



THE STATE OF HUMAN RIGHTS IN CAMBODIA - 2008 A TURNING POINT FOR THE WORSE?

The human rights situation conditioned several significant developments in Cambodia in 2008. The first development was the parliamentary election held in July whose outcome was a “landslide victory” for the ruling Cambodian People’s Party and the continuation of the same government with increased power and size. The second development was the planned enactment of an NGO law long feared to restrict the activities of NGOs. The third was the resolution of the conflict over the assessment of the human situation between the Cambodian government and the UN Secretary-General’s Special Envoy, a resolution which lead to the resignation of the Special Envoy and his replacement by a Special Rapporteur.

This report details briefly all these developments before covering in more detail the situation of human rights that had conditioned them.

<i>A Turning Point for the Worse?</i>	1
<i>1. The election and the new government</i>	2
<i>2. The NGO law</i>	5
<i>3. The resignation of the un special envoy for human rights</i>	7
<i>4. Land grabbing</i>	8
<i>5. Corruption</i>	13
<i>6. Press freedom</i>	14
<i>7. Freedom of expression and assembly</i>	15
<i>8. Torture</i>	17
<i>9. The rule of law</i>	20
<i>Conclusion</i>	26



1. THE ELECTION AND THE NEW GOVERNMENT

In July 2008, Cambodia held a parliamentary election, the third after the UN-organised one in 1993. Eleven political parties were competing for the 123 seats in the National Assembly in 24 municipal and provincial constituencies. This election has portrayed the image of the country as a multi-party democracy.

There was less violence than in the previous elections, and the National Election Committee has won appreciation for its technical ability to organize the July election.

Despite this appreciation, this election nevertheless felt short of key international standards. Reports of election monitors have highlighted the lack of respect for and the violations of many human rights that had been going during and outside the electoral process.

There was no particular complaint about denial of the right to stand for election. Yet, through its control of all state institutions, its control of the media and its overwhelming resources, the ruling party had a firm grip on the electorate and limited their freedom of choice.

The other contesting parties could not campaign in freedom and peace. They were facing various obstructions from public authorities, including violence, threats and intimidation, and unequal treatment before the law.

The electoral process not only highlighted the lack of respect for and violations of the rights of the electorate and contesting parties, but it also served as an opportunity for abuses of other rights, namely land grabbing, corruption and the absence of the rule of law, to come to the forefront.

The July election had many features of a democratic election. Yet one party, the Cambodian People's Party (CPP) dominated the whole electoral process: the registration of voters, the activities of contestant parties, the media, the influence on the electorate, and the adjudication of election conflicts.

The National Election Committee (NEC), Cambodia's election management board, is dominated by the CPP. NEC members were appointed by the CPP-dominated National Assembly. The CPP has a majority on the NEC and an overwhelming majority of NEC operatives are CPP members or supporters. The registration of voters is carried by the CPP-dominated local authorities.

The NEC is also an election dispute adjudicating mechanism. Appeals against its judgments are heard by the Constitutional Council on which the CPP has also an overwhelming majority.

The CPP has effective control of the media, especially radio and TV, which were running news on the activities of CPP leaders and very little, if at all, on those of the other party's leaders. Three leading parties other than the CPP were able to hire the airtime of a private radio station with a limited coverage radius.

The CPP has the control of all state institutions from the three branches of government down to the village chiefs and almost all positions in the civil service, the army and the police are staffed by its trusted members. At the grassroots level, almost all commune officials and village chiefs are its members and agents. All these officials and agents have exercised control over the electorate and limit the activities and influence of other parties.

In the July election, the CPP introduced a new strategy to win popular support by assigning senior government officials to assist those commune and village officials to get the support of the electorate with



actual or promised construction of various infrastructure or social projects, humanitarian relief handouts and money, and all these expenses were funded by those officials themselves. Although there is no computation of all parties' election expenses, some have privately estimated that these expenses could run into hundreds of million US dollars for an electorate of just over eight millions in a country where the estimated GDP per capita US\$571 in 2007 (US government source, <http://www.state.gov/r/pa/ei/bgn/2732.htm>).

Furthermore, the CPP gained more popular support when the government had succeeded in getting UNESCO list an ancient temple called Preah Vihear on the Thai border as a World Heritage site right in the middle of the election campaign. The news was greeted with festive ceremonies across the country, and aroused strong Cambodian nationalism and enhanced strong popular support for the ruling party, when Thai troops had entered and occupied the area around the temple following the listing announcement.

The CPP had "a landside victory" winning 93 out of 123 seats in the National Assembly. It was followed by Sam Rainsy Party with 26 seats, Human Rights Party with three seats, and FUNCINEC and Norodom Ranariddh Parties with two seats each. However, two contestant parties, Sam Rainsy and Human Rights, have rejected on the grounds that nearly one million legitimate voters had their name deleted from the electoral rolls while many illegitimate voters were issued papers to cast their votes allegedly for the CPP.

According to the procedure provided for in Cambodia's Constitution of 1993, the new Parliament should convene within 60 days after the election. It should begin with the adoption of its standing orders and elect its speaker or chairman and two deputy speakers or vice-chairmen. Based on the same constitution, Cambodia is supposed to be a Westminster-modeled parliamentary democracy under a constitutional monarchy. But, in practice, unlike its Westminster-modeled counterparts, the Cambodian Parliament pays no regard to the impartiality of its speaker and deputy-speakers. It elects them among leaders of party who have already been pre-selected by the dominant party. This party may allow the leader of another party to be one of these house speakers

Once its leadership has been elected, the same Parliament should proceed to elect the chair and vice-chairs of its nine committees. Again, in practice, these leaders of committee have also been pre-selected by the dominant party. This party may allow leaders or members of other parties to chair several committees. The next stage is for the Parliament's chairman in consultation with his deputies to select a leader of the party with a majority to propose to the King to appoint as Prime Minister. This prime minister then presents his cabinet to the Parliament to get its vote of confidence.

In the aftermath of the 2003, there was a stalemate in the composition of the leadership of the Parliament and of its committees as well as that of the new government, when the dominant party could not secure the two- third majority of seats required for the election of those leaders and for the vote of confidence in the government. After a protracted stalemate for many months, the dominant party, the Cambodian People's Party (CPP), already in the government, introduced an Additional Constitutional Law to institute voting in bloc for the pre-selected composition of the leadership of the National Assembly as well as for the pre-selected composition of the government. This bloc voting is to be done without any debates and by a show of hands.

Through a coalition deal with the second party, FUNCINPEC, the ruling party forced the new National Assembly to adopt this law before this assembly had properly been convened.

The objective of this law was to address the "necessity" to overcome the impasse that the dominant party in government had encountered at that time in having the government's composition of its liking. There were



protests against this law, claiming it was unconstitutional when the then new National Assembly had not properly convened, adopted its standing orders and elect its leadership and chairs of its committees in accordance with the 1993 Constitution. But the CPP-dominated Constitutional Council declared the law was constitutional.

The dominant CPP then prepared beforehand the composition of the leadership of the National Assembly and its committees and also the composition of the new government, and submitted the whole package to the assembly to cast its vote by a show of hands to approve it without any debates.

In 2006, the two-third majority requirement provided for in the 1993 Constitution for the vote of confidence in any new government, for the election of the parliament's and its committees' leaderships, and for the adoption of any law was amended and changed into an absolute majority. But when the new National Assembly convened on 24 September 2008 the CPP which had secured over a two-third majority in the July election still resorted to the same bloc voting when there was no "necessity" for it at all.

However, by resorting to this bloc voting procedure, the CPP has denied the rights and freedoms of Members of Parliament as representatives of their respective constituents and the whole nation as provided for in the 1993 Constitution. Furthermore, the CPP, through the same package vote, has denied the other parties an active role in the leadership of the National Assembly when CPP members have assumed all the chairmanship and vice-chairmanships of the National Assembly and its various committees. The legislature in effect represents the CCP voters and not the entire nation.

The National Assembly has effectively lost its status as a separate branch of government. It has been subservient to the government it has created, and through it, to the CPP. This branch of government has lost its power of checks and balances right from the beginning of its term. When the other branch of government, the judiciary, is already under political control as well, all checks and balances are gone. Power will further concentrate in the hands of the executive, meaning in those of Prime Minister Hun Sen, the strongman of Cambodia, with all unknown consequences on the human rights and freedoms of the Cambodian people.

