

CAMBODIA

FREEDOMS OF EXPRESSION, ASSOCIATION AND ASSEMBLY: A SHRINKING SPACE

INTERNATIONAL FACT-FINDING MISSION REPORT

with cooperation from the International Trade Union Confederation (ITUC)



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September 2010

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REPUBLIQUE
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DE GENEVE

POST TENEBRAS LUX



This report has been produced with the support of the European Union, the International Organisation of the Francophonie and the Republic and Canton of Geneva. Its content is the sole responsibility of FIDH and OMCT and should in no way be interpreted as reflecting the views of the supporting institutions.

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Printed by FIDH

Dépôt légal Juillet 2010, ISSN en cours - Fichier informatique conforme à la loi du 6 janvier 1978 - (Déclaration N° 330 675)



ACRONYMS

ACU	Anti-Corruption Unit
ADHOC	Cambodian Human Rights and Development Association
APSARA	Authority for the Protection and Management of Angkor and the Region of Siem Reap
ASEAN	Association of Southeast Asian Nations
BWI	Building and Woodworkers International
CCHR	Cambodian Centre of Human Rights
CCWTUF	Cambodian Construction Workers' Trade Union Federation
CESCR	United Nations Committee on Economic, Social and Cultural Rights
CLEC	Community Legal Education Centre
CPP	Cambodian People's Party
CTSWF	Cambodian Tourism and Services Workers' Federation
ECCC	Extraordinary Chambers in the Courts of Cambodia
FIDH	International Federation for Human Rights
FTUWKC	Free Trade Union of Workers of the Kingdom of Cambodia
HDI	Human Development Index
HRC	United Nations Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organisation
LICADHO	Cambodian League for the Promotion and Defense of Human Rights
NAC	National Anti-Corruption Commission
OHCHR	United Nations Office of the High Commissioner for Human Rights
OMCT	World Organisation Against Torture
SRP	Sam Rainsy Party
UNTAC	United Nations Transitional Authority in Cambodia
UPR	Universal Periodic Review

I. INTRODUCTION

1. Delegation's composition and objectives of the mission

Alerted by numerous reports concerning increasing restrictions on the rights to freedom of expression, association and assembly in Cambodia, the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), within the framework of their joint programme, the Observatory for the Protection of Human Rights Defenders, decided to conduct an international fact-finding mission on the situation of human rights defenders in the country. The mission was composed of Mr. Jens Tinga, trade union representative (the Netherlands), Ms. Emilie Cuq, lawyer (France), and Mr. Will Fitzgibbon, researcher (Australia) (hereinafter "the Delegation").

The main objectives of the Delegation, which visited Cambodia between February 14 and 24, 2010, were to investigate the general human rights situation and the environment in which human rights defenders carry out their work, and to assess the impact of the existing legal framework and bills announced or proposed by the Government of the Kingdom of Cambodia on human rights defenders: the draft Law on Associations and Non-Governmental Organisations, the draft Law on Trade Unions, the Anti-Corruption Law¹, as well as the new Criminal Code and the recently-adopted Law on Peaceful Demonstrations (December 2009).

The Delegation paid particular attention to the situation of human rights defenders active in the areas of forced evictions, labour and trade unionism as well as the media.

The mission was prepared with cooperation from the International Trade Union Confederation (ITUC).

During its 10-day mission, the Delegation met with representatives of the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) and the Cambodian Human Rights and Development Association (ADHOC), with journalists, land activists, trade union leaders, international and national NGO leaders, foreign diplomats and representatives of international organisations such as the European Union, the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the International Labour Organisation (ILO), as well as with members of the Cambodian judiciary (prosecutors, judges, lawyers and the Secretary-General of the Bar Association of the Kingdom of Cambodia), provincial governors and senior officials of the Ministry of Labour. These meetings took place in Phnom Penh, Siem Reap and Ratanakiri.

The Delegation wishes to thank ADHOC and LICADHO for their invaluable help in preparing this mission. The Delegation also wishes to thank the Cambodian authorities who accepted to meet with the mission members.

2. Context of the mission

Political context

Over the past 15 years, Cambodia has started to recover from the civil war that ravaged the country for decades. There was a sense that the rule of law and democratic principles would progressively gain strength in the country. The wording of the UN Security Council Resolution 745(1992) establishing the United Nations Transitional Authority in Cambodia (UNTAC) reflects those expectations².

¹ This law passed through Cambodia's National Assembly on March 12, 2010, without amendment, during the finalisation of this report. For a response by 200 local Cambodian organisations and associations to this Law, see the Joint Statement by Coalition of Cambodian Civil Society Organisations on Draft Anti-Corruption Law, March 11, 2010.

² Resolution 745(1992) of February 28, 1992 establishing UNTAC, e.g. The following paragraphs: "Desiring to contribute to the restoration and maintenance of peace in Cambodia, to the promotion of national reconciliation, to the protection of human rights and to the assurance of the right to self-determination of the Cambodian people through free and fair elections; Convinced that free and fair elections are essential to produce a just and durable settlement to the Cambodia conflict, thereby contributing to regional and international peace and security".

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Cambodia appears to be at a turning point: while commercial and business development continues, the human rights situation is not improving and, according to a number of local observers, is even deteriorating. If this trend were to continue, it could result in an erosion of progress that has been made in this area in the past decade. The need to closely follow-up the situation at this particular juncture is crucial.

The mission took place in a context in which civil liberties are already severely restricted. The 2008 elections, won by the Cambodian People's Party (CPP), confirmed and consolidated the *de facto* one-party predominance since 1997. The overwhelming political dominance of the CPP has led to a visible shrinkage of the democratic space and intimidation and persecution of not only members of the opposition, but also NGOs activists and community leaders opposing forced evictions, journalists expressing views critical of Government policies, and independent labour leaders.

In 2009, three opposition parliamentarians were stripped of their parliamentary immunity and threatened with prosecution. Mr. Sam Rainsy, leader of the main opposition party Sam Rainsy Party (SRP) had his parliamentary immunity taken away so that he could be criminally prosecuted. On January 27, 2010, he was convicted and sentenced to two years in prison and given a 12,207 euros fine for destroying public property after moving a number of markers on the Cambodia - Vietnam border in October 2009. The exact delineation of the border between the two countries has not yet been finalised, while critics have deplored the demarcation process as lacking transparency. By this time, Mr. Sam Rainsy had left the country and he continues to live in exile in France. Ms. Mu Sochua, a senior SRP Parliamentarian, had her parliamentary immunity taken away on June 22, 2009³ and was convicted of criminal defamation of Prime Minister Hun Sen on August 4, 2009, carrying an eight million riel (approximately 1,545 euros) fine. Ms. Mu Sochua took her case to the Supreme Court and on June 2, 2010, the Supreme Court affirmed her conviction⁴. **Mr. Kong Sam Onn**, the human rights lawyer assisting Ms. Mu Sochua in her defamation case, was forced to join the CPP and write an apology letter to the Prime Minister to avoid facing criminal defamation charges himself⁵. Mr. Ho Vann of the SRP was also stripped of his parliamentary immunity on June 22, 2009, because a criminal defamation case had been brought against him by the Cambodian Armed Forces. He was acquitted by the Phnom Penh Court on July 17, 2009. The Prosecutor had one month to appeal the verdict, which he did not. While Mr. Ho Vann should have been granted his parliamentary immunity back when the verdict was enacted on August 17, 2009, the National Assembly waited until March 5, 2010 to restore the immunity⁶.

Widespread corruption in all layers of Government and in the Judiciary means that the law as it appears in the statute books is not always applied. The law is often used by CPP members in favour of their own personal and business interests. Transparency International's 2009 Corruption Perception Index⁷ ranked Cambodia 158th out of 180 countries in the world and South East Asia's second-most corrupt country. In many cases, the administration of justice and decision-making processes are not carried out in accordance with the Rule of Law. Land activists, trade union leaders, journalists and other human rights defenders find it very difficult, if not impossible, to hold the authorities and other powerful people accountable for human rights violations before the domestic courts. Impunity is the rule and the Judiciary is most often perceived and used as a tool in the hands of the authorities to repress dissent. In June 2010, at the end of his ten-day fact-finding mission in Cambodia on the functioning of the judiciary, the United Nations Special Rapporteur on the Situation of Human Rights in Cambodia, Mr. Surya Prasad Subedi, declared that "The Judiciary in Cambodia is facing tremendous challenges in delivering justice for the people of the country, especially the poor and marginalised"⁸.

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³ See Joint Statement issued by the Cambodian Centre for Human Rights (CHR), Cambodian Independent Teachers Association (CITA), Community Legal Education Centre (CLEC), Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC), Independent Democratic of Informal Economic Association (IDEA), LICADHO, Khmer Kampuchea Krom Human Rights Association (KKKHRA), SILAKA, Gender and Development for Cambodia (GAD/C), June 22, 2009.

⁴ See Phnom Penh Post, June 3, 2010.

⁵ See Observatory Urgent Appeal KHM 002/0609/OBS 085, issued on June 18, 2009.

⁶ See CCHR Press Release, September 23, 2009.

⁷ See Transparency International's Corruption Perception Index 2009, available at http://www.transparency.org/policy_search/surveys_indices/cpi/2009/cpi_2009_table.

⁸ See UN Statement, June 17, 2010.

Economic context

Cambodia is one of the poorest countries in South East Asia. Although progress has been achieved in the field of poverty reduction, with regular increase in the Human Development Index (HDI), Cambodia's current development position indeed remains fragile. The United Nations Development Programme's 2009 Human Development Report ranks Cambodia 137th out of 182 countries in its Human Development Index⁹. It should be noted that Cambodia's HDI is comparable to Burma/Myanmar's HDI, in spite of a much higher per capita GDP¹⁰.

While the last decade has seen a decrease in extreme poverty, particularly in urban centres, the decrease has been uneven and has left the country's rural population behind¹¹. Close to 70% of the labour force works in agriculture¹² and over 68.2% of the population lives in extreme poverty, i.e. on less than two dollars a day¹³. Cambodia did not escape the worldwide economic crisis in 2009. The textile and clothing sector represents 70% of the country's exports¹⁴ and was the most seriously hit by the crisis¹⁵. A survey on the impact of the crisis on garment industry workers¹⁶ states that the most important consequence for workers is a decrease in wages, with 55% of interviewed workers saying they do not have enough money to pay for food, compared to 28% in 2008; they also have less means to send remittances home. The interviewed garment workers also pointed to reduced overtime work (resulting in a lower salary), more difficulties to ask for days off, reduced health and safety conditions in the workplace, the obligation to take compulsory leave, and late payment of salary. Workers in export factories seem to benefit from better conditions than those in non-exporting factories. While the garment industry has hit the bottom of the crisis, it is still struggling to recover from an 18.9% fall in demand from Europe and the US in 2009¹⁷.

International human rights context

Cambodia is a party to all major international human rights treaties, including most of the Optional Protocols¹⁸.

In June 2009, the situation in Cambodia was examined by the UN Committee on Economic, Social and Cultural Rights. In its Concluding Observations, the Committee notably expressed its deep concern about Cambodia's prevalent culture of violence and impunity "and the repression of human rights activists defending economic, social and cultural rights, particularly those defending housing and land rights. The Committee is also concerned about reports that the court system has been used to legitimise forced evictions and falsely prosecute housing rights defenders". The Committee consequently urged Cambodia [the State Party] "to take all necessary measures to combat the culture of violence and impunity prevalent in the State party, and for the protection of human rights defenders, including indigenous leaders, peasant activists engaged in defending the economic, social and cultural rights of their communities against any intimidation, threat and violence, whether perpetrated by State security forces and agents or non-State actors. It also calls on the State party to ensure that all alleged cases of repression and abuse are promptly and thoroughly investigated, and that alleged perpetrators are prosecuted and appropriately punished, if found guilty"¹⁹.

⁹ United Nations Development Programme, *Human Development Report 2009*, Cambodia, available at http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_KHM.html.

¹⁰ See United Nations Development Programme, HDI Rankings, available at <http://hdr.undp.org/en/statistics/>.

¹¹ See United Nations Development Programme, Kingdom of Cambodia, available at <http://www.un.org.kh/undp/CMDGs/Goal-1-Eradicate-extreme-poverty-and-hunger.html>

¹² According to the World Factbook 2009 of the US Central Intelligence Agency, 67.9% of the labour force works in agriculture.

¹³ See UNDP Human Development Index 2009. The figure refers to the period 2000 - 2007.

¹⁴ See Industry Data Sheet by the International Labour Organisation (ILO), Better Factories Cambodia, *Cambodia's Garment Industry Struggles in the Face of the Global Economic Downturn*, March 2010.

¹⁵ See ILO, *Rapid assessment of the impact of the financial crisis in Cambodia*, March 2009.

¹⁶ See Benchmarking Survey Report prepared by the Cambodia Institute of Development Study (CIDS) for the ILO, UNDP and the Better Factories Programme, *Tracking Study of Cambodian Garment Sector Workers Affected by the Global Economic Crisis*, March 2010.

¹⁷ See Industry Data Sheet by the ILO, Better Factories Cambodia, *Cambodia's Garment Industry Struggles in the Face of the Global Economic Downturn*, March 2010.

¹⁸ See United Nations Office of the High Commissioner for Human Rights, Cambodia Country Office, <http://cambodia.ohchr.org/EN/PagesFiles/InternationalLawsIndex.htm>

¹⁹ See Committee on Economic, Social and Cultural Rights, *Concluding Observations - Cambodia*, para. 31, UN Document E/C.12/KHM/CO/1, June 12, 2009.

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2009 also saw the first Universal Periodic Review (UPR) of Cambodia undertaken by the United Nations Human Rights Council (HRC), which led to 91 recommendations for the Cambodian Government to improve its human rights record²⁰. In March 2010, the Cambodian Government accepted all recommendations adopted in the HRC report. It will now be important to ensure proper implementation at local level of those recommendations.

