

article 2

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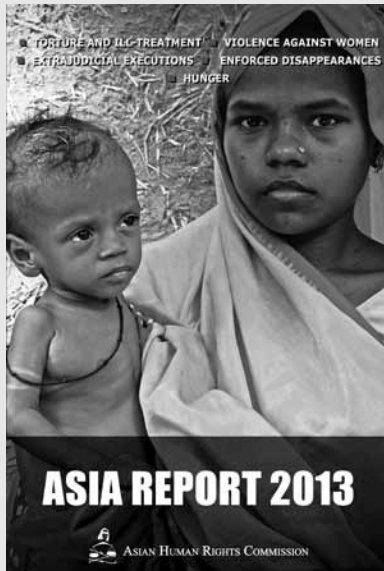
Focus on Southeast Asia

Suppression of emerging protests in Cambodia



Interviews on
torture in Indonesia, the Philippines and Thailand

New publications



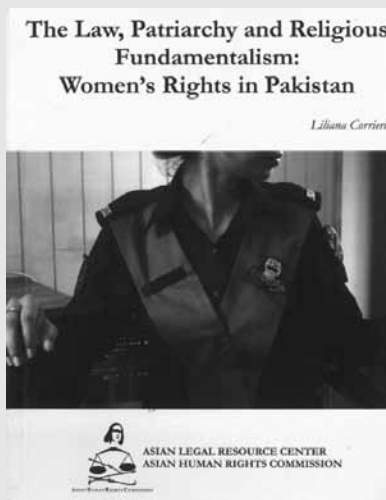
Asia Report 2013

Asian Human Rights Commission (AHRC)

The AHRC presents its analysis on human rights and hunger in Asia for 2013. The analysis is based on the work of the organisation in seven countries of Asia. The casework undertaken through its engagements with partners in the countries underlines the fact that the protection, promotion and fulfilment of human rights in Asia is possible only through reforms of the criminal justice institution.

Available online at:

<http://www.humanrights.asia/resources/hrreport/2013/>



The Law, Patriarchy and Religious Fundamentalism: Women's Rights in Pakistan

Liliana Corrieri with a foreword by Baseer Naweed, AHRC Pakistan Desk

This book is an analysis of the prevailing criminal justice system which is poor and weak at best and the absence of the rule of law in general and particularly with regard to women. It also explores the recent historical background and the cultural patterns in an attempt to define the reasons why gross forms of abuses and discrimination of women takes place.

It notes that a deeply patriarchal mentality and a gender-bias interpretation of the religious texts are presented as twining components, impacting both society and institutions. This patriarchal mindset of judges and courts, particularly those in the lower judiciary, provides impunity to the perpetrators.

Available online at: <http://www.humanrights.asia/resources/books/AHRC-PUB-005-2013>

Contents

FOCUS ON SOUTHEAST ASIA: Suppression of emerging protests in Cambodia

Introduction: What it means when emerging protest are suppressed <i>Editorial board, article 2</i>	3
'Help us find justice for my son, and others' article 2	6
'They shoot anyone on streets, in their homes' article 2 & <i>Fact Finding Mission in Cambodia, January 2014</i>	11
How and why the 23 protestors were arrested, prosecuted <i>Cambodian League for the Promotion and Defense of Human Rights (LICADHO)</i>	20
Interviews on the idea of justice and accountability in Cambodia <i>Danilo Reyes, Editor, article 2</i>	38

INSIGHTS AND REPORT ON CAMBODIA

'The possibility of justice does not exist in Cambodia' <i>Basil Fernando, former senior officer at the Human Rights Centre, United Nations Transitional Authority in Cambodia (UNTAC)</i>	45
'People realized that they can make change' <i>Prof. George Katsiaficas, author of the books on "Asia's Unknown Uprisings"</i>	51
"A week that shook Cambodia" <i>An extract of the Fact Finding Mission report on the crackdown of protests</i>	54

TORTURE IN SOUTHEAST ASIA: Interviews on the nexus between torture and the criminal justice system

INDONESIA

'None of the torturers were punished for their crimes' <i>Era Purnama Sari, LBH Padang</i>	66
'Police officials do not understand that torture is always wrong' <i>Sultan, Komnas HAM</i>	70

PHILIPPINES	
'I've seen obvious bias against poor, innocent persons' <i>Abina Rombaoa, Moro Women Center, Inc.</i>	73
'Police, prosecutors & judges do not perform according to the law' <i>Atty. Dominador Lagare, lawyer for torture victims</i>	79
THAILAND	
'Victims are not son of a rich man, they are poor' <i>Pornpen Khongkachonkiet, Cross Cultural Foundation</i>	82
'Disappearances is a systematic pattern of extra-legal policing' <i>Pratubjit Neelapaijit, daughter of disappeared lawyer Somchai Neelapaijit</i>	91
APPENDICES:	
For justice to be more accessible to victims, an anti-torture law is needed in Indonesia	94
Torture and violence against children in child care institutions must end in Philippines	99
Ten years without justice for Somchai Neelaphaijit in Thailand	104

Introduction: What it means when emerging protest are suppressed

Editorial Board, *article 2*

In this edition of *article 2* we focus on Cambodia and look at the implications of the suppression of emerging protests, and in Southeast Asia, on the nexus between practice of torture and its impact on the functioning of criminal justice systems.

The emerging protests in Cambodia in the last four years are not the customary protests we usually see on TV, hear over the radio and read in the newspapers. These protests were manifestations of the people demanding from their own government protection of their fundamental rights: *to live with dignity*. The protests that commenced in December 2013, until they were violently suppressed in early January 2014, were “self-generated” by the Cambodian people themselves, notably garment workers.

In this report, we look into the causes of these emerging protests and how the violent suppression, which killed four people, impacted on aspirations for protection of rights and democratization in Cambodia. One person has been disappeared, dozens were wounded and many arrested, detained and prosecuted. What is particularly bad in this instance is that some of those arrested had nothing to do with the protests at all. Several of them were actually taken from their apartments.

In our view the government and its security forces opened fire on the protestors to send a clear message: *‘We are in control; you do what we say.’* They suppressed not only the people’s demands for a wage increase, but also the emergence of a new force which was accumulating power that threatened the political stability of the regime. In fact, it is the very existence of workers and how their suffering, misery and dire conditions, were shared by other ordinary Cambodians, which poses a threat to the very stability of the regime in power and its political structure.

The question really is not only about whether or not it agrees to demands to increase the minimum wage to USD160 a month of the garment workers. In fact, it was the government's own findings that, for a person to live decently, the current minimum wage should be increased. Their findings merely affirm what the ordinary Cambodian, notably those working in the garment sector, has known for a long time. They know it because they have lived with such poor, difficult and dire living conditions all their lives.

Although the workers were not able to achieved, for time being, an increase of the minimum wage to USD160, nevertheless, the government has been "put on notice" by its people, as explained by Prof. George Katsiaficas, in an interview in this report. His comments also explain that, from the earlier demands for a wage increase, and later the demands for political change, that "once protests start they (the issues their represent) tend to build upon each other."

Why do the emerging protest in Cambodia need careful understanding? The protests in Cambodia are unique. They have profound meaning in the people's imagination and aspirations for justice, human rights and democracy, keeping in mind how they suffered from the genocide of the Khmer Rouge regime. The protest was a spontaneous reaction to the Cambodian people's collective pain, misery and dire condition, notably garment workers who suffer the most.

In another interview, Basil Fernando, former senior officer of the United Nations Transitional Authority in Cambodia (UNTAC), noted that while it is good that now "the people are asserting their rights" there should also be a thorough and realistic assessment of the institutions of justice and the political structure of Cambodia. He notes that while the people are asserting their rights, a process whereby the government would recognize these rights "has not come yet."

Fernando elaborates on the fundamental theoretical and ideological contradiction in the rebuilding of the country's justice institutions in early 90s, rendering the possibility of justice to be non-existent in Cambodia. To him, the idea of Cambodia's "constitution was based on socialism," and the principles of liberal democracy, whereby justice and democracy is a cornerstone, exist only on paper.

Drawing from views and opinions of Fernando and Katsiaficas, *article 2* wrote an analysis base on the documentation it has collected from interviews of the victims, families of the dead, local and foreign NGOs who are helping the victims, and others who are supportive of the Cambodian people's democratic aspirations. Their stories may be found in the articles '*Help us find justice for*

my son, and others’, ‘*They shoot anyone on streets, in their homes*’ and *How and why the 23 protestors were arrested, prosecuted*, in this report.

Moreover, Danilo Reyes, editor of *article 2*, put together the reflections of all his interviewees on how they understand and what their thoughts are on the idea of ‘justice’ and ‘accountability’ in Cambodia. Reyes joined the team of the fact finding mission of regional labour and human rights groups, academics, to investigate the root causes of the crackdown of the protest of workers. The extract of the group’s report, titled “*A week that shook Cambodia*,” is also included here.

Also, in another section of this report, *article 2* interviewed human rights defenders, human rights lawyers, families of victims of torture and disappeared, and a member of a government’s human rights commission, asking them about the nexus between the use of torture and how they impacts on criminal justice institutions. The interviews cover countries in Indonesia, the Philippines and Thailand.

