
CAMBODIA

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
ANNUAL REPORT 2010

Political context

In 2009, Cambodia was particularly marked by an increase in restrictions on the right to freedom of expression, in a context where the Cambodia People's Party (CPP) has become overwhelmingly powerful and was controlling all the State apparatus. Members of the opposition and representatives of civil society organisations critical of the Cambodian Government were the main target of such repression: at least 22 complaints were filed by Government officials against them during the year, with an additional 25 complaints against journalists for "criminal defamation", "disinformation" and related offences. Several journalists were imprisoned¹.

Forced evictions also continued to take place throughout 2009 both in cities and in rural areas. These evictions, in blatant violation of national and international standards, benefit the powerful and wealthy people, leaving victims without means of subsistence. According to the Cambodian Human Rights and Development Association (ADHOC), 29 cases of forced eviction affected 5,497 families in 2009, with an additional 71 communities notified of impending eviction². As of late 2009, 52 individuals were reportedly detained in relation to land disputes in 18 out of 25 prisons monitored by the Cambodian League for the Promotion and Defence of Human Rights (LICADHO), including members of human rights organisations and community leaders³. In contrast, no prosecutions were instigated against the corporations or other entities responsible for violent land seizures and the destruction of property⁴.

2009 did see some progress in the work of the Extraordinary Chambers in the Courts of Cambodia (ECCC), with the trial of Mr. Kaing Guek Eav, alias "Duch", which can be viewed as a key element in addressing

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

2/ *Idem*.

3/ See LICADHO.

4/ A number of development partners called upon the Government of Cambodia to stop forced evictions until a fair and transparent mechanism for resolving land disputes is put in place and a comprehensive resettlement policy is developed. See Common Statement, July 16, 2009, signed by the Embassies of Australia, Bulgaria, Denmark / Danida, Germany, the United Kingdom, the United States of America, the Swedish International Development Agency (Sida), the Asian Development Bank, the Delegation of the European Commission, the United Nations and the World Bank.

Cambodia's painful history⁵. Nevertheless, the judicial system, as well as other aspects of public administration, continued to suffer from corruption⁶, and human rights defenders found it very difficult if not impossible to hold the authorities and other powerful people accountable for human rights violations before the domestic courts. As highlighted by the UN Secretary General, impunity remained a major challenge to the rule of law in Cambodia in 2009. Numerous cases of unlawful detention were not addressed by the competent institutions⁷ and there were repeated political interferences in judicial proceedings⁸. Impunity was still the rule and the Judiciary was often used as a tool in the hands of the authorities to repress dissent. The persisting impunity for attacks against human rights defenders in Cambodia remained a major concern, all the more as these attacks are meant to intimidate and silence all human rights activists.

These serious concerns and others were addressed by various UN human rights mechanisms in 2009: in June 2009, the UN Committee on Economic, Social and Cultural Rights examined Cambodia's State report and the UN Universal Periodic Review process was undertaken in December, which led to 91 recommendations for the Cambodian Government to improve its human rights record⁹. The Committee notably expressed its deep concern about Cambodia's prevalent culture of violence and impunity "and the repression of human rights activists defending economic, social and cultural rights, particularly those defending housing and land rights". The Committee also acknowledged the "reports that the court system has been used to legitimise forced evictions and falsely prosecute housing rights defenders". The Committee consequently urged Cambodia "to take all necessary measures to combat the culture of violence and impunity prevalent in the State party, and for the protection of human rights defenders, including indigenous leaders, peasant activists [...] against any intimi-

5/ The verdict in the case against Mr. Kaing Guek Eav is expected at the end of July 2010.

6/ Transparency International 2009 Corruption Perception Index ranked Cambodia 158th out of 180 countries in the world and South East Asia's second-most corrupt country.

7/ See Human Rights Council, *Report of the Secretary General - Role and achievements of the OHCHR in assisting the Government and people of Cambodia in the promotion and protection of human rights*, UN Document A/HRC/12/41, August 5, 2009.

8/ See Testimony by Dr. Chhiv Kek Pung, President and Founder of the Cambodian League for the Promotion and Defence of Human Rights (LICADHO), before the Tom Lantos Human Rights Commission, September 10, 2009.

9/ See Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Cambodia*, UN Document A/HRC/13/4, January 4, 2010, Committee on Economic, Social and Cultural Rights, *Concluding Observations - Cambodia*, UN Document E/C.12/KHM/CO/1, June 12, 2009 and Human Rights Council, *Compilation prepared by the Office of the High Commissioner for Human Rights, in accordance with Paragraph 15 (B) of the Annex to Human Rights Council Resolution 5/1 - Cambodia*, UN Document A/HRC/WG.6/6/KHM/2, September 18, 2009.

dation, threat and violence, whether perpetrated by State security forces and agents or non-State actors". Moreover, in September 2009, the UN Human Rights Council decided to extend by one more year the mandate of Mr. Surya Prasad Subedi, UN Special Rapporteur on Human Rights in Cambodia¹⁰.