The Khmer Rouge trials

2009 saw progress in the work of the Extraordinary Chambers in the Courts of Cambodia (ECCC), with the verdict in case 001 against Kaing Guek Eav, alias "Duch", expected at the end of July 2010. Case 002 against Nuon Chea, Khieu Samphan, Ieng Sary and Ieng Thirith is now open. During Cambodia's UPR, many States expressed concerns at reports of political interference and corruption in the ECCC. Additionally, the gap between the national and the international side is growing. The Cambodian Investigating Judge refused in late 2009 to co-sign summon letters delivered to several high ranking ruling party officials. Further, in June 2010, the Co-Investigative Judges Mr. Marcel Lemonde and Mr. You Bunleng made public their disagreement over the former's decision to initiate background investigations on additional prosecutions, beyond the current five in pre-trial detention²¹. Prime Minister Hun Sen has repeatedly said he would not allow the ECCC prosecute more than five people.

While the Khmer Rouge trials rightfully receive ample attention from the international media, there is a risk that, as a result, the national human rights situation may not receive the attention it deserves.

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²⁰ See Human Rights Council, Report of the Working Group on the Universal Periodic Review - Cambodia, UN Document A/HRC/13/4, January 4, 2010.

²¹ See ECCC Statement from the Co-Investigative Judges, June 9, 2010.

II. THE LEGAL FRAMEWORK GOVERNING FUNDAMENTAL FREEDOMS

In 1991, the Paris Peace Accords established a legal framework protecting fundamental human rights throughout Cambodia. Article 15 of the Accords guarantees that “[a]ll persons in Cambodia and all Cambodian refugees and displaced persons shall enjoy the rights and freedoms embodied in the Universal Declaration of Human Rights and other relevant international human rights instruments”. In addition, Article 13 of the Constitution of the Kingdom of Cambodia provides that “The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights”.

However, despite Cambodia’s ratification of the major international human rights treaties, the country is far from guaranteeing the full exercise of human freedoms. According to the former United Nations Special Representative of the Secretary General for Human Rights in Cambodia, Mr. Yash Ghai, Cambodia’s shortfall in guaranteeing the equal protection of its citizens before the law has “the proportions of a gulf. The system has failed the people of Cambodia woefully”²².

Civil society in Cambodia maintains its eternal vigilance against restrictive legislative changes. While the Government often expends considerable effort on elaborating new national laws, which gives the illusion of democratic progress, in broader Cambodian society, Cambodia’s political context is witnessing an increased centralisation of power in the hands of Prime Minister Hun Sen and the ruling CPP. As a consequence, there is a deterioration of the conditions of participation in public affairs and democratic life. The Government appears increasingly intolerant of public criticism, as is evidenced by the growing number of legal actions taken against opposition members, trade unionists, journalists and members of non-governmental organisations.

So while law-making activity of the Government of Cambodia in the field of fundamental freedoms may appear per se like progress, it occurs within the context of cowed political opposition voices and a dependent judiciary. This gives rise to legitimate concerns when it comes to Cambodia’s adoption of laws governing human rights in the absence of any judicial control on law implementation. In the present environment, the adoption of new legislation in particular poses real threats to freedoms of expression and association.

Criminal provisions and prosecution are increasingly used to repress freedom of expression, as it was already observed in 2005²³. More and more journalists, political opponents, NGO representatives and human rights defenders are coming under judicial harassment for exercising their legitimate right to freedom of expression. In July 2009, Mr. Moeun Sonn, Director of the NGO “Khmer Civilisation Foundation” was convicted of “disinformation” and sentenced to two years in prison and a fine of seven million riels (approximately 1,354 euros) as well as another eight million riels (approximately 1,547 euros) in damages following his public criticism of the installation of a new lighting system at Angkor Wat. Similarly, on June 26, 2009, **Mr. Heng Chakra**, Editor-in-Chief of opposition-affiliated Khmer newspaper *Machas Srok*, was sentenced to one year in prison and a nine million riel (approximately 1,741 euros) fine for having published articles exposing allegations of governmental corruption²⁴.

²² See Special Representative of the Secretary-General for Human Rights in Cambodia, Mr. Yash Ghai, Press Release, December 10, 2007.

²³ See Observatory Annual Report 2005 and FIDH Report, *Libertés de réunion et d’association menacées au Cambodge*, February 2006. For instance, political dissident Mr. Cheam Channy was sentenced in August 2005 to seven years in prison after an unfair trial. Mr. Mam Sonando, Director of a radio station, and Mr. Rong Chhun, member of the Cambodia Watchdog Council (CWC), both vocal critics of Government policy, were arrested in October 2005.

²⁴ See below.

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At the time of the Observatory's visit, Cambodia had recently passed a law on peaceful demonstrations, entered into force in December 2009 and was to see its new Criminal Code fully enter into force in October 2010. In addition, draft laws on trade unions as well as on NGOs activities were also well advanced. These laws and bills could directly and significantly undermine Cambodians' exercise of their fundamental rights and human rights activities. Indeed, a number of provisions of those laws and bills could pave the way for a further increase in arbitrary judicial action against human rights defenders by restricting freedoms of expression, peaceful assembly and association in order to silence dissent. Further, the laws in question have been marked by a notable absence of governmental consultation with civil society and a disregard of the transparency of law-making processes necessary in a democratic nation. This was the case also with the Anti-Corruption Law, adopted only weeks after the Delegation's visit, on March 11, 2010. Prime Minister Hun Sen had announced on television that the draft law was satisfactory and would consequently be adopted the following day. The text had been made available to the public only on March 8, which left only three working days for civil society to develop and submit comments. No draft of the text had been circulated since 2006. The final Anti-Corruption Law, which will enter into force at the end of 2010, is strongly criticised by NGOs for its weak definitions and mechanisms to stamp out corruption²⁵.

1. Impending adoption of a law regulating NGOs' activities

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In September 2008, Prime Minister Hun Sen announced the imminent adoption of a law regulating the activities of both national and international associations and NGOs. In November 2009, he reaffirmed his strong political will in this domain²⁶.

First of all, the Government explains the need for the NGO Law as a matter of priority in order to clean up Cambodia's diverse NGO landscape. The Ministry of the Interior has registered 3,000 NGOs in the country, of which 400 are international. Depending on the sources, between 500 and 3,000 NGOs would be active²⁷. In reality, between 600 and 1,000 NGOs are active in the country according to the Ministries of the Interior and Foreign Affairs. However, NGOs in Cambodia are already bound to certain laws and prescriptions, including various registration requirements for international NGOs and national NGOs. INGOs must enter into a Memorandum of Understanding with the Ministry of Foreign Affairs and an administrative order requires local NGOs to register with the Ministry of the Interior²⁸. The recently enacted Anti-Corruption Law also includes provisions that impose financial disclosure obligations on NGOs. According to a number of members of civil society the Delegation met, the current legal and regulatory framework is extensive but not unnecessary given the diverse and active third sector in Cambodia.

Besides, the Government justifies its present quest for a new NGO Law by invoking the fight against criminality, nefarious and criminal NGOs and the necessity of information on NGO funding. In this context, the Government often refers to links between NGOs and organised crime and terrorism. There is certainly some justification for this official concern. In 2004, six men were arrested and convicted for crimes linked to terrorism. They were alleged to have carried out their crimes with the assistance of foreign funds through a legitimate Islamic educational institution with official association status. The Government therefore insists on the necessity to ensure greater transparency in order to eradicate this phenomenon. Yet, while the Government readily uses this example to justify its new law, it is an isolated example that better demonstrates the ability of the existing legal framework to respond to the illegal activities. Indeed, the argument in favour of a new law regulating NGOs is not supported by

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²⁵ See below.

²⁶ The speech given by Prime Minister Hun Sen on November 24, 2009, "The 30th anniversary of the partnership between the royal Government, non-governmental organisations and the People of Cambodia 1979 - 2009", illustrates that the law is one of the priorities for the Government.

²⁷ See NGO Forum and Cooperation Committee for Cambodia (CCC).

²⁸ See the International Center for Not-for-Profit Law.

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the swathe of provisions already in place that target criminality in this area. For example, the new Criminal Code, which will enter into force in its entirety by the end of 2010, contains provisions criminalising organised crime. In addition, Cambodia's 2007 Anti-Terrorism Law accords significant power to the Executive in limiting the financing of activities and organisations linked to terrorism.

Finally, the new Anti-Corruption Law applies equally to NGOs and associations. It provides that directors and heads of NGOs come within the legal definition of "public servant". This appears to be at odd with the internationally recognised anti-corruption laws, focused on State actors, and could indicate intentions by the Government to misuse the law to attack NGO leaders. Furthermore, the law allows for corruption whistle blowers to be sentenced to prison if the anti-corruption body, filled with Government appointees, concludes the corruption allegations raised to be false²⁹.

This NGO bill therefore represents a major concern for human rights defenders insofar as NGOs in Cambodia are active in all spheres of public life (education, health, legal assistance, development, human rights, etc.) and often work alongside the State in providing the most vulnerable categories with access to essential services. In addition, the NGO bill comes at a time when the Cambodian Government is demonstrably hostile to public criticism. Human rights NGOs in particular represent a significant counterweight to the strengthening reality of Cambodia's one-party system.

All the members of Cambodian civil society met by the Delegation, both Cambodian and international, were not opposed in theory to a law on NGOs and associations, as they are aware that such laws form a part of any solid democracy. However, there is a widespread belief that the intention of the Cambodian Government in introducing this legislation is less about increasing the transparency of the third sector and more about restricting the ability of NGOs to effectively carry out their missions. NGOs are concerned that this law is emerging within a wider context of governmental hostility to freedom of speech. NGOs believe Community-Based Organisations will be most at risk should an NGO law be passed, as they might be discouraged by heavy bureaucratic procedures and unable to meet any burdensome financial requirements. The initial 2005 version of the NGO Law required NGOs to re-register with the Government and to provide the State with its full finances and a detailed annual report. The contents of the latest NGO Law remain secret. All requests from civil society to be consulted during the law-making process have been rejected. Although the Government has promised to establish a consultation as to its implementation once the law has been adopted by Parliament, NGOs are unconvinced by official commitments to consultation.

Given the complete lack of transparency in this case, it is difficult to assess the real impact of this law on the activities of NGOs. However, the Government has been clear in its desire to limit the scope of action by NGOs it considers politicised. With such tendentious motivations and in the context of a non-existent independent judiciary, there are real risks that the final NGO Law will be used for partisan ends.

2. The new Criminal Code

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In October 2009, the National Assembly of the Kingdom of Cambodia adopted a new Criminal Code - without any amendment to the Government's Bill. The Code draws largely on the French Criminal Code and was drafted with French technical assistance. It replaces the UNTAC Code of 1992. It will enter into force in its entirety only in October 2010 in order to allow Cambodian legal practitioners the time to familiarise themselves with its provisions.

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²⁹ For more information on the Anti-Corruption Law, see below.
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The National Assembly adopted the new Code in only ten days and, once again, NGOs were denied the opportunity to contribute to the final outcome and their many recommendations were rejected. NGOs are particularly disappointed that the Code's most controversial provisions concerning the crimes of "defamation", "slandering denunciation" and "public" insult were discussed solely behind closed doors³⁰.

The Observatory notes that although the new Criminal Code represents an opportunity to improve Cambodia's existing legal criminal framework, it also introduces a range of new crimes that may impinge freedom of expression. Under Chapter II related to personal rights, "defamation"³¹ or "public insult"³² is a crime for which the penalties range from three months and 56 days imprisonment to fines of 10 million riels (approximately 1,852 euros). The crime of "slandering denunciation"³³ provides for penalties ranging from one month to one year imprisonment and fines of two million riels (approximately 1,932 euros). Taken together, these provisions, if used without good faith, may contribute to excessive restrictions on freedom of expression and the creation of an environment of fear, particularly among Cambodian human rights defenders³⁴.

The Observatory is equally concerned by the vague wording of a number of provisions criminalising defamation and slander, which leave significant room for judicial interpretation. This is important given the Cambodian context in which the Executive largely controls the judiciary. The Criminal Code may therefore provide legislative legitimacy for legal actions taken against individuals who would otherwise be legally expressing their opinions.

The new Criminal Code expressly provides for members of the Government or another holder of public office to bring a criminal action against another person on the grounds of "defamation" and "public insult"³⁵. Moreover, the new Code states that "institutions" may be victims of defamation. While the Code does not define "institution"³⁶, the term suggests that all governmental bodies may in future bring a criminal action. As has been noted by the NGO Article 19, laws establishing crimes or actions of defamation should not allow public bodies, such as Government ministries, Government agencies or municipal bodies, to launch actions for defamation because an open discussion of such bodies is necessary for a democracy. In addition, public bodies have no emotional or financial interest to protect and, in addition, have other means to respond to public criticism, such as public statements³⁷.

In what is a welcome development, crimes relating to the media have been excluded from the new Criminal Code³⁸. As a result, any act committed by a journalist or a media worker that may be classified as defamatory or libellous may only give rise to civil actions, in contrast to the UNTAC Criminal Code. This is most certainly an improvement. As noted by Reporters without Borders (*Reporters sans frontières* - RSF), however, it is vital that this change in

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³⁰ See Interview with Ms. Kek Pung-Galabru, LICADHO President.

³¹ Article 305: "Any allegation or slanderous charge that undermines the honour or the reputation of a person or an institution constitutes defamation. The defamation that was committed by one of the following means, is punishable by a fine of between 100,000 (one hundred thousand) and 10,000,000 (ten million) riels:

1. by speeches, by any means whatsoever, announced in a public place or in public meeting;
2. in writing or sketches by any means whatsoever, circulated in public or exposed to the sight of the public;
3. by any means of audio-visual communications intended for the public".

³² Article 307: "Any insulting expression, any scolding term or any other verbal abuses which does not affect the slanderous charges constitutes an insult. The insult committed by one of the following means is punishable by a fine of between 100,000 (one hundred thousand) riels and 10,000,000 (ten million) riels:

1. by speeches, by any means whatsoever, announced in a public place or in public meeting;
2. in writing or sketches by any means whatsoever, circulated in public or exposed to the sight of the public;
3. by any means of audio-visual communications intended for the public".

³³ Article 311: "The act of denouncing a fact that is known to be incorrect and it is so knowingly to result in criminal or disciplinary sanctions constitutes a slanderous denunciation, when it is addressed to:

1. a competent authorities, such as a judge, a judicial police officer, or an employer;
2. or a person with power to refer the matter to the competent authorities".

