

# THE OBSERVATORY

for the Protection of Human Rights Defenders

**L'OBSERVATOIRE**  
pour la protection  
des défenseurs des droits de l'Homme

**EL OBSERVATORIO**  
para la Protección  
de los Defensores de los Derechos Humanos

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**fidh**

International Federation for Human Rights  
17, Passage de la Main d'Or 75011  
Paris, France



World Organisation Against Torture  
Case postale 21 - 8, rue du Vieux-Billard  
1211 Geneva 8, Switzerland

## Cambodia



**Capital** : Phnom Penh

**Land Area** : 181,035 sq.km

**Population** : 13.124764 Million (2003 est.)

**Official Language** : Khmer

**Major Export Products** : Garments/Textile Product, Sawn Wood Furniture and Rubber

**Head of State** : His Majesty Samdech Preah Baromneath Norodom Sihamoni

**Head of Government** : H.E. Samdech Hun Sen, Prime Minister

(Source : <http://www.cambodia.gov.kh/>)

**GDP growth rate** (in %) in 2003 (8,6%), 2004 (10%) and 2005 (13,5%)

**Adult literacy rates** in 2004 : males : 84,7% / females : 64,7%

**Child labour** : about 23%

**Maternal mortality ratio** : 472 per 100,000 live births

**Infant mortality** (children under 5 years) : 83 for 1000 live births in 2005

**Access to potable drinking water** : at most 40% in 2004

(Source: Cambodia Human Development Report 2007, UNDP)

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## Introduction

Upon request of LICADHO (Cambodian League for the Promotion and Defence of Human Rights) and ADHOC (Association for Human Rights and Development in Cambodia), the Observatory for the Protection of Human Rights Defenders, a joint programme of FIDH and the World Organization Against Torture (OMCT) requested two lawyers, Ms. Marie Guiraud, from France, and Mr. Andreas Kirsch-Wood, from Germany to undertake an international fact-finding mission to Cambodia to follow up the previous FIDH mission, held in 2005, on freedoms of expression and assembly.<sup>1</sup> The mission took place between 15 and 23 June 2007, and sought to assess the implementation of the right to freedom of expression and the right to peaceful assembly while paying special attention to the situation of activists dealing with forced evictions of rural villagers and other vulnerable groups from their land. The mission also worked on the impact on human rights of land management policies, in particular the practice of forced evictions and relocation of communities in Cambodia. In addition, the mission conducted interviews to examine attacks against leaders of trade unions, and to review what legal action has been taken in these cases, in connection with the exercise of their right to assemble and to freedom of expression.

During their mission the *chargés de mission* met representatives of civil society, especially representatives of unions, community leaders, lawyers, and national NGOs in Phnom Penh and Sihanoukville. The mission also met representatives of the national authorities and diplomatic missions (list in Annex). The Observatory regrets, however, that the large majority of officials contacted before and during the mission declined to meet with the mission members.<sup>2</sup>

The Observatory is grateful for the special hospitality and support the mission received from LICADHO and ADHOC.

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1. FIDH, Report, International Fact-Finding Mission, Threats to Freedom of Expression and Assembly in Cambodia, Paris, February 2006. See 2006 Annual Report of the Observatory for the Protection of Human Rights Defenders, "Steadfast in Protest" section on Cambodia, page 380.

2. The Minister of Justice and the Minister of the Interior were contacted in particular.

## A. Cambodia - A Snapshot

Cambodia has made impressive strides in economic growth in recent years. The country experienced average annual GDP growth of nearly 9% over the past decade. However, more than one third of the population still lives in severe poverty.<sup>3</sup> In a recent report the World Bank also found an increasing gap between rich and poor in Cambodia.<sup>4</sup> Many observers believe that the benefits of economic growth have yet to translate into better living standards for many Cambodians.

International donors' support to Cambodia has primarily focused on public, administrative and land reform and on encouraging the government to tackle the widespread problem of corruption. Generally, the aid flow has been stable and predictable and donors report that their response is increasingly co-ordinated. So-called "joint monitoring indicators" have been agreed upon between the government and donors and have been in effect for the last three years. Many of the indicators, particularly those relating to good governance reforms, have not been met by the government. According to donors, while foreign aid to Cambodia in the 1990s was a donor-driven process, today donors and government representatives have more equal, consultative meetings. As the government has become more assertive, the formal donor countries-government meetings previously called "Consultative Group Meetings" has been renamed the "Cambodia Development Co-operation Forum" ("CDCF").<sup>5</sup> This process is intended to encourage donors to align themselves with the government's development agenda, thereby generating healthier means of engaging with the government. However, critics say, it does not address the core issue – the lack of political will on the part of the government to undertake real reforms to promote rule of law and good governance.

Considerable progress remains to be made to strengthen the respect for human rights in Cambodia. Three trade union leaders have been murdered in the last three years. Human rights activists report that there have been fewer physical attacks against them and journalists over the last two years, but no fewer threats which led to victims going into hiding or abroad. By and large, there has been little progress in improving the human rights record of the country. National NGOs take the lead on human rights in the absence of government actions, and NGOs complain that the space for human rights activities has become more restricted.

Although 60% of the population was born after 1980 and therefore have not experienced the central rule of the Khmer Rouge regime, national and international interlocutors emphasised that the shadows of the past still influence present developments. The Khmer Rouge remained active, in a limited way, as a military and political force until 1998. In addition, memories of the intra-government fighting between CPP and FUNCINPEC (*Front uni national pour un Cambodge indépendant, neutre, pacifique et coopératif*) in 1997 (when the CPP ousted its coalition partner in a coup) remain fresh in Cambodians' minds. Unsurprisingly, people's fear of political violence and turmoil featured in the last election campaign. For example, activists for the Cambodia People's Party (CPP – the ruling party) used unofficial slogans such as "Vote for CPP if you don't want war" during the communal election campaigns earlier this year.

Trials are still under preparation against those most responsible for the most serious violations during the Khmer Rouge rule of the country under possible charges such as war crimes, genocide, crimes against humanity, crimes against internationally protected persons, and violations of Cambodia's 1956 Penal Code. The Khmer Rouge trials should be an opportunity not only to examine the past in an attempt to promote national healing but also to highlight the problems of the Cambodian judiciary. However, there has been much criticism of the qualifications of many of the Cambodian judges appointed to the tribunal, and their lack of independence from the government, as well as allegations of corruption and mismanagement at the Cambodian side of the tribunal. Whether the tribunal will in fact be able to meet international standards of justice remains to be seen. So far, the panel's international judges have reacted strongly to significant shortcomings in the Cambodian justice system. In particular the problems of the deficient bar association have been highlighted through the process.<sup>6</sup>

Despite improved economic growth, it appears to many observers that government policy is still focused on maintaining power at all costs. The government has been slow to make reforms – such as fighting corruption and improving the judiciary – which would have brought tangible benefits for the lives of Cambodians. Free speech and free assembly has been consistently restricted, ostensibly under pretence of protecting national security or

public order. Many interlocutors therefore questioned whether the Royal Government of Cambodia or its ruling party, the CPP, have come to a stage yet to see the benefits of allowing more democracy.

Over the last decade, the country has moved closer to being a one party system. This has obvious negative effects for the opposition and on freedom of expression. For example, Prince Ranariddh was recently expelled from Funcinpec, and it is widely believed by Cambodians interviewed that this was done due to the influence of the ruling party. As a result, the Funcinpec party has effectively collapsed. The 2006 law on adultery promulgated by the National Assembly, which made adultery a criminal offence, is also seen as politically motivated. Prince Ranariddh was indicted under this law in March 2007 shortly before the communal elections on 1 April 2007. Many Cambodians believe that the adultery law was promulgated to deprive his newly formed party of any chance in the elections. This law enhanced a perception of impunity of the government by using the criminal justice system in such an unconcealed way as its tool. Funcinpec without Prince Ranariddh became an insignificant force in the communal elections, the result being a high level of abstention in the elections.

International observers reported improvements in the conduct of the 2007 commune elections, compared to the previous one in 2002. In particular, less violence and intimidation was reported during the election period. International observers regard it noteworthy that the Sam Rainsy Party (SRP) received around 25% of the vote during the last communal elections on 1 April 2007. International observers called this an “increasing democratic space” against the tendency of a one party system. However, serious problems were raised, including about the provision of information to voters, and the registration of them, with allegations that non-CPP supporters were deliberately obstructed from being able to register and vote.

NGOs and the international community alike are aware that more effort is necessary to achieve a more equitable society in Cambodia. Donors can play an essential role in fostering an environment in which civil society and other stakeholders can engage the government. This is particularly important given the recent discovery of oil in Cambodia, as well as increased mining for gold, bauxite and other minerals. There are grave concerns about whether Cambodia can avoid the so-called “Oil Curse” suffered by other countries, in which

huge revenues are misused or siphoned off by corrupt government officials, rather than being spent on services for the benefit of citizens. Without transparency and sound fiscal management of oil and mining revenues, and good governance reforms include strict measures against corruption, Cambodians may well not benefit. The government has committed itself to the Extractive Industries Transparency Initiative,<sup>7</sup> but – like other commitments it has made to good governance issues – it should be judged on its actions, not its words, in this regard.

A critical issue is the lack of truly independent and powerful institutions in Cambodia, to counterweight the power of the executive. Key institutions – including the judiciary, the Constitutional Council and the Supreme Council of Magistracy – are heavily politicised and poorly functioning. An example of successful quasi institution-building, which possibly could build trust that independent institutions are a stabilising factors worth of support by the government, is the establishment of the “Labour Arbitration Council.”<sup>8</sup> The Council reaches non-binding decisions and it is therefore deemed less threatening for the government. Although the decisions are non-binding, they are usually implemented.

In order to develop institutions to uphold fundamental human rights, donors must do more to hold the government to its reform promises and insist that it shows real progress. The clear lack of political will displayed by the government must be addressed. If at some point in the future such institutions are going to be able to protect the rights of vulnerable populations in Cambodia, then those people must be given a voice in the creation and reform of such institutions. Freedom of assembly and association, as mechanisms for people to express their grievances and seek changes in government policies, are critical. Civil society’s legitimacy and the importance of its role should therefore be at the core of donors’ policies.

According to LICADHO and ADHOC, the years 2006 and 2007 have witnessed changes in the pattern of threats and attacks towards freedom of assembly and freedom of expression. If staff members of national human rights organisations continue to be the target of harassment and intimidation, the most serious attacks are increasingly targeting community activists, trade union leaders and other representatives of marginalised and vulnerable groups.<sup>9</sup>

The present mission report focuses in particular on the violations of the rights to freedom of expression and

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assembly occurring in the context of widespread illegal land grabbing. It also outlines concerns regarding the intimidation of journalists who critically reported about incidents of land grabbing in the country. Finally, it addresses the concerning trend of continuing repression against trade unionists and the persistent impunity of those targeting them, because this category of human rights defenders, along with those working on land issues, seems a particular target of repression.<sup>10</sup> Those individuals and groups indeed challenge, through their activities, strong economic and political interests.