Through that bloc voting and through the use of his power as Prime Minister, Hun Sen has now formed a government of altogether 463 members, one third bigger than his previous government, to run 26 ministries and two government departments in a country which has 13.4 million inhabitants (March 2008 census). These members comprise:

- Prime Minister - 1
- Deputy-Prime Minister - 9
- Senior Minister - 16
- Minister - 34
- Secretary of State - 198
- Under-Secretary of State (non-cabinet members) - 205

Hun Sen has not only bypassed the constitutional procedure for the election of the leadership of the National Assembly and its committees and for the vote of confidence in his government, but also overlooked the legality of action of his government. Article 3 of the Law on the Organisation and Functioning of the Council of Ministers (1994) says that "The Royal Government shall manage the general affairs of the State in compliance with the policies and plans of the State as adopted by the National Assembly."



Hun Sen had not made any policy address announcing the policies and plans of his government and get the National Assembly to adopt them after securing its vote of confidence on 25 September before his government can implement them. Instead he made this policy address to his Cabinet at its first meeting on 26 September and announced that his government was going to implement those policies and plans without securing the national Assembly's prior approval.

2. THE NGO LAW

After securing an overwhelming majority in the Parliament, Prime Minister Hun Sen has reactivated the government's plan to regulate the activities of NGOs. The reactivation of the plan by the Prime Minister seems to reflect his frustration with continued criticisms of his government's records on human rights and the civil society's continued advocacy of observance of and respect for human rights, which is the government's international obligations. These obligations have issued from the Paris Peace Agreements of 1991 that put an end to the war in Cambodia.

Under these agreements, Cambodia has undertaken, inter alia, "to ensure respect for and observance of human rights and fundamental freedoms in Cambodia; to support the right of all Cambodian citizens to undertake activities that would promote and protect human rights and fundamental freedoms;" to establish "an independent judiciary ...empowered to enforce the rights provided under the constitution."

Many in the government have showed their dislike of human rights defenders who have been vocal in their criticisms of corruption, logging and deforestation, land grabbing, political control of the judiciary, lack of freedom of expression and assembly, wide income disparity, high unemployment, a whole host of other social ills.

Two days after the approval of his government, on 26 September, Hun Sen already announced to his first cabinet meeting his plan to enact a law to regulate NGO, citing his concern that their funding could come from terrorist groups. He said: "We have a concern that sometimes under so and so NGO, financial assistance has been provided for terrorist activities, take for instance the Al Um Quran under which Ham Bali hid himself in Cambodia."

The government has made this law on of the three laws it is going to enact as a matter of priority, the other two being the penal code and the anti-corruption law. This is a strategic package to dampen any criticism when both the civil society and the donor community alike have been pressing the government for the adoption of the two latter laws, especially the anti-corruption law, for a long time.

The previous government had floated on and off the idea of an NGO law for many years, and this idea has hanged over the heads of the civil society like a sword of Damocles ever since. Then in 2006 the government put out a draft for debate with the civil society. After several consultations this draft was shelved.

Many in the civil society are sceptical about the purpose of this law when virtually no NGO has caused any noticeable scandal. The NGO law may not be just another measure to fight terrorism in Cambodia. The fears of NGOs being funded by terrorist organizations are hardly founded, when financial activities of such



organizations are adequately addressed by the anti-terrorism law that the government had already enacted in 2007.

Since the idea of an NGO law was floated, it has been suspected that this law would be used to control the activities of human rights NGOs whose freedom of action has been already much curtailed by different executive orders. A remark made in 2006 by Heng Samrin, the President of the National Assembly and Honorary President of the ruling party, the Cambodian People's Party (CPP), when the first draft law was issue, is still haunting them. Heng said: "Today, so many NGOs are speaking too freely and do things without a framework. When we have a law, we will direct them." After the July election Heng is still holding the two positions.

Actually, the constitutional rights and activities of NGOs have been much restricted already by a guideline the Ministry of the Interior had issued in 2005. This guideline instructs all commune authorities (grassroots authorities), among other things, that all activities of non-governmental organisations, associations and civil society organisations, "must have cooperation from provincial or municipal governors" and "all invitations to provincial, district and commune officials to attend any seminar or training sessions must have the approval" of these governors as well.

These guidelines in effect restrict the activities of NGOs when members of which have to travel potentially long distances to the offices of provincial or municipal governors and get through lengthy bureaucracies to get such approvals.

Cambodian local authorities have rigorously enforce the guideline of the Ministry of Interior and have banned or interrupted many NGO activities, especially the holding of public forums for the public to debate issues affecting their livelihood. Thanks to public pressure from inside and outside the country the enforcement has been relaxed. Still not all local authorities have relaxed their control and ban (see Freedom of expression and assembly).

When the government has such an overwhelming majority in the Parliament, when the opposition is marginalized (see The election and the new government), and when the international monitoring of the human rights situation in Cambodia by the UN are downgraded (see The resignation of the un special envoy for human rights), there is practically nothing that could hinder the enactment of what ever NGO law that the government might like.

With the anti-human NGOs prevailing in the government at present, it is unlikely that this law is going to adequately guarantee the rights and freedoms of Cambodian people to engage themselves in the promotion of human rights, as stipulated by the Paris Peace Agreements. It is likely that this law will restrict further the activities of NGOs. These NGOs will be muzzled and will not be able to serve, as they have been doing so far, as one of the main bulwarks for the protection of human rights. This NGO law could be yet another step for Cambodia to go down the road back to serfdom from which the international community had helped pull it out in the early 1990s.

There is little the international community could do to stem this trend, when this community has lent little support to a UN special representative for human rights in Cambodia and raised no eyebrows when he offered his resignation.



3. THE RESIGNATION OF THE UN SPECIAL ENVOY FOR HUMAN RIGHTS

On 1 November 2005 Prof. Yash Ghai, from Kenya, was appointed Special Representative of the UN Secretary General for Human Rights in Cambodia, the fourth since the post was created in 1993. This post was created by virtue of the Paris Peace Agreements mentioned above. These agreements stipulate, among other things, that, after the end of the UN's peacekeeping operation and transitional administration of Cambodia, "The United Nations Commission on Human Rights should continue to monitor closely the human rights situation in Cambodia, including, if necessary, by the appointment of a Special Rapporteur who would report his findings annually to the Commission and to the General Assembly..

Based on his meetings with a wide range of people in the government, the civil society, and victims of human rights violations, his visits to the scene of violations of human rights, and recommendations made by his predecessors, Ghai have since made remarks about the human rights situation of Cambodia together with his own recommendations for its improvement. Among other things, he has made remarks about the lack of judicial independence, its control by the executive, and its service for the rich and powerful at the expenses of the poor and the weak, especially in land grabbing cases. He has gone further than his predecessor to make a remark on the concentration of power in the hands of one man, the Prime Minister, which he further added was not conducive to respect for human rights.

All this truthful remarks have very much irritated Prime Minister Hun Sen and his government. Instead of addressing the problems Ghai had raised, Hun Sen has mounted continued attacks on his personality. Hun Sen called Ghai "short-tempered", "deranged", and "lazy". At one time, in 2006, Hun Sen called on the UN Secretary-General to dismiss Ghai. He also threatened to close down the field office of the UN High Commissioner for Human Rights created by virtue of the same Paris Peace Agreements, calling its staff "long-term tourists". Hun Sen has also made disparaging remarks about his country, Kenya, calling it, among other things, "a killing field" when it was hit by ethnic violence after the 2007 presidential election there.

The Cambodian government's Spokesman and Minister of Information, Khieu Kanharith, has added further insults, calling Ghai, "uncivilized" and "lacking Aryan culture". He has also made disparaging remarks about the Kenyan people, calling them "rude" and "servants". The Cambodian leadership's dislike of Ghai at the end has reached a point where they denied all meetings he had sought to raise human rights issue with them in compliance with his mandate.

This personality assassination through such insults is a hallmark of the Cambodian leadership when they cannot not face the truth and seek ways of addressing the problems people call on them to solve. They simply use this assassination to dissolve them instead.

The Human Rights Council, the international community and Cambodia's donors themselves have done little to support Ghai and his work, which has then encouraged the Cambodian leadership to be more arrogant towards this senior UN official. Ghai offered his resignation on 16 September 2008, which the Cambodian leadership welcomed with glee, expressing their triumph over a senior UN official who had the temerity of criticizing and telling the truth about human rights in Cambodia. With Ghai's resignation, the post of the Special Envoy of the UN Secretary-General for Human Rights in Cambodia is also abolished. It is replaced instead by a special rapporteur.