Legislative reforms restricting the environment for human rights activities

In 2009, the introduction of several new pieces of legislation contributed to worsen an already restrictive environment for human rights activities. The Government also announced the imminent adoption of two laws regulating NGOs and trade unions.

Adoption of a new Criminal Code

The new Criminal Code adopted on October 6 in a rush by the CPP-dominated National Assembly, ignoring crucial suggestions by NGOs and opposition parliamentarians members, enshrines a number of broadly defined offences that may be used to curb freedom of expression. Notably, defamation remains criminalised, paving the way for continuing abusive criminal prosecution of human rights defenders, including journalists reporting human rights violations¹¹. While the Law on Freedom of the Press provides for civil penalties, the crimes of "defamation" (Article 305)¹² or "public insult" (Article 307) are subjected to penalties ranging from three months and 56 days' imprisonment to fines of 10 million riels (approximately 1,852 euros), and the crime of "slandorous denunciation" provides for penalties ranging from one month to one year' imprisonment and fines of two million riels (approximately 1,932 euros).

Promulgation of the Law on Peaceful Demonstration

On December 5, 2009, the Law on Peaceful Demonstration was promulgated, which imposes excessive restrictions in violation of the international human rights obligations of Cambodia¹³. This is all the more worrisome when considered that the authorities often refuse to authorise demonstrations, or delay granting authorisation for demonstrations until shortly

10/ See Human Rights Council, *Technical Assistance and Capacity-Building - 12/... Advisory services and technical assistance for Cambodia*, UN Document A/HRC/12/L.18*, September 28, 2009.

11/ See Cambodian Centre for Human Rights (CCHR) Press Release, October 16, 2009.

12/ The new offence of defamation in Article 305 applies to any "allegation or slanderous charge that undermines the honour or the reputation of a person or an institution". The extension of the offence to comments affecting the reputation of institutions is concerning given the propensity of Government officials and ministries in recent years for initiating defamation proceedings.

13/ See CCHR Press Release, June 19, 2009.

before they are due to take place, even though the Constitution guarantees the right to freedom of peaceful assembly (Article 37)¹⁴.

The Law on Peaceful Demonstration, which will enter into force in April 2010, does in principle allow demonstrations signalled by declaration only. However, the legal requirements imposed to ensure the legality of a declaration are so burdensome and proscriptive that a demonstration must *de facto* be authorised before it can take place. Under the new law, demonstrations can only be authorised where they do not pose a danger or represent an attack on security and public order. These grounds for refusal are ill-defined and leave ample room for continuing abuse by authorities. In addition, the law does not provide for spontaneous demonstrations. Any gathering that has not received official approval, even when peaceful, may be forcefully dispersed by the authorities. Moreover, whereas under international law restrictions must be fully justified in a democratic society on the basis of “public safety, public order, public health or morals”, and be proportional to their objective, the text adopted mentions “harming the rights to freedom and honour of others, good customs of society and national security”. Those terms are vague and open to wide interpretation. For instance, on this basis, a demonstration could be prohibited because it is considered as defamatory to the authorities. Under the new law, the authorities can also refuse to allow a demonstration if “there is *reliable information* that the demonstration may cause danger or serious harm to the security, safety and public order” (emphasis added). It is unclear what “reliable information” means in this context. Furthermore, the law does not provide for judicial review or appeal in the case of a refusal to allow a demonstration.

Approval of the Anti-Corruption Bill

In December 2009, the Anti-Corruption Bill was approved by the Council of Ministers. The proposal was to be discussed in the National Assembly early 2010, and seemed to be the priority on the legislative agenda¹⁵. Given the lack of transparency during the adoption process, several questions remain as to the efficiency of this new instrument¹⁶. Some NGOs feared in particular that it would be used as a new tool of repression and intimidation of human rights defenders, as the law would reportedly not only require the disclosure of assets from Government officials but also NGO workers. In particular, the law allows for whistle blowers to

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

15/ The bill was finally passed in March 2010.