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3. See Asian Development Bank & Cambodia, 2007 - A Fact Sheet, [http://www.adb.org/Documents/Fact\\_Sheets/CAM.pdf](http://www.adb.org/Documents/Fact_Sheets/CAM.pdf)

4. World Bank, Cambodia, Sharing Growth: Equity and Development in Cambodia, Equity Report 2007, 4 June 2007. The report can be found under <http://go.worldbank.org/H73UTIOKS1>

5. See the Agenda and Documents of the Cambodia Development Cooperation Forum under [http://www.cdc-crdb.gov.kh/cdc/first\\_cdcf/default.htm](http://www.cdc-crdb.gov.kh/cdc/first_cdcf/default.htm)

6. See FIDH, LICADHO, ADHOC, Report – International Criminal Court Programme, Articulation between the International Criminal Court and the Khmer Rouge Tribunal: The Place of Victims, Phnom Penh, 2-3 March 2005; FIDH-ADHOC-LICADHO-Collective for Khmer Rouge Victims' comments on the ECCC Draft Internal Rules, November 2006, at [http://www.fidh.org/IMG/pdf/Key\\_Comments\\_FIDH-ADHOC-LICADHO-ADHOC.pdf](http://www.fidh.org/IMG/pdf/Key_Comments_FIDH-ADHOC-LICADHO-ADHOC.pdf)

7. For more information on this Initiative see <http://www.eitransparency.org/section/abouteiti>

8. For more information on the Labour Arbitration Council see [http://www.arbitrationcouncil.org/eng\\_index.htm](http://www.arbitrationcouncil.org/eng_index.htm)

9. LICADHO briefing paper, Attacks and threats against human rights defenders in Cambodia, December 2006.

10. See annual reports of the Observatory for the Protection of Human Rights Defenders, a joint programme of FIDH and the World Organisation Against Torture (OMCT).

## B. Legislative Framework on freedom of expression and assembly

### I. The Constitution

The rights to freedom of expression and to freedom of assembly are guaranteed under Cambodian law, as well as under various international instruments that impose formal legal obligations on Cambodia as a State Party to the treaties.

The 1993 Cambodian Constitution guarantees the rights to freedom of expression and to freedom of assembly under Article 41:

*“Khmer citizens shall have freedom of expression, press, publication and assembly. No one shall exercise this right to infringe upon the rights of others, to affect the good traditions of the society, to violate public law and order and national security”*

Article 35 of the Constitution guarantees the right of Cambodian citizens *“to participate actively”* in the political life of the nation. Article 37 states that *“the right to strike and to non-violent demonstration shall be implemented in the framework of a law.”*

The Constitution (Article 31) also pledges the Kingdom of Cambodia to *“recognise and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights.”* Several of these enshrine the rights to freedom of expression and freedom of assembly.

Freedom of expression is enshrined in Article 19 of the UDHR and of the ICCPR, to which Cambodia acceded in May 1992. Article 19 of the ICCPR determines the admissible restrictions on this right: *“It may (...) be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.”

Freedom of assembly is enshrined in the Universal Declaration of Human Rights (Article 20) and the International Covenant on Civil and Political Rights (Article

21). Article 21 of the ICCPR clearly limits the restrictions admissible to freedom of assembly *“The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.”*

### II. Freedom of expression

#### a) The Law relating to the Press

The law relating to the press, adopted on 18 July 1995, reaffirms freedom of expression in Article 1 which specifies that *“This law shall determine a regime for the Press and assure the freedom of press and freedom of publication in conformity with Articles 31 and 41 of the Constitution of the Kingdom of Cambodia.”* The law also specifies in article 20 that *“No person shall be arrested or subject to criminal charges as result of expression of opinion.”* In cases of defamation, attacks on public order, national security or political stability, the law on the press provides for civil prosecution and in certain cases, a fine.

Despite the existence of this law, all cases of defamation were in the past based on articles 62 and 63 of the UNTAC (The United Nations Transitional Authority in Cambodia) Law, concerning disinformation and defamation respectively.

#### b) Defamation, Disinformation and Incitement Charges

In a surprise move on 14 February 2006 Prime Minister Hun Sen publicly declared on national radio that he was in favour of any move *“to promote profound freedom of expression”* in Cambodia, including decriminalising defamation. The Prime Minister’s declaration came shortly after the release on bail from prison of five civil society leaders whose arrests he had earlier ordered on defamation and other charges, and shortly before the March 2006 Consultative Group donor meeting.

The Prime Minister declared that criticism should not be prosecuted and that defamation should be redefined as an offence which could carry only a monetary fine as a



penalty. On 21 April 2006, the Cambodian government voted to abolish prison sentences for defamation. On 26 May 2006, the amendment was passed by Cambodia's National Assembly.<sup>11</sup>

This amendment introduced by the Royal Government is certainly commendable. It follows a trend of decriminalisation of defamation and similar type offences in many countries around the world. Although, e.g., in many European countries defamation is still a criminal offence included in their criminal codes, most of them have not applied these provisions against the media for decades, and a growing number of states abolish them altogether.<sup>12</sup> The UN Special Rapporteur for the promotion and protection of the right of freedom of opinion and expression stated that "sanctioning libel and defamation by prison sentences is not proportionate. Furthermore, he is of the view that criminal law is not appropriate for regulating such offences. [...] Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, as necessary, with appropriate civil defamation laws."<sup>13</sup>

However, despite the abolishment of prison sentences for defamation in Cambodia, critics of the government can still be imprisoned on alternative charges. In practice it appears that prosecutors have only replaced defamation charges under Article 63 of the UNTAC Penal Code with charges related to "disinformation" (Article 62 UNTAC). Disinformation is defined as a form of defamation that "has disturbed or is likely to disturb public peace", and carries a prison sentence of up to three years. Although in some cases no imprisonment was pronounced, the general threat of imprisonment by being charged with disinformation remains.

The most current abuse of the disinformation law involves Teang Narith, a university lecturer in Phnom Penh who is serving a two and a half year prison sentence for disinformation. He was imprisoned after he wrote a book, which he used in his classes, that was highly critical of Hun Sen and the government. No evidence was presented at his trial that his teachings had disturbed the public peace, or was likely to.

Another trend is the use of "incitement" charges (Articles 59-61 UNTAC) against journalists and, as outlined below, against community leaders. Especially Article 60 UNTAC (incitement "without the offence actually being committed") is phrased in a way that can easily be misused to target anyone who criticises government officials.

Not only does this generate fear of prosecution among journalists and human rights defenders, but also impedes open discussion of important public issues, criticism of government officials' policies or corruption. The Observatory recalls that the UN Special Representative of the Secretary General for Human Rights in Cambodia had already expressed deep concern "*that in Cambodia defamation and disinformation are being prosecuted as criminal cases under the 1992 UNTAC law and not under civil law. In this respect, the Special Representative firmly believes that dissenting views and opinions should be challenged through public debate rather than criminal law suits.*"<sup>14</sup>

Despite the trend of decriminalisation in particular in Europe, most recently French legal experts have contributed to draft a new penal code for Cambodia that again included defamation with imprisonment sanctions thereby, in effect, conveying a message that defamation charges can be brought up without restraint. However, Khmer newspapers reported in August 2007 that the Council of Ministers does not intend to reintroduce defamation provisions that provide for imprisonment sanctions.<sup>15</sup> During the time of the drafting of this report the new penal code was still under consideration by the Council of Ministers and not yet sent to the National Assembly for adoption. A new criminal code, that at least does not include imprisonment sanctions for defamation, would send appropriate signals. The Observatory wishes to express its expectation that this will lead to a genuine change of policy that defamation charges will not be applied or replaced by other accusations to suppress freedom of expression as has been the practice to date.

### **III. Freedom of assembly**

#### **a) The 1991 Law on Demonstrations**

In 1991, the National Assembly of the State of Cambodia<sup>16</sup> passed a Law on Demonstrations which says demonstrations are "acceptable" provided they are not "*detrimental to public tranquility, order or security*".<sup>17</sup>

It is important to note that the 1991 Law on Demonstrations states that "*authorities in each commune or ward through which a group of demonstrators will march shall be informed at least three days beforehand in writing*". The authorities are obliged to issue a receipt for the gathering unless they believe it has "*characteristics conducive to causing turmoil*", in which case they can ban the assembly within 48 hours. If the assembly organisers disagree, a

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final decision should be made by “*higher authorities*” within 24 hours. This law clearly sets out a process of notification and yet it has been wilfully misinterpreted to mean assembly organisers must apply for permission to gather. In doing so, the authorities turn the law into a tool to arbitrarily restrict freedom of assembly. Indeed, both in the Constitution and in the 1991 Law on Demonstrations, the vague definitions of what can be used as justification for restricting the right to freedom of assembly have been widely misinterpreted. The result is that an article which is meant to guarantee the basic right to assemble and peacefully protest is often used to legitimise restrictions which go against the spirit of freedom of assembly. Since early 2003, permission has been routinely denied to hold peaceful protests on spurious security grounds.

### **b) The Draft Law on Public Assembly**

The government, under the supervision of the Ministry of Interior, has drafted a new Law on Public Assembly for Peaceful Demonstrations.<sup>18</sup> The stated aim of the law, according to the ministry, is to shift from a system that de facto requires authorisation under the 1991 Law to a genuine notification system. Representatives of the Ministry of the Interior explained to the mission the government’s intention to draft a new law to adapt the old and short 1991 legislation to “the new world” and “the increasing development of industrial relations”.<sup>19</sup>

The Observatory considers that the authorities should enforce the current demonstration law properly (ie. respect that notification, not authorisation, is required), rather than proposing an entirely new law providing actually the same notification system.

A NGO consultative process was put in place by the Ministry of Interior and two large seminars organised in 2005 to collect NGOs’ proposals and comments. Even though most NGOs have welcomed the process for being rather open and constructive, some regretted that only two consultations were held and no real input was possible during the process.

Under the draft law, organisers of public assemblies would generally have to notify authorities at least five days in advance. The authorities have the power to refuse to permit a public assembly on public order grounds. If authorities have “clear information that the public assembly for a demonstration poses serious danger or harm to the public order, safety or security”, the authorities shall immediately inform the applicant and discuss modifications to the planned assembly. If this does not produce an agreement, the Ministry of Interior has the final decision on whether the assembly can proceed or not.

NGOs have expressed concern regarding the possible broad interpretation of “clear information”, and have urged alternative wording such as “convincing evidence” that would be more in line with international standards. The Government has so far refused to modify this provision.

The Observatory hopes this new law will only be approved by the government and National Assembly if it truly enhances the right to freedom of assembly in Cambodia. It urges the Government to ensure that the restrictions imposed on the right to freely assemble are as limited as possible, in conformity with international human rights standards.

