

Achieving Justice for Gross Human Rights Violations in Cambodia

Baseline Study, October 2017

ICJ Global Redress and Accountability Initiative

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BASELINE ASSESSMENT

Achieving justice for gross human rights violations in Cambodia is a generational project requiring, among many other things, a fundamental change in the relationship of the Royal Government of Cambodia (RGC) with the country's judicial system. Unless and until this occurs, it is highly unlikely that any meaningful and lasting change will be affected with respect to redress and accountability. The best that can be hoped for in the short- and medium-terms is to provide individual justice actors with the skills and experience needed to strengthen their professional development and thereby increase their own demand for the fair administration of justice; increase and enhance the advocacy of lawyers and human rights defenders (HRDs) on behalf of clients and victims; and bolster the calls of justice actors for institutional change.

According to all interlocutors (although Government employees would not explicitly admit to this), the single largest problem facing the Cambodian justice system is the lack of independent and impartial judges and prosecutors. The problem is two-fold: an endemic system of political interference in high-profile cases and an equally entrenched system of corruption in all others. Only in very limited instances at the local level – where lawyers have direct and informal access to judges – are cases potentially decided on the merits. And even in such instances, the outcome is often the result of behind-the-scenes negotiation. Simply put, the rule of law is virtually absent from the Cambodian justice system.

Additionally, there is near universal agreement that – despite marked and steady improvements over the last 25 years – the capacity of judges, prosecutors and lawyers remains limited in significant ways. While many actors are now well versed in Cambodian and international law (in theory), there is a significant need for improvements on the practical application of the law, in particular as it relates to criminal investigations, trials and appeals. Most agree that training in this regard should be practical, focused and interactive (and possibly regional). There is a general sense that the 'market' has been saturated with theoretical training on international human rights standards. More of the same is not needed. What is desired is specialized training applicable to current issues facing criminal justice actors. It is very difficult to obtain a comprehensive sense of what has been done already in this regard over the years. Training to date has been a highly ad hoc process and no single body appears to have a clear overall picture.

Complaints and concerns of individual lawyers run the gamut. Apart from entrenched political interference, these include: inadequate and unfair judicial investigations, trials, and appeals; coerced confessions and the lack of accountability and redress for such abuses; the identification of lawyers with the political agendas of their clients and the potential for targeting by the Government on that basis; a highly ineffective court management system; and the courts' refusal to acknowledge and rely upon international law and standards. Notably, lawyers are increasing afraid to accept accountability-related cases given the country's deteriorating political climate. Retaliation for involvement in cases perceived to be critical of the authorities on any issue is common. Punitive charges of incitement and or criminal defamation are a key Government tool of suppression.

Established human rights NGOs, while continuing to do much good work, are suffering from a chilling effect on their advocacy related to increased Government targeting of political opponents and HRDs. While these NGOs are particularly strong in many respects – including court monitoring, recourse to UN mechanisms and public campaigns – they would welcome any available assistance. In particular, they would like to see more direct ICJ advocacy and support focused on Cambodia, perhaps in the form of a dedicated ICJ country office or officer.

The Cambodian court system is in chaos throughout the country, leading to

massive delays and other injustices. The fact that the Court of Appeal sits only in Phnom Penh leads to serious obstacles to access to justice. The MOJ confirms the existence of a plan to expand the court to the provinces, but it is unclear if and when this will actually occur. Moreover, the MOJ is currently embarking on a needs assessment with a view to making structural and substantive improvements to the court system. There is a strong desire for international partnership and cooperation here, and it seems there may be room for a limited amount of impact.

Legal aid reform is desperately needed. The BAKC is given a limited annual legal aid budget by the Government, but this is insufficient to cover little more than internal costs and basic fees for limited court appearance. OHCHR is working in this area but has made little progress to date. The BAKC would be an essential and potentially useful partner. However, it should be noted that it is not independent and suffers from the same problems of corruption as all national institutions. A pro bono model has been suggested by some. Current providers note that the lack of a national legal aid strategy discourages donors. This seems to be part of a general sense of donor fatigue, especially with respect to judicial reform.

There is much disappointment with the Extraordinary Chambers in the Courts of Cambodia (ECCC), although it has and will continue to provide certain forms of symbolic reparations for victims. Also, according to some domestic justice actors, the national courts are attempting to replicate some aspects of the ECCC's case management and court administration systems.

1 The general human rights situation in Cambodia

1.1 Cambodia's political and justice systems

The Kingdom of Cambodia, a parliamentary constitutional monarchy, gained its independence from France in 1953. While the legal system is rooted in the colonial civil law model of the 1950s, it has been influenced over the years, to varying degrees, by the UN Transitional Authority in Cambodia (UNTAC), customary law, communist legal theory, common law and practice, and a flood of ad hoc reform initiatives spearheaded by the UN and various donor nations.

The Constitution, promulgated in 1993, provides a number of nominally attractive guarantees related to liberal democracy and pluralism; recognition and respect for human rights; equality before the law; peaceful demonstrations; prosecution, arrest, detention and trial in accordance with the law; fundamental fair-trial principles; redress for breach of laws; freedom of expression and assembly; political parties and mass organization; land ownership and just compensation for appropriation; and independence and impartiality of the judiciary.¹

The Head of State is King Norodom Sihamoni. Hun Sen is the country's Prime Minister, a position he has held since 1985. The bicameral Parliament consists of the Senate and the National Assembly. Both houses are currently controlled by the long dominant Cambodian People's Party (CPP), and both houses will likely hold nationwide elections in 2018. The CPP is led by Hun Sen and Heng Samrin, the President of the National Assembly. The major political opposition is the Cambodian National Rescue Party (CNRP), currently led by Khem Sokha.

Cambodia's judicial branch includes, at the highest level, the Supreme Court and the Constitutional Council, whose judges are recommended by the Supreme Council of the Magistracy (SCM). Subordinate courts include a Court of Appeals (which currently sits only in Phnom Penh), provincial and municipal courts and a military court. In 1997, the Royal Government of Cambodia requested UN assistance in establishing trials to prosecute former Khmer Rouge senior leaders for

¹ See Articles 1, 31, 37, 38, 39, 41, 42, 44, 128, 129, 132, 133 and 134.

atrocities crimes allegedly committed during the 1975–1979 Pol Pot regime. The Extraordinary Chambers in the Courts of Cambodia (ECCC) was established in 2006 and its proceedings are on-going.

1.2 Cambodia's international human rights obligations and commitments

On its face, the Constitution endorses the international human rights framework, stating in Article 31 that: 'The Kingdom of Cambodia recognizes and respects human rights as enshrined in the United Nations Charter, the Universal Declaration of Human rights, and all the treaties and conventions related to human rights, women's rights, and children's rights'. Cambodia has ratified or acceded to a number of international human rights instruments.² However, there is an on-going debate as to whether the country adheres to a monist or dualist system.³ In any case, no serious efforts have been made to implement the country's obligations and commitments (as discussed in detail throughout this report.) At Cambodia's most recent periodic review by the UN Human Rights Committee in 2015, a host of criticisms were raised by the Committee.⁴

1.3 Cambodia's political and human rights background

Although Cambodia formally gained its independence from France in 1953, it did not assume its current incarnation as a self-proclaimed 'liberal democracy' until some forty years later. The interregnum was characterized by a number of corrupt and violent regimes, including the Khmer Rouge. Liberation from that nightmare was followed by yet another brand of communist authoritarianism – albeit one far less brutal than its predecessor – which maintained the country's Cold-War isolation for more than another decade under Vietnamese occupation. It was during this period that Hun Sen, a former Khmer Rouge cadre-cum-defector, became Prime Minister.⁵

One of the many victims of the Khmer Rouge period and its aftermath was the Cambodian legal system. What had been imposed by French colonial authorities, and retained until 1975, was immediately and thoroughly eradicated by the Pol Pot regime. Upon liberation, the Vietnamese usurpers simply imposed their own brand of communist legal order, such as it was. As a result, from 1975 to 1993, 'Cambodia had no laws to direct the performance of any kind of judicial function'.⁶

With the collapse of the Soviet Union and the end of the Cold War, the Vietnamese eventually withdrew from Cambodia pursuant to the UN-brokered

² See <http://indicators.ohchr.org> .

³ See, e.g., Michael Karnavas, 'Bringing Domestic Cases into Compliance with International Standards' (2014) 3 *Cambodia Law and Policy Journal* 44-74.

⁴ Human Rights Committee, 'Concluding observations on the second periodic report of Cambodia', UN Doc CCPR/C/KHM/CO/2(2015). These include: limited domestic applicability of the ICCPR within the judicial system; lack of an independent national human rights institution; continued impunity for serious human rights violations; excessive use of force by security services at peaceful demonstrations and lack of related investigations; torture and ill-treatment in the context of police custody and for the purposes of obtaining confessions; lengthy pretrial detention and arbitrary confinement; arbitrary arrest and detention; limited access to counsel; political interference at the ECCC; lack of an independent and impartial judiciary; undue limits on freedom of expression, association, and assembly—in the context of the killing of journalists, human rights defenders, and other civil society actors, as well as harassment and intimidation of journalists, human rights defenders, trade union workers, land and environmental activists, and other civil society actors.

⁵ Future Forum, 'Moving Beyond The January 7 Narratives', 6 January 2017.

⁶ International Bar Association Human Rights Institute (IBAHRI), 'Justice versus corruption: Challenges to the independence of the judiciary in Cambodia', September 2015.

Paris Peace Agreement of 23 October 1991. Central to the Paris Agreement was a commitment from the parties to the observance of human rights and fundamental freedoms. In recognition of Cambodia's recent history, adherence to a strict human rights framework was hoped to ensure, among other things, 'the non-return to the policies and practices of the past'. With a view toward ensuring the enjoyment of 'the rights and freedoms embodied in the Universal Declaration of Human Rights and other relevant international human rights instruments', the new Cambodian Government pledged its allegiance to the principles and practices embodied in those documents.⁷ Moreover, the Government committed to a new constitution that would enshrine, among other things, a system of liberal democracy on the basis of political pluralism and an independent judiciary.⁸

Unfortunately, it did not take long for the promises of Paris to give way to the realities of Hun Sen's alternative vision for the country. In many ways, the language of the Paris process was co-opted by the CPP and, within this aspirational framework, a culture of impunity was born and raised. The ensuing period has been one of well-documented human rights abuses – including extrajudicial executions, torture, arbitrary arrests and illegal land confiscation – at the hands of 'senior government officials and military, police, and intelligence personnel'. In many cases, if not most, the perpetrators have been 'protected and promoted' rather than brought to justice. According to Human Rights Watch, while '[m]ore than 300 people have been killed in politically motivated attacks since the Paris Agreements', not a single 'senior government or military official has been held to account'.⁹

Decades of authoritarian single-party rule have ensured little progress 'in creating a culture of good governance and the rule of law'. Poverty and extreme income inequality, due largely to institutionalized corruption, are rife.¹⁰ Hun Sen, the central figure of Cambodian politics for more than thirty years, has deftly spent his time in office consolidating power at every level. All senior military and civilian officials report to him; the parliament is a 'rubber stamp'; security and intelligence forces are 'party instruments'; and the justice system is largely staffed by CPP members and loyalists 'who implement party directives and believe they have no leeway to do otherwise'.¹¹

According to reports, the Prime Minister has been personally implicated in a number of serious human rights abuses since his time as a Khmer Rouge commander in the 1970s.¹² Additionally, he has presided over a protracted period of 'repression and corruption... during which political and social activists, trade union leaders, and journalists have been killed in connection with their opposition to policies and practices' of the CPP.¹³ Moreover, the Prime Minister has to a certain extent 'obstructed justice for international crimes perpetrated in 1975–1979 by the Khmer Rouge, relying on his control of a Cambodian judiciary'.¹⁴

⁷ Agreement on a Comprehensive Political Settlement of the Cambodia Conflict (Paris Peace Agreement), Part III, Human Rights, Articles 15(1) and 15(2)(a). The other signatories agreed to act as guarantors of the accord; a transitional authority (UNTAC) was created; and, following the transition to full sovereignty, the UN would continue to monitor progress from afar. See Articles 15(2)(b), 16 and 17.

⁸ Paris Peace Agreement, Part VII, Principles for a New Constitution for Cambodia, Article 23. See also Annex 5, Articles 2, 4, 5.

⁹ Human Rights Watch, "'Tell Them That I Want to Kill Them': Two Decades of Impunity in Hun Sen's Cambodia", 13 November 2012. The report includes the detailed accounts of 13 particularly egregious cases of impunity from 1992 through 2012.

¹⁰ See, e.g., Future Forum, above note 5.

¹¹ Human Rights Watch, "'Tell Them That I Want to Kill Them'", above note 9.

¹² Human Rights Watch, '30 Years of Hun Sen: Violence, Repression, and Corruption in Cambodia', 12 January 2015.

¹³ Ibid.

¹⁴ Ibid.

Finally, some say he has sanctioned, if not personally spearheaded, a widespread and systematic policy of 'land-grabbing affecting the urban and rural poor that has adversely affected hundreds of thousands of Cambodians and helped to enrich [himself] [and] other officials'.¹⁵

For the first time since the Paris Accords, the 2013 national elections appeared to many observers as a chance for real political change in the country, as the newly energized opposition 'tapped into... growing discontent'.¹⁶ While the CPP managed to prevail, the opposition significantly increased its numbers in the National Assembly and 'challenged the official narrow victory... by rallying unprecedented mass protests'.¹⁷ For the CPP, this close call was also a 'wake-up call' and, following 'an initial crackdown on 15 September 2013, when one man was shot dead and several seriously injured', the party strategically regrouped.¹⁸

Despite CNRP gains, the CPP was firmly back on the offensive by January 2014. In particular, soldiers beat and killed several demonstrators, and the Ministry of Interior (MOI) promptly 'announced an indefinite ban on public demonstrations'. The Government temporarily shut down Freedom Park – an open plaza in central Phnom Penh designated as an official protest zone. Later the same year, 'a renewed crackdown on freedom of peaceful assembly was launched', ending with the arrest of numerous individuals, most of whom 'received the maximum possible jail sentence'.¹⁹ According to Amnesty International, the two years following the 2013 elections amounted to a 'tumultuous period in Cambodia', during which the authorities engaged in a pattern of serious abuses.²⁰

1.4 Recent and recurring trends aimed at shrinking democratic space

a) Opposition party targeting ahead of elections

Since the last elections, the RGC has engaged in extensive efforts aimed at undermining the opposition, despite initial attempts at a now moribund 'culture of dialog' between the parties.²¹ CNRP officials have been consistently targeted. By way of example:

- In July 2014, several opposition officials 'were arrested and charged with leading an "insurrection" following a violent clash between some CNRP supporters and district security guards at an attempted peaceful gathering at Freedom Park'.²² They were convicted and sentenced in July 2015 despite a lack of evidence linking them to the allegations.²³ One individual 'was sentenced to an additional two years' imprisonment on charges arising from a separate demonstration... when he was violently attacked by security forces'.²⁴
- In August 2015, opposition senator Hong Sok Hour was arrested by counter-terrorism forces (under the command of Hun Sen's son-in-law) and charged

¹⁵ Ibid. Though his only employer since 1979 has been the Cambodian Government, 'Hun Sen is reported to be worth hundreds of million dollars'. See also Global Witness, 'Hostile Takeover: The Corporate Empire of Cambodia's Ruling Family', July 2016.