³⁴ It is worth reminding that prison sentence was removed from the UNTAC defamation article in 2006, a move that was applauded by many. The new Code constitutes a setback in that regard.

³⁵ Article 309: "For the case of defamation or insulting against members of the Royal Government, public civil servants or any citizen who is assigned to perform public mission or public mandate the charge is filed by the person concerned or by the head of the institution concerned".

³⁶ See Article 305, above.

³⁷ See Article XIX, Defamation ABC: A simple introduction to key concepts of defamation law, November 2006.

³⁸ Article 306: "The defamation committed by means of media is subject to the provisions of the press law"; Article 308: "The insult committed by means of media is subjected to the provisions of the press law".

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Cambodia's criminal laws be respected by the Government, State Prosecutors and judges, and that the provisions of the new Criminal Code will not be used against journalists in lieu of the 1995 Press Law, which provides greater protection³⁹. In the past, courts have indeed preferred to use the criminal provisions under the UNTAC Code rather than the 1995 Press Law. Finally, the Observatory welcomes the removal from the New Criminal Code of the UNTAC Code's criminalisation of disinformation and provocation under Articles 60 to 62.

3. Restrictions on the right to peaceful demonstration

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Although the Constitution of the Kingdom of Cambodia guarantees the right to peaceful assembly⁴⁰, the Government regularly requires those wishing to organise a peaceful gathering to have official approval, which may be given or refused arbitrarily. Under the pretext of maintaining public order, it is not uncommon for approval to be refused for peaceful demonstrations criticising the policies or practices of the ruling party. For instance, in June 2009, the municipality of Phnom Penh refused on two separate occasions to allow the Cambodian Centre of Human Rights (CCHR) to organise a public gathering in support of the human rights of the inhabitants of Boeung Kak Lake, a community who have faced forced eviction. In 2008, ADHOC also reported that the authorities imposed restrictions on public demonstrations relating to land and natural resources conflicts, and workers' rights. Of 155 peaceful strikes and demonstrations that took place that year, 108 (70%) were suppressed forcibly by the armed forces. In addition, the authorities often refused to authorise demonstrations, or delayed granting authorisation for demonstrations shortly before they were due to take place. In 2009, 156 demonstrations, including labour strikes, received official approval. 71 demonstrations concerned the right to housing and land and 37 related to workers' labour conditions in factories. However, authorities violently disbanded 34 of these demonstrations, notwithstanding that they were peaceful. Provincial authorities refused requests for 28 other peaceful demonstrations⁴¹.

Besides, a Law on Peaceful Demonstrations was adopted on December 5, 2009. This law entered into force in its entirety in April 2010 and replaces the 1991 Law on Demonstrations, which required those organising peaceful demonstrations to inform authorities before the event was to be held. In practice, authorities interpreted this requirement of notification as requiring express authorisation before the demonstration could be held.

Article 4 of the new Law on Peaceful Demonstrations defines a demonstration as "any gathering or procession made by a group of people to demand, protect or express publicly their feelings/sentiments, ideas/opinions or will by using peacefully various forms or means".

In principle, the new law permits demonstrations by declaration only. However, the legal requirements imposed so that a declaration be legal are so burdensome and proscriptive that a demonstration must, de facto, be authorised before it can take place. This interpretation is confirmed by the use of the word "requiring" in several provisions, which means that there is an obligation to seek authorisation and not a simple obligation to inform authorities that an event will be held.

Under the new law, demonstrations may be authorised where they do not pose a danger or represent an attack on security and public order. These grounds for refusal are ill-defined and leave ample room for abuse by authorities⁴².

The new law establishes two methods of notification for two distinct forms of demonstration. "Ordinary" demonstrations are those taking place in the public domain and for which notification must be submitted to the Provincial Governor at least five days in advance. This in

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³⁹ See RSF Mission Report, *Monsieur le Premier ministre, vous aviez pourtant promis que les journalistes n'iraient plus en prison*, February 19, 2010.

⁴⁰ Article 37 of the Constitution of the Kingdom of Cambodia guarantees the right to strike and to peaceful demonstration. Article 41 states, moreover, that "Khmer citizens shall have freedom of expression, press, publication and assembly".

⁴¹ See ADHOC Report, *The Human Rights Situation Report 2009*, February 4, 2010.

⁴² See Article 9 of the law: "competent municipal or provincial territorial authorities shall respond positively in writing toward the notification letter except if : (...) there is clear information indicating that the demonstration may cause danger or may seriously jeopardize security, safety and public order".

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itself represents an increase from three days under the previous law. The organisers of the demonstration must explain the purpose of the event as well as provide details on where it will take place and how many people are expected to participate. This last requirement is of particular concern. If, for example, the organisers underestimate the number of demonstrators, authorities would have the right to declare the event illegal. Finally, the law does allow organisers to appeal a negative decision to the Ministry of the Interior. However, the law is silent as to whether the Ministry's decision is itself subject to appeal before a court.

Moreover, the law provides for the establishment, in each municipality, of "freedom parks" or areas specifically approved for the holding of peaceful demonstrations. Where a freedom park is to be used, the law provides for a rapid approval process. Such demonstrations are limited to 200 persons and the declaration of intent to hold a demonstration may be made up until 12 hours in advance. The Observatory is concerned that these "freedom parks" may in practice be remotely located and difficult for demonstrators to access in ways that would deprive the event of the important objective of bringing public attention to the issue in question. Article 28 of the new law, which provides certain details on "freedom parks", only specifies with regard to location that they will be held in open air. The Observatory is also concerned by the requirement that private meetings also require authorisation, a clear violation to the right to privacy and to the rights of freedoms of expression and of peaceful assembly. Indeed, the law fails to specify the number of individuals required for a "demonstration" and, if read narrowly, the law could see a meeting of three persons or more requiring prior authorisation from authorities.

The basis for a refusal to allow a demonstration to take place goes beyond the admissible restrictions under international human rights law, in particular under Article 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Cambodia. While under international law, restrictions must be fully justified in a democratic society on the basis of "*public safety, public order, public health or morals*", and be proportional to their objective, the text adopted mentions "*harming the rights to freedom and honour of others, good customs of society and national security*". Those terms are vague and open to wide interpretation, and on this basis, a demonstration could, for instance, be prohibited because it is considered as defamatory to the authorities. Under the new law, the authorities can also refuse to allow a demonstration if "there is reliable information that the demonstration may cause danger or serious harm to the security, safety and public order" (emphasis added). It is unclear what "reliable information" means in this context, all the more so because the law does not provide for a judicial review or appeal in case of a refusal to allow a demonstration. This means that a court of law will not have the possibility to assess whether the relevant information is "reliable" or not, and the authorities will consequently have total discretion in assessing this "reliability". While Article 9 uses the term "reliable information", Article 11 refers to "clear information", which leads to further confusion.

The Delegation notes also that the law provides for no spontaneous demonstration and that any gathering that has not received official approval, even when peaceful, may be broken up by authorities⁴³. Article 26 of the text provides that "*If the process of the peaceful demonstration turns into violence causing damages to either private or public property, the reparations for the damages shall be the responsibility of the offender(s) and the accomplices. In case they are not able to pay such damage, the competent authorities shall draw up a dossier and submit it to the court for legal action in accordance with the applicable law*". This provision is unnecessary since damage to property is already regulated under the Civil and Criminal Codes. The scope of this provision will depend on the courts' interpretation of the term "accomplice". The Observatory fears that the organisers of the demonstrations may be possible targets of criminal actions under this provision.

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⁴³ The Law authorises authorities to take "appropriate measure(s) to hamper and cease the demonstration immediately".
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In March 2010, the United Nations Office of the High Commission for Human Rights in Cambodia, in cooperation with the Ministry of the Interior, organised a workshop on the implementation of the law, to which representatives of civil society and of the union movement participated. This initiative allowed for stakeholders to develop a user's guide to the new law, which aims to clarify the unclear provisions of concern to NGOs. The way in which the Government responds to and uses this guide will, if successful and in good faith, mitigate the potential negative impacts of the new law which, the Observatory believes, represents a step backwards in Cambodia's protection of freedom of peaceful assembly.

4. The draft Trade Union Law

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There seems to be a general agreement that a trade union law would be useful to clarify the current trade union landscape. Members of the trade union movement, with whom the Observatory Delegation met, were not opposed to a law in the abstract. Indeed, members of Cambodia's trade union movement recognised that there is a need to "clean up the trade union landscape". The ease and regularity with which often dubious unions are established and then disappear as well as the well-documented phenomenon of fake "yellow unions"⁴⁴ contribute to a complex trade union scene in Cambodia that makes social dialogue and negotiation difficult. Many Cambodian unionists support trade union legislation if, and only if, it can regulate and support the existence of genuine unions and put an end to extortionist and otherwise illegitimate unions.

The Delegation met with the Secretary of State of the Ministry of Labour, who promised that the trade union law would be in accordance with the ILO labour standards. The Ministry insisted that it wishes to produce a law that is acceptable to all. The Cambodian Government indeed appears to be concerned with the country's image abroad and with offering an attractive investment climate.

However, the initiative to propose a trade union law was taken by the private sector forum and the Government, which raises the question of the possible benefits for trade unions. At the time of writing, the Ministry of Labour was in the process of drafting the law, without having consulted the social partners. There are fears the trade union law might be used to crack down on unions that the Government considers to be engaged in "political activities" and introduce strict registration and financial reporting requirements, similar to its approach to the NGO law. Restrictive rules on trade union demonstrations may also be introduced, given that the Peaceful Demonstrations Law does not cover trade union demonstrations. At least one trade unionist the Delegation met expressed his fear that the new law may reduce the scope of collective bargaining and strictly control the internal finances of trade unions. He further expressed concern that the proposed text may even contain a "one company, one union" rule, in violation of ILO Convention 87 of Freedom of Association and Protection of the Right to Organise (1948). In a context where there are so many pro-owner/pro-management unions and few pro-workers unions, and where most pro-owner unions have links to the ruling party, such a provision could be used to force the pro-owner union in the factories, and would consequently leave workers with nobody to truly represent them.

Adoption of the law is expected in early 2011, after consultation with the social partners, according to statements made during a meeting between members of the Delegation and senior officials in the Ministry of Labour on February 23, 2010. At the time of writing, the proposed text had not yet been made public.

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⁴⁴ Yellow Unions are "unions" established by some Cambodian companies as a "tactic (...) to prevent the emergence of genuine workers' representatives". See International Trade Union Confederation (ITUC), *2008 Annual Survey of Violations of Trade Union Rights*, November 20, 2008.

5. The Anti-Corruption Law

Cambodia's National Assembly adopted the Anti-Corruption Law on March 11, 2010. As is common with Cambodian legislation, the bill was not made available for public comment in its entirety and civil society was, once again, kept at a distance and unable to provide input into the development of the text.

The new law will enter into force in November 2010. The law establishes two new anti-corruption bodies: a National Anti-Corruption Commission (NAC), which will be responsible for developing anti-corruption policies at the national level, and an Anti-Corruption Unit (ACU) within the Council of Ministers, which will examine allegations of governmental corruption.

While this new law is welcomed by some commentators for its potential contribution to ending Cambodia's endemic corruption, it is also widely criticised and represents a weaker version of a similar law proposed in 2006. In particular, the most powerful provisions have been either deleted or amended so as to significantly weaken their impact. In particular, NGOs are concerned by the removal of all of the provisions establishing a mechanism for preventing corruption, a mechanism that appeared in the 2006 bill. These provisions had provided for the establishment of a "corruption-free personnel recruitment system for Government" and a code of ethics based on international standards. Further, the earlier version would have implemented a national education campaign on anti-corruption in schools and universities. None of these provisions have been maintained in the final law.

Another essential element that has drawn criticism from NGOs and the opposition is the lack of political independence of the NAC and the ACU⁴⁵. The 11 members of the NAC, responsible for developing the anti-corruption strategy, are appointed by the King, the Senate, the Assembly and eight other Government institutions and are accountable to the Prime Minister. The ACU operates under the supervision of the Council of Ministers, and manages day-to-day anti-corruption actions.

The provisions of the law are therefore too vague and do not guarantee the overall independence of the two new anti-corruption bodies while effective measures would have been needed in this domain⁴⁶.

As mentioned before, the law allows for whistle blowers to be prosecuted if the allegations they raise is declared to be false by the anti-corruption body, filled with people elected by the ruling party. This is a clear threat against anti-corruption initiatives and NGOs and journalists working in this field.

Furthermore, NGO leaders are also forced to declare their assets since the law states that they are "civil servants". The notion of NGO "leaders" has not been defined, and it could therefore encompass the executive director, the chairperson and/or members of the Board. While NGO leaders have no problem declaring their assets, this late inclusion of NGO leaders in the law could indicate a will by the Government to misuse the law against NGOs critical of the Government.

⁴⁵ See CCHR Press Release, March 10, 2010.

⁴⁶ For example, Article 4 prohibits the receipt of presents (as well as loans, fees, rewards or commissions) in exchange for favours but allows for presents "in accordance with custom and tradition", thereby giving significant room for interpretation.

6. Existing legal framework on freedom of the media

Article 41 of the Constitution of the Kingdom of Cambodia acknowledges that all Cambodian citizens have the right to freedom of expression, press, publication and assembly.

However, the unholy trinity of defamation, disinformation and incitement ("DDI") in the UNTAC Law is a very worrying tool of repression, especially against independent media and journalists, and those provisions have been consistently used in legal suits against journalists, to the detriment of the more favourable 1995 Press Law. According to the UN Special Rapporteur on the Human Rights Situation in Cambodia, Professor Surya Subedi, "the defamation laws of Cambodia had gone beyond what is a permitted level of restriction on freedom of expression" under the ICCPR⁴⁷.

According to Article 62 of the UNTAC provisions, the publication, distribution or reproduction of false information that "has disturbed or is likely to disturb the public peace" constitutes disinformation. Unlike criminal defamation, disinformation still carries a prison sentence of six months to three years. With the entry into force of the whole new Criminal Code at the end of 2010, the offence of "disinformation" will disappear only to be replaced by a number of defamation-related articles restricting freedom of expression. Therefore, because there are similar provisions in the new code, the Observatory is concerned that dubious prosecutions of human rights defenders, including journalists who denounce human rights violations, may continue.