16/ See ADHOC. The Law was adopted on March 11, 2010 by the Parliament and it will enter into force in November 2010.

be prosecuted if the allegations they raise are declared to be false by the anti-corruption body, which is composed of people elected by the ruling party. This is a clear threat against anti-corruption initiatives and NGOs and journalists working in this field. In addition, NGO leaders are also forced to declare their assets since the law includes them in the requested lists of “civil servants”. The precise meaning of NGO “leaders” has not been defined, and it could therefore encompass the executive director, the chairperson and/or members of the Board. While NGO leaders have no problem declaring their assets, this late inclusion of NGO leaders could indicate an intention by the Government to misuse the law against NGOs that vocally criticise its policies.

Imminent adoption of the Bill on Associations and NGOs and of the Law on Trade Unions

In 2009, no draft of the Bill on Associations and Non-Governmental Organisations circulated during the preparatory process preceding its discussion, which contributes to reinforce the fear that this project – far from being used to regulate dangerous or “terrorist” organisations – forms part of a Governmental strategy to restrict the activities of Cambodian civil society organisations and reinforce their political control. The majority of NGOs accept transparency requirements and other legitimate regulations to which they are already subjected. However, many observers fear that the new law would allow the Government to suspend or dissolve NGOs if they are deemed to have conducted activities for undefined “political interests”. The text may be sufficiently vague to serve a wide range of political ends¹⁷.

At the end of 2009, the Ministry of Labour was also preparing a Law on Trade Unions with the aim of clarifying the industrial relations landscape and of limiting the number of unions within one factory, without the social partners being consulted or the text being made public. This legislative initiative was taken at the joint request of the private sector forum and the Government. There are fears that the law may introduce strict registration requirements and grant the authorities powers to restrict the activities of the more “politically active” unions, similar to those under the draft NGO law. This would make it even harder for trade unions to exercise their legitimate activities. It should be noted that trade unions are outside the scope of the Law on Peaceful Demonstration, and may be subjected to strict rules on organising demonstrations or marches under the new Law on Trade Unions. There are talks of joint workshops and

17/ See LICADHO Briefing Paper, *Is an NGO law in Cambodia justified?*, June 2009 and Joint Statement of 216 domestic civil society organisations, September 1, 2009.

consultation meetings with the social partners before the law is adopted, which is anticipated by early 2011.

Threats and judicial harassment against human rights lawyers

A number of lawyers were targeted by prosecution in Cambodia in 2009, merely for representing the interests of their clients, as underlined by UN Special Rapporteur on the Independence of Judges and Lawyers¹⁸. For example, on April 27, 2009, Mr. **Kong Sam Onn**, a human rights lawyer, was the subject of a criminal defamation complaint by Prime Minister Hun Sen. The lawsuit was filed against Mr. Kong Sam Onn and a client of his, Ms. Mu Sochua, opposition elected Member of Parliament from Kampot province. The complaints followed the announcement by Ms. Mu Sochua of her intention to file a defamation complaint against the Prime Minister after he had made insulting comments against her during a public speech. Ms. Mu Sochua had criticised the Executive on several occasions. On June 10, the Prosecutor dismissed the complaint against the Prime Minister. On July 6, under the pressure of the fines and disbarment which he was likely to face, Mr. Kong Sam Onn addressed a letter of apology to the Prime Minister and requested to join the ruling Cambodian People's Party. His about-face led to an immediate withdrawal of all criminal and other actions against him¹⁹. Moreover, in January 2009, three defence lawyers acting for defendants at the ECCC, Mr. **Michiel Pestman**, Mr. **Victor Koppe** and Mr. **Andrew Ianuzzi**, were threatened with possible legal action by Cambodian judges for having called for allegations of corruption at the Chambers to be properly investigated by the Phnom Penh Municipal Court. Indeed, in a press release issued on January 9, 2009, the impugned judges stated that they “deeply regretted” the filing by the lawyers of such a complaint and they “reserve[d] the right to legal recourse against any individuals” if those allegations “stem[ed] from bad faith in putting the blame on the judges”. Yet, as of the end of 2009, there had been no further development with regard to such threat of legal action against Messrs. Pestman, Koppe and Ianuzzi²⁰.

Ongoing acts of reprisals against trade unions leaders and impunity in the murders of trade unionists

In 2009, trade union leaders continued to be regularly subjected to violence, harassment and intimidation in order to stop them from carrying

18/ See United Nations Press Release, July 1, 2009.

19/ See CCHR Press Release, July 9, 2009. As for Ms. Mu Sochua, she was found guilty on August 4, 2009 of having defamed the Prime Minister by the Phnom Penh Municipal Court and was sentenced to pay a fine of eight and a half million riel (approx. 1,500 euros) and a further eight million riel in compensation.