¹⁶ See, e.g., Future Forum: 'An Overview and Analysis of the Current Political Situation in Cambodia', 7 February 2017; 'Moving Beyond The January 7 Narratives', above note 5.

¹⁷ Stephanie Giry, 'Autopsy of a Cambodian Election: How Hun Sen Rules', *Foreign Affairs*, October 2015.

¹⁸ Ibid.

¹⁹ Amnesty International, 'Taking to the Streets: Freedom of Peaceful Assembly in Cambodia', 2015.

²⁰ Ibid. See also Stephanie Giry, above note 17.

²¹ Future Forum, above note 16; and Stephanie Giry, above note 17.

²² Amnesty International, Report 2014/15 – Cambodia.

²³ Amnesty International, Report 2015/16 – Cambodia.

²⁴ Ibid.

with incitement for posting an online video regarding an allegedly fake 1979 treaty concerning the Cambodia-Vietnam border.²⁵

- In October 2015, 'elements of the prime minister's bodyguard unit and others in civilian clothes brutally assaulted two CNRP parliamentarians outside the National Assembly'.²⁶ Certain individuals whose involvement had been photographed were not pursued.²⁷
- In November 2015, an arrest warrant was issued against then CNRP President Sam Rainsy regarding a 2011 conviction for criminal defamation related to allegations that Cambodia's Foreign Minister had been involved in Khmer-Rouge era crimes.²⁸ One month later, arrest warrants were issued against Rainsy and two associates in connection with the Hong Sok Hour case.²⁹ All three went into self-imposed exile.³⁰
- In April 2016, a CNRP lawmaker was arrested 'for criticizing the government's handling of border disputes with Vietnam' and 'falsely charged with incitement and discrimination'.³¹ He was sentenced to two-and-a-half years' imprisonment in October.³²
- In the same month, a National Election Committee (NEC) member and former union leader 'was informed that he would be tried on criminal charges in relation to a 2014 demonstration at which a number of protesting factory workers were shot dead by security forces'.³³ This was seen as a ploy to exclude him from his NEC position.³⁴
- In June 2016, additional convictions were handed down in the 2014 Freedom Park case.³⁵
- In September 2016, then CNRP acting leader Kem Sokha was convicted of disregarding a summons to appear as a witness in a case against two fellow CNRP members in what was described as 'another trumped-up case'.³⁶ Despite his parliamentary immunity, Sokha was sentenced to five months in prison and, following a failed Government attempt to arrest him, moved into CNRP headquarters where he remained under 'de facto house arrest'.³⁷ He was pardoned at the end of the year.³⁸
- The RGC formally announced a ban on Rainsy's return in October 2016.³⁹ Multiple fresh charges were brought against him in absentia, including for criminal defamation of Hun Sen and two other CPP officials.⁴⁰
- In December 2016, Rainsy and his two assistants were sentenced to five years' imprisonment as 'accomplices' in the case against Hong Sok Hour.⁴¹
- Rainsy, still in exile in France, 'resigned as head of the CNRP in February [2017] just as Hun Sen's government was planning to introduce a law that

²⁵ Ibid. See also Human Rights Watch, World Report 2016, Cambodia – Events of 2015.

²⁶ Human Rights Watch, *ibid.* In addition to the country's official armed forces and national police service, a number of powerful CPP politicians, including the Prime Minister, maintain large private bodyguard units.

²⁷ Human Rights Watch, World Report 2016, Cambodia – Events of 2015.

²⁸ Amnesty International, Report 2015/16 – Cambodia; Human Rights Watch, World Report 2016, above note 25.

²⁹ Amnesty International, Report 2015/16 – Cambodia.

³⁰ Ibid.

³¹ Human Rights Watch, World Report 2017, Cambodia – Events of 2016.

³² Amnesty International, Report 2016/17 – Cambodia.

³³ Human Rights Watch, World Report 2017, above note 31.

³⁴ Amnesty International, Report 2016/17 – Cambodia; Human Rights Watch, World Report 2017, above note 31.

³⁵ Human Rights Watch, World Report 2017, above note 31.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Amnesty International, Report 2016/17 – Cambodia.

³⁹ Ibid.

⁴⁰ Human Rights Watch, World Report 2017, above note 31.

⁴¹ Amnesty International, Report 2016/17 – Cambodia.

would dissolve political parties if their leaders [had been] convicted of domestic crimes'.⁴²

- In March 2017, Rainsy was sentenced 'in absentia' to 20 months in prison for incitement and defamation', adding to his previous five-year term.⁴³

Election security for the June 2017 commune polls promises to be militarized, with the RGC suggesting that a CPP loss in the national elections could trigger a civil war. While the opposition has condemned such a heavy-handed approach, reports suggest that the Government is in fact preparing for a crackdown on protests.⁴⁴ The RGC has continued to escalate its discourse, with Hun Sen vowing to 'quash protests with military might if they turn violent' and insisting that 'war will happen if the [CPP] isn't in power'.⁴⁵ More recently, the Minister of Defence threatened to 'smash the teeth' of political opponents who demonstrate against commune election results.⁴⁶

Moreover, in keeping with its historical rhetoric describing the CPP as the only credible guarantor of Cambodia's peace and stability, the RGC has engaged in a sustained campaign to suppress and denounce a so-called 'colour revolution' in the country.⁴⁷ In August 2015, 'a student was arrested on incitement charges after stating on Facebook that he planned to initiate' such a revolution 'at an unspecified date in the future'.⁴⁸ In late 2016, the Interior Minister made it clear that he considered the CNRP's protest campaign following the disputed 2013 elections as such an attempt.⁴⁹

Suggesting that all of this activity may have been part of a carefully crafted plan, official minutes of a CPP central committee meeting revealed the party's intentions to weaken the opposition through, among other avenues, the application of further legal pressure on the judiciary. Noting the need to 'strongly oppose' CNRP campaigns made under 'the umbrella of democracy and fake human rights', the CPP vowed to 'push the implementation of the court's procedure for all illegal actions of leaders, officers, and activists of the opposition party' and called for the 'strengthen[ing] [of] the state's equipment of power, especially the armed forces and the court' (emphasis added).⁵⁰ A CPP spokesperson 'denied the party was targeting political opponents', claiming that pushing the courts 'simply meant the party wanted ongoing cases concluded as soon as possible so the two parties could resume dialogue'.⁵¹

On 11 April 2017, the Ministry of Foreign Affairs released a 'stunning and sweeping... white paper, targeted at Western governments, diplomats, the media,

⁴² Thai Tha, 'Cambodia's Prime Minister Takes Potshot at Opposition in New Year's Speech', 14 April 2017.

⁴³ Ibid.

⁴⁴ Mech Dara, 'Election security pushed', *Phnom Penh Post*, 20 April 2017.

⁴⁵ 'Cambodian PM threatens poll protesters with war', *News 24*, 11 May 2017; Meas Sokchea and Mech Dara, 'Unrest to be met by military, Prime Minister says', *Phnom Penh Post*, 11 May 2017.

⁴⁶ Sek Odom and Ben Paviour, 'General Banh to 'Smash Teeth' Of Opponents', *Cambodia Daily*, 17 May 2017.

⁴⁷ Human Rights Watch, *World Report 2016*, above note 25; Maly Leng, 'Government Video Won't Stop "Color Revolution" in Cambodia: Student Activist', *Radio Free Asia*, 1 May 2017.

⁴⁸ Amnesty International, *Report 2015/16 - Cambodia*; Human Rights Watch, *World Report 2016*, above note 25; Human Rights Watch, *World Report 2017*, above note 31.

⁴⁹ Mech Dara, 'CNRP tried "revolution" after '13 election: Kheng', *Phnom Penh Post*, 3 May 2017.

⁵⁰ Mech Dara, Shaun Turton, and Lay Samean, 'CPP gameplan? "Attack"', *Phnom Penh Post*, 21 July 2016.

⁵¹ Ibid.

and [NGOs].⁵² Entitled 'Cambodia, Democracy, and Human Rights: To tell the truth',⁵³ the document has been characterized as 'pre-emptively setting the groundwork for a difficult period in national politics'.⁵⁴ Claiming to 'set the record straight', the paper took particular aim at the UN Special Rapporteur on the situation of human rights in Cambodia, Rhona Smith, referring to her view that Cambodia should be held accountable for human rights violations as 'mindboggling' and 'sheer contempt'.⁵⁵ The paper is very much in keeping with Cambodia's standard line on the preservation of peace and order at any cost, a position which is often used 'as an enabler of some of its hard-line approaches to the national opposition, public rallies, and criminal justice'.⁵⁶ Invoking the Constitution and the rule of law, a Government spokesman said the statement was designed to 'push [international governments] to look beyond what he maintained were media-generated falsehoods' in order to understand 'Cambodia's definition of democracy',⁵⁷ concluding: 'We don't need to choose any other international standards'.⁵⁸

b) *The 'weaponization' of legislation*

As noted by an NGO senior legal officer, there has been significant concern in recent years regarding the 'weaponization' of legislation in the country. This is an issue the ICJ has been following closely.

In August 2015, following months of campaigning by domestic and international human rights groups, a controversial law regulating Cambodia's NGOs was officially signed into law by the King.⁵⁹ Passage of the Law on Associations and Non-Governmental Organizations (LANGO) came in the wake of a sustained effort by the ICJ and others to block what was roundly considered an attempt 'to enact a law that would impose unwarranted restrictions on the rights to freedom of association and expression and create legal grounds on which to arbitrarily close or deny registration to politically disfavoured NGOs, including those employing [HRDs]'.⁶⁰ Human Rights Watch warned the law would give 'the government wide authority to decide what activities can and cannot take place'.⁶¹ As the ICJ stated, the law amounts to a clear manifestation of Hun Sen's 'long expressed hostility towards independent NGOs, particularly those that criticize human rights violations, a culture of impunity for officials committing them, government development priorities, the extractive industries and deforestation, and corruption'.⁶² Given Cambodia's pre-existing legislation, there was no need for

⁵² Royal Government of Cambodia, Ministry of Foreign Affairs, 'Cambodia, Democracy, and Human Rights: To tell the truth', 11 April 2017. See also Jack Board, 'Cambodia lashes out in "piece de resistance" against the West', *Channel News Asia*, 12 April 2017.

⁵³ RGC, 'Cambodia, Democracy, and Human Rights: To tell the truth', *ibid.*

⁵⁴ Jack Board, above note 52.

⁵⁵ RGC, 'Cambodia, Democracy, and Human Rights: To tell the truth', above note 52.

⁵⁶ Jack Board, above note 52.

⁵⁷ Ananth Baliga and Chhay Channyda, 'Government sounds off on critics in report, claiming detractors twist facts', *Phnom Penh Post*, 12 April 2017.

⁵⁸ *Ibid.*

⁵⁹ Pech Sotheary, 'King signs law on NGOs', *Phnom Penh Post*, 14 August 2015.

⁶⁰ ICJ et al, Letter to Australian Foreign Minister, 'Call on Cambodia government to drop draft NGO Law', 29 May 2015; ICJ Press Release, 'Cambodia: approved NGO law poised to hobble the work of civil society', 13 July 2015.

⁶¹ Human Rights Watch, World Report 2016, above note 25; see also FIDH, Press Release, 'Cambodia: The dangers of LANGO', 8 July 2015; Pech Sotheary, above note 59.

⁶² ICJ et al, 2015 Letter to Australian Foreign Minister, above note 60.

such a law.⁶³ Nevertheless, it was drafted and adopted without any consultation with civil society or the public.⁶⁴

Furthermore, proposed revisions to Cambodia's Law on Political Parties could lead, according to the UN Office of the High Commissioner for Human Rights (OHCHR), 'to the suspension or dissolution of a political party, or to the arbitrary limitation of political rights or the rights to freedom of expression and association enshrined in the ICCPR'.⁶⁵ A Trade Union Law imposing new restrictions on the right to freedom of association has also come into force, marking a further downward slide for labour rights in the country.⁶⁶

Even seemingly uncontroversial laws aimed at regulating telecommunications and cyber-crime contain provisions that, in the current political climate, raise serious cause for concern.⁶⁷ Viewed in light of recent targeting of HRDs, Cambodian NGOs are well aware of the risks of such surveillance and are taking the necessary precautions.⁶⁸ Naly Pilorge, deputy director of advocacy at the Cambodian League for the Promotion and Defence of Human Rights (LICADHO), has said that 'fear of intrusive surveillance—be it digital or physical—was nothing new, but that [recent events] had necessitated a drastic change of course'.⁶⁹

c) *Prosecutorial and judicial harassment of HRDs*

In recent years, the ICJ has been closely monitoring the situation of HRDs targeted by the RGC and vocally calling for a halt to their legal (prosecutorial and judicial) harassment. As noted by the ICJ: 'While Cambodia has a positive legal duty under international law to protect [HRDs] from attacks arising out of their work', the RGC instead has initiated several proceedings that 'appear to be aimed at intimidating and silencing Cambodian civil society and are the latest in a series of laws and actions directed against them'.⁷⁰ As has long been the case in Cambodia, HRDs – like lawyers in general – are seen as the embodiments of their clients' views and thus, in political cases, deemed by the RGC to be political opponents themselves.⁷¹ According to LICADHO, there are 'currently as many as 26 human rights and political activists in prison on charges which have all the hallmarks of being politically motivated'.⁷²

Emblematic of this phenomenon are several cases centered on an alleged affair between CNRP leader Kem Sokha and Khom Chandaraty (also known as Srey Mom).⁷³ It did not take long for the allegations to devolve into something much larger, and far more troubling. As noted by Human Rights Watch:

⁶³ Ibid.