However, those who are working for human rights in Cambodia have felt Ghai's resignation as a setback. It is harder for them to think that the prospects of better respect for human rights in Cambodia when the Cambodian government can defy its international human rights obligations and defeat the work of a senior UN official of high integrity who had the courage to speak the truth and call on the Cambodian government to address the human rights issues for the benefit of the Cambodian people. Some hope that the special rapporteur would be a person of Ghai's personality and having the same honesty and courage to speak the truth about human rights in Cambodia.

4. LAND GRABBING

Land grabbing has remained a hot issue, when the rich and powerful, through illicit means acquire land belonging to weaker and poorer people. It has affected and continues to affect the livelihood of hundreds of thousands of people in urban and rural areas alike, the ethnic majority and minorities alike, when these people have been evicted or are likely to be evicted, most often by force, from their homes and lands without just compensation as the country's constitution has prescribed. Amnesty International has estimated in its report published in February 2008, that "at least 150,000 Cambodians across the country are known to live at risk of being evicted in the wake of development projects, land disputes and land grabbing".

In 2008 land grabbing affected people in many localities in Cambodia. The latest and most notorious case was the lease of a lake called Boeung Kak Lake and its surroundings and the ensuing eviction of some 4600 families of residents in Phnom Penh. The lake and its surroundings are public state property whose sale or lease is prohibited by law. But in 2007 the Municipality of Phnom Penh leased it to a development company, Sukaku, and in 2008 the government made the lake a private state property which, in law, can be sold or leased. The lake was lease for 99 years for US\$79 millions.

The Municipality of Phnom Penh offered various forms of compensation which many residents found "inadequate" to sustain their livelihood, rejected this compensation, resisted their eviction, and demanded compensation commensurate with the market price of their homes and lands. Meanwhile the company started to fill the lake.

The government has not ignored the issue of land grabbing. In fact it already feared that there might be "peasant revolution" as a result of it. An incident that happened in early January 2008 could be seen as symptomatic of this feared revolution. A young man brutally beat an old parliamentarian from the ruling party with a steel pipe on the head. In his statement to the police, Ros said he had had no personal grudges against that man. His attack was his revenge against the powerful officials who had grabbed his land in Russey Sros village and deprived him of the only means that would have allowed his mother to pay for his wedding.

The other victims have not resorted to such violence as yet. They have preferred a peaceful means to end the grabbing their land, to repossess it or to be paid just compensation as prescribed by the country's constitution. In 2008 they were more daring in their endeavours. They raised the issue with the top leadership of the country through various means including a march for land from a distant province to the capital. They have forced those leaders to address it head on. However, forced evictions have continued, but they have been suspended in some localities.



Action by the Authorities

In March 2007, a month before the local elections, Prime Minister Hun Sen declared a war against land grabbing. Immediately, several land grabbers were arrested or forced to give back the lands they had taken. This war soon lost momentum and Hun Sen remained basically quiet about the issue until almost exactly a year later when, at the approach of the July parliamentary election, he became active again and took a flurry of decisions in succession to address the issue again.

In March 2008 he went in person to a disputed land in the seaport town of Sihanoukville on the Gulf of Thailand to take 16 hectares of land from a grabbing company to give back the 125 families who had lost it. He offered them his apologies for the police action to evict them that caused injury to some and led to the arrest of three of them. He also ordered the immediate release of these three accused.

The next day, back in Phnom Penh, he ordered the governor of Banteay Meanchey province and his colleagues to resolve a dispute over a 20 hectare plot of land “within a week” or they would be sacked.

In the same address he criticized the National Authority for the Resolution of Land Disputes (NARLD) for its “sluggishness” in resolving land disputes and threatened to wind it up. He then noted that land grabbing had the “character of a hot issue” when disputes had not been speedily resolved. He also noted that some plots of land had up to four different title deeds on each of them, and he warned the Ministry to avoid the issuing of such multiple titles. He threatened to send NARLD officials to jail if found to be dishonest.

Despite its name, NARLD is not a specialized court of justice or administrative tribunal for land disputes. It was created in early 2006 by a sub-decree (an executive order signed by the Prime Minister), and was composed of political appointees from different relevant government ministries. According to a former member, Eng Chhay Eang, an MP, from the opposition party, who had resigned from it, NARLD has no power. It is more like a coordinating body entrusted with the tasks of receiving complaints and conducting investigation with the cooperation of relevant authorities. It mostly entrusts the task of settling the disputes to these authorities.

The creation of NARLD has undermined the jurisdictions of the cadastral commissions created under the 2001 land law for resolving disputes over unregistered land, and the courts of law for disputes over registered land. However, Hun Sen has preferred, as he put it when meeting with those 125 families in Sihanoukville on 24 March, resolution of land disputes “outside the justice system”. In his address to the meeting of the Ministry of Land Management the next day, Hun Sen was reported to be “accusing courts of law of being corrupt.”

The following month, Hun Sen displayed in public his anger with the rulings of two courts of first instance. The first one was the court of Banteay Meanchey province which ruled in favour of a company in its dispute with the government over its construction on public land. The second was the court of Kandal province which ignored his “notification letter” (See RULE BY DECREE) ordering the return of a disputed land to its occupants and the findings of an investigation by the provincial authorities, when it ruled in favour of a company which had claimed to have bought the land from those occupants.

Although he chose to be silent again at the approach of the election and after, his spurt of action together with the election itself had stoked up more action by victims themselves and prodded concerned authorities into more action as well.



Victims' Action and Responses from the Authorities

In the month of May 2008 this issue of land grabbing came noticeably to the forefront. In that month alone a radio station ran over 40 stories of land grabbing or related issues. These stories showed that land grabbing victims have become more resourceful and have pressed harder to repossess their land. For their part, the authorities have showed more concern and responded more positively, setting a momentum for addressing land grabbing.

In general, land grabbing victims have no confidence at all in adjudicating authorities and have now appealed to their powerful Prime Minister, Hun Sen, for his personal intervention to get their land back. They have been further encouraged to seek his personal intervention after he had gone in March 2008 to a contested area in the seaport town of Sihanoukville, seized it from the grabbing company and gave it back to its rightful owners (see above). A group of land grabbing victims, who had marched from Battambang province to Phnom Penh, said they had no confidence in the courts of law and the provincial authorities, but only in their prime minister, in adjudicating their land disputes in their favour.

This group was a part of the resourceful villagers who, in May, set off on a march from their province to Phnom Penh, over a distance of 291 km, for the purpose of meeting with Hun Sen and requesting him to help them get their land back. Their march attracted a lot of publicity of their case.

They were halfway into their march when senior officials from the Ministry of Interior and from Battambang province hurriedly went to meet with them and offered to adjudicate the case in their favour. Having received such assurances, half of the marchers have agreed to return home and abandoned the march. The rest were disappointed with the promise, continued their journey by car to Phnom Penh. Joined by groups from other localities, they went to petition the prime minister's intervention at his residence on the outskirts of Phnom Penh. Other groups of victims of land grabbing had gone before or after them to seek the same intervention from the prime minister.

Land grabbing victims have also banded together as communities to organize protests or resistance to their eviction. These communities have also banded together to garner support for their cause. In June 2008, representatives of 12 such communities from 24 municipalities and provinces met with the director of the Cambodia Office of the High Commissioner for Human Rights in Cambodia to hand over a petition containing some 40000 thumb prints, requesting him to intervene with Prime Minister Hun Sen to seek his persona personally to address the grabbing of their land

Victims have also used their ballot papers as leverage to get the authorities to end the grabbing of their land. In the middle of May, villagers of the Phnong indigenous minority in Mondolkiri province, frustrated by broken promises from the provincial authorities, said that if these authorities could not keep their promises, they would take their complaint against the grabbing of their communal land by two development companies to Phnom Penh and would not go and cast their votes at the forthcoming election. The provincial authorities ended the grabbing and returned the land to them.

Around the same time a group of villagers in Kratie province, with the same frustrations, said they would lose all motivation to go and cast their votes if the provincial authorities did not end the grabbing of their land by an army unit posted in their locality. The governor of the district then diligently investigated their case for settlement in their favour.



In May the governor of Siemreap provinc began to conduct investigations into a land grabbing case involving 363 families, some three months after receiving an order to that effect from the Ministry of Interior and four months after those families had filed their complaint to that Ministry. On the same day a deputy governor of Battambang province decided to conduct investigations the day after 60 villagers representing 105 families had protested in front of the provincial government office the day before against the grabbing of villagers from another district.

