

Report

International Fact-finding Mission

Threats to Freedom of Expression and Assembly in Cambodia

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Introduction

Alerted by its member organizations in Cambodia, LICADHO (Cambodian League for the Promotion and Defense of Human Rights) and ADHOC (Association for Human Rights and Development in Cambodia), FIDH decided to mandate an international mission of investigation on freedom of expression in the country, between 10 and 17 December 2005. The mission was composed of Julie Morizet, lawyer (France) and Denis Bribosia, lawyer (Belgium). The mission was able to meet representatives of the authorities, of diplomatic missions, of the United Nations and Cambodian civil society (see annex for list of persons met).

The purpose of the mission was to evaluate the state of freedom of expression in Cambodia, paying particular attention to policies and practices which infringe this freedom. This present report does not aim to offer a complete presentation relating to the problems of freedom of expression in Cambodia, but to instance the information gathered on site, to put this information in a wider context and address a certain number of recommendations to the relevant actors.

The mission was able to establish the existence of an increasingly restrictive climate in relation to the exercise of freedom of expression.

This freedom is hindered through several methods which complement each other:

- the deliberate fostering of a climate of impunity with particular reference to attacks on members of the opposition, journalists, trade unionists and Human Rights defenders;
- restrictions to freedom of expression through a willful misinterpretation of the concept of defamation.
- the executive's stranglehold on the judicial apparatus and the absence of any real independence of the judiciary, which make possible this abusive misinterpretation of the law;
- the absence of legislative reforms in criminal and legal matters;
- restrictions on the right to peaceful assembly, which contribute to the establishment of a climate of fear within the opposition and civil society, and works to the detriment of freedom of expression.

The FIDH wishes to thank ADHOC and LICADHO for their invaluable help in preparing this mission.

On the other hand, the FIDH regrets that most of the members of the Cambodian government who were contacted with a view to arranging a meeting with the FIDH representatives, could not or wished not to accede to these requests.

I. Freedom of Expression in Domestic Law

1. The Constitution

In domestic law, freedom of expression is guaranteed by Article 41 of the Constitution which states that *“Khmer citizens shall have freedom of expression, press, publication and assembly. No one shall exercise this right to infringe upon the rights of others, to affect the good traditions of the society, to violate public law and order and national security. The regime of the media shall be determined by law.”*

Moreover, article 35 of the Constitution states that: *“Khmer citizens of either sex shall have the right to participate actively in the political, economic, social and cultural life of the nation.”*

It must also be noted that the Cambodian Constitution contains an explicit reference to the international instruments for the protection of Human Rights. *“The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights”* (Article 31 of the Constitution).

It must be remembered in this context that, in 1992, the Kingdom of Cambodia acceded to the International Covenant

on civil and political rights (ICCPR) whose Article 19 enshrines the right to freedom of expression.¹ By virtue of article 74 of the “Provisions relating to the judiciary and criminal law and procedure applicable in Cambodia during the transitional period”² the ICCPR is “applicable as law” in Cambodia.³ Therefore the Covenant has force of law and may be effectively invoked before the country’s tribunals.

2. Criminal and Civil Defamation

The law relating to the press, adopted on 18 July 1995, reaffirms freedom of expression in Article 1 which specifies that *“This law shall determine a regime for the Press and assure the freedom of press and freedom of publication in conformity with Articles 31 and 41 of the Constitution of the Kingdom of Cambodia.”* The law also specifies in article 20 that *“No person shall be arrested or subject to criminal charges as result of expression of opinion.”* In cases of defamation, attacks on public order, national security or political stability, the law on the press provides for civil prosecution and in certain cases, a fine.⁴

Despite the existence of this law, all cases of defamation which came to the attention of the mission are based on articles 62 and 63 of the UNTAC Law, which read:

1. Article 19 of the ICCPR states that: “1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.”

2. Hereunder “UNTAC Law”.

3. This also applies to the Universal Declaration of Human Rights, the Standard Minimum Rules for the Treatment of Prisoners, the International Covenant on Economic, Social and Cultural Rights, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Basic Principles on the Independence of the Judiciary, the Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

4. Article 10 para. 3: “If following a complaint of the Plaintiff of the civil action the court found out that any publication is false, it then may order the press:

- to publish a retraction,
- to pay a compensation, or
- to publish a retraction and pay a compensation.

(...) Additionally, the court may penalize to pay fine from 1,000,000 Riels to 5,000,000 Riels.”

Article 10, para. 2: “In the case of a public figure, all purports or false allegations which the journalist takes to publish itself or reproduces out of the truth, with malicious intent against such public figure, is such a libel which is prohibited by the law”;

Article 11, paras. 1 and 2: “The press shall not publish anything which may affect the public order by inciting directly one or more persons to commit violence. Any act of abuse to what stated above shall be penalized to pay fine from 1,000,000 to 5,000,000 Riels.”

Article 12, paras. 1 and 2: “The press shall not publish or reproduce any information that may cause harm to the National Security and Political Stability. Employer, editor and journalists shall be penalized to pay fine from 5,000,000 Riels to 15,000,000 Riels, without yet taking into account of due punishment according to Criminal Law.”

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Article 62: *"The director or other party responsible for a publication or other means of communication who took the decision to publish, distribute or reproduce by any means information which is false, fabricated, falsified or untruthfully attributed to a third person and did so in bad faith and with malicious intent, provided that the publication, distribution or production has disturbed or is likely to disturb the public peace, shall be liable*

to a punishment of six months to three years in prison, a fine of three hundred thousand to three million Riels, or both."

Article 63.3: *"Defamation or libel made by one of the means listed in article 59 shall be punished by imprisonment of eight days to one year, a fine of one million to ten million Riels, or both."*

II. Strategies Used to Restrict Freedom of Expression

Several threats endanger freedom of expression in Cambodia. These threats result in serious attacks on human rights: political opponents assassinated, leaders of opinion prosecuted and imprisoned, human rights defenders victims of arbitrary prosecutions...⁵

Apart from these direct consequences, it became apparent during the FIDH mission that the combination of these different threats gives rise to a climate of fear which cannot be reconciled with the principle of freedom of expression. A large majority of the people who spoke to the mission emphasized the existence of this climate of fear, which is an obvious hindrance to normal functioning of a participative democracy.

1. Impunity

The murders of journalists and dozens of political opponents since 1993 have still not been punished, which bears witness to the fact that the Kingdom of Cambodia has never been a country open to criticism and dissidence.

In a way which is both curious and revealing, the impunity from which certain criminals benefit is just as great in Cambodia today as it was in 1993, at the time when the country was still in a state of civil war. This unacceptable situation has been firmly denounced for more than ten years by the different Special Representatives of the Secretary-General for Human Rights in Cambodia. The reports published during this period by the Special Representatives instance hundreds of cases which have never led to a sentence and which have often have not even been prosecuted.⁶ These same reports contain many recommendations addressed to the authorities in order to fight against the plague of impunity, recom-

mendations which they have never really taken into account. The phenomenon of impunity has therefore a strong foothold in modern Cambodia.⁷

The causes of this phenomenon of impunity are numerous and complex: they notably stem from the absence of a clear legal framework and consequently the law is not applied equitably; in fact, article 158 of the Cambodian Constitution states that *"Laws and standard documents in Cambodia that safeguard State properties, rights, freedom and legitimate private properties and in conformity with the national interests, shall continue to be effective until altered or abrogated by new texts, except those provisions that are contrary to the spirit of this Constitution."*

The interpretation of this provision fluctuates, in such a way that divergence of opinion exist as to the texts which apply and those which do not apply in Cambodia, especially in criminal matters. This situation can be explained by the fact that laws have been superimposed during different periods of the country's history, without new Codes replacing all those texts having been adopted to this day.

The phenomenon of impunity is also due to the confusion between the role of different authorities, to the absence of independence of the judiciary or even to corruption which often constitutes an obstacle to the implementation of courts decisions.⁸

This phenomenon contributes directly to the creation of a climate of "fear" which disrupts the good functioning of democratic institutions and prevents dissident voices from making themselves heard. It is indisputable that the absence of sentencing or of serious, objective enquiries into, for example,

5. See especially Human Rights Situation Report 2004, by ADHOC; Situation of human rights in Cambodia - Six-month Report March-August 2005, ADHOC; see also Report of the Special Representative of the Secretary General for Human Rights in Cambodia, Peter Leuprecht, E/CN.4/2004/105.

6. The following extract from the Human Rights Committee's report is explicit: "The committee is alarmed by reports of killings by the security forces, other disappearances and deaths in custody, and by the failure of the State party to investigate fully all these accusations and to bring the perpetrators to justice. It is particularly concerned by the lack of actions in regard to many deaths and disappearances that occurred during the 1997 and 1998 elections, and in regard to the delay in completing an investigation of the grenade attack on demonstrators on 30 March 1997. Action should be taken without delay to prevent a further occurrence of such incidents, to investigate all such allegations, and to bring those alleged to have violated the Covenant rights to trial," CCPR/C/79/Add.108, para. 11.