⁶⁴ Ibid; ICJ et al, Letter to Cambodian President of the National Assembly Heng Samrin, 'Withdraw Draft Law on Associations and Non-Governmental Organizations', 22 June 2015; ICJ et al, Letter to Cambodian Prime Minister Hun Sen re 'Law on Associations and Non-Governmental Organizations', 6 July 2015; ICJ Press Release, 'Cambodia: the ICJ condemns Senate's approval of draft Law on Associations and NGOs', 24 July 2015.

⁶⁵ OHCHR Cambodia, 'A Human Rights Analysis of the Amended Law on Political Parties (2017)', 28 March 2017.

⁶⁶ Human Rights Watch 'Cambodia: Revise Union Law to Protect Worker Rights', 17 December 2015.

⁶⁷ Human Rights Watch, World Report 2016, above note 25.

⁶⁸ Ananth Baliga and Niem Chheng, 'NGOs' "Adhoc 5" effect', *Phnom Penh Post*, 28 April 2017.

⁶⁹ Ibid.

⁷⁰ ICJ Press Release, 'Cambodia: ICJ calls for halt to prosecutorial and judicial harassment of human rights defenders and political opponents', 9 May 2016.

⁷¹ ICJ meetings with Cambodian lawyers and NGO staff.

⁷² ICJ et al, Press Release, 'Cambodia: drop farcical investigation of human rights defenders', 7 February 2017.

⁷³ ICJ Press Release 9 May 2016, above note 70; Amnesty International, Report 2016/17 – Cambodia; Human Rights Watch, World Report 2017, above note 31.

'On April 28, 2016, the Government's Anti-Corruption Unit (ACU) took into custody four senior staff [of the Cambodian Human Rights and Development Association (ADHOC)]... and one former staffer, Ny Chakrya, a deputy secretary-general of the NEC. They were accused of "bribing a witness" in connection with legal advice and other assistance ADHOC had been providing to a witness in the case against Kem Sokha. All five remained in detention on charges punishable by up to 10 years in prison.'⁷⁴

Following the arrests, 'civil society launched a peaceful "Black Monday" campaign to call for the release' of the so-called ADHOC 5.⁷⁵ The authorities 'attempted to ban the protests and threatened, arrested and detained participants who were generally released only after signing undertakings not to protest again'.⁷⁶

Several States spoke out at the 32nd session of the UN Human Rights Council in mid-2016.⁷⁷ The UN High Commissioner for Human Rights, in his opening remarks, said the recent arrests of opposition and civil society members indicate a 'drastic and deplorable narrowing of the democratic space that is not conducive to credible elections in 2017 and 2018'.⁷⁸ According to previous ICJ advocacy, such activity amounts to an attempt by the Government to limit the influence of opposition parties.⁷⁹

In September 2016, the ICJ observed the criminal trial of Ny Chakrya, where he 'was convicted of crimes, including criminal defamation, for raising allegations of human rights violations'.⁸⁰ His detention in the ADHOC 5 case, along with that of his four co-accused, was extended for an additional six-month period in October 2016,⁸¹ and for yet another six months in April 2017.⁸² To date, only one witness has been questioned and it appears the latest decision to extend the detention was made before the actual hearing on the issue.⁸³

International criticism has been strong, with the UN Special Rapporteur on the situation of human rights in Cambodia describing the 'use of criminal provisions as a pretext to suppress and prevent the legitimate exercise of the right to freedom of expression and to silence [HRDs] [as] incompatible with article 19 of the [ICCPR]'.⁸⁴ In April, the five were named as finalists for the 2017 Martin Ennals Award for Human Rights Defenders. In the same month, requests to visit

⁷⁴ Human Rights Watch, World Report 2017, above note 31.

⁷⁵ Amnesty International, Report 2016/17 – Cambodia.

⁷⁶ Ibid.

⁷⁷ ICJ et al, Press Release, 'UN Human Rights Council puts Cambodia on notice', 4 July 2016.

⁷⁸ UN High Commissioner for Human Rights, Opening Remarks – Thirty-Second Session of the Human Rights Council, 13 June 2016.

⁷⁹ ICJ et al, Letter to Permanent Representatives of Member and Observer States of the United Nations Human Rights Council Geneva re 'Call on the Human Rights Council to adopt a resolution addressing Cambodia's gravely deteriorating human rights situation', 18 August 2016.

⁸⁰ ICJ oral statement to UN Human Rights Council, 33rd Regular Session, Agenda Item 10, Interactive Dialogue with the Special Rapporteur on the situation of human rights in Cambodia, 28 September 2016; Amnesty International, Report 2015/16 – Cambodia; Human Rights Watch, World Report 2016, above note 25.

⁸¹ Amnesty International, Report 2016/17 – Cambodia.

⁸² Ouch Sony, 'Judge to Extend Detention of Cambodia's Adhoc 5', *Cambodia Daily*, 26 April 2017.

⁸³ Niem Chheng, "'Adhoc 5" see detention extended for six months', *Phnom Penh Post*, 27 April 2017.

⁸⁴ UN Press Release, 'Cambodia: UN experts call for the immediate release of five human rights defenders', Geneva, 25 January 2017.

the five by ADHOC, the Cambodian Center for Human Rights (CCHR) and LICADHO were all denied by court officials without reasons given.⁸⁵

In the wake of the arrests, ADHOC has described a significant chilling effect on its activities with some members fearing for their safety. The RGC's message, it seems, has been 'received—loud and clear', not only limiting ADHOC's own efforts but spreading 'fear among the country's other main advocacy groups, with officers from two prominent human rights NGOs, LICADHO and CCHR, both admitting that they have been taking extra precautions'. Legal Aid of Cambodia (LAC) offered a similar assessment. While independent observers echoed these concerns, the Council of Ministers spokesman 'reiterated that the judiciary was independent of the government and the case was not an attack on ADHOC or civil society'. According to him, the RGC welcomes 'criticism if partnered with the government' but would not tolerate 'harassment'.⁸⁶

In recent days, the harassment has spread to simple acts of support, with the forcible removal of banners calling for the five's release at provincial offices of ADHOC, LICADO and another NGO. One local police chief acknowledged that the action did not 'refer to any article of the law'. While rights groups denounced the action, the MOI spokesman said 'that calling for the release of the ADHOC 5 was against the law because it constituted an attempt to pressure the court'.⁸⁷

Adding its voice to the critics, the US Department of State issued a press release in May supporting previous statements and recommendations made by the EU, the OHCHR and the UN Working Group on Arbitrary Detention.⁸⁸ The RGC quickly 'lashed out at the US and the EU', calling their statements 'politically motivated'.⁸⁹ By way of explanation, Council of Ministers spokesman noted that ADHOC and other human rights organizations received funding from the US and EU: 'They support each other... but they ignore the rule of law... We are a sovereign and independent state and we respect the court... They don't know what due process is'.⁹⁰ More removals, justifications, and criticisms ensued.⁹¹

Other NGOs have not been immune from judicial harassment. Cambodian officials have accused Am Sam-at, a respected human rights monitor at LICADHO for nearly 20 years, and Chan Puthisak, a land rights activist from Boeung Kak Lake and former prisoner of conscience, of instigating violence at an October 2016 demonstration. Para-police forces, which are regularly used to suppress demonstrations, violently dispersed what had been a peaceful protest in Phnom Penh. When Puthisak attempted to prevent para-police from confiscating a drum that was being used by a demonstrator, four or five para-police attacked him, repeatedly beating him on the head with their fists, according to a video of the incident. When Sam-at tried to stop the assault, the para-police attacked him,

⁸⁵ Aun Pheap and Matt Surrusco, 'NGOs "Temporarily" Barred From Visiting Jailed Adhoc Staff', *Cambodia Daily*, 26 April 2017.

⁸⁶ George Wright and Van Roeun, 'NGOs Decry "Chilling Effects" Of Rights Workers' Jailings', *Cambodia Daily*, 28 April 2017; Ananth Baliga and Niem Chheng, above note 68.

⁸⁷ Kim Sarom and Kong Meta, 'Police remove "Adhoc 5" banners, claiming message was anti-government', *Phnom Penh Post*, 3 May 2017; Ben Sokhean, 'Police Admit No Legal Basis for Removal of Adhoc 5 Banners', *Cambodia Daily*, 4 May 2017; Ben Sokhean, 'More "Adhoc 5" banners taken down by officials', *Phnom Penh Post*, 5 May 2017.

⁸⁸ US Department of State, Press Statement, 'Extension of Pre-Trial Detention for Members of ADHOC in Cambodia', Heather Nauert, Spokesperson, Washington DC, 5 May 2017; Alexis Wheeler, 'US joins international concern over Cambodia detainees', *Jurist*, 6 May 2017.

⁸⁹ Matt Surrusco, 'Government Denounces US, EU Criticism of Adhoc 5 Detention', *Cambodia Daily*, 8 May 2017.

⁹⁰ Ibid.

⁹¹ Ben Sokhean, 'Police Order Adhoc Banner Stripped From Home', *Cambodia Daily*, 11 May 2017; Kong Meta, '"Adhoc 5" sign moved after police intervene', *Phnom Penh Post*, 11 May 2017.

also beating him on the head. Both men sustained injuries that needed medical attention. No efforts have been reported of the authorities' efforts to bring to justice the para-police responsible for the unlawful use of force.⁹²

Cambodian security forces have routinely targeted and used excessive force against peaceful union-related activity.⁹³ In May 2014, the ICJ observed trials at the Phnom Penh Municipal Court of 25 individuals arrested in connection with strikes seeking higher minimum wages. Despite certain cosmetic trappings of a functional judicial system, 'it was clear that the process was a pretence and the accuseds' convictions a foregone conclusion'.⁹⁴ The ICJ catalogued a litany of egregious practices all amounting to 'clear violations of the right to a fair trial'.⁹⁵

Similarly, issues related to the RGC's endemic practice of land grabbing, forced evictions, economic land concessions, and related environmental concerns have been a rocky feature of Cambodia's human rights landscape for many years. Estimates regarding the total number of individuals affected since 2000 exceed half a million.⁹⁶ Many disputes remain unresolved and the issue has spawned a highly vocal group of protestors, many of whom have been the targets of harsh Government crackdowns and malicious prosecutions.⁹⁷ RGC promises to end land-grabbing practices and provide redress for those affected have had little positive effect. According to NGOs monitoring the situation, illegal activity continued apace in 2016.⁹⁸ A LICADHO report from that year noted: 'Communities that protest their loss of land come up against authorities and corporations who respond with intimidation, violence, and judicial persecution'.⁹⁹

The emblematic case in this regard concerns the forced evictions of established communities around Phnom Penh's former Boeung Kak Lake. An RGC plan to fill in the lake in order to make way for high-end real estate development led to the evictions of thousands.¹⁰⁰ In November 2014, 'seven women housing rights defenders from the Boeung Kak community were imprisoned for a year after a summary trial for taking part in a peaceful street protest'.¹⁰¹ One of the women in particular, Tep Vanny, has been repeatedly harassed by the authorities, enduring further charges and convictions related to her advocacy in 2016. She was tried yet again in February 2017, this time 'for her role in a protest outside Prime Minister Hun Sen's residence in 2013'. Tep Vanny was 'found guilty of inciting violence and assaulting security guards while trying to deliver a petition to Hun Sen on the land dispute'. Eyewitness testimony was presented at trial indicating 'that neither Vanny or other protesters had committed acts of violence'. Three protestors gave evidence that security guards had beaten non-violent protestors. Notably, the guards – who had initiated the case as civil parties – did not testify or appear for cross-examination. Rather, a clerk simply read their nearly identical written statements into evidence. An RGC spokesman 'rejected the accusation that the Government was using the judiciary to hound opponents' and made a familiar counterclaim: 'What the judiciary has done is based on facts and legal grounds, not on politics... The allegations are just a set up to cause confusion that

⁹² ICJ et al, Press Release, 'Cambodia: drop farcical investigation of human rights defenders', 7 February 2017.

⁹³ Amnesty International, Report 2014/15 – Cambodia.

⁹⁴ ICJ Op-Ed, Kingsley Abbot, 'Injustice in Cambodia', 11 September 2014.

⁹⁵ Ibid.

⁹⁶ Alisa Tang and Prak Chan Thul, 'Amid land grabs and evictions, Cambodia jails leading activist', *Thompson Reuters Foundation*, 24 February 2017; see also Men Kimseng, 'A Cambodian Spring' Charts Cambodia's Urban Land Rights Movement', *VOA*, 5 May 2017.

⁹⁷ Amnesty International, Report 2014/15 – Cambodia.

⁹⁸ Human Rights Watch, World Report 2017, above note 31.

⁹⁹ Alisa Tang and Prak Chan Thul, above note 96.

¹⁰⁰ Khouth Sophak Chakrya, 'Boeung Kak lake dispute "closed"', *Phnom Penh Post*, 28 April 2017.

¹⁰¹ Amnesty International, Report 2014/15 – Cambodia.

everything in Cambodia is under the control of Prime Minister Hun Sen.’ The verdict was criticized by the ICJ and Human Rights Watch, while a spokesman for the court said it ‘acts independently and fairly’.¹⁰²

Environmental issues, such as illegal logging and dam construction, are another longstanding subject of activism in Cambodia. As with all such activity that is critical of the RGC, demonstrators are met with harsh reactions.¹⁰³ Perhaps the country’s most prominent environmental activist, Chut Wutty was murdered in 2012. Five years after his death, significant ‘threats persist’ as activists continue to be killed, brutally attacked, threatened, and judicially harassed.¹⁰⁴ On 27 April 2017, a peaceful meeting was held near the Royal Palace in Phnom Penh to mark the five-year anniversary and ‘to call for an investigation into his murder’.¹⁰⁵ The response was typical: police ‘interrupted the gathering... by confronting protesters physically.’¹⁰⁶ One commentator noted that ‘the lack of closure surrounding Wutty’s death acts as a “license to kill” others with similar impunity’.¹⁰⁷

On 30 May 2017, Amnesty International published a report documenting the use of the criminal justice system to target human rights defenders (HRDs) and political opponents.¹⁰⁸

d) *Targeting journalists and other limitations on press freedoms*

In early May, Radio Free Asia (RFA) Khmer Service Reporter Huot Vuthy (also known as Chun Chanboth) was summoned to appear before the Phnom Penh Municipal Court for questioning in relation to allegations that he had made a false statement to disguise his identity during an April prison visit to opposition politicians.¹⁰⁹ Huot Vuthy denied the allegations, ‘saying he signed in under his own name and was well known by [the] prison guards’.¹¹⁰ Reacting, the Interior Ministry ‘will no longer allow CNRP officials to visit their jailed comrades’,¹¹¹ and the Council of Ministers has accused the RFA of being ‘in cahoots with the US government and the opposition party, with the clandestine aim of instilling chaos and instability through biased reporting’.¹¹² Huot Vuthy’s summons, arrest warrant, and subsequent flight from Cambodia to the US, caused much consternation among local and international commentators.¹¹³ The Southeast Asia representative of the Committee to Protect Journalists warned that pursuing the case would ‘give authorities *carte blanche* to harass and prosecute journalists on flimsy allegations... while pursuing politically sensitive stories’.¹¹⁴ The MOI

¹⁰² Alisa Tang and Prak Chan Thul, above note 96.

