

authorities should duly consider. In the event that agreement cannot be reached on a proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate.

39. During planning processes, opportunities for dialogue and consultation must be extended effectively to the full spectrum of affected persons, including women and vulnerable and marginalized groups, and, when necessary, through the adoption of special measures or procedures.

40. Prior to any decision to initiate an eviction, authorities must demonstrate that the eviction is unavoidable and consistent with international human rights commitments protective of the general welfare.

41. Any decision relating to evictions should be announced in writing in the local language to all individuals concerned, sufficiently in advance. The eviction notice should contain a detailed justification for the decision, including on: (a) absence of reasonable alternatives; (b) the full details of the proposed alternative; and (c) where no alternatives exist, all measures taken and foreseen to minimize the adverse effects of evictions. All final decisions should be subject to administrative and judicial review. Affected parties must also be guaranteed timely access to legal counsel, without payment if necessary.

42. Due eviction notice should allow and enable those subject to eviction to take an inventory in order to assess the values of their properties, investments and other material goods that may be damaged. Those subject to eviction should also be given the opportunity to assess and document non-monetary losses to be compensated.

43. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. The State must make provision for the adoption of all appropriate measures, to the maximum of its available resources, especially for those who are unable to provide for themselves, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available and provided. Alternative housing should be situated as close as possible to the original place of residence and source of livelihood of those evicted.

44. All resettlement measures, such as construction of homes, provision of water, electricity, sanitation, schools, access roads and allocation of land and sites, must be consistent with the present guidelines and internationally recognized human rights principles, and completed before those who are to be evicted are moved from their original areas of dwelling. **h [FN h See section V of the present guidelines.]**

IV. DURING EVICTIONS

45. The procedural requirements for ensuring respect for human rights standards include the mandatory presence of governmental officials or their representatives on site during evictions. The governmental officials, their representatives and persons implementing the eviction must identify themselves to the persons being evicted and present formal authorization for the eviction action.

46. Neutral observers, including regional and international observers, should be allowed access upon request, to ensure transparency and compliance with international human rights principles during the carrying out of any eviction.

47. Evictions shall not be carried out in a manner that violates the dignity and human rights to life and security of those affected. States must also take steps to ensure that women are not subject to gender-based violence and discrimination in the course of evictions, and that the human rights of children are protected.

48. Any legal use of force must respect the principles of necessity and proportionality, as well as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and any national or local code of conduct consistent with international law enforcement and human rights standards.

49. Evictions must not take place in inclement weather, at night, during festivals or religious holidays, prior to elections, or during or just prior to school examinations.

50. States and their agents must take steps to ensure that no one is subject to direct or indiscriminate attacks or other acts of violence, especially against women and children, or arbitrarily deprived of property or possessions as a result of demolition, arson and other forms of deliberate destruction, negligence or any form of collective punishment. Property and possessions left behind involuntarily should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

51. Authorities and their agents should never require or force those evicted to demolish their own dwellings or other structures. The option to do so must be provided to affected persons, however, as this would facilitate salvaging of possessions and building material.

V. AFTER AN EVICTION: IMMEDIATE RELIEF AND RELOCATION

52. The Government and any other parties responsible for providing just compensation and sufficient alternative accommodation, or restitution when feasible, must do so immediately upon the eviction, except in cases of force majeure. At a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions.

53. Special efforts should be made to ensure equal participation of women in all planning processes and in the distribution of basic services and supplies.

54. In order to ensure the protection of the human right to the highest attainable standard of physical and mental health, all evicted persons who are wounded and sick, as well as those with disabilities, should receive the medical care and attention they require to the fullest extent practicable and with the least possible delay, without distinction on any non-medically relevant grounds. When necessary, evicted persons should have access to psychological and social services. Special attention should be paid to: (a) the health needs of women and children, including access to female health-care providers where necessary, and to services such as reproductive health care and appropriate counselling for victims of sexual and other abuses; (b) ensuring that ongoing medical treatment is not disrupted as a result of eviction or relocation; and (c) the prevention of contagious and infectious diseases, including HIV/AIDS, at relocation sites.

55. Identified relocation sites must fulfil the criteria for adequate housing according to international human rights law. These include: *[FN i See general comment No. 4 on adequate housing adopted by the Committee on Economic, Social and Cultural Rights in 1991.]* (a) security of tenure; (b) services, materials, facilities and infrastructure such as potable water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services, and to natural and common resources, where appropriate; (c) affordable housing; (d) habitable housing providing inhabitants with adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors, and ensuring the physical safety of occupants; (e) accessibility for disadvantaged groups; (f) access to employment options, health-care services, schools, childcare centres and other social facilities, whether in urban or rural areas; and (g) culturally appropriate housing. In order to ensure security of the home, adequate housing should also include the following essential elements: privacy and security; participation in decision-making; freedom from violence; and access to remedies for any violations suffered.

56. In determining the compatibility of resettlement with the present guidelines, States should ensure that in the context of any case of resettlement the following criteria are adhered to:

- (a) No resettlement shall take place until such time as a comprehensive resettlement policy consistent with the present guidelines and internationally recognized human rights principles is in place;
- (b) Resettlement must ensure that the human rights of women, children, indigenous peoples and other vulnerable groups are equally protected, including their right to property ownership and access to resources;
- (c) The actor proposing and/or carrying out the resettlement shall be required by law to pay for any associated costs, including all resettlement costs;
- (d) No affected persons, groups or communities shall suffer detriment as far as their human rights are concerned, nor shall their right to the continuous improvement of living conditions be subject to infringement. This applies equally to host communities at resettlement sites, and affected persons, groups and communities subjected to forced eviction;
- (e) The right of affected persons, groups and communities to full and prior informed consent regarding relocation must be guaranteed. The State shall provide all necessary amenities, services and economic opportunities at the proposed site;
- (f) The time and financial cost required for travel to and from the place of work or to access essential services should not place excessive demands upon the budgets of low-income households;
- (g) Relocation sites must not be situated on polluted land or in immediate proximity to pollution sources that threaten the right to the highest attainable standards of mental and physical health of the inhabitants;
- (h) Sufficient information shall be provided to the affected persons, groups and communities on all State projects and planning and implementation processes relating to the concerned resettlement, including information on the purported use of the eviction dwelling or site and its proposed beneficiaries. Particular attention must be paid to ensuring that indigenous peoples, minorities, the landless, women and children are represented and included in this

process;

(i) The entire resettlement process should be carried out with full participation by and with affected persons, groups and communities. States should, in particular, take into account all alternative plans proposed by the affected persons, groups and communities;

(j) If, after a full and fair public hearing, it is found that there still exists a need to proceed with the resettlement, then the affected persons, groups and communities shall be given at least 90 days' notice prior to the date of the resettlement; and

(k) Local government officials and neutral observers, properly identified, shall be present during the resettlement so as to ensure that no force, violence or intimidation is involved.

57. Rehabilitation policies must include programmes designed for women and marginalized and vulnerable groups to ensure their equal enjoyment of the human rights to housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman or degrading treatment, and freedom of movement.

58. Persons, groups or communities affected by an eviction should not suffer detriment to their human rights, including their right to the progressive realization of the right to adequate housing. This applies equally to host communities at relocation sites.

VI. REMEDIES FOR FORCED EVICTIONS

59. All persons threatened with or subject to forced evictions have the right of access to timely remedy. Appropriate remedies include a fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation, and should comply, as applicable, with the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

A. Compensation

60. When eviction is unavoidable, and necessary for the promotion of the general welfare, the State must provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services. Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better.

61. All those evicted, irrespective of whether they hold title to their property, should be entitled to compensation for the loss, salvage and transport of their properties affected, including the original dwelling and land lost or damaged in the process. Consideration of the circumstances of each case shall allow for the provision of compensation for losses related to informal property, such as slum dwellings.

62. Women and men must be co-beneficiaries of all compensation packages. Single women and widows should be entitled to their own compensation.

63. To the extent not covered by assistance for relocation, the assessment of economic damage should take into consideration losses and costs, for example, of land plots and house structures; contents; infrastructure; mortgage or other debt penalties; interim housing; bureaucratic and legal fees; alternative housing; lost wages and incomes; lost educational opportunities; health and medical care; resettlement and transportation costs (especially in the case of relocation far from the source of livelihood). Where the home and land also provide a source of livelihood for the evicted inhabitants, impact and loss assessment must account for the value of business losses, equipment/inventory, livestock, land, trees/crops, and lost/decreased wages/income.

B. Restitution and return

64. The circumstances of forced evictions linked to development and infrastructure projects (including those mentioned in paragraph 8 above) seldom allow for restitution and return. Nevertheless, when circumstances allow, States should prioritize these rights of all persons, groups and communities subjected to forced evictions. Persons, groups and communities shall not, however, be forced against their will to return to their homes, lands or places of origin.

65. When return is possible or adequate resettlement in conformity with these guidelines is not provided, the competent authorities should establish conditions and provide the means, including financial, for voluntary return in safety and security, and with dignity, to homes or places of habitual residence. Responsible authorities should facilitate the reintegration of returned persons and exert efforts to ensure the full participation of affected persons, groups and communities in the planning and management of return processes. Special measures may be required to ensure women's equal and effective participation in return or restitution

processes in order to overcome existing household, community, institutional, administrative, legal or other gender biases that contribute to marginalization or exclusion of women.

66. Competent authorities have the duty and responsibility to assist returning persons, groups or communities to recover, to the maximum extent possible, the property and possessions that they left behind or were dispossessed of upon their eviction.

67. When return to one's place of residence and recovery of property and possessions is not possible, competent authorities must provide victims of forced evictions, or assist them in obtaining, appropriate compensation or other forms of just reparation.

C. Resettlement and rehabilitation

68. While all parties must give priority to the right of return, certain circumstances (including for the promotion of general welfare, or where the safety, health or enjoyment of human rights so demands) may necessitate the resettlement of particular persons, groups and communities due to development-based evictions. Such resettlement must occur in a just and equitable manner and in full accordance with international human rights law as elaborated in section V of these guidelines.

VII. MONITORING, EVALUATION AND FOLLOW-UP

69. States should actively monitor and carry out quantitative and qualitative evaluations to determine the number, type and long-term consequences of evictions, including forced evictions, that occur within their jurisdiction and territory of effective control. Monitoring reports and findings should be made available to the public and concerned international parties in order to promote the development of best practices and problem-solving experiences based on lessons learned.

70. States should entrust an independent national body, such as a national human rights institution, to monitor and investigate forced evictions and State compliance with these guidelines and international human rights law.

VIII. ROLE OF THE INTERNATIONAL COMMUNITY, INCLUDING INTERNATIONAL ORGANIZATIONS

71. The international community bears an obligation to promote, protect and fulfil the human right to housing, land and property. International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should take fully into account the prohibition on forced evictions under international human rights law and related standards.

72. International organizations should establish or accede to complaint mechanisms for cases of forced evictions that result from their own practices and policies. Legal remedies should be provided to victims in accordance with those stipulated in these guidelines.

73. Transnational corporations and other business enterprises must respect the human right to adequate housing, including the prohibition on forced evictions, within their respective spheres of activity and influence.

IX. INTERPRETATION

74. These guidelines on development-based evictions and displacement shall not be interpreted as limiting, altering or otherwise prejudicing the rights recognized under international human rights, refugee, criminal or humanitarian law and related standards, or rights consistent with these laws and standards as recognized under any national law.

¹ Committee on Economic, Social and Cultural Rights General Comment 7, Sixteenth session (1997)(58): The right to adequate housing (art. 11 (1) of the Covenant): forced evictions, para. 3.

² UN Commission on Human Rights Resolution 1993/77, 10 March 1993, para. 1.

³ See e.g. *When the war was over*, Elizabeth Becker, 1986, *Cambodian humanitarian assistance and the United Nations*, United Nations, 1992.

⁴ *Phnom Penh Then and Now*, Michael Igout, 1993.

⁵ *Cambodia after the Khmer Rouge: Inside the Politics of Nation Building*, Evan Gottesman, 2004, p.76.

⁶ Sub Decree N° 25 of April 22, 1989, see e.g. *Land tenure database development in Cambodia*, Brett Ballard, 2006.

⁷ "Dealing with market eviction processes in the context of developing cities," Alain Durant-Lasserre, April 2005, [http://www.worldbank.org/urban/symposium2005/papers/durant_lasserve.pdf]

⁸ The constitution -- or as some call it, the amendment of the 1981 constitution -- replaced the PRK with the State of Cambodia.

⁹ See e.g. *Land and human development in Cambodia*, UNDP, 2007, *Phnom Penh Then and Now*, Michael Igout, 1993.

¹⁰ *Land concessions for economic purposes in Cambodia - A human rights perspective*, Special Representative of the Secretary-General for Human Rights in Cambodia, November 2004, p.3.

¹¹ *Ibid.* and a follow-up report, *Economic land concessions in Cambodia -- A human rights perspective*, Special Representative of the Secretary-General for Human Rights in Cambodia, June 2007.

¹² *Economic land concessions in Cambodia -- A human rights perspective*, Special Representative of the Secretary-General for Human Rights in Cambodia, June 2007.

¹³ *Cambodia: Halving Poverty by 2015?*, Cambodia Poverty Assessment, World Bank, Phnom Penh, February 2006, p.48.

¹⁴ Estimate made from list provided to Amnesty International by several NGOs working with communities at risk and evicted communities. (Unpublished copy on file.)

¹⁵ *Ibid.*

¹⁶ Cambodia remains predominantly rural; figures from the World Bank show that over 85 percent of the population live in the countryside, and around 85 percent of these depend on natural resources and subsistence farming for their livelihoods, according to e.g. *Natural Resources and Rural Livelihoods in Cambodia: A Baseline Assessment*. (Working Paper 23, Bruce McKenzie and Prom Tola, Cambodia Development Resource Institute; Phnom Penh, June 2002)

¹⁷ *Cambodia: Halving Poverty by 2015?*, Cambodia Poverty Assessment, World Bank, Phnom Penh, February 2006.

¹⁸ According to the World Bank, poverty is much more prevalent amongst the rural population; Cambodia's overall rapid economic growth in recent years has been significantly less beneficial to those in rural areas, where over 90 percent of people living in poverty live.

¹⁹ *Sharing Growth: Equity and Development in Cambodia*, World Bank, Phnom Penh, June 2007, p. 64.

²⁰ *Ibid.*

²¹ *Oxfam GB - NGO Forum Land Dispute Database 1st report*, Oxfam GB, Phnom Penh, May 2005. (Unpublished draft.)

²² *Ibid.*

²³ NGO Forum on Cambodia now hosts the database and provided Amnesty International with the unpublished note *NGO Forum, Land Dispute Database Analysis*, 27 Aug 2007.

²⁴ *NGO Forum, Land Dispute Database Analysis*, 2007. (Unpublished, on file.)

²⁵ Central in the implementation of land reform is also Land Management and Administration Project (LMAP). The multi-donor project, managed by the Ministry of Land, is operational with land titling in around half of Cambodia's 24 provinces, while also supporting the land registration system.

²⁶ Disputes may be transferred to court if the disputing parties are not satisfied with the result of the Cadastral Commission. (Article 47)

²⁷ *Royal Decree, NorSar/RoKorTor/0206/097*, Phnom Penh, 26 February 2006, unofficial translation.

²⁸ *Poverty Reduction Strategy Papers (PRSPs): A Rough Guide*, The Bretton Woods Project, April 2003.

²⁹ *The Rectangular Strategy for Growth, Employment, Equity and Efficiency in Cambodia*, Royal Government of Cambodia, 2004.

³⁰ It is unclear precisely what such "eradication" would entail, but the government states that it will review "State land illegally occupied by private entities in contravention with the regulations and procedures."

³¹ The Habitat Agenda, the main political document that came out of the 1996 Habitat II conference in Istanbul, was adopted by 171 countries, including Cambodia, and contains commitments and recommendations on human settlements issues. Article 40 (n) states that states commit to "[p]rotecting all people from and providing legal protection and redress for forced evictions that are contrary to the law, taking human rights into consideration; when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided."

³² *Between poverty reduction strategy and national housing policy*, Discussion Paper, Meng Bunnarith, Council of Land Policy, MLMUPC, Phnom Penh, 2004.

³³ *Big Breakthrough*, 25 May 2003, Asian Coalition for Housing Rights.

³⁴ See *Final Draft National Housing Policy*, National Housing Policy Task Force (The Royal Government of Cambodia, Council for Land Policy), Phnom Penh, 24 July 2006.

³⁵ The Municipality of Phnom Penh has, according to the draft, the intention not to remove any existing settlements in the short-term.

