CAMBODIA

The human rights situation in 2007

In October 1991, Cambodia's warring factions and 17 concerned countries gathered in Paris, France, to sign a set of agreements, in the presence of the Secretary-General of the United Nations, to end the war in Cambodia. All State signatories then recognized, among other things, that Cambodia's tragic recent history required special measures to ensure the protection of human rights.

Among these measures were Cambodia's adoption of a pluralistic liberal democratic system of government, and its undertaking to ensure respect for, and observance of, human rights and fundamental freedoms. For their part, the other State signatories also committed themselves to promoting and encouraging such respect and observance, and the UN was tasked with monitoring the situation of human rights in the war stricken country.

Following these accords, Cambodia has become party to all major international human rights norms and standards and incorporated them into its constitution. This constitution has established an independent judiciary for the protection of the rights and freedoms of all Cambodian citizens so that aggrieved individuals can have courts to adjudicate on and enforce their rights. Furthermore, the same constitution has assigned the King of Cambodia to be the guarantor of both the independence of the judiciary and the rights and freedoms of Cambodian citizens.

Cambodia is therefore internationally bound by international human rights norms and standards by virtue of the Paris Peace Agreements and the constitution it adopted in 1993.

This report focuses on some developments that conditioned, for better or for worse, the situation of human rights in Cambodia in 2007. These developments are as follows:

1. The strenuous relationships between the Cambodian government and the UN human rights mechanisms in Cambodia;
2. The adoption of the Code of Ethics for Judges and the enactment of the Code of Criminal Procedure, and their impact on the judiciary and human rights;
3. Criminal lawsuits and arrests to strike fears in the population;
4. The restrictions on the freedoms of the press, of expression and of assembly;
5. Land disputes and land-grabbing, and the measures taken to address this issue.

1. The strenuous relationships between the Cambodian government and the UN human rights mechanisms in Cambodia

Under the Paris Peace Agreements and with the consent of the Cambodian government, the UN High Commissioner for Human Rights has set up a field office in Cambodia

(Cambodia-OHCHR) and the UN Secretary-General has appointed a Special Envoy for Human Rights in Cambodia (UNSGSE). The Cambodia-OHCHR office is doing the field work while the UNSGSE visits the country from time to time and, with help from the Cambodia-OHCHR office, presents reports on the human rights situation in Cambodia.

The purpose of these two UN human rights mechanisms is basically to monitor the human rights situation in Cambodia and to provide technical assistance to the Cambodian government to help it meet its human rights obligations and ensure observance of and respect for human rights in the country.

However, right from the start, the Cambodian government has reluctantly welcomed the presence and role of the two UN mechanisms, notably when their reports have continued to identify violations and abuses of human rights and made recommendations for change to improve observance of and respect for human rights. There has been apprehension as to whether the Cambodian government would consent to the extension of the mandate of the Cambodia-OHCHR every time this mandate is about to expire.

In fact, the Cambodian government has maintained its hostility to both UN mechanisms. The strenuous relations reached a high point in 2006 when the latest UNSGSE, Prof. Yash Ghai, after having visited the country and met with people in the government and civil society, presented a report critical of the leadership of the country for overlooking and failing to act upon repeated recommendations of his predecessors for the improvement of the institutions of the rule of law and the situation of human rights in the country. He singled out the concentration of power in the hands of the prime minister, which he said was not conducive to the respect for human rights.

The government reacted sharply to Ghai's matter-of-fact presentation. Prime Minister Hun Sen called on the UN Secretary-General to dismiss him and also threatened to close down the Cambodia-OHCHR office. The UN Secretary-General did not heed the call and the UN High Commissioner for Human Rights, Louise Arbour, during a visit to Cambodia several months later, succeeded in defusing the tension between the Cambodian government and the two UN human rights mechanisms.

However, the tension flared up again in June 2007 following Ghai's presentation of his critical report concerning the human rights situation in Cambodia during a session of the UN Human Rights Council in Geneva. His report highlighted, among other things, the lack of an independent judiciary, political repression and detentions, a lack of progress concerning legal reforms, land-grabbing and forced evictions, corruption, the lack of freedom of speech, violations of indigenous peoples' land rights, and impunity. All of these issues are central themes that concerned local and international organizations have repeatedly raised and are the key hurdles facing the country at present.

Following Ghai's presentation, the country's ambassador to the United Nations in Geneva, Chheang Vun, launched an unwarranted attack on the UN Secretary-General's special envoy. Chheang Vun attempted to dismiss Ghai's report, claiming that it focused solely on negative aspects, but without dismissing its veracity. He then stated that

Cambodia no longer accepted Ghai's mandate in the country and called on the UNHRC to review the Special Envoy's nomination to this position. In doing so, Cambodia has effectively signalled that it will no longer cooperate with this important UN mechanism that was initiated to further respect for human rights and the rebuilding of the country as a whole.

2. The Code of Ethics for Judges and the enactment of the Code of Criminal Procedures

After the election of a new government and the adoption of a new constitution in 1993, Cambodia has continued to join newly adopted international human rights instruments. In early 2007, it ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). However, it has not yet ratified the First Optional Protocol to the International Covenant on Civil and Political Rights, although it had signed it even before signing OPCAT.

Cambodia has also embarked on a number of reform programmes, one of which is judicial reform programme, in order to reform its system of government, to shed its communist past and become a pluralistic, liberal democracy governed by the rule of law. However, the implementation of the judicial reform programme, as will be shown below, has been the slowest of the various reform programmes.

Over the last couple of years judicial reform has gained some momentum, with the enactment in 2006 of the Code of Civil Procedure and in 2007 of the Code of Ethics for Judges and the Code of Criminal Procedure.

A. Code of Ethics for Judges (CEJ)

In February, the Supreme Council of the Magistracy (SCM) of Cambodia, the supreme judicial body governing the judiciary, adopted a Code of Ethics for Judges (CEJ). In the Cambodian justice system, judges and prosecutors are all magistrates and belong to the same body. Therefore the CEJ applies to both judges and prosecutors.

If effectively enforced and well complied with, the CEJ could become a remedy to the endemic corruption within the judiciary, which then infects the other branches of government. It will also strengthen the independence of the judiciary, inspire more public confidence in the system, and lay a solid foundation for the establishment of the rule of law in the country.

The CEJ begins with the objective of reinforcing the dignity and independence of all judges. It then successively announces the principles of independence, impartiality, honesty, dignity and diligence, and the application of each of these principles. The Cambodian code reflects much of the Bangalore Principles of Judicial Conduct and similar codes in countries endowed with a well functioning, independent judiciary. It confirms the independence of the prosecution as stipulated in the country's constitution, in which it is recognised that prosecutors belong to the same body of judges.

It further incorporates the inadmissibility in court of evidence obtained through the use of illegal means and the prosecution of those who have resorted to those means, which is a novelty under the Cambodian legal system and which is left to the law of evidence and the law on the crime of torture in other countries. Section 9 of the CEJ states that "when a judge receives evidence against a suspect, and that evidence is known or believed to derive from illegal means which seriously violate the rights of the suspect, especially when it relates to torture or inhuman treatment, or any human rights violation, that evidence shall not be permitted to be used against the suspect, and the judge shall take necessary measures to ensure that the persons responsible for the above acts are immediately brought before the court."

The CEJ, however, does not contain much detailed and elaborated application of or commentary on each of the principles it enumerates. Those principles and their respective application are therefore very open to various interpretations that may render their enforcement less effective.

For instance, regarding judges' attitudes towards political activities and issues, the Cambodian code states under the principle of independence that judges "shall remain neutral in political activities"; and under the principle of impartiality, that they "shall not make any prejudgment relating to ...political tendency..." when making judgments, and that they "should avoid making any statement ...relating to political controversies; involving political parties; .."

The CEJ does not specify, as codes in some other countries do, that judges should refrain from membership in or association with political organisations or activities. A clear recommendation in this regard would put an end to the political control of judges and prosecutors through their affiliation to the ruling party since the communist days, or their more recent politically-encouraged affiliation. It is now known that "99 per cent of judges and prosecutors" are members of the ruling party, the former communist Cambodian People's Party (CPP), whose discipline remains as strict as it was in the past.

Judges and prosecutors have since been trained in the adopted judicial ethics. Although its effectiveness is yet to be seen, it will encounter the same fate as that of other laws in Cambodia, whose implementation is weak and depends on the erratic "political will" of the country's leadership, instead of depending on the institutions of the rule of law, which are primarily dysfunctional.

B. The Code of Criminal Procedures (CCP)

Cambodia adopted a Code of Criminal Procedures (CCP) in August 2007. The CCP had been prepared by French experts, and it is very much modelled on the French Code of Criminal Procedures. It replaces the section on criminal procedures in the law known as UNTAC Law, enacted in 1992 when the United Nations Transitional Authority in Cambodia administered the country in 1992-1993, pursuant to the Paris Peace Agreements of 1991.

This replacement inadvertently ended Cambodia's recognition of some important principles and rules related to criminal procedures adopted by the United Nations that had been an integral part of the UNTAC Law. These principles and rules are not carried forward or adequately provided for in the new code.

