

TAKING TO THE STREETS

FREEDOM OF PEACEFUL ASSEMBLY IN CAMBODIA

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Cover photo: 22 December 2013: Thousands of demonstrators, including Buddhist monks and opposition party supporters, march in Cambodia's capital, Phnom Penh.
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GLOSSARY

ACSC/APF	ASEAN Civil Society Conference/ASEAN People's Forum
ADHOC	Cambodian Human Rights and Development Association
AGPA	ASEAN Grassroots People's Assembly
ASEAN	Association of Southeast Asian Nations
CCFC	Coalition of Cambodian Farmer Community
CCHR	Cambodian Center for Human Rights
CCIM	Cambodian Center for Independent Media
CCPC	Code of Criminal Procedure of the Kingdom of Cambodia
CNRP	Cambodian National Rescue Party, the main opposition party which won 55 of 123 seats in the July 2013 national elections
CPN	Community Peacebuilding Network
CPP	Cambodian People's Party, the ruling party which won 68 of 123 seats in the July 2013 national elections
CYN	Cambodian Youth Network
Freedom Parks	Introduced under the 2009 Law on Peaceful Demonstrations as areas designated for "peaceful assembly or public expression"
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPED	International Convention for the Protection of All Persons from Enforced Disappearance
IDEA	Independent Democracy of Informal Economy Association
ILO	International Labour Organization
LAC	Labour Advisory Committee, established under the 1997 Labour Law

LEMNA	Law on the Election of Members of the National Assembly
LICADHO	Cambodian League for the Promotion and Defense of Human Rights
LPD	Law on Peaceful Demonstrations, enacted in December 2009
NGO	Non-governmental organization
NRPG	Natural Resource Protection Group
OHCHR	Office of the UN High Commissioner for Human Rights
Para-police	State auxiliaries, also known as district or private security guards, involved in policing assemblies
RCAF	Royal Cambodian Armed Forces
SR on assembly and association	UN Special Rapporteur on the rights to freedom of peaceful assembly and of association
SR on Cambodia	UN Special Rapporteur on the human rights situation in Cambodia
SR on summary executions	UN Special Rapporteur on extra-judicial, summary or arbitrary executions
SRSR on HRDs	UN Special Representative of the Secretary-General on the situation of human rights defenders
UDHR	Universal Declaration of Human Rights
UN	United Nations
UN Basic Principles	UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
UN Code of Conduct	UN Code of Conduct for Law Enforcement Officials
UN Convention against Torture	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UN Principles on Summary Executions	UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions

EXECUTIVE SUMMARY

“After they beat me on the back I became like a dead fish. They held me in a standing position and then jumped and gave me a hard kick in the chest. Then they were all standing around me in order to block photographs from journalists. They made a circle, with me in the middle, and punched and beat me some more.”

Yong Sok Chea, a 17-year-old garment worker arrested and beaten by gendarmes on Veng Sreng Street, Phnom Penh on 2 January 2014¹

At the end of 2013, a series of demonstrations erupted in Cambodia’s capital Phnom Penh, culminating in late December in several mass protests over disputed national election results and calls for a higher increase in the minimum wage paid to garment workers.² Supporters of the Cambodian National Rescue Party (CNRP), the main opposition party, converged with thousands of striking workers and other disaffected groups. Tens of thousands of people took to the streets of Phnom Penh to demand changes to Cambodia’s political, social and economic status quo.

In early January 2014, with the demonstrations gaining momentum and a planned CNRP-led march expected to attract perhaps hundreds of thousands of people, the authorities and security forces used unnecessary and excessive force to end the demonstrations.

On 2 January 2014, military soldiers violently clashed with striking workers at Yakjin (Cambodia) Inc. factory on the outskirts of Phnom Penh; and on 3 January, four people were shot dead when security forces opened fire on demonstrators on the capital’s Veng Sreng Street where an assembly had turned violent. A fifth individual – 16-year-old Khem Saphath – was last seen lying on that street with an apparent gunshot wound to his chest and remains

¹ Interview with Yong Sok Chea, 11 July 2014.

² On 24 December 2013, the government announced that the minimum wage in Cambodia’s garment sector would be increased from US \$80 to US \$95 per month in April 2014; unions had called for a larger increase. See: Aun Pheap and Colin Meyn, “Monthly Wage Increased to \$95, Unions Vow to Strike”, *The Cambodia Daily*, 25 December 2013; Mom Kunthea, “Strike picks up steam”, *The Phnom Penh Post*, 26 December 2013.

missing, presumed dead. A sixth, who bystanders witnessed being beaten by security forces on the same street, reportedly suffered a brain contusion and died in May 2014.³ At least 28 people were severely beaten and arrested by the security forces at Yakjin factory and on Veng Sreng Street over the course of those two days. The fatalities at Veng Sreng Street followed the deaths of two individuals resulting from the security forces' use of lethal force at two separate demonstrations in 2013.⁴ Members of the security were apparently also injured in some of these incidents.⁵

On 4 January 2014, the Ministry of Interior announced an indefinite ban on public demonstrations.⁶ The ban was inconsistently but at times violently enforced over the first half of 2014. Later in the year, on 30 April 2014, the authorities shut Freedom Park – an urban plaza in Phnom Penh legally designated as an area for public demonstrations – and it remained closed until 6 August. The barricades were removed only after the CNRP agreed to end its boycott of parliament, following a political agreement reached on 22 July with the ruling Cambodian People's Party (CPP).

After a brief period in which restrictions on assemblies appeared to ease, a renewed crackdown on freedom of peaceful assembly was launched in November 2014, during which 17 individuals, including housing rights defenders,⁷ monks,⁸ and CNRP officials and activists,⁹ were arrested over the course of nine days.¹⁰ Eleven of the 17 were charged, tried and convicted the day after their arrest and received the maximum possible jail sentence.¹¹ Together with a CNRP district official and activist arrested in September and October 2014 respectively, the 17 individuals arrested in November make up a group of 19 political and human rights activists jailed after the CNRP-CPP agreement.¹² A further agreement between

³ 29-year-old Muon Sokmean. See: Mech Dara and Alex Consiglio, "Five Months On, Witnesses Recall Muon Sokmean's Beating", *The Cambodia Daily*, 20 May 2014.

⁴ Mao Sok Chan was killed on 15 September 2013 and Eng Sokhom was killed on 12 November 2013.

⁵ Meeting with senior members of the National Police, 5 May 2015.

⁶ Press Statement of Ministry of Interior, 4 January 2014. See also, Colin Meyn and Phorn Bopha, "Government Blasted for Eviction of Freedom Park", *The Cambodia Daily*, 6 January 2014.

⁷ Amnesty International, *Urgent Action: Women Defenders and Buddhist Monk Sentenced* (Index: ASA 23/007/2014), 14 November 2014, available at: <https://www.amnesty.org/en/documents/asa23/007/2014/en/>.

⁸ Amnesty International, *Urgent Action: Women Defenders and Buddhist Monk Sentenced* (Index: ASA 23/007/2014), 14 November 2014.

⁹ Amnesty International, *Urgent Action: Women Defenders and Buddhist Monk Sentenced* (Index: ASA 23/007/2014), 14 November 2014.

¹⁰ LICADHO, *LICADHO Calls for the Release of the 19 Men and Women Wrongfully Imprisoned in Prey Sar's CC1 and CC2 Prisons*, 8 December 2014, available at: <http://www.licadho-cambodia.org/pressrelease.php?perm=366>

¹¹ LICADHO, *LICADHO Calls for the Release of the 19 Men and Women Wrongfully Imprisoned in Prey Sar's CC1 and CC2 Prisons*, 8 December 2014.

¹² The 19 are, in order of their arrests: Sum Puthy, CNRP council member for Chbar Ampov district; Ouk Pich Samnang, a CNRP grassroots activist; Boeung Kak Lake community activists Nget Khun, Tep Vanny, Song Srey Leap, Kong Chantha, Phan Chhunreth, Po Chorvy, and Nong Sreng; Meach Sovannara, Chief of the CNRP Information Department; Heng Pich, Im Srey Touch, and Phuong Sopheap housing rights activists from Boeung Kak Lake and Thmor Kol communities; Venerable Seung Hai, Buddhist monk; Ke Khim, tuk-tuk driver and CNRP supporter; Venerable Khith Vannak and Venerable Sang Kosal, Buddhist monks; Tep Narin, CNRP youth member, and Ly Seav Minh, resident of Toul Kork district whose family are locked in a land dispute with a well-connected private company. See LICADHO, *LICADHO Calls for the Release of the 19 Men and Women Wrongfully Imprisoned in Prey Sar's CC1 and*

the CPP and CNRP in 2015 resulted in the release of 18 of these individuals; on 11 April, 10 women land activists were released after being pardoned by His Majesty King Sihamoni;¹³ and on 13 April, eight others – three monks and five CNRP officials and activists – were released on bail.¹⁴ On 24 April, the last individual, Ly Seav Minh, a resident of Toul Kork district in Phnom Penh whose family are locked in a land dispute with a well-connected private company, was released on bail.¹⁵

Yet despite frequent efforts by the authorities to restrict and sometimes violently suppress assemblies, people in Cambodia continue to take to the streets to express themselves collectively. They appear more willing to speak out to challenge perceived injustice. In Phnom Penh, demonstrations relating to land, labour, environmental and other issues have become a weekly, and sometimes daily phenomenon. Those in previously isolated villages and towns in the provinces are sharing information through new and developing community networks – utilising new communications technologies – and protesting together to protect the land and resources upon which they rely to support their traditional livelihoods. Through a series of strikes, workers and unions have showed their ongoing influence. And Cambodia's youth – the “post Khmer Rouge baby boomers”¹⁶ – are establishing new forums to collectively debate the future of their fast changing country.

* * *

This report sets out Amnesty International's research findings in relation to a tumultuous period in Cambodia when, over the last two years, the authorities, including the government, local authorities and security forces, severely restricted and violated the right to freedom of peaceful assembly – a right enshrined in major human rights treaties to which Cambodia is party and in the country's Constitution.

The findings are based on interviews with people injured during assemblies and their families, family members of some of those killed during demonstrations, political activists, former detainees, representatives of community interest groups, members of the media, NGO representatives, union leaders, lawyers, UN officials, and Buddhist monks; and desk research and media monitoring conducted between November 2013 and May 2015. Apart from meetings in May 2015 with senior officers of the National Police at the Ministry of Interior and with a senior Ministry of Justice official, repeated attempts to arrange meetings with other relevant government officials to discuss the research findings were unsuccessful. Amnesty International provided the Cambodian government with an advanced draft of the report but the government did not provide any detailed comments.

CC2 Prisons, 8 December 2014.

¹³ LICADHO, Flash News, *10 Boeung Kak Lake activists freed following royal pardon, more releases expected*, 11 April 2015, available at <http://www.licadho-cambodia.org/flashnews.php?perm=122>.

¹⁴ LICADHO, Flash News, *Five CNRP and three defrocked monks released following political negotiations*, 13 April 2015, available at <http://www.licadho-cambodia.org/flashnews.php?perm=123>.

¹⁵ LICADHO, Flash News, *Last of the “Free the 19”, Ly Seav Minh, granted bail by Supreme Court*, 24 April 2015, available at <http://www.licadho-cambodia.org/flashnews.php?perm=124>.

¹⁶ Sopath Soeung, “Social Media's Growing Influence on Cambodian Politics”, *Asia Pacific Bulletin*, East-West Center, Number 222, 23 July 2013.

The report reveals a pattern of violations: the imposition of arbitrary restrictions on freedom of peaceful assembly; the unnecessary and excessive use of force by security forces policing assemblies; a culture of impunity surrounding human rights violations committed in the context of assemblies; and the use of the judiciary to harass those who organize and participate in assemblies.

ARBITRARY RESTRICTIONS ON FREEDOM OF PEACEFUL ASSEMBLY

International human rights law requires that any restrictions imposed on the right to freedom of peaceful assembly must meet a three-part test of legality, legitimate purpose and necessity. But despite a presumption in Cambodia's 2009 Law on Peaceful Demonstrations in favour of allowing assemblies, the authorities are imposing arbitrary restrictions on them and sometimes banning them outright. The report provides examples of such interference, including attempts to obstruct and disperse assemblies. It also provides examples of restrictions imposed on trainings, meetings and public forums, which fall outside the notification requirements of the Law on Peaceful Demonstrations.

UNNECESSARY AND EXCESSIVE USE OF FORCE

Organizers and participants who ignore attempts to restrict or prohibit peaceful assemblies find themselves in direct confrontation with security forces, who have resorted to using unnecessary and excessive force against assembly participants, often resulting in injuries and sometimes deaths. The vast majority of assemblies examined in this report were peaceful and provided no justification for the use of force. There are clear international standards on exactly when force and firearms can be used and to what extent. These standards have not yet been fully incorporated into Cambodia's domestic law and their core principles of legality, necessity and proportionality are frequently ignored by security forces. Since the July 2013 National Assembly elections, security forces have shot dead at least six people¹⁷ during demonstrations and seriously wounded scores more. This report identifies and analyses five areas of particular concern with regard to the unnecessary and excessive use of force: use of force by State auxiliaries – the now infamous district “para-police”; the targeting of journalists and human rights monitors; punitive force in carrying out arrests; misuse of equipment and use of inappropriate weapons; and the unjustified use of lethal force.

IMPUNITY

Under international human rights law, Cambodia must provide redress to victims of human rights violations and hold accountable those responsible. But while numerous complaints have been submitted to the courts by victims of security forces' use of unnecessary and excessive force during assemblies, these complaints have generally not resulted in criminal prosecutions of those responsible. The report examines how official investigations into the shooting deaths of at least six people in 2013 and 2014 have been opaque and vaguely

¹⁷ The six people killed are Mao Sok Chan (29), killed on 15 September 2013; Eng Sokhom (49), killed on 12 November 2013; and Khim Phaleap (25), Sam Ravy (25), Yean Rithy (25) and Pheng Kosal (22), all killed on 3 January 2014. In addition, Amnesty International remains concerned about the disappearance of 16-year-old Khem Saphath. The last time he was seen was on 3 January 2014, lying on Phnom Penh's Veng Sreng Street with an apparent bullet wound to the chest. He is missing, presumed dead (see chapter 5 for more details).

defined. No results, findings, criminal or disciplinary measures arising from these investigations have been publicly announced. Similarly, no information has been shared as to the steps taken to investigate the disappearance of Khem Saphath – the 16-year old boy who is missing, presumed dead, after security forces opened fire on demonstrators in Phnom Penh on 3 January 2014. As a result of this lack of accountability, most victims and their families have not been provided with a remedy by the government or the perpetrators.

JUDICIAL HARASSMENT

Those organizing and participating in assemblies are frequently subjected to criminal prosecution and harassment. Both international human rights law and Cambodian law protect the right to be free from arbitrary arrest and provide for the right to a fair trial before an independent court. There is a clear contrast between the apparent zeal with which Cambodia's prosecutors have pursued charges against participants and organizers of assemblies and the lack of diligence in investigating and prosecuting perpetrators of unnecessary and excessive use of force in the policing of assemblies. The report highlights the misuse of the legal process, including pre-trial detention and prosecutions, to harass and punish those leading and participating in assemblies critical of the government, however peaceful, and shows that the courts are failing to adhere to international fair trial standards in such cases.

KEY RECOMMENDATIONS

The report concludes with a call on the Cambodian authorities to respect, protect and facilitate the right to freedom of peaceful assembly and provides a series of detailed recommendations for changes in law, policy and practice to assist them in doing so, including the following 10 key recommendations:

- Amend the Law on Peaceful Demonstrations to conform with international law and standards on the right to freedom of peaceful assembly;
- Transfer all responsibility for policing assemblies from district para-police to police or other law enforcement personnel whose authority is clearly grounded in law, and who are trained and equipped to carry out their tasks in accordance with human rights law and standards, in particular as regards the use of force and firearms;
- Enact legislation and issue detailed implementing regulations setting out a comprehensive code of conduct on the use of force for all law enforcement personnel. The code of conduct should fully comply with and reflect relevant international standards including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- Provide training to law enforcement personnel in non-violent crowd control, threat assessment, and de-escalation in the context of assemblies. Training should also be provided on the use of force by all law enforcement personnel, once put in place as outlined above;
- Ensure that every case of suspected human rights violation in the context of assemblies, in particular those involving death, injury or other serious harm, is investigated promptly, independently, impartially and thoroughly;
- Provide information to victims and the public about the investigations, including terms of reference, into the deaths of and injuries to individuals shot on 15 September 2013, 12 November 2013, and 3 January 2014 and publish findings;
- Launch a full investigation into the enforced disappearance of Khem Saphath and provide information to his family as required by the International Convention for the

Protection of All Persons from Enforced Disappearance;

- Ensure that those suspected of being responsible for committing offences involving human rights violations in the context of assemblies are prosecuted in proceedings which meet international standards of fairness. This includes prosecution of those who ordered acts of violence and those who carried them out;
- Ensure that no individuals are arrested, charged, prosecuted or imprisoned solely for exercising their human rights to freedom of peaceful assembly, association and expression;
- Review existing prosecutions and convictions in all related cases, drop charges and overturn convictions that are not supported by law or evidence and release immediately and unconditionally all those who have been imprisoned solely for the peaceful exercise of their human rights.

METHODOLOGY

The findings of this report are based on interviews, desk research, and media monitoring conducted between November 2013 and May 2015. The research assessed the legal framework governing freedom of peaceful assembly in Cambodia and the authorities' response to demonstrations and other assemblies between 2012 and 2014.

Desk research included a review of Cambodian law in light of international law and standards relating to freedom of peaceful assembly, and relevant reports from local and international NGOs, the Office of the UN High Commissioner for Human Rights in Cambodia and UN special procedures.

Amnesty International interviewed a total of 53 people. Those interviewed included people injured during assemblies and their families, family members of some of those killed during demonstrations, political activists, former detainees, representatives of community interest groups, members of the media, NGO representatives, union leaders, lawyers, UN officials, and Buddhist monks. The majority of the research and interviews were conducted in Phnom Penh. Three visits were also made to Svay Rieng province to meet with people affected by violent responses to demonstrations.

The Cambodian government was provided with a set of questions arising from the research undertaken for this report. In May 2015, an Amnesty International delegation met with senior officers of the National Police at the Ministry of Interior to discuss the research findings and with a senior Ministry of Justice official, but despite repeated attempts was unable to arrange meetings with other relevant government officials. The police officers provided answers to some of the questions that Amnesty International had sent in advance. The information provided is incorporated into this report. Further to a request by the Ministry of Justice official, Amnesty International provided the Cambodian government with a draft of the report (English) and executive summary (Khmer) for comment but the government did not provide any detailed comments.

Amnesty International extends its thanks to the organizations and individuals including officials who consented to meet with its researchers and visiting delegation and to those who provided information for this report.

The organization does not support or oppose any government or political system, nor does it support or oppose the political views of those whose right to express them it seeks to protect.

1. PROTESTS ON THE RISE

“[People are more willing to protest] because of the pain and suffering that people are feeling and facing everywhere. It is like the water is reaching the nose now and people cannot breathe anymore...it makes them have to stand up.”

Yorm Bopha, an activist from the Boeung Kak community in Phnom Penh¹⁸

People in Cambodia are now more willing to speak out against injustice and to join public assemblies. In the years prior to the introduction of the Law on Peaceful Demonstrations (LPD) in December 2009, public assemblies had been prohibited or restricted to such an extent that they were rare.¹⁹ However, the establishment of a more permissive legal framework has contributed, along with a number of trends in society, to an explosion in the amount of public assemblies.

Phnom Penh City Hall reported that the number of public protests and strikes in the capital nearly doubled in 2011 compared to the previous year.²⁰ 2013 – election year – was another breakthrough year, with larger and more frequent demonstrations than perhaps ever before. Despite a series of violent, at times lethal crackdowns by security forces, and a ban on public demonstrations for the first seven months of 2014, people continued to take to the streets. In July 2014, Phnom Penh Police Chief Chhuon Sovann reported that there had been 445 demonstrations in the capital since the July 2013 National Assembly elections – an average of more than one assembly per day.²¹ In a meeting with Amnesty International in May 2015, senior officers of the National Police stated that police figures for assemblies and other gatherings recorded 852 events in 2013 compared to 2,439 in 2014.²² The officers stated that police figures showed 432 assemblies and other gatherings in the period of the 2015 preceding that meeting.

¹⁸ Interview with Yorm Bopha, 14 July 2014.

¹⁹ Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights: Report of the Secretary-General (A/HRC/15/47), 16 September 2010, para. 26.

²⁰ Kuch Naren, "Phnom Penh Sees Doubling of Public Protests", *The Cambodia Daily*, 15 February 2012.

²¹ Khouth Sophak Chakrya, "City Hall says thanks to those who cracked down", *The Phnom Penh Post*, 31 July 2014.

²² Meeting with senior members of the National Police, 5 May 2015.

The government has acknowledged that people are increasingly turning to protest as a means to address their grievances. For example, in a statement released in May 2012, Prime Minister Hun Sen called on villagers involved in land disputes to seek a resolution to their disagreements through the relevant authorities rather than by staging protests.²³ In August 2014, Phnom Penh Governor Pa Socheatvong asked villagers from Cambodia's provinces to refrain from gathering in Phnom Penh to seek high-level intervention in their land disputes after hundreds of villagers arrived from across the country to petition the government.²⁴ The majority of assemblies in Cambodia are peaceful but some have turned violent or included violent elements.



November 2012: 75-year-old Nget Khun demonstrates with other women from Boeung Kak Lake outside the US embassy in Phnom Penh. © Thomas Cristofolletti / Ruom

Public protests, demonstrations and assemblies are held to address a number of contentious issues in society and take a variety of forms. They include small-scale community protests and demonstrations, political rallies, marches, sit-ins, vigils, meetings, trainings, public forums, and labour strikes. In recent years, communities have become increasingly creative in their use of innovative tactics and techniques designed to draw attention to their causes. Such tactics have included blocking roads, conducting cursing ceremonies to condemn

²³ May Titthara and Meas Sokchea, "Trust govt, PM tells protesters", *The Phnom Penh Post*, 28 May 2012.

²⁴ Khuon Narim and Aun Pheap, "Governor Urges Provincial Protesters to Stay Put", *The Cambodia Daily*, 29 August 2014.

allegedly corrupt officials, utilising costumes and props, demonstrating partially nude, burning effigies, presenting petitions, and performing songs and dances.²⁵

“All the strategies that we use in the different scenarios, they all come from our heart, come from our pain. We try to make [our protests] more attractive and not the same as before. By doing this we attract the public’s attention and also the media.”

Tep Vanny, an activist from the Boeung Kak community in Phnom Penh²⁶

WOMEN AT THE FOREFRONT: THE BOEUNG KAK LAKE PROTEST MOVEMENT

In Cambodia, women are often at the forefront of protests and demonstrations, particularly in relation to forced evictions.²⁷ Many have taken the lead in their communities’ struggle for justice, putting themselves at risk to defend their communities. The women of the Boeung Kak community, an area which has been subject to a long-running and high profile land dispute, have led a sustained, resilient and innovative protest movement since Shukaku Inc., a private development company, was awarded a 99-year lease over 133 hectares of land in their neighbourhood in 1997.

Thousands of people were forcibly evicted from their homes on and around Boeung Kak Lake when Shukaku Inc. began filling in the lake. In August 2011, the Prime Minister allocated 12.44 hectares of the land for onsite housing for the more than 900 families who remained. Although most of the families have now received land titles, protests have continued for the dozens who have been excluded and for those who were evicted. Community activist and former Amnesty International prisoner of conscience Yorm Bopha told Amnesty International: *“We knew we had to do something in order to protect ourselves from the grabbing of our land and property and the feelings of fear so that is how we learned to protest.”*²⁸

Activists from the Boeung Kak community have been arrested and imprisoned on a number of occasions for their peaceful activism (see chapter 6). In a 2014 report that examined the challenges to the enjoyment of the right to freedom of peaceful assembly experienced by groups most at risk, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association stated that he “is deeply concerned” about the response of authorities to assemblies held by women in many parts of the world, before specifically noting that: *“In Cambodia, for example, female land-rights activists have been targeted for violence, harassment and arrest on numerous occasions.”*²⁹

The Special Representative of the UN Secretary General on the situation of human rights defenders has recognised that women human defenders *“often face more risks when participating in public action because*

²⁵ See, for example, Aun Pheap and Zsombor Peter, “Protesters Deliver ‘Gangnam Style’ Message”, *The Cambodia Daily*, 18 December 2012.

²⁶ Interview with Tep Vanny, 3 July 2014.

²⁷ See, for example, Amnesty International, *Eviction and Resistance: Five women tell their stories*, 2011 (Index: ASA 23/006/2011), available at: <https://www.amnesty.org/en/documents/ASA23/006/2011/en/>; LICADHO, *Good Wives: Women Land Campaigners and the Impact of Human Rights Activism*, November 2014, available at: <http://www.licadho-cambodia.org/reports/files/200LICADHOREportGoodWivesFemaleActivism2014-English.pdf>.

²⁸ Interview with Yorm Bopha, 14 July 2014.

²⁹ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, UN Doc. A/HRC/26/29, 14 April 2014, para. 42.

*of perceptions of the traditional role of women*³⁰ and has recommended that States “investigate and prosecute instances of gender-based violence against women defenders occurring during demonstrations as a matter of priority.”³¹ As this report will show, security forces in Cambodia have committed violence against women participating in assemblies and have not been prosecuted or disciplined (see chapter 5). Having been subjected to violence, arrest and imprisonment, the women of Boeung Kak are only too aware of the dangers they face in continuing to protest. But they still believe their cause is worth the risk, as community activist Yorm Bopha explained: “We are not protesting just for ourselves but also for our children, for the next generation, so that they will not suffer the potential consequences. In other words, we would rather die today than see deaths tomorrow.”³² In April 2015, 10 women activists from Boeung Kak, some of whom were interviewed previously for this report, were released from jail having been imprisoned in November 2014 while exercising their right to peaceful assembly (see chapter 6).

1.1 DIVERSE VOICES AND ISSUES

Behind many of the demonstrations and other assemblies taking place in Cambodia are a number of unresolved social, economic, and political issues, including serious human rights violations.

Land and housing rights are highly contentious issues in Cambodia and have been for some time. Historical circumstances have undoubtedly played a role in the proliferation of land disputes over the past two decades.³³ However, the government has failed to systematically address the issue of land tenure, leaving millions of Cambodians without formal legal title to the land on which they live, farm, and operate businesses. Many of Cambodia’s highest profile social conflicts stem from alleged land grabbing, forced evictions, and encroachments from economic land concessions. The 2001 Land Law established a strong legal framework for land rights in Cambodia but has often been either ignored or interpreted to benefit powerful individuals and businesses.

The government’s economic land concession programme has brought many Cambodians into direct conflict with powerful companies, some of which are owned by prominent politicians of the ruling Cambodian People’s Party (CPP) or affiliated businesspeople. Dispute resolution mechanisms, including the judiciary, have been largely ineffective at adjudicating these disputes and providing redress for human rights abuses committed by private enterprises.³⁴ The resulting conflicts and perceived injustice have led to the emergence of a generation of land activists, as people desperate to secure their livelihoods have increasingly turned to public demonstrations to ensure that their voices are heard. In 2012, the UN Special Rapporteur on the situation of human rights in Cambodia (SR on Cambodia) noted that

³⁰ Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, UN Doc. A/61/312, 5 September 2006, para. 72.

³¹ Report of the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, UN Doc. A/62/225, 13 August 2007, para. 101.

³² Interview with Yorm Bopha, 14 July 2014.

³³ Private land ownership was abolished under the Khmer Rouge regime from 1975 to 1979 and official records destroyed. The period of Khmer Rouge rule and subsequent civil war were also characterised by mass transfers and dislocation.

³⁴ Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi (SR on Cambodia), UN Doc. A/HRC/27/70, 15 August 2014, para. 49 (SR on Cambodia August 2014 report, (A/HRC/27/70)).

“...trends in protests and violent land disputes indicate an increasingly desperate and unhappy population, and communities who have lost faith in their government...”³⁵

Most people in Cambodia care deeply about preserving their natural resources and the **natural environment**.³⁶ However, illegal logging is a widely recognised problem in Cambodia and forests are disappearing at an alarming rate.³⁷ Forestry patrols and demonstrations led by local communities have contributed to documenting and raising awareness about the impact of such activities. Community groups have also demonstrated against the environmental and social effects of hydropower dam projects planned in Cambodia and neighbouring Laos.³⁸



December 2013: Garment workers block a road outside the Ministry of Labour, calling for an increase in the Minimum Wage. © Thomas Cristofolletti / Ruom

Since the enactment of the 1997 Labour Law, Cambodia's **labour rights** movement has developed rapidly alongside the country's expanding economy. As union membership has

³⁵ Report of the SR on Cambodia: *A human rights analysis of economic and other land concessions in Cambodia* (A/HRC/21/63/Add.1), 24 September 2012, para. 132, available at: http://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session21/a-hrc-21-63-add1_en.pdf.

³⁶ See International Republican Institute, “Survey of Cambodian Public Opinion”, 28 October – 10 November 2013, available at: <http://www.iri.org/sites/default/files/2014%20January%2023%20Survey%20of%20Cambodia%20Public%20Opinion,%20October%2028-November%2010,%202013.pdf>.

³⁷ M.C. Hansen et al., “High Resolution Global Maps of 21st-Century Forest Cover Change”, *Science* 342, 850 (2013); Zsombor Peter, “Loss of Forest in Cambodia Among Worst in the World”, *The Cambodia Daily*, 19 November 2013.

³⁸ For example, the 108-megawatt Stung Chhay Areng dam project in Koh Kong province, Cambodia and the Don Sahong dam project in southern Laos.

increased so too has the influence of union leaders, some of whom are now among the most prominent human rights defenders in Cambodia. Workers in Cambodia's garment manufacturing industry, which employs over half-a-million people, have repeatedly gone on strike and taken to the streets to demand better wages, allowances and working conditions. Teachers, civil servants, garbage collectors, hospitality staff, bus drivers, and gas station attendants, among others, have followed this example with varying degrees of success.

CAMBODIA'S LABOUR MOVEMENT

Workers throughout the country continued to strike for better pay and working conditions in 2014, seemingly unswayed by the violent State suppression in early January of a two-week long nationwide general strike and demonstrations. In 2014, the minimum wage³⁹ and a new draft law on unions were the two most important issues in the labour sector.

In June 2014, Cambodia's Labour Advisory Committee (LAC),⁴⁰ composed of representatives from government, employers, and unions, agreed to an annual timetable for discussing, announcing and implementing increases to the minimum wage.⁴¹ The LAC agreed to vote on a revised minimum wage in October 2014, with employers to begin implementing the new wage in January 2015. In November 2014, it was announced that the minimum wage for 2015 would be set at US \$128 per month.⁴²

But as discussions were ongoing, and just a month before the negotiations were scheduled to conclude with a vote, investigating judge Chea Sokheang of the Phnom Penh Municipal Court pressed criminal charges against six of Cambodia's most prominent union leaders – Chea Mony, Ath Thorn, Rong Chhun, Pav Sina, Mam Nhim and Yang Sophorn – in relation to conduct that allegedly occurred during the general strike between 25 December 2013 and 3 January 2014.⁴³ Amnesty International is concerned that the charges were a form of judicial harassment, designed to weaken unions ahead of the vote, and discourage the mobilisation of large worker demonstrations to support an increase in the minimum wage.

In August 2014, a number of unions complained about a new procedure introduced by the government that requires them to obtain a signature from a factory representative to prove notification of an intention to set up a new branch. Unions claimed that factory representatives were causing delays to prevent unionisation of their employees. The government has also begun requiring the submission of documents showing that union leaders have a clean criminal record before a new branch can be opened.⁴⁴ This is particularly concerning given the frequent judicial harassment of union leaders.

³⁹ The "guaranteed minimum wage" was established by the Labour Law 1997. According to Article 104 of the law, "it must ensure every worker of a decent standard of living compatible with human dignity".

⁴⁰ The Labour Advisory Committee was established under the Labour Law 1997. According to Article 357 its duties include formulating recommendations on the guaranteed minimum wage.

⁴¹ Aun Pheap, "Garment Wage Plan Set; Some Unions Hold Out", *The Cambodia Daily*, 1 July 2014.

⁴² Press Release by the Ministry of Labour and Vocational Training, "Fixing Minimum Wage for Workers and Employees in Textile, Garment and Footwear Industry", 12 November 2014, available at http://mlvt.gov.kh/upload/docs/Press_Release_MW_2015_EN_Final.pdf.

⁴³ Mech Dara and Holly Robertson, "Union Leaders Charged Over Nationwide Protests", *The Cambodia Daily*, 3 September 2014; Mom Kunthear and Shane Worrell, "Charges in strike violence surface", *The Phnom Penh Post*, 3 September 2014; Human Rights Watch, *Cambodia: End Political Prosecution of 6 Unionists – Donors Should Press Government to Drop Cases*, 3 September 2014, available at: <http://www.hrw.org/news/2014/09/03/cambodia-end-political-prosecution-6-unionists>.

⁴⁴ Holly Robertson and Mech Dara, "Unions Must Have Factory Sign-Off to Register New Branches", *The*

In 2014, the government also introduced a new draft of the Law on Unions of Enterprises that has been in progress for a number of years. In May 2014, an International Labour Organization (ILO) representative said that the “current draft appears to be a step backward” from earlier drafts that had generally complied with ILO conventions.⁴⁵ Among the major concerns are a new requirement that a union must sign-up at least 20 per cent of the workers at a particular enterprise or institution before it can open a new branch.⁴⁶

In 2013, Cambodia saw perhaps the largest **political demonstrations** in its history. Huge numbers of young people gathered to demonstrate their support for the two main political parties during a vigorously contested, but mostly peaceful campaign ahead of the July national election. The Cambodian National Rescue Party (CNRP) continued to hold large scale rallies and marches in the second half of 2013 disputing the election results and calling for electoral and political reform. For the most part, these assemblies were allowed to proceed unhindered. The CNRP utilised the urban plaza that constitutes Phnom Penh’s designated Freedom Park as a base for its public assemblies. By the end of the year thousands of people had participated in gatherings at Freedom Park, building confidence in a society in which freedom of peaceful assembly had previously been tightly restricted.

FREEDOM PARKS

The 2009 Law on Peaceful (LPD) introduced the concept of Freedom Parks. Article 28 of the law states: “Within six (6) months after the entry into force of this law, each capital and province shall create a ‘Freedom Park’ by choosing an appropriate compound or center, which the general public can easily hear and see, in their respective territorial jurisdictions for holding peaceful assembly or public expression.”⁴⁷ Senior police have confirmed to Amnesty International that Phnom Penh is the only area of the country to have complied with this requirement by creating a Freedom Park.⁴⁸

In December 2013, Freedom Park in Phnom Penh became a semi-permanent base for CNRP supporters as the opposition party increased the frequency and size of its demonstrations against National Assembly election results which they disputed. However, on 4 January 2014, after two days of State violence against striking workers, the area was abruptly cleared. Police and gendarmes looked on and military helicopters flew overhead as scores of men armed with metal poles and batons – some in civilian clothing with red scarves, and others identified as the capital’s Daun Penh district para-police, a unit of auxiliaries often deployed to assist police and gendarmerie in the policing of demonstrations – stormed Freedom Park to break up the structures and campsites that had been established and to dismantle a stage that had been used by the CNRP.⁴⁹

Cambodia Daily, 30 August 2014.

⁴⁵ Zsombor Peter and Hul Reaksmeay, “ILO Says Gov’t Moving Backward With Draft Union Law”, *The Cambodia Daily*, 29 May 2014.

⁴⁶ LICADHO and the Cambodian Legal Education Center (CLEC), *Legal Analysis: Cambodia’s Draft Law on Unions of Enterprises*, September 2014, p. 1, available at: <http://www.licadho-cambodia.org/reports/files/199JointBriefAnalysisDraftTradeUnionLaw2014-English.pdf>.

⁴⁷ Article 28 of the Law on Peaceful Demonstrations, 5 December 2009 (LPD), available at: http://cambodia.ohchr.org/WebDOCs/DocProgrammes/Law_on_peaceful_demonstration-promulgated_Eng.pdf.

⁴⁸ Meeting with senior members of the National Police, 5 May 2015.

⁴⁹ Amnesty International, *Cambodia: End suppression of human rights, respect the right to peaceful assembly* (Index: ASA 23/003/2014), 29 March 2014, available at: <https://www.amnesty.org/en/documents/ASA23/003/2014/en/>; LICADHO, *Peaceful Protesters Expelled from Freedom Park as Military Mobilization Escalates*, 4 January 2014, available at: <http://www.licadho->

On 30 April 2014, Freedom Park was barricaded shut ahead of 1 May, Labour Day, and 2 May 2014, the first day of the campaign period for provincial, municipal and district council elections that were held on 18 May. The barricades were not removed until 6 August, following a political deal in which the opposition CNRP agreed to end its boycott of the National Assembly and take its seats in parliament.⁵⁰



November 2013: Buddhist monks at the start of a 25km walk through the jungle in Koh Kong province to raise awareness of environmental destruction across Cambodia. © Thomas Cristofolletti / Ruom

Young people have increasingly been exercising their right to freedom of peaceful assembly to discuss, debate and raise awareness about political, human rights, and social policy issues. The Cambodian Youth Network, an NGO registered in 2013 with over 2,000 members, provides training to young people through seminars and workshops on topics including law and human rights, advocacy, community organization, and leadership. Members have also joined the protests of local communities affected by land or natural resource disputes to show their solidarity.⁵¹ Another group called 'Politikoffee' was established in 2011 to provide a regular forum for young people to gather to discuss and debate social and policy issues. One member of this group told Amnesty International that young people are becoming more influential in society as a result of increased access to information. He believes that his peer

cambodia.org/pressrelease.php?perm=335; Thomas Fuller, "Cambodia Steps Up Crackdown on Dissent With Ban on Assembly", *The New York Times*, 5 January 2014.

