particularly in a land much blessed as is Australia, is to make our individual contributions whenever we get a chance.