

## CAMBODIA: Abysmal lawlessness and the powerlessness of the citizens

The first election in post Pol Pot Cambodia was held in May 1993. The new constitution promised a liberal democracy and a system of governance based on the rule of law. However, the country is still in a state of abysmal lawlessness and ordinary Cambodians are powerless. There are no institutions in the country, which can offer them any kind of protection. The Cambodian police is in a rudimentary stage of development, is known to be corrupt and completely under the political control of the regime and those who are rich and powerful. Cambodian courts are also known to be corrupt and are used as instruments of political control by way of jailing opposition politicians; people resisting land grabbing; those who express independent opinions and civil society activists who express solidarity with victims of abuse of power. There are no institutions that people can turn to make any complaints or to turn to any kind of help when faced with injustice. And the injustices that the people face are many.

The major complaint everywhere is that of "Land Grabbing". Having a title to a plot of land is normally the ultimate guarantee of some security in this poor country. However, having a title to land is of little use when the same land can be allotted to some company by a government authority, who does not even inform the original title holder when such allocations are made. It is only when the company begins the operation to redevelop the land that the original owners get to know that the land they rightfully own has been given away.

Naturally they protest and at that stage security forces enter the scene and harassment is the result. As the people literally have nowhere to go, they fight back. Then they are brought to courts on all kinds of charges and many are detained. There are thousands of reports of such happenings from around the country. **In Phnom Penh, 133,000 people, which is more than 10% of its population, are believed to have been evicted since 1990.**

The result of such land evictions is that those who are displaced are excluded from any benefits, and lose their source of income; they are exposed to poor health and the young people go uneducated. In a country, with so little opportunities, eviction from land implies a transformation, which ends in destitution. For many people any hope for stability and a future is lost. Naturally women, young people and the elderly suffer the most. Consequently, prostitution and other related problems are increasing in today's Cambodia.

"The Cambodian courts continue to act on behalf of rich and powerful interests, ignoring the evidence, the Land Law and other relevant legislation, enforcing eviction where ownership remains undecided and imprisoning those who dare to protest", states a report from the well known Cambodian League for the Promotion and Defense of Human Rights (LICAHDO). Many other organizations and most people within the civil society confirm this view.

Cambodian courts are not able to protect land titles. Their function is not the protection of the individual but the interests of those who are in power. The idea of the balancing of interests is an alien concept in Cambodia. The role of the authorities is to protect the state, not the people. <sup>1</sup>

<sup>1</sup> An AHRC Statement- <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-206-2010/>

## Torture

The people of Cambodia continue to face serious problems relating to guaranteed rights against torture. As far as legislation is concerned, Cambodia has been a party to all UN conventions relating to civil rights and rights against torture. Recently, it also ratified the optional protocol relating to prevention of torture, cruel, inhuman, degrading treatment and punishment. However, it is common knowledge in Cambodia that while all these documents are being signed, there are taken no action whatsoever to implement them and they continue to have little practical value for the people.

Cambodia's judiciary and rule of law system are wholly inadequate to deal with this problem. In the recent visit of the UN Special Rapporteur on the situation of human rights in Cambodia, Professor Surya Prasad Subedi, highlighted the inadequacies of the judicial system in Cambodia. Unfortunately, the only response he drew from the country's prime minister was, "Don't tell me it is raining when I am standing in the rain." His comments were interpreted by the media to mean, 'Don't state the obvious.' Clearly, the government shares the view that the country's rule of law and judicial system are inadequate. However, there are no plans of any sort of the improvement of these systems.

As far as torture is concerned, Cambodia still does not have a proper definition of torture incorporated into its domestic legislation. The penal code recognizes torture as a crime, but it has not incorporated a clear definition of torture into its legal framework. It has been the recommendation of UN's Committee against Torture (CAT) as well as local and international human rights organizations that the government should bring about legislation which incorporates a clear definition of torture. Without clear definitions, it is not possible for courts to properly implement the constitutional and penal code provisions relating to torture in Cambodia.

The problem of torture in Cambodia is similar to those in neighboring countries and is rooted in Cambodia's policing system, which is seriously lagging in every way. Criminal investigations still use old methods and there has been no attempt to modernize the policing system of Cambodia. There have been no investments in the improvement of this system. The training of the police as well as the facilities available to the police are entirely inadequate for dealing with criminal investigations in a rational manner. The underdevelopment of the policing system results in the constant use of coercion on people who are arrested by the police.

A characteristic of well-developed policing systems is to have a comprehensive system for receiving complaints against the police and dealing with such complaints in a satisfactory manner. In Cambodia, such a system of public complaints does not exist; it has not developed any internal controls to deal with complaints made against the policing institution. As such, the people have no avenues to make complaints.

The only limited avenue available involves making such complaints to the courts. However, when the alleged victims of torture make complaints, courts inquire from the victims as to whether they want to make a complaint against the police. At this stage, according to lawyers, the general reply of victims is that they do not wish to make any formal complaint. This is due to the fear of serious reprisals following the complaints. The complete absence of any kind of protection for those making complaints prevents people from dare even trying. Bitter experiences of the cruel systems that Cambodia has faced in its recent past act

as a psychological and emotional barrier for making complaints. While Cambodia is committed to breaking away from its past, and the constitution itself recognizes this commitment, no measures have been taken to ensure protection for torture victims so that they can make complaints without fear of reprisals.

The deficient facilities of police stations and prisons mean that properly securing detainees is difficult, which further engenders torture. In police stations, there are no proper lockups and prisons are overcrowded, and as a result, people are often shackled to chairs by their legs or arms. Sometimes detainees are shackled for several months; a practice that is commonly discussed in Cambodia. This practice has evolved in order to prevent people from escaping. It is also common knowledge that people who make attempts to escape are punished severely. The development of adequate safeguards for arrested people is a primary need for the protection of victims and prevention of torture at police stations and detention centers.