⁵⁰ Mech Dara and Matt Blomberg, "Freedom Park Open as City 'Returns to Normal'", *The Cambodia Daily*, 7 August 2014; Pech Sotheary and Alice Cuddy, "Opening marks a 'return to freedom'", *The Phnom Penh Post*, 7 August 2014.

⁵¹ Interview with Sar Mory, Vice-President of the Cambodian Youth Network, 1 July 2014.

group is the most important unit for changing the political culture in Cambodia.⁵²

Buddhist monks are a familiar presence at demonstrations and other assemblies related to social justice issues. They have attended demonstrations to show their solidarity with communities affected by injustice or to monitor the authorities' response.⁵³ In the days leading up to International Human Rights Day in 2013 and 2014, the Independent Monk Network for Social Justice helped organize a "peace march" that saw monks, villagers and activists march along five different national roads and converge on Phnom Penh. The intention was to raise awareness of the links between Buddhism and human rights.⁵⁴ Monks have also led protests where Buddhist interests have been directly affected, such as when a number of Buddhist relics were stolen in December 2013,⁵⁵ and when, in 2014, a local casino's expansion plans reportedly threatened Phnom Penh's Buddhist Institute.⁵⁶ Attempts by Cambodia's senior monks, many of whom are apparently aligned with the ruling CPP, to prevent members of the clergy from attending or participating in demonstrations have largely been ignored.⁵⁷

ANTI-VIETNAMESE RHETORIC

Viet Nam is resented by many in Cambodia for a combination of factors, including its perceived historical encroachment on Cambodian territory, its occupation of Cambodia throughout the 1980s following the defeat of the Khmer Rouge in 1979, and contemporary concerns around border demarcation and Vietnamese economic activity.⁵⁸

In several of the demonstrations which took place in the period following the national election in July 2013, anti-Vietnamese views were expressed. The opposition Cambodian National Rescue Party (CNRP) in particular has been criticized by some in civil society for its use of anti-Vietnamese rhetoric at demonstrations.⁵⁹ After

⁵² Interview with member of Politikoffee group, 30 November 2013.

⁵³ Interview with Venerable Loun Sovath, 17 June 2014.

⁵⁴ Zsombor Peter and Aun Pheap, "Monks Embark on 10-Day 'Peace Walk' to Phnom Penh", *The Cambodia Daily*, 2 December 2013.

⁵⁵ Mech Dara and Khuon Narim, "Protesting Monks Besiege Buddhist Clergy Over Stolen Relics", *The Cambodia Daily*, 18 December 2013.

⁵⁶ Ezra Kyrill Erker, "Bad news for Buddhist institute", *The Phnom Penh Post*, 21 June 2014.

⁵⁷ In June 2007, Supreme Patriarch of the Maha Nikaya sect Noun Nget announced a decree, signed by Minister of Cults and Religions, Khun Haing, banning monks from participating in peaceful demonstrations (Sam Rith and Charles McDermid, "Ban on monk protests called 'un-Buddhist'", *The Phnom Penh Post*, 29 June 2007). Following the disputed election in July 2013, Cambodia's most senior monks from the Maha Nikaya and Dhammayuttika Nikaya sects issued a statement calling for the clergy to refrain from joining political demonstrations (Meas Sokchea, "On politics, silence gold: top monks", *The Phnom Penh Post*, 4 September 2013). In December 2014, the supreme patriarchs of both sects called for legislation to prevent monks from voting and taking part in other political activities, including demonstrations. The head of the Maha Nikaya sect, the largest sect in Cambodia, is a former senior member of the ruling CPP (Ouch Sony and Zsombor Peter, "Clergy Seeks Law to Ban Monks from Voting", *The Cambodia Daily*, 18 December 2014). More recently, the authorities have taken aim at monks at Samakki Raingsy pagoda, establishing a committee to examine whether the monks there have been properly ordained. Monks from the pagoda tend to be among the more politically active in the country and communities that travel to Phnom Penh to take part in demonstrations often stay there for the duration of their time in the city (Mech Dara, "In Restive Pagoda, City Sees Threat of 'Secession'", *The Cambodia Daily*, 2 February 2015).

⁵⁸ Ciorciari, John D. and Weiss, Jessica Chen, "Nationalist Protests, Government Responses, and the Risk of Escalation in Interstate Disputes", July 2013, available at <http://ssrn.com/abstract=2436668>.

⁵⁹ In a public statement released in January 2014, the SR on Cambodia stated that he was "alarmed by

publicly criticizing this anti-Vietnamese rhetoric, Ou Virak, who was then president of the Cambodian Center for Human Rights, a human rights NGO, and other CCHR staff were subjected to a series of insults and death threats online and via email, which Amnesty International condemned.⁶⁰

In August 2013, with the potential for mass demonstrations rising following Cambodia's disputed election and the government moving hundreds of security forces into Phnom Penh, Amnesty International urged political leaders to "call on their supporters not to commit violence and human rights abuses against others, including on grounds of political opinion and ethnicity."⁶¹

Anti-Vietnamese sentiment at demonstrations has, at times, apparently given rise to acts of violence. On 3 January 2014, during a demonstration by garment workers at Veng Sreng Street which turned violent and which was put down by security forces unjustifiably using lethal force, a number of businesses were attacked on the grounds of being Vietnamese owned, including at least three that were looted.⁶²

In August 2014, hundreds of demonstrators gathered outside the Viet Nam embassy in Phnom Penh on three consecutive days after an embassy spokesperson stated that Kampuchea Krom, an area of present day Viet Nam that was formerly part of the Khmer empire, was Vietnamese territory before it was ceded to Viet Nam by France in 1949.⁶³ Anti-Vietnamese sentiment was a prominent feature of the protests which included, on the second day, burning of Vietnamese flags. A second round of protests outside the embassy took place in October 2014 and lasted five days, with participants again burning Viet Nam flags and threatening to burn down the embassy if Viet Nam did not apologise for the embassy spokesman's comments earlier in the year.⁶⁴

The International Covenant on Civil and Political Rights, to which Cambodia is a state party, provides for the right to freedom to hold opinions without interference, and freedom of expression, including freedom to seek, receive and impart information and ideas of all kinds (Article 19). At the same time, the Covenant provides

the anti-Vietnamese language allegedly used in public by the opposition". See *Statement by the United Nations Special Rapporteur on the situation of human rights in Cambodia, Professor Surya P. Subedi*, 16 January 2014, available at http://cambodia.ohchr.org/WebDOCs/DocStatements/2014/012014/SR_press_statement_16_January_2014_Eng.pdf

⁶⁰ David Boyle, "Activist's Facebook firestorm", *The Phnom Penh Post*, 20 December 2013.

⁶¹ Amnesty International, *Cambodia: Post-election tension must not lead to violence*, 9 August 2013, available at <https://www.amnesty.org/en/articles/news/2013/08/cambodia-post-election-tension-must-not-lead-violence>.

⁶² Julia Wallace and Neou Vannarin, "Cambodia protests unmask anti-Vietnam views", *Aljazeera*, 24 January 2014; Hul Reaksmey and Julia Wallace, "Vietnamese Shop Near Site Looted by Demonstrators", *The Cambodia Daily*, 6 January 2014; Footage of the destruction of a Vietnamese owned coffee shop that was captured by an onlooker using a smartphone is included in a short video on the destruction of Vietnamese owned businesses at Veng Sreng Street on 3 January 2014 by *The Phnom Penh Post*. See Griff Tapper and Koam Chanrasmey, "Vietnamese shop owner rebuilds after attack", *The Phnom Penh Post*, 25 January 2015, available at <http://www.phnompenhpost.com/video/vietnamese-shop-owner-rebuilds-after-attack>.

⁶³ Kevin Ponniah, "VN rallies 'round the flag'", *The Phnom Penh Post*, 15 August 2014; So Chivy and Joshua Lipes, "Cambodia Orders Halt to Anti-Vietnamese Protests After Flag Burning", *Radio Free Asia*, 19 August 2014.

⁶⁴ Pech Sotheary, Alice Cuddy and Charles Rollet, "Anti-VN protests heat up", *The Phnom Penh Post*, 6 October 2014; Mech Dara, "Demonstrators Threaten to Burn Vietnam Embassy", *The Cambodia Daily*, 6 October 2014.

that “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law” (Article 20).

Amnesty International is concerned that some of the anti-Vietnamese rhetoric used at demonstrations may have constituted such advocacy and incitement. The government should investigate such incidents to ensure that no incitement takes place, while respecting and protecting the right to freedom of expression.

As a state party to the International Convention on the Elimination of All Forms of Racial Discrimination, Cambodia has a legal obligation to prohibit and bring to an end racial discrimination by any persons, group or organizations.⁶⁵

1.2 WEAK INSTITUTIONS AND SOCIAL CHANGE

Various commentators have provided a number of reasons for the increase in demonstrations and other assemblies in Cambodia. Many of those interviewed by Amnesty International for this report pointed to the weakness of state institutions that should play a role in solving disputes and responding to citizens’ concerns. Political analyst Lao Mong Hay expressed the view that the Cambodian people had “lost confidence and trust in public institutions to address their grievances.”⁶⁶

In a 2011 report, the SR on Cambodia noted that “despite the plethora of institutions created to promote and protect human rights, many of them have not been effective in performing their functions in an independent, impartial and robust manner.”⁶⁷

An assessment of Cambodia’s governance released by Transparency International Cambodia in 2014 concluded that the judiciary and law enforcement agencies were the weakest⁶⁸ pillars of the country’s governance system.⁶⁹

Many of those interviewed by Amnesty International also cited increased access to information, particularly through mobile phones and social media, as another reason for more demonstrations and other assemblies in Cambodia. As of March 2015, 25% of the Cambodian population are internet users, an increase of 414% since January 2014.⁷⁰ Social media such as Facebook and Twitter facilitate the rapid dissemination of information about both the social conflicts fuelling demonstrations, and the demonstrations themselves. Photographs and video footage of State violence against demonstrators are widely shared online.

⁶⁵ International Convention on the Elimination of All Forms of Racial Discrimination, Article 2.

⁶⁶ Interview with Dr. Lao Mong Hay, 19 November 2013.

⁶⁷ Report of the SR on Cambodia, UN Doc. A/HRC/18/46, 2 August 2011, para. 63.

⁶⁸ Each pillar - legislature, executive, judiciary, political parties, civil society, media, business, etc - was assessed in terms of its capacity, governance, and role. See Transparency International Cambodia, *National Integrity System Assessment 2014 - Corruption and Cambodia’s Governance System: The Need for Reform*, 2014, pp. 1-3, available at: <http://www.ticambodia.org/files/2014EN-NISA-WEB.pdf>.

⁶⁹ Transparency International Cambodia, *National Integrity System Assessment 2014 - Corruption and Cambodia’s Governance System: The Need for Reform*, 2014, p. 199.

⁷⁰ Simon Kemp, “Digital, Social & Mobile in APAC in 2015”, We Are Social, 11 March 2015, available at <http://wearesocial.net/blog/2015/03/digital-social-mobile-apac-2015/>. While noting that Cambodia recorded the largest per capita increase in internet usage, We Are Social outlined that the extent of the

Although much of Cambodia's traditional media is controlled by or aligned with the ruling party,⁷¹ access to independent news sources such as the radio stations Radio Free Asia, Voice of America, Radio France International, and Voice of Democracy has provided Cambodians in both urban and rural areas with information about contentious issues in the country.

As public assembly and expression have grown more common in Cambodia, the links between different protest groups have also grown. A number of networks now link communities across different provinces who are affected by land disputes and other issues. These networks, which include the Coalition of Cambodian Farmer Communities and the Community Peacebuilding Network, among others, have helped to facilitate the sharing of knowledge and skills.

Leadership figures have emerged to train, support and inspire others. Prominent activists Tep Vanny and Yorm Bopha from the Boeung Kak community in Phnom Penh,⁷² and activist monk the Venerable Loun Sovath⁷³ have all won international awards in recognition of their human rights work. The Boeung Kak community has provided training in advocacy and protest techniques to other communities⁷⁴ and with help from donations, are constructing a new building to serve as a base for community meetings and a shelter for those who travel to Phnom Penh to protest alleged land grabbing.⁷⁵

percentage increase recorded is likely to be partially due to more accurate reporting than in previous years.

⁷¹ In a 2013 report, the SR on Cambodia noted that: "The ruling party has a near monopoly on national radio and television in the country. The predominantly rural population has little access to independent news other than through programmes broadcast by foreign radios." See Report of the SR on Cambodia, UN Doc. A/HRC/24/36, 5 August 2013, para. 47 (SR on Cambodia August 2013 report (A/HRC/24/36)).

⁷² In 2013, Tep Vanny received a Vital Voices Global Leadership Award in Washington D.C., USA in recognition of her work to strengthen democracy and protect human rights. In 2014, Yorm Bopha received the James Lawson Award in Boston, USA in recognition of her nonviolent activism.

⁷³ In 2012, the Venerable Loun Sovath was presented the Martin Ennals Award in Geneva in recognition of his work as a human rights defender.

⁷⁴ Interview with Tep Vanny, 19 June 2014; Matt Blomberg and Sek Odom, "Boeung Kak's Best Teach Villagers Protest 101", *The Cambodia Daily*, 25 July 2014.

⁷⁵ Mech Dara and Zsombor Peter, "Tep Vanny's Home Away From Home for Protesters", *The Cambodia Daily*, 19 August 2014.

2. THE LEGAL FRAMEWORK

“The Kingdom of Cambodia recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights and the covenants and conventions related to human rights, women’s rights and children’s rights.”

Article 31 of the Constitution of the Kingdom of Cambodia

Cambodia is obliged to respect, protect and facilitate the right to freedom of peaceful assembly under both international human rights law and national law. Cambodia has become a state party to most of the major international human rights treaties that form the basis of international human rights law, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and is legally obliged to implement their provisions.

In domestic law, the right to freedom of peaceful assembly is protected and regulated by the Constitution, the Law on Peaceful Demonstrations (LPD), and the Labour Law. The LPD has frequently been interpreted to restrict or prohibit assemblies based on reasons that are not consistent with international law.

2.1 FREEDOM OF PEACEFUL ASSEMBLY - INTERNATIONAL OBLIGATIONS

The right to freedom of peaceful assembly is enshrined in the Universal Declaration of Human Rights (UDHR),⁷⁶ as well as major human rights treaties to which Cambodia is party, including the ICCPR.⁷⁷ All branches of government – executive, legislative and judicial – and government authorities at all levels (national, provincial, and local) are obliged to act in accordance with Cambodia’s responsibility to respect, protect and facilitate the right to freedom of peaceful assembly under the ICCPR.⁷⁸

⁷⁶ Article 20 of the UDHR.

⁷⁷ Article 21 of the ICCPR.

⁷⁸ Human Rights Committee, General Comment No. 31, Article 2: Nature of the General Legal Obligation Imposed on State Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13, 2004, para. 4.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association (SR on assembly and association) has defined an “assembly” as “an intentional and temporary gathering in a private or public space for a specific purpose”. The right to freedom of peaceful assembly therefore encompasses “demonstrations, inside meetings, strikes, processions, rallies or even sit-ins.”⁷⁹

The SR on assembly and association has noted that under international law, freedom of peaceful assembly is to be considered the rule, and its restriction the exception.⁸⁰ The ICCPR allows for the exercise of the right to freedom of peaceful assembly, as well as certain other rights (including freedom of association and freedom of expression), to be subject to some restrictions. But any such restrictions are only permissible if they are, first, provided by law; second, imposed for the purpose of protecting certain public interests (national security or public safety, public order, protection of public health or morals) or the rights and freedoms of others; and, third, demonstrably necessary for that purpose.⁸¹ Any restrictions imposed which do not meet all elements of this “three-part test” constitute violations of the right.⁸²

Even when restrictions are imposed on assemblies in accordance with the law, peaceful assemblies “should always be facilitated within ‘sight and sound’ of the target audience so that the message they (organizers and participants) want to convey reaches this target audience.”⁸³ The right to freedom of peaceful assembly only protects assemblies that are peaceful and where participants have peaceful intentions. The SR on assembly and association has stated that peaceful intentions should be presumed. Acts of sporadic violence or other punishable acts committed by others do not deprive peaceful individuals of their right to freedom of peaceful assembly.⁸⁴

The SR on assembly and association has emphasised that in addition to the obligation not to arbitrarily interfere with or restrict the right to freedom of peaceful assembly, there is also a positive obligation on state parties to the ICCPR to facilitate the exercise of this right.⁸⁵ This includes an obligation to protect those engaged in a peaceful assembly against *agents provocateurs* and counter-demonstrators, whose aim is to disrupt or disperse such assemblies. The SR on assembly and association notes that such individuals include those

⁷⁹ Report of the SR on assembly and association, Maina Kiai, UN Doc. A/HRC/20/27, 21 May 2012, para. 24, available at: http://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session20/a-hrc-20-27_en.pdf (SR on assembly and association May 2012 report (A/HRC/20/27)).

⁸⁰ SR on assembly and association May 2012 report (A/HRC/20/27), para. 16.

⁸¹ See Article 21 of the ICCPR.

⁸² See, for example, Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, 2011, para. 27. The Committee has clarified that this general comment also provides guidance with regard to elements of the right to freedom of peaceful assembly – see Communication no. 1790/2008 *Govsha, Syritsa, and Mezyak v. Belarus*, Views adopted 27 July 2012, para. 9.4.

⁸³ Report of the SR on assembly and association, UN Doc. A/HRC/23/39, 24 April 2013, para. 60, available at:

http://www.ohchr.org/documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf (SR on assembly and association April 2013 report (A/HRC/23/39)).

⁸⁴ SR on assembly and association May 2012 report (A/HRC/20/27), para. 25.

⁸⁵ SR on assembly and association May 2012 report (A/HRC/20/27), para. 27.

belonging to the State apparatus or working on its behalf.⁸⁶ The Human Rights Council has consistently urged states to: “*facilitate peaceful protests by providing protestors with access to public space and protecting them, without discrimination, where necessary, against any form of threat and harassment, and underlines the role of local authorities in this regard*”.⁸⁷

Cambodia’s obligations under international human rights law are reinforced by the pledges undertaken during the peace process to end the country’s civil war. In the 1991 Paris Peace Agreements, Cambodia undertook to “ensure respect for and observance of human rights and fundamental freedoms in Cambodia”, “to support the right of all Cambodian citizens to undertake activities which would promote and protect human rights and fundamental freedoms” and to “adhere to relevant international human rights instruments”.⁸⁸ On the 20th anniversary of the agreements, the Special Rapporteur on the situation of human rights in Cambodia (SR on Cambodia) said that the agreements will remain relevant until their vision is a reality for all Cambodians.⁸⁹



July 2014: A banner hangs across a razor-wire barricade in Phnom Penh’s Freedom Park which was blocked off from public access in April 2014. Picture: LICADHO

⁸⁶ Report of the SR on assembly and association, UN Doc. A/68/299, 7 August 2013, para. 23, available at: <http://freeassembly.net/wp-content/uploads/2013/09/UNSR-elections-report-to-UNGA-Aug.-2013.pdf> (SR on assembly and association August 2013 report (A/68/299)).

⁸⁷ Human Rights Council Resolution A/HRC/25/L.20, 24 March 2014, para. 4.

⁸⁸ Article 15 of the Agreement on a Comprehensive Political Settlement of the Cambodia Conflict, 23 October 1991, available at: http://peacemaker.un.org/sites/peacemaker.un.org/files/KH_911023_FrameworkComprehensivePoliticalSettlementCambodia.pdf. Amnesty International notes that other State parties to the agreements also have an obligation to promote respect for human rights in Cambodia, having undertaken to “promote and encourage respect for and observance of human rights and fundamental freedoms in Cambodia as embodied in the relevant international instruments...in order, in particular, to prevent the recurrence of human rights abuses.”

⁸⁹ Office of the UN High Commissioner for Human Rights, For Sunday 23 October 2011, on the 20th Anniversary of the Paris Peace Agreements Cambodia: ‘Paris Peace Agreements still relevant 20 years on’ - UN Special Rapporteur, 23 October 2011. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11524&LangID=E>.

2.2 FREEDOM OF PEACEFUL ASSEMBLY - NATIONAL LAW

THE CONSTITUTION

The Constitution of the Kingdom of Cambodia explicitly provides for freedom of expression and peaceful assembly⁹⁰ and the right of Khmer citizens to participate actively in the political, economic, social and cultural life of the nation.⁹¹ However, the Constitution states that: “No one shall exercise [these rights] to infringe upon the rights of others, to affect the good traditions of the society, or to violate public law and order or national security.”⁹² Aside from the concept of “good traditions of the society,” which is vague and open to abuse, these considerations are consistent with the limited range of interests that may justify restrictions as set out in the ICCPR.

The Constitution states that the right to strike and to non-violent demonstration is to be implemented in the framework of the law.⁹³ The relevant national laws are the Labour Law of 1997 and the LPD of 2009. The ICCPR is specifically incorporated into Cambodian law through Article 31 of the Constitution, which states that Cambodia shall recognize and respect human rights as stipulated in the UDHR and the “covenants and conventions related to human rights, women’s and children’s rights.”

THE LAW ON PEACEFUL DEMONSTRATIONS

The LPD was enacted in December 2009. The stated purpose of the law is to “assure the freedom of expression of Khmer citizens through peaceful assembly”. However, the law notes that this right “shall not be used abusively to affect the rights, freedoms and honour of others, good customs of the national society, public order or national security.”⁹⁴

The scope of the LPD extends to all peaceful gatherings or marches “for demonstration”.⁹⁵ Peaceful assembly is defined as a “gathering or march conducted by a group of people to publicly demand, protest or express their sentiments, opinions or will by using various forms or means peacefully.”⁹⁶ Article 3 of the LPD explicitly states that its provisions do not apply to gatherings or marches during election rallies; gatherings related to labour disputes if they are in the vicinity of the relevant factory or enterprise (which are covered by the Labour Law); and “parades, funeral processions and other gatherings for the purposes of serving religion, art, culture, national customs and tradition and educational dissemination activities for social interests.”⁹⁷ The Implementation Guide, described below, further states that examples of “educational dissemination activities” that are not covered by the LPD, “whether on public or private property”, include trainings, workshops, public forums, and press conferences.⁹⁸ The

⁹⁰ Article 41 of the Constitution of the Kingdom of Cambodia, 21 September 1993, available at: http://cambodia.ohchr.org/klc_pages/KLC_files/section_001/section_01_01_ENG.pdf.

⁹¹ Article 35 of the Constitution.

⁹² Article 41 of the Constitution.

⁹³ Article 27 of the Constitution.

⁹⁴ Article 2 of the LPD.

⁹⁵ Article 3 of the LPD.

⁹⁶ Article 4 of the LPD.

⁹⁷ Article 3 of the LPD.

⁹⁸ Article 3.2.1(c) of the Implementation Guide.

LPD therefore regulates only a narrow category of assemblies protected by the right to freedom of peaceful assembly.

In December 2010, the Ministry of Interior issued a ministerial decision introducing the Implementation Guide to the Law on Peaceful Demonstration (Implementation Guide). The decision states that the Implementation Guide is “a basic tool to assist the relevant competent authorities and citizens in respecting and complying with the [LPD]”⁹⁹ and that the competent authorities “shall carry out their roles and duties in accordance with” the LPD and the Implementation Guide.¹⁰⁰



October 2013: Garment workers run towards a statue of the late King Father Sihanouk fleeing baton wielding security forces who have come to disperse a sit-in organized outside the home of Prime Minister Hun Sen. © Thomas Cristofolletti / Ruom

The Implementation Guide provides commentary to each article of the LPD. It does not amend the LPD, and does not have the status of law. Lower-level ministerial regulations do not generally apply outside the jurisdiction of the Ministry that issues them, which raises concerns about how effective the Implementation Guide is in guiding the actions of security forces such as the Gendarmerie and other units of the Royal Cambodian Armed Forces (RCAF), which operate under the administrative supervision of the Ministry of Defence.

THE LABOUR LAW

Article 8 of the ICESCR specifically guarantees the right to strike, “provided it is exercised in

⁹⁹ Article 1 of the Decision on the introduction of the Implementation Guide to the Law on Peaceful Demonstration, 8 December 2010.

¹⁰⁰ Article 20 of the Decision on the Implementation Guide.

conformity with the laws of the particular country”.¹⁰¹ The Cambodian Labour Law guarantees the right to strike,¹⁰² which is defined as “a concerted work stoppage by a group of workers that takes place within an enterprise or establishment for the purpose of obtaining the satisfaction for their demand from the employer as a condition of their return to work.”¹⁰³ Workers can strike if they reject an arbitral decision, to enforce compliance with a collective agreement or the law; or to defend their economic and “socio-occupational” interests.¹⁰⁴

The right to strike can be exercised “only when all peaceful methods for settling the dispute with the employer have already been tried out.”¹⁰⁵ These include processes of conciliation¹⁰⁶ and arbitration¹⁰⁷ set out in the Labour Law. Once these avenues have been exhausted, workers are legally entitled to strike. Workers must provide notification at least seven days prior to strike to both the enterprise or establishment concerned and the Ministry of Labour.¹⁰⁸ The notification must specify the demands which constitute the reason for the strike.¹⁰⁹ Non-peaceful strikes are illegal.¹¹⁰ The International Labour Organization (ILO) has stated that: “*The obligation to give prior notice, the obligation to engage in conciliation, have recourse to voluntary arbitration, comply with a given quorum and obtain the agreement of a given majority where this does not cause the strike to become very difficult or even impossible in practice...are all acceptable conditions for the exercise of the right to strike.*”¹¹¹

NEW ELECTION LAWS

In March 2015, the National Assembly passed two controversial new draft election laws over the objections of civil society organizations and independent election monitors.¹¹² The content of the two draft laws, the Act to amend the existing Law on the Election of Members of the National Assembly (Act Amending the LEMNA) and the Law on the Organization and Functioning of the National Election Committee, was agreed between the ruling Cambodian People’s Party (CPP) and the Cambodian National Rescue Party (CNRP), the only opposition party to win seats in the National Assembly in the 2013 general election. A number of civil society groups have expressed concern at the content of the laws and at the lack of transparency in the process by which they were passed through the National Assembly on 19 March 2015, without any debate and without any genuine consultation with the public and

¹⁰¹ Article 8 of the ICESCR.

¹⁰² Article 319 of the Labour Law.

¹⁰³ Article 318 of the Labour Law.

¹⁰⁴ Article 320 of the Labour Law.

¹⁰⁵ Article 320 of the Labour Law.

¹⁰⁶ Articles 303 - 308 of the Labour Law.

¹⁰⁷ Articles 309 - 314 of the Labour Law.

¹⁰⁸ Article 324 of the Labour Law.

¹⁰⁹ Article 324 of the Labour Law.

¹¹⁰ Articles 330 and 336 of the Labour Law.

¹¹¹ Bernard Gernigon, Alberto Odero and Horacio Guido, *ILO Principles Concerning the Right to Strike* (Geneva: International Labour Organization, 2000), pp. 55-6, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_087987.pdf.

¹¹² The Phnom Penh Post Staff, “Election Laws passed”, *The Phnom Penh Post*, 19 March 2015; “Cambodia Oks controversial election laws”, *Agence France-Presse*, 19 March 2015; Roseanne Gerin, “Cambodian Parliament Passes Controversial Election Laws”, *Radio Free Asia*, 19 March 2015.

civil society.¹¹³ Both documents were signed into law by His Majesty King Sihamoni on 26 March 2015.¹¹⁴

Insofar as the right to freedom of peaceful assembly is concerned, the Act Amending the LEMNA in particular raises a number of concerns. As outlined above, Article 3 of the LPD explicitly states that its provisions do not apply to gatherings or marches during election rallies. The Act Amending the LEMNA puts in place a number of conditions on gatherings and marches during election rallies, which are in violation of the right to peaceful assembly. Article 6 sets a cap of four on the number of marches or rallies that a political party may organize during an election campaign. Article 84 applies a number of restrictions on civil society groups during election campaigns stating that such groups must observe a position of neutrality where elections to the National Assembly are concerned. Article 84 also bars local and international civil society groups working in Cambodia from engaging in a number of activities, including participating in rallies or meetings of a political party or candidate.

¹¹³ Committee for Free and Fair Elections in Cambodia et al., Joint Statement of Civil Society Organizations on the Draft Law on the Organization and Function of the National Election Committee and the draft Law on Election of Members of the National Assembly, 6 March 2015, available at http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=press_detail.php&pid=540&id=5&lang=eng; Electoral Reform Alliance, CSO Recommendations and Concerns on the Proposed Draft Law on Election of Members of the National Assembly and Freeness of Elections, 17 March 2014, available at http://comfrel.org/eng/components/com_mypublications/files/711355CSOs_Recommendations_and_Concerns_on_the_Proposed_Draft_Laws_LEMNA.pdf. See also, Alex Willemyns and Kuch Naren, "Constitutional Council Asked to Annul Portions of Election Laws", *The Cambodia Daily*, 25 March 2015.

¹¹⁴ Kuch Naren, "King Sihamoni Approves Two New Election Laws", *The Cambodia Daily*, 31 March 2015.

3. ARBITRARY RESTRICTIONS ON PEACEFUL ASSEMBLY

“The thing is, sometimes the government doesn’t use any law, they just do whatever they want.”

Interview with Sar Mora, President of the Cambodian Food and Service Workers’ Federation¹¹⁵

The Special Rapporteur on the rights to freedom of peaceful assembly and association (SR on assembly and association) has stated that the exercise of the right to freedom of peaceful assembly should be “governed at most by a regime of prior notification whose rationale is to allow State authorities to facilitate [this right] and to take measures to protect public safety and order and the rights and freedoms of others”.¹¹⁶ In practice, however, local authorities in Cambodia commonly interpret the notification procedure established by the Law on Peaceful Demonstrations (LPD) as an approval procedure. As noted, the International Covenant on Civil and Political Rights (ICCPR) requires that any restrictions imposed on the right to freedom of peaceful assembly must meet the three-part test of legality, legitimate purpose and necessity (see above, p. 26). But local authorities in Cambodia continue to impose restrictions on assemblies that do not pass this test.

3.1 THE LAW: EXCESSIVE NOTIFICATION REQUIREMENTS AND RESTRICTIONS

THE NOTIFICATION PROCEDURE

The LPD states that any group of individuals “who wish to organize a peaceful assembly at any public venue shall notify the competent municipal or provincial territorial authorities” in charge of the location in which the assembly is planned to take place.¹¹⁷ Where organizers plan to hold a demonstration in a public location other than a designated Freedom Park, Article 7 of the LPD requires that “a notification letter shall be submitted to the municipal or provincial hall at least five (5) working days prior” to the planned assembly.¹¹⁸ Article 6 of the LPD further requires organizers to provide the name and addresses of three leaders and a copy of their national identification cards, and to state the date, time, duration and purpose

¹¹⁵ Interview with Sar Mora, 25 July 2014.

¹¹⁶ SR on assembly and association May 2012 report (A/HRC/20/27), para 28.

¹¹⁷ Article 5 of the LPD.

¹¹⁸ Article 7 of the LPD.

of the assembly, the venues and routes to be used for activities, and the number of participants and vehicles involved.¹¹⁹

The SR on assembly and association has stated that in general, notification procedures that require organizers to list more than one organizer, produce formal identification documents, provide reasons for a demonstration, and provide the exact number of participants, should be regarded as “unduly bureaucratic”¹²⁰ and therefore inappropriate. According to the SR on assembly and association, notification “should be submitted, for example, a maximum of 48 hours prior to the day the assembly is planned to take place.”¹²¹

The information and advance notice required under Articles 6 and 7 of the LPD are excessive. The LPD should be amended to reflect the recommendation of the SR on assembly and association that “organizers should be able to notify...in the simplest and fastest way, by filling, for instance, a clear and precise form...the notification should merely contain information regarding the date, time, duration and location or itinerary of the assembly, and the name, address and contact details of the organizer.”¹²²

Article 14 of the LPD sets out a less stringent notification procedure applicable when organizers wish to hold an assembly of 200 persons or less in a designated Freedom Park or on private or collective property. In these circumstances, notification is required only 12 hours ahead of the planned assembly and need only include the identification details of three organizers.

While Amnesty International is not opposed to the concept of “freedom parks” and similar arrangements as such, “freedom parks” must not become, either in law or in practice, a means of marginalising public assemblies or an excuse to ‘toughen up’ regulations on holding peaceful assemblies elsewhere. The establishment of “freedom parks” does not affect States’ obligations to respect, protect and facilitate such assemblies elsewhere within their territories. In this context, the SR on assembly and association has stated that restrictions must not prevent a peaceful assembly from taking place “within ‘sight and sound’ of its object and target audience.”¹²³

Amnesty International regards the requirement to provide notification for assemblies on private or collective property to be excessive, as such gatherings are unlikely to affect the limited range of interests that may justify certain restrictions on assemblies in public places. In some circumstances, the enforcement of this provision may also violate the right to privacy guaranteed under Article 17 of the ICCPR and Article 40 of Cambodia’s Constitution. Amnesty International considers that it is inappropriate to include assemblies on private property within the scope of the LPD.

¹¹⁹ Article 6 of the LPD.

¹²⁰ SR on assembly and association April 2013 report (A/HRC/23/39), para. 54.

¹²¹ SR on assembly and association April 2013 report (A/HRC/23/39), para.52.

¹²² SR on assembly and association April 2013 report (A/HRC/23/39), para.53.

¹²³ SR on assembly and association May 2012 report (A/HRC/20/27), para. 40.

The SR on assembly and association has stated that “notification should be required only for large assemblies or for assemblies where a certain degree of disruption is anticipated.”¹²⁴ The provisions of the LPD apply to all public demonstrations regardless of how many people are expected to participate. Amnesty International considers that at least smaller demonstrations should be exempted from any notification procedure as they generally pose little threat to public order and can be easily controlled should problems arise.

A related concern is the lack of recognition and protection in the LPD for spontaneous assemblies. Spontaneous assemblies are those that occur without prior organization, usually in response to a specific event. Because they are unplanned, prior notification is not possible. In 2010, the Office of the UN High Commissioner for Human Rights (OHCHR) in Cambodia reported that spontaneous demonstrations were occurring more frequently in Cambodia.¹²⁵ The SR on assembly and association has stated that spontaneous demonstrations should be exempted from prior notification requirements.¹²⁶ Under the LPD, demonstrations can be dispersed where notification has not been submitted. There is no mention of an exemption for spontaneous assemblies.

RESTRICTIONS IN PRACTICE

The SR on assembly and association has stated that a presumption in favour of allowing peaceful assemblies “should be clearly and explicitly established in the law”.¹²⁷ The LPD creates a broad presumption in favour of allowing peaceful assemblies in Article 9 which states that the authorities “shall respond positively toward the notification letter” unless certain exceptions apply.¹²⁸ The LPD further states that if the authorities fail to respond to the notification letter within three working days, “that implies that the competent municipal or provincial territorial authorities have approved”.¹²⁹

There is an important distinction between a notification procedure and one of prior authorisation or permission. The SR on assembly and association has emphasised that the exercise of a right, such as the right to peaceful assembly, should not be subject to the latter.¹³⁰

References in the LPD to “approval”¹³¹ of assemblies by the authorities and the use of the vaguely worded phrase “shall respond positively...toward the notification letter” blur the lines between notification and authorisation.

¹²⁴ SR on assembly and association April 2013 report (A/HRC/23/39), para. 52.

¹²⁵ Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights Report of the Secretary-General, UN Doc. A/HRC/15/47, 16 September 2010, para. 27

¹²⁶ SR on assembly and association May 2012 report (A/HRC/20/27), paras. 29 and 91.

¹²⁷ SR on assembly and association April 2013 report (A/HRC/23/39), para. 50.

¹²⁸ Article 9 of the LPD requires authorities to “respond positively” to the notification letter, “except if: the peaceful assembly is to be held on the King’s birthday, Coronation day, Water Festival, National Independence day, Khmer New Year day and Pchum Ben day [;or] There is clear information indicating that the demonstration may cause danger or may seriously jeopardize security, safety and public order.”

¹²⁹ Article 10 of the LPD.

¹³⁰ SR on assembly and association April 2013 report (A/HRC/23/39), para. 51.

¹³¹ Articles 10 and 20 of the LPD.

The SR on assembly and association has also stated: "In case an assembly is not allowed or restricted, a detailed and timely written explanation should be provided, which can be appealed before an impartial and independent court."¹³² Article 12 of the LPD states that "[u]pon discussion, if both parties fail to reach an accord [in regard to the authorities' concerns], the competent municipal or provincial authorities shall request the Minister of Interior to provide a decisive opinion."

Amnesty International considers this dispute resolution process to be flawed. The LPD does not allow for the organizers of the demonstration to be heard in person or to present a submission to the Minister of Interior setting out and explaining any position they have taken during negotiations with local authorities.¹³³ Although the Minister is required to provide a decision in writing, he is not required to provide detailed reasons for that decision. And the LPD does not provide for a right of appeal against the Minister of Interior's decision to the courts or an independent body.

3.2 NEGATIVE RESPONSES TO NOTIFICATION

Although the LPD requires authorities to "respond positively" to notification except where certain limited concerns arise, in practice local authorities frequently either attempt to impose restrictions on assemblies or ban them outright. When reasons are provided for such decisions, they are often either inconsistent with the limited range of interests that may justify restrictions under the ICCPR, or they do not comply with the other aspects of the three-part test for imposing restrictions or both.

In early 2014, Mam Sonando, the owner of Beehive radio station and a former Amnesty International prisoner of conscience,¹³⁴ was twice informed by Phnom Penh City Hall that he could not hold planned demonstrations in Phnom Penh. In a letter dated 14 January 2014 he notified City Hall of his intention to hold daily demonstrations from Monday to Friday beginning 27 January 2014 and requested that he be allowed to proceed. The purpose of the demonstrations was to protest a decision by the Ministry of Information not to grant him a television broadcasting licence and a licence to expand existing radio broadcasting activities. The letter stated that a group of "less than 200" would gather at Freedom Park at 7am and then march to the Ministry of Information at 8am.¹³⁵

¹³² SR on assembly and association May 2012 report (A/HRC/20/27), para. 90.