Article 2 would like to thank the Asia Monitor Resource Centre (AMRC) and the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), individuals and groups, for their contribution in this report. Some of them, like witnesses to the crackdown could not be named for their own safety.

More importantly, we pay tribute and dedicate this report to the victims who were killed, suffered severe injuries, and those who are imprisoned and in an ongoing struggle to prove their innocence to win back their liberty. To their families—their fathers, mothers, siblings and their children—who know and value them more than anyone else could, we are grateful to you for letting us in, not only in your hospital rooms and in your homes in the village, but into your lives.

We hope that this report could help let other people know, and help them to understand, the reasons why your loved ones are struggling. And, for the readers to know who your loved ones were, who they are, not only to you, but also to them.

This report was prepared, edited, and layout designed by Mr. Reyes, with the kind assistance of John Stewart Sloan and Sr. Marya Zaborowski in copy-editing.

‘Help us find justice for my son, and others’

The editor, article 2



Sous Samoul, father of the victim.

“He was a good boy, very helpful, hardworking and he never made any trouble for his family,” said Sous Samoul of his son, Kim Phal Leap, one of four persons killed in the protest demanding for a wage increase in Cambodia on January 3, 2014.

Phal Leap, like many other garment workers that migrate to Phnom Penh from the rural villages, started working in his teens because he could not study further for lack of money. At the time of his death, he was a line leader in a sewing section—a position of responsibility in the Chlari Factory.

After finishing his ninth grade, equivalent to either middle school or high school in other countries, he started working in the garment industry at the age of 17. Like many other Cambodians from rural areas, Phal Leap spent years going from one garment factory to another in the industrial areas and economic zones.

His wife, Khat Samneang, whom he married two years earlier, had just given birth in November 2013 to their first child, Oul Tith Souvantey. The couple’s earning was about USD250 a month, including overtime work. Of

this income, USD45 was deducted to pay for the rent, and the rest went for utilities, food and transportation. After having a child, the couple had to earn more to support their child.

“Their salary is too low. They (the couple) could not survive at that amount. That is why he (Phal Leap) decided to join the

strike. The worker's demand was just for decent living. It's not for him to buy movie ticket or brand new car," his father, Samoul, said. "He usually sends some money back home to support his family," he added.

As the couple's gross income was not sufficient, Phal Leap also had to work as a motorcycle taxi driver to earn a bit extra. Their situation is no different to other garment workers coping with high inflation rates and the cost of living. In November of 2013, the National Institute of Statistics of Cambodia recorded a 4.12 percent inflation rate, rendering the current USD 85 minimum wage insufficient.

Phal Leap was not affiliated with any unions, but his decision to join the protest obviously was out of burden shared among garment workers. After his death, the government and public's perception of him and the others killed or wounded in the protest, may be negative—describing them as troublemakers, rioters and gangsters, but to his wife and parents, Phal Leap was a kind person dedicated to supporting his family.

"He was a very gentle man. He was very respectful to the elderly, and friendly. He was also very helpful. He also helped in the household chores. He was a hardworking man," Samneang said of her husband. The last time she was able to speak to him was at 8am on January 3, by phone. It was just an hour later that he was shot dead.

What Khat Samneang knew was that her husband was just by the roadside along Vreng Sreng Road, inside the industrial park. When she last spoke to him, she told him about the crackdown on the workers the day before, January 2, at the Yakjin Factory. This incident resulted in the arrest of 10 labour leaders and garments workers. Several persons, including two journalists who were covering the incident, were also beaten and attacked. (*See related story: How and why the 23 protestors were arrested, prosecuted*).

By 9am on January 3, the military police deployed at Canadia Industrial Park, started shooting at the protestors, chasing them away, beating people; arresting and detaining any person on streets they could get their hands on. Some were dragged from coffee shops, their rented houses or other places the police thought the protestors were hiding. The incident left four people dead, including Phal Leap. He was 26 years old when he died.

The three other garment workers killed were Pheng Khosal, 24, of the Y Tech Factory; Yien Rihty, 26, of the Sin Chao Factory; and Som Ravy, 25, of the New Mingda Factory.

Another victim, Khem Sophath, 16, who was last seen by witnesses visibly injured, and in custody of the military police, has disappeared. On February 3, Mr. Ibrahim Salama, director of the UN Human Rights Treaties Division, in Geneva, informed Ms. Naly Pilorge, director of LICADHO, that her request for urgent action "has been registered."

“ Phal Leap was not affiliated with any unions, but his decision to join the protest obviously was out of burden shared among garment workers.”



Khat Samneang in their home.

By January 30, Salama said his office has requested the Government to “send information regarding the actions taken by competent authorities to clarify the alleged enforced disappearance, the measures (it has) adopted to protect his family and relatives, and the results of the investigations.”

It was Khat Samneang’s sister, also a garment worker in another factory, who informed her about the shooting to death of protestors and garments workers. She quickly asked her to contact her husband, but nobody could reach his phone. “We got scared and worried if something happened to him because normally he doesn’t turn off his phone,” his father, Samoul, said.

At 2:30pm, they knew that Phal Leap had been wounded and taken to the hospital. Samoul immediately sent his other son to the hospital. By 3:30pm, this son found Phal Leap, not among the dozens of persons wounded and waiting at the emergency ward, but among the dead in the morgue.

Phal Leap’s brother saw a doctor examining the body, but neither the doctor nor any staff from the hospital explained to him the circumstances of how he had died. The hospital doctors did provide the victim’s death certificate which contained information of the findings of the examination and that: “he was injured by bullet wounds, died of bullet wounds.” There were no other details.

“ Some doctors do conduct post-mortems regardless of whether or not their findings would be used in the investigation.”

The doctor asked Samoul to keep the document; however, neither he nor his daughter-in-law could understand why they had to keep it, and for what purpose. Understandably, keeping of forensic evidence and forensic methods of investigation is non-existent in Cambodia. Nevertheless, some doctors do conduct post-mortems regardless of whether or not their findings would be used in the investigation. (*See related story: Interview on the idea of justice and accountability.*)

Most of the garment workers who were killed, wounded and arrested during the January 2 and 3 incidents were workers who had come from rural villages. It explains why the families of the dead find it difficult, not only because they do not know how criminal prosecution functions in Cambodia, but the cost and financial burden it would have on them, if they file a complaint for the death of their loved ones.

Even local political leaders, like Samoul, who is part of Cambodia’s ruling party, had no idea how he could file a complaint. When asked if he was thinking of filing a complaint to seek remedy for the death of his son, he said: “I am not sure, and I have that question back. If I file a complaint, what should be in the complaint?”

“When I got this letter” (death certificate), I did not look exactly at what it is. I didn’t look because I was shocked. So we just got the paper and we do not look at the paper. I wondered why they asked me to keep this paper,” Samoul said.

Samoul, a member of the Cambodian People’s party, the ruling political party in Cambodia; and deputy village chief in Rolaing Kreul Commune, Samrong Tong District, Kampong Speu province, could not understand why the military police shot at unarmed workers. Why they would kill his son over a just demand for “a decent living.”

Samoul, however, explains why his son was so confident that in joining a peaceful demonstration, everything would be fine. Phal Leap was one of the hundreds of protestors, who are not only garment workers, but also *tuk tuk* drivers, students and ordinary villagers, who were either joining the protest or supporting the call for a reasonable wage increase (*See related story: They shoot anyone on streets, in their homes.*)

“My son believed strongly that these people—the military—are not able (sic) to kill their own people in Cambodia. Khmer could not kill Khmer,” as Samoul remembers his son’s words. To him, his son’s assumption was wrong.

“Samoul, a member of the Cambodian People’s party, the ruling political party, could not understand why the military police shot at unarmed workers.”



Sous Samoul and Khat Samneang, the victim’s wife with her son. *article 2/Danilo Reyes*

“My son believed strongly that these people—the military—are not able (sic) to kill their own people in Cambodia. Khmer could not kill Khmer.”

Like Phal Leap, the three garment workers who were killed, and the boy who remains disappeared, were not members of labour unions. They, however, joined the protest for a common demand: minimum wage of USD160 a month.

Samoul repeated his son’s words and purpose in joining the protest: “Their (his son and workers) demand is to cope with the living cost. So it is not for holiday or those lazy activities. It was just for their family. They send money back home so the family can use it for their daily needs in the village.”

In Cambodia’s rural villages, it is common for a family to have their sons, daughters, in-laws and relatives, migrate to Phnom Penh or to other places, where there are garment factories, for work. Since most of them are young, it is also common to see the elderly taking care of these worker’s children, their grandsons and granddaughters; and do all domestic work in their absence.

“It is exhausting to work in the factory. We have to sit (sewing) all day. I want to go back to the village. There it is better, but why we don’t also like staying there because you have nothing to do,” said a 28-year-old garment worker at the Canadia Industrial Park. She and her 17-year-old sister are from Prey Veng province.