7. Until 1999, this impunity was partly legalised by Cambodian law itself: Article 51 of the law on state employees—amended in September 1999—prohibited prosecutions and criminal investigations against state employees, including members of the police and the army, without the previous consent of their superiors.

8. See below.

murders or attempted murders of politicians (Sam Rainsy, 1997) or trade union leaders, is interpreted as “messages” aimed at potential opponents and critics.

On the 30th of March 1997, Sam Rainsy conducted a peaceful demonstration against corruption of the legal apparatus, a demonstration which was attacked by grenades, accounting for at least 16 dead and 150 wounded. Hun Sen’s body guards were reportedly implicated in the attack. In February 2004, Sam Rainsy filed a complaint against the Prime Minister, Mr. Hun Sen, for complicity in voluntary manslaughter in the context of the grenade attack at the time of this demonstration. The Phnom Penh municipal court dismissed the case. Sam Rainsy lodged an appeal. On 14 June 2005, the Court of Appeal confirmed the first decision. One of the appeal judges in charge of the case declared at the end of the hearing that: *“The decision of the municipal court is justified. The case file presented by (Sam Rainsy’s) attorney does not contain enough evidence.”* In reality, it seems that no serious investigation had been conducted to identify those responsible for the attack. The Supreme Court reached the same verdict as the Appeal Court.

The assassination of the trade union leader Chea Vichea is another flagrant example of this climate of impunity: Chea Vichea, the President of the Free Trade Union of the Workers of the Kingdom of Cambodia, was assassinated on 22 January 2004 in Phnom Penh. Two persons, Mr. Sok Sam Oeun and Mr. Born Samnang, were arrested for his murder. Several witnesses testified that Mr. Born Samnang was not in Phnom Penh at the time of these events. As for Mr. Sok Sam Oeun, he always denied any implication in the murder. Despite numerous irregularities and breaches of the basic principles of a fair trial, whether at the time of the arrest, the enquiry or the trial, Sok Sam Oeun and Born Samnang were sentenced to 20 years prison and to pay 5,000 dollars in compensation to the plaintiff.⁹ The family of Chea Vichea refused to accept this compensation as they are convinced that the two men convicted are innocent. Everything would lead to the conclusion that his parody of justice served to protect those really guilty of the crime.

The phenomenon of impunity is now on such a scale in Cambodia that one may legitimately consider it in part as the result of a deliberate political will to reinforce the ambient climate of fear.

2. Repression of Dissenting Voices

To the “classic” phenomenon of impunity must now be added the use of legal proceedings to suppress dissenting voices. The FIDH notes the existence of an ever more frequent recourse to trumped up legal proceedings, aimed not only at silencing current critics but to warn off future critics by reinforcing, to an even greater extent, the climate of fear. These procedures are aimed at the expression of opinions, criticisms and commentaries which are improperly described by the plaintiffs and tribunals as “defamation,” “disinformation” or “incitement to crime” and blameworthy in Cambodian criminal law.

The phenomenon has its source in the negligence of the judiciary, in its allegiance to the government as well as in the deplorable state of the penitentiary system. Taking advantage of the almost complete absence of independence of the judges, of the glaring malfunctioning of the judiciary¹⁰ and the real risks to health of being held in Cambodian jails, the authorities are assured that the authors of criticisms of government policies will, on their own initiative, silence or moderate their comments.

Following the signing of a Treaty concerning the frontiers between Cambodia and Vietnam on 10 October 2005, the practice of making an abusive use of judicial lawsuits to crackdown on freedom of expression has witnessed an abrupt acceleration. The Treaty, the exact contents of which has been kept secret until its ratification and promulgation, is very controversial, especially as it could legalise a 1985 agreement on the frontiers between Cambodia and Vietnam, at the time of the Vietnamese occupation. Many Cambodians, including former King Sihanouk, consider this treaty to be illegal and contrary to the Paris Peace Agreement of 1991. Hun Sen has publicly threatened to prosecute for defamation any person criticizing the treaty: *“[his detractors] cannot be forgiven,” “they have to be dealt with legally.”*¹¹

Two persons, Mr. Mam Sonando, Director of an independent radio station and Mr. Rong Chhun, the President of the Cambodian Independent Teachers’ Association, were arrested and remanded in custody. Following the important mobilisation of the Cambodian civil society and the international community, Mam Sonando and Rong Chhun were freed on bail on 17 January 2006.

9. See The Observatory for the Protection of Human Rights Defenders, a joint programme of FIDH and OMCT (Organisation mondiale contre la torture), urgent appeal KHM 001/0805/OBS 70, 17 August 2005.

10. See below.

11. “The Price to Pay is the Abolishment of the Monarchy”, *Phnom Penh Post*, October 21- November 3, 2005.

Mr. Mam Sonando is a journalist and owner of an independent radio station (Radio Beehive). Following the anti-Thai riots, he was indicted for the first time in January 2003 for incitement to crime, incitement to discrimination and disinformation (Articles 59, 61 and 62 of the UNTAC Law). This case has not yet been tried.¹² He was prosecuted for the second time following the broadcast on his radio on 20 September 2005, of an interview with Sean Pengse, an opposition politician living in France, accusing the Prime Minister and the Cambodian Government of having lost Cambodian territory in the context of the additional treaty on the frontiers negotiated with Vietnam.

On 11 October 2005 he was arrested and detained until 17 January 2006. The complaints against him come from the Government and National Assembly. He is being prosecuted for defamation (Article 63 of the UNTAC Law, which carries a maximum penalty of one year in prison), disinformation (Article 62 of the UNTAC Law, which carries a maximum penalty of three years prison) and incitement to crimes failing to lead to crime (Article 60 of the UNTAC Law, which carry a maximum penalty of five years prison). However, the transcription of the interview contains no criticism of this treaty by Mam Sonando himself. Furthermore, the judge responsible for the dossier indicated that Mam Sonando had been accused because his *"programme had had a negative effect on the Prime Minister's reputation."*

According to the information gathered by the mission, no mandate for arrest had been produced at the time of his arrest. He was arrested and detained following a summons, whereas it is a warrant for his arrest which should have been produced. Article 19 para. 3 of the UNTAC Law lays down that *"the arrest warrant must stipulate facts and grounds for the arrest of the suspect."*

Furthermore, the investigating judge ordered the remanding in custody of Mam Sonando without declaring the legal basis for such a detention, thus contravening Article 14, para. 1 of the UNTAC Law, according to which *"Only the judge, if so petitioned by the Prosecutor, may decide to keep an accused in prison, and only if there is a risk of escape or non-appearance manifested by the absence of such factors as a job, a family, a home, or if there is reason to believe that the accused will influence witnesses or the conduct of the investigation."* FIDH also recalls

that Article 9 of the ICCPR states that *"no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law"* (para. 1) and *"it shall not be the general rule that persons awaiting trial shall be detained in custody"* (para. 3). A plea of defamation has also been lodged against Sean Pengse (see below).

The Special Representative of the Secretary-General of the United Nations for Human Rights in Cambodia, Mr. Peter Leuprecht, criticised this arrest as well as that of Mr. Rong Chhun as being *"highly irregular."*¹³

Mr. Rong Chhun, as a member of the Cambodia Watchdog Council which is a coalition of unions and associations, was a signatory to a press release calling on the National Assembly not to approve the additional frontiers agreement concluded between the Prime Minister and Vietnam, and inviting Cambodians to go into mourning for the loss of a part of Cambodian territory. Arrested on 15 October 2005, Rong Chhun was prosecuted for *"incitement of others to commit a criminal offense without the offense being committed"* (Article 60 of the UNTAC Law), defamation (Article 63). Article 60 of the UNTAC Law stipulates that incitement to crimes failing to lead to crimes must be linked to one of the crimes or offences listed in the law itself.¹⁴ Now, the press release made public by Rong Chhun makes no reference to any act which could be considered as one of the crimes or offences itemized in the UNTAC Law or any other Cambodian laws. What is more, like Mam Sonando, Rong Chhun was arrested following a writ of *habeas corpus* without any previous summons to appear before the court properly communicated to him. The remand in custody was decided without the examining magistrate justifying his decision. In this case, the complaint once again originated with the government.

The three other persons who signed the press release, Mr. Men Nath, President of the Cambodian Civil Servants Association, Mr. Chea Mony, President of the Free Trade Union of Workers of the Kingdom of Cambodia and Mr. Ear Channa, Deputy Secretary-General of the Student Movement for Democracy, were likewise prosecuted for defamation. They are also members of the Cambodia Watchdog Council. Messrs. Men Nath and Ear Channa managed to flee the country. They were granted refugee status by the United Nations High Commis-

12. This case cannot be tried anymore because under the UNTAC Law, *"any accused person, whether or not in detention, must be judged no later than six months after arrest"* (Article 21).

13. See the declaration: *"Rights expert expresses deep concern over arrest of journalist and trade unionist in Cambodia,"* 20 October 2005, on the following link: <http://www.unhchr.ch/huricane.nsf/view01/BD3D1CE530E5BCF7C12570A0002EDFDE?opendocument>.