20/ See CCHR.

out their legitimate trade union activities. In particular, the Cambodian authorities recurrently used violence or the threat of violence to prevent workers from peacefully protesting on labour rights issues. Peaceful gatherings outside factories by striking workers were repeatedly and forcibly dispersed by armed police. In the process, strike leaders and workers were injured and unlawfully arrested. Local Government authorities also routinely rejected requests from unions to march and rally in public areas²¹. For instance, on June 4, 2009, over 300 striking Sangwoo factory workers from the Samraong Tong district of Kampong Speu, who were demonstrated to demand respect for their labour rights as well as the release of three imprisoned workers, were obstructed by 700 provincial police officers, and six workers were seriously injured in the clash²².

Criminal charges, or the threat of them, were also regularly used against trade union leaders and activists to intimidate them into halting their activities. For instance, criminal complaints were filed against 14 trade union leaders, activists and members of the Cambodian Tourism and Services Workers' Federation (CTSWF) after they were dismissed in February 2009 from the Naga Hotel and Casino in Phnom Penh for their trade union activities. After they demanded to be reintegrated into their positions and threatened to organise a strike, all 14 unionists were summoned in July 2009 to the Phnom Penh Municipal Court and questioned about complaints filed against them by Naga management. These complaints accused them of "criminal defamation", "disinformation" and "incitement". Two of the unionists immediately resigned from the union and were not questioned by the court prosecutor, while the others had to wait until October 2009 for the court to dismiss the case. If convicted, the unionists would each have faced up to three years in prison and costly fines²³.

Moreover, while the trade union movement remains weakened and intimidated by the assassination of three leaders of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) in 2004 and 2007 – Messrs. **Chea Vichea**, FTUWKC President (2004), **Ros Sovannareth**, a FTUWKC Steering Committee member (2004), and **Hy Vuthy**, an FTUWKC trade union leader (2007) – impunity for the authors of their assassinations continued in 2009. Indeed, despite lack of any evidence against him, in February 2005, Mr. Chan Sopheak, also known as Thach Saveth, was sentenced to 15 years' imprisonment by the Phnom Penh

21/ See Testimony by Mr. Tola Moeun, Head of Labour Programme Unit at Community Legal Education Center (CLEC), before the Tom Lantos Human Rights Commission, September 10, 2009.

22/ See LICADHO.

23/ *Idem*.

Municipal Court for Mr. Sovannareth's assassination. The hearing before the Court of Appeal took place on February 11, 2009. It lasted less than an hour and the Court upheld the conviction. Despite the presence in Court, at the request of the defence lawyer, of one of the witnesses of Mr. Sovannareth's assassination, Presiding Judge Um Sarith refused to call him to the stand, and preferred to rely upon written statements of witnesses collected by the police²⁴. Since then, an appeal to the Supreme Court was lodged and remained pending as of the end of 2009. The case of Mr. Hy Vuthy was just as poorly investigated and his killers remained at large as of the end of 2009. In July 2009, the Phnom Penh Municipal and Appeals Courts decided to drop the investigation on his murder. With regards to the high-profile killing in 2004 of Mr. Chea Vichea, the Supreme Court decided, on December 31, 2008, to release on bail Messrs. Born Samnang and Sok Sam Oeun. The two men spent close to five years in prison on false charges of killing, following a judicial trial marred by political interference, intimidation of witnesses, and other violations of international legal standards. They were only released after a large international campaign. The case was then sent back to the Court of Appeals to be retried, which in its turn sent a list of points to be investigated down to the Phnom Penh Municipal Court. At the end of 2009, no progress appeared to have been made. Although these releases are to be welcomed, serious concerns remain as to the persistent judicial harassment against the two men. In August 2009, Mr. **Chea Mony**, Mr. Chea Vichea's brother, was threatened with legal action for accusing the Government of involvement in the killing of his brother. However, Prime Minister Hun Sen withdrew the judicial proceedings in September 2009, on grounds that Mr. Chea Mony was "overwhelmed by grief" when he spoke out²⁵.

Forced evictions and intimidation of land rights defenders

In 2009, NGOs, community leaders and human rights defenders who stood up for the rights of victims of forced evictions and land-grabbing²⁶ were again regularly subjected to harassment, intimidation and criminalisation. For instance, the Cambodian Natural Resource Protection Organisation (CNRPO) came under repeated attack in 2009 in an attempt to deter them from their combat against illegal logging in Koh Kong province. On December 21, 2008, six CNRPO staff patrolling for illegal loggers

24 / See LICADHO, *Submission to the United Nations Universal Periodic Review, Cambodia*, April 10, 2009.

25 / See CCHR Press Release, August 31, 2009.