¹⁰³ See, e.g., Amnesty International, Report 2014/15 – Cambodia; Amnesty International, Report 2015/16 – Cambodia; Amnesty International, Report 2016/17 – Cambodia; Phak Seangly, ‘Complaint filed over villagers’ dam protest’, *Phnom Penh Post*, 4 May 2017.

¹⁰⁴ Aun Chhengpor, ‘In Cambodia, 5 Years After Chut Wutty’s Killing, Questions Remain’, *VOA*, 19 April 2017.

¹⁰⁵ Alessandro Marazzi Sassoon and Touch Sokha, ‘Activists gather near palace to mark Chut Wutty’s death’, *Phnom Penh Post*, 27 April 2017.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ Amnesty International, *Cambodia: Courts of Injustice: Suppressing Activism Through the Criminal Justice System in Cambodia*, 30 May 2017.

¹⁰⁹ ‘RFA Khmer Reporter Receives Court Summons Over Prey Sar Visit’, *Radio Free Asia*, 22 April 2017.

¹¹⁰ *Ibid.*

¹¹¹ Van Roeun and Ben Paviour, ‘Gov’t Bars CNRP From Prison Visits’, *Cambodia Daily*, 21 April 2017; Ben Sokhean, ‘Ban on CNRP Prison Visits for “Public Order”’, *Cambodia Daily*, 25 April 2017.

¹¹² *Ibid.*

¹¹³ Niem Chheng and Ananth Baliga, ‘Court seeks arrest of RFA reporter’, *Phnom Penh Post*, 3 May 2017.

¹¹⁴ Ben Sokhean and Matt Surrusco, ‘Court Issues Arrest Warrant for Runaway RFA Journalist’, *Cambodia Daily*, 3 May 2017.

spokesman accused Huot Vuthy of being 'a dog of the RFA director', suggesting that the broadcaster lacks independence and harbours 'intentions to overthrow the royal government'.¹¹⁵ Although represented by local counsel, the Justice Ministry spokesman claimed that Huot Vuthy 'could not be represented by a lawyer in court, a luxury he maintained was given only to plaintiffs'.¹¹⁶

As the controversy was growing, Freedom House released its annual report, warning that Cambodia 'could experience an even more severe "crackdown" as the elections draw nearer' and ranking the country 33 out of 40 countries in the Asia-Pacific region, and 152 out of 199 countries globally.¹¹⁷ Additionally, a press freedom ranking by Reporters Without Borders (RSF) ranked Cambodia 132 out of 180 countries and claimed 'the July [2016] murder of political analyst Kem Ley was meant to silence media and government critics'.¹¹⁸ Benjamin Ismail, head of the Asia Pacific region for RSF, said 'the group had placed Cambodia under "close watch" due to the intimate relationship between the country's ruling elite and its media institutions'.¹¹⁹ The director of the Cambodia Institute for Media Studies noted that local journalists are 'reluctant and fearful to report or produce news stories about sensitive and controversial issues, such as corruption, illegal logging, land grabbing, and other social injustices committed by people in powers and well-connected business elites'.¹²⁰ At least 12 journalists have been killed in Cambodia since 1992, while many others have faced legal action over their reporting.¹²¹

e) *Institutionalized and endemic corruption*

Despite assurances by the Government to fight the practice, corruption remains a huge problem in the country.¹²² Cambodia is considered the most corrupt in ASEAN and the practice infects nearly all spheres of public and private life, including politics, Government bureaucracy, business, judiciary, police, natural resource management and procurement.¹²³ This culture of corruption enables 'impunity against prosecution' and 'legitimises an atmosphere where fundamental human rights are regularly violated'.¹²⁴ There is little in the way of whistleblower protection,¹²⁵ and '[r]ather than targeting high-level official corruption, Cambodia's official anti-corruption unit has launched politically motivated investigations against the CNRP' and ADHOC.¹²⁶

Such practices, it is said, are encouraged and perpetuated by the behavior of the Prime Minister, who has amassed a vast fortune and corporate empire over the course of his long reign.¹²⁷ Moreover, Hun Sen 'has abused his position as prime minister to allow his relatives control of, or major stakes in, most of Cambodia's

¹¹⁵ Ben Sokhean and Matt Surrusco, 'Journalist, Now in US, Will Not Appear in Court, RFA Says', *Cambodia Daily*, 2 May 2017.

¹¹⁶ Niem Chheng and Ananth Baliga, 'Fearing safety, RFA reporter in US', *Phnom Penh Post*, 2 May 2017.

¹¹⁷ Andrew Nachemson, 'Freedom House latest group to note fall in press freedom', *Phnom Penh Post*, 28 April 2017.

¹¹⁸ *Ibid.*

¹¹⁹ Aun Chhengpor, 'Cambodia Loses Regional Top Spot in Global Press Freedom Index', *VOA*, 4 May 2017.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² Renata Suter, Transparency International, 'The Need for a Good Whistleblower Protection Law In Cambodia', January 2016; Kain Rahman, Transparency International et al, 'Cambodia: Overview of corruption and anti-corruption', 31 October 2016.

¹²³ Kaunain Rahman, Transparency International et al, 'Cambodia: Overview of corruption and anti-corruption', 31 October 2016.

¹²⁴ *Ibid.*

¹²⁵ Renata Suter, above note 122.

¹²⁶ Human Rights Watch, *World Report 2017*, above note 31.

¹²⁷ Global Witness, 'Hostile Takeover: The Corporate Empire of Cambodia's Ruling Family', July 2016.

key industries'.¹²⁸ The impact of such influence is 'a stranglehold over the democratic space and corrupt[ion] [of] the country's legal system which remains firmly under the control of Hun Sen'.¹²⁹ It further results in domination of the state apparatus, where the Prime Minister's family members 'hold key posts..., including in politics, the military, police, media, and charities—sectors that prop up [the CPP] through propaganda, political donations, or brute force'.¹³⁰

2 Independence and accountability of justice actors

2.1 The role of justice actors and institutions in the pursuit of redress and accountability

The equal administration of justice for all without fear or favour is essential to the ability of a State to discharge its obligations to hold perpetrators of gross human rights violations to account and to provide effective remedies and reparation to victims.¹³¹ In turn, the equal administration of justice relies on several factors, including:

- The operation of independent judicial mechanisms comprised of judges whose independence is protected from interference by the executive branch or third parties (including, for example, as a result of dismissal or disciplinary action initiated on the basis of judicial decisions that are unfavourable to the executive, or other forms of interference or intimidation, or threats from police, security forces or private actors);
- The impartial adjudication by judges of cases, which may be negatively influenced, for example, by appointment processes for judges, the internal allocation of cases and/or corruption;
- The accountability of judges and prosecutors, including for corruption or lack of adherence with fair trial standards;
- The competence of judges and prosecutors, for example including as a result of adequate training and knowledge of international law and standards, particularly concerning obstacles to redress accountability and the available means to overcome such challenges;
- The knowledge and skills of lawyers and HRDs that act to pursue accountability or redress for victims; and
- The ability of such lawyers and other representatives to act free from external interference, undue influence or persecution.

2.2 Lack of independent and impartial judiciary

Despite de jure guarantees in domestic law and stated commitments to adhere to international standards, the de facto lack of an independent and impartial judicial system remains one of Cambodia's central and enduring human rights issues. Unfortunately, the country's judicial officials have always been deeply beholden to their political masters. While RGC officials routinely make assertions to the contrary, not a single independent observer has been able to identify any progress on this crippling issue. Although there has been a considerable increase in judicial capacity over the years, judges and prosecutors remain firmly under RGC control. The troubling status quo was most recently affirmed in great detail by the

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ See, for example: ICJ, *Practitioners Guide No 7: International Law and the Fight Against Impunity* (2015), pp. 318-325; and UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in its resolution 60/147 (2006), para 12.

International Bar Association (IBA), which produced a report on the extent of the problem in April 2015.¹³² Unsurprisingly, the research undertaken by the ICJ in connection with this baseline study only confirms that, two years later, nothing has changed.

The problem has long been rooted in corrupt influence, both political and financial, which 'appears to be exerted at will over all judicial activities':

'Trainee judges are asked for bribes in order to enter onto professional training and those judges who are members of [CPP] are favoured for appointments and promotions. It is widely acknowledged that court decisions are dictated by financial and political pressures on judges: cases in which the authorities have an interest are consistently resolved in their favour and in other cases, the party able to offer the largest bribe to a judge or clerk will almost certainly win the case, regardless of the merits.'¹³³

Moreover, the Cambodian Minister of Justice 'has been granted—both in law and in practice—an excessively powerful role in the judiciary, with the capacity to exercise discretion and influence over almost every element of a judge's career'.¹³⁴ The scope of this power has been legitimized by three laws: the Law on the Organization of the Courts; the Law on the Statute of Judges and Prosecutors; and the Law on the Organization and Functioning of the Supreme Council of the Magistracy – all widely considered to be inconsistent with international standards.¹³⁵ Much of the ICJ's Cambodia advocacy in 2014 was dedicated to robust critique of these laws, which the RGC had cynically characterized as 'judicial reform'.¹³⁶ The ICJ, among others, had called for a thorough review of the laws and proper consultation with the public and civil society 'with a view to revising the drafts to ensure that they are in accordance with international standards', in particular the separation of powers.¹³⁷ Ultimately, there was no consultation,¹³⁸ and opposition lawmakers vowed, in vain, to seek amendments.¹³⁹ On 16 July 2014, following months of campaigning by domestic and international human rights groups, the three pieces of legislation were officially endorsed by King Norodom Sihamoni.¹⁴⁰

Such problems are compounded by a legal profession largely unregulated and almost wholly unsupported by any professional bodies independent of the RGC's influence. The Bar Association of the Kingdom of Cambodia (BAKC) 'is too politicized to be capable of fulfilling its proper function of representing and advocating for lawyers and the legal profession'. According to credible allegations, the bar 'accepts bribes from lawyers entering into training, artificially restricts the number of lawyers entering the profession, permits entry by unqualified members of the CPP, and is controlled by the... government'. Moreover, the Bar is said to withhold 'support from lawyers who are known to represent clients litigating against the interests of the state, where those lawyers then become the subjects

¹³² IBAHRI, 'Justice versus corruption', above note 6.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid, citing Gabriela Knaul, 'Intervention by the United Nations Special Rapporteur on the independence of judges and lawyers'.

¹³⁷ ICJ Press Release, 'Cambodia: Judicial reform laws not in line with international standards', 11 June 2014; see also ICJ Briefing Paper, 'Key concerns over three judicial reform draft laws in Cambodia', 8 July 2014; Amnesty International, Report 2014/15 – Cambodia; IBAHRI, above note 6.

¹³⁸ ICJ Press Release, 'Cambodia: Judicial reform laws not in line with international standards', 11 June 2014; IBAHRI, above note 6.

¹³⁹ Stuart White, 'King OKs judiciary laws', *Phnom Penh Post*, 15 August 2014.

¹⁴⁰ Ibid.

of spurious criminal charges'. And the concept of legal aid in the country, such as it is, is woefully inadequate.¹⁴¹

All of these factors have 'significantly undermined the public's ability to access legal advice and representation'. And, in light of the foregoing, 'public confidence in the legal profession is very low'. Such dubious regard 'has led to a situation where many Cambodians not only distrust the courts' agendas but fear any engagement with them whatsoever'. In general, the judiciary is seen for what it is—'an extension of the government'. Accordingly, citizens approach the courts at their peril and consider it to be far wiser to avoid any such engagement, if at all possible.¹⁴²

According to various sources with whom the ICJ met, engaging directly with the Government on the independence of the judiciary is a non-starter, and further training in this respect is a waste of time. Well known as political tools of the CPP, courts are viewed by the public, at best, as 'fish markets' where cases can be negotiated or, at worst, as 'remote courts' (as in, remote control), where the CPP simply pushes a button to 'change the channel'. Judges who do not decide cases as ordered will be punished; relocation to far-flung posts is a typical threat. While many judicial actors desire change and are tired of the overarching system of CPP control, they have no choice in the matter. Manipulation by the Government is unavoidable. As one lawyer put it, many judges are aware of the disease but are prevented from prescribing the proper medication. There is simply no cure for political interference and corruption. The same individual noted that judges sometimes apologize privately for not being able to apply the law in the face of political interference. They are simply too fearful of powerful interests and actors who intervene directly in cases.

The problem is compounded by the fact that many judges are young, inexperienced, lack proper qualifications and are almost always in a great deal of debt to the 'political patron' who assisted them with the various payments required to reach the bench, which can amount to \$20,000 USD. Ultimately, this creates a system in which judges value their own personal interests more than their professionalism. The need and opportunity to increase paltry official salaries is an enduring influence. The lack of proper role models is also an issue. Some judges teach fair-trial rights at university but do not (or cannot) apply the same rules in court. Even for those with a great personal integrity and independent financial means, it is difficult to follow their own way. Judges work for the party and its interests rather than those of the people. At times, they consult directly with politicians for instructions on sensitive cases, although in many cases the judge already knows how to proceed. Cases are allocated to those who are expected to follow orders and there is constant pressure in this regard.

2.3 Absence of judicial and prosecutorial accountability for lack of adherence to basic fair trial standards

As described in great detail over the course of a two-day training in Phnom Penh organized by the ICJ and CCHR in April 2017, Cambodian lawyers face constant and consistent hurdles in their practice before the domestic court system. At the investigative stage, these challenges include, but are in no way limited to:

- A significantly limited ability to shape the course of judicial investigations in a manner that serves the interests of their clients. Under Cambodia's civil law system, lawyers must request investigating judges to act on their behalf and are subject to charges of interference with the administration of judges if they go beyond mere 'preliminary inquiries' themselves. Due to political

¹⁴¹ IBAHRI, above note 6.

¹⁴² Ibid.

pressure and/or corruption, there is no way to persuade judges to act on legitimate requests for investigative action.