14. *"Any person who, by one of the means listed in Article 59, incites the commission of one of the felonies or misdemeanors covered by the present text without the offence actually being committed, shall be liable to a punishment of one to five years in prison."*

sioner for Refugees and later were settled in a third country. Having signed the statement, Mr. Chea Mony¹⁵ was taking part in a conference on Human Rights Defenders in Europe when the arrests took place. He returned to Cambodia on the 1st of February, 2006.

A defamation complaint has also been lodged against Prince Sisowath Thomico, the private secretary of former King Norodom Sihanouk, for having written a commentary on the question of frontiers on the internet site of King Sihanouk. Prince Thomico fled to China in October 2005.

Dr. Say Bory and Mr. Sean Pengse were also accused of defamation and/or other incriminations linked to defamation following complaints lodged by the government. Dr. Say Bory is a former member of the Constitutional Council of Cambodia and a former President of the Bar. The municipal court of Phnom Penh issued a detention order for complicity and disinformation linked to the commentaries which he wrote on the border agreement between Cambodia and Vietnam. He is now living abroad.

Sean Pengse lives in France and it was he who gave the interview on radio Beehive which led to the arrest of Mam Sonando. Sean Pengse is a former Minister for Industry and the President of a French organization which is working on these questions of frontiers.

The international community, national and international NGOs denounced the arbitrary character of these detentions as well as the multiple procedural irregularities which led to them.¹⁶ The arrests of Rong Chhun and Mam Sonando constitute a violation of Article 41 of the Constitution of Cambodia relating to freedom of expression. The FIDH also states that, according to Article 20 of the Law on the Press, *"Any act committed by employers, editors of journalists that violated the Criminal Law, shall be subjected to punishment according to Criminal Law. But nevertheless, no person shall be arrested or subject to criminal charges as result of expression of opinion."*

Furthermore, the prosecutions of Mam Sonando, Rong Chhun, Men Nath, Chea Mony, Ear Channa, Say Bory, Sean Pengse,

and Prince Sisowath Thomico constitute violations of Cambodia's international obligations. Article 19 of the International Covenant on civil and political rights specifies that restrictions on freedom of expression are only conceivable if they are *"necessary: a) of respect of the rights or reputations of others; b) For the protection of national security or of public order (ordre public), or of public health or morals."* These conditions were not met in the case in point. Furthermore, the United Nations Human Rights Committee has specified that *"Paragraph 3 [of Article 19] lays down conditions and it is only subject to these conditions that restrictions may be imposed... when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself."*¹⁷ The climate of fear resulting from arrests for defamation demonstrates blatantly that restrictions applied to freedom of expression endanger the right itself: Human Rights defenders, journalists, members of the opposition and other representatives of civil society all agree that there is an increasing risk if one expresses oneself freely on a certain number of questions.

FIDH emphasizes that having recourse to a criminal procedure in matters of defamation is itself considered to be a violation of the right to freedom of expression.¹⁸

FIDH also notes that it is precisely because of their role that the authorities should not use defamation. *"International jurisprudence also supports the view that Governments and public authorities as such should not be able to bring actions in defamation or insult. The Human Rights Committee has, for example, called for the abolition of the offence of 'defamation of the State'. While the European Court of Human Rights has not entirely ruled out defamation suits by Governments, it appears to have limited such suits to situations which threaten public order, implying that Governments cannot sue in defamation simply to protect their honour. A number of national courts (e.g. in India, South Africa, the United Kingdom, the United States, Zimbabwe) have also refused to allow elected and other public authorities to sue for defamation."*¹⁹

"Government bodies and public authorities should not be able to bring defamation suits; the only purpose of defamation,

15. Chea Mony is the brother of Chea Vichea - see above.

16. More than 70 Cambodian NGOs and Trades unions called for the liberation of Mam Sonando and Rong Chhun (*Cambodia Daily*, 25 October 2005) as well as organisations like FIDH, HRW, AI and CISEL. See also joint press release of FIDH, ADHOC, and LICADHO of 21 October 2005: "Serious crackdown on dissent," http://www.fidh.org/article.php3?id_article=2778.

17. General Comment No. 10: Freedom of expression (art. 19), 29/06/83, para. 4.

18. See below.

19. Annual report of Mr. Abid Hussain, UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, E/CN.4/2000/63, para. 50.

libel, slander and insult laws must be to protect reputations and not to prevent criticism of Government or even to maintain public order, for which specific incitement laws exist."²⁰

For some, particularly those in the government, the restrictions on the freedom of expression in Cambodia are merely an epiphenomenon which is explained by the very sensitive nature of the issue of frontiers and relations with Vietnam. Some of those interviewed by FIDH—both among NGOs and in diplomatic missions—were however agreed that this phenomenon had developed insidiously since the present government of Mr. Hun Sen was set up.

FIDH has unfortunately not been able to obtain statistics on the number of defamation lawsuits (or similar cases) instigated since 2003. In any case, the "success" of this policy seems undeniable. Most of the representatives of the civil society and journalists met by the mission did tell of their fears. Leaving the country for some time when the threats become too great, has become current practice. Arrest or threats of arrest of opposition representatives, journalists and human rights defenders leads one to believe there is a drift towards authoritarian government.

The legal proceedings instigated in 2005 against the members of the principal opposition party are also evidence of this. The parliamentary immunity of three members of parliament from the Sam Rainsy Party, Sam Rainsy himself, Cheam Channy and Chea Poch was removed by the National Assembly through a vote of hands in February 2005. Several aspects of the procedure were considered irregular. Fearing an arrest following criminal proceedings for defamation, Sam Rainsy and Chea Poch fled the country the same day their immunity was removed. Mr. Sam Rainsy was sentenced, on

22 December 2005, to 18 months imprisonment for defamation against Prime Minister Hun Sen and Prince Ranariddh,²¹ as a result of them filing complaints for defamation. The Chairman of the National Assembly, Prince Norodom Ranariddh, accused Sam Rainsy of alleging that Ranariddh had received bribes in exchange for forming a coalition between his party, FUNCINPEC and the Prime Minister's party, the Cambodian People Party (CPP). Hun Sen himself filed a complaint against Sam Rainsy after the Supreme Court rejected his appeal concerning the grenade attack against him in 1997. Hun Sen's complaint was filed on 22 September 2005.

Chea Poch also became the victim of a criminal defamation complaint by Ranariddh, who alleged that Chea Poch had said that he, Ranariddh, had joined the government coalition after receiving 30 million dollars from Hun Sen.

Cheam Channy, who had not fled the country, was arrested on 3 February 2005 within hours of the immunity removal, and charged with crimes relating to the organisation of "an illegal armed force." On 8 August 2005, he was sentenced to 7 years imprisonment by a military court. He did not appeal this decision because he lacked confidence in the Judiciary and feared that it would be counter-productive. In November 2005, the United Nations Working Group on Arbitrary Detention decided to classify Cheam Channy's detention as arbitrary, as it was in contravention of Article 14 of the ICCPR.²² The Working Group also considered that "*under the laws of Cambodia the military tribunal did not have jurisdiction to adjudicate in Mr. Cheam's case.*" Article 11 of the UNTAC Law²³ and article 9 of the Law of 8 February 1993 on the organisation of the courts²⁴ also prohibit military courts from sentencing civilians. Provisions in both these laws, make it clear that previous contrary provisions are repealed.²⁵

20. E/CN.4/2000/63, para. 52.

21. The present government is the result of a coalition between the CPP (of which Hun Sen is currently Vice-chairman) and the FUNCINPEC (the Royalist party of which Ranariddh is the Chairman).

22. See article 14, para. 1: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." See also General Comment No. 13 of the Human Rights Commission relating to Art. 14 of the ICCPR, 13/04/84, para. 4: "the trying of civilians by military courts should be very exceptional and take place under conditions that genuinely afford the full guarantees related to the right to a fair trial."

23. "Military tribunals have jurisdiction only over military offences. Military offences are those involving military personnel, whether enlisted or conscripted, and which concern discipline within the armed forces or harm to military property. All ordinary offences committed by military personnel shall be tried in the ordinary courts."

24. "The military court shall have competence to adjudicate and shall be subjected to appeals for those cases of military offenses. Military offenses are those committed by military members in the army and which concerned with military discipline or effected properties of military armed forces. In case when a military member committed normal criminal offence, he/she shall be prosecuted by the provincial/municipal court. The procedure of the military court shall be the same as what of the provincial and municipal court."

25. Article 73 of the UNTAC Law: "Any text, provision, or written or unwritten rule which is contrary to the letter or the spirit of the present text is purely and simply nullified."

Article 25 of the Law of 8 February 1993 on the organisation of courts: "All other provisions that are contrary to this law, shall be repealed."

On 5 February 2006, King Norodom Sihamoni granted pardon to Cheam Channy and Sam Rainsy, on request of Prime Minister Mr. Hun Sen.

