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# CAMBODIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS  
ANNUAL REPORT 2011

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In 2010-2011, the space for civil society continued to shrink, with increased limitations on the freedoms of opinion, expression and peaceful assembly, in particular through unfair and illegitimate judicial proceedings. Human rights defenders operating in an increasingly restrictive legal environment, found it extremely difficult and risky to denounce human rights abusers and bad practices, while peaceful demonstrations were prevented or violently dispersed. Also, acts of intimidation continued. In addition to NGO members, many trade union leaders, land rights activists, community leaders and journalists faced fierce retaliation for documenting and denouncing abuses.

## Political context

The year 2010 and early 2011 were marked by a deterioration of the situation of human rights in Cambodia, confirming the negative trend witnessed in previous years. The political space indeed considerably narrowed, with the Government increasing harassment of its critics. Democratisation has not yet fully taken root in the country and there was a further drift towards a *de facto* one party system<sup>1</sup>. Corruption was still widespread and systematic, affecting all public institutions and the functioning of most public services<sup>2</sup>. Cambodia remained accordingly one of the most corrupt countries in Asia<sup>3</sup>.

Illegal land confiscations and forced evictions continued. The use of military police by companies with connections to high-ranking Government officials to forcibly evict villagers, remained a common practice and featured prominently in land grabbing cases, leaving over 2,500 families at risk of losing their homes or livelihood during the first quarter of 2010<sup>4</sup>. Land conflicts with indigenous peoples also continued, with the Government

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1/ See Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in Cambodia*, UN Document A/HRC/15/46, September 16, 2010 and European Parliament Resolution No. RSP/2010/2931 on Cambodia, October 21, 2010.

2/ See Committee Against Torture (CAT), *Concluding observations of the Committee Against Torture*, UN Document CAT/C/KHM/CO/2, January 20, 2011.

3/ See Transparency International Corruption Perceptions Index 2010.

4/ See Cambodian League for the Protection and Defence of Human Rights (LICADHO) Statement, April 2, 2010.

granting concessions to companies in territories inhabited by indigenous groups or designated as national parks<sup>5</sup>.

The first judgement of the Extraordinary Chambers in the Courts of Cambodia (ECCC) was delivered on July 26, 2010 in the case of Mr. Kaing Guek Eav, aka “Duch”, who supervised the systematic torture and execution of thousands of prisoners at the S-21 detention centre in Phnom Penh during the Khmer Rouge regime, and four former Khmer Rouge leaders were indicted by the ECCC on September 16, 2010. However, concerns relating to the lack of independence and effectiveness of the ordinary courts in Cambodia increased, with various United Nations (UN) actors expressing strong concerns<sup>6</sup>. In particular, corruption and political interference appeared to affect the functioning of the judicial bodies at a very significant level and the courts continued to be used as an organ of repression, including to silence dissent voices. As a result, accountability for human rights violations was frequently not established and impunity remained widespread.

Furthermore, relations with the UN came under significant strain during 2010. The Government threatened to expel the UN Resident Coordinator after he released a statement on March 10, 2010 calling for a more transparent and participatory process on the draft Anti-Corruption Law. Similarly, in October 2010, Prime Minister Hun Sen, in a meeting with UN Secretary General Ban Ki-moon, demanded the removal of the top UN human rights official in Cambodia, and stated that the Government intended to force the closure of the country office of the High Commissioner for Human Rights (OHCHR). This came after a strong criticism by the Country Representative of the OHCHR regarding the deportation of two Thai citizens in June 2010<sup>7</sup>.

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5/ To that extent, in its concluding observations adopted on April 1, 2010 following the examination of the 8-13th Periodic Report of Cambodia, the Committee on the Elimination of Racial Discrimination (CERD) expressed its concern at reports of intimidation and acts of violence against indigenous peoples during forced evictions or land disputes. CERD also found it worrisome that there appears to be a widespread tendency to press charges against indigenous peoples and arrest them when they protest against their forced eviction or contest the granting of a concession on indigenous land. See CERD, *Concluding Observations of the Committee on the Elimination of Racial Discrimination - Cambodia*, UN Document CERD/C/KHM/CO/8-13, April 1, 2010.