In Phal Leap’s own village, most of the young people have left their village to work as factory workers in Phnom Penh. When this interview was conducted, a crowd of onlookers in the neighbourhood joined in, visibly willing to share their stories and to listen. “You can also check with other villagers how they feel about my son,” Samoul said pointing to his neighbours who were present.

Towards the end of the interview, speaking to an interpreter, Samoul had this appeal:

“Help us find justice for my son. Not just for my son, but also for other killed and injured workers; and those who are arrested and put in jail. I am calling on the international community to put pressure on the Government. They should be held responsible for their acts for the deaths of (four) persons, they should give compensation to injured workers, and release the 23 workers,” Samoul said.

‘They shoot anyone on streets, in their homes’

The editor, article 2

In the aftermath of January 2 and 3, 2014 crackdown on workers demanding a wage increase in Cambodia, *article 2* joined a group of academics, regional labour and human rights organisations, in a field investigation in Phnom Penh. Of the 38 persons who were taken to hospitals, we spoke with ten of them in their hospital beds at the Khmer-Soviet Friendship Hospital (Russian Hospital).

Of these ten, however, two were bystanders. The two were neither garment workers nor part of the worker’s protest, but were sympathetic to the protestors. Though the majority of the victims wounded during the crackdown—who suffered gunshot, fractures, loss of hearing and memory due to severe beatings—are workers, the shooting of persons who were not at all part of the protests, clearly demonstrates that the military police intended to kill or harm anyone on streets and in their homes indiscriminately.

Take the case of a victim, Vonsrei Ora, a 17-year-old a student.

At 8am on January 3, she and her friend were riding on a motorbike passing by the Canadia Industrial Park when she was struck by a bullet on her scalp. Had she not lowered her head when her friend asked her to do so, the bullet could have pierced her forehead. She cheated death by inches. When she was interviewed, she recalled how she narrowly escaped death:

I was driving a bicycle with a friend in the area. We were about one or two kilometres away (from where the protest and shooting) when the bullet



Vonsrei Ora



Thet Theng

(coming in front of us) hit my scalp. We were far from the site. I cannot tell exactly how far I was, but I was still hit by bullets. There were policemen but I'm not sure whether the bullet that hit my scalp had come from police nearby or from far.

My friend told me to lower my head down. After I was injured, I asked my friend to take me to a clinic, but the clinic where we first went to refused to admit me. They said their clinic was small and could not treat head injuries. Before we reach the (Russian hospital) we had gone from one clinic to another. All of them refused to admit me. After I was admitted here, more and more wounded victims were taken.

Vonsrei is one of the many bystanders, onlookers and curious Cambodians who were wounded when the police started shooting indiscriminately. Another onlooker, 18-year-old Thet Theng, a garment worker, thought the crackdown on the protesters in the morning of January 3 had finished, so he went out on streets just to see what was going on. The military police caught him, shocked him with their electric batons, and started severely beating him, causing serious trauma in his head. His mother said:

On January 3 at 3pm, he was not among the strikers. He didn't join the strike when it started (in the morning). It was only in the evening when he went to (the Canadia Park) to see what was happening. There he was hit with electric batons. The military police shocked him first (with their electric baton) and then beat him after that.



Mon Sarorn and his wife, Sang Bopha.

He was aware about the violence that already started in the morning, but he thought it was over so he went on street to see.

Another onlooker, 27-year-old Mon Sarorn, a *tuk tuk* driver, had just dropped his passenger at 10am. On his way, out of his curiosity he stopped near where the workers' protest was happening. He was just standing, looking at the crowd of workers on protest when the police started shooting.

I was only standing and looking at the strikers. Then, I saw the police started shooting at the strikers. I tried to escape by running away, and at the

same time looking back to see if the police were still chasing me. I didn't know that I was already shot. I just kept on running and running. Then later I feel my legs were numbing. I thought I must have been injured by a stone thrown at the strikers.

After I was injured, I was carried by persons into another *tuk tuk* towards the hospital. There were three bullets that hit my leg (at his ankle to his left leg, and right knee). The three bullets hit both my legs.

After I was shot, I received a call from my wife. She told me to avoid passing through the streets in Canada Industrial Park because she heard about the shooting in the area. But actually, I was already injured when she called. So I told her that I was already at the hospital. She was very frightened.



Pan Bur

Mon's wife, Sang Bopha, was also a garment worker. When her husband was undergoing treatment in the hospital, she had to stop working to take care of him. She never left her husband's bedside at the hospital. She was terminated from her job because she could no longer report to work because she needed to take care of her husband. Now that the couple both lost their means of income, Mon worries on how he can support his wife and their two-year-old child, Chan Leakna.

My family relies on my income. After the incident, I could not drive my *tuk tuk* and earn money for living. I only get support from people visiting us at the hospital giving donations. I hope I will get better soon so I can go back to earn a living.

Even those who had not been on the streets or joined the protest were shot. This is what happened to 17-year-old Pan Bur, also a garment worker, who was shot in the leg while inside a rented room. At that time, Pan was with her elder sister, also a garment worker, cooking their food. Pan's right leg was struck by bullets.

We (my sister and I) did not join the strike (on that day, January 3). We were in our rented room. My sister and I heard the shooting. When the police started shooting, the bullets pierced through the wall of our room, and goes into our room.

I was standing inside our room. I did not know that my leg was already hit by bullets. I was wearing jeans at that time. So I did not notice immediately that I was hurt. My sister was cooking at that time.

Our rented room is about one kilometre (from where the shooting/protest was happening). In the area, there were a lot of police.

Even though Pan and her elder sister were inside their rooms on January 3, they have been supportive of the worker's demands for a wage increase. Also, since the worker's strike started gaining momentum in December 2013, they both have been joining the strike and protest occasionally. On January 3 they decided not to join for fear that the protest could turn violent after learning of the violence the day before, January 2, when the workers were beaten on the streets. They also notice the increasing police presence. For fear of their safety and to avoid violence, they said of their decision to stay at home.

Many workers collapsed and lost consciousness. They (the policemen) just threw them unto the truck. We thought it was not acceptable so some workers decided to join the strike (on January 3).

This is our commitment. We saw what happened and we felt that we have to do something. We first thought of joining the protest on the street that day (January 3); however, after seeing the policemen on streets, we were scared. We did not join on that day.

We thought we will just come back. We were afraid of violence. When we saw the policemen, we decided not to join.

Like Pan and her elder sister, although Thet had since been joining the worker's strike since December 2013, on January 3, he decided not to join fearing violence as well. He joined the worker's protest occasionally, and he was very supportive of his fellow garment worker's demand to have their minimum wage



Garment worker's rented rooms. *Photo: AMRC/Fact Finding Mission*

increased to USD160. When he was interviewed on his hospital bed, it was obvious that Thet suffers memory loss and has had fragmented memories as he speaks. He could not remember the name of factory he was working for, the name of union he was a member of; however, he could clearly understand and could recall reasons why he must support the protest.

It is appropriate for us (garment workers) to demand for wage increase because USD80 a month is not enough. If you buy food, that is just enough, it is finished. If we get USD160 it is better.



Losh Sao and his sister

In the last two weeks of December 2013, I did join the strike. I went to the factory for work, left my bag and joined the strikers. But on the day I was beaten (January 3), I did not join the protest. I just wanted to see. I thought (the crackdown) was finished.

Thet's mother, also a manual labour worker in their province in Kampong Cham, had to travel all the way from her village to Phnom Penh to look for her son after learning from her relatives about the crackdown, and when they could not contact him.

I was so scared that day. I tried to call him. I cried a lot when I learned what happened to him. We have a relative leaving close by, and they tried to look for him. But they could not find him. It was our relative who found him at the hospital.

He was sent to another hospital first; then, after two days he was discharged after being given some medicines. But the pain persisted, so we decided to take him here (hospital) again. He is waiting (for his skull) operation.

But other siblings, Losh Sao and his younger sister, both garment workers, joined other workers in their protest on streets of Canada Industrial Park even though they knew full well it could turn violent. They did it as they tried to get over their fear inside upon seeing the presence of the military police. In the factory where Losh and his sister work, despite the risk and danger by requiring their workers to work due to ongoing protests on streets, their employers still compelled them to show up in person.

The employers did not require the workers to work; however, all the workers were required to have their thumbprints scanned as proof of their work and that they were present before they would let them go home. If they did not do it, they would either be terminated or their absences deducted from their salary. The factory's requirement resulted in many workers being exposed to unnecessary risk and danger.



Ham Pun

When I was going to work on January 3, I couldn't concentrate walking on the streets. I have to go to work otherwise I will not get paid. I need to show up and have my thumbprints scanned at the factory as proof that we did our work. So I get paid. If we don't do that, they consider us absent and will deduct it from our salary.

I was too scared of the military police. After the January 2 incident, I could not sleep. I was awake the whole night. On that day, I heard people screaming, shouting and the military police were chasing people to their rented rooms.

The decision by some employers, however, to pay workers their salary even though they were not working, obviously did not arise on humanitarian grounds. In fact, days before the Garment Manufacturers Association in Cambodia (GMAC) issued an announcement to all their members that, to protect the properties of the factory, it is better for them to close their factory. Thus, by compelling their workers to register their thumbprints in person at the factory knowing full well the danger their workers would face, explains clearly that the factory property was worth more than the lives of their workers.