For what regards Cheam Channy, this pardon was granted two days after Hun Sen had asked a partial pardon (reduction of penalty). Channy was freed on 6 February in the morning.

This pardon takes place after letters were sent by Sam Rainsy to Hun Sen and Ranariddh, by which they regretted their previous statements on which the lawsuits were based. Rainsy decided to go back to Cambodia.

FIDH also witnessed an intensification of threats and of the climate of tension during the mission, culminating at the end of 2005 and January 2006 with the arrest of people in connection with the organisation by a group of more than 60 NGOs, trade unions and associations of celebrations for the International Human Rights Day on December 10.²⁶

Then main theme of the peaceful assembly of 10 December was the defence of freedom of expression. The organisers had arranged to distribute thousands of little yellow ribbons that participants were asked to wear in support of freedom of expression. The assembly, which numbered between 1,000 and 2,000 participants according to the sources consulted, took place peacefully. The organisers included the Cambodian Center for Human Rights (CCHR) whose president is Mr. Kem Sokha. On 10 December, in the area where the demonstration was taking place, CCHR had booths to promote its activities to the public. Amongst the documents on show were banners which, in particular, attracted the attention of the authorities. They had been made in 2003 as part of an information campaign on political rights conducted by CCHR. One banner had the slogan *"I don't vote for any party that sows fear to the people"* and another said *"Corruption is making the people even poorer."* Handwritten slogans, which, according to the government, criticised the Prime Minister and the government, had also been added by the civilians invited to express themselves in this way. In the evening of 10 December 2005, the municipal authorities said that one of the handwritten slogans was *"an insult to the head of the Royal Cambodian government."* On 11 December, the Vice-governor of the municipality announced publicly that he required the principal organiser of the demonstration, Mr. Yeng Virak, director

of the Community Legal Education Center (CLEC) and a member of the organising committee for the celebrations of 10 December 2005, to provide explanations of how this banner had appeared and how it disappeared.²⁷ In fact, after the authorities had confirmed the banner's presence (which they had filmed and photographed), the members of CCHR immediately took it down and disposed of it.

On 11 December 2005, the mission met Mr. Kem Sokha, president of CCHR. Mr. Kem Sokha, a long standing activist, was subjected to numerous threats for having criticised government policy. Lately, following the conviction of Mam Sonando and Rong Chhun, he felt threatened and took refuge in Thailand for a few days before returning on 18 October 2005. During the meeting, Mr. Kem Sokha seemed anxious and feverish. This case was a vital lead for the mission and was mentioned by almost all the interviewees. The diplomatic missions interviewed seemed prepared to consider his case as a "test case" in Cambodia's transition to democracy. Messrs. Kem Sokha and Yeng Virak were eventually arrested and remanded in prison on 31 December 2005 and Mr. Pa Nguon Teang, deputy director of CCHR, on 4 January 2006. They were charged with defamation following the events of 10 December. Those charges and arrests confirm, as far as FIDH is concerned, the drift towards authoritarian government.

The release on bail of Mr. Yeng Virak on 11 January, and of Messrs. Kem Sokha, Pa Nguon Teang and Mam Sonando on 17 January 2006, is certainly a step in the right direction. The charges however are still held against them and the lawsuits are ongoing. FIDH has asked, in the framework of the Observatory for the protection of human rights defenders, that all the charges held against them be dropped.

The mobilisation of Cambodian civil society and the international community were determinant in the release of Cheam Channy, as for the other activists and human rights defenders who had been arrested during the past months.

The government is seeking to strengthen its control over society and limit freedom of expression; to do this, it is content not just to let the climate of impunity hold sway, but it is also developing more refined methods of exploiting the innumerable flaws in the judicial system to give its interventions a semblance of legality. The use of this method

26. See Urgent appeals of the Observatory for the protection of human rights defenders, a joint programme of FIDH and OMCT (Organisation mondiale contre la torture), KHM 001 / 0106 / OBS 001, KHM 001 / 0106 / OBS 001.1, KHM 001 / 0106 / OBS 001.2 and KHM 001 / 0106 / OBS 001.3. See also the Observatory's Annual Report 2005, still to be published.

27. *Cambodia Daily*, December 12, 2005.

produces an effect of fear and reserve among activists, which is spreading throughout society, mainly on account of the publicity given by the government to these arrests. The abuse of lawsuits to curb the political and democratic debate in Cambodia is seen to have become particularly problematic due to the desperate state of the judicial system.

3. Absence of Reform in the Criminal and Judicial Sphere

The trials mentioned above saw many irregularities in and malfunctioning of the judicial system. In this connection, FIDH notes that article 1 of the UNTAC Law states in paragraph 3 that *"The principle of the independence of the judiciary entitles and requires judges to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected."*²⁸ By virtue of article 74.1 of the UNTAC Law, these provisions are applicable as law in Cambodia.²⁹

The independence of the judiciary, recognised by the Constitution (article 128³⁰) and of which the King, assisted by the Supreme Council of the Magistracy (Article 132³¹) is the guarantor, is not respected in practice. The principle of the independence of the judiciary is also mentioned article 1 of the UNTAC Law.

The lack of training for judges is only partly to blame for this bad state of affairs. The statements by the Prime Minister, mainly in the context of the Border treaty clearly shows the executive's grip on the judiciary. In his speech on 14 October 2005, in which the Prime Minister talked about the

proceedings initiated by the government against Rong Chhun and other signatories of the appeal by the Cambodia Watchdog Council, Hun Sen revealed that he was in no doubt as to the outcome of the their trials: *"they will be in prison and they will not be very happy."* His distrust of the law was again evidenced in a speech made on 17 October 2005: *"if I did not abide by law, the armed forces are in hands, no one can object."*³²

The Consultative Group for Cambodia, which includes the main donors of Cambodia, has established a certain number of benchmarks that constitute the objectives assigned to the country to improve and modernise its functioning. These benchmarks include the fight against corruption, the legal and judicial reform including the protection of human rights, decentralisation and deconcentration, agriculture and the management of natural resources, gender equality, poverty and the prevention of HIV/AIDS and also health and education. The Group met for the first time in July 1996 and will hold its 8th meeting in March 2006. Although, over the years, the Consultative Group has emphasised that some progress has been made—essentially in the economic sector—it is clear that, as regards legislative reforms in the criminal and judicial sphere, this is certainly not the case. These reforms which the Consultative Group has been asking for since 2002³³ were also included in the recommendations of the first Special Representative of the Secretary General on the situation of human rights in Cambodia in 1994.³⁴

The present status quo also means that there is still some legal uncertainty as to what laws are applicable in Cambodia which leads to arbitrariness and may end up with violations of the principle of the legality of crimes and punishments.³⁵

28. Article 1 para. 1: *"The independence of the judiciary must be ensured in accordance with The Basic Principles on the Independence of the Judiciary, adopted by the United Nations. Judges must decide in complete impartiality, on the basis of facts which are presented to them, and in accordance with law, refusing any pressure, threat or intimidation, direct or indirect, from any of the parties to a proceeding or any other person."*

Para. 2. *The judiciary must be independent of the executive and legislative authorities and of any political party. Persons selected for judicial functions must be honest and competent."*

Para. 3. *The principle of the independence of the judiciary entitles and requires judges to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected. They must have decent and sufficient material conditions for the exercise of their functions. Judges must receive suitable training and be remunerated adequately to ensure their impartiality and independence."*

29. *"The instruments of the United Nations mentioned in the present text are applicable as law in Cambodia once they have been officially published by UNTAC."*

30. *"The Judicial power shall be an independent power. The Judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens. The Judiciary shall cover all lawsuits including administrative ones. The authority of the Judiciary shall be granted to the Supreme Court and to the lower courts of all sectors and levels."*

31. *"The King shall be the guarantor of the independence of the judiciary. The Supreme Council of the Magistracy shall assist the King in this matter."*

32. *"The Price to Pay is the Abolishment of the Monarchy," Phnom Penh Post, October 21-November 3, 2005.*

33. At the end of their 6th meeting on 19-21 June 2002, the donors "strongly urged that more progress needs to be achieved. Failure to do so would undermine investor confidence, erode human rights and the rule of law, and diminish the effectiveness of overseas aid."

34. See E/CN.4/1994/73/Add.1, Report of the Special Representative of the Secretary General, Mr. Michael Kirby, on the situation of human rights in Cambodia, 21 February 1994, para.12 c 2 and para.26.