These principles and rules are*:* (1) *The Basic Principles on the Independence of the Judiciary*; (2) *Code of Conduct for Law Enforcement Officials;* (3) *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*; (4) *Standard Minimum Rules for the Treatment of Prisoners*; (5) *Standard Minimum Rules for the Treatment of Detainees;* (6) *Basic Principles for the Treatment of Prisoners*; (7) *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.

It remains to be seen whether the CCP has superseded all of these principles and rules altogether and Cambodia has repudiated an important part of human rights norms and standards contained within these.

Another concern is that the CCP, which "aims at defining the rules to be strictly followed and applied in order to clearly determine the existence of a criminal offence," is silent on the responsibility of the judiciary for the protection of human rights as stipulated in the Paris Peace Agreements and in Cambodia's constitution.

The CCP lays out in detail rules of procedure to be followed at every stage of the criminal process from the beginning of investigation to the imprisonment of the guilty. It makes adherence to those rules mandatory and renders void any process being conducted in breach of them. These rules are the bread and butter of the judiciary, but the whole of the criminal procedures should begin with an announcement of the essence of the constitutional rights and the responsibility of the judiciary for their protection, as the French CCP does in its preliminary article.

i. Characteristic features of the Cambodian justice system

The CPP crystallized Cambodia's French-modelled civil law system, which is an inquisitorial system whose main features comprise:

(1) Judicial inquiry as the core of criminal investigation;
(2) Prosecutors and judges belonging to the same body of judicial officers called magistrates;
(3) The subordination of the police, called the judicial police, to the prosecution;
(4) Criminal investigations by investigating judges for felonies, prosecutors for misdemeanours, or by judicial officers under the direction of prosecutors or on behalf of investigating judges;
(5) Trial judges taking a lead in the interrogation of defendants in court based on their thorough reading of the case file constituted by an investigating judge or a prosecutor;
(6) Court judgments being based on the "true belief" (in French *intime conviction*) of the trial judge in the evidence submitted in court, not on "proof beyond reasonable doubt";

(7) Brevity of trials;
(8) Pronouncement of the verdict and sentencing at the same time in a single judgment not very long after the end of the hearing, in the same day or within a few days;
(9) Absence of clear equality of arms and the accused person's right to silence in court;
(10) Inferior status and role of the defence counsel throughout the criminal process;
(11) Secondary role of prosecutors in trials.

ii. No guarantee of fair trial

There should be concern about the absence of equality of arms, the leading role of the trial judge, the principle of the trial judge's "true belief" in evidence, and the inferior status of the defence counsel in court, and their negative impact on the right to a fair trial of the accused.

The physical arrangement of the courtroom already indicates the guilt of the accused and the inferior status of the defence counsel. The desks of all court actors are arranged in the form of a U shape, with the trial judge's desk placed at the highest level at the base of the U, with the prosecutor's and the clerk's desks placed lower down either side, and the lawyer's desk placed at the lowest level, on the floor, beside but lower than the court clerk's desk. In the middle facing the judge and a distance away from the lawyer's desk, on the floor, is the horse-shoe shaped bar behind which stands the accused, with the trial judge, the prosecutor and the court clerk literally looking down on him or her. Victims and witnesses stand beside the accused.

As the result of Australian assistance, the Kandal provincial trial court (a "model court") has all desks, except the judge's, placed at the same level, with the clerk's desk placed right in front and beneath the judge's desk, and the prosecutor's and the lawyer's desks facing each other. It is quite an innovation towards the equality of arms and the common law, accusatory system. It is known that the prosecutors of that court were at first reluctant to use the new courtrooms when they had to lower themselves down to the lawyer's level. However, the president of that court does not mind that physical symbol of equality of arms between the prosecution and the defence and seems to welcome a combined civil and common law system in his court.

In the court, the trial judge first interrogates the accused based on the case file constituted by an investigating judge, who has already found probable evidence to prove the guilt of the accused and who has the approval of the prosecutor for the submission of the case for trial. The counsel would not dare object to questions, including leading questions, the trial judge poses to the accused, for fear of antagonizing the judge and suffering from the judge's displeasure. After completing his interrogation, the trial judge allows the prosecutor and the counsel to question and cross-examine the accused, and make submissions and rebuttals. The court then hears victims and witnesses.

The hearings are normally of short duration: an hour, several hours or one day at the most. They are rarely adjourned. At the end of the hearing, the trial judge withdraws to his chambers. He comes back shortly after or within a few days at the most to pronounce

his judgment, which includes the verdict and sentencing. In a trial in 2005 of two men, Born Sam nang and Sok Sam Oeun, who were accused of the murder of leading union leader Chea Vichea, the trial judge came back to the courtroom some 20 minutes after a day-long to pronounce his judgment, sentencing them to 20 years in prison.

It is commonly known that, after examining the case file prior to the hearing, trial judges have already made up their mind as to the guilt of the accused and have already prepared a rough judgment. The hearing is often merely a formality. In fact the police, the prosecutor or the investigating judge have normally already decided the fate of the accused at the stage of investigation. A big part of the unfairness of the trial lies there, where the accused, mostly in detention and also mostly without legal counsel, is in a disadvantageous position to defend himself, notably when the procedure is not conducted in public.

The judgment, which includes both the verdict and the sentencing, requires the presentation of mitigating factors at the end of the same hearing, prior to the pronouncement of the verdict. The defence is very much at a disadvantage when the mitigation, especially for leniency, can influence the judge's verdict on the guilt of the accused.

The system relying on the "true belief" in evidence of the trial judge should be tested for its constitutionality, as it concerns the impartiality of the judge and the fairness of the trial. After examining the case file together with the conclusion of the investigating judge prior to the trial, it is unlikely that the trial judge does not have any prejudice and can maintain his or her impartiality. This "true belief" may not be compatible with what the constitution says about evidence in court: "any doubt shall benefit the accused." What the constitution says can be interpreted as meaning that a trial judge must have "proof of evidence beyond reasonable doubt" before pronouncing the guilt of the accused.

Furthermore, the CCP restricts the right to fair trial when it limits the causes for recusal of judges. These causes are basically the judges' own, their current or former spouse's, or their close relatives' involvement as parties in the case before them. It does not extend those causes for instance to the involvement as parties in the case of other individuals or groups with whom they themselves, their current or former spouse, or their close relatives have close association.

The CCP also too heavily penalizes defendants who request the recusal of judges when they doubt the judges' independence, competence or impartiality, should their request be rejected. They will be fined a sum of US$50 and may have to also pay damages to the concerned judge in such cases. Defendants may have to think hard before lodging such a request, especially as another judge, albeit at a higher court, decides on the request.

iii. Subordination of the police to courts

The CCP stipulates that the judicial police perform their duties in support of the judiciary and have the duty to: control felony, misdemeanour and petty crimes; arrest accused

offenders; and collect evidence. It is composed of police officers trained for these purposes. There are three groups of judicial police officers:

(1) National or civilian judicial police officers, who are personnel of the Ministry of Interior;
(3) Military police officers, who are personnel of the Ministry of National Defence; and
(3) Heads and deputy heads of territorial units, that is, in descending order, governors and deputy-governors of provinces, governors and deputy-governors of districts, and chiefs and deputy-chiefs of communes.

The prosecutor of a court of first instance directs and coordinates the activities of judicial police officers working under the jurisdiction of his or her court. All judicial police officers under the jurisdiction of a Court of Appeal are placed under the supervision and control of the court's Prosecutor-General. The Prosecutor-General has power to discipline these officers.

There are other civil servants and public agents who are authorized by law to investigate criminal offences under their respective jurisdiction. These civil servants and public agents are also placed under the supervision of prosecutors.

The prosecutors of each court of first instance have extensive power. They can order the police to: conduct investigations, conduct investigations themselves, file the case without processing, summon the accused person to appear in his or her court (citation), order the accused to appear in court for trial for misdemeanour cases, send the case to the investigating judge for investigation, participate in the interrogation of the accused by the investigating judge, issue search and arrest warrants, conduct searches, request the detention of the accused, have a say in the release of the accused, approve the charge to prosecute the accused in court, appeal against court judgments, and visit judicial police units under the jurisdiction of his or her court.

Judges in a court of law can serve as trial judges and also investigating judges, but the latter cannot be trial judges for cases they have investigated. The investigating judge has power to order the detention of the accused, to interrogate him or her, to summon witnesses, to seek the service of experts, to get the judicial police to conduct investigations on his or her behalf, to drop the charge against the accused, to order the release of the accused subject to approval by the prosecutor, and to send the case for trial when his or her investigation has been completed.

There is a concern that in practice both the prosecutor and the investigating judge mostly rely on the judicial police to do the investigations for them as prosecutors and investigating judges are few in number and do not have adequate resources to conduct investigations by themselves.

The CCP has altered the "balance of power" between the judiciary and the police. Prior to the adoption of the code, as part of the legacy of the communist days, the police had resisted any subordination to the judiciary. The opposite was true when the police "had

guns" and was placed under the powerful Ministry of Interior, and the judiciary had only the law as a weapon and was placed under the weak and resource-starved Ministry of Justice.