6/ See CAT, *Concluding Observations of the Committee Against Torture - Cambodia*, UN Document CAT/C/KHM/CO/2, January 20, 2011 and CERD, *Concluding Observations of the Committee on the Elimination of Racial Discrimination - Cambodia*, UN Document CERD/C/KHM/CO/8-13, April 1, 2010.

7/ In April 2011, the UN Resident Coordinator eventually left his post but the OHCHR country office keeps functioning.

On the other hand, Cambodia accepted in March 2010, all 91 recommendations stemming from the Universal Periodic Review process of the UN Human Rights Council, including recommendations to strengthen efforts to protect freedom of expression and the right of all human rights defenders to conduct their work without hindrance or intimidation, including by safeguarding freedoms of assembly and association. Other recommendations suggested that a policy be developed to protect human rights defenders and that the work of NGOs and other civil society groups be facilitated<sup>8</sup>. The country also acceded to the UN Optional Protocol of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in October 2010.

### **Legislative reforms restricting the environment for human rights activities**

In 2010, the adoption of ill-defined and restrictive laws gave rise to further concerns as they could potentially undermine Cambodians' exercise of their fundamental rights and freedoms and human rights activities. Indeed, a number of provisions of those laws and bills pave the way for more arbitrary administrative and judicial harassment against human rights defenders. Furthermore, the drafting process was not transparent and the Government failed to genuinely and adequately consult civil society on these laws and bills.

#### **Adoption of the Anti-Corruption Law**

On March 11, 2010, the Anti-Corruption Law was hastily adopted, only seven days<sup>9</sup> after the draft was released, severely limiting the opportunity for public consultation and comments from civil society organisations. The law entered into force in November 2010. Among the numerous concerns relating to the new law, is the lack of independence of the National Anti-Corruption Commission (NAC), which will be responsible for developing anti-corruption policies at the national level, and the Anti-Corruption Unit (ACU) within the Council of Ministers, which will be in charge of examining allegations of governmental corruption<sup>10</sup>. Neither the NAC

8 / Other recommendations related, among others, to the ratification of the remaining core international human rights instruments; ensuring the independence of the judiciary and completing the judicial reform; adopting a law against corruption; and allowing the visits of UN thematic special procedures mandate holders. See Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Cambodia*, UN Document A/HRC/13/4, January 4, 2010.

9 / Including one official holiday and a weekend.

10 / The eleven members of NAC, responsible for developing the anti-corruption strategy, are appointed by the King, the Senate, the Assembly and eight other Government institutions and are accountable to the Prime Minister. ACU operates under the supervision of the Council of Ministers, and manages day-to-day anti-corruption actions.

nor the AUC is required under the new law to release public reports on their activities and findings. Additionally, provisions relating to the protection of witnesses and whistle-blowers are vague and may put the latter in danger as they could face prosecution if their allegations are deemed to be false<sup>11</sup>.

### **Entry into force of the Law on Peaceful Demonstration**

In April 2010, the Law on Peaceful Demonstration, which had been promulgated in December 2009, entered into force. The broad terms of the law give to the authorities sweeping discretion to deny Cambodians permission to peacefully assemble and protest. The law is inconsistent with Cambodia's Constitution and international human rights obligations. It is worrisome since authorities often refuse to authorise demonstrations or delay granting authorisation until the eleventh hour, even though the letter of the law only contains notification requirements. It thus risks to be abused to silence critical voices.