³⁶ According to article 2 of the Sub-Decree on Economic Land Concession (December 2005) economic land concessions are a mechanism to grant state private land through a specific economic land concession contract to a concessionaire to use for agricultural and industrial-agricultural exploitation.

³⁷ Cf e.g. Ministry of Agriculture's public information on economic land concessions:

<http://www.maff.gov.kh/olc/objectives.html>. [Last visited on 25 August 2007]

³⁸ *Economic land concessions in Cambodia -- A human rights perspective*, Special Representative of the Secretary-General for Human Rights in Cambodia, June 2007, p.6.

³⁹ Article 5 (e) (iii).

⁴⁰ Article 14 (2)(h).

⁴¹ Article 27 (1) and (3).

⁴² Promulgated in 1993.

⁴³ These covenants and conventions include those to which Cambodia is a state party, *inter alia*, the [International Covenant on Civil and Political Rights \(ICCPR\)](#), the [ICESCR](#), the [Convention on the Rights of the Child \(CRC\)](#), [Convention on the Elimination of All Forms of Discrimination Against Women \(CEDAW\)](#) and the [International Convention on the Elimination of All Forms of Racial Discrimination \(ICERD\)](#).

⁴⁴ A General Comment is an authoritative interpretation of particular provisions of or aspects of an international human rights treaty by the body charged with monitoring its implementation. General Comments have been used as the basis for decisions taken by national courts in various countries.

⁴⁵ Committee on Economic, Social and Cultural Rights, General Comment 4: The right to adequate housing (art. 11 (1) of the Covenant), Sixth session, 13 December 1991, para. 18.

⁴⁶ The Human Rights Committee is the expert body mandated to oversee the implementation of the International Covenant on Civil and Political Rights (ICCPR).

⁴⁷ See Concluding Observations on Kenya, Report of the Human Rights Committee, UN Doc. A/60/40 (Vol. I) (2004-5), para. 86 (22).

⁴⁸ Committee on Economic, Social and Cultural Rights, General Comment 7: The right to adequate housing (art. 11 (1) of the Covenant): forced evictions; Sixteenth session, 20 May 1997, para. 3.

⁴⁹ E.g. the ICESCR, Art. 11 (1); CEDAW Art 14 (2) (h); the CRC, Art. 27 (3); and ICERD Art 5 (e)(iii).

⁵⁰ CESCR General Comment 7, para 15, 1997.

⁵¹ *Ibid*, para 13.

⁵² *Ibid*. para 16.

⁵³ CESCR General Comment 4,, para. 8(a).

⁵⁴ Basic Principles And Guidelines On Development-Based Evictions And Displacement, Annex 1 of the report A/HRC/4/18 of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living. http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf; (See Attachment 1 for text.)

⁵⁵ A sub-decree is a legislative document in the form of administrative order to implement and clarify specific provisions within Laws. Sub-Decrees tend to be drafted within the ministries; they are examined and adopted by the Council of Ministers and signed by the Prime Minister.

⁵⁶ State private land refers to one category of publicly owned land. Chapter 2 of the 2001 Land Law distinguishes between State **private** land, which may be transferred and utilised for social and economic development, and State **public** land, which is inalienable. (Emphasis added.)

⁵⁷ *Sub-Decree On Social Land Concessions*, 19 March, 2003, The Royal Government of Cambodia.

⁵⁸ Chapter 3, Part 2: Immovable Property of Indigenous Communities, especially Articles 26 and 28.

⁵⁹ CCPR, General Comment No. 25, "The right to participate in public affairs" UN Doc. CCPR/C/21/Rev.1/Add.7 (1996), para 5.

⁶⁰ General Comment 7 Forced evictions, and the right to adequate housing (art. 11, para. 1) [1997], para 13.

⁶¹ CESCR, General Comment 7, para 15.

⁶² Basic Principles and Guidelines on Development-Based Evictions and Displacement, A/HRC/4/18; emphasis added.

⁶³ See e.g. *Assisting Cambodia to Develop an Access to Information Policy Paper*, USAID 21 June 2007, http://phnompenh.usembassy.gov/usaaid_monasri_mou.html.

⁶⁴ See General Comment 9,

⁶⁵ ICCPR Article 2.3.

⁶⁶ Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 16.

⁶⁷ General Comment 4, paragraph 17.

⁶⁸ CESCR, General Comment 7, para 13.

⁶⁹ General Comment 7 in para 13.

⁷⁰ *Report of the Special Representative of the Secretary-General for human rights in Cambodia to the Human Rights Council*, UN Doc. A/HRC/4/36, 30 January 2007, para. 40.

⁷¹ Constitution of the Kingdom of Cambodia, Article 44; 2001 Land Law, Article 5.

⁷² See Articles 6(1) and 9(1), respectively.

⁷³ Principle 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

⁷⁴ UN Code of Conduct for Law Enforcement Officials, adopted by UN General Assembly resolution 34/169 of 17 December 1979, Article 3, Commentary.

⁷⁵ Article 10.

⁷⁶ *Ibid.*

⁷⁷ Article 18.

⁷⁸ See Article 19.

⁷⁹ Articles 26(3), 27 and 28.

⁸⁰ Cambodia ratified ICERD in November 1983.

⁸¹ General Recommendation No. 23 (General Comments): Indigenous Peoples, 1997.

⁸² CERD. Fifty-first session, 1997: "General Recommendation XXIII. Indigenous Peoples", para 5.

⁸³ 2001 Land Law, Chapter 3 -- Collective Ownership, Part 2: Immovable Property of Indigenous Communities.

⁸⁴ MRG, *State of the World's Minorities 2006*, p 127.

⁸⁵ E/CN.4/2005/111, para 50.

⁸⁶ A draft version from May 2007 entitles it "Sub-decree on Addressing Socio-Economic Impacts caused by Development Projects".

⁸⁷ *UN Experts appeal to respect human rights of Bassac residents in Phnom Penh, Cambodia*, The Secretary-General's Special Representative on human rights defenders, Hina Jilani, and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, 30 May 2006. [<http://cambodia.ohchr.org/Documents/Statements%20and%20Speeches/English/300.pdf>]

⁸⁸ *Tonle Bassac Community: A Case Study on Poverty Reduction and the Rectangular Strategy in Phnom Penh*, Cambodia Development Watch, Year 2, Issue 2, NGO forum, Phnom Penh, August 2006.

⁸⁹ *CLEC and LAC Represent Group 78 in the Tonle Bassac Land Dispute*, Press release by Community Legal Education Centre (CLEC), 16 June 2006. LAC stands for Legal Aid of Cambodia. Available at <http://www.clec.org.kh/hotnews.asp?oNID=1>. [Last visited 28 January 2008.]

⁹⁰ *Tonle Bassac Villagers to be evicted next week*, The Cambodia Daily, 5 June 2006.

⁹¹ *Cambodia: Poor families evicted from shanty town*; 4 May 2006.

⁹² *Ibid.*

⁹³ Article 52 the UNTAC Law.

⁹⁴ *3 Convicted of Inciting Tonle Bassac Riot*, The Cambodia Daily, 1 December 2007.

⁹⁵ *High Price of Land: The Deadly Eviction of Kbal Spean*, CHRAC -- Cambodian Human Rights Action Committee, August 2005.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ Report of the Special Rapporteur on Adequate Housing, Miloon Kothari, *Mission to*

Cambodia, E/CN.4/2006/41/Add.3, 21 March 2006.

⁹⁹ *Land issues in the Poipet area*, The NGO Forum on Cambodia, 2005.

¹⁰⁰ *High Price of Land*, CHRAC, August 2005.

¹⁰¹ *Police Shoot 5 Poipet Protestors*, The Cambodia Daily, 22 March 2005.

¹⁰² *High Price of Land*, CHRAC, August 2005.

¹⁰³ *CPP Honorary President Condemns Poipet Killings*, The Cambodia Daily, 24 March 2005.

¹⁰⁴ *High Price of Land*, CHRAC, August 2005.

¹⁰⁵ Report of the Special Rapporteur on Adequate Housing, Miloon Kothari, *Addendum: Mission to Cambodia*, E/CN.4/2006/41/Add.3, 21 March 2006.

¹⁰⁶ *High Price of Land: The Deadly Eviction of Kbal Spean*, CHRAC -- Cambodian Human Rights Action Committee, August 2005.

¹⁰⁷ *Villagers protesting eviction gunned down*, Phnom Penh Post, Issue 14/06, 8 - 23 Apr 2005.

¹⁰⁸ The village is also called Spean Ches, which translates to Burning Bridge.

¹⁰⁹ Within the domain of publicly owned land, Chapter 2 of the 2001 Land Law distinguishes between State private property, which may be transferred and utilised for social and economic development, and State public property, which is inalienable. Within the domain of private ownership, the Law recognises e.g. individual ownership (Chapter 1) and collective ownership of Indigenous communities (Chapter 3, part 2).

¹¹⁰ See also *Illegal forced eviction of 105 families in Sihanoukville Fact Sheet*, Licadho, July 2007.

¹¹¹ "Provisions Relating To The Judiciary And Criminal Law And Procedure Applicable In Cambodia During The Transitional Period" The Supreme National Council, Decision of September 10, 1992.

¹¹² *Nine Convicted, Five Acquitted in Trial of Sihanoukville Villagers*, The Cambodia Daily, 5 July 2007.

¹¹³ *Sentences of Sihanoukville Villagers Are Appealed*, The Cambodia Daily, 11 July 2007.

¹¹⁴ Its full name reads: Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms".

¹¹⁵ See e.g. *Assassination of human rights defender Mr. Seng Sarom*, The Observatory for the Protection of Human Rights Defenders, 9 July, 2007.

¹¹⁶ With a population of around 24,500 the Indigenous Phnong who live in the Cambodian eastern highlands constitute 54 percent of the population in Mondulkiri province. Cambodia's 17 indigenous groups account for 0.9 percent of the total population, according to the 1998 population census, although this is believed to be an underestimation. NGO Forum on Cambodia, for example, assesses the true number to be 1.4 percent. (See e.g. *Indigenous Peoples in Cambodia*, NGO Forum on Cambodia, April 2006.)

¹¹⁷ *Land concessions for economic purposes in Cambodia - A human rights perspective*, Special Representative of the Secretary-General for Human Rights in Cambodia, Nov 2004 (Annex: *Wuzhishan L.S. Group - A Pine Tree Plantation in Mondulkiri Province*, June 2005).

¹¹⁸ The area affected is mostly within O'Reang district, in particular Dak Dam and Sen Monorom communes.

¹¹⁹ See e.g. *Rethinking Poverty Reduction to Protect and Promote the Rights of Indigenous Minorities in Cambodia - A Human Rights Approach to Land and Natural Resources Management*, NGO Forum on Cambodia, April 2005.

120 *Special Representative, Peter Leuprecht, calls for the cancellation of the land concession to Wuzhishan L.S Group in the province of Mondulkiri.* Cambodia Office of the High Commissioner for Human Rights, 5 July 2005; [http://cambodia.ohchr.org/download.aspx?ep_id=224].

121 At the time of writing this report, there has been no negotiated settlement in the case. Such geographic and political lack of clarity leaves the community at risk of further violations of their land rights. Indeed some reports suggest that two further 100,000 hectare land concessions are being discussed or may have already been agreed in the north-eastern parts.

122 The report, *Cambodia's Family Trees*, portrays the involvement of high-ranking government officials, an elite military unit and other members of the armed forces in the structures of illegal logging operations, http://www.globalwitness.org/media_library_detail.php/546/km/cambodias_family_trees.

123 *Global Witness Decries Report Ban: Probe Ordered*, The Cambodia Daily, 5 June 2007.

124 *Cambodian officials respond to Global Witness report with ban and threat of violence*, Global Witness, 6 June 2007.

125 Human Rights Situation Report 2005, ADHOC Fifth Annual human Rights Report, March 2006.

126 Human Rights Situation Report 2006, ADHOC Sixth Annual human Rights Report, March 2007.

127 *Concerns over the arrests and detentions due to the land disputes*, Cambodian Human Rights Action committee and The NGO Forum on Cambodia, Public statement, 7 November 2007, states that 121 land activists were arrested between January and October 2007.

128 Human Rights Situation Report 2005, ADHOC Fifth Annual human Rights Report, March 2006; *Human rights in Cambodia: The Charade of Justice*, Licadho, December 2007.

129 *Cambodia "suffering land crisis"*, BBC, 2 September 2005, available at http://news.bbc.co.uk/1/hi/world/ukfs_news/hi/newsid_4207000/4207138.stm. [Last visited 28 January 2008.]

130 See, for instance, Article 14(1) of the ICCPR.

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HUMAN RIGHTS IN CAMBODIA: THE CHARADE OF JUSTICE

A LICADHO Report
December 2007



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LICADHO

CAMBODIAN LEAGUE FOR THE PROMOTION
AND DEFENSE OF HUMAN RIGHTS

Cambodian League for the Promotion and Defense of Human Rights (LICADHO)

LICADHO is a national Cambodian human rights organization. Since its establishment in 1992, LICADHO has been at the forefront of efforts to protect civil and political, and economic and social, rights in Cambodia and to promote respect for them by the Cambodian government and institutions. Building on its past achievements, LICADHO continues to be an advocate for the people and a monitor of the government through wide ranging human rights programs from its main office in Phnom Penh and 12 provincial offices.

LICADHO pursues its activities through its seven program offices:

- The Monitoring Office investigates human rights violations and assists victims in the legal process. Specially trained staff also monitor 18 prisons to assess prison conditions and ensure that pre-trial detainees have access to legal representation.
- The Medical Office provides medical assistance to prisoners and prison officials in 18 prisons and provides medical care and referrals to hospitals for victims of human rights violations.
- Project Against Torture provides comprehensive rehabilitation services to victims of torture and conducts advocacy against torture.
- The Children's Rights Office educates the public on children's rights, creates child protection networks at the grassroots level, and investigates children's rights violations.
- The Women's Rights Office educates the public about women's rights, investigates women's rights violations and advocates for social and legal changes.
- The Advocacy, Documentation and Resource Office compiles case files into a central electronic database, so that accurate information can be easily accessed and analyzed.

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Contents

1.	INTRODUCTION.....	1
2.	THE COURTS AND POLITICS.....	2
	TIMELINE: POLITICS AND PROSECUTIONS.....	4
	BEGGING YOUR PARDON: POLITICIANS BEFORE THE COURTS.....	5
3.	THE COURTS AND FREEDOM OF EXPRESSION.....	7
4.	THE COURTS AND IMPUNITY.....	9
	IMPUNITY IN ACTION: SAMPLE CASES SINCE MARCH 2006.....	11
	THE APPEAL COURT HEARING OF BORN SAMNANG AND SOK SAM OEUN.....	16
5.	THE COURTS AND ECONOMIC INTERESTS.....	18
	THE BOEUNG PRAM LAND DISPUTE.....	20
6.	THE COURTS AND CORRUPTION.....	22
7.	THE COURTS AND DETENTION.....	23
8.	KHMER ROUGE TRIBUNAL: A MODEL COURT?.....	25
9.	THE COURTS AND REFORM.....	27
10.	RECOMMENDATIONS.....	29

1. Introduction

The Cambodian justice system has failed. Despite the UNTAC intervention and 15 years of aid to legal and judicial reform, in 2007 the primary functions of the courts continue to be to:

- Persecute political opponents and other critics of the government
- Perpetuate impunity for state actors and their associates
- Protect the economic interests of the rich and powerful

During a visit to Cambodia last year, the UN High Commissioner for Human Rights, Louise Arbour, described court reform as “the single most important area” in which the country needs to make progress. Yet despite repeated public pledges by the Royal Cambodian Government of its commitment to judicial and legal reform, and millions of dollars invested by foreign donors in reform programs since 1992, there has been no progress whatsoever in the single most important issue affecting the courts: their lack of independence from political and financial influence.

There is no reason to believe the Cambodian government is serious about improving the country’s courts, given the extremely slow progress made over the past 15 years. It is unlikely that meaningful reforms will come without greater efforts by Cambodia’s donors to hold the government to its promises.

While legal and judicial reform is invariably touted as a key component of donor support to Cambodia, the donor community remains focused upon short-term, material indicators of progress. They consistently ignore what is actually happening in the Cambodian courts on a daily basis: where existing legislation is routinely ignored, and training courses routinely forgotten, as soon as political or financial influences come into play.