It will help a smoother and effective enforcement of the CCP if there is a change in that balance of power in favour of the judiciary, which is very much a moot point so long as the judiciary continues to rely heavily on the judicial police to conduct investigations. This is all the more the case when the CEJ continues to give credence to the police investigation report in court: "In principal, the record prepared by judicial police officers in the course of inquiry is for information only. However, such record (original version) is worth as persuasive evidence and shall be valid unless counter evidence is shown. Counter-evidence may be freely shown to the judge by all means permissible by laws."

iv. Inadequate protection of the rights of the accused

There is a concern that the CCP is not comprehensive enough to ensure the protection of the rights of the accused, of the victims and of witnesses. Suspects are very much at the mercy of the police at least for the first 24 hours in police custody following their arrest. In this 24 hour period in police custody they have no right to legal council. During these 24 hours they cannot communicate with their families or people they trust. After this period suspects can have access to legal counsel, but for only 30 minutes. This access again depends on whether the custody officer is in the mood to allow the lawyer in to get his or her potential client to sign a request for his or her services.

Persons can be kept in police custody for 48 hours, extendable for another 24 hours. In police custody they have no right to medical examinations. Only custody police officers or prosecutors can call for medical examinations. They also don't have the right to silence or to be clearly informed that statements they make can be used in court against them. They could well be, and many have already been, subjected to torture or other ill-treatment to make confessions.

Suspects will be formally informed of their rights to legal counsel and to silence when they are brought before and interrogated by the prosecutor or the investigating judge.

The CCP has not made it mandatory for prosecutors, investigating judges and trial judges to check a suspect or accused person's physical or psychological state when he/she appears before them, to see whether the person has been subjected to ill-treatment or torture, and take action forthwith. The CCP should make this task an integral part of the duty of prosecutors and judges and should further stipulate, as the Code of Ethics for Judges (CEJ) mentioned above does, that "the judge [meaning also prosecutor] shall take necessary measures to ensure that the persons responsible for the above acts [illicit means] are immediately brought before the court."

v. Insufficient relaxation of pre-trial detention

The CCP sets limits to the duration of temporary detention while an accused is under investigation by an investigating judge. It stipulates that, as a rule, all accused persons remain free, and should only be in pre-trial detention under exceptional cases as defined in the CCP. All accused charged with offences punishable by a prison sentence of equal or less than one year must not be detained. This relaxation is deceptive, as such offences are very few – there are only four in the UNTAC Law and two in the Land Law.

The duration of pre-trial detention for misdemeanours must not exceed 4 months, but the investigating judge can extend this for another two months with clear justification. In any case the duration of the detention must not exceed half of the minimum sentence set by law. For felonies, the duration of pre-trial detention is limited to 6 months, but the investigating judge can extend it for another six months, and at the expiry of this extension, he or she can extend the detention for another six months, each time with clear justification.

There are two concerns relating to the above. First, there is no clear cut distinction between misdemeanours and felonies in all laws that contain prison sentences. The UNTAC Law has a clear cut distinction: sentences for felonies start from three years. There should therefore now be a clear legal distinction, for example to define a felony as an offence punishable by a prison sentence equal to or more than three years in detention.

Secondly, who can determine what "clear justification" is? The CCP is silent on any challenge to this justification. It just says that that the lawyer must present his or her defence to protect the rights of the accused. To whom should the lawyer present this defence? To the investigating judge? Would that judge go back on his decision? Or to the Investigation Chamber of the Court of Appeal?

In practice, under the now-superseded procedure of the UNTAC Law, appeals against any extension were filed in the Court of Appeal. However, the accused or their defence counsel was very reluctant to do so for fear that such an appeal would delay the trial when the extension was for only two more months for both misdemeanours and felonies. It remains to be seen whether appeals will be made when the detention for felonies can be extended twice for a further six months at a time, to a total of up to one and half year.

vi. Inadequate protection of the rights of victims and witnesses

The CCP to some extent protects the rights of victims of crimes. The right to be a civil party to legal action against offenders, namely to be present and give input into e decision-making and the right to compensation from offenders, as well as the right to privacy are spelled out clearly in the CPP. The right to receive information about the progress of the case, which consists of notification of whether action is taken against offenders or not, and the right to appeal against the prosecutor's decision to file the case without processing, are also recognized. A victim, as a civil party, has the right to legal counsel.

There is a cause for concern as the CCP is silent about the right to be referred to adequate support services and the right to physical protection. In this regard, it is also silent on witnesses' right to protection. Victims have no right to be consulted before the prosecution or the court make decisions, especially decisions to release the accused, even though victims could face retaliation from these persons.

In 2007, in separate cases, two victims of crime manifested fear concerning this. The first victim, Ms Chem Sopheap, a vendor of sugar cane juice in Phnom Penh, had to go into hiding upon the news that her attacker, a senior army officer, had been released from jail, fearing retaliation from him. The second victim, Ms Pov Panhapech, a popular singer and TV host, who survived gun shots and was recovering in Vietnam, did not want to go back to Cambodia, fearing that her attacker, who was still at large, would attack her again and this time end her life.

To allay fears for their physical safety of Chem Sopheap, Pen Panhapech and other victims of crime, the prosecution and courts should consult such victims and seek their views and concerns at appropriate stages of the proceedings where their physical safety is affected, especially before making any decision to release their attackers. They should impose upon those attackers certain conditions, for instance not to be in the vicinity of the victims' domicile and place of work, and notification to the police of those localities for protection purposes, to ensure these persons will not do any further harm to the victims. They should also notify the victims of their decision prior to any such release.

vii. Another violation of judicial independence

There is concern that the CCP legalizes political control of the judiciary in violation of the constitution, as the Minister of Justice can order the Prosecutor-General or the prosecutor of a trial court to take legal action when the Minister has knowledge of any criminal case. Furthermore, the same Minister can give them any directive he deems appropriate.

This mirrors the power given to the Minister of Justice in France where there is only a "judicial authority" (*autorité judiciaire*), not a "judicial power" (*pouvoir judiciaire*) or a judiciary that is a branch of government on an equal footing with the legislature and the executive, and where prosecutors are placed under the authority of this minister. In Cambodia, the constitution provides for the separation of powers and a constitutionally independent "judicial power" or judiciary, not a "judicial authority." Prosecutors are judges, and they and judges belong to the same body which is to be (as a law to that effect has not been enacted yet) regulated by the same law on their statute, and are appointed and disciplined by the same SCM chaired by the King of Cambodia, who is the Head of State but has no executive power. The Cambodian SCM is modelled on the French SCM, but the French SCM is chaired by the president of France, the Head of State who in does have executive power.

Another law which is intended to strengthen the legalisation of political control over prosecutors was the anti-terrorism law enacted in the same year. Under the law, the

Minister of Justice can order the Prosecutor-General of the Court of Appeal to freeze the assets of terrorists on the list of the UN Security Council's Anti-Terrorism Committee.

viii. Inspection of places of detention

The CCP has some provisions on the inspection of places of detention. The Prosecutor-General of the Court of Appeal and prosecutors of trial courts can inspect judicial police units. The CCP further makes it mandatory for the Prosecutor-General of the Court of Appeal, prosecutors of trial courts, the President of the Investigation Chamber of Court of Appeal and investigating judges to regularly inspect prisons.

The CCP does not spell out in detail the purposes and the periodicity of such inspections. Are such inspections meant to ensure that there are no violations of absolute rights, namely, the freedom from torture and cruel, inhuman or degrading treatment, and other rights of persons detained in those places? What action should judicial officers take when they encounter violations of these rights? The code is silent.

ix. Silence on redress for human rights violations

The CCP stipulates that investigators, either from the police or judicial officers, are bound by professional secrecy. Any breach will be punished by a law that has yet to be created. The law further makes it mandatory for judges to make an immediate examination when they receive a complaint of illegal detention, without specifying action to be taken against the offender(s).

Furthermore, unlike the now-superseded procedure of the UNTAC Law which made such breaches criminal offences punishable by imprisonment ranging from one to five years, the CCP is basically silent on the penalty for any breach of procedure which affects the rights of the accused or other people. It instead relies on disciplinary measures against violators, for instance against judicial police officers by the Ministry of Interior or the Ministry of Defence at the initiative of prosecutors and the Prosecutor-General of the Appeal Court. It also relies on the inadmissibility of evidence if there is any breach of procedure, as a deterrent. This sanction may not be effective and cannot deter such breaches.

Victims of rights violations during the criminal justice process can file complaints in court if such violations are criminal offences already defined in law, such as illegal confinement, battery or murder. Other violations may not yet have been prohibited and made criminal offences, leading to loopholes being created.

The CCP is also silent on the procedure for providing redress for violations of other human rights that are not as yet, recognized as being punishable offences. These violations include, for instance, the abuse of power, and violations of the freedoms of assembly, expression, and the press, and of economic, social and cultural rights. People do not know in which court and how to file a complaint when they have suffered from violations of these other rights.

3. Criminal lawsuits and arrests used as a tool of repression

The judiciary does not have adequate procedures to protect human rights and fundamental freedoms. Furthermore, it has continued to serve as a tool for the strong and powerful, and accepts their criminal lawsuits against apparently innocent but weaker parties to the disputes and to issue orders to arrest the latter. These criminal lawsuits and arrests are malicious and aim not so much to seek justice as to cow and punish the weaker parties for their resistance to the strong and powerful. They are meant to strike fears in them, deter others and exhibit the power and will of those strong and powerful, which is very much an aspect of power culture in Cambodian society.