Forensic pathology has not yet been introduced to Cambodia. Victims of torture are not being examined by doctors and consequently no medical reports of torture are being produced to serve as proof for the victims. The government of Cambodia and the UN agencies operating in Cambodia should collaborate to introduce medical and forensic facilities. Foreign donors should promote education of forensic pathologists. This would be a great contribution to the prevention of torture as well as an improvement of criminal investigations.

The Cambodian government has not acknowledged its duty for the compensation of victims of human rights abuses, including victims of torture. There are no possibilities for victims to bring about suits so as to receive compensation for torture or other cruel and inhuman treatments. Providing legal redress for torture remains a requirement that needs to be developed.

There are no facilities for psychological assistance, such as trauma counseling for torture victims. Some human rights organizations are attempting to provide such help by their own initiatives. However, due to inadequate support from the state and funding agencies, a system of providing psychological rehabilitation for victims has not yet been developed.

Other inadequacies in the legal system for proper investigations into abuses, such as sexual harassment of women and children, are also serious flaws in the Cambodian legal system. In the absence of proper complaint and investigation mechanisms, many crimes are committed in this area and go unaddressed. Thus, from the point of view of guaranteeing the rights of women and children, the government's compliance with the convention against torture, cruel and inhuman treatment remains a necessity.<sup>2</sup>

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<sup>2</sup> Reproduced from a statement of AHRC for the commemoration of torture day in 2010

### Recommendations for Prevention of Torture<sup>3</sup>

- (1) Prepare and enact specific anti-torture legislation which incorporates into domestic law the definition of torture set out in Article 1 of the Convention and characterizes in detail acts of torture as a specific crime, punishable by appropriate sanctions;
- (2) Take effective measures to establish and ensure a fully independent and professional judiciary in conformity with international standards. Such measures include to immediately expediting the adoption of three fundamental laws: the Organic Law on the Organization and Functioning of the Courts; the Law on the Amendment of the Law on the Supreme Council of Magistracy; and the Law on the Statute of Judges and Prosecutors;
- (3) Provide for an adequate and effective legal aid scheme, which provides sufficient resources and independent capacities in order to guarantee access to justice for all the people of Cambodia, particularly for poor and vulnerable populations, and enables any person deprived of his or her liberty the right to be assisted by a lawyer;
- (4) Establish a separate juvenile justice system by adopting expeditiously the draft Law on Juvenile Justice and develop corresponding guidelines and directives for judges, prosecutors and judicial police on the concept of a child-friendly justice system;
- (5) Amend the Criminal Procedure Code as to guarantee detainees the right to communicate with a lawyer, relative, friend or other person at any time while in police custody, and to have a legal representative present during police questioning;
- (6) Immediately close all unlawful detention centers, in particular the so-called Social Affairs Centers. These centers exist solely to lock up, without due process, members of society deemed 'undesirable' by the authorities. The existence of these centers has no basis in national or international law;
- (7) Immediately stop the practice of shackling persons in police custody and other detention;
- (8) Increase without delay the use of non-custodial pretrial measures, for instance supervised release prior to trial, in order to reduce excessive pretrial detention, and comprehensively apply and further develop existing legal provisions on bail;

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<sup>3</sup> This section is re-produced from Joint Cambodian NGO Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Kingdom of Cambodia presented to the UN Committee Against Torture (CAT) prior to Cambodia's second periodic report at the 45th session of CAT, held in Geneva from 1 to 19 November 2010. Jointly prepared by Cambodian Human Rights and Development Association (ADHOC), Cambodian Defenders Projects (CDP), Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Transcultural Psychosocial Organization (TPO), Cambodian Human Rights Action Committee (CHRAC), and endorsed by Asian Human Rights Commission (AHRC); Cambodian Center for Human Rights (CCHR); Coordination of Action Research on AIDS and Mobility (CARAM Cambodia); Community Legal Education Center (CLEC); Cambodian Women in Crisis Center (CWCC); Khmer Institute of Democracy (KID); Khmer Youth Association (KYA); Legal Aid of Cambodia (LAC); People's Center for Development and Peace (PDP); Protection of Juvenile Justice (PJJ); Human Rights Vigilance of Cambodia (VIGILANCE), referred here after as CAT Report.

(9) Take all the necessary measures to reduce and prevent the use of torture and other ill-treatment in police custody, including increased monitoring by prosecutors and independent organizations, and training of law enforcement officials, judges and lawyers in human rights law, and in particular the provisions of the Convention;

(10) Take measures to improve conditions of detention in police stations and prisons, including hygiene, food supply and separate detention of men, women and juveniles;

(11) Immediately disband the so-called “prisoner self-management committees,” which function as a way for prison officials to outsource critical job functions and disguise state sanctioned torture;

(12) Establish an independent civilian oversight body competent to directly receive and deal with complaints against the police and other law enforcement personnel in a satisfactory manner;

(13) Ensure that law enforcement personnel and other officials of the state accused of torture and other ill-treatment are promptly, impartially and fully investigated and, where appropriate, prosecuted according to the law;

(14) Establish domestic capacities in forensic pathology and other specialized medical facilities allowing for a professional examination of victims of torture and other ill-treatment, if necessary by calling for international cooperation;

(15) Establish an effective state program of victims and witness protection at the courts which assists in ensuring confidentiality and protects those who come forward to report or complain about acts of torture;

(16) Prohibit the use of confessions as admissible evidence in court unless the confessions were made in the presence of a judge or a lawyer, and train law enforcement, judges and lawyers in how to identify and investigate false or forced confessions;

(17) Improve access to medical and psychological services for torture survivors, especially during and after imprisonment, and assure that they receive effective and prompt rehabilitation services;

(18) Increase the capacity of national health agencies in providing specialized rehabilitation services, based on recommended international standards, to survivors of torture, including their family members, specifically in the field of mental health;

(19) Ensure that any national preventative mechanism established in accordance with the Optional Protocol to the Convention against Torture is independent and impartial and also capable of receiving individual complaints about torture and other prohibited ill-treatment, which it can then convey to the competent authorities for follow-up action.