¹³³ Article 2.4.7 of the Implementation Guide states that when requesting "a decisive opinion" from the Minister of Interior, "the municipal or provincial authorities should provide the Minister with: the information indicating that a demonstration may cause danger or may seriously jeopardize security, safety and public order; the solutions they propose; and the solutions the organizers propose."

¹³⁴ Amnesty International, *Cambodia: Free journalist from two-decade prison sentence*, 4 March 2013, available at: <https://www.amnesty.org/en/articles/news/2013/03/cambodia-free-journalist-two-decade-prison-sentence/>.

¹³⁵ Letter from Mam Sonando to Excellency Pa Socheatvong, governor of Phnom Penh, Subject: Request to conduct demonstration every weekday from Monday-Friday, dated 14 January 2014 [unofficial translation]. Supplied by Beehive Radio Station.



March 2013: Mam Sonando greets supporters after being released from prison. Amnesty International had designated him a prisoner of conscience. © Thomas Cristofolletti / Ruom

After attending meetings at the Ministry of Information and Phnom Penh City Hall, Mam Sonando received a letter dated 25 January signed by Phnom Penh deputy governor Khuong Sreng which stated simply that “for the request to conduct the demonstration...the City Hall does not allow it.” No specific reason for the decision was provided in the letter, which also stated that if the march went ahead and affected “security, safety, and public order” Mr. Mam would be “fully responsible in accordance with the law.”¹³⁶ The demonstration proceeded and 10 people were injured, including six who were hospitalised, after gendarmes intervened to disperse the demonstration and beat protesters.¹³⁷

In a subsequent letter dated 3 March 2014, Mam Sonando advised City Hall of plans to hold a demonstration on 31 March 2014 for the same reason.¹³⁸ He attended a meeting with City

¹³⁶ Letter from Phnom Penh deputy governor Khuong Sreng to Mam Sonando, Subject: Notification to do demonstration in order to expand broadcasting to province and to set up television channel, dated 25 January 2014 [unofficial translation]. Supplied by Beehive Radio Station.

¹³⁷ LICADHO, *Smoke grenades used by military police in violent dispersal of protesters*, 27 January 2014; The Asian Forum for Human Rights and Development, *Cambodia: Latest crackdown on peaceful dissent further perpetuates impunity and fuels tensions*, 28 January 2014; Mech Dara and Zsombor Peter, "Military Police Baton Charge Peaceful Protesters", *The Cambodia Daily*, 28 January 2014; Khouth Sophak Chakrya and Kevin Ponniah, "Rally violently dispersed", *The Phnom Penh Post*, 28 January 2014. Mech Dara and Zsombor Peter, "Military Police Baton Charge Peaceful Protesters", *The Cambodia Daily*, 28 January 2014; Thomas Fuller, "In Cambodia, Voicing the Struggle", *The New York Times*, 13 March 2014. See also, "A second day of violence", video by *The Phnom Penh*, 26 January 2015, available at: <http://www.youtube.com/watch?v=fucNuUtCaW8>.

¹³⁸ Letter from Mam Sonando to Excellency Pa Socheatvong, governor of Phnom Penh, Subject: Request to conduct demonstration on 31 March 2014, dated 3 March 2014 [unofficial translation]. Supplied by

Hall officials, including Phnom Penh deputy governor Khuong Sreng, on 24 March. The following day Mam Sonando received a letter signed by the deputy governor which stated that “in order to keep peace and guarantee public order and the regularity of the people and their living, the City Hall cannot allow” the demonstration.¹³⁹ The protest went ahead and was again met by violence from security forces with two protesters suffering head injuries.¹⁴⁰



January 2014: Armoured Gendarmes deployed to police a demonstration planned by former Amnesty International prisoner of conscience Mom Sonando and expected to involve less than 200 participants. Picture: LICADHO

Sar Mory, the Vice-President of the Cambodian Youth Network (CYN), told Amnesty International that for the past three years since 2012 he and others notified the authorities of their intention to hold events on World Environment Day and have faced arbitrary restrictions each year.¹⁴¹ In 2014, a letter from Phnom Penh City Hall dated 4 June advised that the CYN was “not allowed” to hold a gathering in front of the Ministry of Environment followed by a march to the Ministry of Agriculture, Forestry and Fisheries on World Environment Day, 5 June 2014. The letter stated that they could conduct a World Environment Day event at their own office or at any other appropriate private location, or could celebrate the occasion with City Hall six days after World Environment Day on 11 June.¹⁴² The letter did not provide a

Beehive Radio Station.

¹³⁹ Letter from Phnom Penh deputy governor Khuong Sreng to Mam Sonando, Subject: Notification to do demonstration in order to expand broadcasting to province and to set up television channel, dated 25 March 2014 [unofficial translation]. Supplied by Beehive Radio Station.

¹⁴⁰ LICADHO, *Sonando protest cut short by authorities*, 31 March 2014; The Associated Press, “Cambodia: Protest Rally Thwarted”, *The New York Times*, 31 March 2014; Hul Reaksmeay and Zsombor Peter, “Security Guards Thwart March, Beat Protesters”, *The Cambodia Daily*, 1 April 2014.

¹⁴¹ Interview with Sar Mory, 1 July 2014.

¹⁴² Letter from Phnom Penh deputy governor Khuong Sreng to Tim Malay, Director of the CYN 4 June

reason for the decision, however, in a meeting held on 3 June 2014, City Hall officials expressed concerns that the planned march could cause traffic jams that “could affect social order and public safety”.¹⁴³

In regard to concerns about traffic, the SR on assembly and association has endorsed the statement that “the free flow of traffic should not automatically take precedence over freedom of peaceful assembly”.¹⁴⁴ The Implementation Guide to the LPD also states that: “The risk that a demonstration will cause a traffic jam does not necessarily ‘cause danger or...seriously jeopardize security, safety and public order’.”¹⁴⁵ No information was provided in the meeting record from 3 June or the letter dated 4 June to suggest that restrictions on the activities of the CYN were necessary in accordance with the limited interests set out under the ICCPR. In addition, the alternatives offered by City Hall were inappropriate as they defeated the purpose of the march. The SR on assembly and association has noted that “organizers of peaceful assemblies should not be coerced to follow the authorities’ suggestions if these would undermine the essence of their right to freedom of peaceful assembly”.¹⁴⁶

When about 300 CYN members and supporters ignored the ban and attempted to march to the Ministry of the Environment on World Environment Day in 2014, they were blocked by gendarmes. After a standoff lasting nearly three hours, 10 representatives were allowed to deliver a petition to the Ministry calling for measures to prevent deforestation.¹⁴⁷

The attempts by authorities to restrict these assemblies are typical of the response faced by the increasing number of people wishing to exercise their right to freedom of peaceful assembly. None of the restrictions imposed in the examples above can be considered to meet the three-part test of legality, legitimate purpose and necessity (see above, p. 26). The SR on assembly and association has endorsed the statement that: “*Prohibition should be a measure of last resort and the authorities may prohibit a peaceful assembly only when a less restrictive response would not achieve the legitimate aim(s) pursued by the authorities.*”¹⁴⁸

FREEDOM OF ASSEMBLY SUSPENDED

On 4 January 2014, the government temporarily “suspended” the right to freedom of peaceful assembly two days after a violent crackdown by security forces resulted in the death of at least four individuals.

After the opposition Cambodian National Rescue Party (CNRP) notified Phnom Penh City Hall on 30 December 2013 of its intention to hold daily demonstrations in the new year, on 4 January 2014 the party received a memorandum from Phnom Penh governor Pa Socheatvong addressed to CNRP President Sam Rainsy. The memorandum stated that in accordance with paragraph 2 of Article 9 of the LPD, which refers to

2014. Supplied by CYN.

¹⁴³ Meeting Record - Discussion about notification of World Environment Day 42nd Anniversary, 3 June 2014. Supplied by CYN.

¹⁴⁴ SR on assembly and association May 2012 report (A/HRC/20/27), para. 41.

¹⁴⁵ Article 2.4.5 of the Implementation Guide.

¹⁴⁶ SR on assembly and association May 2012 report (A/HRC/20/27), para. 40.

¹⁴⁷ Mech Dara, “Protests in Phnom Penh on World Environment Day”, *The Cambodia Daily*, 5 June 2014.

¹⁴⁸ SR on assembly and association May 2012 report (A/HRC/20/27), para. 39.

demonstrations that may cause danger or seriously jeopardise security, safety and public order, the Phnom Penh Municipality “has decided not to grant permission to the CNRP to continue to hold demonstrations on the Freedom Park and march along various streets in Phnom Penh city effective from 4 January 2014 onward until the security situation and social order returns to normal.” The memorandum further explained: “In the past and in the last few days, the activities of incitement have led to violence, loss of human lives, destruction of public and private properties, closures of public roads and repeated disturbances, thereby seriously affecting security, safety and public order.”¹⁴⁹ On 2 and 3, January State security forces violently beat scores of striking workers, arrested 28 people, including five Buddhist monks who were released hours after their arrests on 2 January,¹⁵⁰ and shot and killed at least four. A memorandum was also sent to diplomatic missions and international organizations advising of City Hall’s decision.¹⁵¹

On 4 January 2014, the Ministry of Interior released a public statement which recalled that the right to freedom of peaceful assembly must be exercised within the framework of the LPD and “shall not be exercised to violate and affect the right and honor of other people, good customs of the nation, public order and national security”. It continued: “...over the last period, rallies gave rise to violence, blocking of public roads and destruction of private and public property, which seriously affected the social security and order and daily lives of the citizens.” The statement concluded by stating that “to guarantee public security and order and social order, demonstrations by public rallies or marches must be provisionally suspended until public security and order return to normal.”¹⁵²

The ban was inconsistently enforced and was never clearly and unequivocally lifted. However, restrictions on freedom of peaceful assembly appeared to ease following a political deal in July 2014 in which the opposition CNRP agreed to end its boycott of the National Assembly and take its seats in parliament.¹⁵³

3.3 OBSTRUCTION AND DISPERSAL OF PEACEFUL ASSEMBLIES

“...in other countries, democratic countries, if people [notify the authorities] then the security forces are there to protect the people and guarantee their safety. But in Cambodia it is not good, because we know the security forces are not coming to protect us but to crack down...so what is the sense in that?”

Yorm Bopha, an activist from the Boeung Kak community in Phnom Penh¹⁵⁴

While some assembly organizers simply ignore the notification procedure completely, others submit the required documentation but reject unjustifiable attempts by the local authorities to restrict or prohibit their assembly and proceed as planned. The result is the security forces’ frequent obstruction of organizers and participants and the dispersal of peaceful

¹⁴⁹ Phnom Penh Municipality Memorandum No. 05 CT.CSM from Pa Socheatvong to Sam Rainsy, 4 January 2014 (unofficial translation).

¹⁵⁰ May Titthara and Sean Teehan, “Strike violence erupts”, *The Phnom Penh Post*, 3 January 2014.

¹⁵¹ Ministry of Foreign Affairs and International Cooperation, memorandum No. 014 MFA-IC/Pro., 4 January 2014.

¹⁵² Press Statement of Ministry of Interior, 4 January 2014. See also, Colin Meyn and Phorn Bopha, “Government Blasted for Eviction of Freedom Park”, *The Cambodia Daily*, 6 January 2014.

¹⁵³ Mech Dara and Matt Blomberg, “Freedom Park Open as City ‘Returns to Normal’”, *The Cambodia Daily*, 7 August 2014; Pech Sotheary and Alice Cuddy, “Opening marks a ‘return to freedom’”, *The Phnom Penh Post*, 7 August 2014.

¹⁵⁴ Interview with Yorm Bopha, 14 July 2014.

assemblies that pose little, if any, threat to public order, national security or the other limited interests that may justify restrictions.

On 17 August 2014, security forces consisting of police and district para-police surrounded a group of between 30-40 supporters of the environmental NGO Mother Nature to prevent them from engaging in a planned bicycle ride around Phnom Penh. The demonstration intended to raise awareness about the environmental and social consequences of a planned hydropower dam project in the Areng valley in Cambodia's Koh Kong province. The planned project will flood the homes of hundreds of members of an ethnic minority community as well as forests that are home to endangered species. The police impounded bicycles that the group had been intending to use for the demonstration. Although the Executive Director of Mother Nature stated that the group had notified City Hall of their intention to hold the bicycle ride on 11 August, spokesman for Phnom Penh City Hall Long Dimanche reportedly stated that the group "did not follow the rules at all".¹⁵⁵ He was reported to have explained that the group "have to submit a letter to ask for permission, but they only sent a letter to inform us, so we could not let them do it."¹⁵⁶

The response of City Hall was clearly at odds with the LPD and highlights the apparent perception of some officials that organizers of an assembly must request and obtain permission from authorities before engaging in a demonstration. As previously noted, the use of the word "approval" in a number of provisions of the LPD may have contributed to this perception. In the example above, authorities appeared to ignore the fact that the LPD clearly states that if the authorities fail to respond to a notification letter then "approval" is "implied" and the assembly "shall not be dispersed". The Executive Director of Mother Nature, Alex Gonzalez-Davidson, told Amnesty International that "no written response or receipt of any kind was issued to us."¹⁵⁷ Any concerns that the authorities might have had about the planned assembly should have been clearly notified to the organizers ahead of the assembly. The restrictions imposed on the group failed to meet the three-part test set out under the ICCPR, in that they were not necessary to protect any of the interests that might justify restrictions. In September 2014, Gonzalez-Davidson was one of 11 activists arrested and detained after they blocked a road into the Areng Valley.¹⁵⁸ He was released on the evening of 15 September and the others were released the following day.¹⁵⁹ In February 2015, he was deported from Cambodia after he was denied a visa renewal.¹⁶⁰ Thirty-one civil society groups condemned the denial of a visa as "an attempt to inhibit further development of grassroots activism to preserve the [Areng] valley".¹⁶¹ Gonzalez-Davidson's online advocacy

¹⁵⁵ Pech Sotheary and Daniel Pye, "Police put brakes on ride", *The Phnom Penh Post*, 18 August 2014. Mech Dara and Zsombor Peter, "City Hall Blocks Bike Ride Against Hydro-Project", *The Cambodia Daily*, 18 August 2014.

¹⁵⁶ Mech Dara and Zsombor Peter, "City Hall Blocks Bike Ride Against Hydro-Project", *The Cambodia Daily*, 18 August 2014.

¹⁵⁷ E-mail from Alex Gonzalez-Davidson, 1 October 2014.

¹⁵⁸ Phak Seangly and Daniel Pye, "Standoff, arrests in Areng", *The Phnom Penh Post*, 16 September 2014; Khuon Narim, "Police Arrest Activists in Koh Kong", *The Cambodia Daily*, 16 September 2014.

¹⁵⁹ Khuon Narim, "Activists Released, Plan to Block Road Again", *The Cambodia Daily*, 17 September 2014.

¹⁶⁰ Tat Oudom, May Titthara, Daniel Pye and Griff Tapper, "Defiant activist deported", *The Phnom Penh Post*, 23 February 2015; Zsombor Peter and Khuon Narim, "Gov't Arrests, Deports Vocal Anti-Dam Activist", *The Cambodia Daily*, 24 February 2015.

¹⁶¹ LICADHO et al., *Civil Society Groups Condemn Use of Visa Denial to Curb Activism*, 17 February

on environmental issues and Areng valley in particular had garnered the support of thousands of young Cambodians.

Early in 2014, villagers from the indigenous Bunong group were twice prevented from marching in Sen Monorom City, the capital of Mondulkiri province. On 29 January, hundreds of villagers were stopped at roadblocks set up by traffic police in Pech Creada district while travelling to a protest march against illegal logging. They were ordered by district authorities to return to their villages. Deputy provincial governor Yim Lux explained that provincial authorities had ordered that the district take such measures because the planned demonstration could “hurt tourism”.¹⁶² The actions of the authorities appeared to be a clear breach of the rights to freedom of peaceful assembly and freedom of movement. The potential negative perceptions of tourists are not a valid reason for imposing restrictions on an assembly under either the ICCPR or the LPD. Banning a march or demonstration outright is also a wholly disproportionate response to such a concern.

In another example of interference with a peaceful assembly, on 13 May 2014 Daun Penh district para-police broke up a gathering of about 40 members and supporters of local network the Working Group for Peace, who gathered at Phnom Penh’s Wat Phnom intending to march to the Royal Palace to celebrate Visak Bochea, or Buddha day.¹⁶³ Bo Pao, a member of the network, said that the group notified the authorities before their planned event but were informed by telephone that it would not be allowed because the area around Wat Phnom and Freedom Park was “not peaceful”.¹⁶⁴ After assembling at Wat Phnom at about 7:30am on 13 May, they were confronted by Daun Penh district para-police, who told them the gathering was illegal, chased off members of the group and confiscated and broke banners. The initial group split and a smaller gathering was attempted a few blocks away near Phnom Penh’s riverside night market. However, after district para-police followed and dispersed the gathering again, organizers called the event off.¹⁶⁵

Article 3 of the LPD states that the law is not applicable to gatherings for the purposes of serving religion, culture, national customs and tradition. A march to celebrate a religious holiday clearly falls within the scope of this exception. The above examples highlight the tendency of the authorities in Cambodia to impose arbitrary restrictions on freedom of peaceful assembly, often in contravention of international human rights law and national law.

2015, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=373>.

¹⁶² Kuch Naren, “Villagers Barred From Attending Illegal Logging Protest”, *The Cambodia Daily*, 30 January 2014.

¹⁶³ Interview with Bo Pao, member of the Working Group for Peace, 30 October 2014; Mech Dara, “Peace Walkers Dispersed By Daun Penh Security”, *The Cambodia Daily*, 14 May 2014.

¹⁶⁴ Interview with Bo Pao, 30 October 2014.

¹⁶⁵ Interview with Bo Pao, 30 October 2014.

3.4 RESTRICTIONS ON MEETINGS, TRAININGS AND FORUMS

"I think the local authorities don't want people to know their rights because the local people always protest against illegal logging..."

Sar Mory, Vice-President of the Cambodian Youth Network¹⁶⁶

In Cambodia, the UN, local and international NGOs, associations, and a variety of other networks and groups regularly conduct educational activities to increase understanding about human rights and laws, and to build the capacity of communities to conduct activities such as human rights monitoring, documentation and advocacy. Some of these groups also organize public forums that provide an opportunity for communities to discuss issues and problems that they are facing and how they can be addressed.

The right to organize and participate in such events is protected under international human rights law through the rights to freedom of expression, peaceful assembly and association.¹⁶⁷ The UN Declaration on Human Rights Defenders¹⁶⁸ recognises that human rights defenders, including NGOs and other relevant groups and individuals, have an important role to play in raising public awareness about human rights, including through education and training activities.¹⁶⁹ It states that everyone has the right, "individually and in association with others" to "know, seek, obtain and receive and hold information about human rights", to "impart or disseminate to others views, information and knowledge" of same, and to study and discuss the observance of human rights in law and practice in order to draw public attention to such matters.¹⁷⁰

The importance of allowing civil society to continue such activities without restriction is recognised in the LPD, which states that the law "shall not be applicable to...educational dissemination activities for social interests."¹⁷¹ The Implementation Guide provides specific examples of the kind of educational dissemination activities that are not governed or restricted by the LPD. These include the following activities, "whether on public or private property": trainings, workshops, public forums, and "meetings to discuss and find solutions for any particular issue."¹⁷² However, despite these clear provisions, local authorities have continued to impose restrictions on such activities without any clear legal basis for doing so.¹⁷³

¹⁶⁶ Interview with Sar Mory, 1 July 2014.

¹⁶⁷ Articles 19, 21 and 22 of the ICCPR.

¹⁶⁸ UN General Assembly resolution 53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN Doc. A/RES/53/144, 8 March 1999 (the Declaration on Human Rights Defenders).

¹⁶⁹ Article 16 of the Declaration on Human Rights Defenders.

¹⁷⁰ Article 6 of the Declaration on Human Rights Defenders.

¹⁷¹ Article 3 of the LPD.

¹⁷² Article 3.2.1 of the Implementation Guide.

¹⁷³ In a 2012 report, the Special Rapporteur on the situation of human rights in Cambodia (SR on Cambodia) stated that "the interruption and closure of civil society workshops and community meetings, at times with the threat of the use of violence" was a "very disturbing trend". See: Report of SR on Cambodia: A human rights analysis of economic and other land concessions in Cambodia (A/HRC/21/63/Add.1), 24 September 2012, para. 187.

The Ministry of Interior had, prior to the enactment of the LPD, issued letters to the governors of at least three provinces – Kratie, Stung Treng, and Pursat – stating that groups wishing to hold activities such as public forums, trainings and workshops, must provide notification to the local authorities.¹⁷⁴ However, these instructions do not have the status of law. In a 2012 report, the OHCHR Cambodia country office reported that “in certain instances, authorities continue to use instructions issued by the Ministry of Interior prior to the entry into force of [the LPD] to prevent citizens from assembling peacefully to discuss politically contentious issues.”¹⁷⁵

Restrictions have often coincided with politically sensitive events. For example, in 2012, authorities obstructed a number of meetings and forums timed to coincide with Cambodia’s hosting of the Association of Southeast Asian Nations (ASEAN) summit from 18 to 20 November. In the lead-up to the summit, civil society groups from Cambodia and throughout the ASEAN region converged in Phnom Penh for a series of workshops and other activities, held under the banner of two main civil society events: the ASEAN Grassroots People’s Assembly (AGPA) and the ASEAN Civil Society Conference/ASEAN People’s Forum (ACSC/APF).¹⁷⁶

On 13 November 2012, the opening ceremony of the AGPA, which was held at a restaurant and attended by over 1,500 people, was disrupted when the electricity supply to the venue was cut off. The restaurant owner had apparently been pressured by the local authorities to cancel the event. Venues for some AGPA workshops scheduled to begin on 14 November 2012 were also cancelled at the last minute, despite agreements and rental deposits being in place. In addition, over 250 AGPA participants were turned away by some guesthouses in Phnom Penh, reportedly due to threats by local authorities who were seen harassing owners of several guesthouses where the participants had been staying. The other civil society-organized event, the ACSC/APF, held on 14 to 16 November, faced similar obstructions by the authorities. The organizers of this event had their venues cancelled on two successive occasions following pressure from local authorities.¹⁷⁷

Restrictions have also been imposed around election periods. The SR on assembly and association has noted that “elections are often highly charged contests at which much lies at

¹⁷⁴ The Cambodian Human Rights Actions Committee (CHRAC), *Compilation of the Reports Submitted by Civil Society Organizations to the UN Human Rights Council During the 18th Session of Universal Periodic Review of the Kingdom of Cambodia*, July 2013, p. 51, available at: http://www.chrac.org/eng/CHRAC%20Statement%20in%202013/07_01_2013_UPR_Report_Compilation_in_English.pdf.

¹⁷⁵ *The role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights* (A/HRC/21/35), 20 September 2012, para. 21, available at: http://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session21/a.hrc.21.35_en.pdf.

¹⁷⁶ Amnesty International et al., *Cambodia: Stop disrupting civil society events and restricting freedom of expression and assembly ahead of ASEAN Summit* (Index: ASA 23/017/2012), 15 November 2012, available at: <http://www.amnesty.org/en/library/asset/ASA23/017/2012/en/fa2973f6-73f5-442d-ae6d-b9fce38cf140/asa230172012en.pdf>; LICADHO, *Human Rights 2012: The Year in Review*, February 2013, p. 11, available at: <http://www.licadho-cambodia.org/reports/files/176LICADHOReportHumanRightsReview2012English.pdf>.

¹⁷⁷ Amnesty International et al., *Cambodia: Stop disrupting civil society events and restricting freedom of expression and assembly ahead of ASEAN Summit* (Index: ASA 23/017/2012), 15 November 2012; LICADHO, *Human Rights 2012: The Year in Review*, February 2013, p. 11.

stake for authorities and the electorate. In that context, States have an obligation to respect and facilitate the rights to freedom of peaceful assembly and of association throughout the entire process.”¹⁷⁸

In Ratanakiri province, arbitrary restrictions on meetings, trainings and forums were imposed in both 2012 and 2013. The province, located in Cambodia’s sparsely populated northeast, has seen a number of land conflicts, including disputes affecting indigenous people. In July 2012, staff members from human rights NGOs operating in the province told a newspaper that restrictions on their activities had increased following the June 2012 commune elections in which the opposition party had gained increased support in the province.¹⁷⁹ In July 2012, two months after the commune elections, authorities broke up a training session organized by human rights NGOs the Cambodian Center for Human Rights (CCHR) and the Cambodian Human Rights and Development Association (ADHOC).¹⁸⁰



28 July 2013, Election Day: Voters looking for their names on electoral lists. Picture: LICADHO

Restrictions continued in 2013. Two weeks before the commencement of the campaign for the 2013 National Assembly elections the governor of Ratanakiri province, Pao Horm Phan,

¹⁷⁸ SR on assembly and association August 2013 report (A/68/299), para. 11.

¹⁷⁹ Kuch Naren, "Tolerance Low for Land Education in R'kiri", *The Cambodia Daily*, 31 July 2012.

¹⁸⁰ CCHR and ADHOC, *Continued Disruption of Community Empowerment Activities Organized by Human Rights Groups*, 27 July 2012; Observatory for the Protection of Human Rights Defenders, *Urgent Appeal* (KHM 003/0712/OBS073), 30 July 2012; Kuch Naren, "Police Clamp Down on Land Rights Meeting", *The Cambodia Daily*, 28-29 July 2012. See also, "On 27 July 2012, the authorities and police officers disrupted a training session jointly organized by [ADHOC]", video by CCHR, 2 August 2012, available at: <http://www.youtube.com/watch?v=e37f00WTd24>.

reportedly issued a letter to local officials stating that the provincial hall “forbids” local authorities at the city, district, commune and village level and ordinary citizens from attending any workshops, meetings and field trips held by NGOs during the campaign period from 27 June to 28 July 2013.¹⁸¹ The governor explained to a local newspaper that rather than attending meetings held by NGOs, people should stay in their villages during the election campaign so that they would not miss out on the messages of the political parties. Tep Nytha, the Secretary-General of the National Election Committee, reportedly defended the ban using the same logic and said that it was not illegal.¹⁸²

The commencement of an election campaign is not a justifiable reason to impose restrictions on freedom of peaceful assembly. It does not fall within the limited range of interests that may justify restrictions as set out in the ICCPR, and such restrictions do not satisfy other parts of the three-part test (for instance, clearly, that of necessity). Citizens have no obligation to listen to the messages of political parties and, their right to meet to discuss issues that are important to them should not be affected by elections.

The episode highlights concerns arising around the Act to amend the existing Law on the Election of Members of the National Assembly (Act Amending the LEMNA) which seeks to oblige civil society groups to maintain a position of neutrality during election campaigns. With the passage of the Act Amending the LEMNA, it will become difficult for NGOs to conduct workshops, meetings and field trips during campaign periods as they will be open to accusations of failing to maintain a position of neutrality. Such restrictions on the right to freedom of peaceful assembly fail the three-part test of legality, legitimate purpose, and necessity and should be removed from the Act Amending the LEMNA.

In another example of arbitrary interference, on 22 August 2013 police attempted to block people from attending a forum at a private home in Ang village, O'Char commune, Battambang city.¹⁸³ The forum was organized by the Cambodian Center for Independent Media (CCIM), a Phnom Penh-based NGO, to discuss Cambodia's election processes following the disputed National Assembly election results. Representatives from the main political parties and the local commune chief were invited to attend the forum as guest speakers, though only CNRP lawmaker Mu Sochua attended. Though there was no legal requirement to do so, in advance of the forum CCIM provided a notification letter to the

¹⁸¹ Amnesty International et al., *Cambodia: Respect freedom of expression as elections approach* (Index: ASA 23/005/2013), 21 July 2013, available at:

<https://www.amnesty.org/en/documents/ASA23/005/2013/en/>; Kuch Naren, "Ratanakiri Governor Bans Attending NGO Meetings Before Election", *The Cambodia Daily*, 26 June 2013.

¹⁸² Kuch Naren, "Ratanakiri Governor Bans Attending NGO Meetings Before Election", *The Cambodia Daily*, 26 June 2013.

¹⁸³ Interview with Chan Somaly, CCIM Communications Officer, 31 October 2014. See also, Rupert Abbott (Amnesty International), Letter to the Editor: "The right to peaceful assembly", *The Phnom Penh Post*, 27 August 2013; CHRAC et al., *Joint Statement on the Situation on Freedom of Assembly*, 23 August 2013, available at:

http://www.chrac.org/eng/CHAC%20Statement%20in%202013/08_23_2013_Joint%20statement%20on%20crackdown%20of%20freedom%20of%20assembly%20in%20BTB%20En.pdf; CCHR, *CCHR condemns the disruption by the authorities of public forum organized by CCIM*, 23 August 2013, available at:

http://cchrcambodia.org/index_old.php?url=media/media.php&p=press_detail.php&pid=422&id=5; Chhay Channyda and Shane Worrell, "Forum leads to clashes", *The Phnom Penh Post*, 23 August 2013.

deputy chief of the commune, with a request to pass it on to the provincial authorities.¹⁸⁴ At about 8:30am on the day of the forum, approximately 50 police officers arrived at the home and attempted to block people from attending the forum, stating that it was illegal.¹⁸⁵ The organizers of the event and the owner of the home attempted to explain to police that no approval was required under Cambodian law for such a forum to proceed. Although the forum was able to commence, it was interrupted when a scuffle broke out between a man attempting to attend the forum and police trying to block him.¹⁸⁶

Under the LPD, there is no legal requirement to notify provincial authorities of meetings or forums, particularly when held on private property. The police intervention to block people from attending the forum is another example of interference that arbitrarily restricts the right to freedom of peaceful assembly. Other peaceful assemblies dealing with sensitive issues such as illegal logging in Prey Lang forest have also been unjustifiably restricted.

PREY LANG FOREST ACTIVISM

Over the past few years community networks, associations and NGOs have been working together to protect Cambodia's Prey Lang forest from illegal logging and other encroachments. Yet attempts to empower local communities by providing training on human rights, land and forest law, and monitoring and advocacy techniques have met with resistance from local authorities.

Prey Lang forest in northern Cambodia is the largest primary lowland dry evergreen forest remaining in Cambodia. The forest spans four provinces – Kampong Thom, Preah Vihear, Kratie and Stung Treng – and contributes to the livelihoods of hundreds of thousands of people, including indigenous communities.

In April 2012, one of the forest's most fearless and tireless advocates was killed. Chut Wutty, a prominent environmental activist and Executive Director of the Natural Resource Protection Group (NRP), was shot dead while collecting evidence of illegal logging in Koh Kong province in the south of Cambodia. An investigation into the shooting, which Amnesty International and other rights groups regarded as both flawed and inadequate,¹⁸⁷ was dropped in October 2012 without any prosecutions. A confused official version of events stated that a gendarme, In Rattana, fired the shots that killed Wutty but was in turn shot by a timber company employee, Ran Borath, who served six months of a two year sentence for the unintentional homicide of In Rattana.¹⁸⁸

Despite the dangers of combating illegal logging, communities that rely on Prey Lang for their livelihoods have continued their efforts to preserve and protect the forest, including the community forest patrols that Chut Wutty helped to establish and coordinate. Groups including the Cambodian Youth Network (CYN) and the Community Peacebuilding Network (CPN) have also facilitated trainings and workshops to provide

¹⁸⁴ Interview with Chan Somaly, CCIM Communications Officer, 31 October 2014.

¹⁸⁵ Interview with Chan Somaly, CCIM Communications Officer, 31 October 2014; CHRAC et al., *Joint Statement on the Situation on Freedom of Assembly*, 23 August 2013; CCHR, *CCHR condemns the disruption by the authorities of public forum organized by CCIM*, 23 August 2013; Chhay Channyda and Shane Worrell, "Forum leads to clashes", *The Phnom Penh Post*, 23 August 2013.

¹⁸⁶ Interview with Chan Somaly, CCIM Communications Officer, 31 October 2014.

¹⁸⁷ Amnesty International, *Annual Report 2013: Cambodia*, available at: <https://www.amnesty.org/en/documents/pol10/001/2013/en/>.

¹⁸⁸ LICADHO, *Conclusion of Two Cases Related to Chut Wutty Slaying Leave More Questions Than Answers*, 22 October 2012, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=293>

communities with the skills needed to defend their rights and interests, and public forums to discuss the issues with local authorities. However, these peaceful assemblies have met with resistance from local authorities.

On 14 March and 19 June 2014, two training sessions organized by the CYN in Kampong Thom were shut down by armed police.¹⁸⁹ In June a public forum organized by CPN in Chey Sen district of Preah Vihear province was also banned despite notification being sent to local authorities.¹⁹⁰ Chhim Savuth, an experienced human rights activist who has taken over the running of NRPNG since the death of Chut Wutty described to Amnesty International restrictions on his work, including numerous court summons, surveillance of his activities, and attempts to arbitrarily arrest him.¹⁹¹



14 March 2014: Armed police disrupt a human rights training event organized by CYN in Kampong Thom province. © CYN

Chhim Savuth says local authorities do not want the communities to participate in meetings and trainings because these activities increase their awareness about the illegal activities taking place in the forest, which he says benefit both the companies concerned and the local authorities. He says the assemblies are seen as a threat because they increase awareness about the problems in Prey Lang among the Cambodian public, civil society and NGOs.¹⁹²

Arbitrary restrictions on educational activities such as trainings, meetings and public forums have no legal basis in Cambodian law and international law. The motive behind the restrictions often seems to be political or financial. Seng Sokheng, the Secretariat Coordinator for CPN, told Amnesty International that *"[t]hose authorities that always try to ban meetings receive benefits from land disputes or crimes. So they try to stop protesting*

¹⁸⁹ Interview with Sar Mory, 1 July 2014. See also, Sen David, "Police end Prey Lang event", *The Phnom Penh Post*, 20 June 2014.

¹⁹⁰ Khuon Narim, "Illegal Logging Forum Banned in Preah Vihear", *The Cambodia Daily*, 12 June 2014.

¹⁹¹ Interview with Chhim Savuth, 2 July 2014.

¹⁹² Interview with Chhim Savuth, 2 July 2014.

because they receive benefits from the particular problem that people are facing." He says that it is particularly hard for villagers to assemble in areas in which economic land concessions are a contentious issue. Villagers who try to meet to discuss problems are often watched by local authorities and then called for questioning. While he noticed less restrictions when gathering in Phnom Penh, Seng Sokheng said "*we still know that they send people to watch and be spies - maybe some officials or officers from City Hall.*"¹⁹³ In order to clarify and uphold the legal right to organize educational activities without restrictions the Ministry of Interior should issue a ministerial directive ordering local authorities to refrain from such interference in these activities.

The examples and analysis in this chapter have shown that a combination of the flaws in the LPD and the expansive interpretation by local authorities of their powers under this law has resulted in excessive restrictions on freedom of peaceful assembly. These restrictions violate international human rights law and contradict Cambodia's Constitution and, at times, the LPD.

Faced with restrictions that are unjustifiable under international human rights law and whose grounding in national laws often appear questionable, those organizing and participating in peaceful assemblies have often ignored the demands of local authorities and proceeded with their plans. This has led to frequent confrontations between demonstrators and security forces. The next chapter will show how security forces have frequently violated international standards on the use of force in their policing of assemblies. In doing so, they have contributed to an unnecessary and dangerous escalation of violence, a pattern that has had fatal consequences.

¹⁹³ Interview with Seng Sokheng, 30 June 2014.

4. UNNECESSARY AND EXCESSIVE USE OF FORCE

“They used metal sticks to beat me on my scar. They beat me until I fell down and then they started to kick and punch me. Then I was dragged along the road and beaten. So I was [treated] like an animal.”

Vorn Pao, President of the Independent Democracy of Informal Economy Association (IDEA)¹⁹⁴

On 2 January 2014, Vorn Pao, the president of an association that represents tuk-tuk drivers and other workers in the informal sector, was surrounded and severely beaten by soldiers from an elite unit of the Royal Cambodian Armed Forces (RCAF) and men in plain clothes. The attack occurred outside Yakjin (Cambodia) Inc. factory on the outskirts of Phnom Penh during a demonstration by striking garment workers calling for an increase to the minimum wage.¹⁹⁵ A number of other people, including human rights workers, community activists, and Buddhist monks, were also beaten and struck with improvised weapons, including metal bars and wooden sticks. During the attack, two of those beaten heard the soldiers shouting “beat them, beat them to death”.¹⁹⁶

In Cambodia, the vast majority of assemblies are peaceful and provide no justification for the use of force. However, the Cambodian security forces frequently use unnecessary and excessive force to disperse both peaceful assemblies and those containing violent elements. In 2012, the Office of the UN High Commissioner for Human Rights (OHCHR) in Cambodia country office reported a “*general trend towards an increased and disproportionate use of force, including the use of live ammunition against protesters, by State authorities and private security guards as a means to control protesters*” and noted that these instances of

¹⁹⁴ Interview with Vorn Pao, 23 June 2014.

¹⁹⁵ On 24 December 2013, the government announced that the minimum wage in Cambodia’s garment sector would be increased from US \$80 to US \$95 per month in April 2014; unions had called for a larger increase. See: Aun Pheap and Colin Meyn, “Monthly Wage Increased to \$95, Unions Vow to Strike”, *The Cambodia Daily*, 25 December 2013; Mom Kunthear, “Strike picks up steam”, *The Phnom Penh Post*, 26 December 2013.

¹⁹⁶ Interview with Vorn Pao, 23 June 2014; Interview with Theng Savoeun, 17 June 2014.

violence were “predominantly unprovoked”.¹⁹⁷ The term “private security guards” here refers to the auxiliaries described in this report as district “para-police” who are also referred to as private or district security guards.



January 2014: Soldiers from Royal Cambodian Armed Forces Brigade 911 attack a demonstrator outside Yakjin (Cambodia) Inc. on the outskirts of Phnom Penh. © Luc Forsyth / Ruom

Policing demonstrations that contain violent elements can be a complex and dangerous task. However, there are clear international standards on exactly when force and firearms can be used and to what extent. These standards have not yet been fully incorporated into Cambodia’s domestic law and their core principles of legality, necessity and proportionality have generally been ignored by security forces.