A number of these suits and arrests are related to land disputes and land-grabbing, but they are also related to other disputes such those over the management of political parties' assets, labour relations, loan and service contracts, and the freedom of expression.

a. Land disputes and land-grabbing

According to the Human Rights Action Committee, a coalition of human rights NGOs, and the NGO Forum on Cambodia, during 2007 up to the time of writing, 121 people were detained in land disputes. 83 of those people had been released, but 38 were still being detained in various prisons in the country. Many of those arrested and still in detention awaiting trials were charged with such offences as wrongful damage to property, infringement upon public property, battery, or fraud.

Below are cases that have been documented by the Asian Human Rights Commission during 2007, up to the time of writing. In October 2007 two men named Soeng Vannak and Bumn Chhoeun were arrested in Siemreap province on the allegation of inciting hundreds of fellow villagers to clear forests for land for cultivation in a national reserve. The villagers went to clear those forests after there had been no response from the authorities to their application for a land concession for social purposes, and for cultivation to sustain their livelihood. The villagers then staged a protest against the arrests and the two men were released on bail.

In the same month in the same province, a woman named So Socheat, a community representative who had been arrested in May 2006 during a protest in a land dispute, was convicted in the Siem Reap Provincial Court of committing battery with injury and wrongful damaged to property. When trying her, Judge Khorn Sokal accepted that So Socheat had not committed the battery, but said that since she was the "ring leader" of the protesters, she had to be responsible for what the other villagers had done.

On the allegation of wrongful damage to property, the following women and men were prosecuted or arrested during different disputes in different localities:

- a woman named Ros Pov was prosecuted by the Phnom Penh court (September);

- two women, Keo Chorn and Keo Sun (September); two men named Oung Phen and Mr. Chreng Khorn (August); two men named Phorn Hen and Vorn Van (August); and three men named Oung Sarat, Nhean Phan and Dun (August) were arrested at the seaport town of Sihanoukville;
- a man named Chea Ny (August) and two men named Tet Bunthoeun and Oung Chea (June) were a arrested in Battambang province (the latter were released in September);
- a man named Im Khnoy (August) was arrested in Kandal province;
- four men named Chheun Rat, Sin Kosal, Oun Sotheara, and Um Nov, and a woman named Mao Sokha (June) were arrested in Banteay Meanchey province.

On the allegation of fraud over state land, the following men have been arrested:

- two men named Horng Nith and Oung Sokha (June) were arrested for alleged infringement upon public property and wrongful damage to property;
- four men named So Dek, Oun Rin, Kuy Yung and San Nek (May), were arrested for the alleged use of violence against the alleged owner of a contested land;
- 13 men including Chum Pet, Yieng Ren, Nom Chry, Chry Chan, Chang Sitha, Sok Ron, Ken Noeu were arrested in April in Sihanboukville for wrongful damage to property, infringement upon public property, and striking police officers during the forced eviction of 107 families; a human rights activist was facing arrest for alleged incitement of those villagers to protest against their eviction and has had to go into hiding;
- three men named Khyorng Bet, Chhuen Ampil and Chan Ra (February) were arrested in Rattanakiri province for alleged infringement upon public land.

A man named Pich Choeun was arrested in April in Sieamreap province for alleged land fraud. In May two men named Dul Din and Vong Pril were arrested in Prey Veng province for allegedly stealing 80 tons of rice in a land dispute.

Two men named Chea Pek and So Sokhom were prosecuted in January in Banteay Meanchey province for allegedly robbing rice that they had harvested from disputed land. In the same month, in a similar case from the same province, Cheb Roeuk was also prosecuted for incitement to disorder after a confrontation between rival groups over contested land.

In January, Leang Seng, the deputy-director of the Provincial Agriculture Department, went on radio charging that some people had incited families to stage their protests against a land concession in Kratie province, implying that if identified they would be arrested and charged.

In December 2006, Chum Vanny and relatives protested against the grabbing of his land in Kandal province by a land development company. Several days later he received a summons to appear in the provincial court to answer a charge of fraud.

b. Labour disputes

In June and July 2006 workers at Jenchou Inn Factory in Kanthouk commune of Angsnoul district, Kandal province went on strike to demand better working conditions and the reinstatement of their union's officials and other fellow workers who had been sacked by the company. The strikers blocked the factory's gate, but left a passage for staff to get in and out. However, three officials of the Free Trade Union of Workers of the Kingdom of Cambodia, Lach Sambo, Gneom Khun and Koemsan, all working at that factory, were later arrested at their homes on the charge of illegally confining the staff. On August 7 they were sentenced to three years' imprisonment, with one month and four days served and the rest suspended.

Also in 2006, Eng Vanna, Sieng Sidaro and other staff of the Phnom Penh Cable TV Company formed a union named Phnom Penh Cable TV Employees Union. Eng Vanna and Sieng Sidaro were elected to be its president and vice-president respectively. They officially registered their union in October and went to notify the company director. He blamed them for not having told him earlier and filed a criminal lawsuit against Eng Vanna and Sieng Sidaro for allegedly stealing the company's master plan. In November the prosecution at the Phnom Penh court summoned them for questioning; in early January 2007 the company suspended them from work and sacked them on the same day. It submitted a copy of the court summons to the labour ministry to justify its decision.

In 2007, no such criminal lawsuits and arrests were reported. However, in February, Hy Vuthy, the president of the Free Trade Union of Workers of 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 factory. The 36-year-old union leader had received telephone death threats approximately three months prior to his assassination.

c. Dispute over assets management

In November 2006, Nhiek Bun Chhay, the secretary-general of the FUNCINPEC party filed a complaint at the Phnom Penh court accusing Prince Norodom Ranariddh, the former president of the party, of selling the party's headquarters and using the proceeds to buy another property in his own name. Chiek Bun Chhay requested the court to prosecute Norodom Ranariddh for breach of trust, a criminal offence under article 46 of the UNTAC Law that is punishable with between one and five years in jail. Civil litigation is already proceeding against the former president; however, in early January 2007, the party urged the court to arrest him "to enable smooth court proceedings and solve the complaint".

In March Ranariddh, who is also former prime minister and president of the National Assembly, was tried in absentia and was sentenced to 18 months in prison while he was out of the country. In October the Court of Appeal upheld the sentence. This sentence will likely keep him out of the country and prevent him from returning to Cambodia to pursue his political career.

d. Freedom of expression

In September 2006, Hek Samnang, Thach Ngock Suern and Try Non were arrested and charged with disinformation and defamation for having disseminated leaflets accusing Prime Minister Hun Sen of involvement in corruption and land grabbing. In fact, defamation is a sufficient charge in this case, but as it no longer carries a jail term disinformation, a criminal offence with prison sentence, was added to ensure that they were locked up.

Similarly, in August 2006, Teang Narith, a law and politics lecturer at Sihanouk Raj Buddhist University in Phnom Penh, was dismissed and arrested the following month and charged with disinformation for writing a book critical of government policy. He has been in jail since that time.

In 2007, the AHRC has not documented any criminal lawsuits or arrests related to the exercising of the freedom of expression. Apparently Cambodians did not dare exercise this right out of fear of being arbitrarily locked up in jail, as courts of law are under political control and do not protect their rights. Furthermore, the government has other ways of denying such a right, such as threats and intimidation or outright bans (see next section).

4. Restrictions on the freedoms of the press, expression and assembly

Freedom of the press has gained ground up to a point, but the freedoms of assembly and expression have continued to meet with severe restrictions during 2007.

a. Restrictions on the freedom of the press

According to Worldwide Press Freedom Index issued by Reporters Without Borders, Cambodia's press freedom ranking moved from 108 in 2006 out of 168 countries to 85 out of 169 countries. In 2007, Cambodia was, in this regard rated, above all of its fellow ASEAN member countries. In 2007, Freedom House change the status of the press in Cambodia from "not free" in previous years to "partly free".

However, this progress should not be taken at face value when a small section of the population reads newspapers and the overwhelming majority rely on radio and television for information and this electronic media is very much under government control.

There has been a proliferation of publications, but their dissemination is still very much confined to urban centres. Not many Cambodian people have any reading habits. The price of newspapers, US$0.17 upward per copy, is simply beyond the reach of the overwhelming majority of the population, one third of which still live under the poverty line of US$1 per day.

Almost all Cambodian people depend on radio and television for information, and all TV channels and radio stations, except one radio station of limited coverage, are under the control of the government, the ruling party or supporters of the ruling party. The government closely monitors their broadcasts.

Press freedom was most affected in 2007 in situations where newspapers and journalists made reports critical of the government, the ruling party and powerful officials, they faced restrictions, attacks or lawsuits. Reporters of the Khmer–language programme of the US-funded Radio Free Asia (RFA) are known to be "frequently singled out for harassment by government officials". Ath Bonny, the Phnom Penh-based RFA field editor has been reported as saying that "news reports about illegal logging, malnutrition in impoverished areas, and human rights abuses have resulted in angry, and sometimes threatening, calls from senior Ministry of Information officials."