But Losh and his sister took this time off from work by joining with the other workers on streets soon after registering their thumbprints. Their actions, however, explains the determination amongst garment workers in Cambodia to both keep their job at the same time support the ongoing demands for wage increase.

On January 3, I went back to my factory to work. After I left the factory, I joined the strike with other workers. I was about to go back home, when I was shot. I was on my way to my rented room when the military police, which was positioned on the roof of the building, shot me.



Pok Sopheak

I joined the strike since morning at 8am. At 10am, the police started the crackdown. They chased the workers into their rented rooms. I was shot on site (where the protest was happening).

I joined the strike on January 2 and 3 because I want the minimum wage increased to USD160. That is not only for me, but for everyone. The rent is high, cost of food is increasing and our salary is very low – Losh

I also joined the strike, but I was in another area. When I heard about what happened to my brother, I suddenly went to see him in the hospital. There were police around. They were observing/guarding the roadblocks (along Veng Sreng road).

Since I have commitment with other workers as well, I decided not to go back to work. I was not working on that day – Losh's sister



Ran Sarath

Like Vonsrei, Losh also cheated death by inches when shots fired by snipers at him from behind hit his left ear, not his head. At that time also, the military police started shooting at anyone on streets, shooting indiscriminately at those in their homes; chasing away and arresting anyone they could get their hands on. Losh could also remember vividly seeing one of the protestors dying from gunshot wounds in front of him. (See related story: *'Help us find justice for my son, and others'*)

I saw one of the protestor who was shot dying on the street. He was bleeding profusely. I felt sorry for that person because he was only demanding for increase of minimum wage, and the police shot him just like that.

I feel better now. When I also saw the video of this person dying, because somebody had taken a video of it too, I could not stand looking at the video again. It is too much for me. I don't know the person because we come from different factories.

Other garment workers who were on protest suffered fractures, loss of sight, memory and hearing, when the military police assaulted and severely beat them as they chased them away or managed to get their hands on them. It was clear to *article 2* from the victims it had spoken to that they were neither posing a danger nor were they carrying weapons capable of causing severe harm to security forces.

In fact, the January 2 incident, where the military severely beat, arrested and later detained workers at the Yakjin Factory and Veng Sreng Road had prompted other workers to come out on the streets to show their support to other workers. (See related story: *How and why the 23 protestors were arrested, prosecuted*) The violent dispersal and use of excessive force by the security forces themselves provoked other workers. One of the victims who suffered gunshot wounds, Ham Pun, recalled what provoked the workers, and why they had to defend themselves.

Many workers were injured on January 2. It was cruel. The workers were beaten by the police with some electric batons. Many workers fell unconscious, and they just threw them onto the truck. We think what we have seen was not acceptable. So we decided to join the strike on January 3rd.

We were not expecting the violence because we came with empty hands. We were only demanding for minimum wage so we did not expect this cruel treatment. We did not have weapons with us.

At first we were empty-handed but when the police came, we felt we needed to and started to defend ourselves. We got rocks (after we saw the policemen were beating) because if the police catch us, they will beat us.

Like Ham, two other workers, Pok Sopheak and Ran Sarath, also suffered gunshot wounds in their legs. Pok had gunshot wounds both of his ankles and right thigh, Ran had gunshot wound to his right knee. Another worker, Pi Yong, was lying in his hospital bed when he was interviewed but did not show his injuries. All the four victims were treated in a crowded hospital room with other patients. Other workers who were undergoing treatment, like Mon Sarorn, Vonsrei Ora and Pan Bur, had to stay

in their bed by the lobby of the hospital or in benches outside the hospital due to overcrowding.

When asked about what they could recall on January 3, Ham said that:

What I know was that on January 2, the workers had already started the strike. They held peaceful demonstrations. They were just dancing outside the factory. There were not so many people. They just gather outside the factory and danced together.

And then at 2pm or 3pm, there were a lot of military came. A few trucks, and then the military came down from their trucks, and started the crackdown by beating the workers. And the workers got angry, so they started to block the street on January 3.

On January 3, the deployment of the military police was divided into different groups. Some were on the rooftop of the building shooting the people to the ground. They had different duties and they were positioned in different places. Some of them were holding electric batons. One of them was beaten by the military on the street.

Actually, all the workers were together. And when the military came, they started



Moun Sokmean

shooting at the workers. The workers were running. I was caught by the police and the bullet went through my thigh, and it exited and hit another person. The strikers were also the one who helped me going to the hospital.



Pi Yong

Ham's recollection of the January 3 crackdown was shared by three other victims, Pi Yong, Pok Sopheak and Ran Sarath. Also, another worker, Moun Sokmean, 29 years old, remembers how indiscriminately the military police were arresting anyone they could get their hands on, chasing them away and shooting in all directions.

I saw the police started beating, shooting at the protestors in all direction, and chasing the protestors. About three to four police officers came to me and started beating me severely to my back, face and head.

While they were beating me, I pleaded to the police to stop beating me. They beat me, pushed me hard and I nearly lost my consciousness. The policemen used a stick in beating me. I told the policemen: "*Sir, if you keep on beating me, I might die.*"

I also thought to myself that if I can't escape, I might die. So, I ran away and pleaded to the villagers to help me hide.

After the incident, Moun went home to his village. At first, he decided not to go to the hospital for treatment; however, when he started vomiting blood, feeling dizzy, and he sensed that his left eye could not see properly, he decided to go back to Phnom Penh to get treatment. When he was interviewed, the swelling in his head, back and bruises in his neck were still visible. Like Thet, Moun underwent observation from the trauma he suffered to his head, face and body due to severe beatings.

I thought my eyeballs were severely damage. Sometimes, my eyesight in both of my eyes is blurring. I had to put patches to my forehead, and right eye next to my eye socket because my head is aching.

On January 22 and 30, Moun and Thet were discharged from the hospital respectively. Thet was discharged after undergoing a craniectomy to drain fluids from his head. Moun and Thet were among the six victims suffering from light to serious head traumas.

How and why the 23 protestors were arrested, prosecuted

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

Splashed with water to regain consciousness, and then beaten again



Vorn Pao

“They wanted to arrest him because he is a leader.”

Name of detainee: Vorn Pao, (39), of Trapang Chhouk Village, Teuk Thla Commune, Sen Sok District, Phnom Penh. He is married with four sons (aged 15, 8, 6, 3). He is the President of Independent Democracy of Informal Economy Association (IDEA)

Details of his case:

He was arrested on January 2, 2014 in front of the Yakjin factory, National Road 4. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances, of the Criminal Code Criminal Code.

“Pao went to help those arrested in front of Yakjin factory. They wanted to arrest him because he is a leader. They caught him and he was beaten until he lost his consciousness. The police poured water on his face to make him conscious to continue to beat him,” his wife

Pao lives with his wife in Phnom Penh and his sons live with their aunt in Pao’s hometown where they go to school. His wife describes him as an “ideal husband” who loves his family. He is active in promoting labour rights, human rights, working with grassroots groups and promoting social justice.

On January 2, Pao went to the demonstrations at National Road 4 when he received a phone call about three people being arrested. Pao and his wife tried to negotiate with the security forces to stop the violence and to ask for those arrested to be released. He also called the staff from the United Nations’ Office of the High Commissioner for Human Rights for their assistance.

As security forces and demonstrators continued to clash, throwing stones and water bottles at each other, Pao and his wife separated on different sides of the road. The security forces

attempted to detain Pao on two separate incidents. The first was when he escaped; soon after, the security forces finally arrested him, severely beating him in the process. Pao has been suffering from a serious wound (ten stitches) on his head as well as from surgery he underwent in late 2013.

During his arrest the security forces beat him on his wounds from the surgery causing him severe pain and bruising.

When Pao's sons asked: "When will he be released?" his wife tried to explain to them that: "He was arrested because he tried to do something for the country, he is innocent and the things he does are for the sake of justice. Please don't be disappointed with your father". Pao's wife hopes and believes that their sons will understand.

Health of an ailing activist deteriorates in prison

Name of detainee: Theng Savoeun, (24), of Chhuok Sar Village, Chheu Teal Commune, Svay Chrum District, Svay Rieng. He is the Coordinator of Coalition of Cambodian Farmer Community (CCFC)

Details of his case:

He was arrested on January 2, 2014, in front of the Yakjin factory and charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; and Article 411, for Intentional Damage with Aggravating Circumstances, of the Criminal Code.

"People don't want to be rich; they [the demonstrators] just want to have a decent life. He was arrested for the benefit of justice, to bring justice to the people," Savoeun's older brother

Savoeun comes from Svay Rieng province where his mother and father still live. He is the second of four children, with two brothers and one sister.

In 2008, Savoeun came to Phnom Penh to study and holds a diploma in law. Since then, he worked with several unions and NGOs until he founded CCFC where he is now a coordinator. Savoeun has always been interested in social work and has been engaged in different networks and groups since high school. Savoeun is particularly interested in advocacy and has often joined forums and debates to mobilise farmers and develop networks.