The donor community needs to wake up. It needs to recognize that while reform of the courts is undoubtedly in the best interests of the Cambodian people, it is not seen by the Cambodian government as being in its best interests. Donors need to stop measuring success by laws passed, courses conducted and courtrooms renovated, and start measuring success by the actual actions of the courts in enforcing the rule of law on a day-to-day basis.



Kompong Chhnang Provincial Court

Strengthening rule of law is, and should be seen by donors as being, essential to Cambodia’s economic, social and democratic development. The lack of progress to date seriously negates the effectiveness of donors’ aid programs as a whole, and their objectives in a host of areas - health, education, poverty reduction, economic growth, political stability.

This report examines the performance of the Cambodian judiciary since the Consultative Group (CG) donor meeting of 2-3 March 2006. It seeks to point out patterns in injustice and impunity, highlight the Cambodian government’s ongoing lack of tangible action to promote rule of law, and to urge the international community to revise its strategies in assistance to legal and judicial reform.

2. The Courts and Politics

On February 10, 2006, opposition leader Sam Rainsy arrived back in Cambodia after a year in exile. Five days earlier he had been pardoned of an 18-month prison sentence handed down by the Phnom Penh court for supposedly defaming Prime Minister Hun Sen and Funcinpec President Prince Norodom Ranariddh. His deputy Cheam Channy had also been pardoned after a year of unlawful imprisonment by the military court,¹ and five detained human rights activists had been released on bail a few weeks beforehand. Rainsy hailed the developments as "a new chapter in Cambodian history", while the international community lined up to praise the Prime Minister's actions, and to deny that they were linked to the donor meeting scheduled for March 2-3. As US Ambassador Joseph M. M. M. put it, "Hun Sen couldn't be nice and democratic in front of one CG meeting and then revert back a few months later."²

In reality, it took only a few weeks.

The relationship between the Prime Minister's Cambodian People's Party (CPP) and the Funcinpec party deteriorated rapidly after the return of Rainsy. A joint call by the CPP and the Sam Rainsy Party (SRP) to reduce the two-thirds majority required to form a government was met with little enthusiasm from minority coalition partner Funcinpec, who stood to lose their toehold in power. In a speech on February 26, Hun Sen then launched a blistering attack on Funcinpec, before threatening to crack down on unnamed officials who spent money on mistresses. He said that the CPP was drafting a law to prosecute such officials, adding that the Funcinpec Minister of Women's Affairs was afraid to draft the law, as it would anger officials in her own party. The Prime Minister's stated intention was to "erase" the mistresses "just like a slap"³. While the Prime Minister later denied to Prince Norodom Ranariddh that the remarks were a personal attack,⁴ they marked the beginning of yet another series of politically-motivated prosecutions.

As the 2006 CG meeting commenced on March 2, the National Assembly passed the constitutional amendments to establish a 50%+1 formula for government formation, and Hun Sen fired Funcinpec's co-ministers of Interior and Defense. The following day Prince Ranariddh resigned as National Assembly President, and over the following months, numerous Funcinpec officials were removed from their posts, while the Prime Minister continued a barrage of public criticism against the party and its leader.

On September 1, the National Assembly passed the law outlawing adultery, which sets forth penalties of up to one year in prison for Cambodians caught cheating on their spouses. CPP National Assembly President Heng Samrin defended the law as being aimed at "protecting unity, strengthen harmony and mutual respect between a husband and the wife"⁵, which contrasted with the Prime Minister's earlier declaration that it was aimed at public officials.

¹ The UN Working Group on Arbitrary Detention found that under Cambodian and international law, the Military Court had no jurisdiction over Cheam Channy, a civilian. See *UN Rules Against Imprisonment of Cheam Channy*, FIDH, January 12, 2006.

² Charles McDermid, *Brave new political world unfolds*, Phnom Penh Post, February 24 - March 9, 2006.

³ Yun Samean & Samantha Melamed, *PM Threatens Crackdown on Mistresses*, The Cambodia Daily, February 27, 2006

⁴ Yun Samean, *PM Phoned Prince To Say Attacks Not Personal*, The Cambodia Daily, March 27, 2006.

⁵ Yun Samean, *Assembly May Make Adultery Illegal Today*, The Cambodia Daily, August 30, 2006.

With rapidly widening schisms evident in Funcinpec, Prince Ranariddh was removed from his position as President on October 18. One month later he announced the launch of the Norodom Prince Ranariddh Party (NRP). And one month later still, he was charged by the Phnom Penh Municipal Court with breach of trust, relating to alleged illegalities in the sale of Funcinpec's former headquarters. The property had been sold in 2005 to the son-in-law of CPP spokesman and politburo member Cheam Yeap.⁶

On March 13, 2007, Prince Ranariddh was convicted in absentia by the Phnom Penh court and given 18 months imprisonment - the same sentence handed down to Rainsy 15 months earlier (although Prince Ranariddh was additionally fined \$150,000 compared to Rainsy's \$14,000). Trial judge Sao Meach was criticized for limiting the testimony and cross-examination of defense witnesses, as well as for returning with a written verdict after just 10 minutes of deliberation. The hearing was condemned by observers including the US Embassy, which expressed serious concerns about the trial's legitimacy.⁷

Prince Ranariddh's conviction came just three days before the start of the 2007 Commune Election campaign started, with the NRP obviously disadvantaged by the exile of its leader, as well as further legal attacks. On the eve of the campaign, NRP Acting President Norodom Chakrapong was summoned to the Phnom Penh court for questioning about an alleged debt to the Finance Ministry. Three days later, the court announced that Prince Ranariddh had also now been charged with adultery.⁸ Prince Ranariddh was the first person known to have been charged under the adultery law, and it is hard to escape the conclusion that it was enacted for the primary purpose of further persecuting him.⁹ At the same time, the law is available to be used at whim against other political opponents of the CPP in the future.

While both Funcinpec and the NRP fared poorly in the Commune Elections, the NRP emerged with 425 seats to Funcinpec's 274, despite the absence of Prince Ranariddh. It was little surprise that Funcinpec later offered to try and secure a pardon for Prince Ranariddh if he agrees to disband the NRP and rejoin his former party. Prince Ranariddh refused.¹⁰ In October, the Appeal Court rejected Prince Ranariddh's appeal against his conviction for breach of trust. During the hearing, prosecutor Ngeth Sarath implicitly acknowledged the political motivation behind the case by noting: "If there were no split in the [Funcinpec] party, there would also be no lawsuit."¹¹ Soon after the Appeal Court decision, Funcinpec once more offered that Prince Ranariddh's legal problems would disappear if he rejoined the party; "When he returns to Funcinpec, the grief will be finished," a party spokesman said.¹² To date, Prince Ranariddh has refused to close down the NRP and join Funcinpec once more, but continues to seek a Royal pardon.

Recent Cambodian history is replete with examples of senior politicians being convicted in highly dubious trials, only to be pardoned at a later date as part of a political deal. This routine use of the courts as a tool of political oppression - and of pardons being granted or not granted by the government based on purely political considerations - sends the message that the rule of law does not matter in Cambodia.

⁶ Yun Samean, *Funcinpec Refusing To Hand Over Headquarters*, The Cambodia Daily, November 1, 2007.

⁷ Yun Samean & Elizabeth Tomei, *Court Sentences Prince Ranariddh to 18 Months in Jail*, Cambodia Daily, March 14, 2007.

⁸ Yun Samean, *Court Charges Prince Prince Ranariddh With Adultery*, The Cambodia Daily, March 19, 2007.

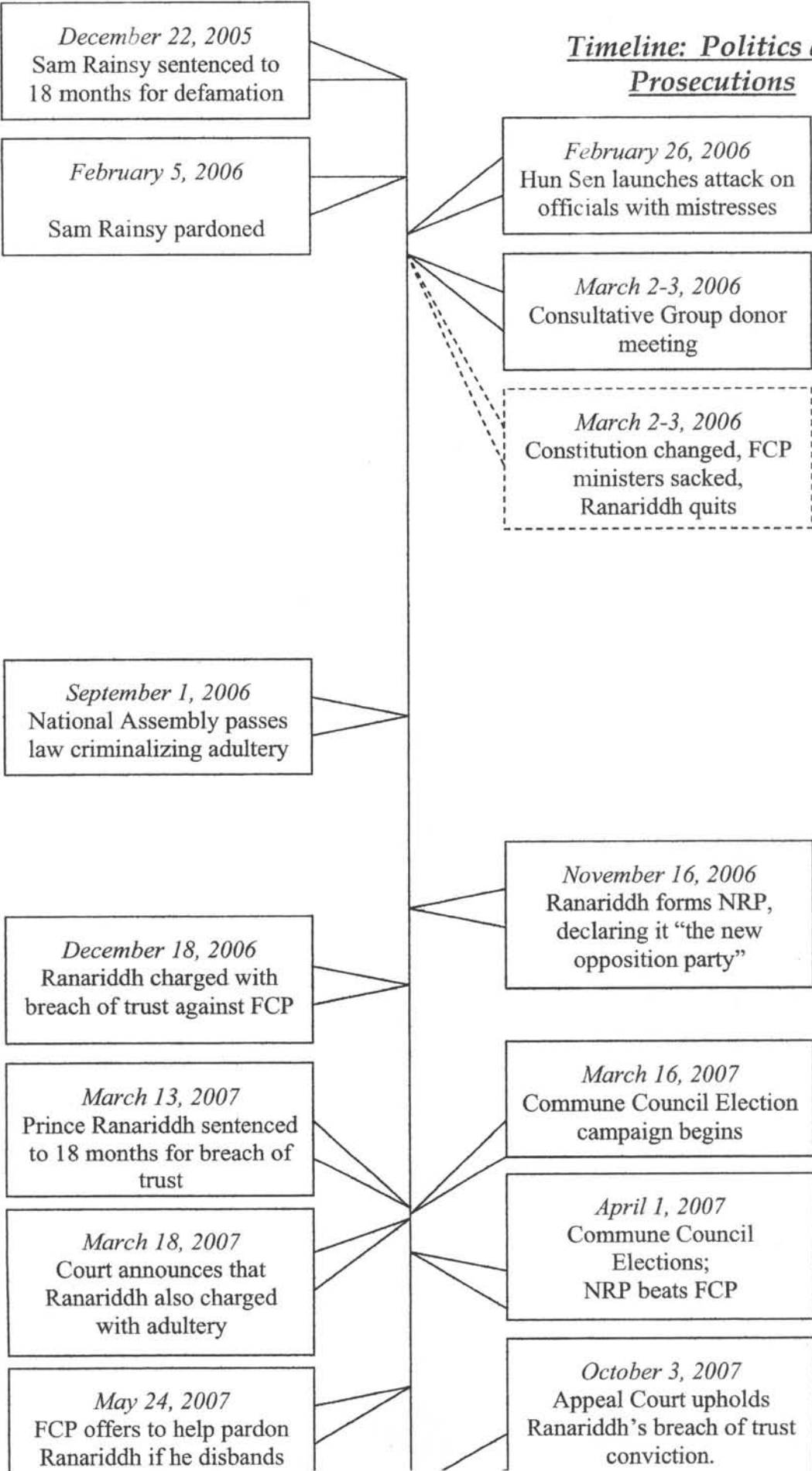
⁹ At time of writing of this report, the adultery case against Prince Ranariddh had not yet gone to trial but remained pending - able to be sent to trial at any time. Meanwhile, former Funcinpec Secretary of State Khek Ravy, a relative of Prince Ranariddh, became the first person to be convicted under the adultery law. See Fergal Quinn & Lam Bopha, *Adultery Law Claims First Conviction*, The Cambodia Daily, October 30, 2007.

¹⁰ Yun Samean, *Funcinpec Offers to Back Amnesty Bid for Prince*, The Cambodia Daily, May 25, 2007.

¹¹ Yun Samean, *Appeal Court Upholds Ranariddh Conviction*, The Cambodia Daily, October 4, 2007.

¹² Yun Samean, *Ranariddh Asks King Father For Clemency in Conviction*, The Cambodia Daily, October 17, 2007.

Timeline: Politics and Prosecutions



Begging Your Pardon: Politicians before the Courts

WHEN	VICTIM	PROSECUTION	WHAT HAPPENED NEXT?
February 1996	Prince Norodom Sirivudh, then Secretary General of Funcinpec.	Sirivudh was convicted <i>in absentia</i> by the Phnom Penh Municipal Court of plotting to kill Hun Sen, and sentenced to 10 years imprisonment. He had been arrested in November 1995, but allowed to leave the country after undertaking to live in exile, to have no involvement in politics, and not to join any movement with Sam Rainsy. ¹³	Sirivudh was pardoned in November 1998, as part of a deal between CPP and Funcinpec to form a coalition government. He returned to Cambodia the following year, and went on to be appointed Deputy Prime Minister and co-Minister of the Interior.
September 1997	Srun Vong Vannak, security chief of the Khmer Nation Party (precursor to the Sam Rainsy Party).	Vannak was convicted by the Phnom Penh Municipal Court of murdering Kov Samuth, a brother-in-law of Hun Sen, and sentenced to 13 years imprisonment. He had been arrested in February 1997.	Vannak was pardoned in September 1998 after one and a half years in jail. He is now an Undersecretary of State at the Ministry of Interior.
March 1998	Prince Norodom Prince Ranariddh, then Prime Minister and leader of Funcinpec.	Prince Ranariddh was convicted <i>in absentia</i> by the Military Court of conspiring to overthrow the government, and sentenced to 30 years imprisonment, as well as fined \$54m for damage caused in the coup that ousted him the previous year.	Prince Ranariddh was pardoned three days after his trial. He returned to Cambodia, led Funcinpec in the 1998 national elections, formed a coalition with the CPP and was appointed President of the National Assembly.

¹³ Cambodia - Diminishing Respect for Human Rights. Amnesty International. May 1996

March 1998	Funcinpec generals Nhek Bun Chhay, Serei Kosal and Chao Sambath - although Sambath had been extra judicially executed in July 1997. ¹⁴	Bun Chhay, Kosal, and the late Sambath were convicted <i>in absentia</i> by the Military Court of conspiring to overthrow the government, and sentenced to 20 years imprisonment.	Bun Chhay and Kosal were pardoned in November 1998, as part of a deal between CPP and Funcinpec to form a coalition government. Nhek Bun Chhay went on to be appointed co-Minister of National Defense.
August 2005	Cheam Channy, leading parliamentarian for the Sam Rainsy Party.	Channy was convicted by the Military Court of forming an illegal armed force, and sentenced to 7 years imprisonment.	Channy was pardoned in February 2006, together with Sam Rainsy (see below). He has returned to politics.
December 2005	Sam Rainsy, leader of SRP.	Rainsy was convicted <i>in absentia</i> by the Phnom Penh Municipal Court of defaming Hun Sen and Norodom Prince Ranariddh, and sentenced to 18 months imprisonment.	Rainsy was pardoned in February 2006 after writing a letter of regret to Hun Sen, then dropping a US lawsuit against him relating to the 1997 grenade massacre. ¹⁵ One month later the SRP supported constitutional changes that effectively negated the role of Funcinpec in government.
March 2007	Prince Norodom Ranariddh, now president of the newly-formed NRP.	Prince Ranariddh was convicted <i>in absentia</i> by the Phnom Penh Municipal Court of breach of trust, and sentenced to 18 months imprisonment.	?

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¹⁴ Cambodia: Military Court Summons Dead Man To Trial, Amnesty International, 17 March 1998

¹⁵ The lawsuit had been filed in 2005 by Rainsy, two other Cambodian plaintiffs and Ron Abney, a U.S. citizen injured in the grenade attack, under the Alien Tort Claims Act and the Torture Victims Protection Act.