Officials of the ruling Cambodian People's Party (CPP) have also showed concern over the negative impact of land grabbing on their party at the election. In the land grabbing case by an army unit in Kompong Speu province, a CPP commune councilor publicly voiced, in May, his worries that villagers would not vote for his party when they lost their paddy fields to the Army Tank Unit and faced hardships afterwards.

A land grabbing case in Kampot province compelled the CPP provincial task force to intervene also in May and request Hun Sen to rescind an order, giving to four persons, 72 hectares of land belonging to a community of 680 families, thereby returning it to that community.

In the same month of May, Sar Kheng, a deputy prime minister and minister of interior, have also reacted publicly to land grabbing. He expressed his unhappiness with the National Authority for the Resolution of Land Disputes or NARLD and the other adjudicating authorities. He then proposed the empowerment of provincial authorities, which are under his authority, so that they can resolve land disputes in their respective provinces. Legislation is needed though for the provincial authorities to have any adjudicating power.

However, Sar Kheng could not have his way, when, in October, the prime minister appointed a new composition of the NARLD. Meanwhile, evictees have continued to stage protests in front of the prime minister's residence and in front of the National Assembly to seek their respective help to back their demand for just compensation or official title deeds on the lands they have occupied for many years.

Continued Pressure on Victims

The action prior to the July election had an electioneering character and served more as safety valve to avoid that the "peasant revolution" that the government has most feared. It was not at all a due process of law that the country's Land Law (2001) and other laws had stipulated. Nor has it done much to ease off land grabbing and the use of various forms of pressure on those who have put resistance to it.

In 2008 there were less brutal forced evictions. They resorted to amore subtle means such blockade to deny food supplies to recalcitrant evictees or even flood to pressurise evictees to leave their homes and lands. But the authorities still resorted to arrests and physical threats as a means to repress any resistance to eviction.

In January, as part of their eviction of the residents of the Dey Kraham community in Tonle Bassac commune, Chamcar Mon district, Phnom Penh, in favour of 7NG company, the authorities of the area notified stallholders of the "garden" market inside the Dey Kroham zone, on which the livelihood of the evictees depends, to dismantle their stalls and clear out of the garden. The authorities claimed their trade affected the environment, hygiene, health and public order, and they were going to rebuild the garden. Their decision at this particular juncture of on-going evictions was hardly a mere coincidence when it is considered that the market has been there for years.



On top of this dismantling of stalls, 7NG company set up a blockade to the zone by sending its workers to place oil drums to be filled with water to block all access roads to the zone and supplies to the market. A mixed group of 30 to 40 armed police officers were posted at the edge of the zone to protect the workers. The evictees again resisted the blockade by pushing the oil drums out of the way and preventing the workers from filling them with water. A confrontation between the two sides over the blockade ensued, in which a truck belonging to the local authorities parked at the blockade was set on fire.

The authorities had already filed lawsuits against a dozen of Dey Kraham residents following previous resistance successive attempts to evict them since 2005. They charged with damage to property, battery, defamation and frauds. One of these accused was convicted in September. The others were summoned to appear in court at the end of October and early November. However, thanks to pressure from inside and out the country, first, the authorities have suspended their eviction, and secondly, the court has granted bail to the rest, which is a positive development, considering the practice of arrest and imprisonment upon their appearance in court.

In the same month of January the authorities also set up a blockade of food supplies to force 180 families of disabled war veterans, widows and orphans out of their homes and lands at Kro-Year commune, Santuk district, Kompong province, in a forced eviction to hand over the land to a rubber company, when these vulnerable people had protested against their eviction.

In August, in their attempt to evict recalcitrant Boeung Kak Lake residents in Phnom Penh, the development company and the Phnom Penh Municipality resorted to a set of draconian measures: they began filling the lake, which raised the level of the water and flooded their homes, destroyed their floating vegetable farms, turned off the fresh water supply and threatened to cut off power supply as well. Unable to continue to live in flood homes, some residents have “voluntarily” accepted the “inadequate” compensation.

In April an army unit began to build a development zone for handicapped veterans in Chhouk district, Kampot province. In subsequent months it began to evict over 400 families from one end of a village and move them to another end. In this process it forced over 700 families living in this end to reduce their living space to accommodate those displaced families. In June some 30 villagers protested and over 100 soldiers and military police officers beat the protesters and arrested four of them on charges of the robbery of a mobile phone and wrongful damage to property.

In August about 40 soldiers, many of them armed, attempted to evict 19 families from their homes on more than 2 hectares of land in Steng Treng provincial town, to be relocated in rural areas. The army had begun to evict these residents in 2005.

Recommendations:

The Cambodian government should abandon the rule by decree and embrace the rule of law, by resorting to the due process of law, to eradicate land grabbing. It should protect the property right of the Cambodian people and enact a law on confiscations of land for the purpose of public interests with an independent and impartial committee for fair and just compensation for people affected by such confiscations.

The Cambodian government should ensure that the cadastral commissions for the adjudication of conflicts related to unregistered land have functional independence and adequate resources including expertise to perform their respective duty. It should ensure that, before making any land concession, people likely to be



affected are consulted, and fair and just compensation are offered to them. Furthermore, adequate land should be made available to the poor and the landless for their housing and cultivation.

5. CORRUPTION

Corruption has been a big issue in Cambodia, and this issue has been continuously raised at least since the mid-1990s, and successive governments, when taking oath of office, have pledged to combat all forms of corruption. They have even included the enactment of an anti-corruption law in their respective policy addresses address and in their promises to donors.

However, all these pledges have not been translated into any concrete action while corruption has worsened. A survey by Transparency International (TI) released in February 2008 showed that 72% of Cambodians reported paying a bribe to receive a public service within the year 2007. IT said that this percentage was the highest in the Asia-Pacific region and second to only Cameroon (79%) internationally. The majority of respondents had expected no decrease in corruption in the next three years to come.

In 2008 Cambodia ranked 166 out of 180 countries in TI Corruption Perception Index. Corruption is pervasive across the entire public sector and, to a less extent, in the private sector as well. A bribe is expected for the delivery of any public service.

Right from the early 1990s there has been a persistent demand on the Cambodian government to enact the long-awaited anti-corruption law whose draft has been written and rewritten over dozen of times. In 2008 an anti-corruption movement across the country was formed to mobilize public opinion to combat corruption and press the government to enact the long-awaited anti-corruption law. Just prior to the July parliamentary election, this movement succeeded in collecting some one million people out of the population of 14 millions to sign a petition to hand to the Parliament, requesting it to enact that law. It also received pledges from all competing parties, except the ruling party, to enact that that within six months after the election.

The government issued from that election felt the pressure and, in his announcement of the political programme of his government to his cabinet's meeting in September, Prime Minister Hun Sen said that the anti-corruption law had already been approved by his government and would be sent to the Parliament for adoption after the penal code had been adopted. He said that the anti-corruption was one of the three laws to be enacted as a matter of priority, the others being the penal code and the NGO law.

However, this anti-corruption law is not likely to meet the standards set by the UN Convention against Corruption and have much effectiveness in tackling the issue, when Hun Sen has already discarded comments from the civil society, saying: "The [anti-corruption law] will come out no matter what comment some NGOs would make."

Recommendations:

There is a dire need to enact the long-awaited anti-corruption law. This law should meet all the standards set by the UN Convention against Corruption. The body that is assigned to enforce this law should be



independent and have sufficient powers and resources to effectively do its work. It should be made easily accessible to the public for filing complaints against corruption.

There is an urgent need for the government to pay at least living wages to its employees. It also needs to introduce a code of ethics for public servants and set up an independent public service oversight body such as an ombudsman to receive and act upon complaints from the public.

6. PRESS FREEDOM

Press freedom is a constitutional right in Cambodia. Yet over the years, journalists have been facing threats and intimidation, confiscation of their newspapers, cameras and note books, and lawsuits for criminal defamation and/or disinformation. However, over recent years Cambodian media has seemed to enjoy a degree of freedom compared with its counterparts in other countries in the region.

In 2007 Freedom House classified Cambodian press as "partly free" and ranked Cambodia 122 out of 195 in its Freedom of the Press World Ranking. In the same year Reporters Without Borders ranked Cambodia 85 out of 169 countries in its World Press Freedom Index (71 out of 139 in 2002; 81 out of 166 in 2003; 109 out of 167 in 2004; 90 out of 167 in 2005; 108 out of 168 in 2006). With this degree of press freedom, Cambodian journalists have been able to relax their self-censorship and write "high-risk stories" like corruption, injustice, illegal logging and land grabbing committed by powerful officials and rich businessmen.