### **Entry into force of the new Penal Code**

The new Penal Code, adopted in October 2009, entered into force on December 10, 2010 and had an immediate effect on freedom of expression, by further reinforcing some already existing restrictions. Article 495 of the Code defines the act of incitement in a vague manner as sharing or exposing the public to speech, writings, drawings or audiovisual communications that could "directly result" in a crime being committed, or in "serious social unrest". Under this definition, the law does not actually require the incitement to be effective in order to be punishable. The law further allows for the criminal prosecution of peaceful expressions of opinion, which "affect the dignity" of individuals, public officials, government institutions and even companies. Questioning a court judgement may come within the ambit of the crime of "disturbing public order"<sup>12</sup>. The provisions of the

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11/ In particular, the law allows for whistle-blowers to be prosecuted if the allegations they raise are declared to be false by the anti-corruption body. This is a clear threat against anti-corruption initiatives and against NGOs and journalists working in this field. On November 9, 2010, the CAT expressed its concern that ACU had not yet taken any steps against alleged perpetrators of acts of corruption and was not yet fully operational. See CAT, *Concluding Observations of the Committee Against Torture - Cambodia*, UN Document CAT/C/KHM/CO/2, January 20, 2011.

12/ Article 523 makes it a separate crime to discredit judicial acts and decisions, in order to disturb public order or endanger Cambodian institutions. The distinction between a judicial act and a judicial decision is not defined, and the inclusion of both indicates a broad prohibition. Similarly, "disturbing public disorder" and "endangering Cambodian institutions" are both alarmingly vague phrases. The crime carries a potential prison sentence of one to six months, and a fine of 100,000 to one million riels

Code make it significantly more risky for civil society representatives to criticise corrupt officials or abusive police and military agents.

### **Release of the draft Law on Associations and NGOs**

While its imminent adoption was announced by Prime Minister Hun Sen in September 2008, the text of the draft Law on Association and Non-Governmental Organisations (NGOs) was finally released by the Interior Ministry on December 15, 2010. While the Government has failed to provide an adequate answer as to why this new law is needed alongside other existing laws and regulations that govern civil society<sup>13</sup>, the draft confirmed that the intention of the Government is to control, rather than strengthen, civil society as it could too easily be used to refuse registration or close down organisations that displease the authorities. The draft law introduces compulsory registration for all associations and NGOs, banning any activity by groups that are not registered. It also places considerable bureaucratic and administrative requirements on them<sup>14</sup>, and appears to be the most serious threat to civil society in years. This may prove to be particularly problematic for unregistered community-based and grassroots NGOs and other types of informal associations operating in the country. The draft law also introduces intrusive reporting requirements for organisations and allows for wide discretionary power for Government officials, without any possibility of appeal against those decisions. The vague and ambiguous wording of certain provisions of the draft law also poses the risk of arbitrary implementation. A revised draft was released on March 24, 2011, however with only marginal changes.

### **Draft Law on Trade Unions**

In January 2011, the second draft Law on Trade Unions was released, which was still under consideration at the Ministry of Labour as of April 2011. Although Prime Minister Hun Sen's Government alleges that the draft law aims at protecting trade union workers, the latter risks to further curtail trade union activities. In particular, it is feared that the Law, if adopted in its current form, would allow the Government to block

13/ In particular, the enactment of the 2007 Civil Code serves as an adequate legal framework to regulate both for-profit and non-profit entities based on voluntary registration, making the introduction of this new law unnecessary.

14/ A newly added clause allows the Government to remove applicants that fail to submit a bank statement within 30 working days of notification of registration from the registration list. Such a decision will disproportionately affect community-level groups. They will also be vulnerable to prosecution for carrying out legitimate activities without the proper legal status.

protests, imprison union leaders<sup>15</sup>, disband existing unions and prevent others from forming. The draft also allows trade unions to be dissolved by court order following complaints by a third party or the Government. It further foresees excessive fines and prison terms for union leaders in breach of regulations.

### Acts of reprisals against trade union leaders

Acts of reprisals against trade union representatives continued unabated throughout 2010 and early 2011, while impunity for such acts were still widespread. In particular, the trade union movement remains shaken by the assassination of three leaders of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) in 2004 and 2007 – Mr. **Chea Vichea** (2004), Mr. **Ros Sovannareth** (2004) and Mr. **Hy Vuthy** (2007) –, all the more as their real assassins have yet to be brought to justice, and police investigations are at an apparent standstill. Moreover, on September 30, 2010, Mr. **Phao Sak**, a trade union representative for FTUWKC in Kampong Speu province, was severely beaten by unknown assailants. Mr. Sak had been involved in negotiations at the Generation International Company for factory workers to be granted bonuses for Pchum Ben Day. He was hospitalised after the attack and treated for head injuries. No suspect was arrested in connection with the case and the police denied that it was an attempted murder, with the Samrong Thong district police chief labelling it merely as “drunken altercation”<sup>16</sup>.