In February 2007, an RFA reporter named Ratha Visal was barred from getting into the venue to report on a ground-beating ceremony for the construction of a road in Rattanakiri province. The following month the police in Battambang province accused another RFA reporter named Lem Piseth of getting the daughter of a victim of a murder to make an untrue statement to the police, concerning her father's participation in the opposition party's procession during the commune election campaign. That statement changed an ordinary murder, as claimed by the police, into a political killing, which sounded bad for the ruling. Most of the police force belongs to this party.

In April there were many actions taken in succession against journalists. A district governor in Battambang province barred another RFA reporter, named Sao Yuth, from entering a junior high school to report on the students' request for the removal of the school principal.

An army general named Muong Khim threw fish sauce in the face of two reporters for *Angkor Thom* magazine and threatened to smash their heads in a restaurant in Phnom Penh. The incident happened after the two reporters had conducted a phone interview with his famous singer wife named Meng Keo Pichchenda. The two reporters learned that that singer intended to remarry. Her intention became the title of their magazine article that appeared on the same day as the incident.

A deputy-governor of Rattanakiri province named Phou Lam made a phone call to inform a freelance journalist named Chea Kimsan living in his province that he would file a lawsuit against Chea Kim San for serving as an informant on forest clearance in the province for *Moneaksekar Khmer* newspaper.

In May, an army general in Battambang province named Pol Sinuon threatened to shoot a journalist for *Kampuchea Thmei* named Chim Chenda following a discord, simply because Chim Chenda was a journalist. In the same month, in Phnom Penh, Prime Minister Hun Sen pointed a finger at an RFA reporter named Um Sarin and called him "insolent" and "rude" as a response to his question on the fate of the coalition after the removal of a minister from a coalition partner party. Hun Sen warned Um Sarin not to ask such questions in future. Um Sarin was scared when Hun Sen's bodyguards walked up and down around him. The scene was shown on TV and Um Sarin had to flee the country for a while.

In June, a RFA reporter named Lem Piseth received a death threat by phone after he had reported illegal logging in Kompong Thom province. Lem Piseth had to flee the country for a period.

In August, the house of a journalist named Phon Phat in Pursat province was set on fire by two men just days after he had received two threatening phone calls from numbers allegedly belonging to members of security forces. He was threatened for reporting on illegal logging activities to the forestry administration for his newspaper, *Chbas Kar* (Veracity).

In the same month, a journalist for *Teassanak Khmer* (Khmer Vision) named Heng Veasna was assaulted by Ouen Vanak, who is the deputy commander of the provincial military police of the province. Ouen Vanak was very angry with Heng Veasna after the latter had written an article critical of the conduct of a judge and the provincial prosecutor with whom Ouen Vanak had good relations.

In September the Ministry of Social Affairs put up a sign at its entrance saying: "Allowed in: Journalists from *Rasmei Kampuchea*, *Koh Santepheap* and *Kampuchea Thmey* newspapers. Journalists from all other newspapers are strictly banned". It is said that this discriminatory ban was aimed at avoiding talking to newspapers that did not support the interest of the ministry. It affected freedom of the press and freedom of access to information. It is widely known that *Rasmei Kampuchea*, *Koh Santepheap* and *Kampuchea Thmey* are "pro-government" newspapers.

In October, the Ministry of Information suspended a local Khmer-language newspaper, *Khmer Amatak*, for a month without any due process of law after the editor had refused to publish a correction from a deputy-prime minister. The editor, Bun Tha, claimed the veracity of the story and was willing to settle the dispute over the story with that deputy-prime minister in a court of law. The arbitrary suspension of that newspaper violates freedom of the press.

In November, the Ministry of Information and the Ministry of Interior confiscated all of the thousands of copies of the first issue of *The Free Press Magazine* from newsstands in Phom Penh and in the provinces. They accused it of "insulting the retired King Norodom Sihanouk and of violating the law" as it published articles and cartoons critical of the retired king and Prime Minister Hun Sen. The publication was ordered to close down. Furthermore, its publisher, Lem Piseth, was summoned to the Ministry of the Interior.

Fearing that he was going to be arrested, Lem Piseth fled the country. Previously (see above), when reporting for Radio Free Asia, Lem Piseth had faced police accusation of instructing a witness to make an untrue statement to the police in a murder case and also received death threats when reporting on illegal logging.

b. Restrictions on the freedoms of assembly and expression

In January 2003 angry Cambodian demonstrators protested against a Thai actress's hurtful remarks concerning their country's famous temple Angkor Wat and attacked the Thai embassy and Thai businesses in and around Phnom Penh. The authorities have used that attack as an excuse to impose strict rules on public demonstrations aimed at banning them altogether.

Organisers must have permission from concerned local authorities to hold demonstrations. Before granting such permission, the authorities minutely vet every aspect of any planned demonstration, including the issues to be raised, the banners and slogans used, the venue, the route to be taken if there is any procession, the number of people participating and the transportation used in the demonstration. They have invariably used disturbance to public order or obstruction of traffic as reasons to refuse permission, or they assign a place to stage the demonstration without any procession.

The authorities do not hesitate to use anti-riot squads and to crackdown on and disperse unauthorized peaceful demonstrations and protests. The squads are armed and are specially trained for the purpose.

In February and March 2007 there was a positive development regarding the right to the freedoms of assembly and of expression, when the NGO network Alliance for Freedom of Expression in Cambodia, succeeded in organizing for the second time a "march for the freedom of expression, non-violence, and political tolerance" for two weeks, from the capital Phnom Penh to Siemreap, the famous ancient capital of the Khmer Empire, covering a distance of over 300km across four provinces and many districts. This succeeded despite obstructions from the local authorities.

However, the march, like the first one organised by the same NGO network in the previous year, was yet another swallow that did not bring about spring for the freedoms of assembly and expression. The government has continued to ban this constitutional right.

In January 2007, Prime Minister Hun Sen launched attempts to curb the exercising of this freedom. While presiding over an official function in Kompong Cham province, he issued a stern warning to all political parties against criticising their competitors in order to win votes in the April commune elections. He urged them to adopt a commercial advertisement style, extolling one's own goods or services and not criticising the goods or services of others. He said that he would take firm action against persons responsible for criticism which would be, in his opinion, divisive and detrimental to the country's stability. That warning was meant to silence criticism that was predominantly targeted at him and his ruling party.

However, people have continued to exercise their right to freedom of assembly and expression amid all these restrictions and warnings.

In February, the Cambodian government threatened to expel the Open Society Justice Initiative (OSJI), a New York-based human rights NGO, after it had publicised

allegations of corruption at the Khmer Rouge Tribunal (KRT) and requested a thorough investigation. The OSJI had worked in Cambodia since 2003 to assist in the establishment, functioning and monitoring of the KRT, by providing a wide range of expertise and advice to court officials as well as to civil society groups. When audited later, the accounts and the management of the tribunal confirmed the veracity of the allegations made by OSJI.

In April, some 150 riot police cracked down on a demonstration staged by around 40 Buddhist monks in front of the Vietnamese embassy in Phnom Penh, demanding an end to persecution by the Vietnamese authorities of fellow Cambodian monks living in Vietnam. There are millions of Cambodians living in the southern part of Vietnam, which is known as Kampuchea Krom or Lower Cambodia. These Cambodians are known as Khmer Krom (Cambodians living in Lower Cambodia). The area was part of Cambodian territory before the French colonial power ceded it to Vietnam. The 40 monk demonstrators were Khmer Krom.

In June, the government banned the dissemination of a report by an international environment NGO, Global Witness, which exposed the involvement of Prime Minister Hun Sen, his relatives and other senior officials in the illegal devastation of Cambodia's forests. The Global Witness staff received an open threat from Hun Neng, the governor of Kompong Cham province and Prime Minister Hun Sen's brother.

Further to the ban, the Minister of Information, Khieu Kanharith, issued a warning letter to the *Sralanh Khmer* newspaper to stop its publication of the Global Witness report.

In August, about 400 families in Phnom Penh staged a protest and put up resistance to a forced eviction and the demolition of their houses by a group of 100 people comprising police, military police with pistols in uniform and some personnel with sticks, hammers and axes. That group forced their way in and beat up those families. In the assault four women, named Long Sokhom, Ros Pov, Kim Leng and Long Nirdey, were injured.

In the same month, a group of representatives of 500 families in Svay Rieng province went to Phnom Penh to stage a protest against the grabbing of their land by a rubber company. After staging a demonstration in front of the residence of the Prime Minister, they went to the National Assembly. In both places they demanded help from the Prime Minister and Members of Parliament to address their grievances.

The protesters were going to camp out in front of a monastery near the National Assembly. However, at night fall, approximately 80 police and military police, some of whom were armed with pistols, cordoned off the area to keep out journalists and human rights activists. They then rounded up all those protesters and forced them into buses to send them back to their native province. In that police action, some of the protesters were beaten, two of whom were rendered unconscious and were taken to hospital for treatment.

In October, an NGO running a radio station called Voice of Democracy (VOD) organized a public forum in Stung Treng province. VOD organised such fora to enable grassroots people to air their concerns about local and national issues and, together with concerned local authorities and members of parliament, to address the issues in question. In that province, local officials came to force the land-owner not to provide VOD with land to serve as the venue for the forum, but the land owner defied the order. On the day of forum, a group of civilian and military police was dispatched there to prevent villagers from participating in the forum. They charged that the holding of that forum was "illegal" since the organizers had no permission.