## Problems concerning prison conditions

### Pre-Trial Detention<sup>4</sup>

The limits on pretrial detention are set forth in Articles 208 of the Code of Criminal Procedure. These relatively new provisions provide much longer time limits compared to the previous law. However, excessive pretrial detention continues to be a serious problem in Cambodia. In addition to the reasons for unwarranted prolongation of pre-trial detention stated in the Government's report, lack of proper case management is a major problem. Neither prison management nor court staff follows up on the actual length of pretrial detention. Sometimes suspects who have no legal representation are simply forgotten. In Phnom Penh, this situation is somewhat alleviated through higher level of knowledge on the law among law enforcement officials.

### Excessive pretrial detention has been documented in the following circumstances:

(a) Detention orders are not extended when they have expired. Under Articles 1208 provisional detention orders must be reviewed periodically by the court and formally extended. For example, an adult felony may be provisionally detained for six months; the detention order may be extended twice, each time for an additional six months. However, such extensions are often presumed by prosecutors, courts and prison officials, and detainees are not given the opportunity to contest the extension. Alternatively, extensions may be made without a proper statement of reasons and/or made for convenience purposes only. The charged persons may not be informed and asked about their observations, depriving them of the opportunity for them to ask the judge for their provisional release.

(b) Persons are detained longer than the maximum time limits for pretrial detention (adults: four months plus a twomonth extension for misdemeanors; six months, plus two six-month extensions for felonies; juveniles: 2 to 4 months, depending on age, for misdemeanors; four to six months, depending on age, for felonies). Caseloads at some courts are considerable, and some detainees remain imprisoned for two years or more before trial.

(c) Individuals are kept in pretrial detention longer than the maximum prison term for the charged offense. This problem arises from inadequate recordkeeping and communication between prisons and the courts, and can be exacerbated by corrupt officials who demand payment before processing an inmate's release.

(d) Juvenile prisoners charged with misdemeanors are held in pretrial detention for more than half of the minimum sentence set by the law for the offense. Under Article 214, this is illegal.

(e) Upon the closing order terminating the investigation period, the trial does not start within the prescribed four months upon which the charged person is supposed to be

<sup>4</sup> This section is reproduced from CAT Report

released automatically, and yet the person is maintained in prison. Under Article 249, the trial must begin within four months of the closing of the investigation period.

(f) Even if the trial starts within four months, the court can issue interlocutory orders authorizing further investigation, circumventing the four-month requirement contained in Article 249. This often extends the investigation period beyond the maximum time limit.

(g) In some provinces, prosecutors and courts erroneously interpret Article 249 of the Code of Criminal Procedure to authorize an additional four months of pretrial detention, in addition to the limits set forth in Articles 208-14. Thus, an adult charged with a felony can be kept in pretrial detention for 22 months (six + six + six + four) instead of the 18 months clearly prescribed in Article 208. Articles 208-14 provide for *absolute limits* to the total term of “provisional detention.” Article 249 concerns an entirely different subject: the time limit on provisional detention after a judicial investigation is closed.

Ordinarily, the completion of an investigation automatically terminates provisional detention. Article 249 allows the judge to extend detention for four months following the completion of an investigation. It does not add an additional four months to the absolute limits in Articles 208-14. We note that the government’s submission to the Committee does not argue that Article 249 provides for an additional four months of pretrial detention. Thus, we hope that the government can ensure that this view of the law is uniformly enforced throughout the country.

LICADHO’s monitoring of 19 prisons with an average pretrial population of 3,900 has identified an average of 102 cases of excessive detention per month for the first six months of 2010. In 2009, the average was 80 excessive detention cases per month, with an average pretrial population of 3,670. In addition, trial monitoring of the Cambodian Center for Human Rights (CCHR) revealed that in 176 of the 199 trial monitored during the latest reporting period (Aug – Dec 2009) the accused was detained in pre-trial detention – a rate of 88 percent across the trial monitored. This is notwithstanding the presumption of liberty and against pre-trial detention in Article 203 of the Code of Criminal Procedure (CCP). Of particular relevance is the trial monitoring report’s finding that eight out of 199 cases monitored, the duration of detention exceeded the maximum legal limits for provisional detention prescribed in Article 208 and 209 of the CCP. In two cases the accused, who had been charged with felonies, were provisionally detained for over three years.<sup>23</sup>

Excessive detention is also a problem for convicted prisoners who are imprisoned beyond their release date. This problem can be caused by official corruption, for instance prison officials demanding payment for processing release papers. Prisoners may also be excessively detained when the prosecution appeals a lower court decision. A prosecution appeal almost always triggers the continued detention of the defendant – even if the lower court found the individual not guilty. Appeal courts are woefully overburdened, and scheduling a hearing can take years. Thus, defendants can be imprisoned beyond the maximum possible sentence for the charged crime, *even if they are ultimately found not guilty*.

The problem of chronic excessive detention is closely linked to Cambodia’s grown reliance on prison as the default punishment for any transgression. The country has made minimal use of noncustodial alternatives, including bail, community service and suspended sentences. As a result, the judicial system is severely overburdened and the country has seen an unprecedented explosion in the prison population.

## Overcrowding

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Overcrowding is among the most serious problems facing Cambodia's prison system (see graph). Cambodia's prisons are already starved for resources, and overcrowding has strained an already broken system to the point of crisis. Cambodia's prison system was operating at approximately 100 percent of capacity in 2004. Taking into account the data of the General Department of Prisons (GDP, see also para. 60) of June 2010, it is now at 173 percent capacity, with an average growth rate of 14 percent. Putting this data into context and comparing it with the information gathered by the International Center for Prison Studies, Cambodia's prison system would now rank among the 25 most crowded in the world. If current growth trends hold, the system could become the world's most crowded by 2018.<sup>24</sup>

Thus far, the Government's sole response to the overcrowding crisis has been to construct additional prisons and expand existing ones. The GDP's latest attempt to ease overcrowding is the construction of Correctional Center 4 (CC4). This new prison in Pursat Province, opened in January 2010, is designed to eventually house 2,500 inmates. The inmates will engage in forced labor, and there is concern that the labor will be performed for the private rubber industry.