Trade union leaders also faced judicial harassment. For instance, on November 18, 2010, Mr. **Sous Chantha**, a trade union leader with the United Apparel Garment Factory, was stopped by military police officers close to the factory and searched. The officers produced nine packages of illegal drugs. Despite highly contradicting accounts of the incident, on November 19, the municipal court decided to place Mr. Chantha in pre-trial detention on charges of “drug trafficking” (Article 33 of the Law on the Control of Drugs). He has been held in pre-trial detention in CC1

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15/ The draft Law on Trade Unions prohibits union leaders from a wide variety of ill-defined, broadly worded “unfair labour practices” under Articles 67 and 68. A “workers’ union, its officers, or representatives” must not: “violate the duty of good faith in collective bargaining, or refuse to bargain collectively with the employer”; “violate or cause to violate a collective bargaining agreement”; “agitate for purely political purposes or commit acts of violence at the workplace”; or “strike illegally”. Chapter 15, which describes the punishment for engaging in such unfair labour practices, uses the word “guilty” throughout, indicating an intent to impose criminal sanctions for such conduct. Violations of Article 68 could also potentially form the basis of a criminal prosecution under the new Penal Code for incitement (Article 495), which carries a prison sentence of up to two years.

16/ See LICADHO Report, *Freedom of Expression in Cambodia: The Illusion of Democracy*, December

prison since. He risks two to five years in jail<sup>17</sup>. The trial was scheduled to begin on June 24, 2011.

Furthermore, requests for peaceful demonstrations made by workers relating to labour issues were frequently denied by the authorities and police often resorts to excessive use of force to crack down on them. For instance, on July 27, 2010, approximately 3,000 workers were demonstrating for the reinstatement of a sacked union representative when police moved in with riot gear and assault rifles to disperse the peaceful demonstration. At least nine female garment workers of a factory owned by PCCS Garments were injured<sup>18</sup>. Authorities also cracked down on a demonstration organised on August 19, 2010 by workers of the Sunlee Fong factory in Phnom Penh, who demanded improved working conditions. Union leaders Messrs. **Ien Pao, Heng Bora** and **Nun Chamnan** later faced criminal charges of “incitement” and “destruction of private property”. If found guilty, they could be sentenced to up to five years in prison<sup>19</sup>. In September 2010, thousands of garment workers participated in a nationwide strike in a bid to increase minimum wages for garment workers. The first wave of the strike lasted for four days, from September 13 to 16, and was called to an end by union leaders after trade union representatives and employers were invited by the Ministry of Social Affairs, Veterans and Youth Rehabilitation for a meeting to discuss their demands on September 27, 2010. The following day, at least six judges issued orders authorising factory owners to suspend over 200 union representatives and organisers because of their involvement in the strike. Dozens of legal cases were also filed against union leaders and, as of April 2011, 141 workers from thirteen factories were still waiting for reinstatement<sup>20</sup>. The affected factories also obtained court orders declaring the second wave of the strike illegal and filed for compensation for lost revenues. On September 18, 2010, police forcibly cracked down on

17/ Since 2008, Mr. Chantha acted as the factory leader of the local union affiliated with the Independent & Democratic Union Federation (IDUF). In late 2010, Mr. Chantha and his union members, roughly 1,000 workers, found themselves increasingly at odds with IDUF, the latter being perceived as pro-factory management. On November 16, 2010, Mr. Chantha approached the Coalition of Cambodian Apparel Workers Democratic Union (CCAWDU) to request for his union members to join the CCAWDU federation. The next day, he and CCAWDU met again to discuss the paperwork needed to leave IDUF and join CCAWDU. On November 18, Mr. Chantha signed the documents at the factory, formalising his union's 1,000 workers transfer from IDUF to join CCAWDU. Two hours later, Mr. Chanta was arrested. See LICADHO as well as Clean Clothes Campaign Statement, December 14, 2010.