From June to October, VOD organized 19 public fora in different localities. Eight of those forums, including the one mentioned above, experienced various degrees of disruption by the local authorities. In June, in Kandal province, the local authorities ordered all tent owners in the locality not to build a tent to shelter the forum. The forum proceeded all the same, under the trees.

In the same month, in Kampong Chhnang province, one local official ordered VOD to seek permission from another official who then ordered it to approach yet another official, passing the buck around as a way of refusing their permission altogether. VOD decided to go ahead with the forum despite this, but on the day of the forum police officers used threats to prevent people from joining it. People defied that threat and participated in the forum all the same.

In July, in Kampot province, the local authorities warned the owner of a venue not to allow VOD to use it. VOD had to find another place to hold its forum. In August, in Takeo province, VOD met the same problem from the local authorities. It succeeded in finding another place, yet when the forum was opened, the queue of people wanting to speak was packed with supporters of and sympathizers with the ruling party. Others who wanted to raise local and national issues or voice their grievances were crowded out.

In September, in Rattankiri province there was an on-going land dispute between a lady dignitary with connection high up in the country's leadership and a group of indigenous people. The local authorities did not allow the public forum and posted military and police officers along the route leading to the forum to prevent people from participating in it to voice their grievances over the land dispute.

In October, in Kandal province, the local authorities posted several police officers at the entrance to a forum to threaten people and deter them from participating in it. In the same month, in Kratie province, the chief of the commune made the same threat to prevent people from joining the forum, but people defied the threat and participated in it anyway.

a. Arbitrary guidelines

When barring VOD from holding public fora, the local authorities referred to guidelines issued by the Ministry of the Interior to commune authorities (lowest level of administrative units) to instruct them, among other things, that "all activities of non-

governmental organizations, civil society organizations and community-based organizations at the local level must have cooperation from provincial or municipal governors."

The phrase "cooperation" is very ambiguous in the first place. Does it mean "permission" or "authorization"? Secondly, the guidelines are apparently not based on any executive order or regulation or on any law that prescribes such "cooperation." The guidelines are silent on the right to appeal against the refusal of cooperation by provincial or municipal governors.

Furthermore, the same guidelines create practical difficulties to organizers of such functions, in provinces in particular, as they have to travel long distances to the offices of the provincial governor and may have to go through a heavy bureaucracy before they can get the prescribed cooperation, especially a written document to that effect to show to the local authorities. Organisers have to spend time and resources to secure such cooperation. All this is tantamount to deterring the organizations from conducting such activities.

This point of the guidelines and any action based on them is to prohibit or ban the exercising of the freedoms of assembly and expression, and may well violate this constitutional right. They should be subjected to judicial review by a court of law and finally by the Constitutional Council.

A judicial review is also required for the law on peaceful demonstrations, when it will be enacted. The government approved the draft of this law (bill) in October and it is expected that the law will adopted by the parliament and come into force soon.

b. Legalising restrictions

The Bill on Peaceful Demonstrations will in effect legalize the restrictions that the authorities have so far been imposing. It requires organisers of any demonstration to "notify" the provincial or municipal authorities of planned events, and these authorities need to "examine" these "notifications." If they "have clear information that the demonstration could cause any danger or gravely affect security, safety and public order," they must immediately notify the organizers so as to give them an opportunity to meet with local authorities and other concerned authorities to consider the matter, and discuss it to find a solution." If both sides do no reach an agreement, the concerned provincial or municipal authorities "must seek the decision of the Minister of the Interior." The latter's decision will then be final.

Through this process, the term "notification" is misleading. According to the practice so far, which is likely to continue, notifications mean meticulous scrutiny by the provincial or municipal, local authorities and other concerned authorities. The authorities check the identity of organizers, the purpose, date, time, duration, and route of the planned demonstration, the number of people participating in it, and the number and types of vehicles used, and whether the date falls on the main public holidays at which time all

demonstrations are banned, all of which the Bill has stipulated. They also vet the issues to be raised and the banners and slogans to be used.

The procedure of "notification" is made so intricate and intrusive to deter those who wish to organize such peaceful demonstrations. Only those with stamina, determination and resourcefulness would struggle to get the authorities to accept their "notification." All these difficulties are tantamount to restrictions.

The Bill requires "clear information" on the way in which the planned demonstration could cause "danger or gravely affect security, safety and public order," before they can ban it. However, this information and its clarity, and the assessment of such a danger and the impact on security, safety and public order, are arbitrarily decided by the authorities, including the Minister of the Interior, who is actually their boss.

The Bill provides for no independent body, for instance a court of law or the Constitutional Council, to which organizers could appeal against the Minister's decision. It is possible to challenge the constitutionality of decisions at the Constitutional Council, but organizers have to go through an ordinary court of law all the way to the Supreme Court before they can get their case adjudicated by this Council. The procedure is so complicated that so far no organiser has bothered to challenge such decisions.

The Bill creates practical difficulties that hinder the enjoyment, though peaceful demonstrations, of the freedoms of assembly and expression, which are among the fundamental rights guaranteed and protected by the constitution. For organizers and would be demonstrators living in municipalities such as Phnom Penh or Sihanoukville, there will be no long distance to travel to notify the municipal authorities of their planned demonstrations. However, those living in the provinces and remote ones will have to travel long distances to be able to do so. Distance itself and the related travel costs and time are significant deterrents to attempts to enjoy these rights.

The Bill is purported to facilitate the organization of demonstrations by less than 200 people as it offers a simpler procedure requiring only the identity of organizers and simple notification to the authorities, if those demonstrations are staged at a venue assigned by local authorities and include no procession. The venues are called "public opinion places," apparently modelled on Hyde Park Corner in London. According to the Bill, the provincial and authorities must assign "one" such place in each province or municipality.

This offer is misleading. It is very likely that such "public opinion places" will be located in the national and provincial capitals. It is easier for residents of these towns to stage small demonstrations. Yet people in rural areas, some 85 per cent of the total population, will have to spend more in terms of travel costs and time to exercise their right at those assigned places in the national or provincial capitals. All these costs are yet another deterrent. Furthermore, it is unlikely that the provincial or municipal authorities will assign such places any near the offices of provincial or municipal governors.

There is another restriction in the Bill as it imposes civil liability to organizers for any damage and harm caused by demonstrators. It shifts this liability away from individual demonstrators to organizers, who have no forces to control them, and especially away from law enforcement agents who have the primary responsibility of preventing such damage and harm and who have forces to carry this particular task. Such civil liability is yet another deterrent.

The freedoms of assembly and expression are further restricted as the Bill empowers the competent authorities, meaning the police, to violate these freedoms at will, as they can arrest and detain for the whole duration of a demonstration, for "holding a potentially dangerous instrument, or causing suffering to others, or committing an act which infringes the rights and freedoms of others," if they do not let them take away the instrument or do not heed warnings not to commit such acts.

The authorities will likely arbitrarily determine the potential danger posed by such instruments, the suffering of and the infringement upon the rights and freedoms of others. A placard pole, a banner pole, an umbrella, or a glass bottle can be considered as "potentially dangerous" instruments. Waving them can be interpreted as "causing suffering" to others. Shouts with or without bodily gestures such as raising fists or slogans critical of corrupt government officials, leaders, cronies, or land grabbers can be interpreted as "infringing the rights and freedoms" of those targeted people.

All in all, the Bill does not help the enjoyment of the freedoms of assembly and expression in an orderly manner through peaceful demonstrations at all. It has the effect of legalizing restrictions against this instead. It is in breach of the human rights norms and standards stipulated in the Paris Peace Agreements and Cambodia's constitution.

5. Land disputes and land-grabbing

Land disputes and especially land-grabbing have continued to be one of the most serious issues facing Cambodia since it abandoned communist collectivisation at the end of the 1980s to embrace a market economy based on private property. In recent years, this problem has become worse as land conflicts have dramatically increased.

Land-grabbing is a major factor contributing to rapid development running parallel to landlessness and large landholdings. According to a survey presented in a recent seminar in Phnom Penh, over 24 per cent families are landless, over 38.8 percent of families have less than 0.5 hectare and occupy 3.5 per cent of the total land, and over 11.6 per cent own 3 hectares and over and they occupy 72.2 percent of the total land. Among owners of 500 hectares and over, 30.7 are businessmen, just under 23.1 percent are high ranking officials, just under 23.1 per cent are dignitaries (lords), just under 15.4 per cent are high-ranking army officers, and just under 7.7 per cent are members of parliament.

According to the Ministry of Agriculture, Forestry and Fisheries which was cited in a report of the Cambodia Office of the High Commissioner for Human Rights, *Economic land concessions in Cambodia: a Human Rights perspectives*, dated June 2007, two

companies - Pheapimex Co.Ltd and Green Sea Agricultural Co.Ltd - owned respectively over 315, 000 and 100,000 hectares of land on December 31, 2006.