While Cambodia is certainly in need of upgraded detention facilities, building new prisons alone cannot eliminate the problem of overcrowding. Even if the inmate population slows to a growth rate of 10 percent per year and Cambodia builds a new CC4-sized prison every year, this will still never catch up with the total inmate population. Taking a more conservative view – the addition of 400 new beds per year for nine years, together with a population growth rate of 5 percent over that time – Cambodia's prison system would still be at 165 percent of capacity in 2019.

Overcrowding is largely the result Cambodia's over-reliance on prisons as the predominant response to crime. Currently, Cambodia's criminal justice system is focused almost entirely on incarceration, both of convicted criminals and defendants awaiting trial. The default punishment for nearly any crime is imprisonment – even for minor offences, and often for an extended time period. Likewise, release pending trial is rare for criminal defendants who typically end up in pretrial detention.

Sentences of imprisonment routinely lack proportionality to the seriousness of the crime. In a recent case, a man was sentenced to 18 months imprisonment and a \$50,000 fine for possession of drugs and possession of US\$500 in counterfeit currency. The fine was imposed specifically for the counterfeiting offense. The man could not pay the fine, and as a result was forced to spend an additional two years in prison.

In another case, a 16-year-old boy in Preah Sihanouk Province was imprisoned for breaking a window. According to a source, the boy was addicted to drugs, argued with his family over money, and broke the window in anger. The family, at a loss to deal with his drug problem, reported him to police. He was convicted of property damage and sentenced to six months imprisonment.



### Overcrowding contributing to the use of torture

Overcrowding impacts prison security and increases the chance that inmates will be tortured. Current inmates rarely report specific incidents of torture to NGOs or other monitors due to the fear of retribution by prison officials or other prisoners. NGO interviews with inmates are not always confidential.

Despite limited reports, it remains clear that torture and other forms of treatment are still commonly used as form of punishment for certain transgressions, including escape, attempted escape and fighting. The most common techniques include shackling, beating, prolonged placement in isolation, and round-the-clock confinement to a cell for periods exceeding one month.

In early 2010, 15 prisoners at the Kampong Thom provincial prison were shackled to each other after they attempted to escape. Kampong Thom prison is Cambodia's most overcrowded prison, housing 220 prisoners in a space meant for 50. The prisoners were bound together with metal leg cuffs attached to iron bars; one bar held eight prisoners and the other held seven. The shackling lasted 24 hours a day for over one month. The inmates remained shackled while they slept, ate, and relieved themselves. The shackling persisted despite numerous local and high-level intervention attempts from local NGOs and the United Nations Office of the High Commissioner for Human Rights. Prison officials claimed that the shackling was necessary for security reasons, as they had no space to securely house inmates who posed an escape risk. The shackling finally ceased when the inmates were transferred to different prisons.

On 26 September 2008, Heng Touch, aged 24, of Roluos village, Cheung Ek commune, Dangkor district, was arrested and charged of robbery to be sent on 1 October 2008 to custody at Prey Sar prison (M-1) on the outskirts of Phnom Penh. In mid November, Heng fell mildly ill in the prison. When his mother and older brother visited him, the guards suggested that he be moved to another room, but asked USD\$200 to effect this transfer. When the mother and brother only offered USD\$50, the guards refused. After being told Heng's condition had deteriorated to a serious state, Heng's mother visited him at the prison and reported that his head was swollen, face, body and legs significantly bruised and tongue cut. His mother paid the guards USD\$30 to transfer Heng to Monivong Hospital where he later told her that he was severely beaten by five men. Medical scans indicated that he had suffered a fractured skull and had damaged lungs. His condition continued to worsen until he lost consciousness permanently. It has been alleged (and later denied by the prison director) that Heng was tortured by guards after they failed to solicit a bribe. Heng died on 21 November 2008 at Calmette Hospital.

Prison discipline is increasingly "outsourced" to other inmates who make up so-called "prisoner self-management committees." These committees are made up of senior prisoners who receive privileges in exchange for keeping other inmates in line. They report directly to prison officials, who may give orders regarding the operation of the prison. These orders may range from distribution of sleeping space in a cell to an order to beat certain inmates. The use of prisoner self-management committees is disturbing, as the practice places an additional layer between torture victims and state actors, making it more difficult to identify mistreatment as state-sponsored torture. This appears to be a conscious effort on the part of the law enforcement officials to disguise their involvement in serious, systematic and institutionalized violations of the Convention. The practice also indicates a deterioration of professionalism in a prison system that already suffers from a dire lack of

qualified personnel. Prison guards are growing increasingly reliant on inmates in the execution of their jobs.

In February 2010, two released inmates reported that the prisoner self management committee regularly meted out “initiation beatings” for newly arrived inmates at CC1 and Kampong Cham prisons. The inmates received such beatings themselves, and stated that the only exceptions were reserved for certain prisoners the guards designated off limits.

In December 2009, a female inmate working in a prison garment factory felt ill one morning during work. The factory area was excessively hot, and she had finished her work, so she went to the doorway to get some fresh air. A female guard responded by cursing her and telling her to get back to her place. The inmate explained that she felt sick, and the guard responded by attacking her. The inmate reported that the guard pulled her down by her hair and beat her about the head with her shoe. A male guard joined the beating, using his belt to strike the inmate three times. Following the attack, the prisoner was ordered to write a letter of apology to the female guard involved. In addition, the inmate was forced during recreation time to exit her cell on her knees, and remain kneeling in the prison compound – in the sun – for the duration of the period of her cell. This continued for 20 days. Following the 20 day period, the prisoner was further disciplined with a total denial of recreation time for an indefinite period. The inmate also lost her job.