⁴⁷ See UN Special Rapporteur on the Human Rights Situation in Cambodia Press Release, October 1, 2009.

III. Attacks against land activists in the framework of land conflicts



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1. Land conflicts: “A core area of concern”

The issue of land rights is one of the major problems facing the people of Cambodia, especially those from rural and indigenous communities⁴⁸.

Conflicts over land have a long history in modern Cambodia. A recent LICADHO report estimated that in Phnom Penh and the 12 provinces in which the NGO has offices, over 250,000 Cambodians have been affected by land disputes in cases investigated and documented from 2003 and 2008⁴⁹. As the President of the LICADHO pointed out, the land issue may be considered “Cambodia’s principal human rights concern” because of the way in which land rights affect all other human rights. The United Nations Special Rapporteur for Human Rights in Cambodia, Professor Surya Subedi, stated that land and housing rights are a “core area of concern” for many stakeholders⁵⁰. Without a home and without land, the right to education, the right to work, right to medical access and to clean water are severely restricted⁵¹.

According to ADHOC, 2009 saw 235 human rights defenders charged with a variety of offences (compared to 36 in 2006)⁵². The majority of those human rights defenders were land rights defenders. This represents a significant quantitative increase compared to 2008, when at least 164 human rights defenders faced prosecution⁵³. Indeed, a number of commentators and individuals the Delegation met, including NGO members and foreign diplomats, expressed the belief that violations of economic and social rights and the resulting attacks on people defending those rights, particularly those related to natural resource disputes, are on the rise. There has been a dramatic increase in this phenomenon since 2001.

⁴⁸ See for example, Bridges Across Borders Southeast Asia, COHRE, Jesuit Refugee Service Report, *Untitled: Tenure Insecurity and Inequality in the Cambodian Land Sector*, September 28, 2009.

⁴⁹ See Land and Housing Working Group Report to the UN Committee on Economic, Social and Cultural Rights, *Land and Housing Rights in Cambodia - Parallel Report 2009*, April 2009.

⁵⁰ See Statement by the United Nations Special Rapporteur from Human Rights in Cambodia, Professor Surya Subedi, January 26, 2010.

⁵¹ General Comment Four (1991) of the UN Committee on Economic, Social and Cultural Rights (CESCR) states that “the human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights”.

⁵² See ADHOC Report, *The Human Rights Situation Report 2009*, February 4, 2010.

⁵³ See ADHOC Report, *Human Rights Situation 2008*, January 2009.

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A diplomat met by the Delegation noted some improvements in Government regulation of the land sector. In particular, he reported the Cambodian Government's reclaiming of "hundreds" of Economic Land Concessions⁵⁴, bought long ago by wealthy Cambodians, that have remained unused for lengthy periods of time. According to other sources, while some concessions were cancelled, land was not redistributed to the people. Also, some concessions were not cancelled but rather transferred to another company, while oversized economic land concessions remain. In addition, new land concessions awarded by the Government outweigh by far the cancelled ones.

2. Historic context and current legal framework

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In 1975, under the Khmer Rouge regime, private property was abolished. Only in 1989 was this formally overturned, once again allowing private property ownership. Although there was recognition of the right to gain private land titles at this time, in practice the vast majority of people did not receive a formal award of land and few people received land certificates. A new Land Law in 1992 failed to clarify the situation. Rather than addressing the issue of land grabbing that had taken place before the implementation of the law, the 1992 Land Law effectively legalised such takeovers of land and property.

In response to ongoing problems, the Government issued a new Land Law in 2001 and created the Cadastral Commission system, a mechanism to replace the pre-existing national and provincial commissions which had failed to adequately address this problem. The only property that cannot be occupied or possessed by private persons is common property⁵⁵. The land upon which indigenous communities have established their homes, in contrast, is collective property on State public land.

While the 2001 Land Law seems good on paper, the authorities have refused to fully abide by it, consistently ignoring crucial parts of the law which would provide land tenure to some of the poorest communities. In particular, Article 30 which states that *"Any person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership"*.

In practice, it is difficult for Cambodians to prove their land ownership in some instances of dispute. In both the urban and rural contexts, the Delegation was often told of the "inevitability" of competing interests between local populations and foreign or locally owned companies.

In cases where there are competing interests in land and land ownership is disputed, international and local organisations have repeatedly recommended that the Cambodian Government adopts an immediate moratorium on forced evictions and development of disputed land until the time that such disputes are resolved⁵⁶. Moreover, as a State Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Cambodian Government has responsibility to protect its citizens against forced evictions⁵⁷. Repression and targeted attacks against individuals working to protect these human rights recognised by the Cambodian law contravene the Government's international obligations.

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⁵⁴ The 2001 Land Law capped possession by putting an end to any new possession. Any land that occupants had not commenced possession of before August 31, 2001 was to be considered State land. Land concessions are State private land leased or allocated by the Government to companies or people. The Land Law discusses two types of land concession: social (SLCs) and economic (ELCs). Economic Land Concessions are long term leases granted over land for agro-industrial exploitation. They may only be granted on State private land, cannot exceed 10,000 hectares and can only be granted up to 99 years. Social Land Concessions are granted with a social purpose and created with the aim of redistributing State Private land to land poor and landless households. See Cambodian Human Rights Action (CHRAC) Report, *Losing Ground - Forced Eviction and Intimidation in Cambodia*, September 2009.

⁵⁵ Common property is not state public property but refers only to Monastery Land such as that upon which pagodas are built.

⁵⁶ For example, see CESCR, Concluding Observations - Cambodia, UN Document E/C.12/KHM/CO/1, June 12, 2009.

⁵⁷ CESCR General Comment Four (1991) states that "all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups".

3. Threats and violence against land activists

The Delegation had the opportunity to speak with a number of community representatives who have experienced human rights violations against themselves or against their communities, including a land activist accused of terrorism offence in 2008. In addition to the two cases discussed in detail below, the Delegation met with community representatives from Kratie, Oddur Meanchey, Mondulhiri, Kampot and Phnom Penh. The community representatives complained of restricted freedoms of movement and peaceful assembly. Meetings of local residents concerned by land rights were monitored by authorities and the representatives reported that participants of such meetings have occasionally been arrested. In Oddur Meanchey, for example, one community representative reported that 169 representatives had been arrested or otherwise detained since 2008 at national level⁵⁸.

In the non-urban context, a particular concern was the discrimination against indigenous minorities and their representatives. Indigenous communities in the provinces are particularly beset by land disputes between the local population and Cambodian or foreign companies⁵⁹. In its 2009 report and recommendations, the UN Committee on Economic, Social and Cultural Rights (CESCR) expressed particular concern with regard to the situation of indigenous peoples and emphasised the need for the proper protection of indigenous people and their land in Cambodia as well as fair and just compensation⁶⁰.

Case study: Boeung Kak Lake, Phnom Penh - Harassment and intimidation of land activists

The case of Boeung Kak Lake in Phnom Penh is well-documented⁶¹. It involves the eviction of over 4,200 people from nine villages on the shore of Boeung Kak lake, which the development company Kako Inc. wishes to fill up with sand in order to develop the area. The residents have a possession right, acquired by law, but no land certificates. Having no regard to the property rights acquired by the locals under the Land Law, the authorities sent their first series of eviction letters in April 2007, without giving residents the possibility to negotiate an agreement. Sustained campaigns targeting the company directly and through legal procedures were of no avail, nor were requests to the authorities. In meetings with the members of the Delegation, the community representatives reported being spied on and followed by the development company, and explained that it is therefore difficult to organise a meeting with local residents. They complained that their rights to freedom of expression and to freedom of assembly are seriously restricted. For instance, in June 2009, the Phnom Penh municipal Government on two occasions denied requests from the Cambodian Centre for Human Rights (CCHR) to hold public forums on human rights and development for residents of the Boeung Kak Lake community. Local authorities reportedly warned guesthouse owners who offered to host the session and threatened them with closure if the meetings were held. In mid-January 2010, the police from the Ministry of Interior threatened representatives still at the lake with arrest and confiscation of property. Two of the nine villages have now been evicted, with the residents having been relocated to an area outside Phnom Penh with no public services. The authorities have started filling up the lake.

While Cambodia's legal framework provides for the settlement of land-related conflicts through civil disputes, the representatives from a number of Phnom Penh eviction sites said they witnessed a trend of criminalisation of land conflicts, whereby the authorities arrest, detain and charge those leading protest against violations of their communities' right to housing and the arbitrary deprivation of their land.

⁵⁸ See LICADHO

⁵⁹ Despite the passing of the Sub-Decree on Procedures for Registration of Land of Indigenous Communities in May 2009, which provides that no land can be registered until an indigenous community is registered as a legal entity, there are concerns that the Sub-Decree will not offer complete protection for indigenous communities.

⁶⁰ See CESCR, *Concluding Observations - Cambodia*, UN Document E/C.12/KHM/CO/1, June 12, 2009.

⁶¹ See for example, Bridges Across Borders southeast Asia, COHRE, Jesuit Refugee Service Report, Untitled: *Tenure Insecurity and Inequality in the Cambodian Land Sector*, September 28, 2009.

Case study: Chi Kreng, Siem Reap province - Land activists suffer violent repression and are jailed

A dispute over a paddy field of 92 hectares in Tonub Soung, Anlong Samnor commune, Chi Kreng district, Siem Reap province, started in 2005 between a group of 175 households and the owner of a water reservoir.

The case was under the jurisdiction of the Cadastral Committee, but the Siem Reap Provincial Court, following a complaint filed by the owner of water reservoir, accused the people without sufficient evidence. On January 29, 2009, three citizen representatives were charged with "physical assault and incitement of others to commit a felony" after having been arrested on December 26, 2008. This led to a violent protest in front of the Siem Reap Provincial Court, where protesters were setting fire to car tires and surrounded the court from January 12, 2009 until January 29, 2009, when the three accused were released on bail⁶².

The outrage of the 175 poor families concerned by this dispute and the perceived unfairness of the January 29 court charges culminated in violent confrontations on March 22, 2009. During the incident, extreme violence broke out. Armed forces shot people in their legs, chased the representatives and arrested many. Authorities tied them and left them to bleed. Many were seriously beaten. After the brutal event, armed forces were deployed around the village and the land in conflict. Hundreds fled their homes and, consequently, were forced to abandon their livelihoods and could not farm on that land any longer.

On March 22, 2009 Mr. Kav Sophon, former District Governor, and about 100 soldiers and police entered the village and rice paddies and opened fire. The shooting followed a five-year property dispute over 475 hectares of increasingly valuable rice fields. Local businessmen with close ties to district and powerful provincial officials are heavily involved. Four villagers were seriously injured (including family members of the Venerable Loun Sovath - see below) and nine villagers - Messrs Mes Pheak, Nheam Paot, Vann Chan, Mar Sek, Chea Khom, Min Soy, Ouch Ki, Chan No and Chheng Savoeurn - were detained and charged with "rice robbery" and "physical assault". On October 27, 2009, they were convicted by the Siem Reap Provincial Court and, as of July 2010, remained imprisoned in Siem Reap prison serving a one-year imprisonment. Moreover, on June 28, 2009, Messrs Chan Leap and Sin Leap, two other representatives, were arrested following an illegal confinement complaint from Tann Soky and Son Som Oul, who claim the land of 175 families in Anlong Samnar commune, Chi Kreng district. On the same day, 34 villagers were detained on the spot and subsequently released without charge.

The Delegation visited the villagers imprisoned from Chi Kreng. The new Siem Reap prison was relocated in early 2009 to a remote location far away from the city centre. The prison has a maximum capacity of 1,000 persons but there are currently over 1,500 prisoners. The imprisoned male villagers explained how difficult life had become not only for them but also for their families who now struggle to survive without them, their land having been taken away from them, and thus their income and their food.

The Deputy Provincial Governor recognised this as "a special case" and accused the Chi Kreng villagers of being the "violators" and having grabbed the land of others. According to him, the entire village is guilty. "This is not a situation of the authorities killing one child and praising another. Rather, all Chi Kreng individuals are guilty". A major source of the problem, in his opinion, is the "limited understanding of the public". In his personal experience, he said, it is the rich who want to stay while the poor people are happy to receive compen-

⁶² For a full account of the history leading up to the Chi Kreng violence, see LICADHO Press Release, November 27, 2009.

sation and move on to another piece of land. The Delegation met and spoke to the eleven detainees in jail (at the time of writing this report, they are twelve), and were left with the impression that this has certainly not been the case.

The Deputy Police Chief Commissioner acknowledged that individual members of the Siem Reap police force involved in the land dispute had gone "too far" and used unjustified force against those protecting their lands. According to him, the individual perpetrators have had their case "sent to the Prosecutor". However, a Deputy Prosecutor at the Siem Reap provincial court denied having received any information relating to police involvement in the incident.



Venerable Loun Sovath,
Acting Head monk
in Chi Krong pagoda
in Siem Reap

The Venerable Loun Sovath

The Venerable **Loun Sovath**, Acting Head monk in Chi Krong pagoda in Siem Reap, began his work as a human rights defender in March 2009 after two members of his family were shot by the military police in the Chi Krong incident referred to in the previous case study. The Venerable arrived just after the shooting, and filmed the ongoing violence while also obtaining footage of the incident taken by members of the community. The Venerable soon became a focal point for the victimised villagers and an irritation for authorities. The Venerable was interrogated by the police chief and asked to hand over the CD and all its copies. The Venerable resisted the confiscation, telling the police chief that he knows "the CD is not against the law". Pressure intensified, with more local and provincial police demanding the CD to be handed over.

As the case of the nine villagers who were charged after the Chi Krong incident went before the local court, the Venerable began spearheading a campaign to advocate for their acquittal. On October 20, the day of the trial of the nine villagers, the Venerable prepared information sessions for villagers and arranged for trucks to allow 120 villagers to attend the trial to show their support. Yet, the police stopped the villagers who attempted to reach the courthouse and intimidated the drivers. Refusing to give up, the Venerable and others walked to the Court. Upon arrival, the authorities summoned a senior monk of the province to confront the Venerable and took him away to a nearby pagoda, accusing him of "incitement" of demonstration. He was released without charge an hour later. The Venerable then continued to be subject to police intimidation. For instance, 50 armed police surrounded the Venerable's pagoda to prevent him from travelling to hear the verdict on October 27. The police also stopped the trucks hired to transport the Venerable and other villagers to the courthouse. The Venerable and other villagers, as a result of the lack of transportation, walked all the way to the courthouse⁶³.