35. See supra developments concerning article 158 of the Constitution.

On 6 and 7 October 2004, the Consultative Group called for the immediate adoption of eight fundamental laws which included the organic law on the organisation and functioning of courts, the law modifying the Supreme Council of the Magistracy and the law on the status of judges and prosecutors.³⁶

These three pieces of legislation—an indispensable prerequisite to the judiciary's move towards greater independence—have still not been adopted. The FIDH mission was not able to assess exactly how far advanced these pieces of legislation were nor, consequently, could it estimate the date on which they would be presented to the National Assembly for adoption. Its interviewees gave differing and contradictory information on this point.

a) The Supreme Council of the Magistracy

The status of judges, the monitoring of their careers, the level of their remuneration, their method of appointment are some of the questions which need to be governed, as a matter of urgency, by the law. It is not therefore surprising to say that, in theory at least, much energy seems to have been spent on the reform works by the Supreme Council of the Magistracy (SCM). The FIDH mission took place at the same time as a seminar on the drafting of a code of ethics for judges. This initiative, which is certainly an important one as the code aims mainly to ensure that judges do not indulge in political activities,³⁷ should not distract those involved from their main mission of rapid reform of the SCM and the adoption of the law on the status of judges and prosecutors detailing conditions of appointment, promotion of judges and prosecutors and their responsibilities in accordance with the United Nations Basic Principles on the Independence of the Judiciary.

The principal mission of the CSM is to supervise the monitoring and management of the careers of judges and prosecutors. It is responsible, for example, for the appointment or disciplining of judges so it should occupy a central place in the organisation of courts in Cambodia. The United Nations Basic Principles on the Independence of the Judiciary

also state that *"Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review."*³⁸ But, the present SCM is completely ineffectual; it is made up essentially of non-lawyers,³⁹ it never meets, and has no independence whatsoever. A great number of the people met by the mission in fact confirmed that the present members of the Supreme Council of the Magistracy were closely affiliated with the government⁴⁰ or had political responsibilities in the CPP or FUNCINPEC. FIDH recalls that article 10 of the United Nations Basic Principles on the Independence of the Judiciary stipulates that *"Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives."*

The decision, on 22 March 2004, to take disciplinary measures against the examining judge of the municipal court of Phnom Penh, Mr. Hing Thirith, and to transfer him to the provincial court of Stung Treng is one of many examples of the lack of independence of the SCM: this measure, taken following the judge's decision to release two men suspected of the murder of Chea Vichea due to lack of proof, is in fact considered by many to be a direct consequence of the judge's initiative, since everything leads one to believe that these two men were arrested only to conceal the identity of the real culprits.⁴¹ FIDH notes in this connection that, according to article 13 of the United Nations Basic Principles on the Independence of the Judiciary, the "promotion of judges, (...) should be based on objective factors, in particular ability, integrity and experience." It should also be noted that the same judge was sentenced in absentia to four years imprisonment by the Court of Battambang on 21 December 2005; it is unlikely that this sentence - perhaps justified in other respects- would have been passed had Mr. Hing Thirith not been involved in the Chea Vichea case.

The lack of independence of the Supreme Council of the Magistracy was also condemned in 1999, by the United Nations Human Rights Committee: *"The Committee is also*

36. This list also included the Penal Code, the Code of Criminal Procedure, the Civil Code, the Code of Civil Procedure and the anti-corruption law. Commentaries on this indicator, as well as on all the indicators, are regularly provided by a group of Cambodian NGOs who make up an "NGO Committee for the Monitoring of CG Indicators".

37. On this point, the FIDH's attention was drawn to a list of 121 new members of the Central Committee of the CPP published in the edition of the Phnom Penh Post, 16-29 December 2005. It included high-ranking officials in the police, the army... and also the judiciary.

38. Article 20.

39. See in particular Working paper on the Supreme Council of the Magistracy of Cambodia, December 2003, Say Bory: "It is astounding to note that in the Supreme Court only 4 out of a total of 15 judges have law degrees or the equivalent".

40. See also The Cambodian Daily, "The Power Shift Puts Judiciary Under Gov't Control", 9 May 2005: "Almost all of [the Supreme Council's] members are members of the CPP", Lao Mung Hay, a legal expert at the Center for Social Development".

41. See above.

concerned that the Supreme Council of the Magistracy is not independent of government influence, and that it has not yet been able to deal with the many allegations of judicial incompetence and unethical behaviour. The Committee is further concerned that the judiciary seeks the opinion of the Ministry of Justice in regard to the interpretation of laws and that the Ministry issues circulars which are binding on judges."⁴²

First of all, a draft aiming to strengthen the Secretariat of the CSM was proposed⁴³ with a view to guaranteeing its greater independence. Following the transfer of the said Secretariat to the Ministry of Justice, in May 2005, this draft became obsolete. The arguments put forward by Prime Minister Hun Sen to explain the removal of the secretariat clearly shows that the independence of the judiciary from the executive remains a fiction: *"we had created [the secretariat] in order to have independence and not relate it to the Ministry of Justice (...) However, the Ministry of Justice can't ask anything so the only way is to dissolve [the secretariat]."*⁴⁴ Hun Sen also added: *"[Now] the Minister of Justice is the gateway to the Supreme Council of Magistracy. So the Minister of Justice is also close to the Prime Minister."*⁴⁵

As part of recent initiatives supposedly to fight against corruption of the judiciary (known as the "Iron fist campaign"), the suspension of two prosecutors, Messrs. Siem Sok Aun and Khut Sopheang, following allegations of corruption, on the direct orders of the Ministry of Justice, shows once again the confusion of responsibilities between the executive and the judiciary. FIDH recognises the seriousness of the charges against the two deputy prosecutors. However, it was up to the Supreme Council of the Magistracy to take the necessary sanctions against these two prosecutors in accordance with article 1 of the UNTAC Law and Article 20 of the Basic Principles on the Independence of the Judiciary. Actually, those measures supposed to fight corruption in the Judiciary are actually another means for the Executive to exert control on it through selective attacks on members of the Judiciary, while the vast majority of judicial corruption is allowed to continue unhindered.

It would seem that the future draft amendment of the law on the CSM will restore the Secretariat to the CSM. It should also

contain all the regulations relative in particular to the jurisdiction of the CSM, its composition, its internal structures and its budget. FIDH believes that the legislature should ensure that the law on the CSM is in complete conformity with the United Nations Basic Principles on the Independence of the Judiciary, and that this law be adopted as soon as possible.

b) The Bar Association

Mention should also be made of the organisation of the Cambodian Bar. The Bar has become so powerless that it has almost lost all credibility even among lawyers themselves.⁴⁶

The conflict that arose following the election on 16 October 2004 of Mr. Suon Visal as the new President of the Bar is evidence of the executive's control over all the legal professions, including members of the Bar. The results of the election were in fact quickly challenged by the retiring President of the bar, Mr. Ky Tech, who maintains very strong links with the government. On 19 November 2004, following a judgement *in camera*, the Court of Appeal decided to cancel the results of the election and restore the former President of the Bar, Ky Tech, to office.

FIDH notes that Article 14, para. 1 of the ICCPR stipulates that *"The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires otherwise or the proceedings concern matrimonial disputes or the guardianship of children."* It seems therefore that nothing could justify the fact that the appeal court's decision on the validity of these elections was held *in camera*.

The appeal court's decision was subsequently annulled by the Supreme Court on 2 June 2004, on the grounds that it was in breach of articles 209, para. b and 217 of the law on criminal procedure.⁴⁷

42. CCPR/C/79/Add. 108, Concluding Observations of the Human Rights Committee: Cambodia 27/07/99, para. 8

43. The organic law on the organisation and functioning of the Supreme Council of the Magistracy did not provide for a secretariat. This was created in May 2001, by the sub-decree of 24 May 2001 on the creation and functioning of the Secretariat of the Supreme Council of the Magistracy.

44. *The Cambodian Daily*, "The Power Shift Puts Judiciary Under Gov't Control," 9 May 2005.

45. *Ibid.*

46. According to information received by FIDH, 80% of lawyers do not pay their subscription to the Bar.

47. Article 209, para. b: the cases for allowing the Supreme Court to annul decisions are: (...) the breach or omission of the required formality under

After the elections, the former President of the Bar, Mr. Ky Tech, kept the official seal of the Bar and refused to return it to Mr. Suon Visal, who had a new seal made to ensure that the workings of the Bar could continue. The former President of the Bar and seven other members of the Bar filed a complaint against Mr. Suon Visal for using the seal and letterhead of the Bar (use of forgeries) and, in so doing, interfered in an internal Bar matter.⁴⁸ In June 2005, Mr. Suon Visal was threatened with being remanded in custody for this. The judge in charge of the case had also confided to Mr. Suon Visal's counsel that he was "awaiting orders" before he could pass judgment. Finding himself without a real job, feeling threatened (he told the FIDH mission that his house had been surrounded by the police), convinced that he could never win in court, and thinking that he did not want to "end up like Sonando," Mr. Suon Visal told the mission that he would accept whatever conditions his adversaries imposed on him as part of an agreement which had just been negotiated between the different protagonists to annul the 2004 elections and hold new elections in March 2005. He did not know whether he would stand as a candidate in these elections.

The FIDH, without taking a stance as to the validity of the elections, believes that this conflict witnesses once more the attempts by the authorities to control the judiciary other related institutions, whose functioning should be totally independent.