Savoeun's elder brother, who has visited Savoeun in prison, says he has become very weak and thin. Before the demonstrations, Savoeun was on medication for health problems.

According to his brother, when he was arrested he did not have any medication with him and at the time of the first prison visit his condition was so severe that he could not eat properly.



Theng Savoeun

“ Savoeun has always been interested in social work and has been engaged in different networks and groups.”



Chan Puthisak

“A very caring and popular person who always helps people in need.”

Savooun’s brother also adds that he had a serious wound on his head from the violence when he was arrested.

A caring person who helps people in need

Name of the detainee: Chan Puthisak, (40), of Boeung Kak Village, Sras Chak Commune, Daun Penh District, Phnom Penh. He is married and he has a 9-year-old daughter. He is a community leader from Boeung Kak Lake, Glasscutter.

Details of his case: On January 2, 2014, he was arrested in front of the Yakjin factory. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances, of the Criminal Code.

“Where is my dad? When will he be released?” Puthisak’s daughter

Puthisak is married and is father to a nine-year-old daughter who is in grade three at school. His daughter asks about him every day, wanting her father to return home. His wife asks for help to get him released as he “only works for justice [increase wages]”. She has a small shop which provides the family with some income whilst Puthisak is in prison.

Puthisak is a key community representative from Boeung Kak Lake who took the lead when 15 Boueng Kak Lake representatives were imprisoned in mid 2012. He is very important to his community, especially while they continue to suffer abuse and persecution by authorities. He also works as a glasscutter to support his family.

His wife describes Puthisak as a very caring and popular person who always helps people in need. When there are issues to deal with he mobilises the community to plan and discuss solutions. His wife says he should be released immediately as he only attended the demonstration to support justice for garment workers. His family miss him greatly.



Sokun Sombath Piseth

“We want him home...back with his family where he can get medical treatment.”

Dislocated finger due to severe beatings

Name of the detainee: Sokun Sombath Piseth, (31), of Russey Village, Steung Meanchey Commune, Meanchey District, Phnom Penh. He is married and has a 3-year-old son. He is the Labour union networking officer at the Center for Labour Rights of Cambodia (CLaRi-Cambodia)

Details of his case: On January 2, 2014, he was arrested in front of the Yakjin factory. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article

411, for Intentional Damage with Aggravating Circumstances, of the Criminal Code.

“We want him home...back with his family where he can get medical treatment” Piseth’s mother)

Piseth comes from a family of four children, and has one brother and two sisters. Piseth himself is married and has a three year old son. His wife now lives with Piseth’s parents as she cannot support their family whilst he is in prison. She works as a garment factory worker close to where they usually live.

Piseth is a labour union networking officer for CLaRi-Cambodia. Previously, he worked for the public telecommunication company Telecom Cambodia. Piseth is known as a very helpful and inquisitive man who is very good with information technology.

Piseth’s mother says that he was severely beaten and lost several of his belongings during the time of his arrest. She also says the security forces crushed his hand and dislocated one of his fingers. When Piseth’s mother visited him in prison he had a very swollen hand and his body was covered with bruises. His family wants him out of prison so that he can receive adequate medical treatment for his injuries.

Arrested for only watching the demonstrations

Name of the Detainee: Bou Sarith, (27), of Russey Village, Steung Meanchey Commune, Meanchey District, Phnom Penh. He is a garment worker.

Details of his case: He was arrested on January 3, 2014 near the Canadia Industrial Park, Veng Sreng Road. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances; Article 502, for Insult addressed to Public Official Acting in their Official Capacity of the Criminal Code, and Traffic Law Act. 78, for Blocking Public Traffic



Bou Sarith

“Please do not worry,” Sarith told his mother when she visited him in the prison

Sarith lives with his mother and two of his siblings who are still in school. Sarith helps to support the family by working in a garment factory. He has two other siblings who are married and live with their families.

Sarith left school at an early age (between grade three and four) and started working to support his family. “He works very hard to support his family, so he is not married yet”, his mother says. He does not have much free time, but when he does, he likes to play football.

“He works very hard to support his family, so he is not married yet.”

According to his family, Sarith was not involved in the demonstrations, but on the evening of January 3, he had gone on his bicycle to see the demonstrations with his friend. His friend managed to escape on the bicycle, but Sarith was violently arrested. If it had not been for Sarith's friend who went to tell his family, they believe, they would not have known about his arrest for several days. Sarith had a lot of bruises on his face when his family visited him in prison.

On February 8, he was released on bail.

Not part of protest, but arrested on his way home



Chea Sarath

Name of the detainee: Chea Sarath, (34), of Trapang Thleung Village, Choam Chao Commune, Posen Chey District, Phnom Penh. He is married with two children (aged 5 and 3). He is a moto-taxi driver.

Details of his case: He was arrested on January 3, 2014, near Canadia Industrial Park, Veng Sreng Road. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances; Article 502, for Insult addressed to Public Official Acting in their Official Capacity of the Criminal Code; and Traffic Law Act. 78, for Blocking Public Traffic

"I did not tell our children about his arrest. When our children ask me about him, I tell them their father goes to work far away. I want him to be released soon. Our children ask about him every day and they really need him," his wife

“ He is a good husband and that they get along well with each other. ”

Sarith is married and has two children, a five year old son and a three year old daughter. He is a moto-taxi driver in Phnom Penh and his wife is a garment factory worker. Their children are currently staying with Sarath's mother in Kien Svay District because his wife works long hours and does not have time to take care of them.

Sarith's wife says that he is a good husband and that they get along well with each other. Since his arrest, his wife has been very worried and cannot sleep well.

Sarith was on his way home on his motorbike and was arrested when he had almost reached their home, his wife said. At the time of arrest he lost several of his belongings, including his motorbike, his identification card, his phone, his helmet and some money. After his wife visited him in prison she said: "He seems fine, but his wrists still hurt because of the handcuffs".

His wife wants to see him released soon. Their children often ask about him but his wife thinks that it is better for them not to know that he is in prison.

Severely beaten, kicked and dragged during arrest

Name of the detainee: Chhim Thoeun, (26), of Ampil Village, Ampil Commune, Romeas Haek District, Svay Rieng. He is a garment worker at Yakjin factory.

Details of his case: On January 2, 2014 front of the Yakjin factory. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances of the Criminal Code.

“I want my brother to be released soon. He is innocent. He just joined the demonstration for a wage increase,” Thoeun’s older brother

Thoeun has worked for the Yakjin garment factory for less than a year. His sister is also a garment worker there. Thoeun has not lived in Phnom Penh for long and is not very familiar with the city. In his spare time he usually stays at home or at his neighbours’ house. When Thoeun was arrested he had just returned from his hometown where he had been helping his family harvest rice.

On January 2, Thoeun’s brother heard he went to join other garment workers at the demonstration after being told the factory was closed. He later went home but decided to return and was arrested when he was on his way back to the demonstration.

When his family visited him in prison Thoeun told them he had been severely beaten, kicked and dragged by the security forces at the time of his arrest. He also told them that he is suffering from a lot of pain. His family says his body was swollen and covered in bruises and he had a wound on his face.

Arrested while resting in his rented room

Name of the detainee: Choeun Yong, (23) of Kourk Roveang Village, Pra Lay Commune, Steung Saen District, Kampong Thom. He is garment worker at the Fuling factory.

Details of his case: On January 3, 2014 he was arrested near the Canadia Industrial Park, Veng Sreng Road. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances of the Criminal Code.

“Please help and release my son...he is innocent...he did not join the demonstration,” Yong’s mother

Yong comes from a family with nine members: mother, father, and his three brothers and three sisters. His parents and one of his brothers are farmers. Before Yong started to work in the garment industry he also used to work as a farmer. Yong has



Chhim Thoeun

“Severely beaten, kicked and dragged by the security forces at the time of his arrest.”



Choeun Yong

“Security forces came into the room and tried to arrest him. When his sisters tried to stop them, they were pushed away.”

worked at the Fuling garment factory for less than a year. Two of his sisters also work in the garment industry.

Yong left school at grade four to start working. Yong's mother says he is a good son and that he never causes problems for his family. He has always kept himself busy with farming, and now he is working long hours at the garment factory to support his family. Whenever he has some free time he likes to go fishing and have coffee with friends.

Yong was arrested when he was resting with his sisters after lunch. His sisters say security forces came into the room and tried to arrest him. When his sisters tried to stop them, they were pushed away. Yong was dragged out of the room, seriously beaten, including being struck with electric batons on his head and face, and taken away. He still shows signs of bruising on his face.

Dragged from a third floor down to the ground when arrested

Name of the detainee: Heng Roatha, (22), of Bakong Village, Tbseng Commune, Kampong Svay District, Kampong Thom. He is a garment worker at YVP factory (building 5B), Canadia Industrial Park

Details of his case: On January 3, 2014, he was arrested near the Canadia Industrial Park, Veng Sreng Road. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances, of the Criminal Code

"We can't afford to visit him in prison, please help us to get him released as we don't know what to do," Roatha's oldest sister



Heng Roatha

“He is a gentle young man who likes joking with people.”