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11. See International Press Institute, World Press Freedom Report 2006 Cambodia, <[http://www.freemedia.at/cms/ipi/freedom\\_detail.html?country=KW0001/KW0005/KW0113/](http://www.freemedia.at/cms/ipi/freedom_detail.html?country=KW0001/KW0005/KW0113/)>

12. See, inter alia, The Representative on Freedom of the Media of the OSCE and Reporters Without Borders, Libel and insult laws: What more can be done to decriminalise libel and repeal insult laws?, Paris, 25 November 2003, [http://www.osce.org/documents/rfm/2003/11/3346\\_en.pdf](http://www.osce.org/documents/rfm/2003/11/3346_en.pdf)

13. See Special Rapporteur, E/CN.4/2003/67, 30 December 2002, para. 73.

14. “The Special representative expresses deep concern over the defamation verdicts against opposition leader Sam Rainsy,” 27 December 2005.

15. See Chakraval, Vol.15, #2706, 14 August 2007, “Samdech Hun Sen Appeals to Journalists Not to Write Cursing Articles but Constructive Ones”.

16. Domestic legislation in Cambodia includes pre-1993 laws, saved by Article 158 of the Constitution under which “Laws and standard documents in Cambodia that safeguard State properties, rights, freedom and legal private properties and in conformity with the national interests, shall continue to be effective until altered or abrogated by new texts, except those provisions that are contrary to the spirit of this Constitution.”.

17. A Selection of Laws Currently in Force in the Kingdom of Cambodia, United Nations Cambodia Office of the High Commissioner for Human Rights, January 2002, p. 313.

18. Draft dated 9/10/2006.

19. Meeting with Mr. Prak Sareoun, from the Ministry of the Interior.

## C. Land Management and Human Rights in Cambodia

The Observatory mission focused on violations of the rights to freedom of expression and the right to freedom of assembly occurring in the context of large scale land grabbing and forced evictions, as well as criminal proceedings against representatives of affected communities. Land management issues and legal provisions on access to land are briefly presented below.

### I. Existing Legal Provisions on Access to Land

#### a) National Framework

During the Khmer Rouge regime, all private property was abolished in Cambodia and most title documents were destroyed. The right to own land was reintroduced in 1989 and from that time onwards, the government took a series of measures to address land issues and ensure efficient land privatisation and management.

The 1993 Cambodian Constitution recognises the right to enjoy private land ownership. Article 44 of the Constitution states that the government can only deprive someone of his/her property for “public interest” purposes and requires that the government pay victims a fair and just compensation.

The 2001 Land Law provides significant new tenure rights for the poor. It grants the right to apply for a land ownership title to occupiers of land whose peaceful and uncontested occupation exceeds five years (art. 38) and prohibits deprivation of ownership without due process.

The Land Law sets forth the different legal regimes of private ownership (individual, collective, undivided and co-ownership). These regimes vary in accordance with “the requirements of the Cambodian society”, such as urban immovable property, agricultural land,<sup>20</sup> forests and land for construction of industrial development zones, among others.<sup>21</sup> It recognises lands traditionally occupied by indigenous peoples (for both residential and agricultural purposes) as the collective ownership of those communities, a provision that should protect indigenous peoples against displacement.<sup>22</sup>

Finally, the Land Law establishes the distinction between State public and State private property. State public

property cannot, in any circumstances, be sold or exchanged, while State private property can be privately possessed, owned and sold.

The law establishes a Cadastral Commission under the supervision of the Ministry of Land, which has the competence to identify properties, establish cadastral index maps, issue ownership titles, register land and inform people about the status of each parcel of land. The Cadastral Commission does not focus on “possession claims” but on “registration claims”, i.e., land that has not yet been registered with the Ministry. The Cadastral Commission is also involved in dispute resolution to mediate between parties that have no title. It has proven to be a successful exercise in small cases but not in bigger disputes.

The Government has also set up a “National Authority for the Resolution of Land Disputes” which comprises of 17 high-ranking officials of various ministries. However, the members have largely delegated their tasks to others and this body is ineffective in practice.

The government's “Strategy of Land Policy Framework” states that the government should avoid forced evictions if at all possible; if people are to be evicted for public interest purposes, the government must pursue a policy of compensation and relocation.

In December 2005, a Sub-Decree on Economic Land Concessions was adopted to establish the legal and regulatory framework for the grant and management of concessions.<sup>23</sup> “Economic land concessions are defined as a mechanism to grant state private land for agricultural and industrial-agricultural exploitation. The purposes for which they may be granted include investment in agriculture, rural employment and diversification of livelihood opportunities, and the generation of state revenues.”<sup>24</sup>

The sub-decree on Economic Land Concessions states that economic land concessions of up to 10,000 hectares may be granted over land that has been registered and classified as State private land, provided the other prerequisites of an approved land use plan, environmental and social impact assessments, public consultations and solutions for resettlement issues are also met.<sup>25</sup>

## b) International Framework

The Government of Cambodia acceded to the main international human rights treaties in 1992, including the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICESCR explicitly guarantees the right to an adequate standard of living (art.11.1), including adequate food and housing. It also urges, in its article 11.2, State parties to “develop or reform agrarian systems”.

Secure access to land is key to the realisation of the right to food and the right to housing, as highlighted by General Comment (GC) 4 on the right to housing, GC 7 on forced evictions and GC 12 on the right to adequate food. These General Comments, elaborated by the UN Committee on Economic, Social and Cultural Rights, are useful guides to interpreting and implementing those rights.

The Committee stressed that the right to adequate housing “should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head. Rather it should be

seen as the right to live somewhere in security, peace and dignity. Thus, the right to housing includes aspects such as the legal security of tenure; availability of services, materials, facilities and infrastructures; affordability; or habitability.”<sup>26</sup> The Committee also defined forced evictions as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”<sup>27</sup>

In his last report, the Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living, Miloon Kothari, included a set of “Basic principles and guidelines on development-based evictions and displacement”. The document describes in great detail the scope and nature of the State's obligations prior to, during and after evictions - when they cannot be avoided - as well as remedies for victims of evictions (compensation, restitution and return, resettlement and rehabilitation). The guidelines also include elements for monitoring, evaluation and follow-up.

In terms of international human rights law, binding upon the Government of Cambodia pursuant to Article 31 of the Constitution of Cambodia, for forced evictions to be considered as lawful, they may only occur in very “exceptional circumstances.” If and only if such “exceptional circumstances” exist, then certain requirements have to be adhered to. These are:

- First, States *must* ensure, prior to any planned forced evictions, and particularly those involving large groups, that *all* feasible alternatives are explored *in consultation with affected persons*, with a view to avoiding ... the need to use force.
- Second, forced evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights. Governments *must* therefore, ensure that adequate alternative housing is available ... to affected persons.
- Finally, in those rare cases where forced eviction is considered justified, it *must* be carried out in strict compliance with international human rights law and in accordance with general principles of reasonableness and proportionality. These include, *inter alia*:
  - An opportunity for genuine consultation with those affected;
  - Adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
  - Information on the proposed evictions, and where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
  - Presence of government officials or their representatives during an eviction, especially where groups of people are involved ;
  - Proper identification of all persons carrying out the eviction;
  - Evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
  - Provision of legal remedies; and
  - Provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.<sup>28</sup>

## II. The Process of Land Redistribution

"Years of civil war and conflict, followed by land grabbing on a massive scale, have exacerbated land disputes and skewed land ownership patterns to the disadvantage of the rural and urban poor. Land management systems have been unable to address a combined result of the absence of land records which were destroyed during the Khmer Rouge period, an undeveloped and non-transparent land registration system, the absence of cadastral index maps, inadequate land laws and procedures, unclear delineation of State land and the weakness of the justice system. Many of these problems persist."<sup>29</sup>

Lack of clarity regarding land titles and rights has increased the vulnerability of small landholders. A recent housing survey (Ministry of Land Management, Urban Planning and Construction, 2003), points out that, while 71% of those surveyed indicated that they owned (or believed they owned) their land, only 5.4% had a land certificate.

Even though only a very small proportion of the population (at country level, both rural and urban) has official title to their land, people have been actively transferring land on the market.<sup>30</sup> Most land and property transactions have therefore taken place outside formal market procedures over the last ten years.

The first forced evictions carried out by the Municipality of Phnom Penh for the construction of infrastructure or city beautification projects accompanied the development of squatter settlements in Phnom Penh between 1990 and 1996. Since 1992, the number of households living in informal settlements has rapidly increased.<sup>31</sup> Evicted families rarely have been given compensation or resettlement options. Evictions often have been initiated by private investors/developers on land occupied by households who could provide some form of documentation. Most of the households have purchase contracts but no recognised title. Many residents have lost their land despite having evidence they had uncontested occupation of the land for more than five years – meaning they had valid claims to the property under the Land Law.

Land grabbing has worsened over the last two years with the issuance of more economic land concessions. The new Sub-Decree on Economic Land Concession of December 2005,<sup>32</sup> an ambiguous legal text, has led to additional pressure on small landholders. It is a conglomeration of well-intentioned principles that are supposed to be implemented by a complicated network of mechanisms for which seemingly

competent institutions do not exist. The sub-decree has further exacerbated the problem of the already weak mechanisms of land regulations and protections that existed before.

Blatantly ignoring the land law which limits the size of concessions to 10,000 hectares, the government has granted to companies concessions of more than 100,000 hectares. It became apparent during the mission that large populations, *i.e.*, those who have no means to resist, are losing their land possessions and are relocated to places to live under despicable circumstances without access to the most basic services.<sup>33</sup>

A particular problem is eviction without proper relocation. A sub-decree on resettlement is in the process of being drafted. NGO representatives expressed the concern that such a decree might only legitimise more land grabbing and relocations of communities.

The way the authorities in the municipalities, provinces and central government grant concessions to individuals and companies remains obscure. The residents are not informed and the proceeds from the concessions are not given to the people from whom the land is taken and who often have a legal claim of ownership over the land under the Land Law, interviewees complained.

The interviews carried out by the Observatory confirmed that the Sub-Decree on Economic Land Concession has been used to grant concessions even in territories where indigenous people live.<sup>34</sup> Although "indigenous community land" is protected under the law, often when such land is claimed by the communities, they are presented with a *fait accompli* - their land has been given away to someone else under a land concession. The notion of land concessions is helplessly distorted when concessions are also being granted on protected land.

An outstanding development of the last two years has been the mobilisation of people against the issuance of economic land concessions and relocation of communities. The mission observed such a mobilisation of a community at a public forum at Village Group 78 in central Phnom Penh. Residents of this community explained to the mission that the word "development" has become a word of fear for many people in Cambodia – it means the loss of land without compensation and relocation to a site without land title. They fear they may also be evicted from this new land, also in the name of "development", in the future.