Changes in laws and practices have to take place as quickly as possible. Given the way the court system functions, it is difficult to understand why the law on the Bar, dated 23 June 1995, gives the Court of Appeals and the State Prosecutor power over the decisions taken by the Bar Council.⁴⁹ Moreover, we fail to understand why persons who do not practice law, such as the Prime Minister, have seats on the Bar Council, whereas article 15 of the law on the Bar stipulates that, "*The persons entitled to stand for election as members of the Bar Council are those lawyers who have registered their names in the Bar List for at least two years and who have not lost the right to vote.*"

The FIDH would like to point out that the UN Basic Principles on the Role of Lawyers stipulates that, "*Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training, and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference*" (Paragraph 24, our underscoring).

c) The Criminal Code and the Criminal Procedure Code

The proper functioning of the justice system requires laws that are respectful of fundamentals freedoms, e.g. criminal procedures that guarantee a fair trial. In Cambodia, drafts for a Criminal Code and a Criminal Procedure Code are currently under study by the authorities. Both projects are part of the eight laws that the Consultative Group (CG) indicated as needing to be adopted urgently.

The draft Criminal Code has to take into account the guidelines put forward by the NGO Committee for the Monitoring of CG Indicators, and in particular the one on the decriminalisation of defamation.

The fact that legislation in certain European States still provides sanctions for defamation, e.g. France does not justify the inclusion of such provisions in Cambodian law (Article 63 of the UNTAC Law). Given the current situation in Cambodia, the direct and immediate consequences of Article 63 of the UNTAC Law is that it discourages citizens from stating their views on public interest issues. The UN Special Rapporteur on the promotion and protection of the right of freedom of opinion and expression said, "*Criminal defamation laws represent a potentially serious threat to freedom of expression because of the very sanctions that often accompany conviction,*" and urged the States to repeal the criminal defamation sanctions in the legislation and replace them, if appropriate, by civil defamation sanctions.⁵⁰

The provision of legal sanctions for defamation constitutes a violation of freedom of expression as provided for by interna-

penalty of nullity such as a hearing not in public.

Article 217: The appeal to the Supreme Court and the time limit for the appeal has a suspensive effect. Therefore, the enforcement of the Appeals Court judgment shall be suspended during the time of appeal, if there is an appeal during the appeal period, until the date of the issuance of the Supreme Court judgment.

48. Article 19 of the law of the Bar indicates that "*The Bar Council deals with all problems concerning the exercise of the lawyer's profession.*"

49. Article 23: Decisions made by the Bar Council on matters outside its jurisdiction or contrary to the provisions of laws or regulations in force may be rejected by the Appeal Court following a complaint from the General Prosecutor to the Appeal Court.

50. See above and the Report by Mr. Abid Hussain, Special Rapporteur on the promotion and protection of the right of freedom of opinion and expression, E/CN.4/2000/63, 18 January 2000.

tional law.⁵¹ This observation has been made, on many occasions, by the UN Human Rights Committee,⁵² as well as in the reports drawn up by the Special Rapporteur for the promotion and protection of the right of freedom of opinion and expression.⁵³ *“As regards criminal libel and defamation, the Special Rapporteur is of the view that sanctioning libel and defamation by prison sentences is not proportionate. Furthermore, he is of the view that criminal law is not appropriate for regulating such offences. (...) Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, as necessary, with appropriate civil defamation laws.”*⁵⁴

The UN Special Representative of the Secretary General for Human Rights in Cambodia recently expressed the same position, *“It is a cause for deep concern that in Cambodia defamation and disinformation are being prosecuted as criminal cases under the 1992 UNTAC law and not under civil law. In this respect, the Special Representative firmly believes that dissenting views and opinions should be challenged through public debate rather than criminal law suits. The Special Representative notes that the UNTAC law was enacted as a temporary measure and under very particular circumstances, which no longer reflect the situation in today’s Cambodia. This law was also passed before Cambodia adopted its Constitution and acceded to the core international human rights treaties, in particular the International Covenant on Civil and Political Rights.”*

*The Special Representative is of the view that the provisions relating to criminal disinformation and defamation under articles 62 and 63 of the UNTAC law respectively are inconsistent both with Cambodia’s Constitution and its international human rights commitments. Therefore, serious consideration should be given to repealing these provisions as unfortunate remnants from Cambodia’s troubled past. The new criminal code currently under preparation also offers a welcome opportunity for amending the law so as to make it compliant with Cambodia’s treaty obligations and Constitution.”*⁵⁵

The Criminal Procedure Code should take into account FIDH recommendations relative to the right of defence, the victim’s access to the criminal trial and the right to a medical examination while in custody.⁵⁶ Incorporating these recommendations, although they are addressed in the specific framework of the implementation by Cambodia of the Rome Statute of the International Criminal Court (ICC), would make Cambodian criminal procedures compliant with international standards.

Authorities in power make use of the carelessness of the judicial branch to curb freedom of expression; the mission carried out by the FIDH has clearly shown how violations of freedom of expression would further weaken the judicial branch and make its independence even more illusory. Restrictions placed on freedoms of opinion and expression considerably limit the possibility of making violations known and enabling their investigation. Additionally, these practices perpetuate corruption and impunity. Given the current climate, lawyers censure their words and live in fear of being accused of committing a crime. Magistrates do not dare to adopt positions diverging from the instructions they received. Human rights activists feel increasingly vulnerable and take serious risks whenever they report on human rights violations or whenever they organise human rights demonstrations. Journalists are increasingly cautious when reporting on courts hearings (See below restrictions on media access to courts).

4. Denying Access to Information

Freedom of expression includes the right to information. Article 19 of the ICCPR states, *“...this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”*

Not only does the State have to abstain from hindering access to sources of information, it must also provide information when it comes to issues of public interest.

51. See hereunder.

52. See Briefing Note on International and Comparative Defamation Standards, Article 19, Global Campaign for free expression, London, February 2004, <http://www.article19.org/pdfs/analysis/international-defamation-standards-note-feb-20.pdf>, note 10.

53. See, in particular, E/CN.4/2005/64, Report on the right to freedom of opinion and expressions, by Mr. Ambeyi Ligao, Special Rapporteur, para. 69: *“To conform to international standards, national legislation should provide for libel and defamation cases to be dealt with under civil law.”* See also Promotion and protection of the right to freedom of opinion and expression, UN Doc.E/CN.4/1999/64, Paragraph 28h: *“Sanctions for defamation should not be so large as to exert a chilling effect on freedom of opinion and expression and the right to seek, receive and impart information; penal sanctions, in particular imprisonment, should never be applied.”*

54. E/CN.4/2003/67, 30 December 2002, para. 73.

55. *“The Special representative expresses deep concern over the defamation verdicts against opposition leader Sam Rainsy,”* 27 December 2005.

56. Forthcoming FIDH report on the implementation of the Statute of the International Criminal Court in Cambodia.

In this field, the situation in Cambodia is alarming. The whole decision-making process seems to be shrouded in a culture of secrecy. The supplemental border treaty is a good example here: both its supporters and opponents clearly have an extensive set of arguments; but none of the people FIDH met were able to explain the exact contents of the treaty and no one had received a copy until the treaty was ratified and promulgated.

The culture of secrecy does not only enshroud important governmental activities⁵⁷ but also activities related to the judiciary, e.g. many decisions are taken in camera for no valid reason.

Similarly, a recent order from the Phnom Penh city courthouse drastically restricts journalists' access to the courts.⁵⁸ The restrictions have been subsequently loosened slightly but access for the media is still complicated and limited. These restrictions contradict article 14 of the ICCPR which imposes the principle of public hearings (see above). It also contradicts Articles 128 and 129 of the 1993 law on criminal procedure which unambiguously defines the exceptional character of hearings *in camera*.⁵⁹

The Consultative Group demanded that a law on freedom of information that would facilitate access to information be drawn up,⁶⁰ but this has not yet been done. Quite the contrary.

On 11 November 2005, the Parliament adopted a law on archives that counters the very principle of freedom of information since it reverses the presumption that public information should be accessible free of charge.

The result of the legal and cultural obstacles to access to information is that all decisions seem suspicious, *a priori*, and are surrounded by rumours that create alarm and fear.

5. Attacks on Freedom of Assembly

The Ministry of the Interior granted authorisation⁶¹ for the celebrations on 10 December 2005 on the occasion of the International Human Rights Day, but under very strict conditions, i.e. that it be held in closed quarters (the Olympic stadium), that participants be screened and that no antigovernmental position be taken. An earlier application to hold a parade and not merely a gathering had been rejected.

A recent report by LICADHO indicates⁶² that freedom to hold peaceful meetings—an essential part of political life in a democratic country—is clearly lacking in Cambodia. LICADHO collected 40 cases of public gatherings which were prevented or dispersed by the authorities, sometimes violently, from January to November 2005. FIDH points out that Article 21 of the ICCPR states that: *"The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."* The Constitution of Cambodia also recognises freedom of assembly (article 41).

In 2005, the authorities granted extremely few authorisations of assembly in the capital or in the provinces and forcefully disbanded several spontaneous gatherings. Most of the gatherings had nothing to do with sensitive issues such as the borders; they were devoted to issues such as the increase in fuel prices and land allocation.