In the months following the July 2013 National Assembly elections, at least six people were shot dead during demonstrations and other assemblies and scores more were seriously wounded.¹⁹⁸ At least two of those killed were reportedly bystanders who were not demonstrating.¹⁹⁹ In addition to those killed, one young man was paralysed from the waist down after a bullet damaged his spinal cord.²⁰⁰ Another man who bystanders witnessed being

¹⁹⁷ *The role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights* (A/HRC/21/35), 20 September 2012, para 23.

¹⁹⁸ The six people shot dead are Mao Sok Chan (29), killed on 15 September 2013; Eng Sokhom (49), killed on 12 November 2013; and Khim Phaleap (25), Sam Ravy (25), Yean Rithy (25) and Pheng Kosal (22), all killed on 3 January 2014.

¹⁹⁹ Mao Sok Chan, killed on 15 September 2013 and Eng Sokhom, killed on 12 November 2013.

²⁰⁰ Twenty-six-year old student Hoeurn Chann (see case study below, pp. 73-75).

viciously beaten by security forces in January 2014 reportedly suffered a brain contusion and died in May 2014.²⁰¹ And 16-year-old Khem Saphath is missing, presumed dead – the last time he was seen was on 3 January 2014, lying on Phnom Penh's Veng Sreng Street with an apparent bullet wound to the chest.

Amnesty International has identified five areas of particular concern with regard to the unnecessary and excessive use of force: use of force by auxiliaries of the State; the targeting of journalists and human rights monitors; punitive force in carrying out arrests; misuse of equipment and use of inappropriate weapons; and the unjustified use of lethal force. These issues are considered below after an examination of international and domestic standards on the use of force and firearms.

4.1 INTERNATIONAL LAW AND STANDARDS ON THE USE OF FORCE AND FIREARMS BY LAW ENFORCEMENT OFFICIALS

The International Covenant on Civil and Political Rights (ICCPR) provides that “*no person shall be arbitrarily deprived of his life.*”²⁰² No derogation is permitted from the right to life, even “*in time of public emergency which threatens the life of the nation.*”²⁰³ The Human Rights Committee, the expert UN body that oversees the implementation of the ICCPR, has stated that: “*The deprivation of life by the authorities of the State is a matter of utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.*”²⁰⁴ The ICCPR also provides that “*no one shall be subjected to cruel, inhuman or degrading treatment or punishment.*”²⁰⁵ This right is also non-derogable,²⁰⁶ and is further protected by the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Cambodia is also a state party.

The international community has developed detailed standards on the use of force and firearms by law enforcement officials that represent a broad consensus on how to best comply with international human rights treaties while conducting law enforcement operations. These include the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles) and the UN Code of Conduct for Law Enforcement Officials (UN Code of Conduct). The UN Special Rapporteur on extra-judicial, summary or arbitrary executions (SR on summary executions) has noted that: “*Human rights standards on the use of force derive from the understanding that the irreversibility of death justifies stringent safeguards for the right to life, especially in relation to due process.*”²⁰⁷

Under international standards, law enforcement officials are required to:

²⁰¹ Twenty-nine-year old Muon Sokmean. See: Mech Dara and Alex Consiglio, “Five Months On, Witnesses Recall Muon Sokmean’s Beating”, *The Cambodia Daily*, 20 May 2014.

²⁰² Article 6(1) of the ICCPR.

²⁰³ Article 4(2) of the ICCPR; Human Rights Committee, General Comment No. 6, Article 6: The right to life, UN Doc. HRI/GEN/1/Rev.1,1982, para. 3.

²⁰⁴ Human Rights Committee, General Comment No. 6, Article 6: The right to life, UN Doc. HRI/GEN/1/Rev.1,1982, para. 3.

²⁰⁵ Article 7 of the ICCPR.

²⁰⁶ Article 4(2) of the ICCPR.

²⁰⁷ Report of the SR on summary executions, UN Doc. A/61/311, 5 September 2006, para. 36.

- *“as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”*²⁰⁸
- *use firearms only “when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender.”*²⁰⁹

If the use of force and firearms is unavoidable, Principle 5 of the UN Basic Principles states, among other things, that law enforcement officials must:

*“(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
(b) Minimize damage and injury, and respect and preserve human life;
(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment”.*

International standards emphasise the importance of proportionality in judging whether the use of force is legitimate and strictly unavoidable, in order to protect life. Principle 9 of the UN Basic Principles states that: *“... officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury”* or to prevent *“a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger”* and *“only when less extreme means are insufficient to achieve these objectives”*. The article continues: *“In any event, intentional lethal use of firearms may only be made when strictly unavoidable to protect life”*.

Principle 7 also calls on governments to ensure that: *“arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law”*. Governments and law enforcement agencies are further called upon to establish *“effective reporting and review procedures”* where injury or death is caused by the use of force and firearms by law enforcement officers. In cases of death and serious injury or other grave consequences, a detailed report must be sent promptly to the competent authorities responsible for administrative review and judicial control.²¹⁰ An independent process, including a judicial process, is also guaranteed to persons affected by the use of force and firearms or their legal representatives.²¹¹

4.2 NATIONAL LAW AND STANDARDS ON THE USE OF FORCE AND FIREARMS BY LAW ENFORCEMENT OFFICERS

Cambodia’s Constitution guarantees the right to life and security of all citizens.²¹² It also states that *“there shall be no physical abuse against any individual”* and that *“[c]oercion,*

²⁰⁸ Principle 4 of the 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.

²⁰⁹ UN Code of Conduct, adopted by UN General Assembly resolution 34/169, 17 December 1979, Article 3, Commentary.

²¹⁰ Principle 22 of the UN Basic Principles.

²¹¹ Principle 23 of the UN Basic Principles.

²¹² Article 32 of the Constitution.

physical ill-treatment or any other mistreatment that imposes additional punishment on a detainee or prisoner shall be prohibited.”²¹³

The Law on Peaceful Demonstrations (LPD) does not explicitly address the use of force by security forces against demonstrations, stating only that if “a peaceful assembly turns violent, competent authorities shall take proper measures to prevent and stop the demonstration immediately.”²¹⁴ The LPD further states that “[c]ompetent authorities designated to maintain security, safety and public order at venues of public assembly...shall adhere to the attitude of absolute patience”.²¹⁵ The Implementation Guide to the LPD (Implementation Guide) states that “[p]olice intervention must be proportional to the situation, and only be to the extent necessary to promptly restore order”.²¹⁶

Declaration No. 006 on the Discipline of the National Police Force by the Ministry of Interior does not contain detailed standards on the use of force and firearms but does state that “a police officer shall not shoot without an order, except only for the case of legitimate self-defence or in case of an emergency to protect human lives or public or private property.”²¹⁷ This provision falls short of international standards, which do not allow the use of firearms to protect property. Amnesty International’s research has not revealed any other publically available national laws, internal regulations, or codes of conduct setting out standards on the use of force by the security forces.

4.3 USE OF FORCE BY AUXILIARIES OF THE STATE

“When security personnel - who are in charge of protecting public order - try to instruct the people, they abuse them so they hit people in order to maintain social stability”

Chheang Vun, Cambodian People’s Party lawmaker quoted in *The Cambodia Daily*, 19 July 2014²¹⁸

AUXILIARY ‘PARA-POLICE’

Throughout the period analysed in this report, para-police played a central role in the policing – and often the violent dispersal – of demonstrations in Phnom Penh. Para-police are units of usually uniformed men deployed by authorities to control and prevent demonstrations and other assemblies and to carry out other functions. When responding to demonstrations they usually accompany other security forces, such as police or gendarmerie, and often wear motorcycle helmets and carry batons or sticks.

The genesis of Cambodia’s para-police may be traced back to armed militia used throughout the country in the 1980s, which were referred to as local ‘security forces’. Over the years, different terminology has been used

²¹³ Article 38 of the Constitution.

²¹⁴ Article 20 of the LPD.

²¹⁵ Article 19 of the LPD.

²¹⁶ Article 3.6.5 of the Implementation Guide.

²¹⁷ Article 6.9 of the Prakas (Declaration) No. 006 on the Discipline of the National Police Force, Ministry of Interior, 1995. Prakas are issued by the heads of ministries. They can neither stipulate on issues not concerned within the framework and competence of the ministry nor contradict other norms and standards of the Royal Government of Cambodia. See Law on the Organization and Functioning of the Council of Ministers, 1994, Article 29.

²¹⁸ Kuch Naren and Matt Blomberg, "Parties Offer Conflicting Narratives of Protest Clash", *The Cambodia Daily*, 19 July 2014.

to refer to what is essentially an auxiliary force providing assistance to police and other security forces in the maintenance of public order and security.

Amnesty International has not identified any single legal document that sets out the rules governing the para-police, their functions and powers. Rather, their legal basis and the rules pertaining to their role and functions are set out in a confusing combination of government statements and policies, and instructions by the Ministry of Interior. In recent years, these documents have tended to refer to “people’s defence forces” or a “people’s defence movement”. The auxiliaries referred to as ‘para-police’ throughout this report fall under the rubric of the people’s defence forces and people’s defence movement.



January 2014: Helmeted and armed with batons, district para-police attack demonstrators taking part in an assembly organized for the victims of the crackdown of 2 and 3 January. © Thomas Cristofolletti / Ruom

At the time of the 1991 Paris Peace Agreements, there were 220,290 individuals in armed militia in Cambodia.²¹⁹ After the 1998 elections, a process of disarming and reducing the number of militia was initiated,²²⁰ but a large unarmed militia, known as “people’s defence forces”, remained. The role of the people’s defence forces was to cooperate with competent authorities to maintain security and public order at the community level under the command of province, municipality, district and commune authorities.²²¹

²¹⁹ Bartu P. and Wilford N., “Transitional Justice and DDR: The Case of Cambodia”, *International Center for Transitional Justice*, 2009, p. 9, available at <https://www.ictj.org/sites/default/files/ICTJ-DDR-Cambodia-CaseStudy-2009-English.pdf>.

²²⁰ Sub-Decree on the Governance of the Use of All Categories of Weapons and Explosives, 7 July 1995.

²²¹ Ministry of Interior, Additional Instruction of Appointment of Homeland Security Defense Movement “Popular Defense Movement”, 3 November 2005; Ministry of Interior, Instruction on the Organization of the Movement for Defence of the Security of the Motherland (Peoples Defence Movement), 9 May 2011.

In March 2010, Prime Minister Hun Sen called for the strengthening of policing by mixed forces under the government's "Safe Villages and Communes Policy" and within the context of the 2008-2013 National Police strategic plan.²²² An instruction by the Minister of Interior on 16 August 2010 provided for unarmed local para-police auxiliaries to provide assistance to administrative and other police under the command of unified command committees in each province, municipality and district.²²³ In September 2010, a Ministry of Interior decision established a ministerial level General Staff headed by Secretary of State Em Sam-an to oversee implementation of the Safe Villages and Communes Policy, with working groups overseeing implementation in each province and municipality in cooperation with provincial and municipal unified command committees who were responsible for implementation at the district and commune level.²²⁴

In pursuance of the Safe Villages and Communes Policy, the Phnom Penh governor in 2010, Kep Chuktema, ordered district and commune authorities and police to establish urban "safe village-commune policing" involving legal and administrative measures to be carried out by police officers and non-police auxiliaries. By the end of 2010, these units were operationalized in Phnom Penh under the authority of district governors.

A further instruction from the Ministry of Interior in May 2011 defined the 'peoples defence' movement as an unarmed movement for the defence of security and public order at grassroots levels operating under local command. The instruction states that the movement is an auxiliary intervention force operating in tandem with local police, gendarmerie and other competent forces, empowered to arrest individuals committing crimes in order to hand them over to the competent authorities, and to issue warnings to people to desist from wrongdoing.²²⁵ In a separate proclamation on the role of rural and urban commune administrative police in the defence of security and public order issued on the same day, the Ministry of Interior outlined that one role of the commune administrative police is to recruit and deploy people's defence forces to carry out security and public order work.²²⁶

The para-police unit referred to mostly in this report comes from Daun Penh district which covers a large part of central Phnom Penh including, importantly in the context of this report, Freedom Park. Para-police are often referred to by media as district or private security guards or forces.

Amnesty International is deeply concerned by the violence committed by district para-police and men in plain clothes against groups of peaceful demonstrators, with the apparent endorsement in some cases of the state security forces who accompany them as well as district and municipal officials, and the government. Amnesty International is unaware of any law or regulation setting out the legal basis for the use of force by these groups against other citizens. However, as Chapter 5 will show, they have been able to perpetrate human right violations with impunity.

²²² Prime Minister Hun Sen, Keynote Address at the 65th Anniversary of the Establishment of the National Police, 16 May 2010.

²²³ Ministry of Interior, Plan of Instructions for the Organization and Implementation of the "Safe Villages and Communes" Policy, Safety village commune/Sangkat Policy Guideline, 16 August 2010.

²²⁴ Ministry of Interior, Decision on the Organization of Work Teams Responsible for Leadership of Examination of the Implementation of the "Safe Villages and Communes" Policy in Municipalities and Provinces, 19 September 2010.

²²⁵ Ministry of Interior, Instruction on the Organization of the Movement for Defence of the Security of the Motherland (Peoples Defence Movement), 9 May 2011.

²²⁶ Ministry of Interior, Proclamation on the Role and Duties of Rural and Urban Commune Administrative Police Posts, 9 May 2011.

On the night of 22 September 2013, a group of men in civilian clothing, many wearing facemasks, attacked a peaceful candlelit vigil at Wat Phnom, a Phnom Penh landmark. The participants in the peaceful assembly, mostly members of the Boeung Kak community, were calling for fair elections and the release of imprisoned housing rights activist Yorm Bopha, who Amnesty International had designated a prisoner of conscience. The group, which began gathering at about 5 pm,²²⁷ included many women and children, and their gathering was monitored by a number of human rights observers.²²⁸

From around 10.30 pm, men armed with sticks, electric prods and slingshots, descended on the group and attacked them while under the watch of a large number of police and gendarmes. According to eyewitnesses, who Amnesty International spoke with later that night, security force personnel initially stood by as the violence intensified, then joined in the violence. At least 10 community members were injured. A 75-year old woman and three others were treated in hospital.²²⁹ Witnesses said that street lighting in the area was cut off moments before the attack commenced.²³⁰

There was no justification for dispersing the assembly, which was entirely peaceful, and posed no threat to the rights and freedoms of others. Amnesty International is particularly concerned that the security forces not only failed to intervene to protect the peaceful gathering but joined the attackers in engaging in violence against the demonstrators. The deputy governor and chief of public security for Daun Penh district both reportedly denied involvement in or knowledge of the violence.²³¹ However, *The Cambodia Daily* reported that a journalist witnessed a truck carrying young men wearing surgical masks and carrying batons being transported from Wat Phnom to the Daun Penh district office.²³² Three weeks after the incident, a local resident reportedly told *The Cambodia Daily* that on the night of the attack she overheard a district official giving orders to beat and arrest prominent Boeung Kak activist Tep Vanny.²³³

District and municipal authorities in Phnom Penh have also increasingly relied upon district para-police to police demonstrations and other assemblies and have often been present to direct these forces. As noted above, Amnesty International knows of no law or regulation granting the district para-police legal authority to use force against other citizens.

²²⁷ Interview with Sou Sophal, 25 June 2014.

²²⁸ Amnesty International et al., *Cambodia's government and donors must act now to prevent escalation of violence* (Index: ASA 23/011/2013), 24 September 2013, available at: <https://www.amnesty.org/en/documents/asa23/011/2013/en/>.

²²⁹ Amnesty International et al, *Cambodia's government and donors must act now to prevent escalation of violence* (Index: ASA 23/011/2013), 24 September 2013.

²³⁰ Denise Hruby, "Mob Ruled and People Bled While Police Watched", *The Cambodia Daily*, 28 September 2013.

²³¹ Mech Dara and Ben Woods, "Daun Penh Authorities Deny Involvement in Wat Phnom Attack", *The Cambodia Daily*, 25 September 2014.

²³² Mech Dara and Ben Woods, "Daun Penh Authorities Deny Involvement in Wat Phnom Attack", *The Cambodia Daily*, 25 September 2014; Denise Hruby, "Mob Ruled and People Bled While Police Watched", *The Cambodia Daily*, 28 September 2013.

²³³ Khuon Narim, "Injured Anti-Eviction Activists File Complaint Against Local Officials", *The Cambodia Daily*, 12 October 2013.

THE SECURITY FORCES IN CAMBODIA

A wide variety of security forces are deployed by the government and local authorities to police assemblies. The three main forces seen on the streets in recent years have been the National Police, the Royal Gendarmerie, and “para-police”. On occasion, elite units of the Royal Cambodian Armed Forces (RCAF) have also been deployed.

According to the 1996 Law on the Establishment of the Ministry of Interior, the Ministry has “the mandate to guide and control all levels of provincial administrative authorities, supervise the national police, protect social order and security, and provide safety to the people of the Kingdom of Cambodia.”²³⁴ The duties of the National Police are “to maintain and protect the national security, public order, social safety and stability in order to serve the interests of the nation and the people.”²³⁵

The 1996 Law on the Establishment of the Ministry of Interior does not provide for command authority on the part of the Ministry over the police. An expert that Amnesty International consulted outlined a complex interplay of *de jure* and *de facto* command authority for the police which resides in different measures with the Prime Minister, the Ministry of Interior, the Supreme Commissioner of the National Police, and local governors. The interplay between these command authorities is unclear. Primary command authority of central forces of the National Police with countrywide jurisdiction resides with the Supreme Commissioner of the National Police whereas command responsibility for sub-national police with jurisdiction at provincial levels and below is largely under more local command.

The Royal Gendarmerie is an autonomous unit of the RCAF²³⁶ that operates under the administrative supervision of the Ministry of Defence²³⁷ and under the command authority of the Prime Minister,²³⁸ via the Gendarmerie Inspector.²³⁹ The Gendarmerie have nationwide jurisdiction to police both civilian and military matters “under an inter-ministerial jurisdiction”.²⁴⁰ When policing civilian matters, including “maintain[ing] security and public orders”, the gendarmerie “may carry out orders” from the Ministry of Interior.²⁴¹ As per the Sub-Decree on the Tasks and General Structure of the Gendarmerie and – according to the expert Amnesty International consulted– in practice, ultimate command authority is with the Prime Minister.

In addition to these three forces, elite units of the RCAF have also been deployed at times to respond to demonstrations. The 1997 Law on the General Statute of the Military Personnel of the Royal Cambodian Armed Forces²⁴² establishes a basic legal framework for the operation of the RCAF. According to this law, the RCAF have a duty to serve the country and their mission is to “manage troops in order to protect and build up the homeland as well as to serve the higher interests of the nation.” In addition, “in cases of necessity” the RCAF

²³⁴ Article 2 of the Law on the Establishment of the Ministry of Interior, 24 January 1996. English translation available at http://www.bigpond.com.kh/council_of_jurists/Stradmin/str018g.htm.

²³⁵ Article 2 of the Royal Decree on the Specific Statute of National Police Personnel.

²³⁶ Article 3 of Sub-decree No. 25 on the Tasks and General Structure of the Gendarmerie. English translation accessed from Parliamentary Institute of Cambodia Legal Database. See: http://www.pic.org.kh/fileadmin/user_upload/Files/Library_Resources/CLRDA_Legal_Database_PDF/Part_4_-_Executive_Branch/ANK-25-95_Structure_of_Gendarmerie_Eng.pdf

²³⁷ Article 2 of Sub-decree No. 25 on the Tasks and General Structure of the Gendarmerie.

²³⁸ Articles 1 and 2 of Sub-decree No. 25 on the Tasks and General Structure of the Gendarmerie.

²³⁹ Article 7 of Sub-decree No. 25 on the Tasks and General Structure of the Gendarmerie.

²⁴⁰ Article 3 of Sub-decree No. 25 on the Tasks and General Structure of the Gendarmerie.

²⁴¹ Article 4 of Sub-decree No. 25 on the Tasks and General Structure of the Gendarmerie.

²⁴² English translation available at <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/93508/109344/F811412622/KHM93508%20Eng.pdf>.

“may take part in ensuring public safety and bringing assistance to citizens having difficulties or at the time of catastrophes.”²⁴³ In August 2014, Defence Minister Tea Banh reportedly stated that he would recruit 700 more soldiers to the RCAF’s Brigade 70 in order to help respond to demonstrations.²⁴⁴ Brigade 70 is the former bodyguard unit for Prime Minister Hun Sen and has previously been linked to human rights violations.²⁴⁵

Governors of provinces and municipalities and districts can “lead and order”²⁴⁶ security forces in their capacity as the chairpersons of provincial/municipal and district “unified commands”. A unified command is a committee with roles and responsibilities that include to “[l]ead, coordinate and take action according to the law in maintaining social order and public security” and “to ensure timely resolution to incidents related to social order”.²⁴⁷ The commander of the relevant sub-national territorial unit of the RCAF and Royal Gendarmerie and the police commissioner (provincial/municipal) or police inspector (district) are also represented on unified command committees as vice-chairpersons.²⁴⁸

Para-police for Phnom Penh’s Daun Penh district violently enforced the ban on assembling at Freedom Park for demonstrations or other assemblies during the first half of 2014. In April, Mu Sochua, at the time a lawmaker-elect, began a campaign of non-violent and symbolic opposition to the ban, attempting to enter the Freedom Park area on at least six different occasions and being removed by district para-police each time.²⁴⁹ On the sixth attempt she was physically lifted out of the area by district para-police and dumped on a nearby street.²⁵⁰ As she and her supporters began to leave the area, a number of her supporters were attacked and beaten by the para-police. At least 10 people were injured. One man lost consciousness after being kicked in the face while on the ground.²⁵¹ Others were beaten on the head with batons, kneed in the face, and kicked and stomped after falling to the ground.²⁵²

Daun Penh district para-police violently dispersed people who gathered near Freedom Park on 1 May, Labour Day and on 2 May 2014, the first day of the campaign period for provincial, municipal and district council elections that were held on 18 May. With the minimum wage still a hot topic, hundreds of people gathered on Phnom Penh’s Naga Bridge opposite Freedom Park on the morning of 1 May, a day after Freedom Park was barricaded shut.²⁵³

²⁴³ Article 1 of the General Statute of Military Personnel of the RCAF.

²⁴⁴ Mech Dara, “Tea Banh Says More Soldiers are Headed for Phnom Penh”, *The Cambodia Daily*, 1 September 2014. See also, May Tithara and Alice Cuddy, “Brigade 70 to see 700 new troops”, *The Phnom Penh Post*, 24 October 2014.

²⁴⁵ Human Rights Watch, *Cambodia: Halt US Aid to Abusive Military Units*, 8 July 2010; Thet Sambath, “Hun Sen’s bodyguards get reshuffle”, *The Phnom Penh Post*, 6 October 2009.

²⁴⁶ Article 6 of Sub-decree No. 156 on The Organization and Functioning of Unified Command at Provincial/Municipal and District/Khan Administration.

²⁴⁷ Article 5 of Sub-decree No. 156 on The Organization and Functioning of Unified Command at Provincial/Municipal and District/Khan Administration.

²⁴⁸ Article 4 of Sub-decree No. 156 on The Organization and Functioning of Unified Command at Provincial/Municipal and District/Khan Administration.

²⁴⁹ The attempts to enter Freedom Park were made on 1, 2, 3, 4, 20, and 21 April 2014.

²⁵⁰ Interview with Pen Chhun Saravoan, CNRP official, 25 June 2014; LICADHO, *The new year brings renewed violence at Freedom Park*, 21 April 2014, available at: <http://www.licadho-cambodia.org/flashnews.php?perm=54>.

²⁵¹ Interview with Pen Chhun Saravoan, 25 June 2014, describing the attack on another supporter.

²⁵² Interview with Pen Chhun Saravoan, 25 June 2014; Khuon Narim, “Helmeted Guards Beat Onlookers at Freedom Park”, *The Cambodia Daily*, 22 April 2014; Khouth Sophak Chakrya, “Fresh violence at Freedom Park”, *The Phnom Penh Post*, 22 April 2014.

²⁵³ Mech Dara and Matt Blomberg, “Freedom Park Locked Down Ahead of Labor Day”, *The Cambodia*

Soon after Cambodian National Rescue Party (CNRP) leaders had addressed the crowd and departed the area, district para-police and plain clothes men armed with wooden batons began indiscriminately beating those gathered, as well as passers-by and journalists. It was reported that para-police “were seen beating people over the head with batons at random”.²⁵⁴ A video posted online by *The Phnom Penh Post* shows one man being repeatedly beaten with batons while riding a motorbike, chased down after abandoning his motorbike, and beaten on the ground by district para-police and men in plain clothes. He can be seen attempting to protect his head and face from the assault as he is kicked and struck with batons and sticks.²⁵⁵ At least four others were badly injured, including a man who reportedly required five stitches to close wounds to his head.²⁵⁶

And at least a further five people were injured the following day when district para-police stationed near Freedom Park again attacked people gathering opposite the barricaded protest zone, including a prominent monk, a journalist who was beaten unconscious (see below, subsection 4.4), and a CNRP lawmaker-elect.²⁵⁷ Nhay Chamroeun, an elected representative for Kompong Cham province, reported injuries to the head and leg after being beaten by para-police with batons and metal bars.²⁵⁸ Ouk Pich Samnang, a CNRP activist who intervened to protect him was repeatedly beaten on the head and body²⁵⁹ and was reported “bleeding profusely from the head”.²⁶⁰ He required four stitches to close the wound.²⁶¹

These and other instances of violence have been committed by district para-police and men in plain clothes while police and gendarmes have been deployed nearby and done nothing to prevent the attacks or arrest any of the perpetrators. When asked by a local newspaper in January 2014 about the legality of some of the actions taken by district para-police, spokesman for the Royal Gendarmerie, Brigadier General Kheng Tito, reportedly stated: “We are not clear whether it is right or wrong with the law” and “...sometimes we consider them to be competent officials like us, so we do not stop them.”²⁶² The Daun Penh district para-police are usually commanded by Kim Vutha, the chief of security for Daun Penh district and sometimes by Sok Penhvuth, the deputy district governor. In January 2014 Sok Penhvuth was filmed beating a motorbike taxi driver over the head with a megaphone while leading an operation by district para-police during a demonstration organized by Mam Sonando.²⁶³

Daily, 1 May 2014.

²⁵⁴ The Phnom Penh Post staff, “Vicious May Day beatings”, *The Phnom Penh Post*, 2 May 2014.

²⁵⁵ Daniel Quinlan, “Bystander savagely beaten”, video by *The Phnom Penh Post*, 1 May 2014, available at <http://www.phnompenhpost.com/video/bystander-savagely-beaten>. See also, The Phnom Penh Post staff, “Vicious May Day beatings”, *The Phnom Penh Post*, 2 May 2014; The Cambodia Daily staff, “On Labour Day, Peaceful Protests Met With Violence”, *The Cambodia Daily*, 1 May 2014.

²⁵⁶ The Phnom Penh Post staff, “Vicious May Day beatings”, *The Phnom Penh Post*, 2 May 2014.

²⁵⁷ LICADHO, *CNRP supporters defy assembly ban with large campaign rally*, 2 May 2014.

²⁵⁸ Sek Odom and Colin Meyn, “Violence, Dancing Bookend First Campaign Day”, *The Cambodia Daily*, 3 May 2014.

²⁵⁹ Sek Odom and Colin Meyn, “Violence, Dancing Bookend First Campaign Day”, *The Cambodia Daily*, 3 May 2014.

²⁶⁰ The Phnom Penh Post staff, “CNRP rally violently thwarted”, *The Phnom Penh Post*, 2 May 2014.

²⁶¹ E-mail from LICADHO human rights monitor, 27 February 2015; LICADHO, *CNRP supporters defy assembly ban with large campaign rally*, 2 May 2014.

²⁶² Colin Meyn and Aun Pheap, “Government Finds Deniability in District Security Force”, *The Cambodia Daily*, 7 January 2014.

²⁶³ “Deputy gov caught bashing motodop”, video by the *The Phnom Penh Post*, 28 January 2014,

The LPD states that: “*Competent authorities designated to maintain security, safety and public order at venues of peaceful assembly shall wear proper uniforms and display name plates and identity codes on the front parts of their uniforms...*”²⁶⁴ The deployment at demonstrations of men in plain clothes is a clear violation of this principle and while Phnom Penh’s district para-police generally wear uniforms and name plates, they have also become known for wearing full-faced, tinted motorcycle helmets. There is an obligation under international human rights law for States to bring to justice those responsible for committing human rights violations (see chapter 5).²⁶⁵ This is made more difficult when victims and others cannot identify those who are attacking them. Police and gendarmes generally wear helmets with clear visors that allow their faces to be seen.

Principle 18 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states that Governments and law enforcement agencies must ensure that all law enforcement officials are “selected by proper screening procedures”, “have appropriate moral, psychological and physical qualities”, and “receive continuous and thorough training”. Governments and law enforcement agencies must also “*ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force*”.²⁶⁶ When providing such training, “special attention” should be given “*to issues of police ethics and human rights...to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms.*”²⁶⁷

In January 2014, Phnom Penh City Hall spokesman Long Dimanche reportedly stated that district para-police have received no “technical security training” but had received “legal and administrative training”.²⁶⁸ In July 2014 the same spokesman reportedly stated that the district para-police had since received training on “how to protect the protesters and avoid violations.”²⁶⁹ However, the training appears to have had little effect. On 20 October 2014, district para-police beat protesters from Preah Vihear province who were demonstrating near Prime Minister Hun Sen’s house seeking intervention in their land dispute. 18 people were injured in the attack. Video footage of the incident shows para-police wantonly destroying the property of demonstrators and kicking a man in the head as he lies on the ground.²⁷⁰ The

available at: <http://www.youtube.com/watch?v=1InrPRZM6OY&list=TLOjU84xUJH84>.

²⁶⁴ Article 19 of the LPD.

²⁶⁵ Human Rights Committee, General Comment No. 31, Article 2: Nature of the General Legal Obligation Imposed on State Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13, 2004, para. 18.

²⁶⁶ Principle 19 of the UN Basic Principles.

²⁶⁷ Principle 20 of the UN Basic Principles.

²⁶⁸ Khouth Sophak Chakrya and Shane Worrell, “Untrained guards rule at protests”, *The Phnom Penh Post*, 23 January 2014.

²⁶⁹ Daniel Pye and Alice Cuddy, “Cracking down 101”, *The Phnom Penh Post*, 1 August 2014. In a meeting with Amnesty International in May 2015, senior officers of the National Police stated that the para-police are trained for the specific function that they are hired to perform and that these functions vary depending on the needs identified by the district, municipal or provincial authorities who recruit them.

²⁷⁰ LICADHO, *Yet Another Violent Dispersal of Land Protesters near the Prime Minister’s Home*, 20 October 2014. Video available at: <http://www.licadho-cambodia.org/video.php?perm=50>.

man has been identified to Amnesty International as Ouk Pich Samnang, the same CNRP activist who was beaten by district para-police on 2 May 2014 (see above, p. 59).²⁷¹

Finally, the UN Basic Principles state that “[law enforcement officials’] continued fitness to perform [their] functions should be subject to periodic review.”²⁷² The Daun Penh district para-police have been complicit in numerous human rights violations, including violent assaults resulting in serious injury. Amnesty International considers that the Daun Penh para-police have been proven manifestly unfit to perform the functions apparently assigned to them. Amnesty International calls on the authorities to immediately transfer all responsibility for policing demonstrations from district para-police to police or another force whose authority is clearly grounded in law, and whose personnel is trained and equipped to carry out its task while respecting and protecting human rights law and standards, including as regards the use of force and firearms. The organization also calls for an independent, impartial and efficient investigation into all existing complaints against district para-police and men in plain clothes and any other incidents in which they were involved, in particular those that have resulted in serious injury.

4.4 TARGETING OF JOURNALISTS AND HUMAN RIGHTS MONITORS

As noted by the then Special Representative of the UN Secretary-General on the situation of human rights defenders (SRSG on HRDs), “*monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. This is a valuable contribution to the effective enjoyment of the right to peaceful assembly. The very presence of human rights monitors during demonstrations can deter human rights violations. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly*”.²⁷³ Human rights defenders include “members of civil society organizations, journalists, ‘citizen journalists’, bloggers and representatives of national human rights institutions”.²⁷⁴

There have been several incidents in which journalists – including reporters, photographers and citizen journalists – and human rights monitors have been attacked by security forces while monitoring and reporting on demonstrations.

²⁷¹ E-mail from LICADHO human rights monitor, 26 February 2015. Ouk Pich Samnang was arrested four days later, on 24 October 2014, and has been charged with intentional violence with aggravating circumstances (Article 218 of the Penal Code); intentional property damage with aggravating circumstances (Article 411 of the Penal Code); obstruction of public officials (Article 503 of the Penal Code); and participation in criminal association (Article 499 of the Penal Code). He has also been charged in relation to the demonstration near Freedom Park on 15 July 2014 of intentional violence with aggravating circumstances (Article 218 of the Penal Code); participation in an insurrectionary movement (Articles 456 and 457 of the Penal Code); and obstruction of public officials with aggravating circumstances (Article 504 of the Penal Code). He was released on bail on 13 April 2015 following a deal between the CPP and CNRP. However, the charges against him remain in place and, if convicted, he faces a total of 20 years in jail and fines totaling USD 10,625. See LICADHO, *LICADHO Calls for the Release of the 19 Men and Women Wrongfully Imprisoned in Prey Sar’s CC1 and CC2 Prisons*, 8 December 2014, available at: <http://www.licadho-cambodia.org/pressrelease.php?perm=366>.

²⁷² Principle 18 of the UN Basic Principles.

²⁷³ Report of the SRSG on HRDs, UN Doc. A/62/225, 13 August 2007, para. 91.

²⁷⁴ SR on assembly and association May 2012 report (A/HRC/20/27), para. 48.

A number of local and international journalists were among those targeted during the attack on the peaceful candlelit vigil at Wat Phnom on 22 September 2013. One human rights monitor was warned by a member of the security forces before the attack that if he did not immediately leave the area he could be killed once the impending operation had commenced.²⁷⁵ According to a statement released by the Committee to Protect Journalists, at least seven journalists were assaulted during the attack, including "staff reporters and freelance contributors for *Agence France-Presse*, *The Cambodia Daily*, *The Phnom Penh Post*, and *Voice of America*."²⁷⁶ One human rights monitor sustained a chest injury. Several journalists received shocks from electric prods, with one having his camera smashed.²⁷⁷

On 21 April 2014, during the sixth attempt by lawmaker Mu Sochua to enter Freedom Park and draw attention to the ban on demonstrations, Daun Penh deputy governor Sok Penhvuth and the commander of Daun Penh district security chief Kim Vutha reportedly ordered district para-police to beat anyone recording the lawmaker without a visible press pass, including photographers and those taking photographs on smart phones.²⁷⁸ Three journalists were reportedly among those injured during the attack, including two foreign journalists.²⁷⁹ A Cambodian journalist was reportedly beaten on the head and body and had his helmet broken during the attack.²⁸⁰

At least three journalists were among those assaulted when security forces violently dispersed crowds that gathered near a heavily fortified Freedom Park on 1 May 2014, Labour Day.²⁸¹ One female Cambodian journalist was reportedly struck in the face.²⁸² The attacks continued the following day, on the first day of the two-week campaign period for Cambodia's provincial, municipal and district council elections. Lay Samean, a reporter for the Voice of Democracy radio station was chased and beaten after taking photographs of district para-police attacking activist monk Loun Sovath.²⁸³

²⁷⁵ Amnesty International et al., *Cambodia's government and donors must act now to prevent escalation of violence* (Index: ASA 23/011/2013), 24 September 2013.

²⁷⁶ Committee to Protect Journalists, *Journalists attacked by masked assailants in Cambodia*, 24 September 2013.

²⁷⁷ Amnesty International et al., *Cambodia's government and donors must act now to prevent escalation of violence* (Index: ASA 23/011/2013), 24 September 2013; "Thugs protected by military police attack protesters, journalist and rights workers", video by *The Phnom Penh Post*, 22 September 2013, available at: <https://www.youtube.com/watch?v=wP4b2M3G0zA>.

²⁷⁸ Cambodian Center for Independent Media (CCIM), *Repeated Attacks on Journalists Unacceptable*, 25 April 2014, available at: <http://www.ccimcambodia.org/press-release/93-repeated-attacks-on-journalists-unacceptable>; Khuon Narim, "Helmeted Guards Beat Onlookers at Freedom Park", *The Cambodia Daily*, 22 April 2014.

²⁷⁹ LICADHO, *The new year brings renewed violence at Freedom Park*, 21 April 2014; Khouth Sophak Chakrya, "Fresh Violence at Freedom Park", *The Phnom Penh Post*, 22 April 2014.

²⁸⁰ CCIM, *Repeated Attacks on Journalists Unacceptable*, 25 April 2014.

²⁸¹ Overseas Press Club of Cambodia, *OPCC Condemns Targeting of Journalists*, 1 May 2014, available at: <http://fccthai.com/items/1397.html>; Reporters Without Borders, *Recent Attacks on Journalists Cast Doubt on Progress in Press Freedom*, 7 May 2014, available at: <http://en.rsf.org/cambodge-recent-attacks-on-journalists-cast-07-05-2014,46243.html>; Post Staff, "Vicious May Day beatings", *The Phnom Penh Post*, 2 May 2014; Mech Dara, "May 1 Rallies Marred By Police Violence", *The Cambodia Daily*, 2 May 2014.

²⁸² Overseas Press Club of Cambodia, *OPCC Condemns Targeting of Journalists*, 1 May 2014.

²⁸³ Interview with Lay Samean, 21 June 2014; Interview with Venerable Loun Sovath, 17 June 2014.

On 4 May the Ministry of Information released a statement condemning the “intimidation, violence, confiscation of equipment and contempt for journalists” and describing the incidents as a “very serious violation of freedom of the press in the Kingdom of Cambodia.”²⁸⁴ While this rare acknowledgement of wrongdoing from the government is welcomed, the government should ensure that those responsible for the violence against journalists are held accountable. Furthermore, it is not only accredited journalists who deserve protection; authorities and security forces must also respect the rights of citizen journalists, human rights monitors, and ordinary citizens to record and document human rights violations whenever and wherever they occur.