### III. The practice of forced evictions and relocation of communities

The Observatory mission visited two eviction/relocation sites: one in Sihanoukville and one in Phnom Penh. The mission also met with nine community leaders who are directly involved in land conflicts that led to repression and attacks on their rights to freedom of expression and assembly. The living conditions in the relocation sites are bleak, and based on interviews with community members, the mission can confirm worrying trends in the process of evictions also highlighted by Human Rights Watch in their recent reports. Human Rights Watch has rightly pinpointed the striking similarities all the recent evictions bear.<sup>35</sup>

- Riot police armed with guns, shock batons, tear gas and shields cordon off the eviction sites before dawn to bar human rights monitors, UN observers and journalists.
- In many cases, police use or threaten to use unnecessary or excessive force to remove residents and tear down their homes.
- Affected communities are not adequately informed or consulted about the pending evictions, nor are they provided due process or adequate legal assistance.
- Compensation, if offered, is far below the market value of the properties that communities are vacating. Resettlement sites, typically located in remote, undeveloped areas far from the city centre, rarely provide basic government services

#### a) Illicit forced eviction of 105 families in Sihanoukville

##### *Recounting of the events*

The mission met with Ham Sunrith and San Soudalen, two lawyers who represent the evicted families in Sihanoukville. The two lawyers went through a detailed recounting of the events:

On the morning of 20 April 2007, a mixed group of some 150 Royal Cambodian Armed Forces personnel, military police, and civilian police armed with guns, electric batons, shields and tear gas forcibly evicted 105 families from Village 6 in Sihanoukville's Mitterpheap District. The forced eviction of the community on 20 April 2007 ultimately led to violence and destruction of the villagers' property.

One LICADHO representative witnessed the arrival of the armed forces in three military lorries. The police did not allow the LICADHO member to come closer to observe the eviction process. However, one of the villagers was able to take photographs of the arrests and police violence.

In the course of the raid, the security forces burned down 60 houses and completely demolished the remaining houses using heavy machinery. The evicted families were not permitted to remove possessions from their homes before they were destroyed. As a result, the families also lost important documents which would have been essential in defending their cases before the courts.

In the ensuing clashes between the authorities and the villagers, many villagers, as well as two police officers and one military police officer, were injured. Thirteen villagers were arrested and later charged with "wrongful damage to property" (Article 52 UNTAC Law<sup>36</sup>) - charges which relate to the alleged destruction of police equipment used in the raid - and "battery with injury" (Article 41 UNTAC Law).

The ownership of the disputed land remains unresolved. Neither the Cadastral Commission nor the civil court system of Cambodia has accorded binding ownership status to any of the parties involved in the case. The claim of one party to be in possession of valid land title deeds has yet to be established in a transparent manner by the relevant institutions. The order by the municipal authorities to forcibly evict the community prior to obtaining a conclusive ownership decision was therefore unlawful and should be subject to an independent investigation.

This is corroborated by the findings of the Senate Commission on Human Rights Reception of Complaints and Investigation issued on 8 February 2007 in response to a petition lodged by 53 villagers who protested against the potential loss of their land. After having interviewed the Governor of Sihanoukville, the Senate Commission came to the conclusion that this land dispute needs to be resolved by a Cambodian court of law. In spite of the Commission's recommendations, the municipality continued with the preparations for the final eviction.

In addition, no valid notice for the eviction on 20 April 2007 was submitted to the community. The Sihanoukville Municipality claimed that the deployment of the security forces including heavy earth-moving machinery was based on a search warrant which the municipal governor had obtained from the Public Prosecutor's Office in

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Sihanoukville upon his request dated 14 February 2007. The affected community and the defence lawyers have yet to receive a copy of the warrant.

Pursuant to Article 20 of the UNTAC Law, "searches must be conducted in the presence of the suspect and two witnesses, preferably neighbours or owners of the building." Violations by public officials of individual rights enumerated in Article 20 will incur criminal sanctions in accordance with Articles 22 (2) and 57 of the UNTAC Law. In addition, search warrants, of course, cannot be used to permanently evict residents and destroy their houses. Furthermore, the Criminal Procedure Code does not allow for the deployment of army personnel to enforce search warrants against civilians; this is the exclusive prerogative of the judicial police.

The Asian Human Rights Commission launched an urgent appeal on the 13th of June 2007 asking the Cambodian government to halt the eviction process and allow families to live peacefully on the land with official ownership titles.<sup>37</sup>

*Mission's visit to the relocation site*

The Observatory mission also visited the site where the community illegally built new primitive shelters on the side of a dirt road not far from its former community place and the sea. Currently, 83 families (including around 189 minors) live on the road. The new shelters are not protected and not strong enough to withstand the coming monsoon. The site is very unhygienic and children suffer from diarrhoea and fever. The villagers explained that as most of them are fishermen, they need to live near the sea.

The mission met with the wife of one of the detained villagers. She has eight children and lives with six of them in a tiny provisional shelter on the road. She reported that on 20 April 2007 the police came and surrounded the community. People were scared and did not leave their houses. Children threw stones at the police. The police threw them back at the children. Then the police entered the small community and started to destroy buildings. The women came out to look after their children and threw stones at the police. That is when the police decided to leave. After a few hours they came back for the second time with reinforcements. Again the police threw stones and the community threw them back. Then the armed police entered and the women took away their children. Her husband was reportedly arrested because he wanted to protect a group of children. The arrests were rather random; it was not clear

why certain men were arrested and others not. The police also used their rifles to shoot in the air.

*Mission's visit to the detainees in the Sihanoukville prison*

The mission had the opportunity to meet at the Sihanoukville prison with 12 detainees arrested on the occasion of the above-mentioned forced eviction. A thirteenth detainee, who is a juvenile, had been released. The detainees informed the mission that the police never told them with what they are charged. Only the defence counsel received the information at some point later.

In the prison, pre-trial detainees are mixed with convicts; there is no distinction between these two categories of prisoners, in violation of the UN Standard Minimum Rules for the Treatment of Prisoners which state: "Untried prisoners shall be kept separate from convicted prisoners", and of Principle 8 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. 34 people are in one cell which is 5x7 metres. They use mats and mosquito nets but have no beds. At the time of the Observatory visit to the prison, there were 173 prisoners; among them ten female, eight minors and 81 convicts.

Korean missionaries are allowed to visit the prison to teach Christianity, English and Korean. The prison administration budget for one prisoner is 1500 Riel (around 25 Euro cents) per day per person for all costs (mainly food). Twice a day the prisoners can leave their cells for 15 to 20 minutes.

On 3 and 4 July 2007 the 13 arrested villagers went to trial at the Sihanoukville Municipal Court. Five of them were acquitted of the charges against them. The eight others, convicted of committing battery with injury and/or destruction of property, were sentenced to between 75 days and eight months in prison. The eight were convicted despite the fact that police officers who testified for the prosecution were unable to confirm that any of them had in fact committed assault or caused damage. The court also did not consider the legality of the eviction, the excessive force used by the authorities during it, and the possibility that residents had lawfully acted in self-defence.

The seven residents who were sentenced to 75 days had already served their sentence in pre-trial detention and should have been released from prison on July 4. However, the court prosecutor appealed the sentences of all the convicted residents and therefore all remain in prison awaiting the Appeal Court hearing.

## **b) The eviction of the Sambok Chab community**

At dawn on 6 June 2006 several hundreds security officials armed with rifles, tear gas and electric batons forcibly evicted the Sambok Chab community in central Phnom Penh. The village is in the Tonle Basaac quarter situated on valuable land nearby the river and close to the National Assembly and government offices. The eviction was the culmination of more than two months' of efforts, including harassment, intimidation and destruction of houses, to force the residents to leave. The eviction was ordered by Phnom Penh Municipality, which had awarded the land to a private company.

The heavily armed police forced more than one thousand residents into lorries and deported them to a relocation site some 20km from the city centre, an area which lacks clean water, electricity, health clinics and schools.<sup>38</sup> Human rights workers and journalists were prevented from observing the eviction, and cameras were confiscated from those who tried to. Eight community representatives were arrested during the eviction, and authorities initially refused access to them by lawyers or human rights monitors.<sup>39</sup>

The eviction occurred despite a public call, less than week earlier, by two UN experts for the Cambodian to halt such evictions. In a 30 May 2006 statement, the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Miloon Kothari, and the Secretary-General's Special Representative on Human Rights Defenders, Hina Jilani, strongly condemned the forced evictions targeting poor and vulnerable people, carried out with total disregard of Cambodia's human rights obligations. They also criticised the authorities' obstruction of efforts by non-governmental organisations to provide humanitarian aid to homeless families.<sup>40</sup>

### *Mission's visit to the relocation site*

The Observatory mission undertook a field trip to the relocation site, in Andoung village, on the outskirts of Phnom Penh.

Despite the relocation being planned months in advance, the Phnom Penh Municipality failed to prepare the relocation site for the evicted people. The evictees were dumped there, to live in cramped and squalid conditions. The site lacked running water, electricity, health care services, toilets and other sanitation facilities, and the

evictees were not given food or other supplies.<sup>41</sup> More than a year later, the situation at Andoung remains much the same, with hundreds of families living in extremely precarious conditions. While some of the people have been given plots of land by the municipality, they have not been given land titles.

Residents said they cannot afford to travel the 20km to the capital to find work and their children are no longer able to attend school.<sup>42</sup> Altogether 277 primary school pupils lost access to their school due to the eviction. The evictees have become so-called "ghost people" – they have no right to vote, health care, suffer from malnutrition and are more prone to illnesses such as dengue fever. The lack of basic amenities at the relocation site has also led to increased prevalence of diarrhoea, skin infections, malnutrition and respiratory infections, particularly among children and the elderly. Residents rely on medical services provided by NGOs.

People are afraid to leave their small huts for fear that others will take their few belongings. They also fear that, if they leave their huts, they may lose the chance to obtain a right over the new plot at some point in the future.

## **c) Repression in the framework of forced evictions**

### *Individual testimonies of community leaders*

On 16 June 2007, the mission met with nine community leaders from various parts of the country who had suffered as a result of land evictions. The mission was not in a position to verify the accuracy of the claims in each case. However, the extent of the information received and the affirmation of similar incidents confirm a pattern of land being taken away from the most vulnerable populations without due process and little or no compensation. Those who lead groups of evicted communities to defend their possessions are often prosecuted and imprisoned. The names of some of those community leaders are omitted from this report for security reasons. The community leaders describe their cases as follows:

(1) The first leader interviewed reported that in 2002 she was arrested while protesting the eviction of 24 families in the Kompong Som province. The land was given to a well known businessman in the province. She was held in detention for 24 days. During the protests her mother fell on the ground and was sent to the hospital where she was not provided with



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medicine. In detention, the community leader was threatened that if she did not give up her land claim, her whole family would be imprisoned. She was told to admit that the land was not hers. Since her family was worried about her, she signed a paper given to her saying that the land 'rightfully' belonged to someone else. When she spoke to a judge about her difficulties in prison, the judge told her not to continue speaking about it or she may be charged with defamation.