Roatha is the youngest in his family and lives with two of his three older sisters, the oldest and the youngest. His sister, the middle among the siblings, is working in Thailand. She could not afford to come to Phnom Penh to help her family to seek for his release. Roatha's parents are dead so his older sisters work hard to keep the family together. They are devastated that he is now in prison.

Roatha left school at grade 11 to start working at the garment factory. During his free time he plays volleyball. He is a gentle young man who likes joking with people; he is considerate and would never do anything to provoke other people.

Roatha's sisters are very worried about their brother and don't know what to do. Roatha's sisters say that when they visited him in prison he suffered from severe headaches and eye pain due to beatings during his arrest. He was dragged down from the third

floor of a building. His sisters want to help him but they have very little money and cannot visit him regularly. Roatha's sisters ask for help to have him released.

Nobody told his family where he was taken when arrested

Name of the detainee: Hocun Da, (29), of Russey Tvea Village, Prey Khnes Commune, Mesang District, Prey Veng. He is married and has a 6-year-old son. He is a garment worker at the Hong Sin factory²

Details of his case: On January 3, 2014, he was arrested near the Canadia Industrial Park, Veng Sreng Road. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances, of the Criminal Code

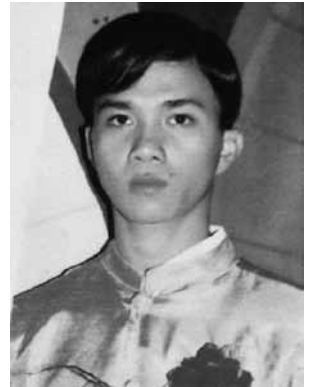
“When he was arrested no one knew where he was, we spent days searching for him. His wife was devastated and everyone cried,” Da’s mother

Da is married and has a 6-year-old son. Da and his wife are both working as garment workers at the Hong Sin factory in Phnom Penh.

Da’s mother describes him as: “a good son who never creates problems.” He always worked hard to support his family. Da has been a garment worker for many years. He dreams of buying his own house, but because his wage is only enough to support their cost of living, they could not save money.

When Da was arrested none of his family members knew where he had been taken. They spent several days searching for him. Da’s wife was devastated and they had lost hope when, with help from NGOs, they found that had been taken to CC3 prison.

When Da’s mother, son and wife went to see him in prison, his head was swollen and he had a lot of bruises under the arms and on the legs from the violence during his arrest. At that time Da could not walk properly because of the pain in his legs. His family wants him released and returned to his family immediately.



Hocun Da

“ He always worked hard to support his family.”

Beaten, arrested for helping his wife who was beaten by security forces



Lorn San

“ When chaos erupted, San and his wife tried to escape by running away, holding each other’s hands. San’s wife fell down and was beaten. ”

Name of the detainee: Lorn San, (20), of Ta Mom Village, Mororom Commune, Thpong District, Kampong Speu. He is married and working as a garment worker at the Sky Nice factory

Details of his case: On January 2, 2014, he was arrested in front of the Yakjin factory. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances, of the Criminal Code

“He was not involved in the clashes, he did not do anything wrong. Please release him soon,” San’s wife

San and his wife are both garment workers at Sky Nice factory. His wife has worked in the factory for several years but San has only worked there for less than a year. He is known as a very helpful man and he usually helps his wife with household duties such as washing and cleaning. When he has free time, he likes to go fishing.

According to San’s wife, he was arrested when he and his wife, together with some other garment workers, went to see the demonstration. When chaos erupted, San and his wife tried to escape by running away, holding each other’s hands. San’s wife fell down and was beaten. When San tried to help by asking the security forces to stop beating his wife, he was himself beaten and arrested. His wife tried to appeal to the security forces not to use violence but they threatened to kill her if she stayed.

When San’s family visited him in prison he had many bruises on his body. He was beaten with iron bars and he had a lot of pain in his mouth. His wife is very worried and wishes to see him released soon as he did not do anything wrong.

Son of a teacher but stopped schooling to work in factories



Mam Piseth

Name of the detainee: Mam Piseth, (23), of Pongro Village, Pongro Commune, Baray District, Kampong Thom. He works as a garment worker at the YVP factory (building 5B), Canadia Industrial Park

Details of his case: On January 3, 2014, he was arrested near the Canadia Industrial Park, Veng Sreng Road. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances, of the Criminal Code

“Please help us get my son and the other 22 people released. My son did not do anything wrong,” Piseth’s father

Piseth has three siblings, two of whom are also garment workers. His father works as a teacher. Because Piseth's family is very poor, he left school at grade 11 to start working to support his youngest sister who is still in grade eight in school.

Piseth started working for the garment factory at Canadia Industrial Park about three months ago. "We only demand a wage increase because we want to have a decent life, not to harass the government," Piseth's father says.

According to his family, Piseth was arrested when he tried to leave the factory together with a group of other garment workers and the security forces came to disperse them. While the other garment workers ran away, Piseth attempted to get his motorbike to return home when security forces caught him. During his arrest he was kicked and beaten.

Piseth was suffering a lot from the violent arrest when his family visited him in prison. He had ear pain and difficulties breathing and sleeping, but his condition is now better. Piseth's father says he is much thinner than before he was arrested.

Arrested while buying food at the market

Name of the detainee: Nakry Vanda, (19), of Daung Khveth Village, Veal Pun Commune, Thpong District, Kampong Speu. He is a Garment worker at the Hon Va factory

Details of his case: On January 2, 2014, he was arrested in front of Yakjin factory. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances, for Criminal Code

"[I] hope to see justice for my cousin as he only attended the demonstrations because of the low wages...it is necessary to raise the wages," Vanda's cousin

Vanda comes from Kampong Speu province. Vanda has been working as a garment worker at Hon Va factory for two years. Vanda's cousin describes Vanda as a "gentle guy who never had problems before". Vanda attended the demonstrations to call for a living wage for garment factory workers.

When Vanda was arrested he and his cousin Reth Roatha had just dropped their sisters at the garment factory. On their way home they stopped at a market to buy food and were both arrested. According to his cousin, Vanda would never use violence. At the time of arrest he was beaten by security forces and people in plain clothes

“ While the other garment workers ran away, Piseth attempted to get his motorbike to return home when security forces caught him.”



Nakry Vanda

“ On their way home they stopped at a market to buy food and were both arrested.”

When Vanda's mother heard about his arrest she immediately went to Phnom Penh on a motorbike to see her son. She was involved in a traffic accident along the way and broke her leg. She is now recovering but because of her condition she is not able to visit Vanda in prison. Vanda's cousin expresses his concern for both Vanda and his mother and hopes to see justice for Vanda.



Nem Sokhuon

Arrested and beaten for filming the demonstration

Name of the detainee: Nem Sokhuon, (23), of Thnong Village, Svay Ang Commune, Svay Chrum District, Svay Rieng. He is now unemployed.

Details of his case: On January 3, 2014, he was arrested near the Canadia Industrial Park, Veng Sreng Road. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances, of Criminal Code.

“ He was beaten until he lost his consciousness.”

“Sokhuon didn't want to tell our mother about his condition, but he looked thinner and very weak,” Sokhuon's older brother

Sokhuon comes from Svay Rieng where his mother and father still live. He has one older brother, who works in a bakery; a brother, who is becoming a monk; and a younger sister, who is still in school. Sokhuon's brother describes him as a good man who would never cause any problems: “He just focuses on his work”.

Sokhuon was not actively participating in the demonstration but on January 3, he and his brother went to see the demonstrators. When the crackdown on the protesters started, Sokhuon's brother wanted to go home but Sokhuon stayed to film what was happening. When the security forces came, Sokhuon continued filming and they arrested him.

His brother says he heard from their mother that at the time of his arrest, he was beaten until he lost his consciousness. His family could not understand why he was arrested, as he was only trying to make a video; they urge for his released. His brother, said: “He is innocent. I was there...I saw him and know that he only tried to make a video.”



Pang Vanny

Arrested because escaping protestors were in his house

Name of the detainee: Pang Vanny, (38), of Ba Prey Village, Prek Changkran Commune, Sithor Kandal District, Prey Veng. He is a garment worker at the Suntex factory

Details of his case: January 3, 2014, he was arrested near the Canadia Industrial Park, Veng Sreng Road. He was charged for

“ Vanny was beaten severely both during the arrest and whilst being taken to prison.”

violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances, of the Criminal Code.

“He was beaten, tortured like an animal, and he was not even involved,” Vanny’s younger brother

Vanny comes from a large family and has eight siblings. His younger brother describes him as a responsible person. Vanny is a garment worker at Suntext factory and three of his siblings are also garment workers. Vanny works hard to support his younger siblings who are still in school.

He is known as a very disciplined and responsible worker. He is well known in his hometown, in Prey Veng; and Phnom Penh where lived for the last 10 years.

His brother said that when Vanny was arrested, he was in his rented room close to the Canada Industrial Park. People who were trying to escape the chaos sought protection in his house. Vanny’s sisters tried to stop the security forces from entering the house but they responded with insults and violence. When Vanny tried to explain to the security forces that he was not involved in the demonstrations, they arrested him.