May 2014: Voice of Democracy journalist Lay Samean unconscious on the ground after being beaten by Daun Penh district para-police a day before International World Press Freedom Day. © VOD

LAY SAMEAN

At about 2 pm on Friday, 2 May 2014, Lay Samean, a 27-year-old reporter for Cambodia’s Voice of Democracy (VOD) radio station, headed to Phnom Penh’s Freedom Park to report on a planned demonstration by the opposition CNRP. It was the first day of the official campaign period for Cambodia’s provincial, municipal and district council elections, which were due to take place on 18 May. The previous day, International Labour Day, had seen violent attacks on protesters, bystanders, and journalists at the same location.²⁸⁵

²⁸⁴ Kuch Naren and George Wright, “Journalists Garner Support, Monks Silent in Wake of Attacks”, *The Cambodia Daily*, 6 May 2014; Vong Sokheng and Alice Cuddy, “Security dressed down”, *The Phnom Penh Post*, 5 May 2014.

²⁸⁵ Mech Dara, “May 1 Rallies Marred By Police Violence”, *The Cambodia Daily*, 2 May 2014.

On 30 April 2014, Freedom Park was placed on lockdown, part of a renewed blanket ban on public assembly to be applied during the council elections. All roads leading to the urban plaza were barricaded by police and the entrances sealed off with razor-wire.²⁸⁶ The CNRP had requested to use Freedom Park as the base for their rallies during the election campaign period but were denied permission by Phnom Penh City Hall and the National Election Committee.

Lay Samean told Amnesty International that when he arrived in the streets adjoining Freedom Park he saw about 300 security force personnel made up of units from the national police, gendarmes, and district para-police. Most CNRP supporters had already been dispersed by the security forces²⁸⁷ and those lingering in the vicinity of the symbolic location were chased away throughout the afternoon.²⁸⁸

According to Lay Samean, at 4 pm, district para-police confronted Loun Sovath, a prominent monk who regularly monitors protests, demonstrations and other assemblies and shares photographs and videos of abuses online. As the para-police moved in to attack the monk, VOD reporters sought to capture the assault on film. The para-police rounded on the journalists and chased after them. Lay Samean told Amnesty International that he tripped and fell to the ground. He was then surrounded by between six and 10 para-police who punched and kicked him and struck him with batons until he lost consciousness.²⁸⁹ A photograph supplied to *The Phnom Penh Post* shows six helmeted para-police walk away as Lay Samean lies unconscious in the middle of a road.²⁹⁰ The injured reporter spent the following day, 3 May, World Press Freedom Day, recovering from his injuries. In the following weeks he travelled to Thailand to have surgery to repair a broken cheekbone. He told Amnesty International that doctors inserted a small plastic plate into his cheek to support his eye socket.²⁹¹

The violent attack has not, however, dampened the enthusiasm of Lay Samean for his vocation. In a statement released on 28 May 2014 he explained: "*I understand the risks that come with reporting the truth. I have the scars to prove it. But I will not be intimidated. I will not be afraid. I will continue to report the truth, because I am a professional journalist and because I believe in a Cambodia that is better than the one I see today.*"²⁹²

4.5 PUNITIVE FORCE IN CARRYING OUT ARRESTS

"When I was arrested I was hit on both sides and they used a metal stick to hit me on the head...I don't know whether they beat me or kneed me [but] I felt a strong [blow to] my back and fell to the

²⁸⁶ Mech Dara and Matt Blomberg, "Freedom Park Locked Down Ahead of Labor Day", *The Cambodia Daily*, 1 May 2014.

²⁸⁷ Interview with Lay Samean, 21 June 2014.

²⁸⁸ Sek Odom and Colin Meyn, "Violence, Dancing Bookend First Campaign Day", *The Cambodia Daily*, 3 May 2014.

²⁸⁹ Interview with Lay Samean, 21 June 2014.

²⁹⁰ Kevin Ponniah and Phak Seangly, "Reporter, 'witnesses' tell different stories", *The Phnom Penh Post*, 22 May 2014, available at: <http://www.phnompenhpost.com/national/reporter-%E2%80%98witnesses%E2%80%99-tell-different-stories>.

²⁹¹ Kevin Ponniah and Phak Seangly, "Reporter, 'witnesses' tell different stories", *The Phnom Penh Post*, 22 May 2014.

²⁹² Statement by VOD Reporter Lay Samean, 28 May 2014, available at: <http://www.ccimcambodia.org/press-release/102-statement-by-samean>.

ground face down...Then they pulled me up and one guy wearing military trousers but a normal shirt jumped and gave me a hard kick on my stomach. [I also suffered] a choking injury.”

Chan Puthisak, describing his arrest on 2 January 2014 by soldiers from Brigade 911 of the RCAF²⁹³

In 2013 and 2014, security forces resorted to violence when carrying out arrests on numerous occasions. In these incidents force appears to have been used as a punitive measure, rather than to restrain or apprehend the alleged offenders resisting arrest. Such violence is in breach of international law, including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) at all times. It is also in breach of Cambodia’s Constitution, which states that physical ill-treatment that imposes additional punishment on a detainee shall be prohibited.²⁹⁴

On the evening of 15 September 2013, police and gendarmes used unnecessary or disproportionate force to arrest six men from among an angry crowd of demonstrators, commuters and local residents trapped at a roadblock at Phnom Penh’s Kbal Thnal overpass. The roadblocks around Kbal Thnal were among dozens set up by the authorities throughout Phnom Penh ahead of the CNRP’s planned three-day mass demonstration to demand an independent investigation into the disputed national election of 28 July. Some of the roadblocks prevented residents from leaving and returning to their neighbourhoods, creating numerous potential flashpoints.²⁹⁵

Violent clashes broke out at about 9 pm as young men reportedly threw rocks at police. An Amnesty International researcher arrived on the scene shortly after and was told by eyewitnesses that police and gendarmes had severely beaten dozens of people.²⁹⁶ Police were reportedly seen kicking men in the head and striking them with batons as they lay on their stomachs after they had been restrained.²⁹⁷ Journalists at the scene said they witnessed at least four men being dragged down dark side streets and beaten by police.²⁹⁸

Another example of unnecessary or disproportionate force being used in carrying out arrests was introduced at the beginning of this chapter. On 2 January 2014, striking garment workers gathered outside the gates of Yakjin (Cambodia) Inc., a garment factory located off National Road 4 in Phnom Penh’s Pursenchey district. When a few workers attempted to open the gate to call on their colleagues to join the strike, soldiers from Brigade 911, an elite parachute unit of the RCAF with a headquarters next door to the factory, intervened and beat workers and monks with batons and metal bars. Three workers and two Buddhist monks were arrested and detained. After a tense standoff, a second wave of violence erupted a few hours later. Shortly after water bottles and rocks were thrown between the crowd and soldiers, the

²⁹³ Interview with Chan Puthisak, 25 June 2014.

²⁹⁴ Article 38 of the Constitution.

²⁹⁵ Amnesty International, *Cambodia: Investigate fatal shooting by security forces* (Index: ASA 23/009/2013), 16 September 2013, available at: <https://www.amnesty.org/en/documents/asa23/009/2013/en/>.

²⁹⁶ Amnesty International, *Cambodia: Investigate fatal shooting by security forces* (Index: ASA 23/009/2013), 16 September 2013.

²⁹⁷ The Phnom Penh Post Staff, "Protest takes dark turn", *The Phnom Penh Post*, 16 September 2013.

²⁹⁸ May Titthara and Amelia Woodside, "Shootings a 'throwback' to earlier era", *The Phnom Penh Post*, 17 September 2013.

soldiers charged the crowd, which by then included a number of human rights monitors, and randomly beat people.

Photographs shared with Amnesty International show workers and rights monitors being surrounded by soldiers and men in plain clothes, their arms restrained so that they cannot protect themselves, before being kned and punched in the head, kicked in the stomach, struck with metal bars, and fired at with slingshots at point blank range. During the attack the soldiers were heard shouting “beat them, beat them to death.”²⁹⁹

Vorn Pao, the president of the Informal Democracy of Informal Economy Association (IDEA), an association that represents tuk-tuk drivers and other workers in the informal sector, was targeted by soldiers and chased into a nearby café where he was isolated, surrounded and severely beaten. Photographs show him being dragged by the arms by a soldier in uniform and another man in plain clothes wielding a metal bar. As he is dragged clutching his bleeding nose, a soldier kicks him in the stomach.

When another human rights monitor, Theng Savoeun, the Secretariat Coordinator of the Coalition of Cambodian Farmer Community (CCFC), attempted to intervene to protect Vorn Pao he was also beaten and arrested. Photographs show his arms being held by soldiers while a man in plain clothes carrying a video camera in one hand punches him in the head with the other. Other photos show soldiers kicking him in the stomach and back, and firing a slingshot at his face from a meter away.

Sokun Sambath Piseth, a staff member at the Center for Labour Rights in Cambodia, and Chan Puthisak, an activist from Phnom Penh’s Boeung Kak community, were also severely beaten. Sokun Sambath Piseth had his hand broken in three places while trying to protect his head from being struck by a metal bar.³⁰⁰ Chan Puthisak told Amnesty International he was struck on the head with a metal bar, and kicked in the stomach and back. After falling to the ground he was kicked in the face.³⁰¹

In accordance with the UN Code of Conduct and the UN Basic Principles, no more force than is strictly necessary may be used when carrying out an arrest. Whatever justification may exist for using force against rioters or persons resisting arrest, no such justification remains once a person is no longer resisting and is thus in the custody of the authorities (irrespective of whether or not a formal arrest has been made). Any use of force in such circumstances violates the right of persons deprived of liberty to be treated humanely and the prohibition on torture and other ill-treatment.³⁰² In particular, severe beatings for purposes such as intimidation or punishment, especially when they result in serious injuries such as broken bones, may amount to torture.

Although Cambodia’s security forces have received numerous training courses on human rights over the past few years, including a workshop in August 2014 on how to conduct

²⁹⁹ Interview with Theng Savoeun, 17 June 2014; Interview with Vorn Pao, 23 June 2014.

³⁰⁰ Interview with Sokun Sambath Piseth, 11 July 2014.

³⁰¹ Interview with Chan Puthisak, 25 June 2014.

³⁰² For instance in Articles 7 and 10 of the ICCPR; and Articles 1 and 16 of the UN Convention against Torture.

arrests,³⁰³ progress on reducing human rights violations has been slow. This is likely to remain the case unless additional steps are taken, including ensuring that the security forces are held accountable for their actions. The next chapter will examine how impunity for unnecessary and excessive use of force and other human rights violations committed by security forces has undermined efforts to improve professionalism and respect for human rights.

4.6 MISUSE OF EQUIPMENT AND USE OF INAPPROPRIATE WEAPONS

“It seems like they are trying to murder people the way they beat... they always try to beat people on the head, not other parts of the body.”

Pen Chhun Saravoan, CNRP official, describing the way district para-police use batons³⁰⁴

Security force personnel who police demonstrations may at times need to carry equipment and weapons, so as to defend themselves and others while pursuing legitimate policing objectives. However, there are numerous examples of security forces and state auxiliaries in Cambodia using equipment and weapons in a punitive or intimidating manner in defiance of international standards on the use of force.

Batons are regularly used by district para-police, often to beat demonstrators over the head and face, sometimes resulting in serious head injuries. Pen Chhun Saravoan was one of those beaten by district para-police on 21 April 2014 while walking away from Freedom Park with lawmaker Mu Sochua. He was beaten over the head with batons and required 10 stitches to close the resulting wound.

Police, district para-police and the men in plain clothes who sometimes accompany them, as well as soldiers from Brigade 911 of the RCAF, have also used improvised weapons such as wooden sticks, metal bars and slingshots that are used to fire marbles and other projectiles. These weapons are particularly dangerous and often result in severe injuries to the head or broken bones. In addition, such weapons are rarely, if ever, used to achieve a police objective that accords with international human rights law and standards, but rather to punish protestors or intimidate others by deliberately inflicting pain and suffering.

In August 2014, *The Phnom Penh Post* ran an article on the illicit black market trade of official military and police clothing and equipment at Phnom Penh's Teuk Thla market.³⁰⁵ The article described a cycle in which “[g]overnment officials in charge of procurement sell state-owned gear to vendors” reducing the clothing and equipment issued to police and soldiers who in turn are required to supplement their uniforms and equipment at their own expense on the black market.

In September 2014, the Ministry of Interior placed a notice in *The Phnom Penh Post* calling for tenders to provide two water canon trucks “to be provided to national police forces for use in security, safety and social order protection operation.” The notice specifically stated that

³⁰³ On 29 August 2014, the Ministry of Interior partnered with the OHCHR Cambodia country office to hold a workshop for police on how to conduct arrests. See Lauren Crothers and Sek Odom, “Need to Improve Knowledge of Arrest Rights, Lessen Use of Force”, *The Cambodia Daily*, 30 August 2014.

³⁰⁴ Interview with Pen Chhun Saravoan, 25 June 2014.

³⁰⁵ Butth Reaksmeay Kongkea, “Inside Phnom Penh’s cop shop”, *The Phnom Penh Post*, 30 August 2014.

the water cannon trucks were “to be used against demonstration”.³⁰⁶ Amnesty International is concerned that such equipment has been misused in the past.

For example, on 29 May 2013, at least one woman was reportedly knocked unconscious by water cannons used by Phnom Penh police attempting to disperse a crowd of anti-eviction protesters.³⁰⁷ The group from Phnom Penh’s Boeung Kak, Borei Keila, and Thmar Koul communities had gathered in front of Phnom Penh City Hall and blocked the capital’s busy Monivong Boulevard. A video posted online by local rights group LICADHO shows a woman lying motionless on the road while continuing to be hosed with a water cannon. As others attempt to move and assist her, they too are blasted with water.³⁰⁸ Directing high-powered water at a person who seems to require assistance is both unnecessary and dangerous.

In another example, on 15 September 2013, the authorities used water cannons to disperse an isolated group of demonstrators who had begun removing police barricades during a day of demonstrations against disputed national election results. According to an eyewitness who spoke to Amnesty International, high-powered streams of water were directed against one demonstrator until he was knocked to the ground, became mangled in razor wire, and suffered convulsions.³⁰⁹

In the period since the national election in 2013, police, gendarmes and military deployed to respond to demonstrations have all at different times been armed with and, in some instances, used AK-47 assault rifles. Live ammunition was reportedly fired from AK-47 assault rifles at a crowd on Veng Sreng Street on 3 January 2014 (see below, pp. 75-77). At least four people were killed by gunfire on that day. The Brigade 911 soldiers deployed at Yakjin (Cambodia) Inc. factory on 2 January 2014 were armed with AK-47s as were the police who clashed with demonstrations at Stung Meanchey on 12 November 2013. In the latter instance, the AK-47s were discharged in a clash that resulted in one death and injuries to nine others caused by live ammunition (see below, sub-section 4.7).

In 2004, Amnesty International noted the danger of using high velocity automatic assault rifles in urban settings in the report, *Guns and Policing: Standards to prevent misuse*. That report noted that police should generally use different weapons to military forces because of the difference in the tactical environment. Police operations generally occur at close-range in densely populated urban environments, whereas military engagements are more likely to involve wider spaces and longer distances. Civilians are also generally unarmed or at worst possess only simple weapons. High velocity ammunition such as that discharged from an AK-47 poses a much greater threat in an urban environment than lower grade ammunition

³⁰⁶ *The Phnom Penh Post*, 29 September 2014, p. 6. See also, Kevin Ponniah and Chhay Channyda, “Wanted: big trucks for a big crowd”, *The Phnom Penh Post*, 30 September 2014.

³⁰⁷ LICADHO, *Water Cannons Used against Peaceful Land Protesters in Cambodia’s Capital*, 30 May 2013, video available at: <http://www.licadho-cambodia.org/video.php?perm=39>; Khe Sonorn and Joshua Lipes, “Water Cannon Crackdown on Cambodian Land Activists”, *Radio Free Asia*, 29 May 2013; Kaing Menghun, “Water Cannons Fired on Eviction Protesters”, *The Cambodia Daily*, 30 May 2013; Khouth Sophak Chakrya, “City turns up pressure”, *The Phnom Penh Post*, 30 May 2013.

³⁰⁸ LICADHO, *Water Cannons Used against Peaceful Land Protesters in Cambodia’s Capital*, 30 May 2013.

³⁰⁹ Amnesty International, *Cambodia: Investigate fatal shooting by security forces* (Index: ASA 23/009/2013), 16 September 2013.

because of the potential for bullets to pass through a person's body and continue on to hit another person with sufficient energy to kill or seriously injure.³¹⁰ For this reason, AK-47 assault rifles are not appropriate weapons to use in the policing of assemblies.

The UN Basic Principles state that “governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons...” Cambodian security forces have access to a range of equipment. Amnesty International considers some of them, such as electroshock weapons, as having “inherent effects likely to result in unwarranted injuries, torture or other ill-treatment” and has recommended that they be banned altogether.³¹¹

4.7 UNJUSTIFIED USE OF LETHAL FORCE

“Before I had him to make a living and now I have to take care of my family myself. I don’t know what is going to happen to my children. I’m not sure what the future is for them. It is very painful that they are growing up without a father, it really hurts.”

Khat Samneang (25), the widow of Kim Phaleap (25) who was shot and killed by security forces on Phnom Penh’s Veng Sreng Street on 3 January 2014³¹²

Since the July 2013 National Assembly elections, at least six people have been shot and killed in three different incidents related to demonstrations. Security forces appear to have ignored international standards on the use of force and firearms and fired live ammunition at crowds when there has been no imminent threat of death or serious injury. The danger of using live ammunition is highlighted by the fact that in two of the three incidents the individuals killed were bystanders who were not involved in the demonstrations.

The first fatal incident occurred on 15 September 2013 during the clashes at a roadblock at Kbal Thnal overpass in Phnom Penh. An Amnesty International researcher arrived on the scene after clashes had broken out at about 9 pm between police and gendarmes and a group of young men from the crowd who were reportedly throwing stones at the security forces. At around 10 pm the Amnesty International representative was shown the body of 29-year-old Mao Sok Chan, a bystander who had been shot through the forehead and killed. Amnesty International also saw a young person who had been shot in the leg and was shown photographs of other injuries suffered during the clashes.³¹³ In addition to Mao Sok Chan, eight other men suffered gunshot wounds.³¹⁴ Gunfire was heard throughout the night and at

³¹⁰ Amnesty International, *Guns and Policing: Standards to prevent misuse* (Index: ACT 30/001/2004), 23 February 2004, p 27, available at: <https://www.amnesty.org/en/documents/ACT30/001/2004/en/>.

³¹¹ See, for example, Amnesty International, *China’s trade in tools of torture and repression* (Index: ASA 17/042/2014), pp. 10-11, and 31, available at: <https://www.amnesty.org/en/documents/ASA17/042/2014/en/>.

³¹² Interview with Khat Samneang, 15 July 2014.

³¹³ Amnesty International, *Cambodia: Investigate fatal shooting by security forces* (Index: ASA 23/009/2013), 16 September 2013.

³¹⁴ LICADHO, *et al.* (27 signatory organizations), *Indiscriminate Police Brutality and Death amid Mass Post-Election Protest Condemned by Civil Society*, 16 September 2013, available at: <http://www.licadho-cambodia.org/pressrelease.php?perm=323>.

about midnight, gunshots were fired near the body of Mao Sok Chan as arrangements were being made for his body to be taken for an autopsy.³¹⁵



September 2013: A group of young men clash with police near Phnom Penh's Kbal Thnal overpass © Thomas Cristofolletti / Ruom

Amnesty International did not directly witness security forces firing live ammunition into the crowd at the Kbal Thnal overpass, however, another human rights observer saw gendarmes "loading and arming assault rifles and automatic pistols with live ammunition"³¹⁶ before linking up with police. In addition, a number of published witness statements suggest that security forces fired live ammunition into the air and ground,³¹⁷ and may also have fired directly into the crowd.³¹⁸ It is unclear whether any verbal warning was given before the firing of live ammunition. Amnesty International is concerned that the security forces' use of firearms on 15 September 2013 was unnecessary and disproportionate and therefore in breach of international standards on the use of force and firearms and a violation of the right to life. Following the incident, Amnesty International called for a prompt, impartial, transparent and thorough investigation into the use of live ammunition that resulted in the

³¹⁵ Amnesty International, *Cambodia: Investigate fatal shooting by security forces* (Index: ASA 23/009/2013), 16 September 2013.

³¹⁶ Human Rights Watch, *Cambodia: Investigate Killing and Injuries of Election Protesters*, 17 September 2013, available at: <http://www.hrw.org/news/2013/09/17/cambodia-investigate-killing-and-injuries-election-protesters>.

³¹⁷ The Phnom Penh Post Staff, "Protest takes dark turn", *The Phnom Penh Post*, 16 September 2013; Mech Dara and Alex Willems, "Victims Describe Deadly Clash at Monivong Bridge", *The Cambodia Daily*, 17 September 2013.

³¹⁸ Human Rights Watch, *Cambodia: Investigate Killing and Injuries of Election Protesters*, 17 September 2013; *The Cambodia Daily*, "One Dead, Several Injured as CNRP Supporters, Police Clash", *The Cambodia Daily*, 16 September 2013.

death of Mao Sok Chan.³¹⁹ To date no investigation results have been made public (see chapter 5).

In another example of the unjustified use of lethal force, on 12 November 2013, security forces fired live ammunition after clashes broke out in Phnom Penh's Stung Meanchey commune between police and gendarmes and a mixed crowd – some of whom reportedly threw rocks at security forces – of striking workers, monks, local residents and bystanders. Eng Sokhom, a 49-year-old female rice vendor, who worked at the local market and was not involved in the demonstration, was shot in the chest and died. Nine others suffered gunshot injuries, including 26-year old student Hoeurn Chann who is now paralyzed from the waist down.³²⁰ Amnesty International researchers visited the scene of the clashes shortly after the last wave of violence occurred and interviewed human rights monitors present during the incident. The organization also examined video footage, and reviewed media reports and NGO statements to corroborate its research.

Violence erupted on the morning of 12 November 2013 after about 600 striking garment factory workers from SL Garment Processing (Cambodia) Ltd. set out from their factory in Phnom Penh's Meanchey district and attempted to march to Prime Minister Hun Sen's house to hold a demonstration. Their route was blocked by a force of more than 100 riot police who had stationed barricades at a bridge in Stung Meanchey. Workers tried to force their way through the barricades but were forced back by police with the support of water cannons.³²¹ Members of the crowd reportedly responded by throwing rocks at the police.

Police hit some of the workers with batons and a few police officers chased members of the crowd into a nearby pagoda compound to beat them. With the crowd continuing to throw rocks, the main police contingent retreated over the bridge, leaving five police officers isolated. These police officers locked themselves into a room in a small building inside the pagoda compound. An abandoned police truck was tipped over and, along with two motorcycles, set on fire by some members of the crowd.³²² Shortly after, Phnom Penh Police Chief Chuon Sovann arrived at the scene.³²³

Human rights workers with the UN and local NGOs attempted to diffuse the tensions, mediate between the police and the crowd, and secure the safe release of the police officers locked in the pagoda.³²⁴ However, at approximately 10:30 am security forces advanced back

³¹⁹ Amnesty International, *Cambodia: Investigate fatal shooting by security forces* (Index: ASA 23/009/2013), 16 September 2013.

³²⁰ Amnesty International, *International Human Rights Day: Cambodia must respect the right to freedom of peaceful assembly* (Index: ASA 23/013/2013), 7 December 2013, available at: <https://www.amnesty.org/en/documents/asa23/013/2013/en/>; LICADHO and the Community Legal Education Center (CLEC), *One Dead, Seven Injured Amid Violent Clashes in SL Garment Workers Strike*, 12 November 2013 (updated on website to include revised injury figures: <http://www.licadho-cambodia.org/pressrelease.php?perm=327>); Mech Dara and Lauren Crothers, "Woman Killed as Police Open Fire During Garment Worker Clash", *The Cambodia Daily*, 13 November 2013.

³²¹ LICADHO and CLEC, *One Dead, Seven Injured Amid Violent Clashes in SL Garment Workers Strike*, 12 November 2013.

³²² LICADHO and CLEC, *One Dead, Seven Injured Amid Violent Clashes in SL Garment Workers Strike*, 12 November 2013.

³²³ Interview with eyewitness, 28 November 2013.

³²⁴ Interview with eyewitness, 28 November 2013; LICADHO and CLEC, *One Dead, Seven Injured Amid*

over the bridge, firing tear gas and rubber bullets at the crowd, who fought back by throwing more rocks. A few minutes after this exchange, the police switched to live ammunition and were seen firing AK-47s and handguns in the direction of the crowd.³²⁵ It is unclear whether any verbal warning was given before live ammunition was used. A number of people were found with gunshot wounds soon after.³²⁶ During this operation, the police officers who had barricaded themselves inside the pagoda ran free, with at least one officer reportedly firing randomly at bystanders.³²⁷



12 November 2013: Police confront a worker during clashes at Stung Meanchey, Phnom Penh. Picture: LICADHO.

About an hour after this second wave of violence, the existing security forces were joined by reinforcements in the form of hundreds of gendarmes. Shortly before noon they launched a final operation to disperse the remaining crowd, advancing in formation and again shooting

Violent Clashes in SL Garment Workers Strike, 12 November 2013.

³²⁵ LICADHO and CLEC, *One Dead, Seven Injured Amid Violent Clashes in SL Garment Workers Strike*, 12 November 2013; LICADHO, *Deadly Clashes amid SL Garment Factory Workers' Strike*, 13 November 2013, video available at: <http://www.licadho-cambodia.org/video.php?perm=41>; Mech Dara and Lauren Crothers, "Woman Killed as Police Open Fire During Garment Worker Clash", *The Cambodia Daily*, 13 November 2013.

³²⁶ LICADHO and CLEC, *One Dead, Seven Injured Amid Violent Clashes in SL Garment Workers Strike*, 12 November 2013.

³²⁷ Interview with eye witness, 28 November 2013. See also, LICADHO and CLEC, *One Dead, Seven Injured Amid Violent Clashes in SL Garment Workers Strike*, 12 November 2013; Mech Dara and Lauren Crothers, "Woman Killed as Police Open Fire During Garment Worker Clash", *The Cambodia Daily*, 13 November 2013.

live ammunition. Police again chased and beat a number of people. Thirty-eight people, including seven Buddhist monks were arrested and detained.³²⁸

As has become increasingly common, multiple photographs and videos emerged and were widely shared on the internet and social media documenting the incident. Local rights group LICADHO posted a two and a half minute video on its website showing various stages of the clash. The video shows security forces brandishing and firing a variety of weapons, including handguns and rifles. One officer can be seen firing multiple shots from a handgun at eye level, although his intended target cannot be determined from the footage.³²⁹

Amnesty International is concerned that the security forces use of force and firearms on 12 November 2013 breached international standards and international human rights law. There appeared to be no imminent threat of death or serious injury. Although rocks were thrown at the police, the police had protective equipment such as shields and helmets. The police officers who barricaded themselves inside the pagoda also did not appear imminently threatened, with rights workers from the UN and local NGOs outside the pagoda working to secure their safe release.

During the second clash, security forces appeared to have lost discipline, with some police throwing rocks, and others firing tear gas, rubber bullets and live ammunition. Principle 10 of the UN Basic Principles states that before using firearms a clear warning must be given, along with sufficient time for the warning to be observed. Principle 4 states the following: “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”

This calls for a graduated response and, where unavoidable,³³⁰ for using the minimum necessary force. Pleas by human rights monitors to allow a mediated end to the confrontation were ignored by security forces. As was the case on 15 September 2013, the individual who was killed was an innocent bystander.

A LIFE CHANGED FOREVER

University student Hoeurn Chann faces an uncertain future after being shot while apparently observing a tense standoff between police and striking workers in Phnom Penh’s Meanchey district. Amnesty International spoke to Hoeurn Chann in July 2014 and in November 2013 interviewed an eyewitness who saw the shots being fired.

³²⁸ Interview with eyewitness, 28 November 2013; LICADHO and CLEC, *One Dead, Seven Injured Amid Violent Clashes in SL Garment Workers Strike*, 12 November 2013.

³²⁹ LICADHO, *Deadly Clashes amid SL Garment Factory Workers’ Strike*, 13 November 2013, video available at: <http://www.licadho-cambodia.org/video.php?perm=41>.

³³⁰ See Principle 5 of the UN Basic Principles.



May 2015: Hoern Chann at his home in Phnom Penh. © Amnesty International

On the morning of 12 November 2013, Hoern Chann set off on a trip into the centre of Phnom Penh oblivious to the chaotic scenes that were about to engulf his Stung Meanchey neighbourhood, where he lived near the local pagoda. He returned home to pick up some documents but was distracted by a crowd milling around the

pagoda.³³¹ Inside five policemen had locked themselves in a room after becoming isolated from their colleagues. As reinforcements approached the pagoda, the trapped police officers ran free. One of the officers was seen drawing a gun as he emerged from the room and firing at least three shots.³³² Hoeurn Chann, who was inside the pagoda observing the scene when the shots were fired, was hit by a bullet in the side.

"After I was shot I felt half of my body go numb. I couldn't feel anything so I crawled outside [the pagoda] to look for help," he told Amnesty International. The bullet hit Hoeurn Chann's spinal cord, paralyzing him from the waist down. He was taken to a local clinic, which was unable to treat him, and later to Phnom Penh's Russian Hospital where surgeons operated to remove the bullet. However, 13 days after being shot, the hospital discharged him, saying they were not capable of providing any further assistance. His family raised money to send him to Viet Nam for a further operation, but the treatment was unable to increase Chann's mobility.³³³ Since then, with the support of local rights group LICADHO, he has been able to undergo some rehabilitation and is now more mobile with the use of a wheelchair. Chann told Amnesty International: *"I just wish that one day I can complete my studies. I am quite uncertain about my future because I have become a disabled person and I am not sure what profession or skill I have to make my own living...I know that I cannot always rely on donations because other people have their own families to support so I just wish that I can finish my studies and find a job."*³³⁴

He said that he would like his story to be shared with many people so that they are aware of the injustice that occurred. He would also like the person responsible for shooting him to be brought to justice.³³⁵

The third fatal incident, involving the greatest number of deaths, occurred on Phnom Penh's Veng Sreng Street on 3 January 2014.

FIVE KILLED ON VENG SRENG STREET AFTER POLICE OPEN FIRE ON CROWD

On 3 January 2014, at least four individuals were shot dead, and scores injured, after security forces fired live ammunition at a crowd of demonstrators in Phnom Penh's Pursenchey district. Dozens of people were hospitalized including many with bullet wounds. Members of the security forces were also injured. Clashes with security forces started on 2 January and continued the following day. Amnesty International spoke with two individuals beaten and arrested during clashes on the evening of 2 January and a number of human rights monitors present on Veng Sreng Street on 2 and 3 January. The organization also examined video footage, and reviewed media reports and NGO statements to understand what occurred.

The lethal crackdown on Friday 3 January was the chilling culmination of a series of escalating clashes between workers and security forces that began the previous day when gendarmes beat workers who were peacefully demonstrating in Phnom Penh's Canada Industrial Zone. On 2 January, hundreds of workers

³³¹ Interview with Hoeurn Chann, 16 July 2014.

³³² Interview with eyewitness, 28 November 2013. See also, LICADHO and CLEC, *One Dead, Seven Injured Amid Violent Clashes in SL Garment Workers Strike*, 12 November 2013; Mech Dara and Lauren Crothers, "Woman Killed as Police Open Fire During Garment Worker Clash", *The Cambodia Daily*, 13 November 2013.

³³³ Interview with Hoeurn Chann, 16 July 2014.

³³⁴ Interview with Hoeurn Chann, 16 July 2014.

³³⁵ Interview with Hoeurn Chann, 16 July 2014.

participating in a nationwide general strike gathered in front of factories in the industrial sub-division to call for an increase in the minimum wage. At about 3pm, a group of gendarmes arrived in two military trucks and attempted to disperse the workers, who were dancing to music from loudspeakers. When the workers refused to move on, the gendarmes began beating the workers with batons, injuring 10,³³⁶ including one man who sustained a serious injury around his eye.³³⁷ Workers and gendarmes then threw rocks at one another before the gendarmes withdrew their forces to a nearby base.



January 2014: A man helps a victim of the bloody crackdown on Veng Sreng Street who has been shot © Thomas Cristofolletti / Ruom 201

Apparently incensed by the attack, a group of mostly young men began erecting makeshift roadblocks on Veng Sreng Street, a dusty, pockmarked road which is lined with some 100 factories, where approximately 100,000 garment workers are employed.³³⁸ As the men chanted and waved sticks, a crowd of at least 1,000 people gathered to watch the burning of tyres and other debris on several bonfires lit at intervals along the road.³³⁹

At about midnight, hundreds of gendarmes in full riot equipment marched down Veng Sreng Street in an attempt to clear the road. Another group of national police marched from the other end of the street. The

³³⁶ Asia Monitor Resource Center, Hong Kong et al., "A Week that Shook Cambodia: The Hope, Anger and Despair of Cambodian Workers after the General Strike and Violent Crackdown" (Dec 2013-Jan 2014), *Asia Monitor Resource Center*, February 2014, p. 14, available at: http://www.amrc.org.hk/system/files/FFM-Cambodia-Report-022014-amrc_0.pdf.

³³⁷ Interview with rights monitors, 14 July 2014.

³³⁸ Figures estimated by Ken Loo, Secretary-General of the Garment Manufacturers Association in Cambodia (GMAC), quoted in Mech Dara and Alex Willemyns, "After Clashes, Garment Workers Flee Veng Sreng Street", *The Cambodia Daily*, 6 January 2014.

³³⁹ Interview with eyewitness, 8 July 2014.

security forces fired smoke bombs and tear gas to disperse the crowd but were pelted with rocks from street level and from the balconies of surrounding apartment buildings. The security forces chased and beat people with batons and forced their way into residential buildings in an attempt to find those responsible for throwing the rocks.³⁴⁰ A number of people were dragged from their homes and beaten.³⁴¹ After engaging in a series of pitched battles with the crowd on Veng Sreng Street, security forces eventually withdrew at about 3 am on Friday morning (3 January).

Later that morning, as the sun came up, the crowd began to reassemble around the roadblocks and further clashes broke out during which rocks were thrown at security forces, who responded by firing tear gas.³⁴² An eyewitness told Amnesty International that before each attempt to clear the crowd, security forces asked those who were not involved in the demonstration, including NGO staff and journalists, to clear the area in order to make it easier to conduct the security operation.³⁴³ According to an eyewitness, when tear gas failed to clear the street, security forces shot live ammunition from shotguns and AK-47s at individuals in the crowd who were throwing rocks.³⁴⁴ The first live ammunition was fired at around 7 am or 8 am in the morning.³⁴⁵

A joint statement from local rights groups LICADHO and the Community Legal Education Center stated that LICADHO monitors had witnessed security forces using live ammunition “to shoot directly at civilians near the Canadia Industrial Area on Veng Sreng Street...The use of live ammunition was prolonged and no efforts appear to have been made to prevent death and serious injury.”³⁴⁶ During the assault a number of people suffered gunshot wounds and were driven to hospitals and clinics on motorbikes and tuk-tuks. Four people were later confirmed to have died of their wounds. A fifth, 16-year old Khem Saphath, was last seen lying on Veng Sreng street with a gunshot wound to the chest, and is presumed dead (see case study in chapter 5). A sixth, who bystanders witnessed being viciously beaten by security forces on Veng Sreng Street on 3 January reportedly suffered a brain contusion and died in May 2014.³⁴⁷

Amnesty International is concerned that the use of lethal force on the morning of 3 January, which resulted in at least four deaths, was unjustified, given that the demonstrators were armed with only rocks and security forces were equipped with protective gear. Although warnings were given for NGO staff and journalists to clear the area, it is unclear whether security forces specifically warned that they would shoot live ammunition as required by the UN Basic Principles.

This chapter has shown that an unnecessarily restrictive approach to freedom of peaceful assembly combined with the use of unnecessary and excessive force by security forces has had devastating consequences. Authorities have attempted to restrict and disperse peaceful assemblies with no real need or justification for doing so. Security forces have then used unnecessary and excessive force, resulting in deaths and multiple serious injuries. As noted by the UN Special Rapporteur on extra-judicial, summary or arbitrary executions: “If peaceful

³⁴⁰ Interview with eyewitness, 8 July 2014; interview with eyewitness, 14 July 2014.

³⁴¹ Interview with eyewitness, 30 June 2014.

³⁴² Interview with eyewitness, 14 July 2014.

³⁴³ Interview with eyewitness, 10 July 2014.

³⁴⁴ Interview with eyewitness, 14 July 2014.

³⁴⁵ Interview with eyewitness, 10 July 2014; interview with eyewitness, 14 July 2014.

³⁴⁶ LICADHO and CLEC, *Civilians killed and injured by security forces amid civil unrest in Phnom Penh*, 3 January 2014, available at: <http://www.licadho-cambodia.org/pressrelease.php?perm=334>.

³⁴⁷ Twenty-nine-year old Muon Sokmean. See: Mech Dara and Alex Consiglio, "Five Months On, Witnesses Recall Muon Sokmean's Beating", *The Cambodia Daily*, 20 May 2014.

protests are managed in such a way that they are less likely to escalate into violent confrontation, the need to decide whether or not to react forcefully will arise less frequently."³⁴⁸ The next chapter shows how the government and the courts have failed to hold security force personnel accountable for the unlawful use of force against demonstrators, contributing to a culture of impunity for such abuses.

³⁴⁸ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, UN Doc. A/HRC/17/28, 23 May 2011, para. 13, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-28.pdf>.

5. IMPUNITY FOR HUMAN RIGHTS VIOLATIONS

“Honestly, I feel very hopeless. I feel very scared. I am scared as a human being and as a woman. This feeling of fear relates to the injustice. We have all the evidence and all the medical reports. We have many photos on CD and witnesses. But still there is no justice.”