The harassment of human rights defenders in Chi Krong is not an isolated incident of the past. After the Delegation's departure, a similar set of events occurred in Kampong Speu's Thpong district. According to LICADHO, 10 people were injured in March 2010 when police attacked a convoy of protesters travelling to the provincial court, where they planned to demonstrate against the arrest of two community representatives, **Mr. Khem Vuthy** and **Mr. You Tho**, in connection with a land row involving a CPP Senator⁶⁴. Once again, the community representatives were charged, *inter alia*, with "incitement" to violence and "destroying the company's property". On March 29, 2010, the two community representatives were released on bail and placed under surveillance⁶⁵.

⁶³ See LICADHO Press Release, May 9, 2010.

⁶⁴ See LICADHO Press Release, April 2, 2010.

⁶⁵ See Ms. May Titthara and Mr. Will Baxter's Article, *Phnom Penh Post*, March 26, 2010, <http://www.phnompenhpost.com/index.php/2010032634305/National-news/police-villagers-clash-in-kampong-speu.html>.

Case study: Kong Yu, Ratanakiri - "Shut up and take the money"

Villagers in Kong Yu, belonging to the ethnic Jarai indigenous community, have been involved in a legal battle since 2004 with the sister of Cambodia's Finance Minister over 450 hectares of land. Community leader **Ms. Sou Kheum** told the Delegation of how she and other villagers were fraudulently induced to renounce to their land title for 400 US dollars in the belief the land was to be given to disabled veterans of the Cambodian army. Instead, the land was purchased by the Finance Minister's sister who has since begun to clear the land and plant rubber.

Ms. Sou led the other villagers in protest against the fraud. In response, the villagers were arrested and suffered regular intimidation and threats of imprisonment. In the most extreme example of repression of local activists, one villager was shot by unknown assailants during an incident on the disputed land. While he was recovering in hospital, authorities told the villager to take 400 US dollars for his land or risk losing all his legal rights. When the villager asked about compensation for the shooting, he was told to "shut up and take the money".

The Delegation met with Deputy Governors, members of the Provincial Council and the Deputy Chief of the military police. As in Siem Reap, authorities claimed the land disputes and the complaints by villagers were the results of their "low understanding of the law".

In discussions with the Community Legal Education Centre (CLEC) in Cambodia, the Delegation was told of several lawyers representing the victims and community leaders have been accused of "incitement of others to commit a felony". While CLEC lawyers have so far avoided incarceration, armed police have followed the lawyers and repeatedly prevented them from accessing and communicating with their clients. In addition, legal representatives have been dogged by procedural requests to have authorisation letters to speak to their clients in the province. The company with the disputed title has laid charges of "fraud" and "defamation" against the villagers and laid charges of "incitement of others to commit a felony" against the lawyers, but as **Mr. Sven Voo**, Ratanakiri villager and human rights defender, made clear to the Delegation, "how can anyone be guilty of incitement when these feelings [of the villagers] are truly held?".

CLEC does not know when hearings on these cases are expected and no information was provided by authorities. In turn, the villagers' legal representatives have filed one civil and one criminal complaint against the company relating to the allegedly fraudulent contracts. CLEC reports that the criminal case has been abandoned because the Prosecutor chose not to proceed. With regard to the civil case, legal representatives have been involved in protracted negotiations with the Provincial Court to have the original judge (Mr. Thor Saron) removed "because he has failed to take action on the case and on the motions we suggested to him in order to process the case". In March 2010, a "council" of three judges was appointed.

IV. Threats against trade unionists

1. The trade union landscape

There are currently approximately 1,500 trade unions in the private sector, around 40 trade union federations and five trade union confederations⁶⁶, though no official figures are available. In practice each federation enjoys a large degree of autonomy. Most unions operate in the garment industry, the construction sector and the hotel and tourism business. An estimated 85% of Cambodians work in the informal economy, and at least one federation organises workers in that field of activity⁶⁷.

The 1997 Labour Law guarantees the right to freely establish and join trade unions in the private sector. In the public sector, the Common Statute of Civil Servants prohibits civil servants from organising. This means that teachers, for example, are represented through an "association", which cannot take part in collective bargaining. This prohibition has been repeatedly criticised by the ILO⁶⁸. Since 2004, the Labour Law provides that every business with more than eight employees must have a "shop steward", whose functions coincide partially with those of a trade union representative. Shop stewards are often elected when there is not yet a trade union in the company and, contrary to trade unions, have legally enforceable negotiating rights. The confusion between the mandatory position of the shop steward and that of a trade union representative is seen as an obstacle to the creation of independent trade unions and a genuine social dialogue and prevents workers from vindicating their rights.

The large majority of unions and federations are pro-Government unions; a small number of unions have links to the opposition or are independent. The latter face major difficulties in defending the social and economic rights of the workers they represent, in a context where most of the media are being controlled by the Government, and the Judiciary cannot provide effective redress and justice. Pro-Government unions on the contrary received benefits from the management and the authorities.

2. A change in strategy: from overt violence to covert legal threats⁷⁰

Trade unionists the Delegation met reported a change in the Government's strategy against trade unions: while the period 2004 - 2007 saw three union leaders murdered (see herein-below), the last few years have witnessed a less violent, but equally effective strategy. The authorities, which have close ties to the large company owners, have resorted to criminal proceedings against the trade union leaders who intend to make wage claims or organise strike action. Union leaders are often accused of "criminal defamation", "disinformation" or "incitement". In many cases, threats to launch proceedings or other intimidation practices are also used to discourage union action.

Criminal suits and threats against trade union leaders

Unions wishing to organise a demonstration or a march often face intimidation, in particular threats of criminal suits or repression by heavily armed police ready to use force against demonstrators. In practice, the number of strikes that ends in violence is very low, but many workers' demonstrations are called off as a result of intimidation and harassment by the employers or the local authorities who maintain close ties with each other. Marches are seen as particularly undesirable to the employers and the authorities, as they attract more partici-

⁶⁶ See International Trade Union Confederation (ITUC). The five confederations are the Cambodian Labour Confederation (CLC), the Cambodian Confederation Trade Union (CCTU), the National Union Alliance Chamber of Cambodia (NACC), the Cambodia National Labour Confederation (CNC) and the Cambodian Confederation Unions (CCU).

⁶⁷ See ILO.

⁶⁸ See ILO Committee on the Freedom of Association, Case 2222, June 2004. Early 2010, the Committee urged the Cambodian Government to amend the Statute in order to allow teachers to organise and to engage in collective bargaining.

⁶⁹ See ITUC, *2009 Annual Survey of Violation of Trade Union Rights*, Cambodia chapter, June 10, 2009.

⁷⁰ In this chapter, the term "independent trade union leaders" and "independent trade unions" refers to all those who do not have close ties to the Government and have not been created by employers.

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pants and publicity than sit-ins in front of factories. For unions, organising a march opens up the prospect of a violent crackdown, reported a trade union leader who prefers to remain anonymous. In one specific case, in 2009, a union leader from Phnom Penh, who wishes to remain anonymous, was threatened that he would be held personally accountable if the collective action he helped to organise ended in violence, public disorder or "criticism" of the company owner.

Trade unionists met by the Delegation⁷¹ also explained that their employers would express their "thanks for defending workers' rights", but warned that the union leaders' "safety would be at risk" if they organised a strike or any collective action. The threats are vague and refer to "problems" and to the union leaders' "family", but are never specific. The International Trade Union Confederation (ITUC) 2009 Annual Report refers to three textile union leaders who received death threats in 2008 because of their activities. One of them was **Mr. Keo Sokun**, a leader of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) at the New Mingda Garment Factory.

The Naga Hotel and Casino case, described below, illustrates how the threat of criminal prosecution is used to stop strike action and intimidate trade unionists and workers who undertake trade union activities.

Anti-union discrimination

Anti-union discrimination is a major concern in Cambodia. Independent trade union leaders met by the Delegation pointed out that it can take several forms: employers may employ workers on consecutive short-term contracts, sometimes as short as two, three or six months if they are thought to be or become union leaders or, more generally, to avoid having to observe labour legislation. In addition, union members find it hard to have their contract renewed. According to **Mr. Ath Thorn**, President of the Cambodian Labour Confederation, around 20 to 30 union leaders were dismissed for their trade union activities in 2009 and numerous unionised workers did not have their contracts renewed.

The ILO Committee on Freedom of Association has been dealing with one case of trade union discrimination since 2006 that illustrates such practices particularly well. The complaint concerns several labour conflicts in the Siem Reap area, where a union was formed and duly registered by the Ministry of Social Affairs in the construction company renovating the Angkor Wat Temple complexes. The construction company was directed by a quasi-governmental agency, the Authority for the Protection and Management of Angkor and the Region of Siem Reap (APSARA). The union, called the Cambodian Construction Workers' Trade Union Federation (CCWTUF), had 3,500 members and obtained representative status. The management however refused to recognise the union. In the ILO case, the claimant, Building and Woodworkers International (BWI), representing the CCWTUF, asserts unfair dismissal of union leaders in 2006, the refusal to recognise representative unions and to negotiate with them, and anti-union discrimination. BWI considers these actions are in violation of the freedom of association. Early 2010, the ILO Committee on the Freedom of Association had still not been able to make a decision, largely because the Cambodian Government has so far refused to submit any comments or observations on the case. It noted however that:

"the present case depicts an insufficiency of laws and procedures to protect workers against acts of anti-union discrimination. As with other complaints against the Government, the present allegations repeat earlier and similar allegations in their depiction of an industrial relations climate characterized by acts of anti-union discrimination, often culminating in dismissals, and an apparent lack of effectiveness of the sanctions provided for in the law to protect workers against such acts".

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⁷¹ These trade union leaders expressed the wish not to be quoted in this report, as they fear reprisals for speaking to international human rights organisations.
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In its interim conclusions, the Committee urged the Cambodian Government to hold negotiations in good faith with the representative union, to investigate the cases of the workers dismissed for their union activities and consider their reinstatement, and to adopt a legal framework that prevents and protects against acts of anti-union discrimination. It considered this case to be one of an urgent and serious nature⁷².

Prevailing impunity for violations against trade union leaders

Unionists explained that lawsuits or complaints to the labour inspectorate are useless. In the absence of labour courts, any lawsuit has to be filed before a civil or criminal court. Such courts can take up to eight years to make a decision. The key obstacle, according to the labour leaders met by the Delegation, is that the employers have close relations with the authorities and may therefore commit violations without facing any consequence. This holds true not only for Cambodian companies, but also for subsidiaries of transnational corporations, according to the trade unionists met by the Delegation. The law and the courts are used as a tool against independent trade unionists and Cambodian workers.

Case study: The Naga Hotel and Casino - the threat of criminal prosecution to stop strike action

This case illustrates how company owners resort to tactics of judicial harassment and intimidation of trade unionists and workers who undertake trade union activities.

In February 2009, 14 trade union leaders, activists, and members of the Cambodian Tourism and Services Workers' Federation (CTSWF) were dismissed from the Naga Hotel and Casino in Phnom Penh for their trade union activities. After they demanded to be reintegrated into their positions and threatened to organise a strike, they received an order from the Phnom Penh Municipal Court in July 2009 to appear before it to respond to charges filed by the hotel and casino managers, which accused them of "criminal defamation", "disinformation" and "incitement". There is no evidence supporting these accusations and the court's decision to summon the workers in such a context brings into serious question its competence and independence from powerful commercial interests. Two of the 14 activists immediately gave up their trade union activities and did not have to respond to questions from the prosecution, while others had to wait until October 2009 for the court to dismiss the case. Ten of the workers have since been reinstated. In February 2010, the Labour Arbitration Council, a tripartite labour conflict resolutions body operating under the auspices of the Ministry of Labour, adopted a non-binding recommendation calling for the reinstatement of the four dismissed workers who remain active union members, underlining that workers should be free to carry out trade union mandates in the workplace. The Naga management however has not followed the recommendation⁷³ and in early March 2010, the four workers remained in talks with the Naga management to try to resolve the dispute and be reinstated.

Case study on the murders of trade union leaders: three cases of impunity

On December 31, 2008, Judge Dith Munty ordered the release on bail of Messrs. Born Samnang and Sok Sam Oen, who had spent almost five years in prison after being wrongfully convicted for the murder of trade union leader Mr. Chea Vichea, President of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC), in January 2004. Judge Dith Munty ordered the Court of Appeal to re-investigate the case while the charges against Messrs. Born Samnang and Sok Sam Oen remained pending. The Delegation was able to meet with Appeals Court Judge You Bun Leng, who explained that he had sent the case

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⁷² See ILO Committee for the Freedom of Association, Case 2655 and ILO Committee for the Freedom of Association's reports at its 355th (November 2009) and 356th (March 2010) sessions. See also ITUC 2009 Annual Survey above-mentioned.

⁷³ See LICADHO and *Phnom Penh Post Press Release*, March 3, 2010.

in the autumn of 2009 to the Phnom Penh Municipal Court for an investigation of specific points. As of early 2010, no progress appeared to have been made on the investigation and the perpetrators of this politically motivated killing remained unpunished.

On February 11, 2009, the Appeals Court confirmed Mr. Chan Sopheak's, also known as Thach Saveth, 15-year prison sentence for the May 2004 killing of **Mr. Ros Sovannareth**, a FTUWKC Steering Committee member. Mr. Thach Saveth is believed by national and international organisations to be innocent, as he is said to have been far from the place of the murder when it happened⁷⁴. During the hearing, the Court of Appeal Judge refused to give the floor to a witness, who was present at the request of the defence lawyer, and instead preferred to rely on written evidence produced by the police to confirm the verdict of the Phnom Penh Municipal Court. Since then, an appeal to the Supreme Court has been lodged. The Delegation met with a Supreme Court judge, who declined to talk about the case, arguing that he could not express himself individually, being a member of a collegial body.