Vanny was beaten severely both during the arrest and whilst being taken to prison. When his family visited him in prison his brother says he had very swollen eyes and could not see clearly. He also had a lot of bruises all over his body. His siblings want justice for their brother. They say he was not involved in the clashes.

Arrested, beaten for watching demonstration from inside a building

Name of the detainee: Phang Tren, (24), of Posen Snay Village, Sro Yov Commune, Steung Sen District, Kampong Thom. He is divorced and has two daughters, aged two and one years old. He is a garment worker at the Hongkong Yufeng factory (building 12), Canada Industrial Park



Phang Tren

Details of his case: On January 3, 2014, he was arrested near the Canada Industrial Park, Veng Sreng Road. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances, of the Criminal Code

“I just want to see him released soon,” Tren’s brother

Tren comes from Kampong Thom and has two daughters, aged two and one. He has been working at the Hongkong Yufeng

“When Tren was arrested his family says he was watching the demonstrations from the third floor of a building.”

factory at Canadia Industrial Park for less than a year. Previously he worked as a fisherman.

When Tren was arrested his family says he was watching the demonstrations from the third floor of a building close to Canadia Industrial Park. The security forces entered the building and arrested him.

Tren's family visited him in prison and at that time they saw a big wound on his head, but it seemed that Tren did not want to worry them so he did not talk about his condition. Tren's family is very worried about him and want to see him released soon.

Arrested while sleeping in his room



Poang Sarath

Name of the detainee: Poang Sarath, (26), of Mohaleap Village, Mohaleap Commune, Koh Sotin District, Kampong Cham. He is married and has a newborn son. He is private security guard at the S.D. Holiday Hotel.

Details of his case: On January 3, 2014, he was arrested near Canadia Industrial Park, Veng Sreng Road. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances, of the Criminal Code.

"I want him released soon. He did not join the demonstration, he is just a private security guard and he was beaten and put in prison," Sarath's wife

“Sarath's wife said when her husband was arrested, he was sleeping in his room.”

Sarath is married and his first son was born just a few days before his arrest. Sarath works as a night-shift private security guard at S.D. Holiday Hotel and rents a room near the Canadia Industrial Park. Sarath's wife works as a tailor in one of the shops close to the room they rent. His wife is currently staying with her parents in Kampong Cham province so they can help with the newborn baby.

Sarath's wife said when her husband was arrested, he was sleeping in his room. Several garment workers, who were trying to escape the violence, tried to seek protection in his house. But the security forces followed them as they entered Sarath's room. When Sarath tried to keep them out they fired live bullets into the wall, kicked down the door and arrested him, his wife says.

Sarath was severely beaten when he was arrested. When his family visited him he was suffering from a lot of pain and had bruises on his abdomen, back and arms. Sarath was also bleeding from his upper lip. Sarath cries a lot when he thinks about his newborn son. His wife is worried about him and wants to see him released.

Arrested while sending his sibling off to a factory

Name of the detainee: Reth Roatha, (24), of Daung Khveth Village, Veal Pun Commune, Thpong District, Kampong Speu. He is a driver at a rice mill in Thailand

Details of his case: On January 2, 2014, he was arrested in front of the Yakjin factory. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances, of the Criminal Code

*“We want to see Roatha released and for him to return to his work in Thailand, but his release is most important,”
Roatha’s mother*

Roatha comes from Kampong Speu province. His mother and father have two daughters and four sons. He is the oldest. His sisters work in the garment industry. Roatha is a very active person who loves all kinds of sports. He especially enjoys playing football and volleyball in his free time.

Roatha works hard to support his family. He left school at grade nine to work as a farmer with his mother. Up until the time of his arrest Roatha worked in Thailand at a rice mill. He was arrested when he was home for two days to visit his family in Cambodia.

On January 2, he drove his sisters to work at their factory along with his cousin, Nakry Vanda. After dropping off their sisters they stopped at the market close to Yakjin factory to buy some food. There they were arrested and Roatha was beaten until he lost his conscious, his mother says.

Roatha’s mother also says he had a lot of pain in his abdomen and shoulders when she was visiting him in prison, and that he had many bruises on his face from his arrest. His family is very worried and want to see him released so he can return to work.

Arrested amidst chaos inside their factory

Name of the detainee: Ros Sophoan, (25), of Prey Phneak Village, Krasang Commune, Romeas Haek District, Svay Rieng. He is married and has a newly born child. He is a garment worker at the Hai Yon factory³

Details of his case: On January 3, 2014, he was arrested near the Canadia Industrial Park, Veng Sreng Road. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances, of the Criminal Code.



Reth Roatha

“ He was arrested when he was home for two days to visit his family in Cambodia.”



Ros Sophoan

“ Sophoan had just returned after taking his wife back to their village after giving birth.”

“We just want him back. When his wife gave birth to their baby she kept screaming for her husband,” Sophoan’s sister-in-law

Sophoan comes from Svay Rieng. He and his wife were recently married. Both are garment workers but they work in different factories. Two weeks after Sophoan was arrested, his wife gave birth to their first child in their home village.

When she was giving birth, she cried and kept on screaming Sophoan’s name. Sophoan’s sister-in-law is looking after his wife and their newborn baby but she needs to return to work soon and will be unable to help. Sophoan’s wife is terrified about what will happen to Sophoan and worries about who will take care of her and the baby.

Sophoan had just returned from taking his wife back to their home village for the birth when he was arrested. He had gone back to Phnom Penh to collect his salary from Ming Yiak factory. He was arrested on his way to his rented room. Sophoan’s sister-in-law says that when he arrived at the factory there was chaos. He was severely beaten when arrested.

She is very worried as he seems traumatised by the arrest.



Ry Sinoun

Arrested amidst chaos as he falls to the ground

Name of the detainee: Ry Sinoun, (18), of Prey Thom Village, Neak Loeng Commune, Peam Ror District, Prey Veng. He is a garment worker at the Xing Long factory

Details of his case: On January 3, 2014, he was arrested near the Canadia Industrial Park, Veng Sreng Road. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances, of the Criminal Code

“I am really worried about him, he is in a lot of pain from the violence when he was arrested. His head, his back and his abdomen are very sore and he has a lot of bruises. His condition will just get worse if he stays in prison,” Sinoun’s mother

“ Sinoun was searching for a job to support his family for a long time, but it was not easy for him to find employment.”

Sinoun lives with his mother and his three younger sisters. When his father died he left school at grade six to support his family. Sinoun’s mother is very sick and cannot work anymore. Before Sinoun’s father died the family spent a lot of money on his medical treatment and now they also need to pay for treatment for his mother. Sinoun and one of his sisters are the only income earners in his family. Sinoun’s family is very worried about him and their financial needs.

Sinoun was searching for a job to support his family for a long time, but it was not easy for him to find employment because of his young age. Sinoun was relieved when he got the job at the Xing Long factory. Sinoun had only worked at Xing Long factory for three months before he was arrested.

According to Sinoun's mother, he was arrested when he, his sister and his cousin, who are also garment workers, left the factory together on 3 January. Because of the chaos the three of them were separated. Sinoun fell down and the security forces forced him to the ground, stepped on his neck and arrested him. When his family met him in prison he was in a lot of pain.

In a wrong place, at a wrong time

Name of the detainee: Teng Chanthy, (21), of Trapang Tonlop Village, Svay Chhuk Commune, Sami Meanchey District, Kampong Chhnang. He is a truck driver and construction worker.

Details of his case: On January 2, 2014, he was arrested in front of the Yakjin factory. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances, of the Criminal Code.

“He had nothing to do with this, he just went to the factory to take some money to his sisters,” Chanthy’s father

There are seven people in Chanthy's family. He is the youngest of five children and has four sisters. Two of his siblings are married and have moved out of the family's home, Chanthy lives with the rest of his family in Phnom Penh.

His family say that Chanthy never drinks alcohol and never has problems with other people. His father also adds that he is afraid of violence. Chanthy always helps his family and supports them by driving trucks and building wedding tents.

His father said that when Chanthy was arrested he and his cousin were on a motorbike on their way to see his sisters who was working at the Yakjin factory. In the middle of a chaos, Chanthy got off the motorbike and tried to escape. His cousin managed to leave on the motorbike but Chanthy was slower on foot and was arrested by the security forces. His family wants justice for Chanthy and for him to be released as they say he was not involved in the demonstrations.



Teng Chanthy

“When Chanthy was arrested he and his cousin were on a motorbike on their way to see his sisters who was working at the Yakjin factory.”

A child labourer who joined protest is beaten severely



Yon Sok Chea

“ Chea left school at grade four to start washing cars and motorbikes to support his family.”

Name of the detainee: Yon Sok Chea, (17), of Barach Village, Prey Knes Commune, Mesang District, Prey Veng. He is a garment worker at the E Khang factory 4.

Details of his case: On January 3, 2014, he was arrested near the Canadia Industrial Park, Veng Sreng Road. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances; Article 502, for Insult addressed to Public Official Acting in their Official Capacity, of the Criminal Code. He was also charged for violation of Traffic Law Act 78, for Blocking Public Traffic.