3. The Courts and Freedom of Expression

Following the outcry over the conviction of Sam Rainsy on defamation charges and the detention of human rights activists on charges of both defamation and incitement, Prime Minister Hun Sen stated his intention to decriminalize defamation in the run-up to the March 2006 Consultative Group meeting.¹⁶ To date defamation has not been decriminalized. Although, the National Assembly voted on May 26, 2006 to remove prison sentences for defamation, it remains a criminal offence for which people can be arrested, and subject to fines of up to \$2,500 in addition to compensation. Defamation cases continue to be brought, arrests made and victims detained - in most cases for allegedly defaming or insulting individuals close to the government. Examples since March 2006 include:

- **Julio Jeldres**, biographer to retired King Norodom Sihanouk, was convicted in absentia of defaming Hun Sen by the Phnom Penh court on September 15, 2006. He was ordered to pay \$2,000 in fines and \$2,500 in compensation. Jeldres had been quoted in a newspaper as saying "As you know, every time Prime Minister Hun Sen makes a threat, someone gets killed or wounded by unknown gangsters." His defense claimed that the quote was sent in an email that was not intended for publication. Prosecutor Sok Roeun stated that the email was still defamatory because it was sent to many people.
- **Sihanoukville customs official Prak Chanthy** was sentenced by the Phnom Penh court in May 2007 to eight days' imprisonment (which had already been served) and five months probation for "insulting" the wife of Supreme Court President Dith Munty in 2002. The supposed insult took place in a telephone call between the two, and even the trial judge admitted that he did not know what was said. "Insult" remains included within the defamation provisions of the criminal code.¹⁷
- **Mo Ravy of Phnom Penh** was arrested on May 15, 2007, for supposedly insulting CPP parliamentarian Ney Pena. She was detained by police for two nights, then questioned by the Phnom Penh court and held for a further night. Ney Pena told the media that when Ravy and her husband insulted him in a domestic dispute, he called directly to Hok Lundy, General Director of National Police, to have them arrested. He later said that the couple regretted insulting him as "they didn't know who I was".¹⁸

In addition, some observers had feared that the softening of the penalties for defamation might result in an increased use of the charge of Disinformation from the same law, for which prison sentences of up to three years can still be applied. Unfortunately, this prediction appears to have been borne out.

- **Three Khmer Kampuchea Krom activists** were detained in September 2006, charged by the Phnom Penh court with disinformation for allegedly distributing leaflets critical of Hun Sen. In February 2007, the three were convicted and sentenced to six months' imprisonment (which they had served in pre-trial detention), and released.

¹⁶ Yun Samean, *Hun Sen: Defamation Should Be Decriminalized*, The Cambodia Daily, February 15, 2006.

¹⁷ Prak Chan Thul, *Man Convicted Of Insulting Judge's Wife*, The Cambodia Daily, May 3, 2007.

¹⁸ Prak Chan Thul, *Lawmaker Claims Couple Abused, Threatened Him*, The Cambodia Daily, 18 May 07; *Couple Publicly Apologizes For Insulting Gov't Official*. The Cambodia Daily. 22 May 2007.

- **Also in September 2006, Dam Sith, editor-in-chief of Moneaksekar Khmer newspaper** was convicted in absentia by the Phnom Penh court for both disinformation and defamation, following his publication of an article accusing Deputy Prime Minister Sok An of involvement in corruption. He was fined \$2,000 for disinformation and ordered to pay \$2,500 compensation to Sok An.¹⁹
- **In June 2006, You Saravuth, editor of Sralanh Khmer newspaper,** was sued for disinformation by Hun To, a nephew of Hun Sen. Saravuth fled the country and applied for political asylum after allegedly receiving a death threat.²⁰ In February 2007, the new editor of Sralang Khmer was summoned to Phnom Penh court for questioning on alleged disinformation and insults against Chiv Keng, the court director.²¹
- **The most serious abuse of the disinformation law in this period concerned Teang Narith,** a law and politics lecturer at Sihanouk Raj Buddhist University in Phnom Penh. Narith was unlawfully arrested on September 4, 2006, after teaching from a self-written book that was highly critical of Hun Sen personally and the government as a whole, accusing them of a range of crimes. After claims that Narith was suffering from a serious mental illness, the Phnom Penh Municipal court requested a psychiatric evaluation of him and a team of three psychiatrists was assigned to assess him. Leading the team was Ka Sun Baunat, director of the faculty of medicine at the University of Health Sciences and a senior advisor to CPP and Senate President Chea Sim. Baunut confirmed that he had filed a report to the Health Ministry, to be forwarded to the court, yet the report was not made available to Narith's defense lawyer, and requests for a new evaluation were denied.²² On February 28, 2007, Narith was sentenced to two years and six months imprisonment, and fined \$1,250. The report on his mental health has still not been made available.²³

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¹⁹ CAMBODIA: A journalist convicted for exposing alleged corruption of the deputy prime minister, AHRG, September 22, 2006

²⁰ Editor, in exile due to death threats over critical article, granted asylum in Thailand, SEAPA/IFEX press release, September 15, 2006.

²¹ Prak Chan Thul, *Phnom Penh Court Sues Newspaper, Editor Says*, The Cambodia Daily, December 2, 2007

²² Prak Chan Thul, *Teacher Denied New Psych Exam By Court Judge*, The Cambodia Daily, December 6, 2006

²³ Prak Chan Thul, *Lecturer Jailed Over Text That Criticized Gov't*. The Cambodia Daily. March 1. 2007.

4. The Courts and Impunity

The impunity enjoyed by powerful perpetrators of serious crimes remains the most pervasive evil affecting Cambodia today. As the UN Secretary General's Special Representative for Human Rights in Cambodia wrote in his 2006 report to the Human Rights Council, "Impunity means that Cambodia's citizens are not protected by law... With impunity there is no protection of human rights. Impunity is the opposite of accountability and the antithesis of the rule of law."²⁴

The grenade attack on a demonstration led by Sam Rainsy on March 30, 1997 remains perhaps the most notorious example of impunity in post-war Cambodia. At least 16 people were killed, and many others maimed. No one has been prosecuted for the attack, which continues to have ramifications to the present day. A lawsuit against Hun Sen for the massacre filed in a New York court by Rainsy and three others was dropped when Rainsy was pardoned in February 2006 for an 18-month defamation sentence, which in turn had partly resulted from his attempts to see the attack prosecuted. Most recently, the Phnom Penh municipality ordered the removal of a memorial to the victims of the attack as part of a "development" plan for the park in which it stands, close to the scene of the attack opposite the National Assembly.²⁵ National Assembly president Heng Samrin (CPP) said that the memorial should be moved because it "affects the tourists".²⁶



Born Samnang and Sok Sam Oeun being ushered away after their long-awaited appeal hearing

Numerous other murders in recent years remain unprosecuted or unsatisfactorily prosecuted. There is overwhelming evidence to show that the men convicted of killing union leader Chea Vichea in January 2004 are not guilty (see page 16), and serious concerns exist regarding the prosecutions in the murders of Funcinpec politician Om Radsady in February 2003 and union activist Ros Sovannareth in May 2004. There also remain many high-profile assassinations for which no one has been prosecuted at all, including that of singer Piseth Pileka in July 1999, leading monk Sam Bunthoeun in February 2003, Funcinpec-affiliated radio journalist Chour Chetharith in October 2003 and most recently union leader Hy Vuthy in February 2007.

Impunity is also evident on a daily basis in the actions of powerful people who commit serious crimes, but escape punishment, often after paying financial compensation to the victims or their families. Questioned about such cases, the courts and police typically blame each other. Courts often claim that they are unable to take action without a police report or a complaint from the victim. However, under Cambodian law prosecutors are obliged to investigate any crime that comes to their attention even if they have not been informed by the police or there is no formal complaint.²⁷

²⁴ Yash Ghai, Report of the Special Representative of the Secretary-General for human rights in Cambodia, A/HRC/4/36, January 30, 2007

²⁵ Yun Samean, *Grenade Memorial Won't Be Part of Assembly Park*, The Cambodia Daily, June 7, 2007.

²⁶ Yun Samean & Lor Chandara, *Grenade Attack Memorial Should Be Moved*, The Cambodia Daily, June 1, 2007.

²⁷ Law on Criminal Procedure (1993), Article 56; Ministry of Justice circular to prosecutors (1998). There is a similar but less explicit provision in the new Criminal Procedure Law (2007), which requires (Art. 44) prosecutors to open investigations in any case of a crime.

This does not, of course, excuse the police from their own responsibilities. Responding to a string of cases in 2006-07 where members of the police and armed forces went unpunished for off-duty violent crimes, Interior Ministry spokesman Lieutenant General Khieu Sopheap said that when a crime does not result in death, the suspects and victims sometimes choose to "compromise". "As the police, when the victim agrees [to compensation], we cannot interfere," he said, adding that prosecuting perpetrators is the responsibility of the courts.²⁸ In fact, by law, a criminal offense may not be settled out of court by any arrangement. Non-compliance with this principle should be considered a miscarriage of justice and result in disciplinary measures and criminal action against the officials involved.²⁹

There have been a very few cases in the past 15 months of officials being successfully prosecuted for serious alleged wrongdoings. Mostly notably, former Phnom Penh police commissioner Heng Pov and many of his subordinates were recently convicted of a range of crimes, including the killing of Judge Sok Sethamony in 2003.³⁰ If the allegations against Pov and his men are true, then the convictions are welcomed and long overdue. However, with such prosecutions clearly the exception rather than the rule, there is little to suggest that they represent any genuine attempt to end impunity; observers have noted that Pov was only prosecuted after a very public fall from government favor, thus perpetuating the principle that those who remain in power remain immune.³¹

For example, on July 21, 2006, six of Pov's subordinates were sentenced to 12 years imprisonment each for allegedly torturing a woman to death in police custody in June 2005, a case in which Pov was also implicated.³² By contrast, repeated attempts to bring three Prey Veng province policemen to trial for allegedly beating robbery suspect Eath Oeurn to death in July 2001 remain unsuccessful - a hearing scheduled for February 8, 2007, was postponed as the suspects, who remain in their positions, were "too busy" to attend the court.³³

It is a defining characteristic of modern Cambodia that state officials, their relatives and others under their protection still commit serious crimes, safe in the knowledge that they will go unpunished.

²⁸ Chhay Channyda & Elizabeth Tomei, *Singer Survives Shooting; Police Make No Arrests*, The Cambodia Daily, February 26, 2007.

²⁹ Law on Criminal Procedure (1993), Article 7. The new Criminal Procedure Law (2007) maintains this principle, stating (Article 75) that judiciary police may not close a criminal case, even if there has been reconciliation between the perpetrator and victim or if a complaint has been withdrawn.

³⁰ Sothea Tith, *Heng Pov Sentenced in Absentia to 18 Years in Jail*, VOA News, 18 September, 2006

³¹ Cat Barton, *Crooked cop or whistle-blower*, Phnom Penh Post, August 11-24, 2006.

³² *Video Tape Shows Presence of Heng Pov during Torture of Duong Sopheap before She Died*, Moneaksekar Khmer, January 3, 2007, translated in The Mirror, January 3, 2007.

³³ Prak Chan Thul, *Policemen Charged with Murder 'Too Busy' for Trial*. The Cambodia Daily. February 9, 2007.

Impunity in Action: Sample Cases since March 2006

DATE	DETAIL	PROSECUTION
17 March 2006	While attending a wedding in Phnom Penh, police officer Kim Vanthon shoots the groom in the chest in a dispute over sauce, seriously injuring him. Municipal Police Commissioner Touch Naruth says the perpetrator will be punished by unspecified "police discipline". ³⁴	None known.
29 March 2006	Kandal villager Pao Rom dies in police custody with injuries suggesting torture. A police committee report concluded she committed suicide, but her body was observed to have serious bruises, burns and internal injuries. ³⁵ Police later informed LICADHO that three officers had been given unspecified "administrative punishment". ³⁶	None known.
29 March 2006	Kandal villager Khat Thoeun dies in police custody with injuries suggesting serious torture. Police claim the death resulted from a mob attack, but witnesses said he was not seriously injured prior to his arrest. ³⁷ Police later informed LICADHO that one officer had been reassigned to a police personnel office. ³⁸	A civilian was briefly arrested in the killing, then released. No action known against any police officer.
3 April 2006	Eight-month-pregnant robbery suspect Khem Nim was allegedly shackled and kicked in the face and stomach by a commune police chief. The suspect was transferred to Pursat provincial police headquarters while the case was investigated. ³⁹ The victim was later paid \$625 and withdrew her complaint. ⁴⁰	The case was closed after the victim withdrew her complaint.
13 April 2006	An unnamed RCAF officer shoots a karaoke singer in the hand in a Phnom Penh nightclub. Municipal Police Commissioner Touch Naruth later claims the gun accidentally fired when the officer was spinning it around his finger, and that he is receiving "punishment". The victim was paid \$3,500 in compensation. ⁴¹	None known.

³⁴ Saing Soenthrith, *Groom Shot After Guest Denied Condiment*, The Cambodia Daily, March 19, 2006.

³⁵ Kuch Naren, *Deaths of 2 in Police Custody Being Investigated*, The Cambodia Daily, April 3, 2006.

³⁶ Unpublished LICADHO monitoring report, May 1, 2006.

³⁷ Kuch Naren, *Death of Bicycle Thief Probed, Police Deny He Was Tortured*, The Cambodia Daily, April 7, 2006.

³⁸ Unpublished LICADHO monitoring report, October 3, 2006.

³⁹ Lor Chandara, *Police Chief Transferred While Beating Charge is Probed*, The Cambodia Daily, April 11, 2006.

⁴⁰ Unpublished LICADHO monitoring report, 2006.

⁴¹ Prak Chan Thul & Whitnev Kvasaer. *Officers Won't Be Charged in Karaoke Shooting*. The Cambodia Daily. April 19, 2006.

14 April 2006	Tuy Sopheak, son of the secretary of state for Rural Development, injures two people in a hit-and-run. He drives the government-owned SUV for a further 2km before being stopped by their motorbike, which is still jammed underneath the car. He is detained but released after one hour. He later offers \$1,500. ⁴²	None known.
23 April 2006	Two men, reportedly members of Hun Sen's bodyguard unit, are shot dead in Kandal. Police claim that they were killed by fellow guards in a dispute over a beer promotion girl. Kandal deputy police chief Kim Rith explains that "they are RCAF soldiers, the victims' commanders will handle this case by themselves". ⁴³	None known.
26 April 2006	Two soldiers from RCAF's Brigade 70 shoot a Phnom Penh beer promotion girl in the foot for being too slow to bring them ice. They are arrested by military police but released hours later by their commander. A representative of the commander says the victim will be paid \$500 compensation by the brigade. ⁴⁴	None known.
10 May 2006	A truck belonging to RCAF's Brigade 70 kills a 12-year old boy and injures a 10-year old in a hit-and-run in Kompong Speu. The brigade later pays \$700 to the family of the dead boy and \$300 to the injured boy. Defense Minister Tea Banh says the driver will be punished "according to the rules of the military". ⁴⁵	None known.
22 June 2006	RCAF officer Siv Vuthy allegedly crashes his SUV into a group of civilians while drunk, killing three and injuring six. The suspect was treated for injuries at a private hospital, but had reportedly left by the time police arrived. His family agreed to pay for the medical treatment of the six survivors. ⁴⁶	None known.
19 July 2006	Phnom Penh Municipal police lieutenant Chea Borith shoots a 21-year old student three times in the back, after the student knocked into his car on a motorbike. The perpetrator was arrested for one day, then released without charge. He paid compensation of \$5,200. ⁴⁷	None known.

⁴² Yun Samean, *Official Says He Didn't Protect Hit-and-Run Son*, The Cambodia Daily, April 20, 2006.

⁴³ Saing Soenthrith, *Commander Denies PM Bodyguards Were Killed*, The Cambodia Daily, April 26, 2006.

⁴⁴ Saing Soenthrith, *Police: Waitress Shot By Officers for Being Slow*, The Cambodia Daily, April 27, 2006.

⁴⁵ Saing Soenthrith, *RCAF-Driven Truck Kills Boy in Hit-and-Run*, The Cambodia Daily, May 12, 2006.

⁴⁶ Pin Sisovann, *Police Seek RCAF Official in SUV Crash That Killed Three*, The Cambodia Daily, June 26, 2006.

⁴⁷ Saing Soenthrith, *Can Pays Student After Shooting Him 3 Times*, The Cambodia Daily, July 24, 2006.

20 September 2006	Pursat court releases three men who had been caught with the skin and bones of a clouded leopard and 5kg of protected deer meat. A forestry official claims they were released on bail after the judge "got repeated phone calls from senior government officials' bodyguards, assistants and wives". ⁴⁸	No further action known.
4 November 2006	Tev Sarak, whose father owns a large gas station in Phnom Penh, allegedly shoots and injures three men visiting the station, following an argument. A station security guard is also implicated in the shooting. The victims are later paid \$1,000-1,700 compensation each. ⁴⁹	None known.
25 November 2006	District police officer Saom Chea allegedly shoots and seriously wounds two Sam Rainsy Party activists in Prey Veng, during an argument over land. His son allegedly threatens the victims with a grenade. Although the shooting takes place close to a border police post, the suspects are not arrested. ⁵⁰	A court investigation was begun, but the suspects had fled.
11-13 November 2006	Three policemen, including the son of a deputy district governor, accused of repeatedly raping a mentally-impaired 12-year-old girl over a three-day period in a Siem Reap commune police post. The deputy district governor admitted his son's guilt and said he had offered \$500 compensation to prevent a trial. ⁵¹	After four months the court issued arrest warrants. The suspects had long since disappeared.
30 December 2006	Villager Sours Sdoeung was tortured to death in military police custody in Kompong Thom. Provincial police confirmed the torture took place, but the family of the victim withdrew their complaint after being paid \$750 compensation. Five military police were later reassigned to the provincial headquarters. ⁵²	Police claimed to have sent the case to court, accusing two suspects. The court said the victim did not answer a summons to be interviewed.
25 February 2007	Four men, including the son of the Interior Ministry land border department director, are arrested for the murder of military police officer Vai Pheakdei. On April 2, the court reduces the charges to "conspiracy in an unintentional killing" and releases all four men on bail, with no security deposit required.	No further action known.