- Case files are largely shaped by prosecutors and are difficult for defence lawyers to access. This leads to issues of unchecked prosecution pressure on witnesses and selective disclosure of evidence.
- Decisions of investigating judges are 'reasoned but not reasonable' (i.e. they contain little or no analysis based on the evidence); and they are almost always endorsed on appeal.
- Prosecutors rarely object to questions or decisions of investigating judges, which are invariably directed at finding guilt rather than the truth.
- Investigating judges do not engage in proper crime scene investigations, which is why the lawyers refer to them as 'asking judges' rather than 'investigating judges'. The hand-written records produced as the result of such questioning are noted for their lack of accuracy and objectivity.
- There are extremely limited resources in terms of forensic and other specialized expertise. The MOI purports to have some capacity but its quality and extent is unclear (and very likely substandard). Defence lawyers may seek forensic investigations but such requests are rarely granted. Where such inquiries are approved, they are conducted by the MOI's experts rather than independent individuals. There is no provision in the law for counter experts.
- As there is a high reliance on confessions in court, the police are essentially authorized to obtain them at all costs. As one lawyer put it, 'confessions are the king of evidence in Cambodia'. This results in the very common practice of using various means of physical and psychological pressure (e.g. beatings, extended interview sessions under harsh conditions, brandishing of electric batons, and other threats) to extract statements.
- In political and HRD cases, there is always a presumption of guilt.¹⁴³

While in theory deficient aspects of judicial investigations should be subject to correction by trial courts, as a practical matter this rarely (if ever) occurs. By way of example:

- Prosecution evidence, especially statements by the police, is given undue weight at trial. It is considered to be authoritative without effective challenges or judicial scrutiny.
- When lawyers attempt to call judicial police or investigators as witnesses at trial, they are frequently chastised by trial judges for not having participated more actively in the judicial investigation.
- It is a routine practice for trial judges to simply endorse the results of judicial investigations, summaries of which are read into evidence in court. When prosecution witnesses fail to appear for cross-examination, their previous statements are nevertheless admitted.¹⁴⁴

Judgments and decisions are notoriously light on law with few, if any, references to jurisprudence. In part, this is a feature of the civil law system. According to lawyers, however, judges simply do not care about applying the law. Much is based on tradition, and there is open hostility to the use of international law, which judges claim is inapplicable to domestic cases. Courts do not apply the jurisprudence of the ECCC for similar reasons. According to lawyers, the Constitutional Council issued a decision on the matter instructing courts to apply international law, but the decision has not been followed in practice.¹⁴⁵

In the face of these difficulties, lawyers have little recourse. Complaints of judicial misconduct may be made to the SCM – the body tasked with regulating the

¹⁴³ ICJ meetings with Cambodian lawyers and NGO staff.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

judicial profession – but lawyers have experienced no real success via this route. That said, according to lawyers, some courts tend to be a bit more responsive to their requests in order to avoid the filing of such complaints.¹⁴⁶

As to claims of torture or other ill-treatment in the context of coerced confessions, it is difficult to later challenge such abuses at trial as judges will typically demand to see scars or other kinds of physical evidence. Victims are often unable to specifically identify the police who tortured them. Moreover, many victims do not dare to complain for fear of further abuse, re-arrest or other forms of retaliation.

2.4 Capacity of judges and prosecutors

The capacity of Cambodia's judges and prosecutors has steadily increased over the years. The current level of technical competence, while still far from ideal, has been a significant achievement. However, as the judicial system remains firmly in thrall to the executive branch, the issue of capacity will continue to be overshadowed by the lack of independence and impartiality. As noted by one lawyer interviewed by the ICJ, judges and prosecutors are generally competent and well trained but ultimately constrained by political influence and corruption. For these reasons, donors have become increasingly frustrated in recent years and contributions are dwindling.

Judges and prosecutors receive a certain amount of official training by the Royal Academy for the Judicial Professions in Phnom Penh.¹⁴⁷ However, such training is limited. In recent years, the OHCHR has conducted training, in conjunction with the BAKC, on fair trial rights, basic trial advocacy and the use of international standards. The ICJ was invited to participate in one such training in 2016. The Office recently published a second edition of an annotated code of criminal procedure with references to international jurisprudence and decisions of the ECCC. A manual on the use of evidence is forthcoming. OHCHR also developed a pre-trial detention form for use by the courts with a dedicated space for judges to provide clear explanations and grounds for their decisions. Although the form was officially adopted by the Cambodian Ministry of Justice (MOJ) with some training, not all judges are using the form. Some apparently fear it will bind them and others claim they simply lack time.¹⁴⁸ For its part, the MOJ is meant to publish a compendium of domestic judgments, but there has been little cooperation from the courts. There is little to nothing in the way of existing court digests or practitioner guides. It is difficult, not to say impossible, to obtain a clear sense of all the training that has been conducted in recent years as the process has been highly compartmentalized. The BAKC has its own meagre training program, but the quality and quantity is uncertain. The MOJ receives some outside support for limited training, but donor funding has dried up in recent years due, in part, to lack of progress on independence.¹⁴⁹ There is a huge need for forensic and investigative training across the board.

Such a chaotic state of affairs is due, in part, to the limitations of Cambodia's court management system, which has been described as being in 'a total state of disarray'.¹⁵⁰ For example, court decisions are not necessarily communicated to the parties or other concerned officials, resulting in situations where prisoners remain confined despite orders of release.¹⁵¹ OHCHR has made some attempts at improving court management, although these have proven fruitless so far.

¹⁴⁶ Ibid.

¹⁴⁷ IBAHRI, above note 6.

¹⁴⁸ ICJ meetings with OHCHR.

¹⁴⁹ ICJ meeting with MOJ.

¹⁵⁰ ICJ meetings with OHCHR.

¹⁵¹ ICJ meeting with NGOs.

For its part, the MOJ is hoping to exert greater control over the courts, with the recent announcement of a plan to undertake a comprehensive review of the justice system.¹⁵² Despite some heated rhetoric in the press (in response to the IBA report referenced above as well as similar undertakings by 'outsiders'), the MOJ is open to working with international partners, expressly including the ICJ, as long as the process would be a collaborative one. The announced needs assessment – based on a model developed by Singapore – is set to begin in May 2017 with the distribution of questionnaires to court officials around the country followed by more detailed in-person interviews. However, there is not yet a clear timeline for completion.

2.5 Limits on lawyers and HRDs to act

In some ways, Cambodia is blessed with a diverse and robust culture of human rights advocacy and activism. In particular, organizations like CCHR, ADHOC and LICADHO have been engaged in numerous programs for many years aimed at maintaining and improving the knowledge and skills of Cambodian lawyers and HRDs. These groups have typically received much support from international donors, as well as the OHCHR which continues to encourage and support HRDs on the incorporation of international law and standards into their domestic cases.

However, the ability of lawyers and HRDs to put their knowledge and skills into action is significantly constrained by several key impediments. First of all, as described above (section 3.2.2), they are forced to operate within a politically compromised judicial system that is unwilling to apply even the most basic fair trial rights to its proceedings.

Equally problematic – if not more so from the perspective of the lawyers' personal liberty and safety – has been the judicial and prosecutorial harassment of lawyers and HRDs in political cases (as outlined in detail in section 3.1.4(c) above). Lawyers in Cambodia are closely associated with their clients, whose views are then imputed to the lawyers by the Government. According to interview subjects, while they used to be labelled 'lawyers of thieves', they are now known as 'lawyers of the opposition party', making them, by imputation, enemies of the CPP to be treated as such. Since the Government is untouchable, simply filing a complaint against any authority is seen as a hostile transgression to be punished with criminal charges of defamation or incitement. This is the RGC's conception of the rule of law, which amounts to the preservation of its own brand of law and order.¹⁵³

Another major issue limiting lawyers' ability to effectively implement their knowledge and skills in the service of those in need, is the lack of any meaningful support from the BAKC which, despite engaging in some potentially useful training programs, is closely linked to the CPP and is in no way independent. Many lawyers simply do not trust it, and with good reason. Like nearly all RGC institutions, it is both corrupt and beholden to political pressure from the CPP. In any case, the Bar is hobbled by a lack of funding, which barely covers its own administrative costs and provides little else in the way of assistance to pro bono lawyers. Lawyers are generally unimpressed with its efforts.

While the BAKC dedicates a small portion of its already meagre budget to direct legal aid support, the bulk of legal aid cases in Cambodia are handled by private lawyers acting in a pro bono capacity and a handful of privately-funded NGOs dedicated to providing what little assistance they can in the face of increasing donor fatigue. The Cambodia chapter of International Bridges to Justice (IBJ), one

¹⁵² Niem Chheng and Andrew Nachemson, 'Ministry to undertake its own study of courts', *Phnom Penh Post*, 15 May 2017.

¹⁵³ ICJ meetings with Cambodia lawyers.

of the largest providers (and in many places the only one), has faced a significant reduction in staff in recent years due to dwindling donor funds. It now employs only seven lawyers (along with limited support staff) in six defence resource centres around the country. As a result, many people end up in court with no lawyer. IBJ lawyers attempt to meet clients as soon as they are arrested, if possible, to prevent torture or other ill-treatment. They also seek to challenge the admissibility of forced confessions in court, with varying degrees of success. IBJ handles roughly 2,000 cases per year. They are well known around the country thanks to their community and prisoner legal awareness programs and hotlines. At times, IBJ lawyers are even contacted by the police or appointed by the courts (without payment). Other NGOs also refer cases. Given all of these difficulties, there is a very limited commitment of lawyers to work on such cases. Due to the lack of an overall legal aid plan, donors are reluctant to provide funding. Other providers have either collapsed (CDP), are on the verge of collapse and focus their limited resources to specialized areas like trafficking (LAC), or focus on high-profile cases or human rights defenders only (CCHR, ADHOC, LICADHO). There is some coordination among the groups and certain pro bono firms also provide assistance.¹⁵⁴

One lawyer reported that pleading with judges on humanitarian grounds – during conversations at ‘coffee time’ – can be successful in low-level cases. He acknowledged that, while not a rule of law approach, to the extent it achieves results for his clients, it is an avenue he feels bound to pursue. The same lawyer emphasized that he attempts to cite international law in all of his cases.

3 Accountability of perpetrators of gross human rights violations

3.1 International law and standards on accountability

With respect to all human rights, whether those applicable to a State under customary international law, or those taken up through party status to international and/or regional human rights instruments, States have both negative and positive obligations: negative duties *not* to interfere with the legitimate enjoyment of rights (e.g. to respect the non-derogable right of all persons not to be arbitrarily deprived of life); and positive duties to protect rights from interference by others (e.g. to take legislative, administrative, judicial, educative and other necessary measures to guarantee the enjoyment of the right to life by all persons within the State’s jurisdiction). The latter positive duty to protect includes the requirement to criminalize acts that constitute gross human rights violations (such as torture and ill-treatment, extrajudicial killings, enforced disappearance and sexual violence) in order to ensure that perpetrators are held to account.

A specific feature of the duty to protect is the obligation to investigate, prosecute and punish all acts that amount to gross violations of human rights. Principle 19 of the UN Updated Set of Principles for the Protection of Human Rights through Action to Combat Impunity in this regard provides that: “States shall undertake *prompt, thorough, independent and impartial investigations* of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are *prosecuted, tried and duly punished*” (emphasis added).¹⁵⁵ In the transitional justice setting it is important to recall that, while truth commissions or similar mechanisms are an important aspect of the right to truth (as an element of

¹⁵⁴ ICJ meetings with Cambodian lawyers and NGO staff.

¹⁵⁵ Updated Set of Principles for the Protection of Human Rights through Action to Combat Impunity, UN Doc E/CN.4/2005/102/add.1 (2005).

reparation for victims), they must be used in combination with the investigation of facts undertaken with a view to prosecuting those responsible for gross violations of human rights.¹⁵⁶

The duty to investigate and hold perpetrators to account requires that investigations be undertaken by independent and impartial investigating authorities: independent of those suspected of being involved, including of any institutions impugned; and impartial, acting without preconceptions, bias or discrimination.¹⁵⁷ For example, investigations into allegations made against security and military forces should be undertaken by an independent commission of inquiry, comprised of members that are independent of any institution, agency or person that may be the subject of investigation.¹⁵⁸ Furthermore, such investigations must be thorough and effective. This requires adequate capacity and resources to be provided to investigating authorities. In the context of extrajudicial killings, and applicable also to other investigations into gross violations of human rights, the revised Minnesota Protocol sets out various recommendations on the practical implications of the need for thorough and effective investigations.¹⁵⁹ The Updated Principles also recall that investigations must be prompt, reflecting the requirement that the duty to investigate is triggered as soon as authorities become aware of allegations of gross human rights violations, regardless of whether a formal complaint has been made.¹⁶⁰

Where prompt, thorough, independent and impartial investigations conclude that there is a prima facie case that an offence(s) constituting gross human rights violations has been committed, several consequences follow. Alleged perpetrators must be made subject to prosecution, involving all persons allegedly responsible, including superiors, by proceedings that adhere with international fair trial standards.¹⁶¹ In the context of unlawful killings, the Human Rights Committee has clarified that this means that: "Immunities and amnesties provided to perpetrators of intentional killings and to their superiors, leading to de facto impunity, are, as a rule, incompatible with the duty to respect and ensure the right to life, and to provide victims with an effective remedy".¹⁶² Where a prosecution leads to conviction, the punishment imposed must be commensurate with the seriousness of the crime.¹⁶³

Ensuring the accountability of perpetrators of gross human rights violations also forms key elements of the right of victims to effective remedies and reparation. In the case of extrajudicial killings, for example, the Human Rights Committee has explained that the duty to investigate, prosecute and punish arises from the obligation of States parties to the ICCPR to provide an effective remedy to victims

¹⁵⁶ See, for example, *La Cantuta v Peru*, Inter-American Court of Human Rights, Judgment of 29 November 2006, Series C, No. 162, para 224.

¹⁵⁷ In the context of the investigation of extrajudicial killings, for example, see ICJ, *Practitioners Guide No 9: Enforced Disappearance and Extrajudicial Execution—Investigation and Sanction* (2015), pp. 134-138. See also *Practitioners Guide No 7*, above note 131, especially Chapter V.

¹⁵⁸ For example, see: Human Rights Committee, *Concluding Observations: Sri Lanka*, UN Doc CCPR/C/79/Add.56 (1995), para 15; and *Revised UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* (United Nations, 2016) – Minnesota Protocol, Principle 11.

¹⁵⁹ Minnesota Protocol, *ibid*, Principles 12-17. See also: ICJ *Practitioners Guides No 7 and 9*, above note 157; and the UN Manual on the Effective Investigation and Documentation of torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) (United Nations, 2004).

¹⁶⁰ See, for example, ICJ *Practitioners Guide No 7*, above note 157, p. 135.