However, in 2008, press freedom was badly marred by some events affecting journalists and the media as a whole. Cambodia's rank dramatically dropped, down to 126 out of 173 countries. In early July, Khim Sambor, a journalist for Monasikar Khmer (Khmer Conscience) newspaper known to have affiliation with the opposition was gunned down in broad day light together with his son in Phnom Penh. This murder has jangled through to all members of the media. No perpetrator has been apprehended yet, despite assistance from the US Federal Bureau of Investigation.

This slaying followed the arrest of the same newspaper's editor a couple of weeks earlier for defamation and disinformation for reporting the opposition leader's remarks that two senior government ministers had been affiliated with the Khmer Rouge regime in the past, one of whom was head of one of its prisons. Both the slain journalist and his newspaper had been writing high risk issues.

Following the slaying of that journalist and the arrest of his newspaper's editor a local English newspaper wrote that "Cambodian journalists feel that they are not safe." Journalists had not been any much safe and the media had not been any freer from government action prior to the two events.

A journalist for Radio Free Asia, Lem Pichpisey, known by his on-air pseudonym Lem Piseth, received renewed threats, on and off, from January to April, through text messages, phone calls from unknown people to fix rendezvous at dubious places, throwing of assault rifle AK47 bullets at night in the yard of his house in Battambang province and also threatening gestures from a group of motorcyclists while he was riding his own motorcycle in a street in Phnom Penh. He received these threats after his return from a short self-exile abroad because of previous threats and after he had investigated a drug trafficking case. In May, unable to put with these threats anymore, Lem decided to flee the country, this time for good.



In the same month of May, the Ministry of Information revoked the licence it had granted to a radio station called Angkor Ratha Radio located in the capital of Kratie province for selling its airtime to four political parties that were to compete in the parliamentary election to be held in July. The ban on this radio station was inconsistent with the ministry's permission to its affiliate radio station in Siemreap province and to Phnom Penh-based Radio Beehive to sell their respective airtime to those same political parties.

Recommendations:

Press freedom is fundamental right, and Cambodian authorities should consider them so and give them priority over inconveniences the exercise of it might cause.

Easily understood and accessible legal procedure should be put in place for people to challenge any ban on the exercise of this right.

7. FREEDOM OF EXPRESSION AND ASSEMBLY

The Cambodian authorities have not lifted its ban on peaceful public demonstrations although staging such an event is one form of exercising the right to freedom of expression and assembly. This right is among all the human rights that Cambodia has undertaken to observe and respect as part of its obligations under the Paris Peace Agreements of 1991. All these human rights are binding on Cambodia as its Constitution of 1993 has recognized and as its Constitutional Council has confirmed in its ruling dated July 2007.

The police have enforced this ban with the use of force. In December 2007 a riot police force armed with shields and batons chased and assaulted a group of Buddhist monks who went to hand a petition to the Vietnamese embassy in Phnom Penh demanding the release of their fellow monks of the same indigenous origin from prison in Vietnam. In the same month another police force in Rattanakiri province used force and water cannon to disperse a procession of indigenous people protesting against illegal logging and deforestation in the province.

The police have not relaxed the enforcement of the ban, but they have seemed to resort less to violence. In January they banned the holding of a genocide memorial ceremony in front of the Khmer Rouge Torture Centre in Phnom Penh to raise an awareness of the situation in Darfur in Sudan. The ceremony was organised by several Cambodian NGOs as well as Dream for Darfur organisation with participation from many local NGOs as well as from an international delegation led by the famous American actress Mia Farrow.

They charged that Farrow had planned to use the ceremony to press China, which was one of Sudan's major trading partners and was to host the Olympic Games, to use its influence with the Sudanese government to end abuses in Darfur. The Cambodian government called the whole ceremony a political stunt to smear China, which is one of its great supporters.

In February in Svay Loeu district, Siemreap province a village chief named Kim San of the ruling Cambodian People's Party used physical threats to prevent a Member of Parliament of the opposition Sam Rainsy Party from holding a meeting with villagers. The MP, Ms. Ke Sovannaroth, organised the meeting to listen to the



villager's complaints regarding the land grabbing cases but the village head allegedly forcibly dispersed the villagers and threatened the MP. Ms. Ke Sovannaroeth filed a complaint, but no action has been taken against Kim San.

In May the authorities in the north-eastern province of Rattanakiri denied 15 indigenous minority associations permission to organize a procession in the provincial capital, Banlung. Their purpose was to urge the provincial authorities to enforce laws and execute Prime Minister Hun Sen's orders to take action against deforestation and illegal acquisition of woodlands for private ownership.

In the same month on the border with Thailand, the immigration police in O Chroeu district in the north-western province of Banteay Meanchey, arrested and held a man named Morng Puthy, head of Independent and Democratic Informal Economy Association (IDEA), for several hours for distributing leaflets to enlist people's support for and participation in a planned peaceful demonstration. According to the organizers, the public demonstration was aimed at demanding the lowering of prices, a pay increase for public officials, clear customs duty rates, and an end to border public officials' extortion of people crossing the border or working around the border post.

IDEA went ahead with its planned demonstration. Despite fears of police action, some 100 people including goods cart pushers, taxi-motorcyclists, motorised-rickshaw drivers, and petty traders joined in. But the authorities posted a mixed, civilian and military police force of some 65 men armed with assault rifles some 100 meters away from the beginning of the procession route to block the procession and prevent the demonstrators from marching to the centre of Poipet town.

In August the authorities banned a public demonstration organised by the Free Trade Union of Workers of the Kingdom of Cambodia (FTU) and the Cambodian Independent Teachers' Association (CITA) at the head office of FTU. They deployed a riot police force armed with batons, shields, and tear gas to crackdown on hundreds of people who joined the demonstration to demand the withdrawal of Thai troops from the Cambodian territory along the border they had occupied since June 2008. The next day FTU President Chea Miny received a death threat email which was believed to be linked to that demonstration.

The police said that "this riot, or demonstration, could cause disorder and bigger problems because in the past, illegal demonstrators burned down the Thai embassy [in January 2003], making the government pay tens of millions of dollars back to Thailand."

The police and local authorities have seemed to be more tolerant towards the holding of public forums held in different provinces and have not used force when enforcing their ban. For instance, the Cambodian Centre for Human Rights, an NGO, organized from January to October 48 forums for ordinary people to talk about the issues of their concern. For seven of these forums, held separately in Siemreap, Prey Veng, Koh Kong, Kampot and Kompong Chhnang, it encountered threats and obstructions, but it succeeded in holding them. Two of the forums, held separately in Kompong Chhanang and Kampot, were completely banned.

In October a human rights NGO, ADHOC, succeeded in securing "permission" from the Ministry of Interior to hold a demonstration in the capital of Rattanakiri province after failing to secure it from the authorities of this province. Hundreds indigenous people took part in the demonstration to request the provincial authorities to enforce the government measures to ban illegal logging and deforestation. This illegal logging and deforestation have badly affected the livelihood of these indigenous people. These people practice slash and burn cultivation and need vast areas for such cultivation. Their livelihood also depends very much on forest products.



The Cambodian authorities have also shown restraint in the use of force against many demonstrations against land grabbing. They have resorted to less violent means such as blockades and flooding in their attempts to evict people from their homes and lands (see LAND grabbing).

Recommendations:

The freedoms of expression and assembly are fundamental rights, and Cambodian authorities should consider them so and give them priority over inconveniences the exercise of them might cause. The police should consider serving and protecting people as their core value, and instead of banning for instance peaceful demonstrations and protests, they should secure law and order for demonstrators or protesters to exercise their rights.

Easily understood and accessible legal procedure should be put in place for people to challenge any ban on the exercise of their rights.

8. TORTURE

TORTURE : Cambodia is a party to the UN Convention against Torture (CAT) in 1992 and the Optional Protocol to this convention (OPCAT) in 2007. Yet over a year after the ratification of OPCAT, Cambodia has not created any national mechanism for the prevention of torture through visits to places of detention as required. Nor has it adopted any specific anti-torture law yet. But torture is made a crime in the current draft penal code, and the government has committed to creating that preventive mechanism to visit places of detention as soon as possible.

Part of the concern for the prevention of torture has already been addressed in the code of criminal procedure enacted in 2007. This code gives power to the prosecutor general and public prosecutors to inspect prisons and judicial police units. But these judicial officers have not been given enough resources to conduct such inspection as they would wish.