Bov Srey Sras, a member of the Boeung Kak community who suffered a miscarriage after being kicked in the stomach by a police officer³⁴⁹

On 27 June 2012, Bov Srey Sras, 25-years-old and pregnant at the time, and her sister Bov Sophoarn set out with members of their community to attend the appeal hearing of their sister Bov Sophea and 12 other women who had the previous month been convicted of illegal occupancy of state land and obstruction of public officials with aggravating circumstances after a swift and unfair trial (see below, p. 97, for further detail).

On the day of the appeal hearing, police blocked off the streets surrounding the Court of Appeal with barricades, preventing family members and supporters from reaching the court. Police stopped a crowd of about 200 people, including children of the imprisoned women, at a roadblock on Phnom Penh's Sisowath Quay. As the crowd pressed forward, a scuffle broke out between the community members and police armed with shields and batons. When Bov Srey Sras witnessed a police officer hitting her sister Bov Sophoarn, she lept to her defence, advancing to the frontline to yell at the police. She was pushed back by a police officer, who drove his baton into her stomach and then kicked her, causing her to faint. She was taken to the National Maternal and Health Center where doctors informed her that she had suffered a miscarriage.³⁵⁰

³⁴⁹ Interview with Bov Srey Sras, 25 June 2014.

³⁵⁰ Interview with Bov Srey Sras, 25 June 2014.

Bov Srey Sras filed a complaint with the Phnom Penh Municipal Court on 31 July 2012. The complaint was submitted against Phnom Penh deputy police chief Phuong Malay, Daun Penh district deputy governor Sok Penhvuth and the unidentified police officer who had assaulted her. When asked about the complaint, Phuong Malay was reported to have responded: *"Is the victim old or young, and does she sue me to return her kid? I want to tell her that if she wants to get back her kid, I am also young."*³⁵¹

The authorities should take measures to encourage women to report acts of violence by de-stigmatising victims, and treating them with dignity and respect. Amnesty International is concerned that the reported response of Phuong Malay to the initial complaint of Bov Srey Sras is more likely to have deterred female victims from reporting crimes. Bov Srey Sras told Amnesty International: *"I really want him to be responsible for his words...I would like to know whether, if this happened to his family member - to his daughter, or any female in his family - whether he would be able to accept this response?"*³⁵²

Bov Srey Sras subsequently filed a second complaint relating to the alleged comments of Phuong Malay. Almost two years after the assault and subsequent comments, she had heard nothing from the court in relation to either complaint.³⁵³ Bov Srey Sras told Amnesty International: *"I want to share this pain so that people hear and know that I continue to fight on by telling my story."*³⁵⁴

Impunity for the use of unnecessary and excessive force against demonstrators like Bov Srey Sras is common in Cambodia. Impunity exists where individuals who commit offences involving human rights violations and other crimes are not held accountable.³⁵⁵ Numerous complaints have been submitted to the Cambodian courts by victims of the unnecessary and excessive use of force by security forces during demonstrations and other assemblies. Very few of these complaints have resulted in prosecution. Government investigations into the shooting deaths of at least six people in 2013 and 2014 have been opaque and vaguely defined. Results, findings, criminal or disciplinary measures are not publically announced. As a result of the lack of accountability, most victims and their families have not been provided with a remedy.

5.1 LAW AND STANDARDS ON ACCOUNTABILITY FOR UNNECESSARY OR EXCESSIVE USE OF FORCE

INTERNATIONAL LAW AND STANDARDS

Under international human rights law, states must stop and prevent violations, and prosecute perpetrators, as a matter of justice, including for victims, and to deter would-be violators. In its authoritative comment on the nature of the states parties' general legal obligation under

³⁵¹ Khouth Sophak Chakrya and Buth Reaksmeay Kongkea, "Cambodia riot police's tactics in spotlight", *The Phnom Penh Post*, 1 August 2012.

³⁵² Interview with Bov Srey Sras, 25 June 2014.

³⁵³ Interview with Bov Srey Sras, 25 June 2014.

³⁵⁴ Interview with Bov Srey Sras, 25 June 2014.

³⁵⁵ Special Representative of the Secretary-General for Human Rights in Cambodia, "Continuing patterns of impunity in Cambodia", OHCHR, October 2005, p. 6, available at: http://cambodia.ohchr.org/WebDOCs/DocReports/2-Thematic-Reports/Thematic_CMB05102005E.pdf.

the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee has referred to a “general obligation [under the ICCPR] to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies.”³⁵⁶ The Committee stated:

“Where...investigations...reveal violations of certain Covenant rights, States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment (article 7), summary and arbitrary killing...Indeed, the problem of impunity for these violations, a matter of sustained concern by the Committee, may well be an important contributing element in the recurrence of the violations...no official status justifies persons who may be accused of responsibility for such violations being held immune from legal responsibility.”³⁵⁷

International standards on the use of force also address accountability. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles) state that governments “shall ensure that arbitrary or abusive use of force and firearms by law enforcement is punishable as a criminal offence under the law”³⁵⁸ and that “independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances.”³⁵⁹ Where death, serious injury or other grave consequences result from the use of force or firearms, “a detailed report shall be sent promptly to the competent authorities...”³⁶⁰

NATIONAL LAW AND STANDARDS

In Cambodia, the 2001 Royal Decree on Specific Statute of National Police Personnel (Royal Decree on National Police Personnel) and 1997 Law on the General Statute of Military Personnel of the Royal Cambodian Armed Forces both state that any order given that is obviously contradictory to the law or an international convention is forbidden. When such orders are given and implemented, both the person giving the order and the person carrying out the order are to be held responsible according to the law.³⁶¹

The Royal Decree on National Police Personnel states that police must be responsible for the mistakes, professional misconduct and offences that they commit while carrying out their functions.³⁶² Police may be disciplined internally and/or prosecuted by a court, depending on the nature and severity of the conduct. Internally, police may be disciplined according to the

³⁵⁶ Human Rights Committee, General Comment No. 31, Article 2: Nature of the General Legal Obligation Imposed on State Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13, 2004, para. 15.

³⁵⁷ Human Rights Committee, General Comment No. 31, Article 2: Nature of the General Legal Obligation Imposed on State Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13, 2004, para. 18.

³⁵⁸ Principle 7 of the UN Basic Principles.

³⁵⁹ Principle 22 of the UN Basic Principles.

³⁶⁰ Principle 22 of the UN Basic Principles.

³⁶¹ Article 29 of the Royal Decree on National Police Personnel and Article 17 of the Law on the General Statute of Military Personnel of the Royal Cambodian Armed Forces.

³⁶² Article 30 of the Royal Decree on National Police Personnel.

Code of National Police Discipline or the Royal Decree on National Police Personnel.³⁶³ When imposing punishment under the Royal Decree on National Police Personnel, advice must first be obtained from a disciplinary council, and then a decision taken by the Minister of Interior.³⁶⁴ Police may be removed from promotion lists, removed or suspended from their position, suspended from receiving salary for up to one year, demoted, or dismissed from the National Police.³⁶⁵



January 2014: Security forces storm a building on Veng Sreng Street during a violent crackdown on striking garment workers who were demanding an increase in the minimum wage © Luc Forsyth / Ruom

Cambodia's Penal Code recognises that crimes may be committed by state officials and establishes higher penalties for such offences. Intentional violence is a misdemeanour offence under the Cambodian Penal Code.³⁶⁶ When intentional violence is committed by a government official, civilian or military, during the performance of his functions the offence is aggravated and carries stiffer penalties, including imprisonment for up to five years.³⁶⁷

³⁶³ Article 36 of the Royal Decree on National Police Personnel. Amnesty International was unable to find a copy of the Code of National Police Discipline. In a meeting with Amnesty International on 5 May 2015, senior police representatives confirmed that no Code of National Police Discipline currently exists; a draft Code of National Police Discipline was completed in 2013 but is pending 'administrative approval'. Amnesty International was informed that in the absence of a Code of National Police Discipline, police are disciplined under the Royal Decree on National Police Personnel and the criminal law.

³⁶⁴ Articles 37 and 38 of the Royal Decree on National Police Personnel.

³⁶⁵ Article 39 of the Royal Decree on National Police Personnel.

³⁶⁶ Article 217 of the Penal Code.

³⁶⁷ Article 221 of the Penal Code.

Murder by civil servants is also recognised as a specific felony under the Penal Code.³⁶⁸ The Royal Decree on National Police Personnel stipulates that when a police officer is charged with a criminal offence, the prosecutor must notify the Ministry of Interior within 72 hours.³⁶⁹ When a police officer is convicted of a felony or misdemeanour and the sentence is not suspended, they shall be dismissed from the National Police from the date of the verdict.³⁷⁰

It is also a criminal offence under the Penal Code for a public servant, soldier or elected public representative to fail to submit a complaint to court when such a person has knowledge that a felony or misdemeanour has been committed.³⁷¹ And it is also an offence to move or hide evidence.³⁷²

5.2 LAW AND STANDARDS ON RIGHT TO A REMEDY

INTERNATIONAL LAW AND STANDARDS

Cambodia is obligated under international law to provide redress for violations of human rights. The ICCPR requires Cambodia to ensure that any person whose rights or freedoms are violated has an effective remedy “notwithstanding that the violation has been committed by persons acting in an official capacity.” The right to such a remedy must be determined by competent judicial, administrative or legislative authorities and remedies must be enforced when granted.³⁷³

Under international standards, the right to remedy, now often termed “reparations,” includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.³⁷⁴ The meaning of these terms is described below:

- Restitution, for instance release (of detainees and prisoners), restoration of legal rights and return of property;
- Compensation, including for physical or mental harm, lost opportunities, harm to reputation or dignity and legal and medical costs;
- Rehabilitation, including medical and psychological care, legal and social services, and social reintegration;

³⁶⁸ Article 204 of the Penal Code.

³⁶⁹ Article 45 of the Royal Decree on National Police Personnel.

³⁷⁰ Article 47 of the Royal Decree on National Police Personnel.

³⁷¹ Article 528 of the Penal Code.

³⁷² Article 533 of the Penal Code.

³⁷³ Article 2(3) of the ICCPR.

³⁷⁴ See, for example, UN Commission on Human Rights, *Updated Set of principles for the protection and promotion of human rights through action to combat impunity*, UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005, see, in particular, Principles 34-8; UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Adopted and proclaimed by UN General Assembly resolution 60/147 of 16 December 2005, see, in particular, Principles 18-24.

- Satisfaction, including cessation of continued violations, disclosure of the truth (without causing further harm), search for victims who have been forcibly disappeared or killed, and an apology for the wrong done;
- Guarantees of non-repetition, including steps to ensure effective civilian control of military and security forces and that all civilian and military proceedings abide by international standards of due process, fairness and impartiality, and strengthening the independence of the judiciary.

NATIONAL LAW AND STANDARDS

Cambodia's Constitution provides that citizens "shall have the right to denounce, make complaints or file claims against any breach of the law by State and social organs or by members of such organs committed during the course of their duties."³⁷⁵ The settlement of complaints and claims "shall be the competence of the courts."³⁷⁶ Cambodia's legal obligations under the ICCPR, including the right to a remedy for breaches of the convention, are formally embedded in the Constitution through Article 31, which provides that Cambodia shall recognise and respect human rights as stipulated in covenants and conventions related to human rights.

A civil action can be brought by the victim of an offence and compensation sought for physical or psychological damage or damage to property that is a direct consequence of an offence.³⁷⁷ Injury can be compensated in the form of damages that are proportionate to the injury suffered or through returning or restoring damaged or destroyed property.³⁷⁸ It is an offence under the Penal Code to intimidate or threaten a victim in order to prevent them from filing a complaint or to cause them to withdraw a complaint.³⁷⁹ The Royal Decree on National Police Personnel states that where a complaint or allegation is submitted by a third party against a police officer for a mistake that is not a result of their individual wrongdoing, they shall be "protected by the State in terms of any civil compensation."³⁸⁰

5.3 INADEQUATE CONSIDERATION OF COMPLAINTS

Despite the Constitution stating that everyone is equal before the law³⁸¹ and that the judiciary is to be an independent power,³⁸² complaints submitted by victims of security forces' violence during demonstrations or assemblies very rarely result in charges or prosecutions. A number of complainants have reported to Amnesty International that they have received little or no information from the court about the progress of their complaint.

The Code of Criminal Procedure of the Kingdom of Cambodia (CCPC) sets out the process that should be followed by the court when a complaint is filed. Complaints are considered by

³⁷⁵ Article 39 of the Constitution.

³⁷⁶ Article 39 of the Constitution.

³⁷⁷ Article 13 of the Code of Criminal Procedure of the Kingdom of Cambodia, 7 June 2007 (the CCPC), available at:

http://cambodia.ohchr.org/klc_pages/KLC_files/section_011/S11_CriminalProcedureCode2007E.pdf.

³⁷⁸ Article 14 of the Code of Criminal Procedure of the Kingdom of Cambodia.

³⁷⁹ Article 527 of the Penal Code.

³⁸⁰ Article 30 of the Royal Decree on National Police Personnel.

³⁸¹ Article 31 of the Constitution.

³⁸² Article 128 of the Constitution.

the Royal Prosecutor, who may choose to either initiate criminal proceedings or “hold a file without processing”.³⁸³ Before making the decision, a Prosecutor can conduct preliminary investigations or order supplemental investigations.³⁸⁴ If the Prosecutor chooses to hold the file without processing, meaning no criminal proceedings will be initiated, he “shall inform the plaintiff about that decision within the shortest possible period”, but not more than two months after the date of registration of the complaint. The decision to hold the file without processing “shall be based on grounds of law and fact”.³⁸⁵ Under the CCPC, the plaintiff may appeal the Prosecutor’s decision to hold the file without processing to the General Prosecutor of the Court of Appeal within two months, “commencing from the date the plaintiff received the decision”.³⁸⁶

Following an attack on 22 September 2013 on a peaceful candlelit vigil at Wat Phnom by armed men and official security forces, members of the Boeung Kak community filed a complaint with the Phnom Penh Municipal Court. The complaint, filed on 11 October 2013 by 10 of the victims, alleged that four Daun Penh district officials were responsible for the crimes of intentional violence and attempted murder. The officials named in the complaint were the deputy Daun Penh district governor Sok Penhvuth, the chief of district security and the commander of the Daun Penh para-police Kim Vutha, the deputy district police chief Nhem Sao Nol, and a Daun Penh district official Pech Socheata.³⁸⁷ A foreign journalist who was shocked with an electroshock weapon during the attack also submitted a complaint to the Phnom Penh Municipal Court on 25 September 2013.³⁸⁸

The complaint from members of the Boeung Kak community was reportedly transferred to the National Police on 16 October 2013 via a letter stating “[t]he prosecutor has decided to send [the case file] to His Excellency the general commissioner of the National Police to investigate and collect evidence and then send it back to the prosecutor at the Phnom Penh Municipal Court to follow according to procedure.” Lieutenant General Kirth Chantharith, spokesman for the National Police, said that police would investigate the case.³⁸⁹ On 31 October 2013, the complainants attempted to submit further evidence to the court, including photographs and video footage but were told to take it to the National Police. Sou Sophal, one of the complainants, told Amnesty International in June 2014 that the community had received no further information about their case.³⁹⁰ The foreign journalist also confirmed to Amnesty International that she had received no update from the court.³⁹¹

The CCPC states that in performing their mission, judicial police officers receive their orders from judicial authorities.³⁹² In this case, it is unclear under what legal authority the Phnom

³⁸³ Article 40 of the CCPC.

³⁸⁴ Article 40 of the CCPC.

³⁸⁵ Article 41 of the CCPC.

³⁸⁶ Article 41 of the CCPC.

³⁸⁷ Eang Mengleng and Khuon Narim, “Phnom Penh Court Rejects Evidence in Wat Phnom Attack”, *The Cambodia Daily*, 1 November 2013.

³⁸⁸ Denise Hruby, “Mob Ruled and People Bled While Police Watched”, *The Cambodia Daily*, 28 September 2013.

³⁸⁹ Eang Mengleng and Khuon Narim, “Phnom Penh Court Rejects Evidence in Wat Phnom Attack”, *The Cambodia Daily*, 1 November 2013.

³⁹⁰ Interview with Sou Sophal, 25 June 2014.

³⁹¹ E-mail, 10 September 2014.

³⁹² Article 70 of the CCPC.

Penh Municipal Court transferred the complaint by members of the Boeung Kak community to the National Police to investigate. Police forces were present at the time of the attack and did nothing to intervene to prevent the violence allegedly committed against the complainants. They may therefore have been complicit in the attack. One of the individuals named in the complaint was Daun Penh district police chief Nhem Sao Nol. While it may be justified for the National Police to launch its own internal investigation into what occurred for disciplinary or other reasons, this should not replace a thorough and independent criminal investigation.



September 2013: Masked, plain-clothes men carrying make shift weapons rush towards a peaceful candlelit vigil for justice organized by women land activists from Phnom Penh Boeung Kak Lake community. © Nicalos Axelrod / Ruom

If the Prosecutor has chosen not to initiate criminal proceedings in response to the complaint filed by the Boeung Kak community, as appears to be the case given that more than a year has passed, then the complainants should have been informed in accordance with the CCPC. An appeal cannot be lodged until that decision is notified. The lack of information provided by the court is a denial of due process and denies the victims the right to an effective remedy as required under international human rights law.

Even when the court does conduct preliminary investigations in relation to a complaint, the investigation usually proceeds very slowly. For example, it appears that very little action has been taken by the Phnom Penh Municipal Court to investigate the assault by district para-police on Voice of Democracy (VOD) reporter Lay Samean on 2 May 2014, which left him unconscious and with a broken cheekbone. A complaint was filed on 28 May 2014 by the Cambodian Center for Independent Media (CCIM, the organization that operates VOD radio station) against Phnom Penh governor Pa Socheatvong, Daun Penh district governor Sok

Sambath and his deputy, Sok Penhvuth, who was also named in the complaint by the Boeung Kak community arising from 22 September 2013 (see above, p. 85).

Representatives from CCIM were summonsed by the Phnom Penh Municipal Court to provide evidence on 16 June 2014. In a statement released on 24 August 2014, CCIM stated that it had submitted a letter to the court the previous week asking for the court to proceed with the complaint. The organization noted the “stark contrast” between the court’s treatment of their complaint and the swift action taken against Cambodia National Rescue Party (CNRP) lawmakers and officials when CNRP supporters clashed with Daun Penh district para-police at Freedom Park in July 2014. Executive Director Pa Nguon Teang noted “[d]elaying is a common tactic used by Cambodian courts when it comes to high-profile government officials who are involved in criminal cases. Very few of them have been brought to justice. The court is now engaging in these delaying tactics to deprive Samean of justice.”³⁹³ A Court Order signed by Deputy Prosecutor Meas Chanpiseth dated 26 November 2014 informed Lay Samean’s lawyer that the complaint had been dropped without providing any details as to the reasoning underlying the decision.³⁹⁴ A second complaint was filed by CCIM in February 2015.³⁹⁵ At the time of writing, no information has been shared with CCIM as to the status of this complaint.³⁹⁶

Amnesty International is concerned that Cambodia’s courts are ignoring international human rights law and the Constitution, both of which provide that people should be treated equally by the judiciary.³⁹⁷ As noted by CCIM Executive Director Pa Nguon Teang, and as Chapter 6 of this report will show, there is a marked difference between the court’s treatment of complaints by victims, and the fast-track process often observed when there are complaints against organizers and participants of assemblies who are charged, tried, convicted, and imprisoned assembly for exercising their human right to freedom of peaceful assembly. It is widely acknowledged that Cambodia’s courts suffer from a lack of independence (see below, pp. 102-103), which seems to be resulting in, among other things, the mishandling of complaints of unnecessary and excessive use of force. As a result, those responsible for committing human rights violations, which are also serious crimes under the Penal Code, have not been brought to justice, reinforcing the cycle of violations and impunity.

Despite the low prospects for success, complaints have helped document the lack of accountability of the security forces and the lack of independence of the courts. Lay Samean told Amnesty International that he did not expect the complaint filed on his behalf to succeed. However, he still believed it was important to submit a complaint: “*If they [use violence against reporters] and we don’t complain, they will do it again. We complain to show all the people in Cambodia that the court is not fair, and to show the international community that the court is unjust in Cambodia.*”³⁹⁸

³⁹³ CCIM, *CCIM Demands Justice For Injured Journalist*, 24 August 2014, available at: <http://www.ccimcambodia.org/press-release/107-ccim-demands-justice-for-injured-journalist>.

³⁹⁴ E-mail from CCIM Representative, 30 March 2015.

³⁹⁵ E-mail from CCIM Representative, 30 March 2015.

³⁹⁶ E-mail from CCIM Representative, 30 March 2015.

³⁹⁷ Article 14(1) of the ICCPR; Article 31 of the Constitution. Article 31 states: “Every Khmer citizen shall be equal before the law...”

³⁹⁸ Interview with Lay Samean, 21 June 2014.

5.4 LACK OF TRANSPARENT INVESTIGATION

No one has been prosecuted in relation to the death of at least six individuals shot dead by security forces during three different demonstrations in the year following the disputed 2013 National Assembly elections, nor have investigation results or disciplinary measures been publically announced. Official responses to the three separate incidents, all of which occurred in Phnom Penh, have followed a similar pattern. Investigations have been announced by the government but no details or subsequent results disclosed to the public. Officials have since confirmed that the results of at least two of the investigations have been sent to the court.³⁹⁹

On 17 September 2013, spokesman for the Royal Gendarmerie, Brigadier General Kheng Tito said that an investigation into the death of 29-year-old Mao Sok Chan on 15 September had commenced under the jurisdiction of the National Police. He denied that gendarmes had used weapons during the incident.⁴⁰⁰ Little information was released about the investigation and no results have to date been made publicly available.

On 2 July 2014, the Deputy Prosecutor at Phnom Penh Municipal Court, Meas Chanpiseth, said that he had forwarded a police report related to the shooting of Mao Sok Chan to an investigating judge. He was quoted as saying: "*No suspect or killer was identified in the report. And I also did not charge anyone in relation to this case, because there was such a big crowd and so many people, so we were not able to identify who killed the victim.*"⁴⁰¹ On the first anniversary of the incident, Council of Minister's spokesman Phay Siphon was quoted as stating that the government investigation was complete but "the court's is still ongoing."⁴⁰²

The progress of a reported investigation into the death of 49-year-old rice vendor Eng Sokhom on 12 November 2013 is also unclear. On the day of the incident, National Police spokesman Lieutenant General Kirth Chantharith said that a committee had been formed to investigate why police had opened fire on demonstrators despite apparently receiving orders from National Police Commissioner Neth Savoeun to use only tear gas and water cannons.⁴⁰³ The following day the same National Police spokesman denied that police were responsible for the death of Eng Sokhom, stating that police "do not know yet where that bullet was fired

³⁹⁹ Six months after the shootings on Veng Sreng Street, National Police spokesman Kirth Chantharith was quoted by *The Phnom Penh Post* as saying that a government investigation into the events had been sent to Phnom Penh Municipal Court. The same article quoted Phnom Penh Municipal Court deputy prosecutor Meas Chanpiseth as saying that while he did not know anything about the status of the investigation into the events on Veng Sreng Street on 3 January 2014, he had forwarded a police report related to the killing of Mao Sok Chan on 15 September 2013 to an investigating judge. See Vong Sokheng and Buth Reaksmeay Kongkea, "Six months on, no justice for shootings", *The Phnom Penh Post*, 3 July 2014.

⁴⁰⁰ Lauren Crothers and Mech Dara, "King Sihmoni and Queen Mother Donate to Sunday's Victims", *The Cambodia Daily*, 18 September 2013.

⁴⁰¹ Vong Sokheng and Buth Reaksmeay Kongkea, "Six months on, no justice for shootings", *The Phnom Penh Post*, 3 July 2014.

⁴⁰² Alice Cuddy and Khouth Sophak Chakrya, "Bridge death haunts family", *The Phnom Penh Post*, 16 September 2014.

⁴⁰³ Shane Worrell and Mom Kuntheary, "Police in strike shootings to be investigated", *The Phnom Penh Post*, 13 November 2013.

from.”⁴⁰⁴ The same day Council of Ministers spokesman Phay Siphon said that security forces had the right “to protect State power as well as their own lives”.⁴⁰⁵ No information has been publicly disclosed about the results of the investigation, if any. It is not clear whether a report or investigation findings have been transferred to the Phnom Penh Municipal Court.



November 2013: Casing from live ammunition fired into a crowd in Stung Meanchey after a demonstration by garment workers resulted in clashes with security forces. Picture: LICADHO.

The results of a government investigation into the death of at least four people on Phnom Penh’s Veng Sreng Street on 3 January 2014 have reportedly been sent to the Phnom Penh Municipal Court. However, the composition and terms of reference of the committee responsible for investigating the incident were not publicly disclosed. Amnesty International is concerned that 16-year-old Khem Saphath, last seen on Veng Sreng Street with blood pouring from an apparent gunshot wound to the chest, may have been subjected to an enforced disappearance. His body has not been located and he is now presumed dead.

THE DISAPPEARANCE OF KHEM SAPHATH

The last time Khem Souen saw his son was in November 2013 during Cambodia’s annual Water Festival when Khem Saphath returned to his home in Svay Rieng, an impoverished province in the southeast of Cambodia, to spend the holiday with his family. During the rest of the year he lived in a rented room with his uncle and sister on a small street near the Canadia Industrial Park in the area of Veng Sreng while

⁴⁰⁴ Lauren Crothers and Phann Ana, "Police Deny Responsibility for Shooting Civilians", *The Cambodia Daily*, 14 November 2013.

⁴⁰⁵ Lauren Crothers and Phann Ana, "Police Deny Responsibility for Shooting Civilians", *The Cambodia Daily*, 14 November 2013.

working in a nearby garment factory. His father says Khem Saphath worked hard to provide for his family, earning bonuses for working overtime, and sending home about US \$100 per month. At 16-years-old, Khem Saphath had already been working in Cambodia's garment industry for two years, having originally lied about his age to gain employment.



Khem Soeun holds a framed photograph of his son Khem Saphath, a 16-year-old boy who is missing and presumed dead since 3 January 2014. © Amnesty International

On the morning of 3 January 2014, Khem Saphath was reportedly among those shot during a government

crackdown on Veng Sreng Street during which at least four people were killed (see case study in Chapter 4). He was last seen by a friend and co-worker lying on Veng Sreng Street with blood pouring from what appeared to be a gunshot wound to his chest. As bystanders tried to aid him, Saphath was heard urging them not to help but to save themselves, saying he “would not survive.” At the time, shots were still being fired at the crowd.⁴⁰⁶

Having been informed by his brother, Saphath’s uncle, that Khem Saphath had been shot, Khem Souen, travelled to Phnom Penh and spent a month searching for and seeking information about his son. A witness who had been on Veng Sreng Street during the shooting told Khem Souen that he saw Saphath being lifted into a truck or other vehicle.⁴⁰⁷ However, investigations by local human rights NGOs have been unable to corroborate this story. Khem Saphath was never seen again.

Though the family has filed a complaint to the Ministry of Interior through local human rights NGOs they have received no information from the government or local authorities. Khem Souen said he “dared not” attempt to contact representatives of the government or security forces to seek information, explaining “they are the ones who did this so how can I speak to them?”⁴⁰⁸

Khem Saphath’s mother told *The Phnom Penh Post*: “If we as a family tried to find [justice on our own] I am afraid that we would end up just like my son. Because they are extremely wild.”⁴⁰⁹

Khem Souen described his son as a “gentle” and “meek” boy who preferred to spend time at home with his family rather than play with other children during festivals. He says the disappearance has affected his whole family, but particularly his wife: “She is very emotional about this issue, especially during festival times when the children of the neighbours return home to visit. She misses him and most times she cries.”⁴¹⁰

Enforced Disappearances

Amnesty International is concerned that Khem Saphath may have been subjected to an enforced disappearance as defined by the International Convention for the Protection of All Persons from Enforced Disappearance (ICCPEd), which Cambodia acceded to on 27 June 2013, and has called for an independent investigation into his disappearance.⁴¹¹ The ICCPEd, beyond prohibiting enforced disappearances, creates an obligation on states parties to take appropriate measures to investigate situations where there are reasonable grounds to believe that an enforced disappearance has occurred and to bring those responsible to justice, whether or not a formal complaint has been lodged. Furthermore, states parties must “take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.”

⁴⁰⁶ Amnesty International et al., *Open Letter Urging an Immediate Investigation into the Disappearance of Khem Saphath* (Index: ASA 23/002/2014), 23 March 2014, available at: <https://www.amnesty.org/en/documents/asa23/002/2014/en/>.

⁴⁰⁷ Interview with Khem Souen, 12 July 2014.

⁴⁰⁸ Interview with Khem Souen, 12 July 2014.

⁴⁰⁹ Koam Chanrasmey and Griff Tapper, Video report: “The disappearance of Khim Saphath”, *The Phnom Penh Post*, 30 May 2014, available at: <http://www.phnompenhpost.com/video/disappearance-khim-saphath>.

⁴¹⁰ Interview with Khem Souen, 12 July 2014.

⁴¹¹ Amnesty International et al., *Open Letter Urging an Immediate Investigation into the Disappearance of Khem Saphath* (Index: ASA 23/002/2014), 23 March 2014.

Khem Saphath's body has never been found. His family deserve to know the truth about what happened to him. Khem Souen told Amnesty International "even if my son is dead, we really wish to know and to at least see the body. If he is alive, we want to know information about where he is."⁴¹²

Following the shootings on 3 January 2014, spokesman for the Royal Gendarmerie, Brigadier General Kheng Tito reportedly stated that gendarmes "never shoot at a target to take a life," and that any investigation would not focus on the role of Royal Gendarmerie, but the role of the "inciters" who led the demonstration.⁴¹³ On 26 January, however, he announced that five gendarmes had been summonsed by the Phnom Penh Municipal Court the previous week to answer questions about the violence. He added that the five men had not been accused of any crime and that they were acting in self-defence during the incident. The names and ranks of the officers were not revealed.⁴¹⁴

On 4 February 2014, National Police spokesman Kirth Chantharith announced that the investigation had been completed and a report sent to senior Ministry of Interior officials for consideration. He also reportedly stated that the report would be released to the public within a few days.⁴¹⁵ A meeting was scheduled for 7 February for Ministry of Interior officials to discuss the report.⁴¹⁶ No results or findings were released. On 24 March 2014, Khieu Sopheak, a spokesman for the Ministry of Interior was reported to have said: "We are investigating these issues and have come to some results, but they will remain internal."⁴¹⁷ On 26 March, the Ministry of Interior released a separate report detailing damage that occurred during the strike and clashes with security forces. The incident was blamed on the CNRP.⁴¹⁸

On 2 July 2014, National Police spokesman Kirth Chantharith said that the report produced by the government had been sent to the Phnom Penh Municipal Court and that authorities were waiting for a court decision. On the same day Brigadier General Kheng Tito said that the authorities had investigated all relevant parties, including security forces. He told *The Phnom Penh Post* that the report was produced for the court rather than the public and that responsibility for further action lay with the court. A court spokesman and deputy prosecutor told the same newspaper that he had not seen the government's report.⁴¹⁹ When asked about the results of the investigation in September 2014, Ministry of Interior spokesman Khieu Sopheak said that the investigation was complete and had been "approved" and that no further information would be released.⁴²⁰

⁴¹² Interview with Khem Souen, 12 July 2014.

⁴¹³ Kuch Naren, "Military Police Deny Their Bullets Killed Five Protesters", *The Cambodia Daily*, 7 January 2014.

⁴¹⁴ Buth Reaksmey Kongkea and Daniel Pye, "Officers queried on shootings", *The Phnom Penh Post*, 27 January 2014.

⁴¹⁵ Meas Sokchea, "All quiet as Veng Sreng probe ends", *The Phnom Penh Post*, 5 February 2014.

⁴¹⁶ Meas Sokchea, "Ministry to 'examine' probe results", *The Phnom Penh Post*, 6 February 2014.

⁴¹⁷ Phak Seangly and Amelia Woodside, "Families make plea for justice", *The Phnom Penh Post*, 25 March 2014.

⁴¹⁸ May Titthara, "Violence blamed on CNRP", *The Phnom Penh Post*, 28 March 2014.

⁴¹⁹ Vong Sokheng and Buth Reaksmey Kongkea, "Six months on, no justice for shootings", *The Phnom Penh Post*, 3 July 2014.

⁴²⁰ Mom Kunthea and Shane Worrell, "Charges in strike violence surface", *The Phnom Penh Post*, 3 September 2014.

The investigations of these three fatal incidents has been marred by a lack of transparency and the process followed raises a number of concerns. Firstly, there has been a lack of clear information about the exact institution or individuals assigned to investigate the incidents, their terms of reference, their legal authority to investigate or the authority they have, for instance to initiate criminal – as opposed to disciplinary – proceedings. Secondly, the independence and impartiality of the investigations is highly questionable given that they each appear to have been either led by or carried out with the involvement of the National Police. Police officers were present during all three incidents and may have been complicit in the shooting deaths. Thirdly, all three incidents involved mixed security forces consisting of both police officers and gendarmes. Because no terms of reference have been disclosed, it is unclear to what extent the role of the Royal Gendarmerie, which as noted is a unit of the RCAF and distinct from the National Police, has been investigated. Finally, the role of the Phnom Penh Municipal Court in investigating these incidents, and its jurisdiction and powers vis-à-vis the *ad hoc* investigation committees established by the government, has been unclear. The court appears to have taken a back seat and awaited the findings of government-led investigations rather than initiating its own proceedings.

The UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (the UN Principles on Summary Executions) provide strong guidance on how an investigation into a potentially unlawful killing by state officials should be carried out. They state that when “*established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse...Governments shall pursue investigations through an independent commission of inquiry or similar procedure.*”⁴²¹ Amnesty International believes that all three of the factors justifying the establishment of an independent commission of inquiry were present in the three fatal incidents referred to above. The UN Principles on Summary Executions further state that “[m]embers of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry”.⁴²² Amnesty International is concerned that the *ad hoc* committees established by the government failed to meet these standards of independence.

The UN Principles on Summary Executions reflect the importance of both victim participation in investigations, and public transparency. They state that: “*Families of the deceased and their legal representatives shall be informed of, and have access to, any hearings as well as to all information relevant to the investigation, and shall be entitled to present other evidence.*”⁴²³ The families of the six victims shot and killed by security forces appear to have received little information about the nature and progress of the investigations. The UN Principles on Summary Executions also state that: “*A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and*

⁴²¹ Principle 11 of the UN Principles on Summary Executions.

⁴²² Principle 11 of the UN Principles on Summary Executions.

⁴²³ Principle 16 of the UN Principles on Summary Executions.

recommendations based on findings of fact and on applicable law."⁴²⁴ As noted, none of this information has been made publically available.

5.5 FAILURE TO ENFORCE CONVICTION OF GOVERNMENT OFFICIAL

"I have this feeling of fear because the man who committed the crime is still around and nobody has caught him. So when I sleep at night I am feeling fearful because I don't know what more that man could do to me if he wanted to."

Keo Na, one of three women shot during a demonstration outside a factory in Bavet City, Svay Rieng province.⁴²⁵

There have been very few cases in which security forces or public officials were charged with criminal offences in relation to violence committed against those participating in demonstrations or other assemblies. In 2012, the governor of Bavet City in Svay Rieng province, Chhouk Bundith shot and injured three female garment workers during a strike at Kaoway Sports Ltd. factory. Although he was eventually charged and prosecuted, the charges against him were widely regarded as inadequate and the trial in which he was convicted seriously flawed. Despite the seriousness of the offence, since his conviction in 2013, he is yet to be apprehended by police and jailed. He remains at large three years after the event.⁴²⁶

GARMENT WORKERS AWAIT JUSTICE WHILE CONVICTED PERPETRATOR WALKS FREE

In February 2012, three female garment workers were shot during a strike at a factory that supplies shoes to German multinational sportswear company PUMA. Over three years later, the well-connected local official convicted of shooting the women has yet to be arrested and has not served a single day of his 18 month prison sentence.

On the morning of Monday 20 February 2012, Bun Chenda (21-years-old at the time) and Keo Na (19-years-old at the time) were shot while standing together talking outside a bathroom building at Kaoway Sports Ltd. factory, which is located in a special economic zone in Bavet city, Svay Rieng province, in the southeast of Cambodia. A bullet punctured Bun Chenda's left lung, narrowly missing her heart. She coughed up blood and collapsed just as workers ran to help her and Keo Na, who was shot in the arm.⁴²⁷ A third victim, Nuth Sokhorn (23-years-old at the time) was shot in the back near the factory gates. All three were rushed to local clinics and Bun Chenda was later transferred to a hospital in Phnom Penh in critical condition.

On 19 April 2012, Svay Rieng provincial court prosecutor Hing Bunchea charged the Bavet Governor Chhouk Bundith with causing unintentional injury under Article 236 of the Penal Code.⁴²⁸ The offence, which is a misdemeanour punishable by imprisonment of between six days and two years, occurs when an act causing

⁴²⁴ Principle 17 on the UN Principles on Summary Executions.

⁴²⁵ Interview with Keo Na and Bun Chenda, 6 July 2014.

⁴²⁶ May Titthara, "Chhouk Bandith still at large three years on", *The Phnom Penh Post*, 20 February 2015.

⁴²⁷ Interview with Keo Na and Bun Chenda, 6 July 2014.