These landholdings starkly contrast with those prior to the communist days in the 1970s and 1980s, when the biggest landholding was 132 hectares and landless families were rare. The Cambodian population was then only some 7 million, half of what it is now.

In 2007 the issue of land disputes and land-grabbing showed no sign of declining. According to its first half yearly report, the National Land Dispute Authority, which had already had nearly 2000 cases in its hands, received yet another 116 complaints about land disputes and land-grabbing from individuals and from state organs. This authority is overwhelmed by the number of cases and is incapable of reducing its load. In the first half of the year it succeeded in "resolving" just over ten cases, in three of which it took action against land-grabbers.

The government, fearing a "peasant revolution" over land-grabbing, took a bold decision to end land-grabbing. In March, Prime Minister Hun Sen declared "a war against land-grabbers" whom he identified as "CPP officials" and "people in power." His declaration met with some scepticism when the "iron fist" policy he had likewise bombastically announced in 2004 to rid the judiciary of corruption had produced few results, if any.

Amidst such scepticism, the "war" nevertheless scored an immediate victory. The first success was against an army major colonel named Te Haing who was arrested for encroaching on State land and cutting into forestry land to take about 1,567 hectares in Banteay Meanchey province. The second success was against an army general named Chao Phirun, who was forced to hand 200 hectares of land back to the government. However, no action was taken against him. The third case concerned was a tycoon named Tan Seng Hak who was a former advisor to CPP Chairman Chea Sim. Tan Seng Hak was arrested together with two members of his group for falsifying documents regarding 300-hectares of land located on the outskirts of Phnom Penh.

The early momentum of the "war" died down until July, when the government sent a delegation of officials, ten excavators and over 100 workers under the protection of armed policemen, to reclaim a site that once included Lake Kob Srov. Long Chhin (Cambodia) Investment Ltd, a mainland Chinese company with good connections to top leaders in the country, had filled in the lake in order to build a luxury housing estate, called Long Chhin Resorts, 12 kilometres northwest of Phnom Penh. The government claimed that the filling-in of that lake was illegal and that it needed to reclaim the site as the construction work on the estate would block the water flow in the area and cause floods in the capital, Phnom Penh. The company claimed that it had the approval of the government.

The excavators and workers tore down and demolished all construction on the estate, turning it into rubble in three days. The demolished structures included all the brick walls around the estate, all entrance porches, seven two-story apartment blocks, 21 finished

villas, eight villas that were still under construction, three guesthouses, a karaoke hall, 10 leisure kiosks, a warehouse, an office building and other amenities.

A number of Cambodians lost their investments in the estate, having already bought villas and apartments from the company or made deposits on them. Suppliers of construction materials have also lost money that the company owed them. The total losses suffered by house buyers and the company's creditors have been estimated to amount to around US$20 million - a huge sum in a poverty-ridden country. Some 60 house buyers and creditors have now filed separate suits against the company to get their money back.

Prime Minister Hun Sen's "war" is yet to score more victories as little of the old land disputes and land-grabbing cases had been resolved, while new cases and confrontations continue to arise. The "war" against the powerful brought terror to the powerless, instead of relieving them, in cases where they dared put up any resistance to claims by the powerful or the government, especially in areas which have become prime sites for development.

The following are some of the cases of land disputes and land-grabbing, which have mostly effected the powerless.

Phom Penh, the capital, is one of the prime real estate sites. In August, a confrontation between 400 families and a company called 7NG took place over an ongoing land dispute. A group of 100 people comprising the police, military police with pistols in uniform and some personnel with sticks, hammers and axes - allegedly hired by 7NG company - went to demolish houses, huts and tents belonging to families who protested and were resisting against their attempts to enter the community for demolition.

A clash occurred between the families and the group and they started beating the families who prevented the group from entering. Four women were injured and another woman was arrested.

In early November, the authorities in the capital sent some 200 police officers armed with assault rifles, batons and shields, 200 demolition workers and two excavators to evict at dawn 132 families from a bank of the Mekong River in front of the city centre and demolished all their houses. The authorities claimed these families had illegally built their houses, polluted the river, spoiled the beauty of the area, and posed a problem of security. They promised each of them a plot of land in a settlement area on the other side of the capital, in an area where previous forced evictees had been settled. There they were to build their new houses, and had to make a new life far away from their places of work.

The seaport of Sihanoukville on the Gulf of Thailand is another contentious site, especially after the discovery of offshore oil in Cambodian territorial waters. In April, the authorities there sent armed police and security personnel to forcibly evict 107 families from 17 hectares of land, for the benefit of Senator Sy Kong Triv, a tycoon and a member of the ruling party.

That day the town's governor, together with his deputy, the town prosecutor, the police commissioner and military police commander, led about 100 police and military police officers armed with AK47 assault rifles, electric batons and tear gas to search for illegal weapons in the homes of these families. Although they had a warrant, the search for weapons was merely a legal cloak to cover up the eviction of the families as the security forces failed to find any weapon and instead took their land.

The families resisted and clashes ensued. The security forces fired shots in the air and into the ground and charged the villagers, using their rifle butts, electric batons and water canons to disperse them. Thirteen men among the villagers were seriously beaten, and many women were assaulted. A 75-year-old man in the village was so severely beaten and electrocuted that he required hospital treatment. Three members of the security forces were also injured.

The security forces arrested 13 villagers for "battery with intent" and "wrongful damage to property." Say Hak filed a criminal lawsuit against Chhim Savuth, a human rights investigator, for "inciting" the villagers to form a "breakaway zone independent of government rule." Chhim Savuth went into hiding to evade arrest (see section 3.a).

The homes, crops and other belongings of those families were destroyed by fire, tractors and bulldozers during the eviction. They were made destitute, and until the time of writing some 40 families were still camping under plastic shelters or trees under monsoon rains and the tropical hot sun on the roadsides along Highway 4 leading to Phnom Penh. They were surviving on relief handouts from humanitarian organizations.

In July, the same authorities forcibly evicted 92 families following a dispute between them and the town's army commander over about 130 hectares of land. They destroyed their homes and all of their crops. These families were forced to live destitute under shelters and have been exposed to tropical storms, rains and the sun. The authorities have ignored their responsibility for these persons' well-being.

In October, at dawn, the same authorities sent a combined military and police force armed with guns and electric batons, together with tractors, to evict 45 families who they claimed had built huts in 100-hectare land "in the front of someone else's land," which had "a negative impact on the city tourism zone." The force used threats and intimidation against the villagers. They also beat them with rifle butts, electrocuted them with electric batons, and arrested one villager. They also destroyed all their homes and crops. The families had lived there since the early 1990s.

In October, in Koh Kong province, several hundred villagers staged a peaceful protest lasting more than a month in front of the house of the Chi Khor Leu commune chief, regarding an unresolved dispute over several hundreds of hectares of lands stretching on either side of National Road 48. According to protesters, along the north side of the road, Oknha (lord) Li Yong Phat grabbed several thousand hectares of land, and on the south side of the road, several hundred hectares of land were being grabbed by a number of

Oknhas who are clearing the lands by demolishing homes and chasing the villagers out from their land.

In May, in Kompong Speu province, villagers reported that an army tank unit used tanks to clear several hectares of land belonging to them. They were defenceless when facing such action by an army unit.

In Svay Rieng, a rubber plantation company cleared 1500 hectares of land that 500 families claimed to have been cultivating since the 1990s. In October, a group of representatives of these families took the protest to the country's leaders in the capital Phnom Penh, only to be bundled into vehicles and sent back by the police to their villages (see section 4).

In October, in Siemreap province, some 140 villagers went to a human rights NGO to seek help to protest against the clearing of 620 hectares of their rice-fields that a rubber company had started clearing.

In virtually all cases of land disputes and land-grabbing, the weaker parties have received no fair compensation, which they are entitled to as of right under the country's constitution. They cannot resort to courts of law to adjudicate on and enforce their rights when the judiciary is under political control and the authorities seldom resort to the due process of law, instead preferring to issue orders and have law enforcement agents execute these orders.

Conclusion

The Cambodian government should make more efforts to honour its international human rights obligations. It should adopt a positive attitude towards the Office of the High Commissioner for Human Rights and the UN Secretary-General's Special Envoy for Human Rights in Cambodia. It should enter into dialogues with them to explore ways of heeding their recommendations. Closing down the OHCHR office and refusing to cooperate with the Special Envoy not only reflect very badly on the Cambodian government, but will also fail to address human rights issues.

The Code of Ethics for Judges (CEJ), will not be effective without the Supreme Council of the Magistracy (SCM) recognising the need for it to reorganise itself in order to become an independent body and to put in place a set of transparent and fair enforcement mechanisms.

Under the Cambodian constitution, the SCM provides assistance to the king, who is also its chairman, to guarantee the independence of the judiciary. Under the law on its organization and functioning, the SCM is responsible for the discipline of judges and the effective functioning of all courts of law. It has a disciplinary council specifically for this purpose, and is therefore the body that is responsible for the implementation and enforcement of the code.

However, the SCM is unlikely to be effective in the enforcement of the code as seven of its nine members are themselves judges and prosecutors and may not be very forthright in disciplining their peers, especially as almost all of these seven members and their peers belong to the same ruling party (CPP).