(2) Another community leader informed the mission that in 1997 her community had moved to unoccupied land and demarcated it, in Kbal Spean village, Poipet commune, Banteay Meanchey province. Nobody had opposed them taking this land. Around 2000, the village chief filed a law suit against the land occupants. Over several years, court decisions by the provincial court and the Court of Appeals ruled against the villagers living on the land. Thereafter they went from Kbal Spean to Phnom Penh to demonstrate before the National Assembly. A Parliamentary official told the protesters to go home; they would look after the issue. The community members returned to Phnom Penh several more times without seeing any action by the government. In March 2005, armed forces removed the community from the land whereby violent confrontations occurred. Five persons were killed during the event, many more were injured and 30 people arrested and forced to sit under the sun for hours. No police officers were convicted of killing the community members. Before the communal elections on 1 April 2007, provincial authorities (supposedly acting on the orders of the Prime Minister of Cambodia) promised that each family would be able to retain small plots of land. However, only some families received smaller land pieces and nobody was given land title. Now their only hope is an intervention by the Prime Minister.<sup>43</sup>

(3) The spouse of Chhea Ny, a community representative from Bavel district, Battambang Province, reported that the authorities wanted to sell their land, where 3,179 families were living, to businessmen. Their land was cleared with bulldozers. In 2005, two people were arrested for incitement for having led the community to file complaints against the evictions. The community protested against their arrests in demonstrations. During the protest the police fired upon them and thereby injured three people. The two detainees were released after 45 days after having received a warning. However, when they continued to pursue their complaints they were detained again in August 2006. Mr. Chhea Ny, one of the community leaders, was arrested by a group of policemen, soldiers and members of the military police. At least seven other villagers, including Mr. Chhea Ny's wife, were injured when they tried to stop his arrest. On 4

September 2006, Mr. Hem Lack and Mr. Mou Sabb, two other community representatives, were also arrested and imprisoned. Chhea Ny was accused of "abuse of individual rights" (Article 57 of the UNTAC Law, a crime liable to five years imprisonment) and "infringement of private property" (Article 253 of the 2001 Territorial Law, which provides for a two-year prison sentence and a fine of 25 million riels – 4,688 euros). At trial in February 2007, Chhea Ny was acquitted of the charge of "abuse of individual rights" but not of "infringement of private property". He was sentenced to a year in prison. At the time of writing of this report, Chhea Ny remained in prison.<sup>44</sup> Mr. Hem Lack and Mr. Mou Sabb, convicted and sentenced to six months in prison, were released from prison in May 2007.<sup>45</sup>

(4) Another interlocutor stated that he belongs to the Stieng ethnic minority group in Kratie Province who lived in the forests. In February 2006, he, his wife, their 15-year old son and their son-in-law were arrested without warrants. Their son was released on bail after two days, but the other three were sent to Kratie provincial prison. They were charged with illegal forest clearance after he cleared land that he recently refused to sell to the owner of a neighbouring plantation. They were then given five-year suspended prison sentences and released, while the interlocutor's son was given a one-year suspended sentence. After the pronouncement of the verdict the District Governor went through the village in an effort to intimidate the residents announcing that an enemy still lives among them.

(5) Another community leader informed that the Chinese company "New Cosmos Company" bought and fenced off 1000 hectares of land in Kampong Speu province which belonged to his ethnic minority group, the Souey. This land contained a hot spring that is considered to be a holy site according to Souey tradition. The company plans to transform the hot spring into a tourist attraction surrounded by other tourist infrastructure. The community fears that the hot spring could disappear. Next to the hot spring is a 'spirit house' which the community was told to remove. The community believes that the spirit house including a worshipped stone must stay there next to the lake. The community leader complained that they had lost the forest, their burial ground, the grazing land, the wildlife and farming land. Most important for them was the forest that has been lost through de-forestation. Complaints have been filed with the authorities. However, the interviewee believes that his community will have no chance, because all the authorities work together against them. They lost the hot spring, the spirit house and the forest; they do not know how they will survive

in the future. He fears that without outside help his distinct small ethnic community will disappear. He stated that before economic land concessions are granted, an assessment on the effects on the environment and the people living there must be conducted. His community has no access to the law; they live far away from the towns. He appealed to the Government for help.

(6) Ms. So Socheat, a 23 year-old community leader from the Wat Bo village, Sala Kamroek commune of Siem Reap province, contended that on 3 May 2006 the police violently broke up a peaceful demonstration held by her community. Some people were so seriously beaten by the police that they lost consciousness. She was arrested and directly sent to prison (not to a police station or detention on remand facility). She refused to sign a confession given to her. Her community demonstrated for her release, and she was released on bail the day after her arrest. She was charged with destruction of the property and battery with injury against the police. It was even suggested that she might be charged with attempted murder, but this did not happen. She asserted that all the charges were groundless, and said that she was given the impression that if she stopped claiming her land, the charges would probably be dropped. The land dispute involves the chief monk of a local pagoda who is claiming the land of about 50 families who have lived nearby; the families have lived there for more than a decade. One of the community leaders, Mr. Mao Bun Laing died in his house under suspicious circumstances. A lawyer of the monk told the community: "If you continue protesting, the same will happen to you."<sup>46</sup> After the mission's interview with So Socheat, she went to trial on 22 October 2007. She was convicted of battery with injury against a policeman and of destruction of private property, and sentenced to eight months in prison. She was convicted despite a lack of evidence against her. In particular, the policeman who was allegedly assaulted told the court that it was not Socheat who had attacked him.<sup>47</sup>

(7) The next community leader stated that on 22 June 2005 the authorities accompanied a representative of a commercial company to his village. The company wanted to clear the area for farming and forestry. The official paper, i.e., the economic land concession, was shown to them indicating this company had been given the land for use. The villagers were told to leave the village. At the time the villagers had not agreed upon a land swap. Compensation of \$50 (around 200,000 Riel) per hectare of fertile land was offered to the 124 affected families. Some accepted the compensation for lack of other alternatives.

(8) Another community leader, from Koh Kong province, reported that a company received a concession for 10,000

hectares land to grow sugar cane. The company is owned by Ly Yong Phat, a powerful businessman and CPP senator. In September 2006, police and company workers forcibly tried to clear the land. Police fired gunshots into the ground and assaulted the villagers. One woman was shot in the foot and another man in the arm. The land dispute remains unresolved, and in protest the community has marched to Phnom Penh to seek intervention from National Assembly members.<sup>48</sup>

(9) The last community leader interviewed told the mission that a private company had been given concession over public lakes but that this company also fished in other lakes used by the villagers. 35 families informed the authorities about the use of illegal fishing equipment by the company. The authorities did not respond to their complaints. Therefore the villagers seized the illegal fishing equipments and brought them to the authorities. In 2002, court hearings were held in absentia on theft charges against the villagers for having taken away the fishing equipment. The second charge was the freeing of 15 tonnes of fish by six of the villagers. All seven defendants received one year imprisonment and 14 million Riel damages. Upon appeal, fewer damages were pronounced by the court but the prison sentence was upheld. Upon another appeal, the sentence was changed to suspended imprisonment plus 440,000 Riel damages. The long proceedings caused considerable stress among this fishing community.

#### **d) Prohibition of peaceful gatherings against forced evictions**

##### *General overview of freedom of assembly*

For more than four years, there has been effectively a ban on public demonstrations and other peaceful gatherings, except for pro-government manifestations. Even small scale demonstrations have not been permitted.<sup>49</sup> The ostensible reason for the ban given by the government is public order and security. The anti-Thai demonstrations in January 2003, which saw rioters attack the Embassy of Thailand and Thai-owned businesses in Phnom Penh, is often referred to in this regard. The riots occurred two days after Prime Minister Hun Sen gave a speech strongly criticising comments allegedly made by a Thai actress (which she denied to have made) that the historical site of Angkor Wat should be part of Thailand's heritage

As a rare exception to the rule, in December 2005 the government authorised NGOs to hold a large gathering at Olympic Stadium in Phnom Penh to commemorate "International Human Rights Day". Sixty NGOs participated in the event, which was attended by thousands of people. The

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organising committee had to provide names of key organisers of the event to the authorities, and had to agree to control the speeches during the event. Notes of all speeches were taken by government observers. The celebrations were followed by a severe repression against the organisers, and led to the arrests and imprisonment on three NGO leaders on defamation charges.<sup>50</sup> The case related to a banner displayed by one NGO at the event on which villagers had scrawled handwritten comments, which the government claimed were defamatory.

The three NGO leaders were released on bail in January 2006, though the charges were never officially dropped. Their arrests had a chilling effect on civil society's ability and willingness to exercise freedom of assembly and speech, and restrictions have remained tight. In 2006, more than 40 peaceful demonstrations or gatherings were obstructed or dispersed by the authorities. On many occasions, police used excessive force against unarmed demonstrators, including tear gas and electric batons and firing shots into the air or even at protesters. Public gatherings banned during 2006 included a celebration of International Labour Day on 1 May; while workers around the world took part in similar celebrations, thousands of Cambodian

workers – mostly young female garment factory staff – faced road blocks with riot police, electric shock batons and water cannons stopping them from entering Phnom Penh. Also banned in 2006 was an NGO event to fly kites near the National Assembly in support of freedom of expression; the event was broken up by armed riot police.

This general ban on peaceful demonstrations clearly violates Article 21 of the ICCPR enshrining the right to freedom of assembly.

### *The park next to Wat Botum*

For years, rural Cambodians have come to Phnom Penh to express grievances about land disputes and seek help from the Prime Minister, other government officials and their elected representatives to resolve them. While in the capital, they have traditionally camped in a park, next to Wat Botum, opposite the former National Assembly and close to a small Stupa.<sup>51</sup>

Between 2005 and the end of 2006, at least 15 separate groups of such land protesters arrived in Phnom Penh.<sup>52</sup>



The Stupa erected in commemoration of the 1997 grenade attack against a peaceful demonstration led by the Sam Rainsy Party.

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Most of these groups had been evicted from disputed land – often with excessive force – and had few other options left except for appealing to the Prime Minister for help. On 15 February 2006, the Phnom Penh Governor announced that all protestors camped in Wat Botum must leave within two days or would be forcibly removed. After ignoring the appeals of these protesters for two months, the deadline for their removal came just two weeks before the annual donors-government meeting. Between 17 February and 19 February 2006, police threatened protesters, dismantled their temporary camps and loaded their belongings into lorries. Some groups (including the protesters from Kompong Speu) fled to the headquarters of the Sam Rainsy Party and asked for assistance. Others returned home. In many cases the land disputes have remained unresolved.

The park next to Wat Botum continued to be a rallying point for different groups of land protesters in May, August and

September 2006. However in early May 2007 the park was filled with huge amounts of dirt making it difficult for people to camp there. In front of the park there is a reconstruction plan displayed about how the park will look once an upgrading of it is completed. The President of the National Assembly reportedly said that the Stupa will not be retained in the new plan.

Since the Observatory mission to Cambodia, there are further signs that the authorities are unwilling to permit the Wat Botum park to continue to be a rallying point for Cambodia's landless. On 16 October 2007, approximately 80 police and military police - some armed with pistols - surrounded a group of about 200 Svay Rieng land protesters camping in the park. The villagers, who had only arrived at the park a few hours earlier, were forced into vehicles including two buses and sent back to Svay Rieng. Some were beaten during the forced deportation.

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20. Residential land can be privately owned but agricultural land is and remains state land that can only be possessed during the time it is being used for agricultural production. (Enactment, Council of Ministers, 1989).

21. Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, Addendum: Mission to Cambodia, E/CN.4/2006/41/ADD.3, 21 March 2006, para. 18 and 23.

22. *Ibid*, para 21.

23. The Sub-Decree further requires that a Technical Secretariat, composed of representatives of eight Ministries and Government institutions, establishes an economic land concession logbook; supports the contracting central, provincial and municipal authorities to review existing land concessions; and issues review reports on whether concessions are fully operated in accordance with the terms of the contract.

24. UN Cambodia Office of the High Commissioner for Human Rights, Economic land concessions in Cambodia – A human rights perspective, June 2007. The report can be found under <http://cambodia.ohchr.org>

25. Report of the Special Representative of the Secretary-General for human rights in Cambodia, Yash Ghai (HRC 4th, 30/01/2007, A/HRC/4/36).

26. The right to adequate housing, General Comment 4, 13 Dec. 1991, para. 1.

27. The right to adequate housing (Art.11.1 ICESCR): forced evictions, General comment 7, para. 3, U.N. CESCR, 1997.

28. Source: COHRE, Legal Memorandum on Forced Eviction; see also General Comment 7 on the Right to Adequate Housing (art. 11.1 of the Covenant): forced evictions, 20 May 1997, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/959f71e476284596802564c3005d8d50?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/959f71e476284596802564c3005d8d50?Opendocument).

29. Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, Addendum: Mission To Cambodia, E/CN.4/2006/41/Add.3, 21 March 2006, para. 26.

30. (Sik, 2000).

31. Solidarity for the Urban Poor Federation (SUPF, 2003), a local Community Based Organisation (CBO), confirm this trend: 130,000 people were living in 187 poor communities in 1994; 375,000 were living in 569 poor communities in 2003. Poor communities include squatter settlements on public or private land, and settlements where low income families have a recognised occupancy status that gives them some security of tenure but no ownership rights.

32. See the brief outline in this report under B. III, The Existing Legal Provisions on Land Issues

33. See World Bank, *op. cit.*, p. 53 et seq.

34. See below under the interviews with community leaders in chapter II. 3., Forced evictions – A widespread practice at the expense of the poor.

35. HRW, 1 August 2006, press release, “Cambodia: Phnom Penh’s Poor Face Forced Evictions”.

36. Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period (so-called UNTAC Law) enacted by the Supreme National Council on 10 September 1992.

37. AHRC, 74 families face imminent eviction in Sihanoukville, Urgent appeal, 13 June 2007.

38. Some interlocutors of the mission even estimated that around 5000 people were affected.

39. Most of the arrested were later released. Three individuals remained in prison and in November 2006 were tried and convicted of wrongful damage to property. The charges related to a riot by angry villagers several days before the June 6 eviction. The three were convicted, and sentenced to two years’ imprisonment, despite a lack of evidence against them; the prosecution case rested on written testimony from one witness, who did not appear at the trial, who alleged the three had incited other villagers to riot.

40. See <http://www.un.org/news/dh/pdf/english/2006/30052006.pdf>

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41. See also CHRAC, HRTF, RAN, Joint Statement on the Eviction of Sambok Chab Village, 7 June 2006.
42. The Cambodia Daily, 12 June 2006.
43. For more information on this case, see: <http://www.licadho.org/reports/files/73CHRACKbaISpeanReport.pdf>
44. At a retrial held in May 2007, the charge against Chhea Ny was altered to one of destruction of public state property, and his one-year prison sentence was reduced to nine months and three months suspended. However, despite him having already served this sentence, he remains imprisoned pending further charges filed against him.
45. See Annual Report of the Observatory for the Protection of Human Rights Defenders (FIDH/OMCT), 2006.
46. See Annual Report of the Observatory for the Protection of Human Rights Defenders (FIDH/OMCT), 2006.
47. For more information, see <http://www.licadho.org/press/files/162LICADHOUjstVerdictWatBo07.pdf>
48. For more information, see <http://www.licadho.org/articles/20070208/51/index.html>
49. See below, LICADHO Briefing paper, Freedom of Assembly in Cambodia: December 2005 to September 2006.
50. See FIDH report Threats to Freedom of Expression and Assembly in Cambodia, February 2006, <http://www.fidh.org/IMG/pdf/kh439a.pdf>. See 2006 Annual Report of the Observatory for the Protection of Human Rights Defenders, "Steadfast in Protest" section on Cambodia, page 380.
51. The Stupa was erected in commemoration of the 1997 grenade attack against a peaceful demonstration led by the Sam Rainsy Party, in which many civilians died.
52. The groups included:
- Meley district, Banteay Meanchey province;
  - Preah Netpreah district, Banteay Meanchey province;
  - Bavel district, Battambang province;
  - Kean Svay district, Kandal province;
  - Srey Ambel district, Koh Kong province;
  - Memoth district, Kompong Cham province;
  - Prey Nub district, Kompong Som province;
  - Phnom Srouch district, Kompong Speu province;
  - Samrong Tong district, Kompong Speu province;
  - Treng Troyeong district, Kompong Speu province;
  - Baray district, Kompong Tom province;
  - Kampong Svay district, Kompong Tom province;
  - Stung district, Kompong Tom province;
  - Sen Monorom district, Mondolkiri province;
  - Anglong Veng district, Oddur Meanchey province.

## D. Threats to Journalists and Human Rights Defenders reporting about Land Disputes

### I. The Situation of the Media

On 15 June 2006, editor-in-chief Mr. You Saravuth, of *Sralanh Khmer* newspaper fled to neighbouring Thailand after printing an article accusing Mr. Hun To, the nephew of Prime Minister Hun Sen of illegally seizing land in Monduliri province. The Asian Human Rights Commission reported that You Saravuth had received death threats, including from Hun To himself, who summoned him to his house.<sup>53</sup> An anonymous fax was sent to him depicting a copy of his Cambodian ID and skull and crossbones across it. Hun To filed criminal complaints against the editor on disinformation charges. The editor went into hiding and fled the country.

On 7 September 2006, 34 year-old Mr. Soy Sopheap, a news analyst for CTN TV, received an anonymous letter that threatened to kill him. Apparently, the letter came from an army general who had been affected by negative press reports, which were analysed and discussed by Soy Sopheap on television.

During the mission's visit in Cambodia, a *Radio Free Asia* reporter Mr. Lim Pisith went into hiding in June 2007 after reportedly being threatened by phone after investigating illegal logging allegations in Kompong Thong provinces which were mentioned in the Global Witness report (see below on Global Witness).<sup>54</sup>

### II. The muzzling of human rights defenders working on land related issues

#### a) The case of Global Witness

The pattern of attacks against the environmental organisation Global Witness is a striking reminder about the Royal Government's inability to permit criticism.<sup>55</sup>

Global Witness is a UK-based NGO whose mandate is to expose corrupt exploitation of natural resources and international trade systems, to drive campaigns that end impunity, resource-linked conflict, and human rights and environmental abuses.<sup>56</sup>

Global Witness first began reporting about illegal logging in Cambodia and to link it to corruption and human rights abuses in 1995.

Until November 2004 Global Witness' presence in Cambodia was officially welcomed by the Royal Government. However, this was before the launch of the Global Witness' report: "Taking a Cut – Institutionalised Corruption and Illegal Logging in Cambodia's Aural Wildlife Sanctuary."

On 20 February 2005, 2,100 copies of 'Taking a Cut' were intercepted by customs officials at Pochentong Airport. The reports have not yet been released, and no legitimate reason was given for their confiscation.

In March 2005, the Council of Ministers, presided over by the Prime Minister, ordered the Ministry of Foreign Affairs to look into Global Witness' continued presence in Cambodia. As a result, on 28 June 2005 Secretary of State at the Ministry of Foreign Affairs, Mr. Long Visalo, sent a letter to the Ministry of Interior, subsequently passed on to immigration, denying Global Witness entry into Cambodia. On 18 July 2005 Global Witness' Assistant Cambodia Coordinator was stopped by immigration officials at Pochentong and put on a plane back to Thailand.

#### *The crackdown on the June 2007 report on illegal logging*

A Global Witness report, titled "Cambodia's Family Trees: Illegal logging and the stripping of public assets by Cambodia's elite", was released on 1 June 2007.

It accuses members of the Cambodian so-called 'kleptocratic elite' of massive environmental plunder and participation in a logging syndicate. It also describes and denounces the illegal destruction of Cambodia's forests carried out, as this organisation asserts, under the lead of family members and business associates of Prime Minister Hun Sen, his wife, and other senior officials.

According to the *Cambodian Daily*, on 3 June 2007, the Cambodian Minister of Information, Mr. Khieu Kanharith, issued a statement, saying that the government was banning Global Witness' latest report and would confiscate any copies found in the country. He said the report was "a politically motivated attack on Prime Minister Hun Sen and retaliation for the group's expulsion from Cambodia in 2005". A statement issued by the Royal Embassy of Cambodia to the UK "to clarify the Global Witness' report" corroborates this remark and contended that:<sup>57</sup>

1. The so-called report on illegal logging in Cambodia is totally: groundless – unacceptable - rubbish and exceeding the work of this organisation.

2. The harmful report and book clearly show the political motivation and grudge for being sacked from Cambodia in 2005 by the Government of Cambodia and, for being banned from entering Cambodia.

3. The accusation and defamation on the Government's members and personalities are an attempt to incite political problem with a motivated intention to discredit the image of the Royal Government of Cambodia and its leaders.

4. Global Witness, as a non-governmental organisation, losing its role as a partner of the Cambodian Government, is using the organisation's name to serve their political campaign against the Cambodian Government.

Finally, the Royal Embassy of Cambodia strongly urges the Governments of Canada, Ireland, Netherlands, Sweden and UK to seriously re-consider their support in funding Global Witness in the future in order to get a real picture of their direction and policy as a non-government organisation.

The police confiscated copies of the report. However, some copies of the Khmer version were nonetheless distributed although not in public. Some Khmer newspapers such as *Sralang Khmer* printed parts of the report they found on the web. The Minister of Information wrote to all newspapers stating that they should not reprint the report or legal action would be taken against them. Local newspapers that already had reprinted parts of the report were told to immediately stop.

On 4 June 2007, Mr. Hun Neng, Kompong Cham, provincial Governor and the Prime Minister's brother, declared that he was considering taking legal action over the allegations made in the report against members of his family. Allegedly he later added that if Global Witness's members came to Cambodia, he would "hit them until their heads are broken".<sup>58</sup>

During the mission's visit to Cambodia, a former Khmer Global Witness staff member received anonymous death threats. He took them seriously and left the country. The mission was also informed that two other former Global

Witness staff members went into hiding after having received threats.

The international community was not unreceptive to the issues raised in the report, although there was some criticism of its sensationalist tone. The US Ambassador, Mr. Joseph A. Mussomeli, went as far as to call on the government to co-operate with Global Witness to prevent illegal logging in Cambodia.<sup>59</sup>

The French-language newspaper *Cambodge Soir* was among the first to cover the Global Witness report. Following the Ministry of Information criticism of its report, the newspaper management fired the journalist responsible. When other staff went on strike in protest, the management arbitrarily closed down the newspaper in what appeared to be an act of self-censorship. It later emerged that one of the owners of the newspaper was an advisor to a senior government official responsible for forestry issues.