Mr. Hy Vuthy, a FTUWKC union leader, was also murdered in 2007. An investigation was opened in 2007 and the Phnom Penh police chief publicly announced they had identified suspects. Yet, over a year later, the same police chief said they had not found any suspects to the killing. The court closed the case after the police had failed to provide reports on the killing. As of June 2010, no investigation into his murder case was under way. His killers remained at large, while witnesses to the case, including his wife, received threats in order to "silence" them.

The Observatory is deeply concerned about the impunity of these three murders, as well as the lack of independence of the judiciary. The fact that Messrs. Born Samnang and Sok Sam Oen were imprisoned for five years and that they, along with Mr. Thach Saveth, are still not cleared of the charges against them, illustrates the worrying role of the judiciary in these situations.

⁷⁴Mr. Saveth was reportedly in Oddar Meanchey at the time of the murder, which took place in Phnom Penh. The UN OHCHR and the ILO doubt the correctness of the conviction: see the joint UN OHCHR and ILO Statement, August 18, 2009.

V. Threats against journalists and the problem of self-censorship



Mr. Dum Sophal,
editor in chief
of the Khmer Machas Srok
newspaper

Media and politics are still closely interrelated in Cambodia. While some journalists met by the Delegation expressed some optimism, stressing the increasing access of NGOs and opposition groups to the media, especially radios, as one journalist (who wishes to remain anonymous) noted, "this opportunity is not stable and there is no law or mechanism to strongly guarantee this". As a consequence, radio stations may be shut down at any time. Furthermore, Government's control of media broadcast licensing means that license renewal is heavily dependent upon an organisation's relationship with the Government. What is more, on radio, television and print, most of Cambodia's media are aligned with political parties, especially the ruling CPP⁷⁵. As a consequence of the omnipresence of politics in Cambodia's media space, journalists find themselves vulnerable to physical and non-physical attacks⁷⁶.

Just before the Delegation left Cambodia, the newspaper *Monseaksekar Khmer* - which was put out of business in July 2009 when its Editor, Mr. Dam Sith, agreed to close the paper in exchange for authorities dropping charges of "defamation, disinformation and incitement" following publication of articles criticising Government officials - was back on the newsstands⁷⁷. In a highly-publicised positive development that occurred while the Delegation was in Cambodia, a ruling of the Takeo Provincial Court in February 2010 acquitted a number of human rights defenders, including *Radio Free Asia* journalist **Sok Serey**, Messrs. **Cheab Chiev** and **Khoem Sarum**, two CCHR activists, **Ny Sen** and **Seb Sein**, two Cham minority representatives, of charges of "disinformation", which related to a radio interview involving and discussing rights activists. The February 2010 ruling was not appealed.

However, the Delegation is concerned that the current situation for journalists is conducive to the silencing of dissenting voices. Many journalists acknowledge that the threat of legal action provokes self-censorship. Some journalists met by the Delegation admit that they reduced their criticism of Government corruption in an attempt to avoid prosecution or arrest. Certain CPP members indeed wield the threat of legal action against newspapers and journalists alleging corruption involving ruling party members or members of their family. Self-censorship has been described as "perhaps the biggest restriction to press freedom in Cambodia"⁷⁸.

Certain journalists met by the Delegation provided information about colleagues affiliated with the CPP who apply indirect pressure on other journalists. They reported that many Cambodian journalists work under a pseudonym and the media outlets are generally reluctant to cover "hot and public issues" out of fear of fines or of being shut down.

⁷⁵ See LICADHO Report, *Restrictions on the Freedom of Expression in Cambodia's Media*, May 2009.

⁷⁶ In the December 2009 Report of the Working Group on the Universal Periodic Review of Cambodia, many UN Member States expressed concern over freedom of the press and the situation of journalists as human rights defenders. In particular, some Member States called on the Government of the Kingdom of Cambodia to ensure that the constitutionally enshrined rights to freedom of press and expression are protected in practice. To this end, nations from Europe, Latin America and the Middle East called on the Government to amend the press law, better define and clarify the scope of defamation and disinformation charges and to adopt legislative measures that prevent journalists from being persecuted for their activities. See Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Cambodia*, UN Document A/HRC/WG.6/6/L.3, January 4, 2010.

⁷⁷ *Monseaksekar Khmer* Editor-in- chief Dam Sith had been arrested on June 8, 2008. See LICADHO Press Release, June 9, 2008.

⁷⁸ See LICADHO Report, *Reading between the lines; how politics, money & fear control Cambodia's media*, May 2008.

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The politically motivated murder of opposition journalist **Mr. Khim Sambor** ahead of the 2008 elections and days after he exposed the misdeeds of a high-ranking official, which has not been solved to date, may also still ring in the ears of many of his colleagues. As stressed by the OHCHR, "irrespective of the motive of the murder, this act inevitably has an impact on public perceptions, reviving in people's minds the fear of politics. It is thus essential that the Royal Government authorities conduct a prompt, thorough and credible investigation, bring to justice those who effectively committed this crime, and clarify beyond reasonable doubt its motive. This is all the more warranted in the context of the continued impunity for past killings of journalists, which have left the impression that perpetrators are above the law, and that journalists are not protected by it"⁷⁹.

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Case study: Heng Chakra: the law of the strongest in action

The case of Khmer Meachas Srok newspaper Director **Heng Chakra** is emblematic of the difficulties and dangers that journalists as human rights defenders experience in Cambodia.

On June 26, 2009, Mr. Heng Chakra was convicted of "disinformation" and sentenced by the Phnom Penh Municipal Court to one year in prison and fined nine million riel (approximately 1,741 euros). He was imprisoned on June 29, 2009. The conviction was related to articles that detailed corruption allegations against senior officials at the Council of Ministers' National Committee for Land Conflicts. The newspaper is one of the few small publications affiliated to the opposition parties, particularly the SRP. Staff currently working at Khmer Machach Srok have reduced the intensity and regularity of articles detailing allegations of Government corruption since Mr. Chakra's conviction. Staff is fully aware that they continue in their work at their own risk. One member of the staff, who wishes to remain anonymous, also told the Delegation that he had received phone calls from Government officials who warned him: "think of your children". As such, this case illustrates the point made to the Delegation by a foreign Diplomat that in Cambodia "the law of the strongest" still prevails.

Members of the Delegation visited Mr. Chakra in prison. He was in noticeably bad health and the effort of ascending two flights of stairs to the interview room was enough to leave Mr. Chakra exhausted. Members of Mr. Chakra's family reported problems with Mr. Chakra's health, especially lung condition, anemia and gastroenteritis. Yet, Mr. Chakra remains a powerful advocate of the media freedom.

During the finalisation of this report, Mr. Chakra was released from prison by royal pardon on April 13, 2010 to coincide with Khmer New Year. Mr. Chakra's case, however, does not end there. Mr. Chakra must still pay the 2,250 USD fine, a sum that will be extraordinarily difficult for him, his family, and his newspaper to front up. If Mr. Chakra defaults on this payment, he may be returned to prison.

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⁷⁹ See OHCHR in Cambodia Press Release, July 11, 2008.

VI. Conclusion: Rising skyscrapers but an imploding environment for human rights defenders

Human rights defenders in Cambodia continue to suffer from violence, intimidation, detention, and the reality of crippling criminal proceedings. NGOs generally believe that the optimism of the 1990s has disappeared and that the space in which they are currently operating is progressively shrinking.

Amid the crisis, Cambodia is going through a period of rapid commercial development often fuelling abuses of people's rights, and the country is increasingly integrated in the international trade and multilateral system. The nefarious nexus between economic growth as practised in Cambodia and attacks on human rights defenders is a close one. Development projects across the country have led to an increase in land prices. Farmers and urban residents are often forced to make way for more lucrative development projects. This report highlights the examples of Boeung Kak Lake in Phnom Penh, Chi Krong in Siem Reap province and Kong Yu and Batang in Ratanakiri province. However, there are dozens more cases across the country affecting hundreds of thousands of families, including already marginalised indigenous people. Legislation aiming at solving land conflicts has not been successful in doing so because it is not, or incorrectly, implemented. Real estate developers, businessmen and the authorities work together to evict local residents, using various tools to this end. Activists trying to stand up and defend the land rights of their communities are arrested and/or threatened with criminal prosecution for "defamation", "incitement" or "property damage". In other cases, they are harassed, intimidated or pressured to accept minimal compensation for "selling" their land.

Economic development is not accompanied by parallel social or democratic development. The Government and local authorities are ready to disparage claims by economically vulnerable groups, such as small farmers and residents of poor neighbourhoods that are going to be "developed" and ordinary workers. These same officials do not accept criticism and try to silence dissenting voices, particularly if they target high-ranking officials. This is illustrated by the use of criminal "defamation", "disinformation" and "incitement" charges against human rights defenders, notably journalists, who already appear to apply a degree of self-censorship. As long as corruption and political interference in the judicial system is not adequately dealt with and the laws are not applied equally to all, abuse of power by the wealthiest and the well-connected will continue, to advance their own vested interests at the expense of the Cambodian people.

The independent trade union movement, which has the potential to be an important membership-based organisation in Cambodian civil society, lost a prominent leader in 2004, Mr. Chea Vichea. The entire movement remains intimidated by the two unresolved murders that followed. The daily harassment and intimidation of dozens of other labour leaders through the misuse of the judiciary and direct threats and violence from the authorities or company owners have considerably weakened any attempt to build a stronger trade union movement in Cambodia.

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In recent years, the international donor community has called on the Cambodian Government to implement legal reforms in a number of areas. The Government has carried out legislative reforms in certain areas, but such reforms have often made the environment more restrictive. The new Criminal Code (2009), the Law on Peaceful Demonstrations (2009), the draft Law on Associations and Non-Governmental Organisations and the recently-adopted Anti-Corruption Law (2009) include elements that hamper democratisation and make the exercise of fundamental human rights more difficult. While no draft of the future Law on Trade Unions has been made public up to now, there are legitimate concerns that the proposed legislation may actually prevent the development of free trade unions.

VII. Recommendations

In view of these findings, the Observatory addresses the following recommendations to the Royal Government of Cambodia and the international community:

Recommendations to the Royal Government of Cambodia

- To guarantee in all circumstances the physical and psychological integrity of all human rights defenders in Cambodia;
- To put an end to all acts of harassment, including at the judicial level, against all human rights defenders in Cambodia;
- To guarantee, at all times, the freedoms of opinion and expression as well as the right to hold peaceful demonstrations;
- To conform with the provisions of the UN Declaration on Human Rights Defenders, adopted by the UN General Assembly on December 9, 1998, especially its Article 1, which states that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels”, Article 11 which reads that “everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession” and Article 12.2, which provides that “the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”;
- To comply with the international and regional instruments ratified by Cambodia and notably the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- To issue a standing invitation to the Special Rapporteur of the United Nations on the situation of Human Rights Defenders so that she visits the country.

On impunity:

- To take immediate steps to investigate and, where necessary, prosecute alleged perpetrators of violence and intimidation against human rights defenders, particularly in Chi Krong and Ratanakiri;
- To renew police and judicial investigations into all murders of journalists in Cambodia since 1993, when the killings of journalists began in remarkable number, and the murders of the three trade union leaders Messrs. Chea Vichea, Ros Sovannareth and Hy Vuthy.
- To that extent, to drop the charges and release Mr. Thach Saveth as well as to drop the charges against Messrs. Born Samnang and Sok Sam Oen.

On land rights and conflicts:

- To immediately and unconditionally release the 12 detained Chi Krenk villagers since their detention is arbitrary as it seems to only aim at sanctioning their human rights activities;
- To implement the 2001 Land Law, and apply its Article 36, which allows for suspension of any eviction order that could cause instability or social repercussions; immediately suspend all forced evictions until the adoption of a comprehensive national housing and resettlement policy in accordance with its national and international human rights obligations;
- To ensure that parties in land and natural resources conflicts are not charged with property violations while the ownership of the land or resources in question remain unresolved;
- To consider ratifying ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries, as recommended in June 2009 by the UN Committee on Economic, Social and Cultural Rights.

On freedoms of expression and association:

- To cancel the fine faced by Mr. Heng Chakra;
- To abolish the crimes of defamation and disinformation in Cambodian criminal law and only use the Press Law to prosecute defamatory or false information to ensure the Government meets its obligations under the ICCPR. Define the scope of defamation and disinformation charges to ensure that the Criminal Code will not be used to abusively restrict the right to freedom of expression;
- Reputational suits should be brought by individuals rather than in the name of the State or State institutions. The Criminal Code should be amended to specify this explicitly;
- To promptly investigate and punish all reported cases of harassment, threats, violence or other interference with journalists;
- With regard to the draft NGO Law, to carry out genuine and in-depth consultations with all relevant stakeholders, in particular civil society.

On trade unions:

- To commit to find a fair solution in the APSARA case;
- To contribute to the creation of an environment in which trade unions can act free of fear, intimidation and violence. The future trade union law should be in full conformity with the ILO Conventions ratified by the Government and social partners should be consulted on the text at an early stage of and throughout the drafting process.

Recommendations to the International Community

A. To diplomatic missions in general

- To exercise greater vigilance in cases of violations of the rights to freedoms of expression, assembly and association and acts of harassment against human rights defenders;
- To increase their coordination and common positions on such cases;
- To ensure that a favourable visa-granting policy be applied to persons who face the risk of arbitrary arrest for having exercised their legitimate right to freedom of expression, through accelerated procedures when relevant.
- To play a more active role in advancing the decriminalisation of defamation.

B. To the European Union in particular

- To grant particular attention to the protection of human rights defenders in Cambodia, in accordance with the EU Guidelines on Human Rights Defenders;
- To examine the question of freedoms of expression and association in Cambodia at the forthcoming meetings to take place under the 1997 Cooperation Agreement between the European Community and the Kingdom of Cambodia and ensure that the human rights clause of the Agreement is respected and actionable in practice⁸⁰;
- To raise the concerns set out in this report with the Cambodian authorities on the basis of the EU Guidelines on Human Rights Defenders;
- To fully implement the EU Guidelines on Human Rights Defenders, including when people at risk are not prominent NGO activists, but, among others, community leaders from rural areas.