⁴²⁸ Joshua Lipes and So Chhivi, "Ex-Governor Charged Over Shooting", *Radio Free Asia*, 19 April 2012.

unintentional injuries to another is committed as a result of imprudence, carelessness or negligence.⁴²⁹ In December 2012, the charge was dropped completely.⁴³⁰

However, after a public outcry, on 4 March 2013, following two days of closed hearings, the Court of Appeal re-charged the former governor with causing unintentional injury and ordered the Svay Rieng Provincial Court to hear the case. In a separate hearing, the Court of Appeal rejected a request that the accused be held in provisional detention pending trial.⁴³¹ Chhouk Bundith attended the appeal hearings, which were closed to the public.⁴³²

The Svay Rieng Provincial Court heard the case between 15 and 17 June 2013. The accused did not appear at the hearing despite a requirement in law to do so⁴³³ and the Court did not exercise its power to order that he be brought before the court.⁴³⁴ His absence meant that lawyers for the victims were denied the opportunity to question him about his conduct. On 25 June 2013, the Court convicted Chhouk Bundith of an act causing unintentional injury, sentenced him to 18 months' imprisonment and ordered him to pay a total of 38 million Riel (about US \$9500) to the three victims.⁴³⁵ Despite a number of sightings, Chhouk Bundith has never been arrested.

Chhouk Bundith appealed the verdict and sentencing, while the victims appealed for an increase to the compensation award. The case was heard by the Court of Appeal on 31 October 2013 and the decision of the Svay Rieng provincial court was upheld in a decision delivered on 4 November 2013.⁴³⁶ The women have since returned to work at the Kaoway Sports Ltd factory. Compounding the financial difficulties faced by the victims as a result of their injuries is the fact that Chhouk Bundith is yet to pay them the compensation ordered by the Svay Rieng Provincial Court and upheld by the Court of Appeal.⁴³⁷

Cambodia's judicial system is failing to effectively investigate evidence of abusive use of force and ill-treatment by law enforcement officials when policing demonstrations and other assemblies. Internal investigation committees established by the government have also failed to provide transparent results. This is part of a wider, long-standing pattern of impunity for security forces.⁴³⁸ Failure to effectively investigate such complaints not only denies the

⁴²⁹ Article 326 of the Penal Code.

⁴³⁰ May Titthara and Abby Seiff, "Chhouk Bundith charges dropped", *The Phnom Penh Post*, 19 December 2012.

⁴³¹ Interview with Sary Chakrya and Chin Lida, lawyers for the victims, 11 July 2014.

⁴³² Interview with Sary Chakrya and Chin Lida, lawyers for the victims, 11 July 2014.

⁴³³ Article 300 of the CCPC.

⁴³⁴ Article 310 of the CCPC.

⁴³⁵ 20 million Riel to Bun Chenda, 10 million Riel to Nuth Sokhorn and 8 million Riel to Keo Na. May Titthara, "Ex-governor sentenced for Puma shootings", *The Phnom Penh Post*, 25 June 2013.

⁴³⁶ The Cambodian Center for Human Rights, *Legal Analysis of the Criminal Case Against Ex-Bavet Governor Chhouk Bundith and Police Chief Sar Chantha Arising from the Shooting of Kaoway Factory Workers on 20 February 2012*, 23 November 2013,

http://cchrcambodia.org/index_old.php?url=media/media.php&p=analysis_detail.php&anid=44&id=5.

⁴³⁷ Chhouk Bundith has appealed the decision to the Supreme Court and the compensation order cannot be legally enforced until the judicial process is complete.

⁴³⁸ LICADHO, ADHOC, Human Rights Watch, *Impunity in Cambodia: How Human Rights Offenders Escape Justice*, June 1999, available at: <http://www.licadho-cambodia.org/reports/files/21Impunity%20in%20Cambodia.pdf>; Special Representative of the Secretary-General for Human Rights in Cambodia, *Continuing patterns of impunity in Cambodia*, OHCHR, October 2005; Human Rights Watch, *Tell Them That I Want to Kill Them: Two Decades of Impunity in Hun Sen's Cambodia*, November 2012, available at:

victims of such violations their right to a remedy, which the State has an international legal obligation to provide, but results in impunity for perpetrators, which encourages the continuation of such violations. The Human Rights Committee has stated that there is a need for specific measures to be taken, beyond a victim-specific remedy, to avoid the recurrence of violations, including changes to laws and practices.⁴³⁹

The failure of Cambodia's institutions, including the judiciary, to respond to injustice appears to be one of the main reasons for the increasing number of assemblies in the country. The continuing cycle of restrictions on peaceful assembly and unnecessary and excessive use of force, followed by impunity for human rights violations by the security forces, is further fuelling these demonstrations and weakening ordinary Cambodians' already low trust in the law enforcement and justice system.

The key to ending impunity in Cambodia is to establish and maintain independent institutions, including an independent judiciary. Unfortunately, the judiciary continues to be compromised by a lack of independence; and as the next chapter shows, this is highlighted by the discrepancy between the lack of action taken to investigate and prosecute instances of arbitrary or excessive use of force by security forces, and the judicial harassment that those who participate in demonstrations sometimes face.

http://www.hrw.org/sites/default/files/reports/cambodia1112webwcover_1.pdf.

⁴³⁹ Human Rights Committee, General Comment No. 31, Article 2: Nature of the General Legal Obligation Imposed on State Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13, 2004, para. 17.

6. JUDICIAL HARASSMENT

“We sometimes feel quite hopeless because the institutions that should protect the people make people lose hope. For example, the court and the police. Their duty is to protect and defend the people from trouble or injustice, but it is the opposite. They help the powerful people and many times the ordinary people and the poor get oppressed.”

Tep Vanny, an activist from the Boeung Kak community in Phnom Penh⁴⁴⁰

Tep Vanny is an activist from the Boeung Kak community, an area of Phnom Penh that has been embroiled in a high profile land conflict with Shukaku Inc., a well-connected company owned by a Cambodian senator (see above, pp. 15-16). In the last three years, Vanny has been arrested on a number of occasions for leading and participating in demonstrations, most recently in November 2014. A witness at a candlelit vigil led by Vanny and other members of her community in 2013 that was violently dispersed by district para-police reportedly heard a district official giving orders to direct violence against Vanny (see above, pp. 85-86).⁴⁴¹

In May 2012, Vanny was arrested alongside 12 others from the Boeung Kak community who were participating in a demonstration against the destruction of homes and forced eviction of thousands of families. The women were charged with illegal occupancy of state land and aggravated violent resistance against public officials. Two days after their arrest, they were tried, convicted and sentenced to two and a half years in jail in a trial that was manifestly unfair and in violation of their fair trial rights. Amnesty International designated all of the women prisoners of conscience.⁴⁴² A month later, the women were released when the Court of Appeal upheld their criminal convictions but suspended the remainder of their sentences.

⁴⁴⁰ Interview with Tep Vanny, 3 July 2014.

⁴⁴¹ Khuon Narim, "Injured Anti-Eviction Activists File Complaint Against Local Officials", *The Cambodia Daily*, 12 October 2013.

⁴⁴² Amnesty International, *Cambodia: Imprisoned for speaking out: Update on Phnom Penh's Boeung*

In January 2014, Vanny was arrested on two occasions, on 6 and 21 January respectively, together with fellow members of the Boeung Kak community and others who were calling for the release of the 23 workers and activists arrested on 2 and 3 January, including Boeung Kak activist Chan Puthisak. On both occasions, Vanny and the others were detained for a period of hours and released after thumb printing documents promising to refrain from participating in or organizing future protests (see below, pp. 103-104).



November 2012: Tep Vanny at a demonstration outside the Appeal Court on the morning that bail applications by fellow Boeung Kak community activist Yorm Bopha and Borei Keila community activist Tim Sakhorn were denied. © Thomas Cristofolletti / Ruom

In November 2014, Vanny was arrested again. On 10 November, she and six other women from Boeung Kak were arrested while holding a peaceful protest calling for the authorities to take measures to combat flooding in their neighbourhood. In a repeat of the accelerated criminal proceedings in May 2012, in the course of a day, the seven women were charged, tried, convicted of obstructing traffic under Article 78 of the Traffic Law and sentenced to a year in jail and a fine equivalent to USD 500.

During the trial of the seven women on 11 November, three more women land activists, two from Boeung Kak and one from Phnom Penh's Thmor Kol community, were arrested outside Phnom Penh Municipal Court together with a Buddhist monk. The following day, the four were charged, tried, convicted of obstructing a public official with aggravating circumstances

Kak Lake, (Index: ASA 23/010/2010), 26 June 2012, available at <https://www.amnesty.org/en/documents/asa23/010/2012/en/>.

under Article 504 of the Penal Code, and sentenced to a year in jail and a fine equivalent to USD 500.

The case of Tep Vanny highlights a trend in Cambodia in recent years in which those organizing and participating in demonstrations and other assemblies have been subjected to criminal prosecution. This trend was noted by the Special Rapporteur on the situation of human rights in Cambodia (SR on Cambodia), who in 2013 stated that he was “concerned that judges continue to use the provisions of the Criminal Code against human rights defenders and all those who express opinions which are not favourable to the Government.”⁴⁴³

Vanny is one of 19 human rights and political activists jailed between September and November 2014 following a political deal between the ruling Cambodian People’s Party (CPP) and the opposition Cambodian National Rescue Party (CNRP) in July 2014 which saw the CNRP end their boycott of the National Assembly. The other 18 individuals are Sum Puthy, CNRP council member for Chbar Ampov district; Ouk Pich Samnang, a CNRP grassroots activist; Boeung Kak community activists Nget Khun, Song Srey Leap, Kong Chantha, Phan Chhunreth, Po Chorvy, and Nong Sreng; Meach Sovannara, Chief of the CNRP Information Department; Heng Pich, Im Srey Touch, and Phuong Sopheap, housing rights activists from Boeung Kak and Thmor Kol communities; Venerable Seung Hai, a Buddhist monk; Ke Khim, tuk-tuk driver and CNRP supporter; Venerable Khith Vannak and Venerable Sang Kosal, Buddhist monks; Tep Narin, CNRP youth member; and Ly Seav Minh, resident of Toul Kork district whose family are locked in a land dispute with a well-connected private company.⁴⁴⁴

A further agreement between the CPP and CNRP in 2015 resulted in the release of 18 of these individuals; on 11 April, 10 women land activists were released after being pardoned by His Majesty King Sihamoni;⁴⁴⁵ and on 13 April, eight others – three monks and five CNRP officials and activists – were released on bail.⁴⁴⁶ On 24 April, the last individual, Ly Seav Minh was also released on bail.⁴⁴⁷ Whereas the women land activists from Boeung Kak and Thmor Kol have been pardoned, the charges against the others remain.

6.1 INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS

The International Covenant on Civil and Political Rights (ICCPR) provides that everyone has the right to liberty and security of person and that no one should be subjected to arbitrary arrest or detention. Further, no one should be deprived of his or her liberty “except on such grounds and in accordance with such procedure as are established by law.”⁴⁴⁸ The ICCPR

⁴⁴³ SR on Cambodia August 2013 report (A/HRC/24/36), para. 27.

⁴⁴⁴ See LICADHO, *LICADHO Calls for the Release of the 19 Men and Women Wrongfully Imprisoned in Prey Sar’s CC1 and CC2 Prisons*, 8 December 2014, available at: <http://www.licadho-cambodia.org/pressrelease.php?perm=366>.

⁴⁴⁵ LICADHO, Flash News, *10 Boeung Kak Lake activists freed following royal pardon, more releases expected*, 11 April 2015, available at <http://www.licadho-cambodia.org/flashnews.php?perm=122>

⁴⁴⁶ LICADHO, Flash News, *Five CNRP and three defrocked monks released following political negotiations*, 13 April 2015, available at <http://www.licadho-cambodia.org/flashnews.php?perm=123>.

⁴⁴⁷ LICADHO, Flash News, *Last of the “Free the 19”, Ly Seav Minh, granted bail by Supreme Court*, 24 April 2015, available at <http://www.licadho-cambodia.org/flashnews.php?perm=124>.

⁴⁴⁸ Article 9(1) of the ICCPR.

also provides that anyone who is arrested must be informed, at the time of the arrest, of the reason for the arrest and promptly informed of any charges against him.⁴⁴⁹

The UN Working Group on Arbitrary Detention regards a deprivation of liberty as arbitrary if it falls into any of the following categories:

- when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (category I);
- when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights (UDHR) and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the ICCPR (category II);⁴⁵⁰
- when the total or partial non-observance of the international norms relating to the right to a fair trial, established in the UDHR and in the relevant instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
- when asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV); and
- when the deprivation of liberty constitutes a violation of the international law for reasons of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability or other status, which aims towards or can result in ignoring the equality of human rights (category V).⁴⁵¹

Those who have been deprived of their liberty are particularly vulnerable to human rights violations and according to the ICCPR “shall be treated with humanity and with respect for their inherent dignity”.⁴⁵² In particular, the ICCPR states that no one shall be subjected to torture, or other cruel, inhuman or degrading treatment or punishment,⁴⁵³ a prohibition

⁴⁴⁹ Article 9(2) of the ICCPR; See also, Principle 10 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 9 December 1988.

⁴⁵⁰ These are the right to equality before the law (UDHR Article 7 and ICCPR Article 26); the right to freedom of movement (UDHR Article 13 and ICCPR Article 12); the right to seek asylum in other countries (UDHR Article 14); the right to freedom of thought, conscience and religion (Article 18 of the UDHR and ICCPR); the right to freedom of opinion and expression (Article 19 of the UDHR and the ICCPR); the right to freedom of peaceful assembly (UDHR Article 20 and ICCPR Article 21); the right to freedom of association (UDHR Article 20 and ICCPR Article 22); the right to participate in public affairs and the right to vote (UDHR Article 21 and ICCPR Article 25); and the right of members of ethnic, religious and linguistic minorities to enjoy their culture, profess and practice their religion, and to use their own language (ICCPR Article 27).

⁴⁵¹ UN Working Group on Arbitrary Detention, *Case of Ali Khassif Saïd Al Qarni*, No. 41/2011 (Kingdom of Saudi Arabia), Communication addressed to the Government on 9 February 2011, para. 2, available at <http://www.unwgadatabase.org/un/Document.aspx?id=2793>.

⁴⁵² Article 10(1) of the ICCPR.

⁴⁵³ Article 7 of the ICCPR.

provided also in the UN Convention against Torture to which Cambodia is also a state party. There are also a range of standards and principles adopted by the international community to reflect best practices around detention and the requirements of international human rights law.⁴⁵⁴

The ICCPR provides that anyone arrested or detained on a criminal charge “shall be brought promptly before a judge...and shall be entitled to trial within a reasonable time or to release.” It further provides that “it should not be the general rule that persons awaiting trial shall be detained in custody”.⁴⁵⁵ The ICCPR also recognises the right to a fair trial, providing that everyone who is charged with a criminal offence “shall have the right to be presumed innocent until proven guilty according to law”⁴⁵⁶ and is “entitled to a fair and public hearing by a competent, independent and impartial tribunal”.⁴⁵⁷ They also have the right to defend themselves “either in person or through legal assistance of [their] own choosing”⁴⁵⁸ and to have “adequate time and facilities for the preparation of [their] defence”.⁴⁵⁹

6.2 NATIONAL LAW AND STANDARDS

Cambodia’s Constitution provides that “[t]he prosecution, arrest, or detention of any person shall not be done except in accordance with the law.”⁴⁶⁰ The Code of Criminal Procedure of the Kingdom of Cambodia (CCPC) stipulates those who are empowered to carry out arrests and under what circumstances. Judicial police, who may be either national police or gendarmes,⁴⁶¹ have the authority to investigate suspected offences and to identify and arrest suspected offenders.⁴⁶² In addition, the CCPC states that: “In case of a flagrant felony or misdemeanour, everyone may arrest the offender and surrender him to the nearest judicial police officer.”⁴⁶³

The Law on Peaceful Demonstrations (LPD) sets out specific circumstances in which the authorities may lawfully detain or arrest individuals in the context of a demonstration. The authorities may temporarily detain, for the duration of a demonstration, persons who, having been given a warning, refuse to refrain from conduct that interferes with the rights and freedoms of others or to surrender “tool(s) which may inflict danger or harm to others”. However, such persons must be released following the demonstration if no other offence has been committed.⁴⁶⁴ The authorities may also arrest demonstrators who carry “weapons or

⁴⁵⁴ See for example, UN Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955; UN Standard Minimum Rules for the Administration of Juvenile Justice, 29 November 1985; UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 9 December 1988; UN Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), 14 December 1990; and the UN Rules for the Protection of Juveniles Deprived of their Liberty, 14 December 1990.

⁴⁵⁵ Article 9(3) of the ICCPR.

⁴⁵⁶ Article 14(2) of the ICCPR.

⁴⁵⁷ Article 14(1) of the ICCPR.

⁴⁵⁸ Article 14(3)(d) of the ICCPR.

⁴⁵⁹ Article 14(3)(b) of the ICCPR.

⁴⁶⁰ Article 38 of the Constitution.

⁴⁶¹ Article 60 of the CCPC.

⁴⁶² Article 56 of the CCPC.

⁴⁶³ Article 87 of the CCPC. The CCPC defines a flagrant felony or misdemeanour as a situation where the alleged offender is either caught in the act of committing an offence or has just committed an offence, where a suspect is being pursued by the public, or where there is some evidence from which it can be concluded that the suspect participated in the commission of an offence.

⁴⁶⁴ Article 23 of the LPD.

explosive substances” and send such persons to a court or other competent institution to be dealt with in accordance with the law.⁴⁶⁵ Anyone who, during the course of a demonstration, commits an offence such as theft, robbery, damage to private property, or violence causing injury or death “shall be punished according to the criminal laws in force”.⁴⁶⁶

The CCPC states that: “In principle, the charged person shall remain at liberty. Exceptionally, the charged person may be provisionally detained”.⁴⁶⁷ Provisional detention may only be ordered in certain limited circumstances specified in the CCPC⁴⁶⁸ and the reasons for a decision to provisionally detain must be explained by the investigating judge in a written order.⁴⁶⁹ The Constitution specifically guarantees the right to a defence, to be equal before the law, and to be “considered innocent until the court has judged finally on the case.”⁴⁷⁰

CAMBODIA’S JUDICIARY

The functioning of the judiciary has been among the major human rights concerns in Cambodia for some time, central as it is to ensuring respect for and protecting human rights.⁴⁷¹ Following a 2010 visit to Cambodia focusing on the judiciary, the Special Rapporteur on the situation of human rights in Cambodia (SR on Cambodia) concluded: “A combination of a lack of adequate resources, organizational and institutional shortcomings, a lack of full awareness of the relevant human rights standards, and external interference, financial or otherwise, in the work of the judiciary, has resulted in an institution that does not command the confidence of people from many walks of life.”⁴⁷² In his August 2014 report, the SR on Cambodia noted that challenges remained, stating: “The performance of the judiciary in practice demonstrates that there is a long way to go” and noting that “...the judiciary continues to be influenced by the executive.”⁴⁷³

For many years, one of the main hindrances to the development of a strong and independent judiciary has been the absence of fundamental laws on the organization and functioning of the judiciary.⁴⁷⁴ In May 2014, while the opposition Cambodian National Rescue Party (CNRP) was boycotting the National Assembly, the ruling Cambodian People’s Party (CPP) passed three crucial laws – the Law on the Organization of the Courts, the Law on the Organization and Functioning of the Supreme Council of Magistracy, and the Law on the Status of Judges and Prosecutors – in quick succession and with little debate or consultation. Amnesty International joined with local and international human rights NGOs to call for the Senate to delay its review of the bills and to seek consultation with the public and civil society to ensure they comply with international standards,

⁴⁶⁵ Article 24 of the LPD.

⁴⁶⁶ Articles 25 and 27 of the LPD.

⁴⁶⁷ Article 203 of the CCPC.

⁴⁶⁸ See Articles 204 and 205 of the CCPC.

⁴⁶⁹ Article 206 of the CCPC.

⁴⁷⁰ Articles 31 and 38 of the Constitution.

⁴⁷¹ See, for example, LICADHO, *Human Rights in Cambodia: The Charade of Justice*, December 2007, available at: <http://www.licadho-cambodia.org/reports/files/113LICADHOREportCharadeJustice07.pdf>; SR on Cambodia September 2010 report (A/HRC/15/46); Amnesty International, *Amnesty International Report 2011*, p. 92; Amnesty International, *Amnesty International Report 2012*, p. 95; Amnesty International and LICADHO, *Submission to the 18th Session of the UPR Working Group*, January/February 2014.

⁴⁷² UN News Centre, “UN human rights expert urges strengthening of Cambodian justice system”, 17 June 2010.

⁴⁷³ SR on Cambodia August 2014 report (A/HRC/27/70), 15 August 2014, para. 40.

⁴⁷⁴ SR on Cambodia September 2010 report (A/HRC/15/46), paras. 47-49.

noting that “the bills, as passed, give the Supreme Council of Magistracy and the Minister of Justice sweeping powers over the country’s Judges and Prosecutors, thereby undermining their independence and formalizing the government’s control over them.”⁴⁷⁵ Concerns over the new laws were also expressed by the UN Special Rapporteur on the independence of judge and lawyers⁴⁷⁶ and the SR on Cambodia.⁴⁷⁷ However, the laws were passed by the Senate and signed into law by the King in July 2014.⁴⁷⁸

The judiciary has frequently been used to harass and silence prominent government critics through criminal trials that Amnesty International and others have deemed unfair. Examples in recent years include the jailing of Boeung Kak activist Yorm Bopha and independent radio station owner Mam Sonando in 2012, both of whom Amnesty International designated prisoners of conscience.⁴⁷⁹ In his final report as SR on Cambodia, Surya Subedi, called on the government to: “Refrain from using the judiciary to intimidate, harass and imprison human rights defenders and trade union representatives”.⁴⁸⁰

6.3 ARBITRARY ARRESTS AND DETENTIONS

“We arrested them because the rally and the expression of their views impacts public order and public security...We sent them to municipal police headquarters, where they will be educated, and we will make an agreement.”

Phnom Penh City Hall Spokesman Long Dimanche, quoted in *The Cambodia Daily*, 21 January 2014⁴⁸¹

Over the past few years, the Cambodian authorities have used arbitrary arrests and detention as a means of disrupting and arbitrarily restricting peaceful assemblies. The Special Rapporteur on the rights to freedom of peaceful assembly and association (SR on assembly and association) has “warn[ed] against the detention of peaceful demonstrators, with a view to preventing their participation in assemblies which are critical of the Government or ruling party.”⁴⁸² These arrests are often carried out by district para-police and the men in plain clothes that often accompany them.

For example, on 6 January 2014, two days after the Ministry of Interior announced that the right to “demonstration by public rallies or marches” had been “provisionally suspended”,⁴⁸³ five women from the Boeung Kak community were surrounded by Daun Penh district para-

⁴⁷⁵ Amnesty International et al., *Civil society condemns the passing of three flawed judicial reform bills and reiterates call for public consultation* (Index: ASA/23/004/2014), 26 May 2014, available at: <https://www.amnesty.org/en/documents/asa23/004/2014/en/>.

⁴⁷⁶ Hul Reaksemey and Lauren Crothers, “UN Expert Calls on King to Block Judicial Laws”, *The Cambodia Daily*, 16 July 2014; Robert Carmichael, “Legal Experts: Cambodia Judicial Laws of ‘Deep Concern’”, *Voice of America News*, 16 July 2014.

⁴⁷⁷ OHCHR, *Cambodia: Lack of consultation on key laws sets worrying pattern for future legislation, warns UN expert*, 27 May 2014. See also, SR on Cambodia August 2014 report (A/HRC/27/70), paras. 36-38.

⁴⁷⁸ Stuart White, “King OKs judiciary laws”, *The Phnom Penh Post*, 15 August 2014.

⁴⁷⁹ Amnesty International, *Convictions of activists in Cambodia demonstrates dire state of justice*, 27 December 2012, available at: <https://www.amnesty.org/en/articles/news/2012/12/convictions-activists-cambodia-demonstrates-dire-state-justice/>; Amnesty International, *Cambodia: Free journalist from two-decade prison sentence*, 4 March 2013.

⁴⁸⁰ SR on Cambodia August 2014 report (A/HRC/27/70), para. 81(m).

⁴⁸¹ The Cambodia Daily staff, “11 Activists Arrested While Petitioning US, French Embassies”, *The Cambodia Daily*, 21 January 2014.

⁴⁸² SR on assembly and association August 2013 report (A/68/299), para. 20.

⁴⁸³ Press Statement of Ministry of Interior, 4 January 2014.

police and men in plain clothes and forcibly put into a waiting van as they tried to deliver a petition to the French embassy in Phnom Penh. The group of women - which included prominent Boeung Kak activists Tep Vanny and Yorm Bopha – were calling for the release of the 23 detained workers and rights monitors, including one of their community representatives, Chan Puthisak, who were arrested in the crackdown on 2 and 3 January 2014.⁴⁸⁴

They were driven to the Phnom Penh municipal police station, where they were detained for eight hours.⁴⁸⁵ Phnom Penh City Hall Spokesman Long Dimanche told newspapers that they had been detained because they had marched in the street without the permission of authorities.⁴⁸⁶ Yorm Bopha told Amnesty International that Phnom Penh Police Chief Chuon Sovann spoke to the group: “*They said now the political situation is in chaos so you better stop with this kind of protest otherwise you will face a serious problem...They made us sign an agreement not to do illegal protesting anymore. This is very wrong, there is no such law saying we cannot march or demand something. So that means we have the right to disobey.*”⁴⁸⁷

Two weeks later, on 21 January 2014, Tep Vanny and Yorm Bopha were again arrested and detained, along with nine others, including the President of the Cambodian Independent Teachers Association, Rong Chhun, while attempting to deliver a petition to the United States embassy with the same message.⁴⁸⁸ Rong Chhun and Tep Vanny were the first to be arrested after each being surrounded by Daun Penh district para-police and forced into waiting vehicles.⁴⁸⁹ The others were arrested shortly after. The group was taken to the Phnom Penh municipal police station where they were detained for five hours. They were released after thumb-printing an agreement stating that they would not induce or participate in illegal demonstrations.⁴⁹⁰

Those who were detained did not appear to have broken any law and were detained by district para-police who have no legal power of arrest. In response to criticism of the use of district para-police to carry out the arrests, Council of Ministers spokesman Phay Siphon reportedly stated: “They are hired by City Hall. We call them ‘police agents’. They are working at private

⁴⁸⁴ Interview with Yorm Bopha, 14 July 2014. See also, Observatory for the Protection of Human Rights Defenders et al., *Cambodia: Harassment, arrest, and detention of human rights defenders continue*, 22 January 2014.

⁴⁸⁵ Interview with Yorm Bopha, 14 July 2014.

⁴⁸⁶ The Phnom Penh Post staff, “Five activists arrested outside embassy”, *The Phnom Penh Post*, 6 January 2014; Aun Pheap, “Anti-Eviction Activists Grabbed Off Street, Detained”, *The Cambodia Daily*, 7 January 2014.

⁴⁸⁷ Interview with Yorm Bopha, 14 July 2014.

⁴⁸⁸ Interview with Yorm Bopha, 14 July 2014. See also, Observatory for the Protection of Human Rights Defenders et al., *Cambodia: Harassment, arrest, and detention of human rights defenders continue*, 22 January 2014.

⁴⁸⁹ Daniel Pye and Khouth Sophak Chakrya, “11 more arrested”, *The Phnom Penh Post*, 21 January 2014; The Cambodia Daily staff, “11 Activists Arrested While Petitioning US, French Embassies”, *The Cambodia Daily*, 21 January 2014.

⁴⁹⁰ Interview with Yorm Bopha, 14 July 2014. See also, Observatory for the Protection of Human Rights Defenders et al., *Cambodia: Harassment, arrest, and detention of human rights defenders continue*, 22 January 2014.

security and are hired by City Hall to enforce public order. I don't see what's wrong with that."⁴⁹¹

The reference to district para-police as "police agents", and the suggestion that there is nothing wrong with them carrying out arrests, is concerning for a number of reasons. "Judicial police agents" are a category of persons legally empowered to perform certain duties under the CCPC. The CCPC distinguishes between the "judicial police", who unless they are senior officials of the police, gendarmes, or local authorities, are required to pass an examination and hold a Higher Diploma of Judicial Police,⁴⁹² and "judicial police agents", who are only required to swear an oath before a court.⁴⁹³

One of the "missions" of judicial police is to "identify and arrest offenders".⁴⁹⁴ However, arresting offenders is not among the "missions" of judicial police agents, which are listed in a separate article of the law.⁴⁹⁵ The CCPC also states that: "Judicial police agents shall not be allowed to perform any duty reserved for judicial police officers."⁴⁹⁶

While the CCPC states that anyone may arrest an offender and surrender him to a judicial police officer "[i]n case of a flagrant felony or misdemeanour", those arrested were not charged with, or accused of committing, any offence. Amnesty International again notes that the ban on "demonstration by public rallies or marches" announced by the Ministry of Interior was not enacted through any law or other legal tool.

Amnesty International is concerned that these detentions, and others that have followed a similar pattern, were arbitrary. Arrests were carried out by persons with no clear legal authorisation and either had no legal basis or were carried out on the basis of sweeping restrictions on assemblies that are unacceptable under Article 21 of the ICCPR. They were not followed by fair judicial proceedings.

Finally, Yorm Bopha's statement that they were informed by Chuon Sovann that they were to refrain from future demonstrations because the "political situation is in chaos" strengthens the impression that the deprivations of liberty of these individuals were the result of their expression of political or other opinions.

6.4 FABRICATED OR TRUMPED UP CHARGES

The Law on Peaceful Demonstrations (LPD) does not set out any specific criminal offences related to participation in or organization of demonstrations. However, Cambodia's courts have used other provisions of the law, mainly under the Penal Code, to harass and imprison prominent activists on charges that have little or no evidentiary basis. Amnesty International is concerned that trumped-up or fabricated charges are used as another form of restriction to

⁴⁹¹ Daniel Pye and Khouth Sophak Chakrya, "Ban foes undeterred", *The Phnom Penh Post*, 22 January 2014.

⁴⁹² Article 60 of the CCPC.

⁴⁹³ Article 77 of the CCPC.

⁴⁹⁴ Article 56 of the CCPC.

⁴⁹⁵ Article 78 of the CCPC.

⁴⁹⁶ Article 78 of the CCPC.

silence those “who express opinions which are not favourable to the Government”⁴⁹⁷ and to discourage demonstrations, however peaceful.

One prominent example of this tactic was the arrest, on consecutive days in September 2012, of two women who had been protesting against the forced evictions of their communities. Yorm Bopha, a member of the Boeung Kak community, was arrested on 4 September 2012 for allegedly planning an attack on a tuk-tuk driver. The following day, Tim Sakmony, a 65-year-old grandmother and member of the Borei Keila community was arrested for allegedly making a “false declaration”. The charge stemmed from a request she had made on behalf of her disabled son to Phanimex, the company redeveloping the Borei Keila area in Phnom Penh, seeking one of the apartments the company had promised the forcibly evicted community.⁴⁹⁸



April 2014: Yorm Bopha (second left) praying in front of police outside Phnom Penh Municipal Court on the day of the trials of 25 individuals arrested on 12 November 2013, and 2 and 3 January 2014. Picture: LICADHO

Both women were held in provisional detention pending trial despite a presumption in favour of liberty before trial in the CCPC.⁴⁹⁹ The Phnom Penh Municipal Court began hearings in both cases on 26 December 2012 in separate courtrooms. Tim Sakmony was convicted of making a false declaration and sentenced to six months’ imprisonment, of which she had

⁴⁹⁷ SR on Cambodia August 2013 report (A/HRC/24/36), para. 27.

⁴⁹⁸ Amnesty International, News: *Cambodia: Free two women campaigning against forced evictions*, 19 December 2012, available at: <https://www.amnesty.org/en/articles/news/2012/12/cambodia-free-two-women-campaigning-against-forced-evictions/>; Amnesty International, *Convictions of activists in Cambodia demonstrates dire state of justice*, 27 December 2012.

⁴⁹⁹ Article 203 of the CCPC.

already served over three months. The remaining three months were suspended and she was released from prison.⁵⁰⁰

Yorm Bopha was convicted of aggravated intentional violence, sentenced to three years' imprisonment and ordered to pay compensation to the alleged victims. Arrest warrants were issued for Yorm Bopha's two brothers, who were tried in absentia.⁵⁰¹ Yorm Bopha spent over a year in jail before the Supreme Court released her on bail on 22 November 2013 and ordered the Court of Appeal to reconsider her case. The charges against her have not been dropped and she could be sent back to jail.⁵⁰²

Ahead of their trials in December 2012, Amnesty International designated Yorm Bopha and Tim Sakmony prisoners of conscience.⁵⁰³ There was little evidence to support the charges against them and Amnesty International considers that they were targeted by the courts as a result of their participation in peaceful protests and their role as prominent representatives of their communities.

On 20 August 2013, Kuch Veng – an activist from Pursat province who had criticized the manner in which a nationwide land titling project had been implemented in his district – was convicted of fraud by the Pursat Provincial Court and sentenced to one year in prison. In an interview with Amnesty International, Kuch Veng stated that an allegation that he had received a bribe from a woman to find employment for her husband with the local police was not supported by evidence and explained that the charge related to his criticism of the land titling project and his past organization of and participation in demonstrations.⁵⁰⁴ In another example of an increasingly common practice in such cases, the court suspended most of the sentence and Kuch Veng was released from prison on 4 September 2013 having served three and a half months in jail.

CNRP officials have also faced judicial harassment after taking part in demonstrations. For example, seven CNRP lawmakers and one official were arrested and charged with criminal offences after a demonstration at Freedom Park on 15 July 2014 that turned violent when district para-police attacked CNRP supporters with batons and sticks, and the supporters

⁵⁰⁰ Amnesty International, *Convictions of activists in Cambodia demonstrates dire state of justice*, 27 December 2012; LICADHO et al., *Legal Persecution of Land Rights Activists Must End and Yorm Bopha Should Be Released Immediately and Unconditionally*, 27 December 2012, available at: <http://www.licadho-cambodia.org/pressrelease.php?perm=300>; LICADHO, *Human Rights 2012: The Year in Review*, February 2013, pp. 9-10.

⁵⁰¹ Amnesty International, *Urgent Action: Cambodian Human Rights Defenders Convicted* (ASA 23/001/2013), 30 January 2013, available at: <https://www.amnesty.org/en/documents/ASA23/001/2013/en/>.

⁵⁰² Amnesty International, *Cambodia: Injustice prevails despite activist's release on bail*, 22 November 2013, available at: <https://www.amnesty.org/en/articles/news/2013/11/cambodia-release-yorm-bopha-just-first-step-against-injustice/>.

⁵⁰³ Amnesty International, *Urgent Action: Women Face Jail for Defending Housing Rights* (ASA 23/020/2012), 17 December 2012, available at: <https://www.amnesty.org/en/documents/ASA23/020/2012/en/>.

⁵⁰⁴ Interview with Kuch Veng, 2 July 2014.

fought back. The Cambodian authorities said that 38 district para-police were injured, some of them critically. At least six CNRP supporters were also injured.⁵⁰⁵

The eight CNRP officials were charged with instigating aggravated intentional violence (Articles 28 and 218 of the Penal Code), inciting others to commit a felony (Article 495 of the Penal Code) and, most seriously, leading an insurrection (Article 450 of the Penal Code). After spending a week in detention at Prey Sar prison they were released on bail on 22 July 2014, hours after a political deal was reached between the CNRP and CPP in which the CNRP agreed to end its boycott of the National Assembly.⁵⁰⁶

The Implementation Guide to the LPD states that demonstration leaders must not be held responsible for offences committed during a demonstration if they were not involved in the offences,⁵⁰⁷ a principle endorsed by the SR on assembly and association.⁵⁰⁸ Amnesty International spoke with a number of human rights monitors and other eyewitnesses who were present on 15 July 2014 and has reviewed video footage of the clash. No evidence was found to support the charges and a number of eyewitnesses stated that CNRP lawmakers were calling for calm and non-violence. In his August 2014 report, the SR on Cambodia commented on the case, stating: "...the lack of material evidence needed for their arrests on very serious charges and their speedy release on the evening of the successful negotiations between the two parties on 22 July clearly reveal the extent to which the judiciary continues to be influenced by the executive."⁵⁰⁹

Three CNRP youth leaders were subsequently arrested on 2 August 2014 and charged with joining an insurrection and other offences.⁵¹⁰ They were detained in provisional detention but released on bail on 22 August.⁵¹¹ Between 29 September 2014 and 13 November 2014, a further four CNRP officials, activists and supporters – Sum Puthy, CNRP council member for Chbar Ampov district, arrested 29 September 2014; Meach Sovannara, Chief of the CNRP Information Department, arrested 11 November 2014; Ke Khim, a tuk-tuk driver and CNRP supporter who is accused of transporting flags to Freedom Park on 15 July and who was also arrested on 11 November; and Tep Narin, a CNRP youth member, arrested 13 November – were arrested, charged with offences arising from the events on 15 July, including participating in an insurrection movement, and held in provisional detention. A fifth individual, CNRP activist Ouk Pich Samnang was charged in relation to the events on 15 July as well as in relation to another demonstration pertaining to a land dispute on 20 October 2014. During that demonstration, Ouk Pich Samnang was kicked in the head by Daun Penh para-police as he lay on the ground.

⁵⁰⁵ Amnesty International, *Urgent Action: Opposition Party Members Arrested, Charged* (ASA Index 23/006/2014), 15 August 2014, available at: <https://www.amnesty.org/en/documents/ASA23/006/2014/en/>.

⁵⁰⁶ Amnesty International, *Urgent Action: Opposition Party Members Arrested, Charged* (ASA Index 23/006/2014), 15 August 2014.

⁵⁰⁷ Section 4, paragraph 1.5.1 of the Implementation Guide.

⁵⁰⁸ SR on assembly and association May 2012 report (A/HRC/20/27), para. 31.

⁵⁰⁹ SR on Cambodia August 2014 report, (A/HRC/27/70), para. 41.

⁵¹⁰ Amnesty International, *Urgent Action: Opposition Party Members Arrested, Charged* (ASA Index 23/006/2014), 15 August 2014.

⁵¹¹ LICADHO, Flash News: *Three CNRP youth leaders released on bail*, 22 August 2014, available at: <http://www.licadho-cambodia.org/flashnews.php?perm=76>.

During a previous demonstration, on 2 May 2014, Ouk Pich Samnang was beaten on the head and sustained a wound which required four stitches (see above, p. 59). He was arrested on 24 October 2014.