26 / Land grabbing and evictions can concern farmers in the countryside, city dwellers, but also indigenous people, who by virtue of the Land Law 2001 benefit from special land rights. The different pieces of "land" legislation are not applied, and it is extremely difficult for the rural and the urban poor to have their legal rights respected.

were shot at by police officers, who were not arrested or even suspended from their positions. Instead, two months after the shooting, on February 16, 2009, Mr. **Keo Kob**, a CNRPO staff who was shot in the stomach by the police officers, and his boss, Mr. **Keo Ya**, were arrested and placed in pre-trial detention after being charged with “illegal logging”. They were released on bail on February 28. However, as of the end of 2009, charges had not been dropped against Messrs. Keo Kob and Keo Ya²⁷. As in many other cases, it appears that authorities maintain the pending charges as a threat against NGO workers and community activists. A good illustration refers to a land grab by a politically connected private company – the DM Group – of 250-300 hectares of indigenous land owned by the “Tumpuon” people of Batang village in Ratanakkiri²⁸. In November 2008, violence broke out between Tumpuon villagers and the police at the provincial courthouse in Banlung. In July 2009, Mr. **Pen Bonnar**, ADHOC Provincial Coordinator who was assisting the villagers²⁹, and his colleague Mr. **Chhay Ty** were questioned by the authorities. On August 6, Judge Thor Saron reportedly declared that if Mr. Pen Bonnar was removed from the province, the case “could be solved”, although the investigation would continue. ADHOC then decided to remove both men from Ratanakkiri province into a safe place and to collect evidence for defending them in the court. Following a series of letters from the Cambodian Centre for Human Rights (CCHR) to His Majesty King Norodom Sihamoni and the Supreme Council of Magistracy, it was announced in October 2009 that an investigation into the misconduct of Judge Thor Saron – namely his personal use of a truck that was confiscated as an evidence in a case before the Ratanakkiri Provincial Court – would be undertaken. However, in November, the Ministry of Justice ruled that his use of the truck was “in response to an actual demand and was in the public interest”. Mr. Bonnar returned to Ratanakkiri in January 2010, where he resumed his work. Mr. Chhay Ty, on the other hand, went to work in Mondulakiri³⁰. In April 2009, the arrest of La Peang village chief, Ms. **Touch Ly**, also raised great concerns. In January 2009, Ms. Ly helped certify a letter in a land dispute with the KDC International Company owned by Ms. Chea Keng, the wife of the Minister of Industry, Mining and Energy, which claims about 600 hectares of land in the area. On February 21, 2009, she was called to the Ministry of Interior’s Serious Crime Department for a closed-door meeting. When she emerged, she had completely changed her

27/ See LICADHO Press Release, May 28, 2009.

28/ Cambodia’s most remote and isolated province.

29/ Mr. Pen Bonnar is well known for his defence of the rights of the indigenous people against the encroachment of their local land and forests by the rich and powerful.

30/ On March 1, 2010, Mr. Chhay Ty returned to work in Ratanakkiri. See CCHR and ADHOC.

mind and authorised an agreement saying she would stop representing the families and recognise that all the disputed land belonged to KDC. She also agreed to give up her own land to the company. She was nevertheless arrested two months later, on April 28, 2009, at the Ministry of Interior. She was taken to the Phnom Penh Municipal Court, charged with “falsifying information”, and imprisoned. On August 27, 2009, Ms. Touch Ly was sentenced to 16 months’ imprisonment after being found guilty of “forging thumbprints” as well as to pay a fine of one million riel (about 183 euros) and compensation of five million riel (about 913 euros) to KDC³¹.

Furthermore, the freedom of peaceful assembly of victims of forced evictions was strongly restricted in 2009. On several occasions, various restrictions were introduced at both the village and commune levels to disperse gatherings and prevent protesters from travelling to Phnom Penh. Those arriving in Phnom Penh were banned from staying overnight in public parks or pagodas, and those spending the night at human rights NGO offices were harassed by local authorities³². In addition, in June 2009, the Phnom Penh Municipality refused twice to authorise the CCHR to organise a public forum on human rights and development with members of the Boeung Kak lake area, a community that is at imminent risk of being forcibly expelled³³.

Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Chea Vichea	Assassination / Impunity	Urgent Appeal KHM 001/0805/OBS 070.2	January 6, 2009
Mr. Ros Sovannareth	Assassination / Impunity	Urgent Appeal KHM 001/0209/OBS 025	February 16, 2009
Mr. Kong Sam Onn	Administrative and judicial harassment	Urgent Appeal KHM 002/0609/OBS 085	June 18, 2009

31/ See Cambodian Human Rights Action Committee (CHRAC) Press Release, September 10, 2009 and LICADHO Statement, September 29, 2009.

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

33/ See CCHR.