The closure of *Cambodge Soir* – the only French language publication in Cambodia, and which also contained a Khmer-language supplement – was a heavy blow to the freedom and independence of the press. The newspaper has since been reopened but it remains to be seen whether it will practise a higher degree of self-censorship than previously, and whether the independence of its journalists will be guaranteed.

## **b) The Murder of Mr Seng Sarorn**

On 4 July 2007, Mr. Seng Sarorn, a member of the "Culture and Environment Preservation Association" (CEPA), an activist of ADHOC human rights NGO, and a leader of the community of Sre Kor village (Stung Treng province), was shot dead by an unknown person while at home with his wife.

Mr. Seng Sarorn actively encouraged people in his community to protest about forestry, fishery, and land-grabbing issues. Recently, Mr. Sarorn had also been involved in protests demanding that a company named Sal Sophea Pheanich give the State's forestry land it had illegally acquired back to the poor people of the community.

Although the provincial Military Police arrived at the crime scene immediately after the killing, an improper investigation was conducted which resulted in the contamination of the crime scene.<sup>60</sup>

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Within days of the killing, the police arrested five men – one of whom was Seng Sarorn's uncle – and declared that the murder related to a personal dispute.

One of the persons charged, PANG Huth, age 45, requested from ADHOC an additional lawyer for the hearing of December 2007 because he did not trust his former lawyer. Three other accused are PHEUNN Lor, HA Khang and KANG Mao. Another accused, PIN Vuthy, was released in October 2007. There will be hearing on December 25, 2007.

The wife of the victim and another witness were supposed to appear as witnesses. The hearing was postponed *sine die*.

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53. See Annual Report of the Observatory for the Protection of Human Rights Defenders (FIDH/OMCT), 2006.

54. The Cambodia daily, June 21, 2007, Press group calls on gov't to protect RFA reporter; see urgent appeal of the Observatory, KHM 003 / 0607 / OBS 068, 22 June 2007.

55. See Urgent appeal of the Observatory, KHM 002 / 0607 / OBS 064, 7 June 2007.

56. See <http://www.globalwitness.org>

57. See "Prime Minister's NEWSROOM" under <http://www.cambodianembassy.org.uk/>

58. See urgent appeal of the Observatory for the Protection of Human Rights Defenders, KHM 002 / 0607 / OBS 064, 7 June 2007.

59. See Sralanh Khmer, Vol. 3, #428, 16 June 2007.

60. See urgent appeal of the Observatory, KHM 004 / 0707 / OBS 075, 9 July 2007.



## E. The Increasing Attacks on Trade Union Leaders

As LICADHO noted in a December 2006 Briefing paper on human rights defenders, 2006 saw an increase in the number of arrests, assaults and threats against trade unionists, particularly in the garment sector.

The mission met with Mr. An Nan from the Workers Rights Consortium and Mr. Tola Moeun of the Cambodian Federation of Building and Wood Workers (“CFBW”). They both confirmed that in the last two years, unlike the years before, more suits have been filed against unionists, especially under charges of “incitement.” Other common charges are: destruction of property, attempted murder, battery, disinformation and defamation.

Similar to community leaders, NGOs and journalists working on land issues, trade union leaders are also challenging, through peaceful and legal means, powerful economic interests. They may therefore be victims of a particularly severe repression. It was therefore decided to include a section on their specific situation in this report.

### I. The case of Mr. Hy Vuthy

On 24 February 2007 Mr. Hy Vuthy, President of the Free Trade Union of Workers in the Kingdom of Cambodia (FTUWKC) at the Suntex garment factory, was shot dead while riding his motorbike home after finishing his night shift at the Suntex factory in Phnom Penh’s Dangkao district. Mr. Vuthy is the third FTUWKC official to be killed in three years.<sup>61</sup> Mr. Chea Vichea, the Union’s President, was shot dead in January 2004. In May 2004, Ros Sovannarith, the FTUWKC President at the Trinunggal Komara factory, was murdered.<sup>62</sup>

A joint statement entitled “Call for justice” was signed by more than 150 organisations throughout the world. This statement calls for a “thorough and impartial investigation into Hy Vuthy’s murder”.<sup>63</sup>

To date, no-one has been prosecuted for the murder. Soon after the killing, police told journalists that they had identified two suspects and sent a request to the Phnom Penh court for arrest warrants for them. However, no action is known to have been taken by the court.

## II. The Chea Vichea murder and the imprisonment of two innocent men

### a) The first instance trial

Mr. Sok Sam Oeun and Mr. Born Samnang were arrested and are still being detained in PJ prison for the death of Mr. Chea Vichea, President of the Free Trade Union of the Workers of the Kingdom of Cambodia (FTUWKC) and who was shot dead on 22 January 2004.

In a trial marred with irregularities, Mr. Sok and Mr. Born were found guilty of murder on 1 August 2005 and were sentenced by the Phnom Penh Municipal Court to 20 years imprisonment and a fine of 3,800 USD in compensation and interests. Mr. Chea Mony, the brother of the victim and president of FTUWKC, stated that he would refuse the money because he had his doubts as to whether the two men were guilty. In October 2005, Mr. Sok and Mr. Born filed an appeal after having asked for an amnesty from King Norodom Sihanouk. On 25 July 2006, the Secretary of the Ministry of Justice wrote to Mr. Chea Mony that more evidence would be required to reopen the investigation.

Ms. Var Sothy, owner of the newspaper stand in front of which the murder occurred, gave a detailed witness statement stating the innocence of the two men accused and describing the murder, the murderer and his accomplice, their car, etc. The statement was given from abroad, after she left the country, fearing for her life.

In August 2006 the police officer in charge of the arrest of the two men, Mr. Heng Pov, former Superintendent of Phnom Penh, admitted in an interview with the French newspaper *L’Express* that he had believed that the men were innocent as soon as the investigation had begun. Heng Pov made his statement after fleeing Cambodia, and also accused the Prime Minister and other senior officials of involvement in crimes including murders, kidnappings and drug trafficking. Heng Pov was subsequently deported back to Cambodia, where he has been imprisoned for serious crimes, including murder. During a court appearance for an unrelated case in July 2007, he reiterated Born Samnang and Sok Sam Oeun’s innocence, telling the court: “Born Samnang and Sok Sam Oeun were not the shooters”.<sup>64</sup>

## b) The Appeal trial

On 6 April 2007, Born Samnang and Sok Sam Oeung appeals against their convictions were heard by the Court of Appeal. The Prosecutor, in his concluding statement at the hearing, acknowledged there were gaps in the original police investigation and recommended the Court conduct additional investigation to find the truth.<sup>65</sup> No prosecution witnesses testified. Defence witnesses for Born Samnang testified he was in Neak Loeung on the day of the murder.

In their verdict delivered six days after the hearing, however, the judges ruled the two men were guilty and upheld their convictions – an extraordinary situation whereby the judges, charged with objectively and independently ruling on the evidence, with a presumption of innocence for the accused, rejected the conclusions and recommendation of the prosecutor. In a mirror image of what had happened at the municipal court trial, the Court of Appeal judges dismissed the testimony given at the hearing by alibi witnesses for Born Samnang as being unreliable, at the same time as they accepted the written testimony of prosecution witnesses who have never appeared in any court.<sup>66</sup>

The judges rejected Born Samnang's recanting of his initial confession. To support their contention that Born Samnang's original confession was true, they wrongly said that it was consistent with the written testimony of a prosecution witness. Finally, the judges refused to consider the new evidence provided by Va Sothy in her notarised statement written in Thailand.

The Court of Appeal verdict was denounced by the UN Secretary-General's Special Representative for Human Rights in Cambodia, who again used the term "grave injustice".<sup>67</sup>

The International Labour Organisation also expressed "grave concern" at the "injustices" in the court proceedings, and demanded a "full, independent and impartial inquiry" into the murder of Chea Vichea.<sup>68</sup>

## III. The Temporary Detention of Eight Foreign Nationals

During the time of the mission, on 19 June 2007, eight foreign nationals were detained by Cambodian immigration police for more than nine hours after

gathering to publicly appeal for justice for Born Samnang and Sok Sam Ouen, the two men convicted of killing trade union leader Chea Vichea in 2004 (see above).

In the early morning, two lorries, each displaying two large poster boards featuring words in Khmer describing Born Samnang and Sok Sam Ouen's cases, were driven around the centre of Phnom Penh prior to the opening of the Cambodia Development Cooperation Forum (CDCF) meeting.

The lorries stopped several times at various points on the Wat Phnom rotary in order to make the boards visible to incoming donors. They did not, or only slightly, obstruct traffic at any time, but moved ahead when requested by nearby police officers.

Approximately an hour after the begin of the protest action, a man who identified himself as an immigration police official ordered other officers to take control of one of the lorries. An officer in charge said the group's actions were in violation of Cambodian law. When asked which law they had violated, he replied, "pick any one you want." The other lorry was escorted by police to the immigration office. The drivers and passengers of both vehicles were not given any reasons for being taken into custody. When one of the passengers asked en route as to where they were going or why, the officers refused to answer.

At the time of the incident, the lorries contained two drivers and six passengers, all foreign nationals: one Briton, three Americans, two Canadians, one Dane, and one New Zealander. Upon arrival at the station, police took photos of the detainees. One officer told a detainee that he "knew her" and "had her picture." Each detainee was then interviewed separately, without impartial translators, until late morning. Representatives from embassies, UN OHCHR, and human rights NGOs were present for some, but not all, of the interviews at the request of the detainees. Media members and defence lawyers were also present at the immigration police office upon the request of the detainees. Copies of each detainee's passport and valid visa were taken by the officials, and each was required to sign a statement written in Khmer. By signing, the detainees agreed that they would, among other things, not engage in any activities that would disturb public order and would seek permission from local authorities when participating in processions. Although the detainees and foreign

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representatives repeatedly asked which law they had violated, no official offered an answer. They were released in the evening.

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61. See joint press release "Bring Killers of Trade Unionist to Justice. Six Major Human Rights and Trade Union Groups Condemn Recent Killing", 27 February 2007.

62. See 2004 Annual report of the Observatory for the Protection of Human Rights Defenders, p. 228.

63. Joint Statement, Call for Justice, Phnom Penh, May 2007.

64. Prak Chan Thul and Van Roeun, Penal Chief Denies Heng Pov's Accusations of Kidnapping, The Cambodia Daily, 20 July 2007.