18/ See LICADHO Report, *Freedom of Expression in Cambodia: The Illusion of Democracy*, December 2010.

19/ See LICADHO Report, *Freedom of Expression in Cambodia: The Illusion of Democracy*, December 2010 and Community Legal Education Centre (CLEC).

20/ See CLEC.

the second wave of strikes, resulting in twelve factory workers being injured. Several trade union leaders also reported having subsequently received threats by phone and SMS<sup>21</sup>.

### Intimidation of land rights defenders and community leaders

The intimidation of land rights defenders and community leaders continued throughout 2010-2011. Land rights activists routinely faced violence and arrests, and those in power frequently used judicial proceedings to restrict their activities<sup>22</sup>. As of April 2011, fifteen land rights activists were detained in Cambodia's prisons - most on trumped-up charges designed to remove them from their role as community leaders<sup>23</sup>. Countless others suffered forced evictions and harassment. On March 24, 2010, Mr. **You Thon**, an Omlaig Commune Council member, and Mr. **Khem Vuthy**, community leader, were arrested on charges of inciting villagers to burn down two temporary shelters used by construction workers belonging to Ly Yong Phat's Phnom Penh Sugar Company. The villagers' land was allegedly confiscated by Ly Yong Phat, a Senator from the ruling Cambodian People's Party. Mr. You and Mr. Vuthy were released on bail on March 29, 2010, and remained under surveillance. As of April 2011, the charges against them remained pending<sup>24</sup>. On January 25, 2011, Mr. **Sam Chankea**, Coordinator of the Cambodian Human Rights and Development Association (ADHOC) in Kampong Chhnang, a human rights defender active in land rights issues, was sentenced to 3 million riel (about 502 euros) in compensation and 1 million riel (about 167 euros) in fine by the Kampong Chhnang Provincial Court for defaming the work of KDC International Company, owned by the wife of the Minister of Mining and Energy. Mr. Chankea's lawyer will appeal the sentence. The complaint against Mr. Sam Chankea followed a radio interview broadcast on December 26, 2009 in which he expressed his opinion over a land dispute between dozens of villagers and the KDC International Company in Kampong Chhnang province<sup>25</sup>. He was subsequently quoted in *Koh Santepheap* newspaper on December 30, 2009. Two community leaders,

21/ See LICADHO Report, *Freedom of Expression in Cambodia: The Illusion of Democracy*, December 2010.

22/ In 25 per cent of the land grabbing cases, individuals and organisations accused of land grabbing used military police units to threaten, intimidate and arrest land activists and community representatives involved in land disputes, and to prevent peaceful demonstrations by villagers. See LICADHO Statement, April 2, 2010.

23/ See LICADHO.

24/ See LICADHO Press Release, March 25, 2010.

25/ The dispute, which dates back to 2002, is a long-standing land conflict between the above-mentioned company and more than 100 families that have sued the company for having bulldozed their land, damaged their properties, grabbed their land and violated their rights. The proceedings are still on-going.



Mr. **Pheng Rom** and Mr. **Reach Seima**, were also prosecuted before the Kampong Chhang Provincial Court for defaming and obstructing KDC International Company's development attempts by staging repeated protests to denounce the activities of the company. Mr. Seima was fined 2 million riel (about 335 euros) and ordered to pay 8 million riel (about 1,339 euros) in compensation to the firm. Charges against Mr. Rom were dropped.