Banning gatherings or creating conditions that incite fear of brutality is tantamount to creating a climate of anxiety in order to discourage associations, opinion groups and citizens from openly expressing their thoughts on important issues affecting life in society.

57. Apparently draft laws are, in general, not made public. Another example concerns the criteria for selecting Cambodian judges to serve on the KR Tribunal. Nobody seems to know them. See Human Rights Situation Report 2004, *op. cit.*, p. 11.

58. *The Cambodia Daily*, "Media barred from City's Courthouse," October 27, 2005.

59. Article 128: The investigation during the hearing shall be in public, if not, it will be considered as null and void. The proceedings in open court are required not only for the pronouncement of the judgement, but, also for the investigation, and the hearing. Therefore, the judgement shall mention the proceedings in open court, because without it, the judgement shall be considered as null.

Article 129: Nevertheless, the hearing can be conducted in camera, if the proceedings in open court might deem dangerous to the public order and good tradition. The in camera hearing may only be conducted on part of the investigation. In another sense, the time for the in camera proceeding is limited to the investigation of the case. The pronouncement of the judgement shall be in public, if not it shall be considered as null.

60. The third indicator in fighting corruption reads: *"The Government should commence preparatory work on establishing a legislative framework (such as a Freedom of Information Law) to facilitate access to information held by public authorities. In the meantime, public authorities must change current practice by displaying a preparedness to share information with the general public and with other institutions in Government."*

61. In principle, according to the law, the intention to hold a peaceful demonstration must be notified to the authorities but prior authorisation is not required.

62. "Restrictions on the freedom of assembly in Cambodia," LICADHO, December 2005.

Conclusion and Recommendations

Conclusion

The Cambodian authorities use a series of methods in order to restrict the rights to freedom of expression and peaceful assembly, although those rights are essential to the functioning of any sound democracy.

Those methods notably include the use of criminal defamation against political opponents, but also journalists, trade union and NGO leaders and human rights defenders, in order to silence all dissenting voices and any criticism of the governmental policies.

In addition to the use of criminal defamation, often combined with immediate pre-trial detention, there is a lack of reform of the judicial system and the criminal law (Penal Code and Criminal Procedure Code, law on the Supreme Council of the Magistracy, law on the status of judges and prosecutors, etc). The lack of legislative reform, although those are key in order to ensure a normal functioning of the judiciary, can only be the result of a deliberate political will to maintain the absence of clarity as to the legal texts applicable. This situation also allows the Executive to keep the Judiciary under control and to use it in order to curb diverging views.

The lack of independence of the Judiciary has been largely denounced since years by the Special Representatives of the UN Secretary-General on the human rights situation in Cambodia. It is a source of deep concern, not only as regards the rights to freedom of expression and peaceful assembly, but also more generally (land conflicts, etc). In addition to the ongoing efforts to train the judges and lawyers, which should be continued, a legal framework conform with international human rights law (cf. notably the UN Basic principles on the indepen-

dence of the Judiciary and the basic principles on the role of lawyers) should be adopted as a matter of utmost urgency.

Last but not least, the climate of impunity prevailing in Cambodia, especially for what regards the attacks against political opponents, trade unionists, journalists and human rights defenders, violates Cambodia's international obligations to protect and guarantee human rights (including the rights to life, to physical integrity, to an effective remedy and not to be arrested arbitrarily). It also obviously contributes to the climate of fear prevailing today in Cambodia.

After the FIDH mission came back from Cambodia, the persons who had been arrested because they had expressed their opinion on the border treaty between Cambodia and Vietnam were freed on bail. The same is true of the persons arrested in connection with the 10 December 2005 celebrations. In addition, the two main political opponents condemned to prison sentences were pardoned. There is no doubt that those liberations are the result of the important mobilisation of the Cambodian civil society and of the international community. Those liberations of persons who should never have been detained in the first place cannot be considered as a meaningful progress. FIDH asks that all the lawsuits aiming at restricting freedom of expression be definitively dropped. We hope that it will allow a normalisation of the political and associative life in Cambodia, which is crucial for the future of the country.

In view of those elements, FIDH addresses the following recommendations to the Royal Government of Cambodia, the Consultative Group of Donors and the European Union.

Recommendations

- Recommendations to the Royal Government of Cambodia

FIDH appeals to the Cambodian authorities

1. To drop the charges against Man Sonando, Rong Chhun, Men Nath, Chea Mony, Ear Channa, Prince Sisowath Thomico, Say Bory, Sean Pengse, Kem Sokha, Yeng Virak and Pa Nguon Teang, because they are aimed at sanctioning freedom of expression and are therefore arbitrary.

2. To immediately stop applying the criminal defamation law, currently being used to muzzle all expression of positions, political or otherwise, that might seem to undermine governmental authority.

3. To ensure adoption as soon as possible of the eight fundamental laws recommended by the Consultative Group, in keeping with Cambodia's international obligations in the field of human rights and more specifically ensuring:

- Respect for Article 19 of the ICCPR. The criminal defamation law should be replaced by civil procedures. Freedom of information should be fully guaranteed.
- Respect for Article 21 of the ICCPR on the right to peaceful assembly.
- Respect for the UN Basic principles on the independence of the judiciary. The law on the status of the judges and prosecutors should make it impossible to be a judge and also be involved in a political party, and should describe the mechanisms for selecting and promoting judges. The law to restructure the Supreme Council of the Magistracy should guarantee its independence, in particular by providing it with a secretariat and an independent budget.
- Respect for the UN Basic principles on the role of lawyers.

4. To cooperate with the United Nations treaty bodies with regard to human rights treaties ratified by Cambodia and, in particular, with the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child and the Committee Against Torture; to fully implement the recommendations made by these bodies.

5. to set up an independent human rights commission, in keeping with the Paris Principles.

- Recommendations to the Consultative Group of Donors

The only explanation for such a lengthy delay in the adoption of the eight fundamental laws recommended by the Consultative Group for Cambodia is the Government's lack of political will. The Consultative Group, thus, has an essential role to play.

FIDH recommends that, at its March 2006 meeting, the Consultative Group:

1. Reiterate the importance of adopting these laws and submit, to the Cambodian Government, an obligatory timeframe for adopting them.
2. Specifically consider the question of freedom of expression and association, by expressing its concern for the deterioration of the situation in 2005. FIDH urges the donors to harmonise their position and include a working session with the Prime Minister as an agenda item for the 8th meeting of the Consultative Group so that they can address with an unanimous voice this crucial question for the future of the country.

- Recommendations to the European Union

A. To diplomatic missions

- Exercise greater vigilance on cases of violations of freedom of expression and association; increase their coordination and common positions on such cases.
- Fully implement the EU guidelines on human rights defenders, dated June 2004.
- Ensure that a favourable visa-granting policy be applied to persons who risk immediate and arbitrary arrest for having exercised their legitimate right to freedom of expression, through accelerated procedures when relevant.
- Play a more active role in the process of legal and judicial reform especially in order to decriminalise defamation, and to redesign the Supreme Council of the Magistracy and the *modus operandi* of the Bar.

B. To the Council, the Commission and Member States

- Coordinate their position with that of the donor community, especially with regard to the forthcoming meeting of the Consultative Group.

- Examine the question of freedom of expression and association in Cambodia at the forthcoming meetings to take place under the 1997 Cooperation Agreement between the European Community and the Kingdom of Cambodia. Article 1 of the text stipulates that respect for human rights and democratic principles are an essential element of the Agreement.

C. To the European Parliament

- Implement, as soon as possible, the suggestion set out in the resolutions of 5 December 2005 and 19 January 2006 to send a parliamentary delegation to assess respect for article 1 of the 1997 Cooperation Agreement between the European Community and the Kingdom of Cambodia and the situation of members of parliament, media representatives and trade union leaders who have been under arrest in Cambodia.

- Continue monitoring the situation of human rights in Cambodia closely.