65. LICADHO, Innocent prisoners awaiting justice, <http://licadho.org/reports/files/107LICADHOPaperSummaryBSSSO07.pdf>

66. See urgent appeal of the Observatory, KHM 001/0805.OBS 070.1, 16 April 2007.

67. UN expert on human rights in Cambodia regrets upholding of sentences in case of murdered union leader, 12 April 2007, <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/9F26CADD2D14AEC0C12572BC00206776?opendocument>

68. ILO statement on appeal hearing for murder of Chea Vichea, 18 April 2007,

[http://www.ilo.org/global/About\\_the\\_ILO/Media\\_and\\_public\\_information/Press\\_releases/lang--en/WCMS\\_082410/index.htm](http://www.ilo.org/global/About_the_ILO/Media_and_public_information/Press_releases/lang--en/WCMS_082410/index.htm)

## F. Conclusions and recommendations

During the mission's visit to Cambodia, the team conducted numerous interviews that confirm how the rights to freedom of assembly and expression are being seriously violated in Cambodia despite its commitments towards the international community enshrined in the many human rights conventions ratified by Cambodia. Members of the ruling elites utilise the instruments of the state for personal enrichment with deplorable consequences for the already marginalised populations. No strong institutions exist that could remedy the disastrous impact on economic and social rights of the massive and inequitable land "redistribution process". Challenges to expropriations and relocations are often met with intimidation, prosecution, imprisonment and violence towards those who represent the dispossessed. The judiciary is incapable or unwilling to protect the residents against arbitrary evictions from their home or their land.

The international community will need to act with persistence and creativity to contribute to a change in the attitudes of the country's elite to gradually allow for the growth of institutions to build a more equitable society. The government must be held to its promises, and be consistently pushed to allow the creation of competent and independent institutions which can truly protect the rights of Cambodia's citizens. The international community should continue to support advocates for reform and human rights, including NGOs, trade unionists, journalists and community representatives. The Cambodian people must have a greater voice in the policies of the government, and donors must fully support the strengthening of civil society.

The rights of the people who try to peacefully defend their claims for land or those who report about it in the national media or denounce the human rights violations that such evictions entail, should be fully respected and protected, in conformity with international human rights standards.

**In view of those elements, the Observatory for the Protection of Human Rights Defenders (FIDH/OMCT) addresses the following recommendations to the Royal Government of Cambodia and the international community.**

### **- Recommendations to the Royal Government of Cambodia**

#### *On freedom of expression and assembly*

1. To immediately stop using disinformation and incitement charges to curb freedom of expression;
2. To free immediately Mr. Sok Sam Oeun and Mr. Born Samnang, as their detention is arbitrary and follows a blatantly unfair trial; ensure an independent enquiry into the assassination of Chea Vichea in order to identify the real perpetrators of this killing;
3. Put an end to impunity for acts of repression against community leaders, journalists and human rights defenders reporting on forced evictions or supporting evicted communities, as well as trade unionists;
4. Adopt the draft law on public assembly only if it is full conformity with international human rights standards and cannot be not used to restrain freedom of assembly in violation of Article 21 of the ICCPR;
5. To conform with the UN declaration on human rights defenders of 1998 – in particular its Articles 5 and 6, as well as international human rights instruments ratified by Cambodia, in particular Articles 19 and 21 of the ICCPR and the ILO Conventions;

#### *On forced evictions*

1. Enshrine the right to housing in domestic legislation and expressly prohibit forced evictions as a principle; only very limited exceptions should be admitted, in conformity with the ICESCR. Such legislation should notably include:

- the right of residents affected by the projects to be effectively and meaningfully consulted on the project involving their eviction and to be informed timely of the proposed eviction,
- effective legal remedies,
- legal aid for needy parties seeking redress from court,
- a clear prohibition of eviction and demolition as long as disputes between the residents and the real estate company are not settled,
- adequate compensation of evicted residents,
- sanctions in case of forced evictions carried out, without appropriate safeguards, by state agents or private persons or bodies;

Such legal framework should also be in conformity with the

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*Basic principles and guidelines on development-based evictions and displacement* presented by the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living;

2. Establish a meaningful and well-funded welfare housing programme in order to ensure full respect of Article 11 combined with Article 2.1 of the ICESCR, which oblige States to use "all appropriate means" to promote the right to adequate housing. As stated by the UN Committee on Economic, Social and Cultural Rights, "the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available,"<sup>69</sup>

3. Immediately suspend all forced evictions until the adoption of a comprehensive national housing and resettlement policy in accordance with its national and international human rights obligations;

4. Ensure that legal provisions are enforced against State agents or third parties who carry out forced evictions;

5. Allow NGOs and lawyers free access to residents arrested in the framework of forced evictions;

6. Put an immediate end to all form of repression against lawyers and activists defending the rights of urban and rural evictees, and more generally fully respect the UN Declaration on Human Rights Defenders of 1998;

7. Guarantee exemption from criminal responsibility of those who peacefully exercise rights guaranteed by the Universal Declaration of Human Rights;

8. Submit its initial report concerning the implementation of the ICESCR to the UN Committee on Economic, Social and Cultural Rights.

### *General recommendations*

1. To ensure adoption as soon as possible of the eight fundamental laws recommended by the Consultative Group, and to ensure that the laws are in full compliance with Cambodia's international obligations in the field of human rights, and more specifically ensuring:

- Respect for Article 19 and 21 of the ICCPR,
- Respect for the UN Basic principles on the independence of the judiciary and on the role of lawyers;

2. To fully implement the recommendations made by various UN treaty bodies and special mechanisms, in particular those of the UN Special representative on Human Rights in Cambodia;

3. To set up an independent human rights commission, in keeping with the Paris Principles.

### **- Recommendations to the donors' community**

1. Specifically consider the question of freedom of expression and association, by expressing concern for the increasing attacks against representatives of communities affected by forced evictions, as well as human rights defenders supporting them and journalists reporting on this phenomenon.

2. Exercise extreme vigilance on cases of violations of freedom of expression and assembly; increase their coordination on such cases.

3. As regards the EU, fully implement the EU guidelines on human rights defenders, dated June 2004.

4. Ensure that a favourable visa-granting policy be applied to persons who risk immediate and arbitrary arrest for having exercised their legitimate right to freedom of expression, through accelerated procedures when relevant.

5. Put the questions of forced evictions and the repression of the persons defending the economic and social rights of vulnerable groups on the agenda of the future meetings to take place under the 1997 Cooperation Agreement between the European Community and the Kingdom of Cambodia. Article 1 of the text stipulates that respect for human rights and democratic principles are an essential element of the Agreement.

6. The People's Republic of China should coordinate its aid to Cambodia with other Cambodia Development Co-operation Forum (CDCF) donor countries, including as regards indicators and benchmarks for the strengthening of the rule of law and human rights.

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69. General Comment n°7, para. 16, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/959f71e476284596802564c3005d8d50?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/959f71e476284596802564c3005d8d50?Opendocument)

## Annex: persons met by the mission

### 1. Cambodian authorities

Mr Prak Sareoun  
Ministry of the Interior

The Governor of the  
Prison in Sihanoukville

### 2. Intergovernmental organisations and diplomatic representations

Mr. Daniel Adler  
Legal Specialist  
The World Bank, Cambodia Country Office

Ms. Keat Bophal  
Programme Associate  
United Nations Office of the High Commissioner for Human Rights

Ms. Julie de Rivero,  
Human Rights Officer  
United Nations Office of the High Commissioner for Human Rights

Mr. Theo Kidess  
Deputy Head of Mission  
Embassy of the Federal Republic of Germany

Mr. Laurent Le Marchand  
First Secretary  
Embassy of the French Republic

Ms. Donica Pottie  
Ambassador  
Canada

Mr. David Reader  
Ambassador  
British Embassy

### 3. Civil society

Mr. An Nan  
Investigator for Cambodia  
Workers Rights Consortium

Mr. Chhith Sam Ath  
Executive Director  
The NGO Forum of Cambodia

Mr. Ham Sunrith  
Human Rights Lawyer  
LICADHO

**Defending Economic and Social Rights in Cambodia  
A High-Risk Activity**

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Mr. Hisham Mousar  
Special Assistant to the President General Coordinator of the Khmer Rouge Trials and International Criminal Court Programme  
ADHOC

Ms. Kek Galabru  
President  
LICADHO

Mr. Khim Sakhen  
Coordinator  
LICADHO

Mr. Gerald Leather  
Independent Consultant and Lawyer

Mr. Michael Lerner  
Technical Advisor  
Arbitration Council Foundation

Mr. Phann Sithan  
Secretariat Officer  
Housing Rights Task Force

Ms. Naly Pilorge  
Director  
LICADHO

Mr. David Pred  
Country Director  
Bridges Across Borders

Ms. San Soudalen  
Human Rights Lawyer  
LICADHO

Mr. Tola Moeun  
Cambodian Federation of Building and Wood Workers

Ms. Camilla Graham Wood  
Volunteer  
Housing Rights Task Force

Mr. Yeng Virak  
Executive Director  
Community Legal Education Centre

*and many others, whose names were not included in the report for security reasons.*

# THE OBSERVATORY

For the Protection of Human Rights Defenders

## L'OBSERVATOIRE

pour la protection  
des défenseurs des droits de l'Homme

## EL OBSERVATORIO

para la Protección  
de los Defensores de los Derechos Humanos

The Emergency Line  
La Ligne d'Urgence  
La Línea de Urgencia

e-mail

Appeals@fidh-omct.org

FIDH

tel: 33 (0) 1 43 55 55 05

fax: 33 (0) 1 43 55 18 80

OMCT

tel: 41 (0) 22 809 49 39

fax: 41 (0) 22 809 49 29

**Director of publication:** Souhayr Belhassen  
**Editors-in-chief:** Antoine Bernard, Eric Sottas  
**Authors:** Marie Guiraud, Andreas Kirsch-Wood  
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### Activities of the Observatory

The Observatory is an action programme, based on the conviction that strengthened cooperation and solidarity among defenders and their organisations will contribute to break the isolation of the victims of violations. It is also based on the necessity to establish a systematic response from NGOs and the international community to the repression against defenders.

With this aim, the priorities of the Observatory are:

- a) a system of systematic alert on violations of rights and freedoms of human rights defenders, particularly when they require an urgent intervention;
- b) the observation of judicial proceedings, and whenever necessary, direct legal assistance;
- c) personalised and direct assistance, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- d) the preparation, publication and diffusion of a world-wide level of reports on violations of human rights and of individuals, or their organisations, that work for human rights around the world;
- e) sustained lobby with different regional and international intergovernmental institutions, particularly the United Nations, the Organisation of American States, the African Union, the Council of Europe, the European Union, the Organisation for Security and Cooperation in Europe (OSCE), the International Organisation of the Francophonie, the Commonwealth and the International Labour Organisation (ILO).

The activities of the Observatory are based on the consultation and the cooperation with national, regional and international non-governmental organisations.

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by OMCT and FIDH: "Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his compromise exercised individually or in association with others, in conformity with international instruments of protection of human rights, in favour of the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by several international instruments.

An FIDH and OMCT venture - Un programme de la FIDH et de l'OMCT - Un programa de la FIDH y de la OMCT

**fidh**

International Federation for Human Rights  
17, Passage de la Main d'Or 75011  
Paris, France



World Organisation Against Torture  
Case postale 21 - 8, rue du Vieux-Billard  
1211 Geneva 8, Switzerland