Three of the seven members are openly known to be active members of the CPP. One member is the President of the Supreme Court and a member of the standing committee and central committee of the CPP. Another member is the President of the Court of Appeals and is also a member of the CPP. He is known to be very close to a powerful Deputy-Premier. It is very difficult for these two leading judges to maintain and proclaim their neutrality in political activities. Another SCM member is the Minister of Justice who runs and controls the SCM secretariat. He is also an active member of the ruling party.

Because of its composition, its members' political affiliation and the control of its secretariat by the Minister of Justice, a politician, the SCM is not free from political control. It is not in a good position to ensure judges' neutrality with regard to political activities, as the code has stipulated. In the past, it has not proved itself as being effective in disciplining judges for misconduct.

For instance, in 2004, it did not act upon a request by the Ministry of the Interior to investigate the corruption of certain judges. This inaction created a confrontation with the ministry in question. Prime Minister Hun Sen stepped in then with his “iron fist” policy which was allegedly aimed at stamping out corruption from the judiciary, but which instead had the effect of consolidating his control of the judiciary. The SCM then brought to justice a number of judges only to allow them to resume their normal judicial functions when the “iron fist” policy had lost its thrust and petered out.

More recently, in 2007, the government bypassed the SCM and violated the country’s constitution altogether when it took action to remove the President of the Court of Appeal and appoint her replacement.

Furthermore, the SCM does not as yet have any transparent and fair complaint procedures in place to enforce the code of ethics. Its decisions on discipline have, so far, not been known to be free of bias, and judges that have been disciplined have not been able to challenge decisions, which cannot be the subject of an appeal. Besides, it is widely known that members of its discipline council are not themselves free from corruption, as accused judges can bribe them to have the charges against them dropped.

The first required step is for the SCM to reorganise itself to become a body that is independent and free from political control. Only an independent SCM can ensure an independent judiciary. Its members should have no affiliation to any political party, and at least half of them should be non-members of the judiciary. It should run and control its own secretariat. Its members should comply with the code – especially the principles of independence, impartiality and honesty - and serve as models for all members of the judiciary.

The SCM should now widely disseminate the CEJ and encourage the public to report any misconduct by judges. It should enact by-laws on the complaint procedure, clearly distinguishing complaints against judges' decisions, which are under the jurisdiction of the Courts of Appeals or the Supreme Court, and complaints against judges' conduct, which fall under its jurisdiction.

These by-laws should set out in detail who can make complaints against judges, how such complaints can be made, where they should be sent, and when they can be acknowledged and their outcome notified to the complainant. They should detail the process by which complaints are dealt with, how they will be examined, how inquiries are conducted, how accused judges can defend themselves, and how sanctions are decided.

They also need to determine the range of sanctions available, which should be proportionate to the seriousness of the proven misconduct. All of these complaint procedures should be transparent and fair, and made known to all members of the judiciary, the legal profession and the wider public. The SCM should assign a leading judge in each court to act as ethics officer for other judges to consult on ethical issues they may be encountering in and out of court.

The subject of the implementation of the CEJ would be greatly facilitated and made more effective if judicial ethics is made an important course in the training programme for judges and lawyers at both the Royal Academy of Judicial Profession and the Centre for Lawyers Training and Professional Improvement in Phnom Penh. The Ministry of Justice and the SCM should also include judicial ethics as an important topic in all refreshment training seminars for judges that they organise.

There should be periodic evaluations of compliance with the code and ways should also be explored to better instil judicial ethics into the country’s judicial culture.

With regard to the Code of Criminal Procedure, the judiciary should seek the enactment of additional legislation to make up for the inadequacies, flaws and shortcomings of the procedure, in order to help it to fully discharge its constitutional duty to protect the rights and fundamental freedoms of Cambodian citizens. The additional legislation should re-incorporate all internationally adopted principles and rules pertaining to criminal procedure that the UNTAC Law recognised and that the code has discarded. It should also ensure there is adequate protection of the rights of suspects, accused persons, victims of crime, witnesses and concerned people. It should criminalize, as the UNTAC Law has done, all breaches of the criminal procedure that affect all rights. The code should be periodically reviewed to evaluate compliance and effect improvement.

In the meantime, rules of court should be adopted to ensure respect for rights, especially with regard to suspects’ and an accused persons’ right to the presumption of innocence, right of silence, right to legal counsel with provision of legal aid, right to communicate with their families, and right to medical examination. The Supreme Court should institute

equality of arms between the prosecution and the defence for trial hearings, and order trial judges to confine the questions put to the accused during interrogation to seeking clarification and nothing else. They should allow the prosecution and the defence more latitude to respectively prosecute and defend the accused. They should pronounce the verdict before the presentation of mitigation, and then the sentencing after due consideration of the mitigating circumstances.

There should be rules of court that fully and adequately protect the rights of victims of crime and also witnesses, especially the protection of their physical safety. Another set of rules of court should make it mandatory for prosecutors and judges to check the physical and mental state of suspects or accused persons who are brought before them. Any suspicion or sign of torture or other ill treatment should be immediately investigated and action taken against the perpetrator(s). They should also clearly define the purpose of judicial officers' visits to judicial police units and prisons as prescribed by the code, concerning the prevention of torture and other ill treatment, and the protection of the fundamental rights of persons detained in those places.

For his part, the Prosecutor-General of the Appeal Court who supervises the judicial police should issue directives or guidelines to all judicial police officers and prosecutors to fully respect and protect the afore-mentioned rights, and to inform suspects, victims of crime and witnesses of such rights, right from the time of a person's arrest.

The judiciary should effect a shift of culture away from criminal lawsuits and arrests that are effectively malicious and vexatious and meant to strike fear in the weaker parties to disputes, especially in land disputes and land-grabbing cases. Prosecutors and judges should give weight to the rights of these weaker parties when considering the legality of facts against them. They should strive beyond legal justice for equity. They should desist from forcing the weak and the poor to make sacrifices for the benefit of the better off, or the strong and powerful.

For its part, the government, including all public authorities, should likewise desist from, prevent and deter the same action. Forcing the poor and the weak to make sacrifices for "development" or "beautification" of cities through their forced evictions without adequate compensation are nothing short of criminal acts.

The "war against land-grabbers," mainly waged through executive orders or the leaders' public speeches, has so far been proven to be ineffective as land disputes and land-grabbing continue. This war should cease and be replaced by recourse to the due process of law and the rule of law. The cadastral committees, established at the district, provincial and national levels by the Land Law, should be empowered and given adequate resources, including expertise, to resolve disputes over non-registered land. The courts of law should likewise be empowered and given adequate resources to resolve disputes over registered land.

The government should not interfere in the work of all these cadastral committees and courts. It should instead cooperate with and provide supporting services to them, and implement their decisions.

Concerning the freedom of the press, and the freedoms of assembly and expression, the government should consider them as fundamental rights, as they are specifically enumerated in the Paris Peace Agreements as well as in the country's constitution. Individuals and society alike should accept some inconvenience that the exercising of such rights may cause.

If any media are suspected of having abused press freedom, the government or affected individuals should have recourse to the due process of law to ascertain the abuse or any breach of the Press Law, for instance. Arbitrary confiscation, suspension or ban by executive orders without recourse to the due process of law is unlawful and violates this fundamental right.

Prior to the Ministry of Interior issuing its guideline on NGOs activities or the government's approval of the Bill on Peaceful Demonstrations, the enjoyment of the freedoms of assembly and expression through meetings, training seminars, public forums to discuss local and national issues, peaceful demonstrations or protests, have been carried out in a peaceful and orderly manner, with the least inconvenience to individuals and society. The experience so far has not warranted such guidelines and such a law.

The violent attack on the Thai embassy and businesses in 2003 was an exception which the government has taken as a rule. That attack was spurred on by Prime Minister Hun Sen's verbal attack on the Thai actress at the centre of the debacle for making a comment hurtful to Cambodians. Importantly, the police failed to act in time to prevent the attacks.

The police should draw lessons from such a failure and, in order to ensure that there will not be any repeat of such attack, and demonstrations pass off with the least inconvenience, they should dispatch forces to march along either side of processions, regulate the traffic along the route and protect venues used for meetings. Traffic jams, when alternative routes are available, or claims of hypothetical public disturbances, should not be used as reasons for banning such peaceful demonstrations.

Cambodian society and the country's government should bear the costs incurred by such forms of policing, if they deem this right fundamental, as they are meant to under the constitution. Any executive order or legislation that aims at restricting freedoms, when their enjoyment does not affect the honour of other people, good customs of the society, public order or national security, is a violation of the constitution.

The Ministry of the Interior should scrap its guidelines and the government should remove all restrictive clauses from its Bill on Peaceful Demonstrations.

For their part, State signatories to the Paris Peace Agreements should also honour their respective commitment to the promotion of, observance of, and respect for human rights

and freedoms in Cambodia. First they should support the continued presence of the field office of the High Commissioner for Human Rights and also the position of the UN Security-General's Special Envoy for Human Rights in Cambodia. Secondly, they should work with all the three branches of government in Cambodia to ensure that they honour Cambodia's human rights obligations, that their institutions for the rule of law protect these rights, and that no unconstitutional restrictions are imposed on the enjoyment of rights by Cambodian citizens.