C. To the UN Special Rapporteur on Human Rights Defenders

- To grant particular attention to the protection of human rights defenders in Cambodia and raise individual cases, in accordance with the UN Declaration on Human Rights Defenders;
- To request for an invitation to carry out a visit to Cambodia.

D. To companies operating in Cambodia, in particular in high risks sectors such as the garment sector

- To fully respect workers' right to association and collective bargaining and to strictly refrain from exercising any action (harassment, threats, intimidation, disciplinary measures) that prevent workers from freely exercising their right to unionise and to play a constructive role in promoting a genuine social dialogue;

⁸⁰ Article 1 of the text stipulates that respect for human rights and democratic principles are an essential element of the Agreement.

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- To ensure that their Cambodian subcontractors and/or subsidiaries observe workers' and trade union rights as defined in ILO standards by:
 - Legally requiring subsidiaries, subcontractors or suppliers to respect the right to collective bargaining and freedom of association, for instance through the adoption of codes of conduct included in suppliers' contract and conforming to ILO standards;
 - Putting in place monitoring systems, including social audits, which duly take into account union rights and which include remediation action plans and taking into account the results of social audits in sourcing practices;
 - Ensuring that the company's purchasing practices do not impede subsidiaries, subcontractors or suppliers from providing workers with better working conditions and refraining from taking any lobby position regarding the drafting process of the Law on Trade Unions that would be contradictory to international labour standards.

E. To donor countries

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- To mainstream human rights principles and standards, in particular those related to the right to freedoms of association, expression and peaceful assemblies, into all areas of aid-giving, including bilateral discussions and agreements with Cambodia, and monitor and evaluate regularly the human rights impact of aid programmes;
- To strengthen the social component of official development assistance to ensure participation of vulnerable and marginalised communities, in particular community leaders, in public decision-making that affects their livelihood;
- To strengthen support to civil society, especially human rights defenders and independent trade unionists, and communicate clearly to the Cambodian authorities that intimidation, harassment, and detention of human rights defenders will not be tolerated.

F. To the other Member States of the Association of Southeast Asian Nations (ASEAN)

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- To raise the concerns set out in this report with the Cambodian authorities in the framework of bilateral discussions and all ASEAN processes, including the ASEAN Ministerial Meetings and annual Summits;
- To use the platform of the ASEAN Intergovernmental Commission on Human Rights to work with the Cambodian authorities to ensure protection of human rights defenders in Cambodia.

Annex 1: Persons met by the mission

Authorities

- His Excellency Oum Mean, Secretary of State, Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation
- Mr. Mon Saroeun, Deputy Governor, Ratanakiri Province
- Mr. Ray Rey, Deputy Chief of Police, Ratanakiri Province
- Mr. Tuy Sim, member of the Provincial Council, Ratanakiri Province
- Mr. Sauphiram, Deputy Governor, Siem Reap Province
- Mr. Nady, Deputy Police Chief Commissioner, Siem Reap Province
- Mr. Chun Saat, Deputy Chief of Cabinet, Siem Reap Province
- Mr. Jung Ratana, General-Secretary, Siem Reap Province

Judiciary

- His Excellency Ot Sotara, Judge, Supreme Court of the Kingdom of Cambodia
- His Excellency You Bun Leng, Judge, Court of Appeal, Phnom Penh
- Mr. Out Savouth, Prosecutor, Court of Appeal, Phnom Penh
- Mr. Ros Saram, Prosecutor, Ratanakiri Provincial Court
- Mr. Chea Sophak, Ratanakiri Provincial Court
- Mr. Sovann, Deputy Prosecutor, Ratanakiri Province
- Mr. Suon Visal, Secretary-General, Bar Association of the Kingdom of Cambodia (BAKC)

United Nations and Embassies

- Mr. Tuomo Poutiainen, Chief Technical Advisor, International Labour Organisation, Better Factories Cambodia
- Ms. Aida Nejad, Human Rights Officer, United Nations Office of the High Commissioner for Human Rights, Cambodia Country Office
- His Excellency Mr. Jean-François Desmazieres, Ambassador of France in Cambodia
- Mr. Dominique Mas, Premier conseiller, French Embassy in Cambodia
- His Excellency Mr. Frank Mann, Ambassador of Germany in Cambodia
- Mr. Rafael Dochao Moreno, Charge d'Affaires, Office of the European Commission in Cambodia
- Mr. Gregory Lawless, First Secretary, Embassy of the United States of America in Cambodia
- Mr. Theodore Allegra, Chargé d'Affaires, Embassy of the United States of America in Cambodia

Civil Society

- Dr. Pung Chhiv Kek, President, Cambodian League for the Promotion and Defense of Human Rights (LICADHO)
- Ms. Naly Pilorge, Director, LICADHO
- Mr. Thun Saray, President, Cambodian Human Rights and Development Association (ADHOC)
- Mr. Nay Vanda, Advocacy Officer, ADHOC
- Mr. Pen Bonnar, Provincial Coordinator, ADHOC
- Mr. Ou Virak, Executive Director, Cambodian Centre for Human Rights (CCHR)
- Mr. Yeng Virak, Executive Director of Community Legal Education Centre (CLEC)

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- Mr. Tola Moen, Head of Labour Programme, CLEC
 - Mr. Yin Savat, Attorney-at-law, CLEC
 - Ms. Ny Sorphonreary, Attorney-at-law, CLEC
 - Mr. David Pred, Co-Founder/Director of Bridges Across Borders South East Asia
 - Ms. Depika Sherchan, Project Officer of Asia and Pacific Programme, Centre on Housing Rights and Evictions (COHRE)
 - Mr Sia Phearum, Secretariat Director, Housing Rights Task Force (HRTF)
 - Ms. Bunn Rachana, Monitoring Project Officer, HRTF
 - Mr. Nep Ly, HRTF
 - Mr. Lun Borithy, Executive Director, Cooperation Committee Cambodia
 - Ms. Laura Mitchell, Project Adviser, Cooperation Committee Cambodia
 - Mr. Chhith Sam Ath, Executive Director, The NGO Forum on Cambodia
 - Mr. Sin Somuny, Executive Director, Medicam
 - Venerable Loun Sovath, Acting Head monk in Chi Kreng pagoda in Siem Reap
 - Mr. Ath Thorn, President, Cambodian Labour Confederation
 - Mr. Chea Mony, President, Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC)
 - Mr. Rong Chhun, President, Cambodian Independent Teachers Association
 - Mr. Dum Sophal, Editor-in-chief, Khmer Machas Srok newspaper
 - Mr Chuon Mom Thol, President, Cambodian Union Federation
 - Messrs. Mes Pheak, Nheam Paot, Vann Chan, Mar Sek, Chea Khom, Min Soy, Ouch Ki, Chan No, Chheng Savoeurn, Chan Leap and Sin Leap, Chi Kreng human rights defenders currently in Siam Reap prison
 - 16 community leaders from throughout Cambodia and dozens of other members of their communities.

Annex 2 : LICADHO's List of Human rights defenders detained as of December 8, 2009 in 18 prisons (out of a total of 25)

1. Mr. Mes Pheak (23) - Land-grab case. Then Chi Krong District Governor Kao Sophean and businessmen attempted to seize 475 hectares of land belonging to 175 families. Part of group of nine villagers arrested on March 22, 2009, and charged with "robbery" and "physical assault". Acquitted on October 27, 2009, but remains in prison pending additional charges and prosecutorial appeal. Anlong Samnar commune, Chi Krong district.

2. Mr. Nheam Paot (27) - Land-grab case. Chi Krong District Chief Kao Sophean and authorities attempt to seize 475 hectares of land belonging to 175 families. Part of group of nine villagers arrested on March 22, 2009, and charged with "robbery" and "physical assault". Acquitted on October 27, 2009, but remains in prison pending additional charges and prosecutorial appeal. Anlong Samnar commune, Chi Krong district.

3. Mr. Vann Chan (29) - Land-grab case. Chi Krong District Chief Kao Sophean and authorities attempt to seize 475 hectares of land belonging to 175 families. Part of group of nine villagers arrested on March 22, 2009, and charged with "robbery" and "physical assault". Acquitted on Oct. 27, 2009, but remains in prison pending additional charges and prosecutorial appeal. Anlong Samnar commune, Chi Krong district.

4. Mr. Mar Sek (28) - Land-grab case. Chi Krong District Chief Kao Sophean and authorities attempt to seize 475 hectares of land belonging to 175 families. Part of group of nine villagers arrested on March 22, 2009, and charged with "robbery" and "physical assault". Acquitted on October 27, 2009, but remains in prison pending additional charges and prosecutorial appeal. Anlong Samnar commune, Chi Krong district.

5. Mr. Chea Khom (40) - Land-grab case. Chi Krong district chief Kao Sophean and authorities attempt to seize 475 hectares of land belonging to 175 families. Part of group of nine villagers arrested on March 22, 2009, and charged with "robbery" and "physical assault". Acquitted on October 27, 2009, but remains in prison pending additional charges and prosecutorial appeal. Anlong Samnar commune, Chi Krong district.

6. Mr. Min Soy (21) - Land-grab case. Chi Krong district chief Kao Sophean and authorities attempt to seize 475 hectares of land belonging to 175 families. Part of group of nine villagers arrested on March 22, 2009, and charged with "robbery" and "physical assault". Acquitted on October 27, 2009, but remains in prison pending additional charges and prosecutorial appeal. Anlong Samnar commune, Chi Krong district.

7. Mr. Ouch Ki (30) - Land-grab case. Chi Krong district chief Kao Sophean and authorities attempt to seize 475 hectares of land belonging to 175 families. Part of group of nine villagers arrested on March 22, 2009, and charged with "robbery" and "physical assault". Acquitted on October 27, 2009, but remains in prison pending additional charges and prosecutorial appeal. Anlong Samnar commune, Chi Krong district.

8. Mr. Chan No (23) - Land-grab case. Chi Krong district chief Kao Sophean and authorities attempt to seize 475 hectares of land belonging to 175 families. Part of group of nine villagers

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arrested on March 22, 2009, and charged with "robbery" and "physical assault". Convicted on October 27, 2009, and sentenced to one year in prison and three million riel compensation for physical assault charges. Anlong Samnar commune, Chi Kreng district.

9. Mr. Chheng Savoeurn (30) - Land-grab case. Chi Kreng district chief Kao Sophean and authorities attempt to seize 475 hectares of land belonging to 175 families. Part of group of nine villagers arrested on March 22, 2009, and charged with "robbery" and "physical assault". Convicted on October 27, 2009, and sentenced to one year in prison and three million riel compensation for physical assault charges. Illegal confinement charges against him were dropped on December 7, 2009. Anlong Samnar commune, Chi Kreng district.

10. Mr. Chan Leap (40) - Land-grab case. Farmer arrested on June 28, 2009, and imprisoned by provincial police following an "illegal confinement" complaint from Tann Soky and Son Som Oul, who claim the land of 175 families in Anlong Samnar commune, Chi Kreng district, Siem Reap. Also awaiting trial on charges (from December 26, 2008) of "incitement", "use of violence against proprietor of real property", and "infringement on private ownership" (was originally released on bail for these charges).

11. Mr. Sin Leap (58) - Land-grab case. Farmer arrested on June 28, 2009, and imprisoned by provincial police following complaint an illegal confinement from Tann Soky and Son Som Oul, who claim the land of 175 families in Anlong Samnar commune, Chi Kreng district, Siem Reap. Also awaiting trial on charges (from December 26, 2008) of "incitement", "use of violence against proprietor of real property", and "infringement on private ownership" (was originally released on bail for these charges).

12. Mr. Vich Vi (45) - Land-grab case; 120 hectares of land belonging to 117 former Khmer Rouge families claimed by a group of four businessmen, including Lun Phun and Hak Vanna. Arrested on September 4, 2009, and currently awaiting trial on charges of damage to private property. Tbeng commune, Banteay Srei district, Siem Reap.

13. Mr. Long Sarith (43) - Land-grab/forced eviction. Community representative who was arrested on October 7, 2009 - two days before village was burned down. Imprisoned on charges of illegal deforestation. Over 100 families evicted, homes burned by a mixed group of police, military police and soldiers. Land is claimed by sugar plantation owners Ly Yong Phat. Awaiting trial on charges of "illegal felling of trees", "clearing of forest" and "illegal occupation of forest land". Samraong district, Oddur Mancheh province.

14. Mr. Long Chankiri (33) - Land-grab/forced eviction. Community representative who was arrested on October 5, 2009 - four days before village was burned down. Imprisoned on charges of "illegal deforestation". Over 100 families evicted, homes burned by a mixed group of police, military police and soldiers. Land is claimed by sugar plantation owners Ly Yong Phat. Awaiting trial on charges of "illegal felling of trees", "clearing of forest" and "illegal occupation of forest land". Samraong district, Oddur Mancheh province.

15. Mr. Ma Ouk Choern (45) - Land-grab/forced eviction. Community representative who was arrested on October 8, 2009 - a day before village was burned down. Imprisoned on charges of illegal deforestation. Over 100 families evicted, homes burned by a mixed group of police, military police and soldiers. Land is claimed by sugar plantation owners Ly Yong Phat. Awaiting trial on charges of "illegal felling of trees", "clearing of forest" and "illegal occupation of forest land". Samraong district, Oddur Mancheh province.

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16. Mr. Sun Korb (37) - Land-grab case. Land conflict between villagers and Forestry Administration. Arrested on February 4, 2009. Sentenced to six years for illegal clearing of forest to occupy forest land. Rumchek village, Anlung Veng district, Oddor Meanchey province.

17. Mr. Sok Saratt (36) - Land-grab case. Land conflict between villagers and tax officer of Siem Reap Province. Arrested on April 22, 2009, and acquitted on charges of "attempted murder", but remains imprisoned due to Prosecutor's appeal. Chong Kao Sou village, Slor Kram commune. Siem Reap district, Siem Reap province.

18. Mr. Vann Saroeurn (56) - Land-grab case. Community representative who led village in land dispute with local authorities. Was arrested without a warrant and imprisoned on charges of "robbery" and "murder". Currently awaiting trial. Raksmeay Sannak village, Nimith commune, Poipet district, Banteay Meanchey. Arrested on July 20, 2009, part of second group of eight total people arrested.