Moreover, demonstrations organised in favour of victims of forced evictions and land grabbing were severely repressed. On March 1, 2010, villagers from Proka Village in Dangkor district who are involved in a land dispute with Mr. In Samon, Deputy Secretary General of the Interior Ministry, attempted to hold a demonstration outside the home of Prime Minister Hun Sen in Takhmao<sup>26</sup>. The villagers were blocked by the police with shields and electric batons. After confrontations with villagers, the police placed eight of them under arrest, without disclosing the reason for their detention<sup>27</sup>. In addition, the police confiscated cameras belonging to rights monitors from ADHOC and LICADHO and deleted photographs taken by the monitors. Seven out of the eight villagers were released on the same day, after succumbing to threats by the police of imprisonment in Prey Sar prison if they refused to withdraw their complaints. The eighth detainee was released after spending a night in detention and forced to thumbprint documents withdrawing land complaint. On August 8, 2010, a peaceful gathering of about 45 villagers was violently dispersed by municipal and district police, and security guards. The villagers had peacefully assembled near Prime Minister Hun Sen's villa in central Phnom Penh in order to raise awareness of the long-standing land dispute between the villagers in Doun Ba commune and the local authorities. The villagers also demanded the release of a community representative, Mr. **Hun Seng Ly**, who has been in detention since August 2008. On October 28, 2010, riot police and administrative police officers cracked down on a group of approximately fifty villagers gathered in front of the Khmer-Soviet Friendship Hospital in Phnom Penh to seek intervention by the visiting UN Secretary General into the ongoing Boeung Kak land grab in Phnom Penh by Shukaku Company, owned by a ruling party Senator. During the incident, Mr. **Suong Sophorn**, a land activist from the Boeung Kak Lake area, was arrested and beaten, resulting in a severe wound to the head. He was released on the same day without charge<sup>28</sup>.

26 / See Cambodian Centre for Human Rights (CCHR), LICADHO, ADHOC and CLEC Joint Press Release, March 5, 2010.

27 / The names of the villagers are not disclosed for security reasons.

28 / See LICADHO Press Release, October 28, 2010.

## Judicial harassment of anti-corruption activists

Human rights activists and journalists continued to face judicial harassment on politically motivated charges for denouncing corruption cases. On February 9, 2010, the trial of Cambodian Centre for Human Rights (CCHR) members Mr. **Cheab Chiev** and Ms. **Khoem Sarum**, as well as of Mr. **Sok Serey**, a *Radio Free Asia* journalist, and two Cham community representatives started before the Takeo Provincial Court on charges of “disinformation” (Article 62 of the United Nations Transitional Authority in Cambodia Penal Code). Charges had been brought against the five individuals in September 2009, following an interview on *Radio Free Asia* broadcast in December 2008 that discussed a dispute between Cham community leader Rim Math and 206 members of his mosque in Kampong Youl village, and during which they further alleged corruption on the part of the local officials in Kampong Youl village in Takeo province. On February 19, 2010, the Takeo Provincial Court acquitted the five individuals on charges of disinformation. The ruling was not appealed. On April 13, 2010, Mr. **Hang Chakra**, the Editor of opposition daily newspaper *Khmer Makras Srok*, was released under a royal pardon to mark the Khmer New Year, after ten months in prison on charges of disinformation. Mr. Hang Chakra had been arrested on June 26, 2009 after being convicted on the same day to one year imprisonment and a 9 million riel (about 1,507 euros) fine for publishing articles regarding alleged Government corruption<sup>29</sup>.

## Urgent Interventions issued by The Observatory from January 2010 to April 2011

Names	Violations / Follow-up	Reference	Date of Issuance
	Obstacles to freedoms of expression, association and assembly	Press Release / International Fact-Finding Mission Report	September 2, 2010
Mr. Ath Thorn, Ms. Morn Nhim and Mr. Tola Moeun	Threat of arrest / Obstacle to freedom of peaceful assembly	Urgent Appeal KHM 001/0910/OBS 110	September 20, 2010
Mr. Sam Chankea	Judicial harassment	Urgent Appeal KHM 001/0111/OBS 002	January 18, 2011
Mr. Sam Chankea, Mr. Pheng Rom and Mr. Reach Seima	Sentencing / Judicial harassment	Urgent Appeal KHM 001/0111/OBS 002.1	January 25, 2011
	Obstacles to freedom of association	Joint Press Release	April 7, 2011

298 29 / On August 11, 2009, the Appeal Court had upheld Mr. Hang Chakra's conviction.