In reality, torture and ill treatment of suspects and accused persons are still practiced, but a senior lawyer has observed that they “are on the decline”. For instance the police in Kirisakor district, Koh Kong province, allegedly beat a young man, Taing Thavy, aged 2, with a rifle when they arrested him in February 2008. The police beat him again in the detention cell. In both occasions Taing was badly injured and also lost consciousness, but the police denied him any immediate medical treatment. Taing sued the police officers who were his attackers, but they have not been apprehended ever since.

In the same month a police officer named Pring Pov was arrested and allegedly tortured and ill treated in police custody in Kep seaside town. He was later confined to a windowless cell and shackled at night. Despite having wounds on his body, he has been denied access to medical treatment. While in detention he has been consistently pressurised to vacate the land on which his house stands and give it up to a senior government minister. Thanks to public pressure, Pring Pov was later released and went back to his job.



ILL-TREATMENT : The civilian and military police have also abused their power. In May, 62 victims of land grabbing who had come from the village of O Voalpreng, Khnay Romeas commune, Bovel district, Battambang province were attempting to hand over a petition to Prime Minister Hun Sen to seek his intervention to get their land back. The police ordered them to moved to another place which they refused. A police officer then used his portable radio set to beat six of the demonstrators injuring them about the head.

In July a military police officer, Nget Vutha alias Kin, slapped a journalist, Ros Phina in the face for reporting on his facilitating of the transportation of protected timber. This incident happened in the district military police headquarters in Stung Hav district, in the seaport town of Sihanoukville. Nget was later disciplined for his assault on Ros.

In October the same police force in Battambang district, Battambang province, assaulted vendors twice respectively in Sar Kheng Garden and near Hun Sen Bridge in Rumchek IV village, Rattanak commune, Battambang district. One victim suffered a fractured rib and another one severe injuries on the forehead.

The rich and powerful have abused their position to ill-treat the poorer and weaker people. In January 2008, the bodyguards of some unknown high-ranking personality beat the driver of a truck in the middle of the road on the outskirts of Phnom Penh for obstructing the traffic and hold up the passage of their boss's car.

In May, Noeu Noeuy, who is chief of Banteay Chhmar South village, Banteay Chhmar commune, Thmar Puok district, Banteay Meanchey province and also the CPP village committee chairman kicked and beat Hem Poeu who is chief of a group of houses in the village, when Hem refused to join CPP.

In July Prime Minister Hun Sen's nephew, Hun To, ordered his bodyguards to physically attack a Member of Parliament named Nuon Vuthy in an overtaking incident at the ferry pier of Prek Kdam in Ponhea Leu district, Kandal Province. Nuon filed a lawsuit against Hun To for battery, while Hun To filed a counter-lawsuit against Nuon for defamation.

Prison conditions: An improvement in the conditions of certain prisons has been noticed, especially the ones on the outskirts of Phnom Penh and the newly built ones. Shackling prisoners is still practiced though as in the prison of Kompong Thom province, and overcrowding, squalid conditions, inadequate food and lack of medical care are still endemic problems in all prisons.

In March 2008 a woman named Chan Heu held in pre-trial detention in the prison of Battambang province fell seriously ill and was taken to hospital in Battambang city for treatment. There she was chained to her bed. She could not make any movement, which worsened her condition. Thanks to public pressure, she was given bail and had proper medical treatment.

In April 2008 a young man named Yan Sok Kea died due to lack of medical treatment both in pre-trial detention in Prey Sor Prison on the outskirts of Phnom Penh and at a hospital where he was admitted when seriously ill.

In August, an unnamed pre-trial detainee in the prison of Kampot province suffered from beriberi for lack of adequate food, could not walk and had to be carried by fellow inmates into the courtroom to stand trial. That prison had just five rooms to house 250 inmates of which 12 are women. Like all other prisons across the country, the food ration there is 1500 riels (US\$0.37) per inmate.



CONDITIONS IN “SOCIAL CENTRES” : Periodically the authorities have rounded up the homeless, beggars and sex workers in the capital Phnom Penh and sent them to the “social centres” run by the Ministry of Social Affairs. It is known that there are two such centres, one is Koh Rumduol Social Centre on Koh Kor island in the Bassack River, in Sa-ang district, Kandal province, the other is Prey Speu Social Centre in Chom Chao commune, Dankor district on the outskirts of Phnom Penh.

Officially, these centres are rehabilitation centres for homeless and other poor people. However, in 2008, a human rights NGO, LICADHO, discovered that there were being “used for the systematic unlawful detention of sex workers, homeless people, beggars and others arbitrarily arrested on Phnom Penh streets”. They were unlawfully detained in “appalling conditions”. At Prey Speu, there were some 50 detainees. These detainees suffered from physical and sexual abuse, including alleged beatings to death of at least of them and gang-rapes of women. At Rumduol, there were 20 persons, detained together in the same room. They badly suffered from various diseases.

Despite criticisms of unlawfulness and appalling conditions in those centres, the authorities have continued to round up homeless people, beggars and sex workers. As the Water Festival held in Phnom Penh November was approaching, the Municipality of Phnom Penh began their roundup of those people to be sent to those centres. In the first day it arrested at least 40 homeless people, including two children. The reason for this roundup was for the beautification of the city. A municipal official said: “We arrest them only for big national celebrations to keep order and create a good atmosphere during the celebrations, especially the Water Festival.”

It was feared that those people would suffer the same abuse and ill-treatment as LICADHO had discovered in those “social centres”.

Recommendations:

Action should be taken without delay against those officials who have allegedly committed torture or other ill-treatment. An independent police oversight body should be set up and made easily accessible to the public to address complaints against the police and take action against officials responsible for torture or other ill-treatment.

Prosecutors should discharge their duty and make visits police stations and prisons, and should conduct investigation and take action whenever they find any indication of torture or other ill-treatment.

There should be respect for the fundamental rights of people deprived of their liberty and detained in such places as police stations, prisons and other detention centres. These people should be able to communicate with their close relatives or receive their visits. They should have adequate food and access to medical treatment and legal counsel. Independent groups working for the welfare people deprived of their liberty should be able to have access to them, and the recommendations these groups might propose should be seriously considered and acted upon.

There is also an urgent need to create the national mechanism for the prevention of torture as prescribed by the Optional Protocol to the UN Convention against Torture, to both of which Cambodia is a party.



9. THE RULE OF LAW

According to its Constitution, Cambodia is supposed to be a liberal democracy governed by the rule of law with separation of powers and an independent judiciary. Yet in reality, 15 years after its promulgation, not only this Constitution has not been fully implemented, but some of its provisions have been violated altogether, and the establishment of the rule of law has made little progress.

A. CONSTITUTION IGNORED

Just as a matter of altogether a month, in September and October, the constitution suffered serious battering on several successive occasions. First, after their July election victory, the winning party proceeded to form the new government in breach of the procedure prescribed by the country's constitution (see the election and the new government).

The new government has also violated the constitution. After receiving a vote of confidence, Prime Minister Hun Sen did not make any policy address to the National Assembly as he should have, to announce the political programme of his government and seek the Assembly's approval. Instead, the next day, he made such a policy address to his cabinet at its first meeting, announcing his government's continued implementation of the political programme of his previous government.

Such implementation is in breach of the Law on the Organisation and Functioning of the Government (1994) in accordance to with which the government should implement policies and plans that have received prior approval by the National Assembly.

The third and most serious violation of the constitution was the ultimatum Prime Minister Hun gave to Thailand on 14 October to withdraw its troops by the next day from a piece of Cambodian territory near a temple called Preah Vihear on the Cambodian border, an area which Thai troops had occupied since 15 July 2008. Hun Sen told reporters, that he had told the visiting Thai foreign minister and had also instructed Cambodian army leaders, including commanders at the frontline, that "this place is a life and death battlefield."

Hun Sen's warning to Thailand and instructions to the Cambodian army commanders amounted to nothing short of a declaration of war, which it was when, the next day, 15 October, both Cambodian and Thai troops engaged in a brief battle causing death and injuries on both sides.

Hun Sen's action violated the Cambodian constitution according to which only the King of Cambodia, the supreme commander of the Cambodian armed forces, can make a declaration of war after both Houses of the Parliament have approved it. Hun Sen usurped the King's power.

There is no remedy for the unconstitutionality of the government's action when the country's Constitutional Council is under political control and the ruling party has an overwhelming majority in this nine-member council. It has not been known to declare any government's action unconstitutional since its creation in 1998.