¹⁶¹ See, for example: ICJ *Practitioners Guide No 7*, above note 157, especially Chapter VI; UN Human Rights Committee, 'Draft General Comment No 36. Article 6: Right to life', UN Doc CCPR/C/GC/R.36/Rev.2 (2015), para 29; Minnesota Protocol, above note 158, para 1.

¹⁶² Draft General Comment 36, *ibid*, para 29.

¹⁶³ See, for example, ICJ *Practitioners Guide No 7*, above note 157, pp. 217-222.

of human rights violations, set out in Article 2(3) of the ICCPR, when read in conjunction with the right to life under Article 6.¹⁶⁴ Reparation includes the right to satisfaction and guarantees of non-repetition. In the context of accountability, satisfaction incorporates two key elements: 'justice' through prompt, thorough, independent and impartial investigations that lead to judicial and administrative sanctions against perpetrators; and truth, involving the verification and full and public disclosure of facts.¹⁶⁵ Guarantees of non-repetition are likewise geared towards the combating of impunity and adopting measures to prevent the commission of further acts amounting to gross violations of human rights.¹⁶⁶ Further elements of the right of victims to effective remedies and reparation are considered in part 3.3 of this report.

3.2 Lack of accountability and a prevalent culture of impunity

As discussed in detail in section 3.1.3 above, the political and human rights history of modern Cambodia is largely a story of impunity. Generally speaking, perpetrators of gross human rights violations are held to account if, and only if, the RGC decides it is expedient to do so – which is to say, almost never, as it is almost always the case that the perpetrators of such crimes are members of, or somehow linked to, the Government itself. In every case, the motivation appears to be political. The lack of accountability in Cambodia, in both the positive and negative senses discussed in the preceding section, is inextricably linked to the Government's control of the judiciary. While superficial *de jure* provisions criminalizing gross violations of human rights are in place, the RGC treats its obligation to investigate and punish them as a matter of political choice rather than legal necessity.

A very recent case in this regard – one that is emblematic of the RGC's self-serving use of the courts to ensure impunity – concerns the assassination of prominent political commentator Kem Ley, who was 'killed against a backdrop of escalating attacks on civil society and the political opposition' and 'Cambodia's well-documented history of killings which are alleged to have had state involvement'.¹⁶⁷

On 10 July 2016, Kem Ley was shot and killed outside a petrol station in central Phnom Penh. Police quickly arrested Oeuth Ang as he fled the scene. According to police, the suspect 'later "confessed" to the killing claiming his motive was an unpaid debt of \$3000 Kem Ley owed him, a claim disputed by Kem Ley's widow and Oeuth Ang's wife'.¹⁶⁸ The ensuing half-day trial, closely monitored by ICJ, revealed an investigation 'deficient in several important respects'.¹⁶⁹ These deficiencies were not adequately addressed at trial, chief among them: the accused's implausible explanation regarding the loan; the apparent failure to interview a witness named by the accused to corroborate his story; the production in court of footage from only one of several CCTV cameras likely to have captured the event; the apparent failure of investigators to attempt to identify a man seen

¹⁶⁴ Draft General Comment 36, above note 161, para 29. See also ICJ, *Practitioners Guide No 2: The right to a remedy and to reparation for gross human rights violations* (2007), chapters IV and VIII.

¹⁶⁵ See, for example: Basic Principles and Guidelines on the Right to a Remedy and Reparation, above note 131, paras 3(b), 4 and 22(b) and (f); and ICJ Practitioners Guide No 2, above note 164, chapters V and VII(IV).

¹⁶⁶ See, for example: Draft General Comment 36, above note 161, para 29; Basic Principles and Guidelines on the Right to a Remedy and Reparation, above note 131, para 23; and ICJ Practitioners Guide No 2, above note 164, chapter VI.

¹⁶⁷ ICJ Press Release, 'Cambodia: Kem Ley's killing demands immediate credible and impartial investigation', 13 July 2016.

¹⁶⁸ *Ibid.*

¹⁶⁹ ICJ et al, 'Cambodia: Significant Questions Remain After Guilty Verdict in Kem Ley Trial', 23 March 2017; see also Amnesty International, Report 2016/17 – Cambodia.

sitting with Kem Ley prior to the shooting; the apparent failure of investigators to attempt to identify an individual the accused claimed fired a weapon at him as he was fleeing the scene of the crime; the apparent failure of investigators to locate and interview the alleged seller of the murder weapon; the apparent failure of investigators to look into the accused's background and possible ties to the military; and the apparent failure to account for the identity of individuals, one of them apparently armed, seen in video footage pursuing the accused as he fled the crime scene.¹⁷⁰

Even the defendant's proffered identity – 'Chuob Samlab', which translates into English as 'Meet to Kill' – raised troubling questions.¹⁷¹ As Amnesty International put it: 'The proceedings may have established that Oeuth Ang pulled the trigger, but the investigation does not seem to have considered whether someone else loaded the gun.'¹⁷² Human Rights Watch was equally critical: 'The authorities' failure to investigate so many clear gaps in the defendant's story and the court's unwillingness to examine them suggest that a quick conviction rather than uncovering all involved was the main concern'.¹⁷³

On 23 March 2017, the day Oeuth Ang's guilty verdict and life sentence were announced, 'it was reported in the media that... [his] lawyer told journalists the court had created a new case-file to investigate two men named Pou Lis and Chak who may be relevant to the killing'.¹⁷⁴ However, this 'has yet to be officially confirmed and no further details of the identity of the men or how they may be related to the case has been made available'.¹⁷⁵ Moreover, the murder, 'came in the aftermath of a scathing report into the riches of... Hun Sen's family, and as Kem Ley was in the process of releasing a series of fables about Cambodian political life'.¹⁷⁶ Sam Rainsy is convinced that the release of as-yet-unseen video footage could point to State involvement.¹⁷⁷ After suggesting this on Facebook, Hun Sen filed a defamation suit against him.¹⁷⁸ Additionally, an opposition senator 'was convicted in her absence of defamation and incitement for allegedly accusing Hun Sen of ordering the killing'.¹⁷⁹ According to Human Rights Watch, there had been an early attempt to implicate opposition officials in the killing.¹⁸⁰

As the ICJ has repeatedly pointed out, pursuant to the principles outlined in the preceding section: 'Cambodia has a duty to promptly, independently, impartially, and effectively investigate all deaths suspected of being unlawful. Investigations must seek to identify *not only direct perpetrators but also all others who may have been responsible for criminal conduct in connection with the death*' (emphasis added).¹⁸¹ While the investigation into Kem Ley's killing may have been prompt in certain respects, it cannot credibly be said to have been independent, impartial or effective given the context in which it was committed, the conduct of the investigation, and the outcome of the trial.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid (quoting Champa Patel, Amnesty International Director for Southeast Asia and the Pacific).

¹⁷³ Ibid (quoting Phil Robertson, Deputy Asia Director at Human Rights Watch).

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ Ouch Sony and George Wright, 'Pilgrims Flock to Kem Ley's Childhood Home', *Cambodia Daily*, 21 April 2017.

¹⁷⁷ Andrew Nachemson, 'Cambodia's politics play out on social media', *Phnom Penh Post*, 9 May 2017.

¹⁷⁸ Amnesty International, Report 2016/17 – Cambodia.

¹⁷⁹ Ibid.

¹⁸⁰ Human Rights Watch, World Report 2017, above note 31.

¹⁸¹ ICJ et al, 'Cambodia: Significant Questions Remain After Guilty Verdict in Kem Ley Trial', 23 March 2017.

Additionally, at the time of writing, no one has yet been 'held to account for a range of violations by security forces in the course of a violent crackdown on freedom of peaceful assembly over 2013 and 2014, including at least six killings resulting from the unnecessary or excessive use of force during that period' as well as scores of injuries and the enforced disappearance of a 16-year-old demonstrator.¹⁸² A renewed investigation ordered in 2013 into the fatal shooting of trade union leader Chea Vichea by unidentified perpetrators in January 2004 has made no progress.¹⁸³ In May 2016, the trial of three members of Hun Sen's personal bodyguard unit 'for a brutal October 2015 assault against two opposition National Assembly members resulted in partly suspended prison sentences'.¹⁸⁴ While two of the attackers were expected to serve one year sentences, according to Human Rights Watch: all of the defendants appear to have been tried and convicted in order to 'avoid following up on evidence that higher-ups were involved in the crime, which had all the hallmarks of being government-orchestrated'.¹⁸⁵

Notably, all of these cases were raised in discussions with Cambodian lawyers as examples of the fact that accountability depends on the profile of the case.

3.3 Limited accountability for Khmer-Rouge era crimes

After ten years of operation, the ECCC has convicted only three people: two senior leaders and the regime's 'chief jailer'.¹⁸⁶ Moreover, since its inception in 2006, the tribunal has been accused of succumbing to political interference – most credibly with respect to the ongoing investigations into former mid-level Khmer Rouge leaders.¹⁸⁷ Recently, a controversial case against one such cadre, Im Chaem, 'accused of overseeing the killing of tens of thousands of people as a Khmer Rouge official in northwestern Cambodia in 1977 and 1978' was dismissed for lack of sufficient evidence on which to proceed.¹⁸⁸ For some, the dropping of crimes against humanity charges (including mass murder, extermination and enslavement) raised 'questions about whether [court officials] had yielded to pressure from the Cambodian government, which opposed the prosecution'.¹⁸⁹

A recently leaked document revealed that the tribunal's co-investigating judges are considering a 'permanent stay on proceedings' due to a 'lack of funding' in the remaining three cases, a claim that some analysts 'suspect could be masking government pressure'.¹⁹⁰ For its part, the RGC 'has made no secret of its preference that the tribunal conclude with the current Case 002', now in its final stages.¹⁹¹ The leak has reignited an old and ongoing debate. As has been typical of such flare-ups at the ECCC, conspiracy theories and overheated rhetoric are abundant.¹⁹² Some commentators suggest that dismissal of the cases 'could damage the court's legacy' and an anonymous court source claimed the budgetary concerns are 'exaggerated'.¹⁹³ Defence lawyers appeared unsurprised, while victims expressed unease.¹⁹⁴ Responding to the leaked document, the tribunal 'confirmed

¹⁸² Amnesty International, Report 2015/16 – Cambodia.

¹⁸³ Amnesty International, Report 2016/17 – Cambodia.

¹⁸⁴ Human Rights Watch, World Report 2017, above note 31.

¹⁸⁵ Ibid.

¹⁸⁶ Julia Wallace, 'The bucolic life of Grandma Chaem', *New York Times*, 28 February 2017.

¹⁸⁷ Human Rights Watch, World Report 2017, above note 31.

¹⁸⁸ Julia Wallace, above note 186.

¹⁸⁹ Ibid.

¹⁹⁰ Andrew Nachemson and Erin Handley, 'Staying Khmer Rouge tribunal cases mulled', *Phnom Penh Post*, 8 May 2017.

¹⁹¹ Ibid.

¹⁹² Ibid.

¹⁹³ Ibid.

¹⁹⁴ Ibid; Erin Handley and Kong Meta, 'Khmer Rouge tribunal judges have 'deep concerns' about future', *Phnom Penh Post*, 9 May 2017.

there were “deep concerns” over the future of ongoing investigations’.¹⁹⁵ For their part, foreign donors quickly ‘reaffirmed their continued support and hopes for the court’s success’.¹⁹⁶

Without a doubt, the convictions of those considered most responsible for Khmer-Rouge era atrocities is a singular achievement in terms of Cambodia’s positive duty to hold perpetrators to account. However, this does not say much about the RGC’s larger commitment to justice and accountability. According to discussions with lawyers, judges and others, the jurisprudence of the ECCC is effectively banned from the national court system. As one of the lawyers put it, the two systems are like ‘oil and water’; and the legal and procedural lessons learned from the tribunal are not being applied at the domestic level. While lawyers and prosecutors attempt to introduce ECCC case law, judges largely dismiss it as inapplicable. That said, the MOJ and individual judges appear to be making attempts to import and replicate the best practices of the tribunal’s court management system. Whether such efforts will have an impact on accountability in Cambodia remains to be seen.

In general, the tribunal is seen as a remote institution with little impact on the domestic courts, as well as a place where Cambodian lawyers are able to enrich themselves. Perhaps the most cynical refrain is this: rather than the ECCC somehow elevating the national justice system to a level of international compliance, as envisaged by the UN and donors, Cambodian ‘judicial politics’ have instead degraded the tribunal.¹⁹⁷

4 Access to effective remedies and reparation for victims of gross human rights violations

4.1 International law and standards on remedies and reparation

Every person who is a victim of a human rights violation, whether amounting to a ‘gross’ human rights violation or otherwise, has the right to effective remedies and reparation. Broadly speaking, this entails the right of victims to defend their rights, to obtain recognition of a violation(s), to cessation of any continuing violation(s) and to adequate reparation. It requires that rights-holders have equal and effective access to justice mechanisms, including through access to judicial bodies that have the competence to adjudicate and provide binding decisions as to the remedies and reparation to be granted to victims.¹⁹⁸ It should be recalled that, where appropriate, such as in cases of the unlawful killing of a person, a ‘victim’ includes “the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization”.¹⁹⁹

The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation recall that adequate, effective and prompt reparation is intended to promote justice by redressing gross human rights violations, requiring reparation to be proportionate to the gravity of the violation(s) and the harm suffered.²⁰⁰ Full and

¹⁹⁵ George Wright, ‘Khmer Rouge Tribunal Judges Confirm Remaining Cases Endangered’, *Cambodia Daily*, 9 May 2017.

¹⁹⁶ Andrew Nachemson and Erin Handley, ‘Donors still backing Khmer Rouge tribunal’, *Phnom Penh Post*, 15 May 2017.

¹⁹⁷ ICJ meeting with NGO staff.

¹⁹⁸ See, for example: UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, above note 131, paras 3 and 11; and ICJ Practitioners Guide No 2, above note 164, especially chapter III.

¹⁹⁹ UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, above note 131, para 8.

²⁰⁰ *Ibid*, para 15.

effective reparation entails:²⁰¹

- Restitution, aimed at re-establishing, to the extent possible, a victim's situation as it was before the violation was committed;
- Compensation, calling for fair and adequate monetary compensation (including for medical and rehabilitative expenses, pecuniary and non-pecuniary damage resulting from physical and mental harm caused, loss of earnings and earning potential and for lost opportunities such as employment and education);
- Rehabilitation, aimed at enabling the maximum possible self-sufficiency and functioning of the victim, involving restoring previous functions affected by the violation and the acquisition of new skills that may be required as a result of the changed circumstances of the victim resulting from the violation;
- Satisfaction, including through the cessation of any continuing violation(s), justice in the form of the holding to account of the perpetrator(s) of the violation, and truth in the form, amongst other things, of the verification and full and public disclosure of facts, the search, recovery and identification of direct victims and public apology and commemorations; and
- Guarantees of non-repetition, geared towards the combating of impunity and adoption of measures to prevent the commission of further acts amounting to gross violations of human rights, including through monitoring of State institutions (including civilian oversight of military and security forces), training of law enforcement and other officials, the adoption and dissemination of codes of conduct for public officials, law, policy and institutional reform, the protection of lawyers and HRDs representing the interests and rights of victims, and the strengthening of the independence and effectiveness of judicial mechanisms.