⁴⁸ Kuch Naren & John Maloy, *Judge Releases Alleged Wildlife Smugglers On Bail*, The Cambodia Daily, September 29, 2006.

⁴⁹ Saing Soenthrith, *Shooting, Arrest Victims Receive Compensation*, The Cambodia Daily, November 14, 2006.

⁵⁰ Saing Soenthrith, *Suspect in Shooting of SRP Activists Still at Large*, The Cambodia Daily, November 29, 2006.

⁵¹ Chhay Channyda, *Police Yet To File Warrants on Alleged Child-Rapists*, The Cambodia Daily, December 22, 2006.

⁵² Kampuchea Thmei Daily, January 7-8, 2007; and Kuch Naren, *Police Admit Man Tortured, Died in Custody; Family Wants More Money*, The Cambodia Daily, January 18, 2007.

10 March 2007	Two private school teachers cut three fingers off the hand of an 11-year old boy they suspect of stealing a plastic bucket. The men were arrested and held in pre-trial detention until 25 April 2007, when they were released by the Phnom Penh Municipal Court after reportedly paying \$1,000 compensation. ⁵³	Charges believed to be dropped on April 25. Prosecutor reportedly appealed the dropping of charges, but the two teachers remained free pending an appeal court hearing.
24 March 2007	About 20 local police and other officials raid a group of villagers who are allegedly fishing illegally (by using electrical devices) in Chantrea district, Svay Rieng province. The villagers flee and the officials open fire at them from behind; one man is killed and another wounded. One policeman is briefly arrested regarding the unnecessary use of force, but released. ⁵⁴	The court is still investigating, and no charges have been laid against any official involved.
2 April 2007	A district police officer in Kompong Siem, Kompong Cham province fire gunshots at two fishermen casting nets into a canal, hitting one of them in the head and killing him instantly. The policeman accuses the survivor of fishing with electrical devices, which he denies, and then walks off. The policeman subsequently pays \$3,000 to the victim's family, and is not arrested or charged. ⁵⁵	None known.
4 April 2007	Sorn Bun Choeun, director of Ratanakiri's labor department, allegedly beats up a beer promotion girl while drunk at a karaoke parlor. He denies the accusations but apologizes to the victim, and agrees to pay her \$250 plus the cost of her hospital treatment. ⁵⁶	None known.
14 April 2007	Four armed, off-duty police officers are arrested in Kandal for pistol-whipping two men following a drunken argument. Kien Svay district police chief Pa Sam Ith says the officers paid \$1,500 compensation to the victims and were released without charge four days later.	None known.
23 April 2007	Five fisheries officers shoot dead three ethnic Vietnamese, including a pregnant woman, in Pursat province. The fisheries officers claim they acted in self-defense, but eyewitnesses say they opened fire without provocation. ⁵⁷	None known against the fisheries officers. However, five neighbors of the victims were arrested and charged with illegal fishing.

⁵³ The Court Released Criminals Who Cut The Fingers From A Trash-Collecting Boy, Rasmei Kampuchea, April 30, 2007

⁵⁴ Unpublished LICADHO monitoring report, October 23, 2007.

⁵⁵ Unpublished LICADHO monitoring report, October 23, 2007.

⁵⁶ Thet Sambath, *R'kiri Beer Worker Gets \$250 for Alleged Beating*, The Cambodia Daily, April 10, 2007.

⁵⁷ John Maloy & Pin Sisovann, *Witnesses Deny Slain Fishermen Provoked Shooting*, The Cambodia Daily, April 27, 2007; Prak Chan Thul, *Slain Fishermen's Neighbors Arrested. Charged With Illegal Fishing*. The Cambodia Daily. April 28-29. 2007.

31 May 2007	Chea Sambath, son of Kampot province customs department Director Som Sokha, injures a street cleaner in a hit-and-run in his father's Land Cruiser in Phnom Penh. The chief of municipal traffic police says the perpetrator will not be arrested, as his family agrees to cover the victim's medical costs. ⁵⁸	None known.
28 August 2007	Two police officers allegedly rape a 15-year-old girl in Kompong Thom province. The victim's family complains to the commune police chief, who attempts to end the case by negotiating a 750,000 riels (\$187) payment to them by the perpetrators. Dissatisfied, the family complains several weeks later to a human rights organization, which assists them to continue their complaint. Three weeks after the rape, the commune police were still completing their investigation report, and the suspects had fled. ⁵⁹	Case believed to have been sent to court, but the two policemen had escaped by then.
30 August 2007	A CPP village chief in Siem Reap province allegedly beats a SRP member after an argument. The village chief later claims he had acted in self-defense, but acknowledges that he had paid \$300 to the SRP member to end the matter. ⁶⁰	None.
22 September 2007	Forestry officers open fire on a vehicle allegedly carrying illegal timber, killing one man, in Pursat province. According to a witness, the forestry officers opened fire on the stationary vehicle after forcing it to stop following a high-speed chase. Six forestry officers were charged with the killing, though one of them (the most senior) was not arrested and detained. The prosecutor suggested that, if the five others paid sufficient compensation to the victim's family, they could be released on bail. Within 10 days, three of the five were released on bail. A fourth received bail on Oct 16, reportedly after the intervention of Forestry Administration chief Ty Sokun. ⁶¹	Prosecution reportedly is continuing. At time of writing, only one of the six charged forestry officers was still detained in prison.

⁵⁸ Kay Kimsong, *Street Cleaner Injured in Hit and Run by Official's Son*, The Cambodia Daily, June 1, 2007.

⁵⁹ Koh Santepheap Daily, September 20, 2007.

⁶⁰ Thet Sambath, *Village Chief Pays \$300 To Settle Beating Claim*, The Cambodia Daily, September 11, 2007.

⁶¹ Saing Soenthrith & Ferga Quinn, *Timber Smuggling Takes Deadly Turn in Pursat*, The Cambodia Daily, October 1, 2007; Rasmel Kampuchea, September 27, 2007; Koh Santepheap, October 20-21, 2007.

The Appeal Court Hearing of Born Samnang and Sok Sam Oeun

Recent developments in case of Born Samnang and Sok Sam Oeun, the men falsely accused of murdering union leader Chea Vichea, highlight the continuing willingness of the courts to blatantly contravene all principles of fair trial and the rule of law, in order to perpetuate a culture of impunity.

Born Samnang and Sok Sam Oeun were convicted by the Phnom Penh Municipal Court in August 2005 of murdering Chea Vichea, a popular labor rights activist affiliated with the Sam Rainsy Party, in January 2004. Both the killing and the subsequent arrests created a national and international outcry, as it became swiftly apparent that the case against the two had been clumsily fabricated by then Phnom Penh police chief Heng Pov. The principle evidence consisted of a confession by Born Samnang, which he swiftly retracted, claiming he had been beaten by police. Multiple eyewitnesses attested that at the time of the killing, Born Samnang had been in another province altogether, while the only evidence against Sok Sam Oeun consisted of Samnang's retracted confession.

Investigating judge Hing Thirith dismissed the charges against them, citing a lack of evidence. Days later, Thirith was sacked from the Phnom Penh court and transferred to the distant province of Stung Treng, while the charges were reinstated by Appeal Court judge Thou Mony.⁶² Born Samnang and Sok Sam Oeun languished in pre-trial detention for more than a year over the legal limit. Their eventual trial at the hands of municipal judge Kong Seth was roundly condemned by the international community and human rights groups, being labeled by the Special Representative of the UN Secretary General for Human Rights in Cambodia as a "grave injustice" which "lacked any credibility" and "disregarded fundamental principles of fair trial, such as the presumption of innocence and the impartiality of the court."

The two had to wait a further 20 months for another day in court, after a scheduled October 2006 appeal hearing was cancelled at the last minute supposedly due to the illness of one judge. This same period also saw the fall from grace of Heng Pov, who by April 2007 was serving multiple prison sentences for serious crimes allegedly committed while chief of Phnom Penh police. By this point, even Pov himself had publicly admitted that the two men "had nothing to do with the murder".⁶³

The appeal hearing was finally held on April 6, 2007, by a panel of three judges. At least two of them had potential conflicts of interest by having previously been involved in rulings on the case: Thou Mony, the same judge who had reinstated the charges against Born Samnang and Sok Sam Oeun in 2004, and Samreth Sophal, who denied bail to them in early 2005. Despite the presence of observers including officials from the US and Canadian embassies, the international co-prosecutor of the Khmer Rouge Tribunal and the director of the Cambodia Office of the High Commissioner for Human Rights, the Appeal Court hearing was a prime example of Cambodian justice at its very worst.

⁶² Thou Mony was later appointed to the Khmer Rouge Tribunal, on which he currently serves.

⁶³ Sylvaine Pasquier, *Hun Sen's Dirty Jobs*, L'Express, August 16, 2006. During a court appearance for an unrelated case in July 2007, Heng Pov reiterated the two men's innocence, telling the court: "Born Samnang and Sok Sam Oeun were not the shooters"; see Prak Chan Thul & Van Roeun. *Penal Chief Denies Heng Pov's Accusations of Kidnapping*. The Cambodia Daily. July 20. 2007.

Both the defendants, and the witnesses for the defense, were treated in an aggressive and contemptuous manner by the judges, who appeared to be asking deliberately confusing and leading questions, and essentially assuming the role of prosecutor. By contrast, at most points of witness cross-examination by defense lawyers, the judges affected to pay no attention at all to proceedings. Judges Saly Theara and Thou Mony both took several mobile phone calls during the course of the hearing, and at one point during defense witness testimony, presiding judge Saly Theara simply left the courtroom without explanation for several minutes, while testimony continued in his absence.

At the close of the hearing, prosecutor Pann Kim Lean made a remarkable statement, acknowledging that there were gaps in the police investigation, and calling for a re-investigation to find "the real killers". The acknowledgement by the prosecution of the failure to prove its case after three years of investigation provided clear legal grounds for the immediate acquittal of the two accused. The hearing, however, was adjourned for a further six days.

On April 12, the verdict was finally delivered - the court opening before the scheduled time of 7:30 am, and finishing by 7:40. Neither the accused nor their lawyers were present. Despite the prosecutor's admission that the evidence was insufficient, the guilty verdicts were upheld. As the Municipal Court had done before, the Appeal Court rejected the alibi testimony provided in court by multiple defense witnesses, instead accepting the written statements of prosecution witnesses who had never appeared before any court - another breach of Cambodian law⁶⁴ - while refusing to consider a new written statement by the only confirmed eyewitness, attesting that the two men were not the killers.

As of November 2007, Born Samnang and Sok Sam Oeun are still serving 20-year prison sentences for a crime they did not commit, while the murderers of Chea Vichea continue to enjoy impunity.

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⁶⁴ This violates Article 24.1 of the 1992 UNTAC Penal Code, which states that: "Witnesses mentioned in the police file, including police officers, must be heard in court. Witnesses may be examined by the intervening party, the accused or their respective counsel, or by the prosecutor."

5. The Courts and Economic Interests

The judiciary continues to play a key role in protecting the economic interests of the rich and powerful, in particular relating to land and natural resources.

Despite a series of promises by Prime Minister Hun Sen to release villagers imprisoned in land disputes,⁶⁵ to hand land back to the poor⁶⁶ and to take action against the perpetrators of land grabs,⁶⁷ the courts continue to regularly charge, detain and convict people for offences related to land disputes, often when the ownership of the land in question has yet to be legally decided. Similarly patterns of intimidation are seen in the courts' treatment of citizens involved in other natural resource disputes. There are numerous examples, including:

- **In March 2006**, nine community activists were detained after protesting an illegal land grab in Pailin⁶⁸, while a community representative was detained in Banteay Meanchey after representing 128 families in a land dispute with military officers.⁶⁹
- **In May 2006**, a community representative in Siem Reap was charged with property destruction following a peaceful demonstration against land-grabbing that was violently broken up by police. The disputed land is claimed by a senior monk supported by Supreme Patriarch Tep Vong.⁷⁰ At trial in October 2007, the community representative, So Soheat, was convicted of property destruction and of an added charge of physical assault against a policeman; she was sentenced to eight months' imprisonment. No evidence was presented to support the charges – in fact, the policeman in question told the court that it was not Soheat who assaulted him and damaged his property. However, the judge stated that, because she was the “ring leader” of the demonstrators, Soheat was responsible for these alleged acts committed by others.
- **In June 2006**, three village representatives in Poipet were charged with incitement after protesting land-grabbing by a local village chief.⁷¹
- **In August 2006**, a community representative in Kompong Cham was charged with property destruction and detained after protesting a rubber plantation company's clearance of disputed land,⁷² a community representative in Kandal was charged with violating private ownership and detained after protesting a company setting up fences around disputed land,⁷³ and four community activists were charged with infringement of private property and detained after a violent eviction from land grabbed by military officers.⁷⁴

⁶⁵ Pin Sisovann, *Kem Sokha: PM To Free Land Dispute Prisoners*, The Cambodia Daily, March 16, 2006.

⁶⁶ Pin Sisovann & Whitney Kvasager, *PM Again Pledges to Give Land to the Poor*, The Cambodia Daily, May 30, 2006.

⁶⁷ Kay Kimsong, *PM Blasts Land Grabbing and Complicit Officials*, The Cambodia Daily, February 17-18, 2007.

⁶⁸ Unpublished LICADHO monitoring report, October 20, 2006

⁶⁹ Unpublished LICADHO monitoring report, October 6, 2006; see also Pin Sisovann, *Three More Land Dispute Detainees Are Freed*, The Cambodia Daily, March 27, 2006

⁷⁰ Unpublished LICADHO monitoring report, November 15, 2006; see also Kuch Naren, *Woman Arrested for Inciting Violence at Pagoda*, The Cambodia Daily, May 8, 2006

⁷¹ Unpublished LICADHO monitoring report, November 18, 2006

⁷² Unpublished LICADHO monitoring report, November 17, 2006; see also Prak Chan Thul, *Villagers Call For Release of Representatives*, The Cambodia Daily, August 5-6, 2006 and subsequent coverage

⁷³ Unpublished LICADHO monitoring report, August 7, 2006

⁷⁴ Unpublished LICADHO monitoring report, October 19, 2006

- **In September 2006**, a community representative in Ratanakiri was arrested and placed in pre-trial detention for allegedly selling land belonging to the CPP, even though a decision about the disputed ownership of the land was still pending at the Appeal Court.⁷⁵
- **In November 2006**, three former residents of Tonle Bassac's village 14 were sentenced to two years imprisonment for property destruction. The prosecution case was based on testimony from one witness, who did not appear at the trial. Four defense witnesses were not called.⁷⁶
- **In December 2006**, 12 villagers in Kampot were sentenced to between six and eight years in prison each for allegedly clearing forest and claiming state land. Their lawyer claimed they had legally purchased the land in 1998, and were not involved in the clearing of the land.⁷⁷
- **Also in December 2006**, eight rubber tappers in Ratanakiri were charged with robbery and two arrested after allegedly attempting to sell their rubber at market prices, rather than at the reduced rates demanded by plantation managers.⁷⁸
- **In March 2007**, four villagers involved in a land dispute with local officials in Prey Veng were summoned to the provincial court for questioning over a confrontation in December with police, during which a 17 year old boy was shot dead by police. No summonses have been issued to police officers in connection with the shooting.⁷⁹
- **In April 2007**, 13 villagers were arrested and charged with battery with injury and damage to police property following a violent eviction by hundreds of police and soldiers in Sihanoukville.⁸⁰ At their trial three months later, five of the villagers were acquitted and eight were convicted and sentenced to between 75 days and eight months in prison. The eight were convicted despite the fact that police officers who testified for the prosecution did not confirm that any of them had in fact committed assault or damage.
- **In July 2007**, three villagers were convicted by Kompong Chhang Provincial Court of using violence to infringe on private property. No evidence was presented in court to prove three had in fact used violence in any way. They were given a six-month suspended sentence, fined 1.5 million riel (US\$375), and effectively lost their land as a result of the court verdict. The court ignored that the three villagers, who had used the land in question since the 1980s and were granted land titles to it in 1993, had valid



The 13 villagers being ushered into Sihanoukville Municipal Court

⁷⁵ Interviews with Cambodian Defenders Project, November 21, 2006; see also Kuch Naren, *R'kiri Villager Charged With Unlawful Land Sale*, *The Cambodia Daily*, October 5, 2006

⁷⁶ Prak Chan Thul & Pin Sisovann, *3 Convicted of Inciting Tonle Bassac Riot*, *The Cambodia Daily*, December 1, 2006.