B. THE JUDICIARY AS A TOOL FOR THE RICH AND POWERFUL

There has been little progress on the adoption of the law on the status of judges and prosecutors, a law which is specifically prescribed by the constitution and whose enactment has been promised by successive governments. This law should ensure at least some degree of the independence of those judges and prosecutors.

The continued delay in enacting this particular law is a prolonged violation of the principle of separation of powers and judicial independence as the constitution has prescribed, and also the maintenance of de facto political control over the judiciary. As a consequence of this omission and violation, the courts have not been able to discharge the constitutional duty to protect the rights and freedoms of the Cambodian people.

Political control over judges and prosecutors has started right from their training. Their school, the Academy of Judicial Profession, is placed directly under the Office of the Council of Ministers. Its leaders are members of the ruling party. In the last July election judge and prosecutor trainees were taken out to a dinner party to be told to support and vote for that party.

Over the years there has been increasing evidence showing that the courts are used by rulers, the rich and powerful to protect and promote their own interests. In a report of the judiciary, LICADHO, a human rights NGO, said that “ the primary functions of the courts continue to be: [1] To prosecute political opponents and other critics of the Government; [2] To perpetuate impunity for State actors and their associates; [3] To promote the economic interests of the rich and powerful.”

These observations made in December 2007 remained true in 2008. In April Hor Nam Hong, Cambodian deputy-prime minister and foreign minister filed a defamation lawsuit against Dam Sith, the editor of a local newspaper, for reporting a remark by Sam Rainsy, a Member of Parliament and opposition leader. Sam said that Hor had been chief of a Khmer Rouge prison in the past. Since defamation is not punishable by jailing, Hor additionally charged Dam with disinformation, for which he could be imprisoned.

In June, Dam was jailed for his reporting. However, due to intense national and international pressure for his release, Hun Sen acted to release Dam on bail.

Hor also filed the same lawsuit against Sam Rainsy for defamation and disinformation. While the parliamentary election was approaching, the court acted promptly on this lawsuit and summoned Sam to appear before it on May 22 -- while it has not acted with the same promptness on cases of violence against opposition parties and their activists. This has prompted further doubts about not only this particular court's but also all Cambodian courts' lack of independence and impartiality. If convicted, Sam could be sentenced to between six months and three years in prison for disinformation, and also fined for each count. Any such imprisonment would cripple his party, which is the second largest after the CPP.

Soon after Dam was freed on bail, the court in Phnom Penh sought to lift Sam's parliamentary immunity in order to put him in jail. Because of national and international pressure not to mar the ongoing electoral process, this attempt to lift his immunity was deferred, however.

Another court case involved Prince Norodom Ranariddh, former leader of the FUNCINPEC party, CPP's current coalition partner in the government, and leader of a newly formed party, also self-named the Norodom Ranariddh Party. He is one of Prime Minister Hun Sen's arch political rivals. He was sued for breach of trust, a criminal offence, by his former party in the handling of that party's assets.



Fearing a negative outcome, Ranariddh fled the country. He was convicted and his chance to lead his new party in the parliamentary election was ruined. In the aftermath of the election, through a political deal with the winning Cambodian People's party, he was granted a royal pardon and was able to return to Cambodia. Ranariddh has since abandoned his political career.

The courts are being used by rich and powerful individuals and groups involved in land grabbing to silence and evict people from their homes and lands without paying just compensation. The common way of silencing protesters or recalcitrant evictees is to arrest and throw them in jail on charges that those people themselves or the conniving authorities could think of.

It is widely known that laws in Cambodia are working against the poor and weak than against the rich and the powerful. Alluding to this development, in March 2008 a western diplomat quoted for his Cambodian audience the ancient Greek, Anacharsis, who said: "Written laws are like the web of a spider, and will like a spider web only entangle and hold the poor and weak, while the rich and powerful will easily break through them."

Over 2008 many villagers were arrested in different cases of land grabbing across the country. Most of them were charged with damage to property during their protests against land grabbing or their eviction. A human rights NGO has reported that in the first half of the year there were 36 villagers were arrested and 24 of them were in custody in prison for pre-trial detention.

In June, four villagers, including one elderly woman, were arrested in Kampot province when they resisted the grabbing of their land by an army unit. In October six villagers were arrested in Kompong Thom province following a land dispute with a company. In the same month two community representatives were arrested in Svay Rieng province following a prolonged land dispute with a local official. In the same month too six villagers were arrested in Siemreap province in a land dispute between 40 families and an army commander.

Invariably, after their arrests the accused are held in prison to await trial, when the police, prosecutors and judges ignore the presumption of bail and the principle of detention only in justified special cases as provided for in the code of criminal procedure. The court has also ignored the need to determine the preliminary question of ownership the land in civil proceedings first before it can lay any criminal charge relating to dispute over this ownership as provided for under Article 343 of the same code.

In a land grabbing case the court of Phnom Penh ignored the rights of the residents of Boeung Kak Lake in Phnom Penh when they sought an injunction to stop the company in dispute filling that lake, which was flooding the whole area and making their life increasingly difficult. In September, this court ruled against issuing such an injunction, saying that it had jurisdiction only over registered lands. Their lands were not registered. Their case was under the jurisdiction of the Cadastral Committee. The flooding continued and, unable to put up with such difficulties, some residents give up the resistance to their eviction and accepted the "inadequate" compensation offered by the authorities.



C. PROTESTS AGAINST PRE-TRIAL DETENTION

The arrest and the ensuing imprisonment of suspects together with the rarity of release on bail have created immediate fears among suspects who are summoned to appeal in court either for trial or for investigation. Following the arrest in June of the four villagers in Kampot province in a land grabbing case, some 20 fellow villagers went into hiding fearing the same arrest and imprisonment. More recently, nine residents of Dey Kraham in Phnom Penh, and fellow residents, had the same fears after receiving summonses to appear in court for trial and for investigation.

Relatives and sympathizers have also such fears. But some have joined forces to express their solidarity with the accused and gone to court to protest against any eventual arrest and imprisonment of the accused. In July nine villagers in Battambang province were summoned to appear in court following a land dispute. Fearing they would face arrest and imprisonment, some 40 of their fellow villagers banded together and went with them to court to protect them from such eventuality. The court just took their statements and let them go back home.

In the case of arrest in October of the villagers in Siemreap province following a land dispute with a senior army officer, some 200 villagers also banded together and, some two weeks after that arrest, they went to protest against their arrest and imprisonment, and also demand their release at the office of the provincial governor.

Their collective protest seems to have some effect: the provincial governor allegedly offered the protesters help to solve the land dispute and get the release of their fellow villagers. Allegedly due to this help, the court seemed to be willing to release the accused on the condition they would agree to vacate the land.

D. CORRUPTION

As mentioned above under the heading Corruption, the judiciary, in tandem with the police, is the most corrupt institution in Cambodia, according to a survey conducted by Transparency International. The results of this survey have only confirmed what is commonly known already. Court clerks are known to pocket a bigger share of bribes intended for judges or prosecutors to secure release on bail or judgment in favour of the bribe giver's side.

Bribery is known to start right at the training stage of judges, prosecutors and court clerks. There is a Royal Academy for Judicial Professions which has two schools, one for training judges and prosecutors and the other for training court clerks. It is known that candidates have offered bribes of US\$25,000 to be able to pass the entrance examinations to enter the magistrate training school to become either a judge or a prosecutor. Offering of bribes of US\$5,000 is also known for candidates to be able to pass examinations to enter the lawyer training school to become lawyers.

As a junior judge's or prosecutor's salary is some US\$350 per month, it should not be difficult to imagine the extent of corruption they would get involved in after those bribe-giving candidates has graduated and secured their appointment.



E. RULE BY DECREE

Over the last 15 years Cambodia's successive parliaments have passed many laws, but these parliaments have not exercised their oversight authority to ensure that all these laws are effectively enforced and the government have issued regulations in accordance with them or with any policies and plans they have adopted or approved.

For its part, the government does not seem to be so much inhibited by the country's constitution, and laws, policies and plans that the successive parliaments have adopted. It seems to be at liberty to arbitrarily issue executive orders or regulations. One particular order is "notification letter" issued by the prime minister himself or a senior official at the Office of the Prime Minister.

This notification letter serves as a simple notice to concerned persons of the decisions made by the prime minister or his office over cases submitted to the Prime Minister for adjudication. It has no official status as an executive order or a regulation – such as a royal decree signed by the king, a sub-decree signed by the Prime Minister or a ministerial order signed by ministers – and is not subject to parliamentary oversight or judicial review.