### The lack of proper food supplies

As mentioned in the Government report, the daily food allowance was increased in 2009 from 1,500 riel per day to 2,800 riel per day. This was an important step in providing for the minimum needs of prisoners. However, prisoners report that the overall quality and quantity of food remains poor. Inmates still require supplementary food supplies – or money to purchase such food – to assure proper nutrition. Protein, such as fish or meat, is rare, and distribution of food is not always conducted in an egalitarian manner. In addition, some prisoners have complained that prison officers eat food intended for inmates. The lack of adequate food supplies can cause malnutrition and diseases such as beriberi.

### Hygiene conditions

Due to overcrowding and understaffing, inmates are not given adequate time out of their cells for recreation. As a result, recreation time has become commoditized, with inmates paying for the privilege. Prison officers are also known to charge prisoners for access to rehabilitation programs, medicine, water, and visiting privileges.

Many new prisons were constructed with minimal regard to proper construction and security standards, resulting in hygiene problems. Some facilities are built as part of so-called “land swaps,” where a company is given valuable land – typically a central parcel where the former prison was located – in exchange for constructing a new prisons. These companies then use unskilled, and unpaid, inmate labor for much of the work. Key elements of the job are routinely left unfinished, including electricity hookups, water facilities, auxiliary buildings (including medical clinics), and even inmate housing. Within a few years, infrastructure is crumbling and needs upgrading. At the provincial prison in Koh Kong, the sewers are so overburdened that they routinely overflow into inmate living areas. The prison was built by a private firm in 2006.

Water quantity and quality is a recurring problem at many Cambodian prisons, with several lacking adequate wells, pumps, or hookups to city water. Overcrowding in Cambodia's prisons greatly contributes to the spread of communicable diseases such as Tuberculosis, Scabies and upper respiratory infections.

Current statistics, as of June 2010, according to the General Department of Prisons (GDP) are as follow:

Total prisoners: 13,944 (4,443 pretrial [32%], 9,501 sentenced [68%])

Convicts: Male = 8,169 Female = 410

Pretrial Detainees: Male = 3,762 Female = 241

Foreigners: Male convicts = 296 Female convicts = 90

Male pretrial = 151 Female pretrial = 50

Minors: Male convicts = 521 Female convicts = 15

Male pretrial = 189 Female pretrial = 50

## Cambodia's legal system

Cambodia still remains an authoritarian state despite of it having a constitution based on liberal democracy and holding periodic elections. Liberal democracy was never a reality due to the nature of the Cambodian judicial system. The Cambodian "judicial system", which was created with the advise of Vietnamese experts during 1980-90 period remain in tact, despite numerous trainings of judges on liberal democratic principles. The over all system does not allow practice of such principles, the judiciary is expected to be under the complete control of the executive.

The actual model of administration of the country is not based on the constitution introduced in 1993, but it based on a model of administration created during the earlier administration 1980-1993, in which the executive had the complete control over the system. The executive exercised his control through the party. The system of administration controlled by the executive and assisted by the ruling party is what still exists today, as the real political stem of Cambodia. The constitution is only a decorative façade.

The thought control of the "judicial system" is essential to the very survival of the actual political system in operation. All political activity is controlled through "the judicial system." All opposition party members who deviate from the unwritten rules of the system are punished through the court system. The development of opposition parties is thus controlled by the sanctions that are being imposed through the courts.

Therefore possibility of a fair trial does not exist within the system. Outcomes of trials are predetermined. Any judge that may try to deviate from this limitation on the power of courts will suffer the consequences. The "Judiciary" quite well understands this situation and therefore deviations have been few and far between them. Besides, deviators have paid for their transgressions.

Limitations imposed on the Supreme Council of Magistracy and Constitutional Council are not accidents but are of a political nature. These institutions are expected to be of subservient nature of the executive. The reforms of such institutions are not possible as long as the existing model of political administration remains in operation.

Most Western “reformers” have refused to acknowledge the actual nature of the political administration and often try to make the constitution work. Naturally, nothing comes out of such efforts except frustration.

Enactment of new laws do not make much of a difference to this system neither. Law is not an important ingredient of administration. The administration has its own operational rules. Misuse of the New Criminal Code for the purpose of imprisonment of the opponents of the government is warning for wanted attempts to reforms of the system by such means.

What is required for any reform is the understanding of the actual system, as it exists today and the weakness of that system. An international debate on the system based on an actual understanding of it, is more likely to produce results facing real challenges to the rule of law and democracy, than ad hoc activities introducing new laws and different kind of training.

The Cambodian people, who suffer under the system of tyranny, do understand its nature and the limitations. One can hope that they will become capable of articulating their tribulations and finding ways to overcome them.

## Impunity

Impunity remains a major challenge to the rule of law in Cambodia. Cases that involve police, military and prison officials among others rarely make it to court and prosecutions are exceptional. The police often refuse to take the complainants’ statements in the first place and complainants are harassed, threatened or bribed to withdraw them. Evidence is withhold or destroyed by authorities and if investigations do take place, they are often arbitrarily conducted and in the favour of the officials. Countless cases of murder, torture or rape go unsolved while evidence is clearly established. The impunity the perpetrators enjoy has a tremendous impact on all aspects of a system claiming to be based on the rule of law.

While all state institutions are afflicted with the lack of separation of powers, most of them are accessible and can be influenced with political or economical power. The government control almost all features of the judicial system and both the government and the Ministry of Justice infringe upon the work of the Constitutional Council and the Supreme Council of the Magistracy, which are supposed to be independent monitoring bodies.

Due to the absence of the law on the statute of judges and prosecutors, the government has exercised its control in the appointment of judges and members of the Supreme Council of the Magistracy, which should be appointed by the Council itself. No age of retirement of judges and prosecutors has been fixed, which have led to cases of favouritism. Corruption is widespread within the judiciary and it is believed that judges and prosecutors bribe their way to their position or to remain in them.<sup>5</sup>

In June 21, 2009, the government retired and replaced four out of eight members of the Supreme Council submitting them to the King. On August 4, 2010 the Minister of Justice

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<sup>5</sup> Human Rights in Cambodia: The Charade of Justice, a LICADHO Report, December 2007

proposed the appointments of over 32 judges and prosecutors. In both examples the Supreme Council has been almost completely ignored.