⁷⁷ Pin Sisovann, *Court Sentences Villagers For Claiming State Land*, *The Cambodia Daily*, December 8, 2006.

⁷⁸ Kuch Naren, *Rubber Plantation and Local Officials Collude Against Workers: Adhoc*, *The Cambodia Daily*, January 3, 2007.

⁷⁹ Prak Chan Thul, *Four Villagers Summoned in Land-Grab Case*, *The Cambodia Daily*, March 6, 2007.

⁸⁰ Saine Soenthrith & James Welsh, *Detainees' Families Claim Self-Defense Against Police*, *The Cambodia Daily*, April 27, 2007.

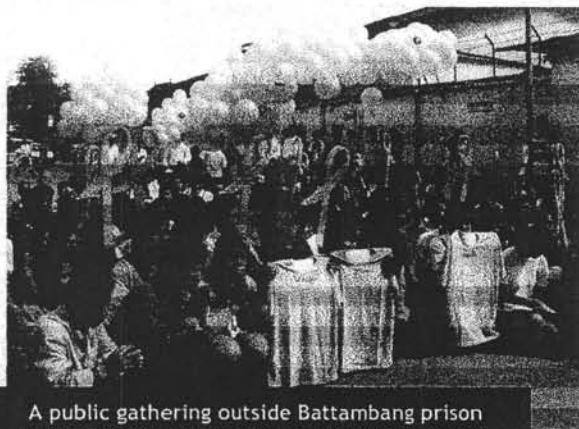
ownership under the 2001 Land Law. The complaint against them was filed by a district official who, in 2005, claimed ownership of the land.⁸¹

And despite the pledges to free citizens imprisoned in such cases, at least 22 remained in prison in connection with land disputes, with arrest warrants issued against a further 23, as of mid-2007.⁸²

THE BOEUNG PRAM LAND DISPUTE

A long-standing land dispute in Battambang province typifies the approach of the Cambodian courts to cases involving the economic interests of the rich and powerful.

The case involves land around Boeung Pram village, Ampil Pram Daeum commune of Bavel district in Battambang, which had been settled by landless families of former soldiers, believing it to be vacant state-owned forest. However, wealthy businesspeople claimed they had purchased the land from Deng Yan, deputy commander of military Brigade 53 based in the area. Deng Yan's right to sell the land is disputed by the families, who asked the government to give the land to them as a social land concession.



A public gathering outside Battambang prison calling for the release of land activists in 2006

Following a complaint by the businesspeople who now claimed to own the land, community representative Chhea Ny was arrested in August 2006 and sent to Battambang prison, where he was joined in September by fellow activists Hem Lack and Mou Sabb. Two other activists, Rous Saroeun and Oeun Mao, fled and were not arrested. All five were charged with infringement against private ownership under article 253 of the 2001 Land Law, which provides for up to 2 years imprisonment and fines of up to 25m riel. This article, however, covers only instances

where violence is used, of which there is no suggestion at all in Chhea Ny's case. The charge was therefore "linked" to article 248 of the Land Law, a general article that covers non-violent occupation, but provides no penalties. There is no legal basis for such a linkage; the same tactic has been observed in many other unlawful prosecutions of land rights activists.

Chhea Ny was additionally charged with infringement of individual rights under article 57 of the UNTAC Penal Code. This article covers only "public agents, including police or military agents, who deliberately infringe upon rights of physical integrity and the inviolability of the home", and provides for sentences of up to two years imprisonment. Ny was charged as a former soldier whose name still appears on an outdated military list. It is particularly disturbing that a law intended to prosecute impunity by state actors is instead used to prosecute a community activist threatened by powerful officials. On November 13, an appeal court hearing was heard for Chhea Ny's application for bail. In a largely meaningless

⁸¹ Three Cambodian villagers convicted after having their land grabbed, LICADHO, July 27, 2007; see <http://www.licadho.org/articles/20070727/61/index.html>

⁸² Unpublished LICADHO monitoring report. July 11, 2007.

decision, the court found that he could be granted pre-trial release on the individual rights charge but not on the private ownership charge.

At a trial on February 13, 2007, the court convicted the five villagers of using violence to infringe against the private property of others, although no evidence was presented at the trial that the defendants had in fact used violence against anyone. Chhea Ny was not present at the trial, having been transferred to prison in Phnom Penh, and repeated requests by his lawyer for him to be sent back to Battambang for the trial were ignored. Neither the plaintiffs nor any prosecution witnesses testified at the trial, preventing defense lawyers from questioning them.

Despite the lack of evidence, trial judge Pech Choet convicted Chhea Ny and sentenced him to serve one year in prison and pay \$400 compensation to the plaintiffs. Rous Saroeun and Oeun Mao, who remained at liberty, received the same sentence. The last two defendants, Hem Lack and 78-year-old Mou Sabb, who were present at the trial, were sentenced to six months' imprisonment.

The actual ownership of the land in dispute was not resolved by the trial. The plaintiff's lawyer acknowledged that his clients did not have land titles for the land, and in his verdict the trial judge instructed that the plaintiffs should apply to the Cadastral Commission for land titles. Yet despite this acknowledgment that the plaintiffs do not currently officially own the land, the defendants were convicted of infringing on private property.

Chhea Ny's absence at the hearing made him eligible for a retrial, which was conducted on May 4, 2007. His lawyer provided additional evidence to demonstrate that the land in question was public state property rather than private property. He requested bail for his client, citing excessive pre-trial detention, the lack of clarity regarding the ownership of the land and the continuing cadastral office investigation into the ownership. It was refused.

On May 11, 2007, the verdict was finally announced: the charge was altered to one of destruction of public state property, and the one-year sentence changed to nine months' imprisonment and three months suspended, suggesting that Chhea Ny would be able to walk free from the court. However, Chhea Ny remained in prison pending multiple other charges leveled against him.

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6. The Courts and Corruption

The extent of corruption in Cambodia's notoriously dishonest courts can be difficult to prove and objectively assess, as neither briber nor bribed usually admits to the offence. This has not prevented some judges from letting their guard down and admitting to receiving money from parties to cases that they have adjudicated. For example, Nil Non, the Battambang Provincial Court President and a Khmer Rouge Tribunal judge, admitted to taking money from parties in legal cases in 2002.⁸³ And Tith Sothy, Takeo Provincial Court President, admitted to taking money and other gifts while President of Kompong Cham Provincial Court. "If a judge is a clever man," said Sothy, "he can find ways to make a lot of money".⁸⁴

Although the salaries for judges and prosecutors were significantly increased in 2003, ranging from \$325 to \$625 per month depending on position,⁸⁵ this appears to have had little impact so far on the honesty of the courts. In a 2005 survey of 2,000 households across Cambodia, the courts came second only to the customs authority as being most dishonest, whilst providing the worst service.⁸⁶ In a survey of 1,200 businesses conducted in 2006, the judiciary was viewed as the most corrupt public institution in the country.⁸⁷

There is also little doubt that judges of all stripes continue to find ways to make a lot of money. For example, despite his \$325 salary, Phnom Penh municipal court judge Kong Seth claimed in 2006 to have recently completed the purchase of a plot of land in Kampot province for the sum of \$250,000.⁸⁸

**"If a judge is a
clever man, he can
find ways to make a
lot of money"**

*- Tith Sothy
Provincial Court President*

It is widely believed that judges, prosecutors and court clerks pay for their positions, and at times court and government officials have privately acknowledged this. Once in their posts, they "recoup their investment" and "squeeze money out of those who come into contact with the judicial system".⁸⁹

Initiatives to prosecute and punish corruption in the judiciary have been cosmetic and temporary. In March 2005 the Prime Minister announced a widely-publicized "iron fist" campaign to crack down on corrupt judges and re-arrest the criminals they released. The campaign reached its height at an unprecedented court hearing in December 2005, when three judges, two prosecutors and two clerks from the Phnom Penh Municipal Court were convicted by the Battambang Court of taking bribes and sentenced to four-year prison terms - although none were arrested or attended the hearing.⁹⁰ Less than two months after the 2006 CG meeting, all seven were acquitted at a retrial.⁹¹ A month later, eight other judges and prosecutors, who had been suspended during the "iron fist" campaign for unspecified wrongdoings, were reappointed to judicial positions.⁹²

⁸³ Amanda Pike, PBS, October 2002. See <http://www.pbs.org/frontlineworld/stories/cambodia/diary04.html>

⁸⁴ Kelly Evers & Phann Ana, *Disorder in the Courts*, The Cambodia Daily, March 4-5, 2000.

⁸⁵ Sub-Decree on Allowance for Judges, RGC, November 13, 2002.

⁸⁶ *Corruption and Cambodian Households*, Center for Social Development, March 2005

⁸⁷ *Assessment of Corruption in Cambodia's Private Sector*, Economic Institute of Cambodia, July 2006.

⁸⁸ Kuch Naren, *Villagers Thwart Police Attempt To Clear Land*, The Cambodia Daily, August 4, 2006

⁸⁹ Un Kheang, *State, society and democratic consolidation: the case of Cambodia*, Pacific Affairs, June 22, 2006.

⁹⁰ *Corruption Cases 2006*, Center for Social Development, 2006

⁹¹ Prak Chan Thul, *7 Officials Convicted Under 'Iron Fist' Acquitted*, The Cambodia Daily, April 22-23, 2006.

⁹² Cheang Sakha, *Hun Sen's 'iron fist' ends up as a slap on the wrist*. Phnom Penh Post. June 30 - July 13, 2006.

7. The Courts and Detention

Under the current law, adults may be detained before trial for up to four months and only if there is a "risk of escape or non-appearance... ..or if there is reason to believe that the accused will influence witnesses or the conduct of the investigation". An additional two-month extension is possible "upon the decision of a judge setting out the reasons".⁹³

In practice, this law is rarely respected. Suspects are routinely detained without consideration of their individual circumstances, and the detention extended to six months without reasons being given. Worst of all, hundreds of suspects are detained far beyond the legal six-month limit. In 2006, LICADHO recorded 307 cases of excessive pre-trial detention in the 18 prisons it monitors.

It is of grave concern that, instead of tackling the underlying causes of excessive pre-trial detention, or requiring judges to respect the law and release prisoners detained illegally, the government has instead simply increased the pre-trial detention limit to a maximum of 18 months for felonies in the new criminal procedure code passed by the National Assembly on June 7, 2007. While judges are still required to provide clear justification for each six-month period of detention, there is no reason to believe they will respect this provision - or indeed the new maximum limit - any more than they do at present.

This problem is more serious still in its application to minors, who can legally be held for only one month in misdemeanor cases and two months for felonies. At time of writing, there were at least 17 minors detained beyond the legal limits at Correctional Center 2 prison - one of whom has been excessively detained for more than 22 months.

The overcrowding in Cambodia's prisons is further compounded by the practice of continuing to hold detainees while prosecution appeals are pending. If a prosecutor appeals a verdict by the court of first instance, the detainee remains incarcerated until the appeal court hears the case. As a consequence, detainees who have been acquitted, or convicted prisoners who have already served their prison sentences, can remain in prison for years awaiting appeal hearings. Previously a policy that was explicitly stated only in a 2003 Decision issued by the Ministry of Justice,⁹⁴ it is deplorable that this practice has now been formalized into the new criminal procedure code.

These two revisions to the criminal procedures make a mockery of the assertion that new legislation necessarily equates to reform. Rather than imposing stricter conditions on a judiciary that is notorious for its disregard of the presumption of innocence, the new criminal procedures have given them yet more leeway to keep innocent and undeserving people imprisoned for increasing lengths of time.

It is of deep concern that this new criminal procedure code was drafted with considerable technical assistance from foreign donors, and that its passing is widely touted as being a positive step forward.

⁹³ UNTAC Law (1992), Article 14.

⁹⁴ Ministry of Justice. *Decision of National Judicial Conference for 2002*. Phnom Penh. March 7, 2003

Foreign donors and others who consider the new law to be a sign of progress might like to consider the case of Sev Tong, who was 12 years old when he was arrested in Ratanakiri province on suspicion of theft in September 2006. Despite being too young to be charged with a crime, he was placed in pre-trial detention. After eight months and six days illegally detained, he was sentenced to eight months and 10 days imprisonment. However, despite completing his unlawful sentence four days later, he continued to be held in prison - awaiting the hearing of a prosecution appeal.⁹⁵

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⁹⁵ Prak Chan Thul. *Bov. 13. Stuck In Prison After New Appeal*. The Cambodia Daily. May 30. 2007.

8. Khmer Rouge Tribunal: A Model Court?

On June 12, 2007, national and international judges at the Extraordinary Chambers in the Courts of Cambodia (ECCC) finally approved the internal rules of the tribunal, ending the latest impasse in the torturous quest to find justice for the victims of the Khmer Rouge. The Japanese government, largest single donor to the tribunal, said in a statement that the trials will "provide a good model for strengthening Cambodia's judicial system".⁹⁶

It is not the first time this view has been put forward. In March 2006, ECCC Press Officer Reach Sambath claimed the tribunal "will leave behind many good lessons for Cambodia, particularly the judiciary", while ECCC Public Affairs Chief Helen Jarvis said the tribunal would be a role model that offers "an unprecedented opportunity for judicial reform".⁹⁷

Unfortunately, it is difficult to see the ECCC being a positive role model for the Cambodian courts, when the process to date has been so flawed.

In May 2005, the government claimed that it could afford to pay only \$1.5m of its agreed \$13.3m contribution to the tribunal, and asked the international community to supply the rest. The remaining \$11.8m was eventually provided by the Japanese government through its bilateral aid funding.⁹⁸ The following year, the hard-up Cambodian government spent \$5m to buy a townhouse in Manhattan for its ambassador to the UN.⁹⁹

In May 2006, the appointment of the Cambodian judges and prosecutors to the ECCC was met with a storm of criticism for the very poor records of many of them with respect to judicial independence, competence and qualifications. The appointees included Major-General Ney Thol, the Military Court president and a CPP central committee member, who less than a year beforehand had presided over the show trial of opposition parliamentarian Cheam Channy. Ney Thol, who does not hold a law degree but is studying for one in political science, had also presided over the politically-motivated trials of Prince Norodom Ranariddh and his subordinates in 1998. Other appointments include Yar Sokhan, who presided over the show trial of Funcinpec parliamentarian Prince Norodom Sirivudh in 1996; Thou Mony, who twice ruled against Born Samnang and Sok Sam Oeun, and who acquitted Hun Sen's nephew of manslaughter in 2004 under dubious circumstances; Thong Ol, who acquitted Khmer Rouge commander Chhouk Rin of murder charges in 2000; Nil Non, who admitted in a 2002 interview that he had taken money from parties in court cases; and Pen Pich Saly, who has never served as a judge. Defending the appointments, ECCC spokesman Reach Sambath said that the tribunal would give the judges a chance to "rebuild their reputations",¹⁰⁰ while Hun Sen said that critics of the appointments were "animals" who "want to seduce their own parents".¹⁰¹

⁹⁶ Statement by Press Secretary/Director-General for Press and Public Relations, on the Adoption of the Internal Rules for the Khmer Rouge Trials in Cambodia, The Ministry of Foreign Affairs of Japan, June 13, 2007

⁹⁷ Cat Barton, *KR trial holds promise for court reform*, Phnom Penh Post, March 10-23, 2006.

⁹⁸ Kate Woodsome, *Cambodia Accepts Japan's Offer to Fund Khmer Rouge Tribunal*, VOA news, June 22, 2005.

⁹⁹ Erik Wasson & Prak Chan Thul, *Gov't Buys \$5 Million Townhouse in New York City*, The Cambodia Daily, November 30, 2006.

¹⁰⁰ Prak Chan Thul, *KR Trial Will Redeem Judges: Spokesman*, The Cambodia Daily, May 6-7, 2006.