On 13 April 2015, the five CNRP officials and activists were released on bail together with three monks following a deal between the CPP and CNRP which also resulted in 10 women land activists being pardoned and released on 11 April 2015. The charges against the five CNRP officials and activists – as well as the charges against the three monks – remain in place and they face prison sentences of between 15 and 30 years each if the cases against them proceed and they are convicted.⁵¹²



March 2015: Ouk Pich Samnang is escorted from the Phnom Penh Appeal Court. © Siv Channa/The Cambodia Daily

Amnesty International is concerned that the legal action taken against CNRP officials, activists and supporters is arbitrary, politically motivated and designed to silence dissent, in violation of the rights to freedom of expression and peaceful assembly and to freedom from arbitrary detention.⁵¹³ The charges of leading an “insurrection”, which carry a possible 30-year prison sentence, are particularly far-fetched, and tend to support the conclusion that the charges are politically motivated. An insurrection is defined in the Penal Code as “[a]ny collective violence likely to endanger the institutions of the Kingdom of Cambodia or to undermine the integrity of national territory”.⁵¹⁴

⁵¹² LICADHO, Statement: *LICADHO Calls for the Release of the 19 Men and Women Wrongfully Imprisoned in Prey Sar’s CC1 and CC2 Prisons*, 8 December 2014.

⁵¹³ Amnesty International, *Urgent Action: Opposition Party Members Arrested, Charged* (ASA Index 23/006/2014), 15 August 2014.

⁵¹⁴ Article 456 of the Penal Code.

6.5 FLAWED OR UNFAIR TRIALS

The trials of those charged with criminal offences for alleged conduct committed during demonstrations have often been criticised by human rights monitors attending the trials as flawed and failing to meet the international fair trial standards that Cambodia is obliged to respect as a state party to the ICCPR and other international human rights treaties.

On 25 April 2014, the Phnom Penh Municipal Court commenced three separate hearings for 25 individuals charged with committing aggravated intentional violence (and in some cases other offences) during the labour strikes in November 2013 and January 2014. The charges related to three different incidents: in Phnom Penh's Stung Meanchey district on 12 November 2013 (two accused), in front of Yakjin garment factory on 2 January 2014 (10 accused) and at Veng Sreng Street on 2 and 3 January 2014 (13 accused).



April 2014: Sokun Sambath Piseth (left) and Vorn Pao call to supporters and journalists as they are driven away from Phnom Penh Municipal Court following the completion of their trials. © Siv Channa / The Cambodia Daily

All 25 were convicted of offences and given prison sentences ranging from six months to four-and-a-half years. However, the court suspended the prison sentence of each individual and released them on 30 May 2014. All three of the trials were condemned as unfair and seriously flawed by both local and international human rights groups.⁵¹⁵ The coordinated

⁵¹⁵ Human Rights Watch, *Cambodia: Stung Meanchey Trial Deeply Flawed*, 11 May 2014; Cambodian Center for Human Rights, *CCHR calls for acquittal of "the 23" and their immediate release*, 29 May 2014; LICADHO et al, *Phnom Penh Court orders conviction with suspended sentences for 25 workers and activists*, 30 May 2014; ADHOC et al, *Joint Statement: The Decision Not to Acquit the 25 is an Injustice*, 30 May 2014; Human Rights Watch, *Cambodia: Quash Convictions of 25 Activists, Workers - Insufficient Evidence Presented in Politically Motivated Trials*, 1 June 2014; International Senior

timing of the trials and uniformly suspended sentences suggest that the cases were influenced by external considerations, including concerns that international retailers buying garments from Cambodia could cut orders out of concern for the impact that such cases would have on their brand images at home.⁵¹⁶ In each of the three trials, the presiding judge vigilantly suppressed any testimony or discussion relating to the conduct of the security forces.⁵¹⁷

At least two children were among those arrested and placed on trial on 25 April 2014. Meas Non was 14-years-old at the time of his arrest on 12 November 2013 in Stung Meanchey. Meas Non reportedly suffers from epilepsy and a minor intellectual disability.⁵¹⁸ Yong Sok Chea was 17-years-old at the time of his arrest on 2 January 2014 on Veng Sreng Street.

International human rights law requires that children, those under the age of 18,⁵¹⁹ receive differentiated treatment during the criminal justice process.⁵²⁰ Cambodia's Penal Code states that the age of criminal responsibility is 18 years.⁵²¹ It establishes a presumption against the criminal conviction of juveniles, stating that "minors who committed an offence are subject to the measures of surveillance, education, protection and assistance." However, the court may hand down a criminal conviction against a minor, "if the circumstances of the offence or the personality of the minor justify in [sic] doing so".⁵²²

As previously noted, despite the CCPC stating that "[i]n principle, the charged person shall remain at liberty", Cambodia's courts regularly abuse pre-trial detention, seemingly using it as a punitive measure, and this practice extends to children.

Lawyers Project and Destination Justice, *Trial Monitoring Report: Observation of the Trials of 23 Persons Criminally Charged in Connection with the Garment Workers Protests in Phnom Penh, Cambodia on January 2 and 3, 2014*, 26 September 2014.

⁵¹⁶ International retailers, including H&M, Levi Strauss, and GAP, together with international union IndustriALL Global Union met with Deputy Prime Minister Keat Chhon in advance of the trials of the 25 "to continue a dialogue regarding international concerns of the treatment of Cambodian garment workers, some of who have been killed or wounded and others who have been detained by security forces". In a joint statement following the meeting, the brands and IndustriALL expressed their concern that the "outcome of the judicial process for the detainees must be based on evidence, and stands up to international scrutiny to build trust and confidence". IndustriALL, H&M, Levi Strauss, GAP, et al, *Joint Statement, Cambodia May 2014*, available at http://www.industrial-union.org/sites/default/files/uploads/documents/Cambodia/statement_-_brands_and_unions_cambodia_meeting_may_2014_final.docx. See also, Sean Teehan and Mom Kunthea, "Brands back wage bump: unionist", *The Phnom Penh Post*, 27 May 2014; Robert Carmichael, "Brands warn problems could see them quit Cambodia", *Deutsche Welle*, 28 May 2014; Joshua Lipes, "Groups Demand Fair Court Verdict for 23 Cambodian Workers, Activists", *Radio Free Asia*, 29 May 2014.

⁵¹⁷ Human Rights Watch, *Cambodia: Stung Meanchey Trial Deeply Flawed*, 11 May 2014; Human Rights Watch, *Cambodia: Quash Convictions of 25 Activists, Workers - Insufficient Evidence Presented in Politically Motivated Trials*, 1 June 2014.

⁵¹⁸ Human Rights Watch, *Cambodia: Steung Meanchey Trial Deeply Flawed*, 11 May 2014.

⁵¹⁹ Article 1 of the Convention on the Rights of the Child defines a "child" as "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".

⁵²⁰ See, for example, the ICCPR; the Convention on the Rights of the Child; the UN Rules for the Protection of Juveniles Deprived of their Liberty; and the UN Standard Minimum Rules for the Administration of Juvenile Justice.

⁵²¹ Article 38 of the Penal Code.

⁵²² Article 39 of the Penal Code.

The Convention on the Rights of the Child, to which Cambodia is a state party, provides: “*The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.*”⁵²³ Both boys were initially held in pre-trial detention. Meas Non was denied bail by the Phnom Penh Municipal Court on 2 December 2013 despite reported assurances from his family that he would return to court.⁵²⁴ After a second bail hearing he was released in January 2014. Yong Sok Chea was also held in pre-trial detention, including for two weeks in a remote, maximum-security prison for Cambodia’s most serious offenders. He was later transferred to another prison and then released on bail on 8 February 2014.⁵²⁵ Given their legal status as juveniles Meas Non and Yong Sok Chea should never have placed in provisional detention.

The ICCPR provides that in criminal proceedings involving juveniles, “the criminal procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.”⁵²⁶ There was no evidence of a differentiated procedure during the trials of Meas Non and Yong Sok Chea in recognition of their status. The Committee on the Rights of the Child has emphasised that where children are concerned “the competent authorities...should continuously explore the possibilities of alternatives to a court conviction.”⁵²⁷ The Committee also stated that “*the reaction to an offence should always be in proportion not only to the circumstances and the gravity of the offence, but also to the age, lesser culpability, circumstances and needs of the child.*”⁵²⁸ Despite these provisions both boys were convicted.

In another example of a flawed and unfair trial introduced at the beginning of this chapter, representatives of the Boeung Kak community in Phnom Penh were again imprisoned in November 2014 for their activism. On 10 November, seven women housing rights defenders from the community were arrested after desperate residents from the neighbourhood gathered outside Phnom Penh City Hall to hold a peaceful protest about flooding in their neighbourhood, including sewage water, which they said the authorities have done nothing to address.⁵²⁹ During the protest a bed frame was reportedly pulled onto the road and scuffles broke out as district para-police removed it.⁵³⁰ The women were detained overnight at traffic police headquarters and brought to the Phnom Penh Municipal Court the next day, where they were charged with obstructing traffic under Article 78 of the Traffic Law. They were tried, convicted, and each sentenced to one year’s imprisonment and fined an equivalent to USD 500. The trial lasted less than three hours. The seven women imprisoned are Nget

⁵²³ Article 37 of the Convention on the Rights of the Child.

⁵²⁴ Lauren Crothers, “No Bail for Teens Arrested After Factory Clashes”, *The Cambodia Daily*, 3 December 2013.

⁵²⁵ Interview with Yong Sok Chea, 29 October 2014.

⁵²⁶ Article 14(4) of the ICCPR.

⁵²⁷ Committee on the Rights of the Child, General Comment No. 10, Children’s rights in juvenile justice, UN Doc. CRC/C/GC/10, 2007, para. 68.

⁵²⁸ Committee on the Rights of the Child, General Comment No. 10, Children’s rights in juvenile justice, UN Doc. CRC/C/GC/10, 2007, para. 71.

⁵²⁹ Amnesty International, *Urgent Action: Women Defenders and Buddhist Monk Sentenced* (AI Index: ASA 23/007/2014), 14 November 2014; LICADHO et al., *Joint Statement: Civil Society Groups Condemn Arrest and Detention of the Boeung Kak Lake Seven*, 12 November 2014, available at: <http://www.licadho-cambodia.org/pressrelease.php?perm=361>.

⁵³⁰ Mech Dara, “Activists Arrested for Blocking Traffic With Bed”, *The Cambodia Daily*, 11 November 2014; Khouth Sophak Chakrya, “At the speed of ‘justice’”, *The Phnom Penh Post*, 12 November 2014.

Khun, Tep Vanny, Song Srey Leap, Kong Chantha, Phan Chhunreth, Po Chorvy and Nong Sreng.

During the seven women's trial on 11 November, three more women housing rights defenders – Heng Pich, Im Srey Touch and Phuong Sopheap – and a Buddhist monk, Venerable Soeung Hai, were arrested outside the court while peacefully protesting with others to call for the seven's release. On 12 November, the four were charged with obstructing a public official with aggravating circumstances under Article 504 of the Penal Code. After a trial lasting around three hours, they were each convicted and sentenced to one year in jail and a fine equivalent to USD 500.⁵³¹

Amnesty International considers that the 11 individuals who were imprisoned should never have been prosecuted in the first place. They were exercising their human rights to freedom of peaceful assembly and freedom of expression. The Cambodian authorities are legally obliged to respect, protect and facilitate the exercise of these rights and, as outlined above, arrests of individuals exercising these rights constitute arbitrary deprivations of liberty. As previously noted, the SR on assembly and association has stated that “the free flow of traffic should not automatically take precedence over freedom of peaceful assembly”⁵³² and outlined that “spaces in the vicinity of iconic buildings ...should also be considered public space, and peaceful assemblies should be allowed to take place in those locations.”⁵³³

On 26 January 2015, the appeal of the 11 was heard by the Court of Appeal in Phnom Penh. In a process characterized by a lack of respect for the fair trial rights of the appellants, the Court of Appeal upheld their convictions but, in most cases, reduced their sentences. The sentence of 75-year-old Nget Khun was reduced to six months in jail and a fine of USD 375 whereas the sentences of Kong Chantha, Song Sreyleap, Nong Sreng, Po Chory, and Phan Chhunreth, all of whom were arrested on 10 November, as well as Heng Pich, Im Srey Touch, and Phuong Sopheap, who were arrested on 11 November, were reduced to 10 months in jail and a fine of USD 375. While the fine imposed on Tep Vanny was reduced from USD 500 to USD 375, her prison sentence of one year was upheld. Venerable Soeung Hai's sentence of a year in jail and a fine of USD 500 was also upheld.⁵³⁴

The 11 were released in April 2015 following an agreement between the CPP and CNRP. Whereas the 10 women land activists were pardoned and released on 11 April,⁵³⁵ Venerable Soeung Hai – who also faces charges of forging public documents, under Article 630 of the Penal Code, and the unauthorized wearing of Buddhist robes, under Article 508 of the Penal Code⁵³⁶ – was released on bail on 13 April 2015.⁵³⁷ Amnesty International understands that

⁵³¹ Amnesty International, *Urgent Action: Women Defenders and Buddhist Monk Sentenced* (AI Index: ASA 23/007/2014), 14 November 2014; LICADHO, Flash News: "Additional on year prison sentences for three land activists and one defrocked monk in Phnom Penh", 12 November 2014.

⁵³² SR on assembly and association May 2012 report (A/HRC/20/27), para. 41.

⁵³³ SR on assembly and association April 2013 report (A/HRC/23/39), para. 66.

⁵³⁴ LICADHO et al, *Civil Society Groups Condemn the Ongoing Detention of 11 Activists*, 26 January 2015, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=370>.

⁵³⁵ LICADHO, Flash News, *10 Boeung Kak Lake activists freed following royal pardon, more releases expected*, 11 April 2015, available at <http://www.licadho-cambodia.org/flashnews.php?perm=122>.

⁵³⁶ LICADHO, *LICADHO Calls for the Release of the 19 Men and Women Wrongfully Imprisoned in Prey Sar's CC1 and CC2 Prisons*, 8 December 2014.

⁵³⁷ LICADHO, Flash News, *Five CNRP and three defrocked monks released following political*

his conviction stands and he has been bailed pending appeal and pending trial on the remaining charges.

This chapter has highlighted the role of the judicial authorities in suppressing dissent. Rather than punishing criminal behaviour, the courts are often used to curtail freedom of peaceful assembly and, in particular, active opposition to government policies or actions. The criminal process is one of gradation involving arbitrary arrests and detentions, fabricated or trumped up charges, flawed judicial proceedings and imprisonment. Throughout the judicial process, the individual who is the subject of the proceedings is to some extent given the opportunity, whether implicitly or expressly, to determine the extent of and outcome of the proceedings against him/her. At the heart of these proceedings is an understanding that those who refrain from activism can avoid punishment while those who persist are more likely to feel the full force of criminal sanction.

There is clear contrast between the zeal with which Cambodia's prosecutors have pursued charges against participants and organizers of assemblies and the lack of diligence in investigating and prosecuting perpetrators of unnecessary and excessive use of force against protesters. Cambodia's courts should refrain from using criminal charges to intimidate and punish human rights defenders and others for exercising their human right to freedom of peaceful assembly. Where there is evidence that someone has committed a criminal offence, that person should be tried by an independent court and accorded all the fair trial rights to which they are entitled under national and international law. Where charges have no basis in law or fact they should be dropped.

negotiations, 13 April 2015, available at <http://www.licadho-cambodia.org/flashnews.php?perm=123>.

CONCLUSION AND RECOMMENDATIONS

“...participating in peaceful protests is an alternative to violence and armed force as a means of expression and change...peaceful protests should not be viewed as a threat.”

Special Rapporteur on the rights of freedom of peaceful assembly and of association⁵³⁸

In his final report to the Human Rights Council before stepping down from the mandate, Surya Subedi, the Special Rapporteur on the human rights situation in Cambodia (SR on Cambodia) stated in August 2014 that he “sensed the optimism and desire for change” in Cambodia.⁵³⁹ Progress has been made in some areas during a sustained period of peace, stability and economic growth over the last decade. However, with protests and other assemblies on the rise, there appears to have been a change in the mind-set of large portions of the Cambodian population who are now demanding more. With the 2013 election proving a major catalyst, people throughout the country have taken to the streets in numbers and with a frequency never before seen in Cambodia to raise concerns in relation to manifold economic, social, and political issues.

The government is aware of the change in attitudes amongst ordinary citizens, and officials have spoken publicly about the increased number of demonstrations that are taking place. But these comments have tended to show a continued apprehension about the exercise of the right to freedom of peaceful assembly on the part of officials who have sought to discourage citizens from publicly raising awareness about issues affecting their lives, livelihoods, and country. However, the line taken by these officials is out-of-date. Ordinary citizens throughout the country are actively seeking levels of respect for the right to freedom of peaceful assembly that go beyond the limits of the Law on Peaceful Demonstrations (LPD), and which are more in line with international law and standards.

This report has analysed the shortcomings in Cambodia’s legislative framework that have contributed to unnecessary and unjustified restrictions on freedom of peaceful assembly. It has shown that while the enactment of the LPD ushered in a period involving less restrictions

⁵³⁸ SR on assembly and association August 2013 report (A/68/299), para. 17.

⁵³⁹ SR on Cambodia August 2014 report (A/HRC/27/70), para.78.

on the right, the law itself is not consistent with international human rights law and standards. The report has outlined specific shortcomings in the legal framework created by the LPD, including the onerous and unduly bureaucratic notification scheme governing demonstrations and other assemblies, the inadequacy of the dispute resolution process, and the absence of exemptions from notification requirements for smaller demonstrations, those conducted on private or collective property, and spontaneous gatherings. In order for the legal framework to be brought in line with international standards, these shortcomings must be addressed through amendments to the LPD.



September 2013: A small group of people overlook a large demonstration near Phnom Penh's Wat Phnom. © Thomas Cristofolletti / Ruom

Where organizers have attempted to proceed with assemblies, authorities have often sought to obstruct and disperse them even in the absence of violence or any genuine threat to public order, national security or the other limited interests that justify restrictions on the right to freedom of peaceful assembly. The authorities have also sought to impose the provisions of the LPD on assemblies that expressly fall outside its scope, including trainings, workshops, public forums, and meetings. In order to ensure that local authorities fulfil their obligation to respect and protect the right to freedom of assembly, the government must remind local authorities of the limits of the LPD and must provide them with training as to the correct understanding of the right to freedom of peaceful assembly.

This report has identified five areas of particular concern with regard to the unnecessary and/or excessive use of force by law enforcement personnel responsible for policing demonstrations and other assemblies: use of force by auxiliaries of the State, most notably district para-police and men in plain clothes; the targeting of journalists and human rights monitors; punitive force in carrying out arrests; misuse of equipment and use of inappropriate

weapons; and the unjustified use of lethal force. These issues highlight the urgent need for law enforcement reform in Cambodia. Specifically, the government must take steps to ensure clarity and transparency in the policing of demonstrations, by transferring all functions for policing demonstrations from district para-police to police or another force whose authority is clearly grounded in law and whose personnel is trained and equipped to carry out its tasks while respecting and protecting human rights law and standards.

The State violence described in this report underscores the need for a comprehensive code of conduct on the use of force for all law enforcement personnel. Amnesty International urges the government to take immediate steps to ensure the creation of a clear code, whether through the enactment of a law or regulation, that reflects international human rights law, including the International Covenant on Civil and Political Rights and the Convention against Torture, as well as international standards on the use of force and firearms, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The code of conduct should clearly define the circumstances in which law enforcement personnel may resort to force and firearms, and should include clear guidance on the types of weapons that may be carried by different categories of law enforcement personnel in specific situations, including demonstrations and other assemblies.

This report has also shown a culture of impunity surrounding human rights violations committed in the context of demonstrations and other assemblies. Rather than encouraging and facilitating criminal complaints, authorities have shown hostility towards complainants while prosecutors have failed to process complaints according to the provisions of the Code of Criminal Procedure of the Kingdom of Cambodia. Amnesty International notes a marked contrast between the treatment of complaints by the victims of human rights violations which rarely appear to go anywhere and the fast-track process observed when prosecutors charge and courts try, convict, and imprison demonstration participants and organizers. The contrast in treatment is in violation of Cambodia's obligations under international human rights law and the Constitution to ensure equality of treatment before the courts.

Of particular concern is Cambodia's failure to investigate and bring to justice those responsible for the deaths of at least six individuals shot dead by security forces on 15 September 2013, 12 November 2013, and 3 January 2014. In each case, the official response to the events followed a set pattern in which investigations were announced by the government without results being disclosed to the public and without action being taken by the courts.

These failures, along with the failure of the authorities to provide information as to steps made to investigate the disappearance of 16-year-old Khem Saphath, are part of a wider, long-standing pattern of impunity for security forces. The government must take immediate measures to break the cycle of violations and impunity including through the publication of information pertaining to the investigations into the deaths of the six individuals and the disappearance of Khem Saphath. Ultimately, the key to ending impunity in Cambodia will be to establish and maintain independent institutions, including an independent judiciary.

Rather than bringing to justice the perpetrators of human rights violations and ensuring redress for victims, the role of the criminal justice system in Cambodia where demonstrations

and other assemblies are concerned is all too often to intimidate those who organize and participate in them. The extent to which individuals and groups become the target of the judiciary is less to do with any criminal behaviour on their part and more often directly linked to the extent to which they are organizing and engaging in acts which criticise the government or its policies. This report has examined how, in recent years, members of communities locked in land disputes, union leaders and workers calling for better working conditions, and representatives of the political opposition have been subject to arbitrary arrests and detentions, fabricated and trumped charges, unfair trials and imprisonment. The fair trial standards set out in international human rights law and domestic law have been discarded, as the judiciary has sought to silence dissent and make an example of those who voice it publicly and collectively through exercising their right to freedom of assembly.

The following are Amnesty International's detailed recommendations to the Cambodian authorities. These recommendations include changes in law, policy and practice to ensure justice for the victims of violations outlined in this report and future compliance with international law and standards on the right to freedom of peaceful assembly as well as other salient rights guaranteed by the international instruments to which Cambodia is a state party, including the right to a fair trial, the right to a remedy, the right to life and the right to freedom from torture and other ill-treatment.

END ARBITRARY RESTRICTIONS ON THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

1. Publicly reaffirm the government's commitment to respect, protect and facilitate the human right to freedom of peaceful assembly, in accordance with international human rights law and standards;
2. Amend Article 41 of the Constitution of the Kingdom of Cambodia so that grounds for imposing restrictions on the right to freedom of assembly conform with those provided in the International Covenant on Civil and Political Rights (ICCPR) Article 21. Specifically, the term "to effect the good traditions of the society", which is inconsistent with ICCPR Article 21, should be removed from Article 41;
3. Amend the Law on Peaceful Demonstrations (LPD) to conform with international law and standards on the right to freedom of peaceful assembly as follows:
 - a. Include express presumption in favour of allowing demonstrations and other assemblies falling under the LDP to proceed;
 - b. Remove "good customs of the national society" as a means to justify a limitation on the freedom of peaceful assembly in Article 2;
 - c. Ensure that notification procedures follow guidelines by the UN Special Rapporteur on the rights to freedom of peaceful assembly and association; are not unduly bureaucratic and provide for notification to be made in the "simplest and fastest way" possible, including:
 - i. reducing the maximum notification period, for instance to 48 hours ahead of

- the day the assembly is planned to take place;
- ii. reducing the requirement for names or organizers from three to one;
 - iii. removing the requirement for the provision of formal identification of organizers;
 - iv. removing the requirement for the provision of information on the exact number of participants expected to take part;
 - v. providing for a procedure whereby organizers fill out a clear and precise form containing information as to the date, time, duration, and location or itinerary of the assembly, and the name, address, and contact details of the organizer;
- d. Ensure that notification requirements do not apply to assemblies that do not exceed a specified minimum number of participants or to assemblies that take place at a freedom park or on private or collective property;
- e. Explicitly recognise spontaneous assemblies and exempt them from the notification process;
- f. Explicitly provide that assemblies are not to be dispersed, regardless of whether notification has been submitted, if they are peaceful and do not pose a serious threat to public safety, national security, public order or the rights and freedoms of others;
- g. Remove all language which indicates a requirement for approval by the authorities for assemblies, including references to approval in Articles 10 and 20, and the use of the term “shall respond positively” in Article 9 which implies a requirement for approval;
- h. Provide for a dispute resolution process pertaining to decisions by the provincial or municipal authorities to impose restrictions on or to prevent an assembly from taking place, including:
- i. requiring the provision by the authorities of a detailed and timely written explanation setting out the reasons for proposed restrictions on the assembly. The explanation should set out how the restrictions in question meet the three-part test of legality, legitimate purpose, and necessity;
 - ii. guaranteeing the organizers the right to be heard in person or to present a submission to the Ministry of Interior against the decision of the provincial or municipal authorities;
 - iii. providing for a right to appeal before an impartial and independent body, such as a court, against any decision by the Ministry of Interior to uphold restrictions or to prevent an assembly from taking place.
4. Provide training for provincial and municipal authorities on the right to freedom of peaceful assembly, the LPD, and its fair and correct implementation, in particular regarding the imposition of restrictions or bans on assemblies. The training curriculum should include guidance on the following:
- a. Restrictions on assemblies must meet the strict three-part test of legality, legitimate purpose, and necessity;

- b.** Prohibiting an assembly is a measure of last resort which may only be used to avert serious consequences such as violence or extensive disruption, where a less restrictive response would not achieve the legitimate aim pursued by the authorities;
 - c.** Authorities must refrain from dispersing assemblies that were notified to the authorities, in the absence of violence;
 - d.** The provisions of the LPD must not be invoked in order to justify restrictions on forms of gathering that fall outside its scope, including strikes, gatherings for religious purposes, meetings, etc.;
 - e.** Authorities must take measures to protect against and must refrain from acts of intimidation against businesses and property owners who host meetings and other peaceful assemblies;
 - f.** The commencement of an election campaign is not a justifiable reason to impose restrictions on freedom of peaceful assembly;
 - g.** Authorities must refrain from conducting surveillance at peaceful meetings and public forums and end the practice of calling participants for questioning after the conclusion of such events and activities.
- 5.** Revise the Act Amending the Law on the Election of Members of the National Assembly in order that its content conforms to international law and standards on the right to freedom of peaceful assembly, as follows:
- a.** Insert a provision reiterating the right to freedom of peaceful assembly throughout the period of election campaigns and elections;
 - b.** Remove the numerical limitation on the number of marches and rallies that a political party is permitted to organize during the period of an election campaign;
 - c.** Remove limitations on the right to peaceful assembly of civil society groups, including the provision precluding them from participating in rallies or meetings of a political party or a candidate.

ENSURE PROPER POLICING OF ASSEMBLIES

- 6.** Transfer all responsibility for policing assemblies from district para-police to police or other law enforcement personnel whose authority is clearly grounded in law, and who are trained and equipped to carry out their tasks in accordance with international human rights law and standards, in particular as regards the use of force and firearms;
- 7.** Establish recruitment and training policies and procedures for all law enforcement personnel, including the National Police and the Royal Gendarmerie, that conform to international standards including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles). This includes ensuring:

- a. Law enforcement officials are “selected by proper screening procedures”, “have appropriate psychological and physical qualities”, and “receive continuous and thorough training”;
 - b. Law enforcement officials are provided with training and tested in accordance with appropriate proficiency standards in the use of force. In the provision of such training, special attention should be given to issues of police ethics and human rights, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation;
 - c. Law enforcement officials’ continued fitness to perform their functions is subject to periodic review.
8. Publish information clarifying the command authority for the National Police and the interplay between the command authority of the Prime Minister, Ministry of Interior, Commissioner General of the National Police, and local authorities;
 9. End the use of men in plain clothes in the direct policing of assemblies and ensure full implementation of the requirement in Article 19 of the LDP that “[c]ompetent authorities designated to maintain security, safety and public order at venues of peaceful assembly shall wear proper uniforms and display name plates and identity codes on the front parts of their uniforms”;
 10. Ensure that law enforcement officials respect the right to freedom of expression of all participants in assemblies and the right of the public to information; ensure that journalists can carry out their work without unwarranted interference, including recording and disseminating information about events and the actions of the police and other security forces;
 11. Ensure that law enforcement officials also respect the rights of citizen journalists, human rights monitors and ordinary citizens to document human rights violations whenever and wherever they occur;
 12. Ensure that law enforcement agencies and officials communicate with organizers and participants before and during the assembly in order to create mutual understanding, reduce tension and avoid unnecessary confrontation, and to find ways to prevent violence or to stop any such incidents quickly in the event that they break out;
 13. Ensure that law enforcement officials do not disperse peaceful assemblies on the pretext that they have not complied with prior notification requirements;
 14. Ensure that any decision to disperse an assembly is taken in line with the restrictions allowed by international human rights law on assemblies; and that the order to disperse is clearly communicated and explained, so as to obtain, as far as possible, the understanding and compliance of the demonstrators, and sufficient time for them to disperse;
 15. Provide training to law enforcement personnel in conducting arrests in conformity with international human rights law and standards, including freedom from arbitrary arrest, the

right of every person being arrested to be informed, at the time of arrest, of the reasons for his or her arrest and to be promptly informed of any charges against him or her and the right to freedom from torture and other ill-treatment.

END UNNECESSARY AND EXCESSIVE USE OF FORCE

16. Enact legislation and issue detailed implementing regulations setting out a comprehensive code of conduct on the use of force for all law enforcement personnel. The code of conduct should fully comply with and reflect relevant international standards including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles. The laws and regulations should include the following:

- a.** Law enforcement personnel must apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result;
- b.** If use of force and firearms is unavoidable, law enforcement personnel must:
 - i.** Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
 - ii.** Minimize injury and respect and preserve human life;
 - iii.** Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
- c.** Law enforcement personnel must use firearms only when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offenders;
- d.** Law enforcement personnel must not use firearms against persons except in self-defence or defence of others against imminent threat of death or serious injury and only when less extreme measures are insufficient to achieve these objectives;
- e.** Intentional lethal use of firearms may only be made when strictly unavoidable to protect life where other means are ineffective or without any promise of result;
- f.** Arbitrary or abusive use of force and firearms by law enforcement personnel must be punished under the criminal law;
- g.** In cases of death and serious injury or other grave consequences, a prompt, independent, impartial and effective investigation must be launched, and a detailed report sent to the competent authorities;
- h.** The laws or regulations should provide for the establishment of effective reporting and review procedures for all incidents in which law enforcement officials use firearms in the performance of their duties or where injury or death is caused by the use of force or firearms by law enforcement officials. Specifically, the law or regulation should provide that:

- i. Independent administrative or prosecutorial authorities shall exercise jurisdiction in such cases;
 - ii. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control;
 - iii. Persons affected by the use of force and firearms shall have recourse to an independent review process, in person or through their legal representatives, including a judicial process. In the event of the death of such persons, this should apply to their dependents.
- i. The laws or regulations should provide clear guidelines on the types of weapons that may be carried by different categories of law enforcement personnel in specific situations, including demonstrations and other assemblies. In keeping with the UN Basic Principles, this should include a range of means as broad as possible and provide for equipping law enforcement personnel with various types of means including, where appropriate, weapons and ammunition to allow for a differentiated use of force and firearms. This should include the development of non-lethal weapons for use in appropriate situations with a view to increasingly restraining the application of means capable of causing death or injury to persons. Specifically, the law or regulation should include:
- i. Clear guidance on the categories of law enforcement officials that can carry weapons generally, and firearms specifically;
 - ii. Clear guidance setting out the types of weapons that can be used in particular situations;
 - iii. A prohibition of the use of high velocity automatic weapons in the policing of demonstrations and other assemblies;
 - iv. A prohibition of the use of improvised weapons, including sticks, metal bars, and slingshots, and weapons that serve no policing function or that have inherent effects likely to result in unwarranted harm;
 - v. Clear guidance on the use of different categories of non-lethal weapons.

17. Amend or repeal article 6.10 of Declaration No. 006 on the Discipline of the National Police Force, so to remove the sweeping authority of police to use firearms to protect public or private property. Upon the enactment of the laws and regulations setting out a comprehensive code of conduct on the use of force by all law enforcement personnel, reference to these guidelines should be included in Declaration No. 006 as the authoritative standards on the use of force and firearms by the National Police;

18. Provide training to law enforcement personnel in non-violent crowd control, threat assessment, and de-escalation in the context of demonstrations. Training should also be provided to all law enforcement personnel on international standards on the use of force and firearms and on the guidelines contained in the laws and regulations containing the comprehensive code of conduct on the use of force by all law enforcement personnel, once put in place as outlined above.

ENSURE ACCOUNTABILITY FOR HUMAN RIGHTS VIOLATIONS

19. Ensure that every case of suspected human rights violation in the context of assemblies, in particular those involving death, injury or other serious harm, is investigated promptly, independently, impartially and thoroughly;
20. Ensure that those suspected of being responsible for committing offences involving human rights violations in the context of assemblies are prosecuted in proceedings which meet international standards of fairness. This includes prosecution of those who ordered acts of violence and those who carried them out;
21. Provide information to the public about the investigations, including terms of reference, into the deaths of individuals shot on 15 September 2013, 12 November 2013, and 3 January 2014, and publish findings;
22. Launch a full investigation into the enforced disappearance of Khem Saphath and provide information to his family as required by the International Convention for the Protection of All Persons from Enforced Disappearance;
23. Establish an independent, impartial and efficient investigation into all existing complaints against district para-police including where their actions have resulted in serious injury;
24. Enact legislation that establishes a formal system of state reparation for victims of human rights violations in accordance with international standards and ensure that the right to remedy of victims of violations outlined in this report is fulfilled including through measures of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition;
25. Ratify the First Optional Protocol to the ICCPR, to enable the UN Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant;
26. Establish a National Human Rights Institution based on the Paris Principles, that is a body independent of the government empowered to receive and consider complaints of human rights violations;
27. Establish an independent, civilian-led police oversight body capable of investigating allegations of misconduct, including unnecessary and excessive use of force;
28. Establish an independent, well-resourced, representative and professional National Preventative Mechanism with the authority to visit all places of detention and all persons deprived of liberty, report and make recommendations for the prevention of torture and other cruel, inhuman or degrading treatment or punishment in accordance with the Optional Protocol to the Convention against Torture;

29. Ensure that the National Assembly's Human Rights Committee tracks the progress of all complaints submitted by victims of unnecessary and excessive use of force;

30. Issue a standing invitation to the special procedures of the UN Human Rights Council to undertake visits to Cambodia, including visits pertaining to the events outlined in this report by the Special Rapporteur on the rights to freedom of peaceful assembly and association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers.

END JUDICIAL HARASSMENT

31. Implement the detailed recommendations on judicial reform set out in the 2010 report of the UN Special Rapporteur on the situation of human rights in Cambodia.⁵⁴⁰ This includes ensuring the independence of the judiciary and institutions supporting the functioning of the courts, judges, lawyers and legal personnel;

32. Ensure that no individuals are arrested, charged, prosecuted or imprisoned solely for exercising peacefully their rights to freedom of peaceful assembly, association and expression;

33. Ensure that individuals charged with criminal offences in relation to the organization or conduct of assemblies are tried only for internationally recognisable offences, and by an impartial and independent tribunal in proceedings that meet international standards of fairness;

34. Issue guidelines on the processing of criminal complaints by the courts to end the practice of judicial harassment of individuals who take part in and organize assemblies, and to ensure that complaints against security force personnel are processed according to international and Cambodian standards. Such guidelines should include:

a. Clear guidance on international fair trial standards, including the right to be tried without undue delay. Such guidance should remind prosecutors of the requirement under the Criminal Procedure Code of the Kingdom of Cambodia (CCPC) to initiate criminal proceedings or "hold a file without processing" where there has been a criminal complaint, in order to end the practice of criminal charges being initiated against individuals which are neither dropped nor heard and ruled on at trial by an independent and impartial tribunal;

b. Clear guidance of the requirement under the CCPC for prosecutors to inform a plaintiff "within the shortest possible period" and no later than two months after the date of registration of a criminal complaint of a decision to "hold the file without processing";

⁵⁴⁰ SR on Cambodia September 2010 report (A/HRC/15/46).

c. Positive measures to encourage victims of human rights violations at assemblies to file criminal complaints.

35. Ensure respect for the fair trial rights of all individuals, including those on trial in relation to the events described in this report;

36. Review prosecutions and convictions in all related cases, drop charges and overturn convictions that are not supported by law or evidence and release immediately and unconditionally all those who have been imprisoned solely for the peaceful exercise of their human rights.

WHETHER IN A HIGH-PROFILE CONFLICT OR A FORGOTTEN CORNER OF THE GLOBE, **AMNESTY INTERNATIONAL** CAMPAIGNS FOR JUSTICE, FREEDOM AND DIGNITY FOR ALL AND SEEKS TO GALVANIZE PUBLIC SUPPORT TO BUILD A BETTER WORLD

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I WANT TO HELP



TAKING TO THE STREETS

FREEDOM OF PEACEFUL ASSEMBLY IN CAMBODIA

During a tumultuous period in Cambodia, over the last two years, authorities have severely restricted and violated the right to freedom of peaceful assembly – a right enshrined in major human rights treaties to which Cambodia is party and in the country’s Constitution.

Amnesty International’s research reveals a pattern of human rights violations in the context of assemblies: the imposition of arbitrary restrictions on freedom of peaceful assembly; the unnecessary and excessive use of force by security forces; a culture of impunity surrounding human rights violations committed in the context of assemblies; and the use of the judiciary to harass and imprison those who organize and participate in them.

At one point during this period, the government announced a total ban on all demonstrations. Security forces shot dead at least six people at protests and seriously injured scores more, while a teenage boy is missing presumed dead. State auxiliaries – the now infamous “para police” – beat protestors and targeted journalists and human rights monitors. Investigations into these incidents have been opaque and no results have been made public. The courts have not provided victims with remedies for the human rights violations they have suffered, while jailing dozens for peacefully protesting.

The report concludes with a call on the Cambodian authorities to respect, protect and facilitate the right to freedom of peaceful assembly, and provides a series of detailed recommendations for changes in law, policy and practice.

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