Since the members of the Supreme Council are partly appointed by the government, there are strong reasons to mistrust their authority. A part of the members of the Constitutional Council are appointed by the Supreme Council, hence, the same might apply to them. It illustrates how all parts of a system designed to hold impartial bodies, which are expected to exercise control on each other, are affected when corruption and power abuse are canalized out crushing the fundamental structure.

The result is a civil society, who has lost trust in and respect for the legal as well as the political system. It implements a fear for using these system among common people as they regard the courts as instruments used by powerful people to remain in power. It encourages crimes among officials and put the use of bribery into common practice to escape punishment or to make political or private enemies scapegoats in cases of their involvement.

### **Political scapegoats – The case of Born Samnang and Sok Sam Oeun**

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The use of political scapegoats is common practice in Cambodia. A primer example is the case of Born Samnang and Sok Sam Oeun, who were sentenced to 20 years imprisonment in August 2005 by the Phnom Penh Municipal Court in on the charges of murdering Chea Vichea, a renowned labour rights activist attached to the Sam Rainsy Party, in January 2004.

A confession from Born Samnang formed the principal evidence, but Samnang retracted the confession as early as the second interrogation claiming that he had been beaten and threaten by the police to confess. Multiply eyewitnesses confirmed that Samnang had been in a different province at the time of the murder. The only evidence against Sok Sam Oeun existed in Samnang's retracted confession.

The investigating judge, Hing Thirith ordered further investigation into the case as well as that the charges against them were dismissed because of lack of evidence. The day after Thirith was removed from his post at the Phnom Penh court due to unspecified judicial mistakes and transferred to a different province, and the charges were reinstated by Thou Mony.

In 2006 even Heng Pov, the former Phnom Penh police commissioner in charge of their arrests and detention, admitted that the suspects had nothing to with the murder. He himself was in 2007 convicted of several crimes committed while he was chief of the Phnom Penh police.

With a 20 months delay the appeal hearing was finally held in April 2007, but the verdict was uphold in what has been labeled as a politically motivated show trial. Despite the presence of several international observers, the case has been highly criticized by the international community as well as local NGO's as violating the legal procedures and human rights standards. The lack of evidence was obvious, the witnesses were treated aggressively, the allegations of torture and threats of the accused during detention were not covered and the judges paid in general little attention during the proceeding.

After enormous domestic and international pressure, the Supreme Court presented a retrial on 31 December, 2008, where Samnang and Oeun were released on provisional bail and ordered the Appeal Court to re-investigate their case.

While the release has been welcomed in Cambodia as well as in the international community, the case still stands as an ugly illustration of how the legal system has become utterly dysfunctional and politicized in Cambodia today.

No legal steps have yet been taken to investigate the murder of Chea Vichea or to compensate Samnang and Ouen for their almost 5 years' wrongful imprisonment. Countless other cases of state officials and their relatives enjoying impunity have been listed by LICADHO in their report covering all from torture cases, illegal smuggling, rape and land-disputes.

## Freedom of expression and free assembly

While the media in theory enjoys a relatively large amount of freedom and journalists seldom have their freedom of expression directly violated, there is a tremendous pressure of self-censorship within the media industry and a remarkable increase in the use of defamation charges by the government. In practice most journalists restrict their reports to objective or government friendly issues and rarely criticize or investigate cases related to misconduct or excesses of the government.

Most media houses are more or less controlled by the government or are to a high extent dependent of their favour to uphold the existence of the paper and their position. As in any other industry in the country it is corruption and nepotism, which keep the majority of newspapers, magazines and TV-channels going. The later almost being a CPP monopoly. Exceptions are the few radio programs run by NGO's and the foreign language newspapers in Phnom Penh, which operate fairly freely. However the later only reach a small part of the Cambodian elite and expatriates.

The rights to free assembly and association have faced considerably decline since the Law on Demonstrations were imposed in 1991. It is difficult to grant permission for a demonstration especially if it is regarded critical of the government and most demonstrations are therefore turned down because of unspecified security concerns. The demonstrations being hold are often facing police crackdown despite the demonstrations carried out according to the law and within peaceful circumstances.

Criminal defamation and libel laws with penal consequences are being freely used by the government to silence critical voices among politicians, human rights defenders and reporters. As a result extreme cautiousness and self-censorship have a strong hold in most journalists. If a media worker gets in state officials' disfavor it almost certainly means the person will be removed from the post, will be sued for defamation or harassed in various other ways. The courts have become popular tools to crack down on critical voices by the government.

During the months preceding an election restrictions of freedom of expression are especially harsh. Obviously organized efforts by the government to crack down on opponents and control all media have been widely reported. The closure of the Angkor Ratha Radio Station in May 2008 preceding the general election in July 2008, was an

unmistakable demonstration of this. According to the Ministry of Information the closure was due to the stations alleged selling of airtime to “foreign interests”, meaning opposition parties.<sup>6</sup>

What also affected the political climate leading up to the election was the assassination of Khim Sambor and his son on July 11, 2008. Sambor was a journalist for the newspaper, Moneaksekar Khmer (Khmer Conscience), affiliated with the Sam Rainsy Party. No legal steps have yet been taken for an investigation into the case; consequently the murder is another illustration of the persistent impunity of political afflicted perpetrators in Cambodia today.

### **Silencing political opponents – The case of Sam Rainsy**

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The restricted freedom of expression for media workers also applies on political opponents, which the dreadful case of Sam Rainsy, the main opposition leader, clearly exemplifies.