19. Mr. Kloeng Da (45) - Land-grab case. Resident of village involved in land dispute with local authorities. Was arrested without a warrant and imprisoned on charges of "robbery" and "murder". Currently awaiting trial. Raksmeay Sannak village, Nimith commune, Poipet district, Banteay Meanchey. Arrested on July 20, 2009, part of second group of eight total people arrested.

20. Mr. Chea Hap (44) - Land-grab case. Resident of village involved in land dispute with local authorities. Was arrested without a warrant and imprisoned on charges of "robbery" and "murder". Currently awaiting trial. Raksmeay Sannak village, Nimith commune, Poipet district, Banteay Meanchey. Arrested on April 23, 2009, part of first group of eight total people arrested.

21. Mr. Tith Theung (40) - Land-grab case. Resident of village involved in land dispute with local authorities. Was arrested without a warrant and imprisoned on charges of "robbery" and "attempted murder". Currently awaiting trial. Raksmeay Sannak village, Nimith commune, Poipet district, Banteay Meanchey. Arrested on April 23, 2009, part of first group of eight total people arrested.

22. Mr. Mao Chim (40) - Land-grab case. Resident of village involved in land dispute with local authorities. Was arrested without a warrant and imprisoned on charges of "robbery" and "attempted murder". Currently awaiting trial. Raksmeay Sannak village, Nimith commune, Poipet district, Banteay Meanchey. Arrested on April 23, 2009, part of first group of eight total people arrested.

23. Mr. Hun Sar (25) - Land-grab case. Resident of village involved in land dispute with local authorities. Was arrested without a warrant and imprisoned on charges of "robbery" and "attempted murder". Currently awaiting trial. Raksmeay Sannak village, Nimith commune, Poipet district, Banteay Meanchey. Arrested on April 23, 2009, part of first group of eight total people arrested.

24. Mr. Lek Sophorn (39) - Land-grab case. Resident of village involved in land dispute with local authorities. Was arrested without a warrant and imprisoned on charges of "robbery" and "attempted murder". Currently awaiting trial. Raksmeay Sannak village, Nimith commune, Poipet district, Banteay Meanchey. Arrested on August 3, 2009, part of third group of eight total people arrested.

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25. Mr. Chath Piseth (19) - Land-grab case. Resident of village involved in land dispute with local authorities. Was arrested without a warrant and imprisoned on charges of "robbery" and "attempted murder". Currently awaiting trial. Raxmey Sannaky village, Nimith commune, Poipet district, Banteay Meanchey. Arrested on August 12, 2009, part of fourth and final group of eight total people arrested.

26. Mr. Ny Sann (57) - Village resident involved in land dispute with local Cham leader and Imam Ry Math. Math was accused of "corruption" by the village and the village also demanded the election of new leaders. Arrested on September 30, 2009, and currently awaiting trial on charges of "disinformation" and "infringement on private property". Kampong Youl commune, Kouk Pou commune, Bourei Cholsar district, Takeo.

27. Mr. Yim Sari (47) - Awaiting trial on charges of "illegal clearing of forest" and "occupation of forest land". Arrested on July 26, 2009. Kilo 12 village, Kork Toch commune, Toek Chhou district, Kampot province.

28. Ms. Sor Kunthea (48) - Arrested on June 6, 2009, convicted of "violation of State property" and "illegal clearing of forest land" and sentenced to eight years' imprisonment. Dam Rey Phong village, Thmey commune, Toek Chhou district, Kampot province.

29. Mr. Ream Chanthly (40) - Arrested on June 6, 2009, convicted of "violation of State property" and "illegal clearing of forest land" and sentenced to eight years' imprisonment. Dam Rey Phong village, Thmey commune, Toek Chhou district, Kampot province.

30. Mr. Soy Sam Heng (42) - Arrested on June 6, 2009, convicted of "violation of State property" and "illegal clearing of forest land" and sentenced to six years' imprisonment. Dam Rey Phong village, Thmey commune, Toek Chhou district, Kampot province.

31. Mr. Ouk Bun (42) - Arrested on June 7, 2009, convicted of "violation of State property" and "illegal clearing of forest land" and sentenced to six years' imprisonment.

32. Mr. Yo Bun Nary (46) - Arrested on June 7, 2009, and convicted of "violation of State property" and "illegal clearing of forest land" and sentenced to six years' imprisonment.

33. Mr. San Ri (42) - Land-grab case. Land belonging to six families seized, community threatened, and crops destroyed. Community representative San Ry was arrested on August 17, 2008, convicted and sentenced to 18 months' imprisonment for "destruction of private property". Roka Po Pram commune, Tbong Khmum district, Kampong Cham.

34. Mr. Hun Seng Ly (42) - Land-grab case. High ranking military commanders Bun Seng and Chak Kem seized the land of 157 families, illegally destroying their property and making death threats. Community representative Hun Sengly was arrested on August 22, 2008, convicted, and sentenced to five years in prison for "robbery" and "destruction of private property". Doun Ba commune, Koas Krolar district, Battambang.

35. Mr. Sor Song (50) - Land-grab case. Land belonging to 100 families illegally appropriated by Ta Ches village chief Thai Hi on behalf of KDC company. Mr. Sor Song was arrested on November 23, 2007, convicted, and sentenced to 10 years in prison for "attempted homicide" and 18 months for "infringement on private property". La Peang village, Ta Ches commune, Kampong Tralach district, Kampong Chhnang.

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36. Ms. Touch Ly (47) - Land-grab case. Village chief involved in mediating land dispute with authorities. Authorities asked her to collect thumbprints of villagers who claimed ownership of land; when she did this, she was accused of "forgery". Arrested on April 27, 2009. Convicted and sentenced to 16 months in prison and five million riel compensation to company, one million riel compensation to State. Land dispute involved KDC company owned by Chea Kheng wife of Minister of Industry, Mines and Energy Suy Sem. Lar Peang Village, Tacheh commune, Kampong Tralach district, Kampong Chhnang province.

37. Mr. Chhoeurn Chheng (35) - Arrested on November 15, 2007. Convicted of "illegal clearing of forest" to occupy State land. Sentenced to five years in prison, with final 2.5 years suspended. Sra Em village, Kontuot district, Preah Vihear province.

38. Mr. Nouv Tith (25) - Arrested on November 15, 2007. Convicted of "illegal clearing of forest" to occupy State land. Sentenced to five years in prison, with final 2.5 years suspended. Sra Em village, Kontuot district, Preah Vihear province.

39. Mr. Som Sopheak (31) - Arrested on November 15, 2007. Convicted of "illegal clearing of forest" to occupy State land. Sentenced to five years in prison, with final 2.5 years suspended. Sra Em village, Kontuot district, Preah Vihear province.

40. Mr. Hang Chakra (55) - Disinformation/media. Editor-in-chief of opposition-affiliated Khmer Machas Srok newspaper. Arrested on June 26, 2009, and convicted to one year imprisonment and a nine million riel fine for publishing articles regarding alleged Government corruption. Phnom Penh.

41. Mr. Heng Han (61) - Land-grab case. Village land awarded as part of an 8,100-hectare concession to Tin Bean company in 2007. Part of group arrested on November 17, 2009, after a clash between villagers and authorities. Police beat local boy, and when villagers went to demand an explanation, police responded by firing shots. Villagers then burned equipment belonging to Tin Bean. Currently awaiting trial on charges of "illegal clearing of forest" to occupy State land. Thmor Samleng village, Krorya district, Kampong Thom province.

42. Mr. Soun Sophorn (45) - Land-grab case. Village land awarded as part of an 8,100-hectare concession to Tin Bean company in 2007. Part of group arrested on November 17, 2009, after a clash between villagers and authorities. Police beat local boy, and when villagers went to demand an explanation, police responded by firing shots. Villagers then burned equipment belonging to Tin Bean. Currently awaiting trial on charges of "illegal clearing of forest" to occupy State land. Thmor Samleng village, Krorya district, Kampong Thom province.

43. Mr. Beng Kep (43) - Land-grab case. Village land awarded as part of an 8,100-hectare concession to Tin Bean company in 2007. Part of group arrested on November 17, 2009, after a clash between villagers and authorities. Police beat local boy, and when villagers went to demand an explanation, police responded by firing shots. Villagers then burned equipment belonging to Tin Bean. Currently awaiting trial on charges of "illegal clearing of forest" to occupy State land. Thmor Samleng village, Krorya district, Kampong Thom province.

44. Mr. Sear Theub - Land-grab case. Village land awarded as part of an 8,100-hectare concession to Tin Bean company in 2007. Part of group arrested on November 17, 2009, after a clash between villagers and authorities. Police beat local boy, and when villagers went to demand an explanation, police responded by firing shots. Villagers then burned equipment belonging to Tin Bean. Currently awaiting trial on charges of "illegal clearing of forest" to occupy State land. Thmor Samleng village, Krorya district, Kampong Thom province.

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45. Mr. Sok Yoeung (38) - Land-grab case. Village land awarded as part of an 8,100-hectare concession to Tin Bean company in 2007. Part of group arrested on November 18, 2009, after a clash between villagers and authorities. Police beat local boy, and when villagers went to demand an explanation, police responded by firing shots. Villagers then burned equipment belonging to Tin Bean. Currently awaiting trial on charges of "illegal clearing of forest" to occupy State land. Thmor Samleng village, Krorya district, Kampong Thom province.

46. Mr. Khoun Sam Oeun (37) - Land-grab case. Village land awarded as part of an 8,100-hectare concession to Tin Bean company in 2007. Part of group arrested on November 18, 2009, after a clash between villagers and authorities. Police beat local boy, and when villagers went to demand an explanation, police responded by firing shots. Villagers then burned equipment belonging to Tin Bean. Currently awaiting trial on charges of "illegal clearing of forest" to occupy State land. Thmor Samleng village, Krorya district, Kampong Thom province.

47. Mr. Sim Chhourk (53) - Land-grab case. Village land awarded as part of an 8,100-hectare concession to Tin Bean company in 2007. Part of group arrested in on November 18, 2009, after a clash between villagers and authorities. Police beat local boy, and when villagers went to demand an explanation, police responded by firing shots. Villagers then burned equipment belonging to Tin Bean. Currently awaiting trial on charges of "illegal clearing of forest" to occupy State land. Thmor Samleng village, Krorya district, Kampong Thom province.

48. Mr. Kong Sao (46) - Land-grab case. Some 1,362 families under threat of forced eviction from their land due to 8,100-hectare land concession granted to Vietnamese company Tan Bien-Kampong Thom Rubber Development Company. Community rep Kong Sao was arrested on March 27, 2009, and charged with "illegal clearing of forest" to occupy State land. Sentenced to five years in prison. Kraya commune, Santuk district, Kampong Thom.

49. Mr. Khat Sam Nang (42) - Arrested on November 30, 2009, and charged with "destruction of private property". Okhmom village, Sdav commune, Rottanak Mondul district, Battambang province.

50. Ms. Hoy Maiy (46) - Arrested on November 28, 2009, and charged with "illegal clearing of forest" to occupy sSate land. Currently awaiting trial. Bos village, Konkreal commune, Samrong district, Oddur Meanchey province.

51. Mr. Sao Bunleang (44) - Arrested on March 13, 2009, and charged with "illegal clearing of forest" to occupy State property. Currently awaiting trial. Kasesep Povong village, Bansayrak commune, Samrong district, Oddur Meanchey province.

52. Mr. Prum Poeun (67) - Arrested on October 7, 2009, and charged with "illegal clearing of forest" to occupy forest land. Currently awaiting trial. Kasesep Povong village, Bansayrak commune, Samrong district, Oddur Meanchey province.

Establishing the facts

Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

Supporting civil society

Training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

Mobilising the international community

Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

Informing and reporting

Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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Created in 1985, the World Organisation Against Torture (OMCT) is today the main coalition of international non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. With 297 affiliated organisations in its SOS-Torture Network, OMCT is the most important network of NGOs working for the protection and the promotion of human rights in the world.

Based in Geneva, OMCT's International Secretariat provides personalised medical, legal and/or social assistance to victims of torture and ensures the daily dissemination of urgent interventions across the world, in order to prevent serious human rights violations, to protect individuals and to fight against impunity. Moreover, some of its activities aim at protecting specific categories of vulnerable people, such as women, children and human rights defenders. OMCT also carries out campaigns relating to violations of economic, social and cultural rights. In the framework of its activities, OMCT also submits individual communications and alternative reports to the United Nations mechanisms, and actively collaborates in the respect, development and strengthening of international norms for the protection of human rights.

OMCT has either a consultative or observer status with the United Nations Economic and Social Council (ECOSOC), the International Labour Organisation, the African Commission on Human and Peoples' Rights, the *Organisation Internationale de la Francophonie*, and the Council of Europe.

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The International Trade Union Confederation (ITUC) is the main international trade union organisation, representing the interests of working people worldwide. It has 312 affiliated member organisations in 156 countries and territories, with a total membership of 176 million workers.

The ITUC's primary mission is the promotion and defence of workers' rights and interests, through international cooperation between trade unions, global campaigning and advocacy within the major global institutions. Its main areas of activity include:

- Trade union and human rights
- Economy, society and the workplace
- Equality and non-discrimination
- International solidarity.

The ITUC adheres to the principles of trade union democracy and independence, as set out in its Constitution. The chief executive of the ITUC is its General Secretary Sharan Burrow.



The Observatory for the Protection of Human Rights Defenders: a joint programme of FIDH and OMCT

The Observatory is an action programme based on the belief that strengthened co-operation and solidarity among human rights defenders and their organisations will contribute to break the isolation they face. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims. The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With this aim, the Observatory seeks to establish:

- a mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- the observation of judicial proceedings, and whenever necessary, direct legal assistance;
international missions of investigation and solidarity;
- a personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- the preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- sustained action with the United Nations in particular with the Special Rapporteur on Human Rights Defenders, and when necessary with geographic and thematic Special Rapporteurs and Working Groups;
- sustained lobbying with various regional and international intergovernmental institutions, especially the Organisation of American States (OAS), the African Union (AU), the European Union (EU), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe, the International Organisation of the Francophonie (OIF), the Commonwealth, the League of Arab States, the Association of Southeast Asian Nations (ASEAN) and the International Labour Organisation (ILO).

The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

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

To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger.

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