In February 2007, serious allegations were reported by a US-based legal NGO that ECCC Cambodian staff had to pay kickbacks to their superiors in exchange for being employed.¹⁰² The United Nations Development Program (which funds the ECCC) commissioned an audit of the ECCC but for months refused to make public its findings. After widespread condemnation of this lack of transparency, the audit report was finally disclosed. The auditors said they "found no evidence that would conclusively support" the allegations, while at the same time they acknowledged they had not specifically investigated the accusations.¹⁰³ The audit did however reveal a host of "serious lapses" in the recruitment of Cambodian staff for the ECCC, and it recommended all their contracts be nullified and the hiring process be restarted from scratch. The auditors went so far as to say that, if the Cambodian side of ECCC did not agree to essential reforms, UNDP should give "serious consideration" to withdrawing from the tribunal.¹⁰⁴

In March 2007, Ky Tech, the controversial President of the Cambodian Bar Association, issued a demand for annual fees of up to \$4,900 to be paid by foreign lawyers acting in the ECCC - even for those working pro bono to represent victims. The international tribunal judges stated that such fees would "severely limit the right of accused and victims to select counsel of their choice",¹⁰⁵ hence compromising the fairness of the tribunal and providing potential grounds for appeal. The demand was eventually reduced to \$500 following discussions with diplomats, including the Japanese government, which provides assistance to the Bar Association. An unwarranted payment that is demanded to ensure that activities can be carried out, and which has no basis in any law or contractual agreement, is usually known as a "bribe".

There are serious issues of unlawful and excessive pre-trial detention regarding the first person indicted by the tribunal, Khmer Rouge prison commandant Kaing Guek Iev, known as "Duch". He has been detained without trial since 1999, in contravention of both Cambodian and international law. Although his detention began prior to the formal establishment of the ECCC in 2006, the Cambodian authorities' decisions to keep him detained without trial were explicitly linked to the pending tribunal. Duch was unlawfully detained by Cambodia's Military Court, which does not have jurisdiction over civilians (as Duch was at the time of his arrest); Military Court president Ney Thol is now one of the Cambodian judges on the ECCC. In July 2007, Duch was indicted by the ECCC and transferred to its jurisdiction. Given that the tribunal is legally required to comply with the International Covenant on Civil and Political Rights, which requires that criminal suspects be brought to trial within a reasonable period of time, Duch's vastly excessive detention could provide legal grounds for dismissal of the charges against him. (As of early November 2007, this issue was due to go before the ECCC's Pre-Trial Chamber for a ruling.)

It is a matter of grave concern that, before a single suspect has been brought to trial, the ECCC was already tarnished by excessive pre-trial detention, allegations of corruption and other unwarranted demands for payment, lack of transparency, and the assignment of Cambodian judges with track records of serious political bias. Far from being a role model, it appears that the tribunal is so far serving to reinforce and reward the very worst aspects of the Cambodian judicial system.

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¹⁰² Corruption Allegations at Khmer Rouge Court Must Be Investigated Thoroughly, Open Society Justice Initiative press statement, Feb 14, 2007.

¹⁰³ The auditors maintained that the allegations - because they related to staff appointed by the Cambodian government, not the UN - were outside their jurisdiction to investigate.

¹⁰⁴ UNDP, *Special Audit of Human Resources Management at the ECCC*, June 4, 2007. See <http://www.unakrt-online.org/Docs/Other/2007-06-04%20UNDP%20Special%20Audit%20of%20ECCC%20HR.pdf>

9. The Courts and Reform

Legal and Judicial Reform has been a declared priority of the donor community since the UNTAC era, and the Cambodian government has repeatedly declared its commitment to this. Millions of dollars have been poured into to reform programs, working in particular with research, legislative drafting, training of court and law enforcement officials, judicial mentoring and the improvement of court and prison facilities.

But has it helped?

The courts have undoubtedly improved in some respects since 1992. In the assessment of legal analyst Dr Lao Mong Hay, he points out that:

- Our judges and prosecutors are generally more competent:
 - They have more knowledge and understanding of laws and procedure;
 - They are more articulate, more open to debates, keener to learn more;
 - They are more insistent with regard to evidence.

- They have adhered more to the rule of law:
 - More compliance with the criminal procedure;
 - Less submission to and more assertive in their relations with the police;
 - Trial judges inform the accused of their rights.

However, the most important area of all has seen no change whatsoever. The political and financial influence over the courts is as strong as it has ever been, and there is nothing to suggest that this will change.

According to Dr Lao, "Among all the reform programs, the government is the least serious about the legal and judicial program and it has been dragging its feet."¹⁰⁶ He is not alone in this assessment. Even the World Bank has shelved a planned Legal and Judicial Reform project because of "growing concerns within the Bank regarding a lack of senior-level RGC commitment to the implementation of a concerted legal and judicial reform agenda within the Executive and Judicial branches of the Government."¹⁰⁷

**"Even cursory
examination of the
reality behind the
rhetoric reveals
neither substance nor
political will"**

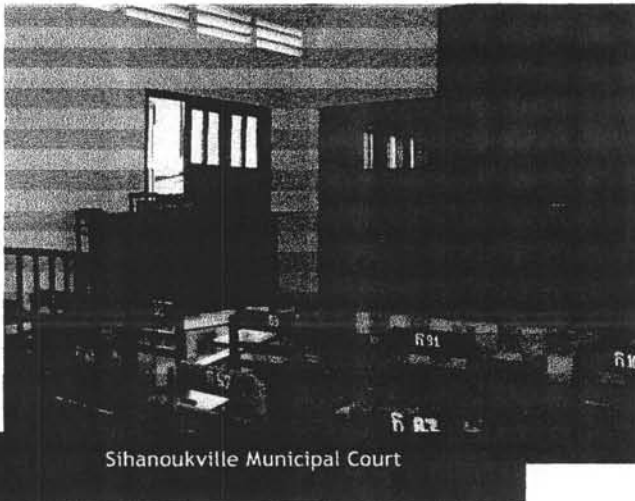
- USAID

Nonetheless, others in the donor community continue to commit large sums of money to legal and judicial reform within the framework of the government's National Strategic Development Plan, despite the notable lack of any significant improvement in access to justice. The government continues to make promises it does not keep, while maintaining a façade of progress. As one donor has noted, the government prepares innumerable plans and establishes numerous councils on good governance issues. Yet "in almost every case, the plans and councils are little more than a studied attempt to tell donors what they want to

¹⁰⁶ Correspondence with LICADHO, June 2007.

hear [...]. Even cursory examination of the reality behind the rhetoric reveals neither substance nor political will."¹⁰⁸

A significant part of the problem lies in the fact that there is currently no system in place to determine whether or not these multi-million dollar reform efforts are actually having a positive impact on justice in Cambodia. Success is measured in terms of short-term outputs such as laws passed, training courses conducted and buildings constructed. But it is a deeply flawed assumption to think that the passage of a given law, for example, will necessarily result in an improved quality of justice, when the courts have demonstrated themselves quite willing to ignore existing laws as soon as political and financial considerations come into play.



Extensive efforts are already being made by Cambodian civil society to monitor and report on the performance of the judiciary, such as the Court Watch project established by the Center for Social Development, which currently monitors six courts, although does not look into issues of corruption or political interference.¹⁰⁹ Human rights organizations including LICADHO also regularly monitor court proceedings throughout Cambodia and make public their observations and analyses. Although some individual reform projects do acknowledge this work, there is still no systematic attempt to incorporate monitoring results into the overall judicial reform program.

The failure to establish a monitoring system for judicial reform underlies the seeming inability of most donors to accept that their current initiatives simply are not working. And, as Louise Arbour pointed out, court reform remains "the single most important area in which Cambodia needs to make progress". Failure in court reform means failure in democratic reform, failure in economic reform and failure in social reform. A monitoring system for the judiciary therefore needs to form the basis of all aid that is supplied to Cambodia - not merely aid to judicial and legal reform.

The government is unlikely to welcome benchmarks based on the reality of justice in Cambodia, or indeed any further conditions placed on aid. On more than one occasion, Prime Minister Hun Sen made a point of publicly praising the Chinese government for supplying aid without strings.¹¹⁰ Yet the donor community has a responsibility to the Cambodian people - and in the case of the bilateral donors, to their own taxpayers - to insist on linking all future assistance to stringent monitoring of the Cambodian judiciary.

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¹⁰⁸ Cambodian Corruption Assessment, USAID, August 2004.

¹⁰⁹ *Court Watch Project Annual Report*, Center for Social Development, February, 2007

¹¹⁰ Yun Samean, *Hun Sen Hails Beijing for Aid Without Strings*, *The Cambodia Daily*, April 12, 2006; Yun Samean, *PM Praises China for Not*

10. Recommendations

Many of the key reforms required in the Cambodian judiciary have been recommended time and time again by human rights advocates. LICADHO still maintains the importance of many such reforms, including the passage of the remaining seven “key laws” (if done with full consultation and consideration for human rights standards), the incorporation of the new Judicial Code of Ethics into legislation (with clearly defined punitive measures and strict enforcement), and the comprehensive overhaul and depoliticization of both the Supreme Council of Magistracy and the Constitutional Council.

However, LICADHO believes that true reform will not simply come with the passing of new laws and policies, and that the Cambodian government’s claims to making progress in reforms need to be judged by the actual actions of the courts on a daily basis. Cambodia’s donors must be more coordinated in their approach to legal and judicial reform, set stringent benchmarks for measuring improvements, and send a unified message to the government that “mere rhetoric, and enactment of laws that are not enforced, will no longer suffice”.¹¹¹ In order to insist on meaningful reforms which have a real impact on the lives of Cambodians, the international donor community must understand, accept and engage with the reality of justice in Cambodia.

LICADHO therefore recommends the establishment of an independent commission by the donor community to monitor the Cambodian judiciary.

The commission should:

- have the sole purpose of independently and objectively monitoring the Cambodian judiciary
- be established in an equitable partnership by Cambodia’s international donor partners
- be staffed by highly-qualified professionals
- be wholly autonomous in its funding
- be wholly independent of interference from any national or international sources
- be wholly transparent in all spheres of its work, and ensure that all outputs are immediately made public
- be granted the freedom to deliver its findings without fear of retribution
- form close partnerships with Cambodian and international civil society organizations engaged in both qualitative and quantitative measurement of the supply of justice, accept data from all concerned sources and review objectively
- commission new monitoring projects and studies as appropriate

¹¹¹ Cambodian Corruption Assessment. USAID. August 2004.

- monitor the entire Cambodian court system, including all provincial and municipal courts, the military court, appeals court, supreme court and any additional courts that are established, such as the proposed commercial court
- consider not only the cases that come before the judicial system, but the cases that fail to be taken up
- not interfere in any way with the conduct of judicial proceedings

The establishment of the commission must be a long-term commitment; the data it provides to be used by the donor community to develop long-term strategies for legal and judicial reform.

LICADHO stands ready to assist and advise the donor community in the creation of this crucial body, and to fully cooperate with a truly independent commission.

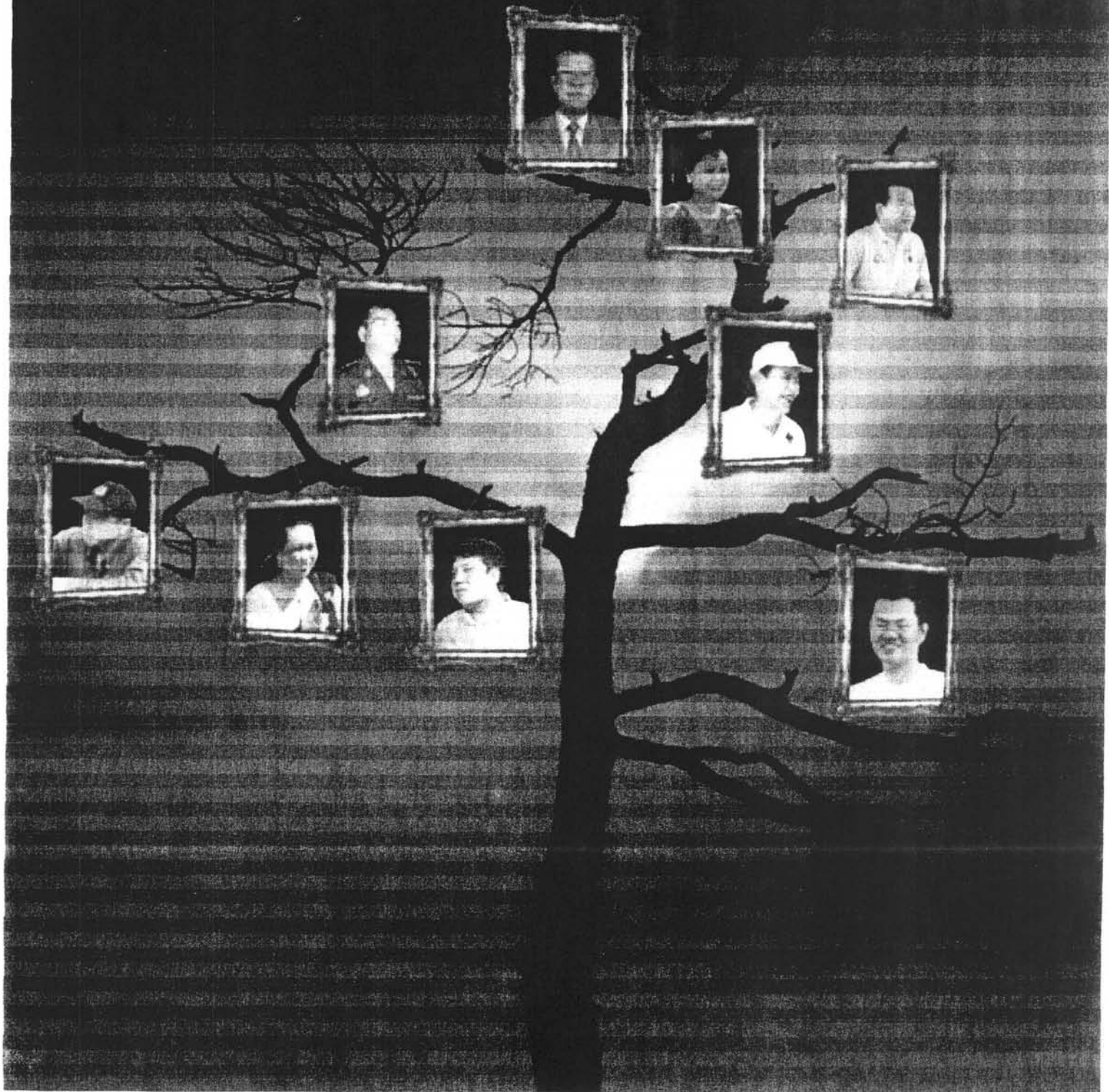
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Cambodia's Family Trees