Rainsy went into self-exile on February 3, 2005 after a vote in the National Assembly removed his parliamentary immunity along with two other party members. Rainsy was charged with criminal defamation for his accusation of corruption between the CPP and Funcinpec in the formation of the current coalition government. Moreover he accused Prime Minister Hun Sen of involvement in the murder of Chea Vichea in January 2004. He was tried in absentia on December 22, 2005 and sentenced to 18 months imprisonment along with a fine of \$14,000 as compensation.

However, on February 5, 2006, at Hun Sen’s request, Rainsy received a Royal Pardon by King Norodom Sihamoni and returned to Cambodia on February 10, 2006.

In October 2009 Sam Rainsy led a protest against alleged border markings at the Vietnamese border, which Cambodian villagers are said to have lost land to.

Vietnam condemned Rainsy’s actions and urged the Cambodian government to protect the treaties and agreements between the two countries. Soon after Rainsy faced a sentence of 2 years imprisonment as the court found him guilty of destruction of property and racial incitement for uprooting markers along the Vietnam border. Rainsy fled to England, where he is currently in exile.

On January 1, 2010 the court issued an arrest warrant after Rainsy failed to appear in court due to his exile. On September 23, 2010, Rainsy was sentenced to 12 years additional imprisonment on forgery and disinformation charges for publishing a map on his party's website of the alleged Vietnamese border encroachment. He also received a fine of more than \$15,000 as reparation since he, according to a judge, had posted the map as an act to damage the image of the Cambodian government.

The verdict has been condemned by the international community. However the Government attorney Ky Tech defends the absurd verdict explaining that “the damage caused by Sam Rainsy was very big.”<sup>7</sup>

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<sup>6</sup> OHCHR Cambodia Country Office's annual report 2008-9

<sup>7</sup> VOA Khmer reporting on the sentence on September 23, 2010

The new sentence of Sam Rainsy will obviously deprive Cambodia of its main opposition leader and therefore weaken the opposition up to the 2012 election.

The case illustrates the government's systematic use of the courts to silence critics and political opponents. It furthermore illustrates the arbitrary use of defamation and disinformation laws. The increased criminalization of defamation and disinformation confirms the fear of a decline in the right to freedom of expression and the right to association and assembly in Cambodia. The government along with state officials seem to have developed a hypersensitivity to criticism as the control of the individual freedom and the political climate for free debates has tightened.

Ironically, while perpetrators of serious crimes remain unpunished, political opponents and dissidents keep facing absurd and severe sentences ruled by court.

## Restrictions on the UN

The latest development involving the work of UN I Cambodia demonstrates the governments growing intolerance on constructive criticism and intentions of shrinking the space for exercising fundamental freedoms. On October 27, 2010 Hun Sen ordered UN's Secretary-General Ban Ki-moon to remove the representative of UN's Country Office of the Office of the High Commissioner for Human Rights (OHCHR), Mr. Christophe Peschoux, from the office in Phnom Penh. Cambodia's Foreign Minister, Hor Nam Hongin accused Mr. Peschoux for being a 'spokesman' for the opposition party. Hun Sen further stated that it was the intention of the government to close the office altogether.

The OHCHR Country Office was established in October 1993 in accordance with the Paris Peace Accords by Resolution 1993/6 of the Commission on Human Rights. Peschoux has been the head of the office since September 2007. The office is mandated to work with the government and civil society organizations to support the implementation of ratified human right treaties, which the government is obliged to.

Ironically, the body supposed to support and advise on violations of the right to freedom of expression among other basic rights is now facing this violation itself. The government's demand is put together to intimidate the civil society and strengthen their grab on all public dissent backed up and made available for the public by international bodies like the UN. Exceeding its authority the government has taken a serious step, as the demand completely undermines international law as well as domestic law and the role of UN, while making a mockery out of a system acclaimed to be based on the rule of law.

## Awaiting action

The conclusion to be drawn is that the authoritarian tendency within the current government is more evident than ever.

There is a strong need for construction of independent and impartial institutions and for a de-politicization of the courts along with the eradicating of corruption. What were



supposed to be impartial bodies such as the Supreme Council, the Constitutional Council among others need to regain authority and an autonomic body to monitor the judiciary should be formed.

Impartial and proper investigations need to be conducted by the police not to let perpetrators go unpunished and eliminate the practice of appointing political scapegoats.

A pressure needs to be put on the Cambodian government to recognize the individual's right to freedom of expression, assembly and association and decriminalize defamation and disinformation.

## Land-grabbing

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During the last decade there has been a tremendous increase in the cases of appropriation land and the following evictions of the inhabitants. The issues of land grabbing have reached epidemic dimensions with a clear pattern of rich and powerful individuals or private companies depriving the poor and marginalized of the land, they inhabit or farm.

The right to private property was only re-introduced in the Cambodian constitution enacted in 1993 following the first election after the Khmer Rouge regime took power in 1975. In the aftermath the claiming of land titles became a complex puzzle, where especially landowners from the more poor and rural areas never managed to get entitled, as the process was complicated and expensive. Moreover, obtaining the titles have seemed to depend more on the will of the authorities in the changing governments than the actual legal rules on the matter.

Since the 1980's the Cambodian government has privatized numerous state owned companies coinciding with state officials obtaining the ownership of these enterprises.

The concomitant evictions are mostly carried out in the name of "development", which remains the prevailing excuse for the government every time a new section of land is handed over to a private enterprise dispossessing numerous people. As almost 80 % of Cambodia's population live in rural areas<sup>8</sup> and consequently rely on farming to sustain themselves, land evictions not only make people homeless, but also entirely deprive them of their livelihood.

While it is certain that the so-called development have profited company owners as well as the state officials reining the land-business, the almost opposite effects apply to the evicted people, whose living conditions and job opportunities are extensively declining.

However, many times the acclaimed development seems to be long in coming. It is not uncommon that an area, which is granted for commercial development faces the complete demolishing of villages, but is still found undeveloped years after. In such cases it is hard to understand the apparent, urgent need for a forceful eviction of the inhabitants placing them in slums with no access to their agricultural dependencies, while the farmland is left disused and overgrown.