Widely known in Cambodia by its Khmer language acronym "Sor Chor Noh", this notification letter has the majesty of a law with authority to even overrule a court judgment. In October 2008, the largest newspaper Reaksmei Kampuchea used this Khmer acronym as the title of one of its commentary, "God Indra's Notification Letter" (in Khmer "Sor Chor Noh Roboh Preah Ind"), to propose the sending of mischievous members of Cambodian society to the frontline to fight the Thai troops occupying Cambodian territory around Preah Vihear temple.

In April this year the Office of the Prime Minister issued a notification order to award 72 hectares of land to four private individuals. The land belonged to a fishing community of 64 families in a coastal area of Kampot province, and its ownership was thus transferred without reference to the country's Land Law (2001).

The affected families protested against the award. To counter any negative impact on the popularity of the ruling party when the parliamentary election was approaching, in early June, some six weeks before the election, the Office of the Prime Minister annulled that letter and the affected families got back their community land.

However, in their efforts to have their community land back, more than 200 families living in a village on the outskirts of Phnom Penh were not that fortunate but suffered instead from such a notification order. In July 2005, the Supreme Court awarded that land to them, but in November 2006, a fellow villager who had lost the case secured a notification letter from the Office of the Prime Minister. This letter has since stalled the execution of the Supreme Court's judgment that had awarded that community land.

The villagers have since protested against the continued possession of their community land by the fellow villager. In September 2008, hundreds of villagers gathered and put their thumbprints on a petition to Hun Sen, requesting him to do justice to get their communal land back.

This form of rule by decree is unconstitutional, where institutions other than the courts have the power to adjudicate disputes. Furthermore, it is an offence of interference in the judicial functions of courts and



appears in the current draft of the Cambodian penal code. Further it has bred corruption and contributed to the centralization of power in the hands of the prime minister.

F. REMEDIES

The Cambodian government with support from donor countries has developed a set of reform programmes including a legal and judicial reform programme. However, the government is the least serious about the latter reform programme and it has been dragging its feet over it.

Successive governments have pledged for instance to enact a law on the status of judges and prosecutors to determine their function and independence and another law on the organization of the judiciary. They have also pledged to reform of the supreme judicial body called the Supreme Council of the Magistracy to make it more functional and more effective in disciplining of judges and prosecutors and in insuring judicial independence. In 2008, all these did not see the light of day yet.

Successive governments have not allocated adequate resources to the courts and the prosecution offices to do their jobs properly. To cite as an example to illustrate how these institutions are deprived of resources, the Court of Appeal has no fax machine and no e-mail address.

The judiciary still lacks independence when almost all its members are members of the ruling party. The chief justice of the Supreme Court and an ex officio member of the Supreme Council of the Magistracy is still a member of its standing and central committees, and all but two of the members of the same Council are also its members.

As mentioned above, the notification letter of the Office of the Prime Minister still prevails over court judgments. Also as mentioned above, in March 2008, the Prime Minister personally adjudicated a land dispute case and ordered the release of the accused involved in this case without any resort to the due process of law. He also gave instructions to avoid the court in resolving land grabbing cases.

However, thanks to continued training, informal and formal, under or outside the legal and judicial reform programme, the adoption of several codes (civil code, civil procedure code and criminal procedure code), monitoring and criticisms, the competency of judicial officials has noticeably improved since the communist days.

Judges and prosecutors are generally more competent; have more knowledge and understanding of laws and procedure; are more articulate, more open to debates, keener to learn more; are more insistent with regard to evidence; are for compliant with the criminal procedure; less submission to and more assertive in their relations with the police; trial judges inform the accused of their rights.

There are efforts to enforce the code of criminal procedure, including the Prosecutor General's instructions to prosecutors to investigate torture when finding indication of it on suspects and the police's increasing submission to the authority of the prosecution offices.

The government and the United Nations Development Programme have established justice centres, or mobile courts, in an increasing number of provinces to enable people to have more access to justice. It remains debatable, though, whether they will be sustainable when UNDP ceases its cooperation and



funding, and whether all these are simply expediencies and divert the attention and resources away from the establishment of a functional and independent judiciary.

In October 2008, as criticisms of the lack of judicial independence had been increasing, the government announced plans to reform the court system. A deputy prime minister, Sok An, announced that the government “will be preparing a workshop the law and courts”, saying that the government had heard “bad rumours about courts in Cambodia” and it was going “to work very hard to change that”. He added that the government “needed to enforce discipline and make sure that the courts are independent.”

This statement is in itself but a violation of the principle of separation of powers and the independence of the judiciary as stipulated in Cambodia’s constitution. The discipline of judges and prosecutors and the independence of the judiciary are the jurisdiction of the King of Cambodia with assistance from the Supreme Council of the Magistracy, which he chairs. Furthermore, such a statement has now become familiar when it has been made again and again since the government had introduced the set of reform programme some ten years ago.

Recommendations:

There is a dire need to respect the constitution, the principle of separation of powers and the independence of the judiciary as stipulated in it, and to establish the rule of Cambodia and to build strong, functional institutions for it. The Constitutional Council should be composed of members with qualifications required by the constitution and with no affiliation to any political party. Judges and prosecutors should be independent and should not be affiliated to any political party.

The Supreme Council of the Magistracy should be composed of members with no affiliation to any political party. It should exercise tighter discipline on judges and prosecutors to ensure their professionalism, independence, impartiality and probity. It should put in place a complaint mechanism with procedure of complaint very accessible to the public.

The Cambodian government should end its control over it and judges' affiliation to political parties. It should enact the laws on the status of judges and on the organisation of the judiciary. It should ensure that courts are not deprived of necessary resources for their proper functioning and it should enforce their judgments regardless whether the affected persons are “people in power” or not.

Access to justice should be made easy and there should be recourse more to courts of law than to the political will of leaders to seek justice.

CONCLUSION

More than two years ago, in March 2006, in a press conference in Phnom Penh to wrap up his second mission in Cambodia, Yash Ghai, the UN Secretary General for Human Rights in Cambodia, said he was “quite struck with the enormous centralization of power, not only in the government but in the one individual [Hun Sen].”



In 2008 power in Cambodia was further centralised in the ruling Cambodian People's Party through a parliamentary election it had very much controlled. There has been concern that Cambodia was being ruled by a single party, the Cambodian People's Party, who has become a state party. Since Prime Minister Hun Sen has a firm grip on his party, this power was in effect centralized in him.

This development was a turning point for democracy, human rights and the rule of law in Cambodia. Two remarks, one specific on Cambodia, and the other general could help visualize which direction this development might take. In the same press conference mentioned above Ghai made another "Everything depends on an individual and this is not really a precondition under which human rights can flourish." Greek philosopher Aristotle said in his Politics that "it is long possession of office which leads to the rise of tyrannies in oligarchies and democracies. Those who make a bid for tyranny, in both types of constitutions, are either the most powerful people (...), or else the holders of the main offices who have held them for a long period."

Hun Sen's ruling party is a former communist party and has control over the institutions for parliamentary democracy and for the rule of law and the media since the communist days. It has been able to effectively squeeze out the rival parties emerging in the early 1990s. It has marginalized the opposition that has remained.

With his victorious confrontation with Ghai leading to the latter's resignation and the subsequent downgrading of the UN mandate in the country, Hun Sen has also been able to marginalize the UN with regard to human rights. He has further moved to use a law to control and subdue further the civil society, the local bulwark of human rights, which, due to its human rights work, advocacy and criticism, he and many in his party have found irritating.

The human rights situation described above is not comprehensive, but it shows no strong indications of any "real precondition under which human rights can flourish" in the future. The rule of law that is essential for the protection of human rights, as recognized by the Universal Declaration of Human Rights, is simply not there when Cambodia is essentially ruled by decree.

The concept of equality before the law and equal protection by the law has not taken root in Cambodia yet. Courts have yet to gain independence and be imbued with impartiality and have yet to discharge their constitutional duty to protect human rights. They have yet to assert themselves as state institutions and not serve a tool for the rich and powerful to promote and protect their interests at the expense of the opposition to the government, and the poor and weak.

Cambodian authorities, the Cambodian Bar Association, the Cambodian civil society, the field Office of the High Commissioner for Human Rights, the Special Rapporteur on Human Rights in Cambodia, and donor countries should make more efforts and concentrate these efforts first and foremost on establishing the rule of law and building strong, functional institutions for it in Cambodia.

The Special Rapporteur should be given more support than Ghai had received, and donor countries should renew their efforts to effect change for the better for human rights in Cambodia.