Annex: Persons Met by the Mission

Authorities and political parties

- Mr. Leng Peng Long, Secretary of State, General Secretary of the Government Jurists Council, Ministry of National Assembly-Senate Relations and Inspection
- H.E. Mr. Khieu San, Member of Parliament, Member of the Commission of Human Rights
- Mr. Son Chhay, Member of Parliament, Whip of the Sam Rainsy Party
- Mr. Pou Darany, Under Secretary of State, Ministry of National Assembly-Senate Relations and Inspection
- Mr. Ouk Vannarith, Vice President, Cambodian Human Rights Committee, National Assembly of the Kingdom of Cambodia
- Mr. Mu Sochua, Sam Rainsy Party

Civil Society

- Mr. Thun Saray, President, ADHOC, Cambodian Human Rights and Development Association
- Dr. Kek Galabru, President, LICADHO, Cambodian League for the Promotion and Defense of Human Rights
- Ms. Naly Pilorge, Director, LICADHO, Cambodian League for the Promotion and Defense of Human Rights
- Mr. Sok Sam Oeun, Executive Director, Cambodian Defenders Project
- Mr. Kem Sokha, President, Cambodian Center for Human Rights
- Mr. Lao Mong Hay, Head of Legal Unit, Centre for Social Development
- Mr. Max Howlett, Legal Adviser, Cambodia Criminal Justice Assistance Project

United Nations and Embassies

- Ms. Margo Picken, Director, United Nations, Cambodia Office of the High Commissioner for Human Rights
- Mr. Kenrik Stenman, Program Coordinator - Protection, United Nations, Cambodia Office of the High Commissioner for Human Rights
- Mr. David Reader, Ambassador, British Embassy in Cambodia
- Mr. Yvon Roe d'Albert, Ambassadeur de France au Cambodge
- Mr. Laurent Lemarchand, Premier Conseiller, Ambassade de France au Cambodge
- Mr. Kurt H. Stoppkotte, Political Officer, Embassy of the United States in Cambodia

FIDH represents 141 Human Rights organisations

141 organisations

Albania-Albanian Human Rights Group
Algeria-Ligue algérienne de défense des droits de l'Homme
Algeria-Ligue algérienne des droits de l'Homme
Argentina-Centro de Estudios Legales y Sociales
Argentina-Comite de Accion Juridica
Argentina-Liga Argentina por los Derechos del Hombre
Austria-Österreichische Liga für Menschenrechte
Azerbaijan-Human Rights Center of Azerbaijan
Bahrain-Bahrain Human Rights Society
Bangladesh-Odhikar
Belarus-Human Rights Center Viasna
Belgium-Liga Voor Menschenrechten
Belgium-Ligue des droits de l'Homme
Benin-Ligue pour la défense des droits de l'Homme au Bénin
Bhutan-People's Forum for Human Rights in Bhutan (Nepal)
Bolivia-Asamblea Permanente de los Derechos Humanos de Bolivia
Brazil-Centro de Justicia Global
Brazil-Movimento Nacional de Direitos Humanos
Burkina Faso-Mouvement burkinabé des droits de l'Homme & des peuples
Burundi-Ligue burundaise des droits de l'Homme
Cambodia-Cambodian Human Rights and Development Association
Cambodia-Ligue cambodgienne de défense des droits de l'Homme
Cameroon-Maison des droits de l'Homme
Cameroon-Ligue camerounaise des droits de l'Homme (France)
Canada-Ligue des droits et des libertés du Québec
Central African Republic-Ligue centrafricaine des droits de l'Homme
Chad-Association tchadienne pour la promotion et la défense des droits de l'Homme
Chad-Ligue tchadienne des droits de l'Homme
Chile-Comite de Defensa de los Derechos del Pueblo
China-Human Rights in China (USA, HK)

Colombia-Comite Permanente por la Defensa de los Derechos Humanos
Colombia-Corporación Colectivo de Abogados Jose Alvear Restrepo
Colombia-Instituto Latinoamericano de Servicios Legales Alternativos
Congo Brazzaville-Observatoire congolais des droits de l'Homme
Croatia-Civic Committee for Human Rights
Czech Republic-Human Rights League
Cuba-Comisión Cubana de Derechos Humanos y Reconciliación National
Democratic Republic of Congo-Ligue des Electeurs
Democratic Republic of Congo-Association africaine des droits de l'Homme
Democratic Republic of Congo-Groupe Lotus
Djibouti-Ligue djiboutienne des droits humains
Ecuador-Centro de Derechos Economicos y Sociales
Ecuador-Comisión Ecuemenica de Derechos Humanos
Ecuador-Fundación Regional de Asesoría en Derechos Humanos
Egypt-Egyptian Organization for Human Rights
Egypt-Human Rights Association for the Assistance of Prisoners
El Salvador-Comisión de Derechos Humanos de El Salvador
Ethiopia-Ethiopian Human Rights Council
European Union-FIDH AE
Finland-Finnish League for Human Rights
France-Ligue des droits de l'Homme et du citoyen
French Polynesia-Ligue polynésienne des droits humains
Georgia-Human Rights Information and Documentation Center
Germany-Internationale Liga für Menschenrechte
Greece-Ligue hellénique des droits de l'Homme
Guatemala-Centro Para la Accion Legal en Derechos Humanos
Guatemala-Comisión de Derechos

Humanos de Guatemala
Guinea-Organisation guinéenne pour la défense des droits de l'Homme
Guinea Bissau-Liga Guineense dos Direitos do Homen
Iran-Centre des défenseurs des droits de l'Homme en Iran
Iran (France)-Ligue de défense des droits de l'Homme en Iran
Iraq-Iraqi Network for Human Rights Culture and Development (United Kingdom)
Ireland-Irish Council for Civil Liberties
Israel-Adalah
Israel-Association for Civil Rights in Israel
Israel-B'tselem
Israel-Public Committee Against Torture in Israel
Italy-Liga Italiana Dei Diritti Dell'uomo
Italy-Unione Forense Per la Tutela Dei Diritti Dell'uomo
Ivory Coast-Ligue ivoirienne des droits de l'Homme
Ivory Coast-Mouvement ivoirien des droits de l'Homme
Jordan-Amman Center for Human Rights Studies
Jordanie-Jordan Society for Human Rights
Kenya-Kenya Human Rights Commission
Kosovo-Conseil pour la défense des droits de l'Homme et des libertés
Kyrgyzstan-Kyrgyz Committee for Human Rights
Laos-Mouvement lao pour les droits de l'Homme (France)
Latvia-Latvian Human Rights Committee
Lebanon-Association libanaise des droits de l'Homme
Lebanon-Foundation for Human and Humanitarian Rights in Lebanon
Lebanon-Palestinian Human Rights Organization
Liberia-Liberia Watch for Human Rights
Libya-Libyan League for Human Rights (Switzerland)
Lithuania-Lithuanian Human Rights Association
Malaysia-Suaram
Mali-Association malienne des droits de

l'Homme
Malta-Malta Association of Human Rights
Mauritania-Association mauritanienne des droits de l'Homme
Mexico-Liga Mexicana por la Defensa de los Derechos Humanos
Mexico-Comisión Mexicana de Defensa y Promoción de los Derechos Humanos
Moldova-League for the Defence of Human Rights
Morocco-Association marocaine des droits humains
Morocco-Organisation marocaine des droits humains
Mozambique-Liga Mocanbicana Dos Direitos Humanos
Netherlands-Liga Voor de Rechten Van de Mens
New Caledonia-Ligue des droits de l'Homme de Nouvelle-Calédonie
Nicaragua-Centro Nicaraguense de Derechos Humanos
Niger-Association nigérienne pour la défense des droits de l'Homme
Nigeria-Civil Liberties Organisation
Northern Ireland-Committee On The Administration of Justice
Pakistan-Human Rights Commission of Pakistan
Palestine-Al Haq
Palestine-Palestinian Centre for Human Rights
Panama-Centro de Capacitación Social
Peru-Asociación Pro Derechos Humanos
Peru-Centro de Asesoría Laboral
Philippines-Philippine Alliance of Human Rights Advocates
Portugal-Civitas
Romania-Ligue pour la défense des droits de l'Homme
Russia-Citizen's Watch
Russia-Moscow Research Center for Human Rights
Rwanda-Association pour la défense des droits des personnes et libertés publiques
Rwanda-Collectif des ligues pour la défense des droits de l'Homme au Rwanda
Rwanda-Ligue rwandaise pour la promotion et la défense des droits de

l'Homme
Scotland-Scottish Human Rights Centre
Senegal-Organisation nationale des droits de l'Homme
Senegal-Rencontre africaine pour la défense des droits de l'Homme
Serbia and Montenegro-Center for Antirwar Action - Council for Human Rights
South Africa-Human Rights Committee of South Africa
Spain-Asociación Pro Derechos Humanos
Spain-Federación de Asociaciones de Defensa y Promoción de los Derechos Humanos
Sudan-Sudan Organisation Against Torture (United Kingdom)
Sudan-Sudan Human Rights Organization (United Kingdom)
Switzerland-Ligue suisse des droits de l'Homme
Syria-Comité pour la défense des droits de l'Homme en Syrie
Tanzania-The Legal & Human Rights Centre
Thailand-Union for Civil Liberty
Togo-Ligue togolaise des droits de l'Homme
Tunisia-Conseil national pour les libertés en Tunisie
Tunisia-Ligue tunisienne des droits de l'Homme
Turkey-Human Rights Foundation of Turkey
Turkey-Insan Haklari Dernegi / Ankara
Turkey-Insan Haklari Dernegi / Diyarbakir
Uganda-Foundation for Human Rights Initiative
United Kingdom-Liberty
United States-Center for Constitutional Rights
Uzbekistan-Legal Aid Society
Vietnam-Comité Vietnam pour la défense des droits de l'Homme (France)
Yemen-Human Rights Information and Training Center
Yemen-Sisters' Arabic Forum for Human Rights
Zimbabwe-Zimbabwe Human Rights Association Zimrights

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