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<sup>8</sup> CIA World Factbook, 2010

### Standing up for your rights is a dangerous affair

As the forced evictions have increased, so has the government's grab on the protesters. Violations and human rights abuses have become common outcomes of land disputes accompanied by arbitrary arrests and fabricated charges against the protesters.

As described in the section on the courts in Cambodia and the impunity enjoyed by influential perpetrators, legal proceedings in Cambodia rarely rely on impartial investigations of the circumstances or the evidence established as much as political interference with the cases hand in hand with corruption. There have been countless reports on brutal arrests and treatment in custody, illegal extension of pre-trial detentions along with fabricated charges; most common are allegations of property destruction and infringement.

The role of the military in the conductions of the land evictions is especially disturbing. The Royal Cambodian Armed Forces (RCAF) is widely known to assist in the clearings of villages as well as guarding the area for the companies or individuals now in charge of the land.

In the aftermath of the civil war both the government and the ousted Khmer Rouge living in border camps used logging to fund their operations. The practice is still widespread among Cambodia's political elite today for especially private interest resulting in an extensive business of illegal deforestation. RCAF is also found to be involved in these illegal logging operations, why the clearing of land often seem to be in their interest.

According to Cambodia's domestic laws, the military impose no power to carry out law enforcement such as evictions. However, as most evictions are conducted by the government without due process in court, they are already illegal and the use soldiers to accomplish them is just adding to the illegitimate profile of the evictions and continue to enjoy impunity.

### The arbitrary and brutal eviction of Spean Ches village and villages in the Choam Ksan district

On January 19, 2007 more than 100 families living in Spean Ches village in Sihanoukville municipality were given 1 week's notice to leave the area. Most of the families had been living in the village since the 1980's and 90's, but suddenly a wife of an adviser to a senior government official claimed to be entitled to the land. Her alleged entitlement was never presented to the villagers and they sent their complaint to relevant authorities to look into the matter.

The Senate Commission of Human Rights concluded that the dispute was a civil matter that had to be tried in court. As the villagers did not have the money to take the case to court, the government shortly after appointed a taskforce to carry out the eviction involving more than 150 members of RCAF. The forceful eviction took place on April 20, 2007 with the arrival of heavily armed military and government forces. People who tried to protect their houses were beaten with sticks and electric batons while shots were fired. Police and military officers confiscated valuables from the villagers including 16 motorbikes, while they burned their houses and the leftovers of their possessions.

18 villagers were badly injured and 13 arrested. All the arrested were imprisoned for more than a year, 9 of them convicted for property destruction and battery with injury. No relocation was ever promised by the government and many of the villagers continue to live under tarpaulins provided by different NGO's.

A similar incident happened on November 15, also in 2007 in Choam Ksan district, Preah Vihear province, where 317 families were evicted. Two people were shot dead by police officers. Mr Oeun Eng was shot in the chest and died almost immediately. Mrs Toeun Chheng was attempting to shield her four children in front of her house, when an officer stepped up to her and shot her with an AK47 rifle in the chest. As she lay bleeding on the ground he ripped of her necklace and also took a motorcycle from the house. Her husband Moeun Chanthon was soon after arrested and brutally beaten. Toeun Chheng later died in hospital.

At least six other people were injured, 5 of them shot. After the looting and burning of houses, the police allegedly celebrated the eviction by killing a cow, cooking its body to eat and burying its head.<sup>9</sup>

## Social Land Concession

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The Social Land Concession (SLC) is a sub-decree launched in March 2003 as a legal mechanism to transfer private state land for social purposes and/or family farming purposes meant for the landless and poor parts of the population. The decree set up a legal framework for land disputes and established departmental bodies to manage the concessions. A welcomed piece of legislation in Cambodia, - if just it had managed to carry out its function.

Since the introduction of the sub-decree it has only become more and more evident, that its real intention was not to provide land for the poor, but to dislocate inhabitants from their current locations and let private enterprises enquire the land instead. It is with bitter irony many poor villagers in Cambodia have come to experience the dreadful impact on their lives caused by the very same sub-decree, they believed was created to benefit them.

## Borei Kella - Victims of the SLC

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A tragic demonstration of the sub-decree in practice would be the government's approval of a SLC on the Borei Keila community in late 2003. While the approval process did not follow any of the legal procedures set out by the sub-decree on consultation and transparency, the proposal itself seemed well intended to begin with. According to an agreement in 2004 between the community and the Phnom Penh municipality, most of the 1776 families in the community were long-time residents and therefore entitled to housing on the land. The project was supposed to be a land-sharing arrangement between the private company, Phanimex, the Ministry of Education and the community. Phanimex would build new apartments on the land to all the families, while the company itself would

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<sup>9</sup> Reported by LICADHO in their press release on the case November, 22, 2007.

be granted some land for commercial development. As time has shown, these promises were to good to be true.

In late 2009 only 30% of the families had received the apartment, they were promised. In inconsistency with the agreement between the community and the municipality in the first place, most of them are apparently now disqualified to get apartments. The relocation sites consist of temporary, lousy shelters with little access to basic facilities often far from the original Borei Kella site, consequently far from their jobs calling for expensive transportation.

However, the most ghastly part of the case is the establishment of what has now been labeled “the HIV-villages”. Around 45 families living with HIV/AIDS were evicted from Borei Kella in 2007 and allocated to one of the temporary shelter sites. In 2010 this group faced a new eviction as the temporary site was allocated to the Ministry of Tourism for a construction of a ministry building along with a car park and sport facilities for the staff. The HIV/AIDS-affected families now live in the isolated site of Toul Sambo, even more distant from the hospitals or any other medical services, which most of them rely on for their medication to keep them alive. The site poses in general a great health risk as it further lacks access to all basic facilities such as toilets, electricity and clean water.

The whole case has been strongly condemned by several domestic as well as international NGO’s and civil society organizations. However, the Cambodian government has so far ignored all complaints and requests on the matter.