4.2 The justice system as an impediment to effective remedies and reparation

With very little in the way of accountability comes even less in the way of remedy and reparation. The underlying problem is the same: a refusal by the RGC to allow the Cambodian judicial system to function in a manner consistent with the Constitution and international standards. Matters of restitution, compensation, rehabilitation and satisfaction are not freely available from the courts – although, with the proper connections and resources, such luxuries can be 'purchased'. Otherwise, remedies and reparations are either negotiated in private or simply not pursued. As noted, most sensible Cambodians avoid the courts if at all possible. Regarding guarantees of non-repetition, it will be clear from the facts outlined above that Cambodian institutions are not geared towards the combating of impunity and adoption of measures to prevent the commission of further acts amounting to gross violations of human rights. To the contrary, justice institutions are largely (and perversely) used to ensure impunity.

An obvious exception to the general rule is enhanced victim participation at the ECCC, which has been viewed by many as one of the tribunal's few success stories.²⁰² Victims of Khmer Rouge era crimes, many of whom have participated in tribunal proceedings as civil parties, are statutorily entitled to seek 'collective and moral reparations'. However, such reparations are not funded by the ECCC. Rather, the Victim Support Section – in conjunction with lawyers for the civil parties – must endeavour to secure sufficient external funding for each proposed

²⁰¹ See, for example: UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, above note 131, paras 15-23; and ICJ Practitioners Guide No 2, above note 164, especially chapters V, VI and VII.

²⁰² <https://www.eccc.gov.kh/en/victims-support> . ICJ meetings with lawyers, NGO staff, and ECCC officials.

project. More than twenty such 'symbolic' programs have been proposed, and funding is currently being sought.²⁰³ Again, whether such efforts will have any impact on the provision of remedies and reparations within Cambodia's national court system is an open question.

As noted above, with regard to allegations of 'widespread and systematic' land grabbing by the country's 'ruling elite', a communication has been filed at the ICC on behalf of several individual Cambodian victims. However, the case is unlikely to proceed anytime soon, if at all. The Government has been openly contemptuous of the effort.

One completely novel alternative dispute mechanism is an ongoing mediation between an international company and affected communities regarding a land dispute in Mondulkiri Province. IMG, the local NGO mentioned above, has secured some funding from a single donor, but the project is not yet fully sustainable. The communities are in need of training in negotiating skills. There is some support from local authorities at the commune and district levels, but – as mediation is a completely new concept in the country – it is uncertain whether the Government will actually endorse the process and put mechanisms in place to allow for the enforcement of any outcome. IMG sees the current mediation as a test case and, depending on the results, is hoping to expand its activities.²⁰⁴

5 Post-report update

Since the preparation of this report, there has been a rapid deterioration in the human rights situation in Cambodia, with actions being taken by the RGC to swiftly and severely clamp down on democratic space, which has an impact on redress and accountability within the country. The following developments are accurate as of 11 October 2017.

5.1 Opposition party targeting ahead of elections

On 3 August 2017, Nhek Bun Chhay, President of the Khmer National United Party, was arrested at his home. He was charged on 6 August with conspiracy to produce and import drugs relating to a case from 2007.²⁰⁵ Nhek Bun Chhay remains in pre-trial detention.²⁰⁶

On 13 August 2017, Sourn Serey Ratha, President of the Khmer Power Party, was arrested for a Facebook post in which he purportedly condemned the deployment of Cambodian troops at the Laotian border. On 25 August, he was sentenced to five years in prison and ordered to pay a fine of \$2,500 USD.²⁰⁷

On 29 August 2017, the Ministry of Interior (MoI) filed a complaint before the Supreme Court seeking dissolution of nine political parties for allegedly not submitting their annual reports to the Ministry in violation of Article 31 of the Law on Political Parties. The nine parties were the Khmer People Party, the Khmer Citizens Party, the Khmer Society Party, the Sangkum Thmey Party, the Khmer Nationalism Party, the Neang Neak Neary Khmer Party, the Freedom Light Party, the Woman Rescue Cambodia Party and the Liberal Unification Party. In a letter to the Supreme Court dated 29 August, the Minister of Interior stated that the Phnom Penh Municipal Court had already issued temporary suspension orders for

²⁰³ ECCC Press Release, 'Fundraising Meeting on Case 002/02 Reparations', 3 April 2017.

²⁰⁴ ICJ meeting with IMG. Note that another NGO, Equitable Cambodia, is working in this area: see <http://equitablecambodia.org/website/>.

²⁰⁵ Mech Dara, 'KNUP leader Nhek Bun Chhay charged over 2007 drugs case', *Phnom Penh Post*, 7 August 2017.

²⁰⁶ ICJ meeting with NGO staff.

²⁰⁷ Reuters, 'Cambodian court jails critic over comment on troop deployment', *Reuters News Agency*, 25 August 2017.

four of the nine parties. In the same letter, 11 other parties were warned that they had between 15 to 90 days to present relevant documents to the MoI in compliance with the Law on Political Parties or face legal action if they failed to do so.²⁰⁸

On 4 September 2017, Huon Reach Chamroeun, President of the Khmer Economic Development Party was convicted and fined 4 million Riel, approximately \$980 USD, by the Phnom Penh Municipal Court for failing to provide the MoI with his party's activity reports in 2015, in contravention of the Lpp.²⁰⁹

Early in the morning of 3 September 2017, CNRP leader Kem Sokha was arrested in a raid at his home and taken away by more than 100 policemen. Later that day, he was reportedly transferred to Correction Centre 3, a prison near the Vietnamese border.²¹⁰ The RGC claimed that Kem Sokha's parliamentary immunity did not apply, nor did the arrest require a warrant, as it was "in flagrante delicto" for the charge of treason against him. As evidence, the RGC referred to a 2013 video clip broadcasted by the Australian Cambodian Broadcasting Network of a speech by Kem Sokha in which he stated that he had received assistance from individuals from the United States in planning his political career.²¹¹

On 5 September 2017, the Phnom Penh Municipal Court formally charged Kem Sokha under Article 443 of the Cambodian Penal Code for alleged 'collusion' with foreign actors to "cause chaos" in Cambodia, otherwise known as treason.²¹² If convicted, Kem Sokha will face between 15 to 30 years' imprisonment.²¹³ On 11 and 18 September, CNRP politicians were barred from visiting him in prison.²¹⁴ On 26 September, the Court of Appeal denied bail to Kem Sokha in absentia. Kem Sokha was barred from attending his hearing by the presiding judge, who cited 'security concerns'. In protest, his defence lawyers walked out of the courtroom.²¹⁵

On 4 and 5 October 2017 respectively, the Cambodian Youth Party and the Funcinpec party filed official complaints with the MoI to dissolve the CNRP for Kem Sokha's alleged involvement in acts of "conspiracy with foreigners for the purpose of a colour revolution". By 6 October, the MoI had filed requests to the Supreme Court to seek the dissolution of the CNRP.²¹⁶

As of October 2017, approximately 20 political prisoners, not including Kem Sokha, remain in detention. This number includes two opposition party leaders, an opposition senator and a member of the National Assembly. Fourteen other persons aligned with opposition parties are currently serving seven to twenty year prison sentences for convictions on alleged insurrection offences.²¹⁷

²⁰⁸ Mom Sophon, 'Nine parties face closure', *Khmer Times*, 30 August 2017.

²⁰⁹ Buth Reaksmey Kongkea, 'Party president fined over missing reports', *Khmer Times*, 5 September 2017.

²¹⁰ Richard Paddock and Julia Wallace, 'Cambodia Arrests Opposition Leader, Accusing Him of Treason', *The New York Times*, 2 September 2017.

²¹¹ Phnom Penh Post, 'Sokha arrested for 'treason', is accused of colluding with US to topple the government', *Phnom Penh Post*, 4 September 2017.

²¹² Al Jazeera, 'Cambodia politician Kem Sokha charged with treason', *Al Jazeera*, 5 September 2017.

²¹³ Pichayada Promchertchoo, 'Cambodia tells US to back off after charging opposition leader', *Channel News Asia*, 6 September 2017.

²¹⁴ Richard Finney, 'Cambodian Opposition Politicians Barred From Visiting Kem Sokha in Jail', *Radio Free Asia*, 18 September 2017.

²¹⁵ Khuon Narim, 'Sokha absent as bail denied', *Khmer Times*, 27 September 2017.

²¹⁶ Mech Dara and Erin Handley, 'Breaking: Interior Ministry files complaint to dissolve CNRP', *Phnom Penh Post*, 6 October 2017.

²¹⁷ ICJ meeting with NGO staff.

As of 11 October 2017, approximately 24 of CNRP's 55 Members of Parliament have reportedly fled the country, including deputy leader Mu Sochua who revealed to journalists that she left the country after she had been warned that she could also be arrested for treason.²¹⁸

5.2 The 'weaponization' of legislation

On 4 July 2017, the MoI sent letters to the Committee for Free and Fair Elections (COMFREL) and the Neutral and Impartial Committee for Free and Fair Elections (NICFEC), members of the NGO election consortium, 'Situation Room', demanding that they stop election monitoring activities as the consortium "(did) not reflect the neutrality" mandated by the LANGO. This occurred after Hun Sen had launched an investigation into the 'Situation Room' for alleged violation of registration requirements under the LANGO.²¹⁹ On 22 August 2017, Hun Sen declared that NGOs would not be allowed to reconvene the 'Situation Room' for monitoring of the national elections in 2018.²²⁰

On 10 July 2017, the National Assembly passed a second round of amendments to the Law on Political Parties banning parties from "using the voice, image, written documents or activities of a convicted criminal... for the interests of the party", and from "accepting or conspiring with a convicted criminal to do activities in the interests of the party", which had the effect of banning Sam Rainsy from the political arena and forbidding the CNRP from using his image in its campaign.²²¹

On 23 August 2017, the Ministry of Foreign Affairs and International Cooperation (MFAIC) ordered the closure of the US-funded National Democratic Institute (NDI) and the expulsion of its international staff members from Cambodia within seven days of the order. The order was based on NDI's alleged failure to register with the MFAIC in contravention of the LANGO,²²² despite NDI's position that it had submitted all necessary registration documentation.²²³

On 28 September 2017, the MoI ordered the temporary suspension of Equitable Cambodia (EC), a land rights NGO, for "thirty working days" with immediate effect for alleged non-compliance with the Ministry's by-laws and Articles 10 and 25 of the LANGO. The stated provisions of the LANGO pertain to registration requirements and the obligation to submit activity and financial reports to the MoI.²²⁴

On 10 October 2017, legislators from the CPP submitted "urgent" draft amendments to four laws which would effectively redistribute the parliamentary seats of the CNRP to other political parties in the event of CNRP's dissolution.²²⁵ Under the formula contained in the amendments, Funcinpec, who filed a dissolution complaint against the CNRP, would stand to gain most of the CNRP's

²¹⁸ The Nation, 'Cambodian democracy has reached tipping point: The Nation', *The Straits Times*, 11 October 2017.

²¹⁹ Ben Sokhean and Ben Paviour, 'Interior Ministry Issues Stop-Order to Situation Room NGOs', Phnom Penh Post, *The Cambodia Daily*, 5 July 2017.

²²⁰ ICJ meeting with NGO staff.

²²¹ Meas Sokchea and Erin Handley, 'Breaking: Assembly passes Party Law changes targeting Rainsy', *Phnom Penh Post*, 10 July 2017.

²²² George Wright, 'NDI Ordered to Halt Operations, Foreign Staff Face Expulsion', *The Cambodia Daily*, 23 August 2017.

²²³ NDI, 'Statement on Cambodian Government's Decision to Shut Down NDI's Office in Cambodia', 23 August 2017.

²²⁴ Ben Sokhean and Kong Meta, 'Land rights NGO suspended', *Phnom Penh Post*, 29 September 2017.

²²⁵ Niem Chheng, Ananth Baliga and Erin Handley, 'CPP rewrites rules again, with amendments planned to political laws to redistribute CNRP seats', *Phnom Penh Post*, 11 October 2017.

National Assembly seats. The amendments pertain to the Law on the Election of the Members of the National Assembly, the Law on the Election of the Members of the Senate, the Law on the Election of Provincial, Municipal, and District Councilors, and the Law on the Election of Commune Councilors.²²⁶ It has been reported that the Assembly's permanent committee would review the draft amendments on 12 October.²²⁷

5.3 Prosecutorial and judicial harassment of HRDs

On 8 September 2017, Cambodia Youth Party leader, Pich Sros, filed a complaint against Moeun Tola, Executive Director of labour rights NGO Centre for the Alliance of Labour and Human Rights (CENTRAL), Pa Ngoun Teang, Executive Director of NGO the Cambodian Centre for Independent Media (CCIM) and prominent activist monk Venerable But Buntenh, head of the Independent Monk Network for Social Justice, for alleged embezzlement of funds in relation to the funeral of the assassinated political analyst Kem Ley.²²⁸ In mid-2016, all three men had been reported to have faced threats and intimidation for organizing the funeral.²²⁹

On 15 September 2017, Mother Nature, an environmental campaign group, was pressurized to de-register following harassment of its directors by the Cambodian authorities.²³⁰ It had released information a week before which alluded to corruption regarding sand exports from Cambodia to Taiwan. That same week, two of the group's activists, Doem Kundy and Hun Vannak, were arrested on the basis of a complaint made by CPP Senator and prominent tycoon Ly Yong Phat for filming activities of suspected illegal sand dredging.²³¹

5.4 Targeting journalists and other limitations

On 4 August 2017, the Cambodia Daily, an independent English-language newspaper, was presented with a bill for unpaid taxes amounting to \$6.3 million USD and ordered to pay the same within a month.²³² The figure was produced despite the absence of any formal audit and despite the newspaper's assertion that they had complied with tax regulations.²³³ On 4 September, the newspaper ceased operations after it was unable to pay the amount.²³⁴ On the same day, the General Department of Taxation (GDT) barred the newspaper's owners from leaving the country until the alleged debt had been paid.²³⁵ On 5 September, the GDT submitted a complaint to the Phnom Penh Municipal Court accusing the newspaper's directors and its founder, Bernard Krisher, of the criminal offences of

²²⁶ Ibid; Joshua Lipes, 'Cambodia's Supreme Court Orders CNRP to Respond to Call For Dissolution', *Radio Free Asia*, 10 October 2017.