Illegal logging and the stripping of public assets
by Cambodia's elite

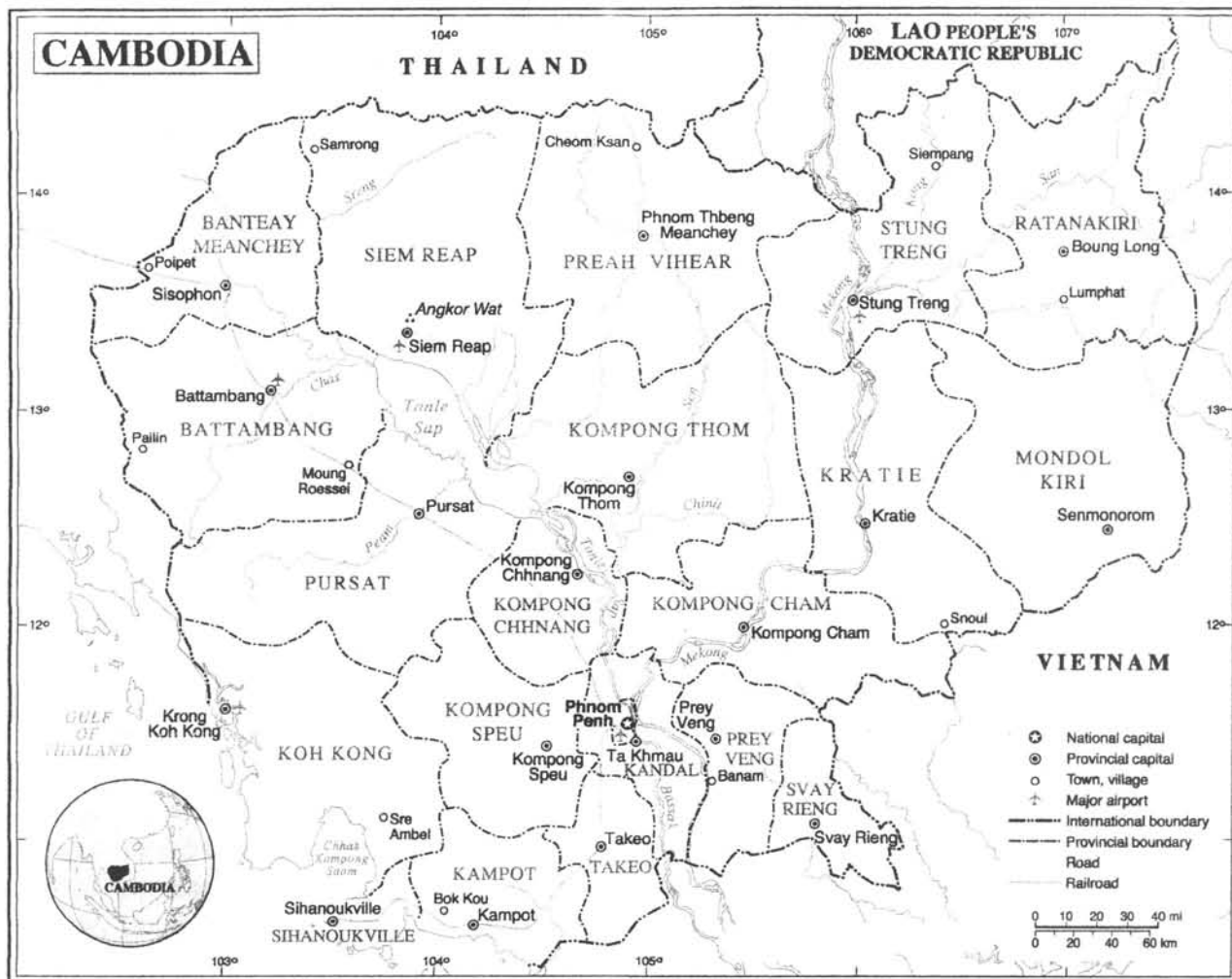


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CONTENTS

ABBREVIATIONS	3	5. A Rural Gangland	50-54
RECOMMENDATIONS	4-5	5.1 Resin Tree Theft	50
SUMMARY	6-8	5.2 Dealing with Dissent	51-53
Table 1: Issues that Cambodia's Judicial Authorities Must Now Investigate	9	Box 9: Account of the Shootings of 10 July 2005	52
CHAPTER I: FORESTS AND CAMBODIA'S SHADOW STATE	10-18	Box 10: In Search of Mr. 95	54
1. Asset-stripping Cambodia	10-12	6. Crackdown or Pause?	55-57
Figure 1: Cambodia's Tycoon-Senators/Cronyometer	11	Box 11: The Logging Syndicate's Next Big Score	56
2. Cambodia's Forest Sector	12-16	A Short History of Forest Management in Cambodia	58-59
Box 1: Furnishing the National Assembly	15	CHAPTER III: INSTITUTIONALISED CORRUPTION IN PREY LONG	60-67
Box 2: Measuring Forest Cover and Deforestation in Cambodia	17	1. Forest Administration	60-62
3. Cambodia's International Donors – Aiding Cambodians or Abetting the Government?	18	Box 12: Chan Sarun and Ty Sokhun's Forest Administration Job Auction	61
CHAPTER II: KEEPING IT IN THE FAMILY	19-59	2. Military Police	63
1. Introducing Cambodia's Premier Logging Syndicate	19-21	3. RCAF Kompong Thom Provincial Military Sub-Operation	64
1.1 Dy Chouch, also known as Hun Chouch	19	4. RCAF Military Region II	64
1.2 Seng Keang	20	5. Military Intelligence	64
Chart 1: Cambodia's Premier Logging Syndicate and Friends	21	Box 13: Bearing the Burden of Corruption	65
1.3 Khun Thong	21	6. Police	66
2. Kingwood – Rise and Demise of a Logging Concessionaire	22-28	7. Local Government	67
2.1 Illegal Logging	22-23	CHAPTER IV: THE BRIGADE 70 CONNECTION	68-88
2.2 Bad Debts	23-24	1. Brigade 70 and the Bodyguard Unit – a Private Army for the Prime Minister	68-69
Box 3: Ky Tech	24	Box 14: General Kun Kim and Lieutenant General Hing Bun Heang	69
2.3 A Very Hostile Takeover	24-28	Box 15: Illegal Logging and RCAF Forces Loyal to Hun Sen	70
2.4 Competing Claims	28	2. Hak Mao	71
Box 4: Kingwood's Assets – Property of the Cambodian People?	28	3. Timber Trafficking	72-81
3. Tumring Rubber Plantation – the New Face of Industrial-Scale Logging in Cambodia	29-38	Box 16: The Royal Cambodian Armed Forces Get a Helping Hand from the US Government	73
3.1 A Family-Scale Enterprise	29-30	3.1 Exports	75
Box 5: Resin Tapping	31	3.2 The Clients	75-81
Box 6: Prey Long Forest at the Crossroads	32-33	4. Transportation of Smuggled Goods by Brigade 70	82-86
3.2 The "Benefit of Conversion"	34	Box 17: Attwood Import Export Co. Ltd	82
3.3 Log Laundering	35	4.1 Smuggling Through Sre Ambel Port	83
3.4 Firewood Collection	36	4.2 Smuggling through Oknha Mong Port	84
3.5 Further Benefits	37	Box 18: Mong Reththy	84-85
3.6 Old logs and Donor Amnesia	38	Box 19: Special Deliveries	86
4. Anatomy of an Illegal Logging Operation	39-47	Chart 3: Brigade 70, the InterContinental Hotel and Attwood	86
4.1 Processing Capacity	39-40	5. The Bottom Line – Hak Mao's Income and Expenditure	87
4.2 Feeding the Factories	40	Box 20: Long Meng Group	88
Box 7: Colexim – Cambodia's Model Concession Company	41	CONCLUSION	89
4.3 The Suppliers	42	APPENDIX 1: CAMBODIA'S TYCOON-SENATORS/CRONYOMETER REFERENCES	90
4.4 Transportation	43		
4.5 The Markets	43		
Box 8: Cambodia's Invisible Timber Exports	44-45		
4.6 Outputs and Financial Returns	46-47		
Chart 2: Forest Destruction and Institutional			



Abbreviations

CDC	Council for the Development of Cambodia	MAFF	Ministry of Agriculture, Forestry and Fisheries
CG	Consultative Group	MR II	Military Region II
CPP	Cambodian People's Party	MR III	Military Region III
DFW	Department of Forestry and Wildlife (renamed Forest Administration in 2003)	MR IV	Military Region IV
ELC	economic land concession	NGO	non-governmental organisation
ESIA	environmental and social impact assessment	RCAF	Royal Cambodian Armed Forces
FA	Forest Administration	RGC	Royal Government of Cambodia
FAO	Food and Agriculture Organisation	SEZ	special economic zone
FLEG	Forest Law Enforcement and Governance process	SFMP	sustainable forest management plan
ha	hectare	SGS	Société générale de surveillance
IFM	independent forest monitoring	UN	United Nations
IFSR	Independent Forest Sector Review	UNOHCHR	United Nations Office of the High Commissioner for Human Rights
km	kilometre	UNTAC	United Nations Transitional Authority in Cambodia
m³	cubic metre	WGNRM	Working Group on Natural Resource Management

RECOMMENDATIONS

CAMBODIA'S JUDICIAL AUTHORITIES SHOULD:

1. **Hold accountable those responsible for illegal logging and associated crimes**
 - Investigate and prosecute all those responsible for the cases of illegal logging, corruption, smuggling, attempted murder and kidnapping detailed in this report.
 - Prioritise investigation of the following people: Minister for Agriculture, Forestry and Fisheries (MAFF) Chan Sarun,¹ Director General of the Forest Administration (FA) Ty Sokhun,² Hun Sen Bodyguard Unit commander Lieutenant General Hing Bun Heang,³ Brigade 70 Brigadier General Hak Mao,⁴ logging syndicate leaders Dy Chouch,⁵ Seng Keang,⁶ Khun Thong⁷ and Seng Kok Heang.⁸

THE ROYAL GOVERNMENT OF CAMBODIA SHOULD:

1. **Hold accountable those responsible for illegal logging and associated crimes**
 - Support the efforts of the judicial authorities to investigate and prosecute those responsible for the illegal activities detailed in this report.
 - Dismiss any government ministers, officials and military officers responsible for these illegal activities.
2. **Protect the Prey Long Forest**
 - Take Prey Long, mainland Southeast Asia's largest lowland evergreen forest, out of production. Develop an alternative management regime for Prey Long, based on consultation with local populations, which prioritises conservation and safeguards the usage rights of people living in and around the forest.
3. **Reform forest management**
 - Reinstate independent forest monitoring (IFM) based on a robust institutional framework and terms of reference, following a period of public consultation. Appoint a qualified organisation on the basis of an open tendering process conducted in line with international best practice.
 - Terminate the logging concession system, in line with recommendations of the 2004 Independent Forest Sector Review (IFSR).⁹
 - Cancel plans to introduce a new system of annual bidding (logging) coupes.

- Terminate all economic land concessions (ELCs) and mining concessions that are situated in forest or are otherwise contrary to existing law.
 - Develop a new forest management regime based on the recommendations of the IFSR. This should centre on expanded community forestry, partnership forestry and landscape-based conservation programmes.¹
 - Recognise the prior claims of indigenous minorities, as required by the Land Law, in determining the status and usage of forested areas.
 - Ensure that any future logging and tree plantation ventures meet Forest Stewardship Council (FSC) or equivalent standards and follow consultation with affected communities.
 - Complete and pass the new Protected Areas Law and all outstanding sub-decrees and *prakas* (ministerial declarations) required under the 2002 Forestry Law. Ensure that drafts are made publicly available prior to passage, allowing sufficient time for public comment.
 - Impose a moratorium on the construction of roads through forested areas, in line with the recommendations of the 2004 IFSR.
4. **Take immediate steps to increase transparency in the management of public assets**
 - Ensure full and continued disclosure of information concerning the management of public assets such as forests, land, oil and gas, mineral deposits, fisheries, heritage sites and state-owned buildings.
 - Ensure that this information includes the following: investment agreements, contractual conditions and compliance status (completion of satisfactory environmental and social impact assessments (ESIAs), payment of royalties etc); exploration, exploitation, transportation and export permits awarded; names and details of the beneficial owners of the companies concerned.
 5. **Strengthen the legal framework governing the management of public assets**
 - Include in the draft Anti-Corruption Law the following provisions:
 - A guarantee that all Cambodian citizens have rights of access listed above.
 - Prohibition on individuals or companies that have a record of illegal activities managing public assets of any kind.

¹ Partnership forestry is a new model proposed by the 2004 Independent Forest Sector Review. It would give a greater say in forest management decision-making to elected commune councils, with the Forest Administration playing a regulatory role.

- Requirement that all contracts between the government and companies concerning the management, exploration or exploitation of natural resources and other public assets proceed from an open tendering process conducted in line with international best practice.
- Requirement that all private sector operators holding concessions on public assets annually disclose the payments they make to the government in the form of taxes, royalties, signature bonuses etc.
- Requirement that the government annually discloses details of all taxes, royalties, signature bonuses etc. received from concessions on public assets.
- Requirement that the government maintains a regularly updated and publicly accessible register of senior officials' business interests and personal assets, as well as those of their family members.
- Pass and implement the Anti-Corruption Law without further delay.

6. Ensure transparent management of oil and gas revenues

- Implement the revenue management measures set out in the IMF's Guide on Resource Revenue Transparency.¹⁰
- Join the Extractive Industries Transparency Initiative.¹¹

7. Reform the Royal Cambodian Armed Forces (RCAF)

- Withdraw all military units stationed inside or on the boundaries of protected areas.
- Disclose the location and legal status of all the military development zones. Terminate all those that are situated on forests, in protected areas, or are otherwise contrary to existing law.
- Overturn the recently introduced conscription law and embark on a comprehensive restructuring of RCAF to create a professional military force that meets Cambodia's defence needs.

CAMBODIA'S INTERNATIONAL DONORS SHOULD:

- 1. Use their influence proactively to ensure that aid benefits ordinary Cambodians**
 - Donors should link disbursement of non-humanitarian aid to demonstrable progress in implementing the measures outlined above, in accordance with set time-lines.
- 2. Withhold support from state institutions engaged in serious criminal activities**
 - In particular, donors should not provide funding or other forms of support to RCAF until such time as it ceases its involvement in large-scale organised crime.
- 3. Support Cambodian civil society's efforts to increase government accountability**
 - Provide more support to Cambodian organisations working to build government accountability with respect to the management of public assets. Specifically, build the capacity of local civil society to document, monitor and scrutinise the management of natural resources and other public assets and ensure transparent public sector spending.
- 4. Help to protect Cambodia's forests as part of international efforts to combat climate change**
 - Act on the conclusion of the recent UK government-commissioned Stern Review on the Economics of Climate Change, that international efforts to combat climate change must prioritise the preservation of existing natural forests.¹²
 - With respect to Cambodia, dedicate funds and expertise to developing new incentives and institutional frameworks for preserving key areas such as Prey Long Forest.



SUMMARY

This report makes the case for greater efforts by the Cambodian government and the international community to strengthen the governance of forests and other public assets on which Cambodia's people depend. It is based on in-depth investigations into illegal logging and associated criminality carried out by Global Witness between the end of 2004 and the beginning of 2007.

The report's main findings are as follows:

1. A kleptocratic elite is stripping Cambodia's forests

- Cambodia is run by a kleptocratic elite that generates much of its wealth via the seizure of public assets, particularly natural resources. The forest sector provides a particularly vivid illustration of this asset-stripping process at work.
- Illegal logging is causing severe damage to Cambodia's remaining forests. The last global forest cover survey by the Food and Agriculture Organisation (FAO) found that Cambodia had lost 29% of its primary tropical forest over a five year period.
- Cambodia's army, military police, police and Forest Administration (FA) are all heavily involved in illegal logging.
- In many cases illegal logging is taking place under the guise of legally dubious plantation developments and harvesting permits. Many of these plantations and permits are being allocated to a small group of individuals who have close relations with senior politicians.
- A particular concern is the damage illegal loggers are causing to Prey Long, which is the largest lowland evergreen forest in mainland Southeast Asia. The Cambodian government is currently developing plans to clear tens of thousands of hectares of Prey Long to make way for plantations.



2. Cambodia's most powerful logging syndicate is led by relatives of Prime Minister Hun Sen¹³ and other senior officials

- The most powerful logging syndicate in Cambodia is led by Dy Chouch, also known as Hun Chouch, his ex-wife Seng Keang and Khun Thong, their business partner. This group operates under the name Seng Keang Company.
- Dy Chouch is the first cousin of Prime Minister Hun Sen.
- Seng Keang is a friend of Bun Rany, the wife of Hun Sen.
- Khun Thong is the brother-in-law of Minister for Agriculture, Forestry and Fisheries (MAFF) Chan Sarun and father-in-law of Director General of the Forest Administration Ty Sokhun.
- Seng Keang's brother, Seng Kok Heang, who supervises operations for Seng Keang Company, is an officer in the Royal Cambodian Armed Forces (RCAF) Brigade 70 elite military unit.

3. Activities in which members of this logging syndicate are implicated include the following:

- The apparent abduction and detention of Lia Chun Hua,¹⁴ the managing director of the Kingwood Industry logging company.
- Large-scale illegal logging in the Prey Long Forest carried out under the guise of the Tumring Rubber Plantation development.
- Felling of thousands of resin-producing trees tapped by local people who depended on them as a source of income. Resin trees are protected under Cambodian law.
- A reported attempt by Seng Kok Heang to kill two community forest activists in Tumring who protested against the Seng Keang Company's felling of resin trees.
- Use of fraudulent transportation permits describing logs as lesser-value firewood. This may have cost the Cambodian treasury over a million dollars in lost tax revenues.
- The export to China of millions of dollars-worth of plywood on which no taxes appear to have been paid.
- Establishment in Tumring of a factory for sawing wood and making veneer. Cambodia's Forest Law prohibits construction of wood-processing facilities in forest areas.
- This factory's processing of over 100,000 cubic metres (m³) of logs a year into timber products worth more than US\$13 million annually. Most of the logs used were cut illegally in Prey Long.
- The above activities are covered by existing Cambodian law and are punishable by prison sentences and fines. Dy Chouch, Seng Keang, Khun Thong and Seng Kok Heang have not been prosecuted, however.