²²⁷ Ibid.

²²⁸ Andrew Nachemson and Mech Dara, 'Party leader files suit over misuse of funds', *Phnom Penh Post*, 11 September 2017.

²²⁹ Lay Samean and Shaun Turton, 'Kem Ley funeral committee dogged by 'threats'', *Phnom Penh Post*, 1 August 2016.

²³⁰ Kann Vicheika, 'Groundbreaking Environmental Campaign Group Closed as Activists Arrested', *Voice of America*, 20 September 2017; Observatory for the Protection of Human Rights Defenders, 'Cambodia: Pre-trial detention of Messrs. Hun Vannak and Doem Kundy, two members of 'Mother Nature Cambodia'', 15 September 2017.

²³¹ Ibid.

²³² The Phnom Penh Post, 'Daily trio face tax department charges', *The Nation*, 7 September 2017.

²³³ Ben Paviour, 'Tax Head Threatens Daily With September 4 Closure', *The Cambodia Daily*, 21 August 2017.

²³⁴ Cambodia Daily, 'Cambodia Daily Announces Immediate Closure Amid Threats', *Cambodia Daily*, 4 September 2017.

²³⁵ Philip Heijmans, 'Perilous times' as Cambodia Daily shuts after 24 years', *Al Jazeera*, 4 September 2017.

tax evasion and obstruction of tax implementation. One of the newspaper's directors, Deborah Krisher-Steele, was further accused of publicly defaming the GDT for her expression of opinion that the closure of the newspaper could be politically motivated.²³⁶

During the week of 21 August 2017, the RGC banned broadcasts by US-funded Voice of America (VOA) and Radio Free Asia (RFA) while broadcasts by the Voice of Democracy (VOD) were successively removed from the airwaves through the week.²³⁷ On 23 August, the Ministry of Information (MoIn) ordered the suspension of independent radio stations Women's Media Center of Cambodia (WMC) and opposition-aligned Moha Nokor for allegedly violating their licence agreements by broadcasting news from RFA and VOA.²³⁸ By 24 August 2017, the MoIn similarly ordered seven other media outlets broadcasting from 11 radio stations to cease operations.²³⁹ By the end of August 2017, the Ministry had effectively shut down 32 broadcast frequencies across 20 provinces.²⁴⁰

On 12 September 2017, RFA announced the formal closure of its in-country operations in Cambodia. Notably, in August 2017, the MFAIC had reportedly questioned RFA on its compliance with tax and registration regulations.²⁴¹

5.5 36th Session of UN Human Rights Council

On 29 September 2017, the UN Human Rights Council (HRC) adopted by consensus a resolution on Cambodia which expressed, inter alia, concerns regarding the "recent deterioration of the civil and political environment in Cambodia due to the chilling effects of judicial prosecutions and other actions against members of political parties, civil society and the media".²⁴² The resolution also highlighted the "negative impact" of the LANGO and amendments to the LPP, which it recognized could result in "arbitrary restriction on the activities of political parties".²⁴³

The resolution, which was adopted at the 36th session of the HRC, further extended the mandate of the Special Rapporteur on the situation of human rights in Cambodia by two years and stipulated that the Special Rapporteur report to the HRC at its 39th and 42nd sessions on the implementation of her mandate.²⁴⁴ In its concluding paragraphs, the resolution requested the United Nations Secretary-General to report to the HRC on the work of the Office of the High Commissioner for Human Rights (OHCHR) in Cambodia at its 37th and 42nd sessions, and stated that consideration of the human rights situation in Cambodia would continue at its 42nd session.²⁴⁵ Notably, the 39th and 42nd sessions are due to be held after Cambodia's national elections in 2018.

This resolution fell short of what the ICJ and other organizations had requested to

²³⁶ The Phnom Penh Post, 'Daily trio face tax department charges', *The Nation*, 7 September 2017.

²³⁷ Human Rights Watch, 'Cambodia: Onslaught on Media, Rights Groups', 25 August 2017; George Wright, 'Voice of Democracy Latest Casualty in Attack on Independent Media', *The Cambodia Daily*, 25 August 2017.

²³⁸ Joshua Lipes, 'Cambodia Expels US NGO, Suspends Radio Stations Allowing Government Criticism', *Radio Free Asia*, 23 August 2017.

²³⁹ Mech Dara and Ananth Baliga, 'Government closes 15 radio stations', *Phnom Penh Post*, 25 August 2017.

²⁴⁰ ICJ meeting with NGO staff.

²⁴¹ Ananth Baliga, Mech Dara and Niem Chheng, 'RFA shuts down Cambodia operations amid media crackdown', *Phnom Penh Post*, 12 September 2017.

²⁴² UN Human Rights Council resolution 36/L.21, UN Doc A/HRC/36/L.21 (2017), para 22.

²⁴³ *Ibid*, paras 23-24.

²⁴⁴ *Ibid*, §29.

²⁴⁵ *Ibid*, §30, §31.

be contained in the resolution, which included measures that:²⁴⁶

- i). The UN High Commissioner for Human Rights ('High Commissioner') prepare a report, in consultation with the Special Rapporteur, assessing the human rights situation in Cambodia and identifying specific actions for the RGC and international community to take to ensure free and fair national elections;
- ii). The High Commissioner update the HRC at its 37th and 38th sessions, before the national elections; and
- iii). The HRC hold an Enhanced Interactive Dialogue on relevant issues in Cambodia, including stakeholders such as staff from Cambodia's OHCHR field office, the Special Rapporteur, other relevant UN Special Procedures and members of local and international civil society.

In its statement to the HRC on 27 September 2017, the ICJ emphasized that the RGC's invoking of the principle of the rule of law to narrow down democratic space in Cambodia was erroneous and "had nothing to do with the rule of law", and called for monitoring and action by the international community which had never been so urgently needed in Cambodia since the signing of the Paris Peace Accords in 1991.²⁴⁷

²⁴⁶ ICJ et al, 'Civil society calls on the UN Human Rights Council to address Cambodia's human rights crisis', 8 September 2017.

²⁴⁷ ICJ, 'Cambodia and the Rule of Law: UN Statement', 27 September 2017.

ANNEX: GLOBAL ACCOUNTABILITY BASELINE STUDIES

The aim of this report is to provide a baseline assessment of the situation in Cambodia pertaining to the accountability of perpetrators of gross human rights violations and the access to effective remedies and reparation of victims of such violations; alongside an assessment of the independence and accountability of judges and lawyers and the ability of justice mechanisms and justice actors to provide for accountability and redress. The report is part of the ICJ's Global Redress and Accountability Initiative, currently focused on seven countries (Cambodia, Mozambique, Myanmar, Nepal, Tajikistan, Tunisia and Venezuela) with the aim to combat impunity and promote redress for gross human rights violations. It concentrates on the transformative role of the law, justice mechanisms and justice actors, seeking to achieve greater adherence of national legal and institutional frameworks with international law and standards so as to allow for effective redress and accountability; more independent justice mechanisms capable of dealing with challenges of impunity and access to redress; and judges, lawyers, human rights defenders, victims and their representatives that are better equipped to demand and deliver truth, justice and reparation.

In all regions of the world, perpetrators of gross human rights violations enjoy impunity while victims, especially the most vulnerable and marginalized, remain without effective remedies and reparation. Governments of countries in transition and/or experiencing a wider rule of law crisis often seek to provide impunity for perpetrators of gross violations of human rights, or make no effort to hold them to account, or misuse accountability mechanisms to provide arbitrary, politically partial justice. Yet international law requires perpetrators to be held accountable and victims to be provided with effective remedies and reparation, including truth and guarantees of non-recurrence. This is reinforced by the 2030 Sustainable Development Agenda, which recognizes the need to build peaceful, just and inclusive societies that provide equal access to justice, are based on the rule of law and respect for human rights, and provide for accountability.

Impunity and lack of redress dehumanizes victims and acts as an impediment to the cementing of democratic values and the rule of law. Lack of accountability and claims for justice dominate national debates, frequently leading to a paralysis or reduced functioning of the institutions of the State and detracting from the pursuit of other rule of law and development initiatives. Impunity threatens a nascent democracy by rendering its constitution hollow, weakening its judiciary and damaging the political credibility of its executive. Public institutions often act in ways that bring them into disrepute and undermine the public confidence in them that is required for sustainable transition: through the legislature enacting laws providing for impunity; through law enforcement and the judiciary acting on a selective basis or without independence; and/or through the executive ignoring rule of law based judgments by higher courts. A failure to guarantee redress and accountability has too often also resulted in former structures of power, to the extent that they enjoy impunity, transforming into criminal and hostile elements that may perpetuate violence and conflict.

Methodology

The ICJ monitors the human rights situation in Cambodia from its Asia and the Pacific Regional office, in Thailand. In recent years, the ICJ's advocacy has been focussed on the independence of the judiciary; cases of legal harassment of human rights defenders and political opponents; laws which are inconsistent with Cambodia's international human rights obligations; the failure to implement laws and policies aimed at providing remedies to victims of human rights violations; and the deteriorating human rights situation in the lead up to commune and

national elections set down for June 2017 and April 2018, respectively.

In preparation for this report, a thorough desk review of all relevant literature was conducted. Additionally, two research missions to Phnom Penh were undertaken—one in April and one in May of 2017—during which a number of interviews and exchanges were conducted with the ICJ’s partners and other stakeholders. The mission met with lawyers, prosecutors, judges, NGOs, and commentators, as well as officials from the Cambodian Ministry of Justice, the Bar Association of the Kingdom of Cambodia, the UN Office of the High Commissioner for Human Rights, and the Extraordinary Chambers in the Courts of Cambodia.

Potential partners and key stakeholders

The Cambodian Centre for Human Rights (CCHR),²⁴⁸ headed by Executive Director Chak Sopheap, is a leading, non-aligned, independent NGO that works to promote and protect democracy and respect for civil and political rights in Cambodia. CCHR focuses on research, advocacy and programs around a wide range of human rights issues, including the promotion of fundamental freedoms, fair trial rights, HRDs, land rights, business and human rights, law reform and the neutrality of State institutions.

The Cambodian Human Rights and Development Association (ADHOC),²⁴⁹ headed by President Thun Saray, is Cambodia’s oldest human rights organization. It was founded in 1991, shortly after the signing of the Paris Peace Agreements, by a group of former political prisoners. An independent NGO, ADHOC seeks to investigate human rights violations, provide free legal assistance to those in need, empower citizens and grassroots communities and engage in advocacy across the country.

The Cambodian League for the Promotion and Defence of Human Rights (LICADHO),²⁵⁰ headed by Dr Kek Galabru (Pung Chhiv Kek), was established in 1992. From its main office in Phnom Penh and 13 provincial offices, LICADHO seeks to protect civil, political, economic and social rights in Cambodia and to promote respect for them by the Government and institutions. LICADHO pursues its activities through monitoring and protection (State violations; women’s and children’s rights; medical assistance and social work; prison monitoring; paralegal and legal representation) and promotion and advocacy (supporting unions and grassroots groups; training and information; public advocacy and outreach). LICADHO regularly publishes reports on its activities and findings, and its internal database is undoubtedly the most comprehensive of its kind in the country.

The Centre for Alliance of Labour and Human Rights (CENTRAL)²⁵¹ is a collective of lawyers who organize and support Cambodian workers through legal aid and other appropriate means to demand transparent and accountable governance for labour and human rights. CENTRAL is closely linked to LICADHO.

The East West Management Institute (EWMI)²⁵² is an international NGO committed to strengthening democratic societies by bringing together government, civil society, and the private sector to build accountable, capable, and transparent institutions. EWMI’s Cambodia office, headed by Andrew Boname, engages in a number of initiatives focused on justice sector reform and civil society empowerment, including HRDs.

The Cambodia chapter of International Bridges to Justice (IBJ),²⁵³ headed by Ouk

²⁴⁸ See www.cchrcambodia.org

²⁴⁹ See www.adhoc-cambodia.org

²⁵⁰ See www.licadho-cambodia.org

²⁵¹ See www.central-cambodia.org

²⁵² See <https://ewmi.org/Cambodia>

²⁵³ See www.ibj.org/where-we-work/cambodia/

Vandeth, is a group of seven privately-funded lawyers who provide access to free legal aid services in Phnom Penh and 20 provinces. Through early access to counsel, IBJ attempts to eliminate instances of torture or other ill-treatment. Additionally, it conducts nationwide rights awareness campaigns to inform individuals of their legal rights and encourage them to claim these rights.

Legal Aid of Cambodia (LAC),²⁵⁴ headed by Run Saray, provides legal aid services related to children's rights, women's rights and land grabbing.

The Independent Mediation Group (IMG), headed by Sophorn Poch (an accredited mediator in Australia), is a privately-funded NGO exploring the use of mediation to settle land disputes in Cambodia on behalf of indigenous communities affected by Economic Land Concessions (ELCs).

The UN Office of the High Commissioner for Human Rights (OHCHR),²⁵⁵ headed by country representative Wan-Hea Lee, has been active in Cambodia – to varying degrees – since 1993. The Office currently focuses on: rule of law (legal aid support, trial monitoring, analysis of draft legislation); economic and social rights (land rights, indigenous communities, economic land concessions, business and human rights); civil society and fundamental freedoms (expression, assembly and association); prison reform; and UN human rights mechanisms. It publishes regular fact sheets, promotional materials and reports on its activities.

The Bar Association of the Kingdom of Cambodia (BAKC),²⁵⁶ headed by President Suon Visal and Secretary-General Prom Vicheth Akara, is a Government-funded professional organization with a mandate to support the work of practicing lawyers in the country. The BAKC receives over 100 requests a month for assistance and maintains a list of roughly 100 legal aid lawyers.

The Cambodian Ministry of Justice (MOJ), headed by Minister Ang Vong Vathna, oversees all aspects of court administration in the country. Dara Khlok, Director of International Relations and Development Partners, is responsible for cooperation with potential partner organizations.

For purposes of implementing potential projects recommended in this study, the key stakeholders identified are practising lawyers and their clients – in particular, those associated with the above-referenced NGOs – as well as prosecutors, judges, the MOJ and the BAKC. The ultimate intended beneficiaries are victims of human rights abuses throughout the country.

²⁵⁴ See <http://lac.org.kh>

²⁵⁵ See <https://cambodia.ohchr.org>

²⁵⁶ See www.bakc.org.kh

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