“Chea started crying when he saw me, his hands were swollen and he has a lot of wounds on his back from being beaten with electric batons. They have also shaved his head,” Chea’s mother

Chea is the middle of five children. Chea, his mother and two of his siblings work as garment workers. Chea has worked in the garment industry since he was 14 years old. He gives most of his salary to his family and rarely buys anything for himself. He works seven days a week and never has any spare time.

Chea left school at grade four to start washing cars and motorbikes to support his family. He has been working in the garment factory since 2010. His mother did not want him to join the demonstrations but Chea felt it was important to protest for a wage increase. Chea’s mother says that when Chea was arrested he tried to talk to the security forces and explain that he was only there for the demonstration and had nothing to do with burning tires and stone throwing.

The security forces refused to listen to him and asked him why he didn’t stay at home if he had nothing to do with the violence. Then they arrested him. His family wants justice for Chea. “The police did not give a warning before they started shooting, one man was shot in his stomach and one in his hand”, his mother says.

On January 17, Chea was transferred to Kampong Cham prison after being held in CC3 together with the other 22 detained men. Recent X rays taken at Kampong Cham provincial hospital showed multiple fractures of his hand caused by beatings from the police on January 3.

On February 8, he was released on bail.

Trying to save his motorcycle from destruction when arrested

Name of the detainee: Yong Sam On, (31) years old, of Khlorok Village, Preah Khe Commune, Boseth District, Kampong Speu. She is married and has a 6-year-old daughter. He is an electrician at the Sabrina factory.

Details of his case: On January 2, 2014, he was arrested in front of the Yakjin factory. He was charged for violation of Article 218, for Intentional Violence with Aggravating Circumstances; Article 411, for Intentional Damage with Aggravating Circumstances, of the Criminal Code

*“Our daughter cries and asks about her father. I try to tell her that he is busy with work. The garment factory has not paid him so he has not seen his daughter in a long time,”
Sam On’s wife*

Sam On is an electrician at one of the garment factories and his wife is a garment worker in another factory. Their daughter is six years old and attends pre-school in Kampong Speu province. She lives with her grandmother as Sam On and his wife work long days.

Whenever they can, Sam On and his wife visit their daughter at Kampong Speu. They recently took a micro-credit loan to buy a house in their village. His wife is worried that they might not be able to pay the loan back now that Sam On is in prison.

According to Sam On’s wife, his manager told him and his colleague to go and see the demonstration. They were to report back so that the manager could decide whether to allow workers to join the demonstration or not. They went to the demonstration on a motorbike. When they saw the violence they left the motorbike and tried to escape. When they saw the security forces destroying other motorbikes, Sam On went back to find his own motobike. At that time, he was beaten and arrested.

When Sam On’s family visited him in prison he was in pain. He had many bruises on his body and he had problems sleeping, his family says. When his family asked how he was doing in CC3 prison he did not respond, his eyes just filled with tears.



Yong Sam On

“ They went to the demonstration on a motorbike but when they saw the violence they left the motorbike and tried to escape. ”

Interview on the idea of justice and accountability in Cambodia

Danilo Reyes, Editor, article 2

In January 14 to 18, I joined a group of regional labour and human rights workers and academics in a field investigation to look into the root causes and the impact of the January 2 and 3 violent crackdowns in Cambodia. Even before the mission concluded its field investigation, the testimonies I recorded from the victims, the families of the dead and eyewitnesses, it was clear that the use of force was excessive and deliberate with clear intention to either kill or cause grievous harm.

As I spoke to the victims, their families, activists and their organizations, asking details on the process of seeking redress for victims and to hold those responsible accountable could be achieved I began to understand, not only how justice is understood in Cambodia, but also why justice and accountability is impossible to achieve.

It is extremely challenging, if not downright difficult, for anyone trained in law or who has lived in a society where there is a possibility for agents of the State to be held accountable, to interpret situations in Cambodia. There, the meaning of the law and what the law is intended to protect, is not necessarily fundamental rights, but to perpetuate the existence of a political system that we have yet to fully understand. Thus, to interpret the crackdown of workers on January 2 and 3, purely by comparing or invoking Cambodia's obligations in domestic and international law would be a limited approach.

In writing this article, rather than examining the incidents, testimonies of victims and witnesses, and the evidence that could point to clear violations of the Cambodian government, I decided to conduct interviews with the affected persons to better understand what their views are on justice and accountability. The views and opinions obtained tell us two things: first, the emerging thinking of what justice and accountability means in a post-genocide society; and second, how the understanding of these two principles evolved when there is no accountability.

Take for example, Sous Samoul, while it was clear to him that those who killed his son, Kim Phal Leap, must be held to

account, he had no idea what he should do. He also could not understand why he has to keep the death certificate, a document given to him by a doctor who examined his son. In countries where the investigation mechanism is developed, forensic evidence is considered crucial evidence. In Cambodia, neither the doctor nor the families of the dead see its value as evidence.

When asked what legal action he would take, and what plans he had for the evidence he had on hand, he said:

I am not sure, and I have that question back. If I file a complaint, what should be in the complaint?

I am requesting ...to help find justice for my son. Not just for my son but also for other injured workers and those who are arrested workers and put into jail.

When I shared this with local activists, I was told 'it was because of ignorance, because most Cambodians in rural areas are illiterate'. The explanation may have some truth in it; however, I was not convinced that this is the case for Samoul. Why? Because Samoul himself is a member of the ruling party, the Cambodian People's Party (CPP), and if anyone knows what one should do in seeking redress to grievances it should be them. I don't think he is ignorant, I think he knows something.

Unlike Samoul who asked questions and took seriously about what he needs to do in seeking justice and to hold those who killed his son accountable, others simply assume the government 'will take responsibility' and 'will provide compensation.' Take the mother of 18-year-old Thet Theng, who suffers memory loss due to severe head injuries. When she was asked about what she demands from the government, she said:

They will take responsibility for this. They will provide compensation. That is what they said. We are hopeful that we will get the compensation.

For these two parents, while Samoul clearly understands that to get justice, he needs to undergo a process—which means he need to understand how he should file a complaint, and to whom he should file his complain—but, the absence of any precedence where the security forces have been arrested, detained, prosecuted, let alone, convicted for murdering those who protested against the government, has made Samoul's simple question problematic.

In my view, the absence of any examples in Cambodia's history where the security forces had been held to account for their crimes renders any discussion about seeking remedy and redress meaningless. Thus, it is understandable that one would have the least interest in talking about the possibility of justice. However, what alternatives are there for anyone interested, like Samoul, is pursuing remedy and redress? My discontent to negligible discussion about the processes of seeking remedy and redress in Cambodia's criminal justice system lead me to ask those who knew how it was configured.

“ The absence of any examples in Cambodia's history where the security forces had been held to account for their crimes renders any discussion about seeking remedy and redress meaningless.”

“The impact on the collective memory of the Cambodian people after the genocide of the Khmer Rouge regime was so deeply imbedded that it “wiped out whatever system that existed.”

To obtain an insight to this, I spoke to Basil Fernando, a former senior officer at the Human Rights Centre at the now defunct United Nations Transitional Authority in Cambodia (UNTAC), regarding how Cambodia’s institutions of justice emerged (read this interview: “*The possibility of justice does not exist in Cambodia*”). In a book he wrote in July 1998, entitled “*Problems Facing the Cambodian Legal System*,” Fernando provides a thorough structural analysis why there can never be an investigation and prosecutions into violations committed by the government and the security forces acting upon its order.

I asked him why it is that victims are still demanding justice and accountability for the loss of lives. The answer was that none of the structural problems he raised 15 years ago were seriously considered, particularly on how the criminal justice institution processes ought to function to protect fundamental rights:

It is not a surprise that these people who have been engaged in protests and calling for change are not really talking about issues as to what happens to those who have been killed and what happens to those in prisons and things like that.

Why is it not a surprise? It is because the possibility of justice does not exist in Cambodia. Pol Pot’s regime wiped out whatever system that existed in Cambodia in terms of justice and democracy.

In Fernando’s view, the impact on the collective memory of the Cambodian people after the genocide of the Khmer Rouge regime was so deeply imbedded that it “wiped out whatever system that existed.” After the genocide, those who had played a major role in the rebuilding of Cambodia, like the Vietnamese, also brought in their ideas of what justice should mean and its relation to the state. However, they did this by drawing from their own country context:

...the next important issue is where the rebuilding of Cambodia took place, the new conception was introduced by the Vietnamese as mentors, these are people who are experts.

To that the Vietnamese also brought their conception of what the justice institutions are. They invented at that time what was known as the socialist model of jurisprudence or the Stalinist model. The person who was mainly responsible for ideologically reshaping that was called Andrey Vyshinsky.

Because Vietnam at that time was a communist country, and their intellectuals were trained in the Soviet Union, and in many other Eastern European Countries.

And the Constitution’s idea was based on socialism.

Fernando’s opinion is that the absence of justice in Cambodia took its roots from the very conception of its criminal justice institution, which is modelled after socialist jurisprudence, and this explains the grievances and discontent by many victims, families of the victims and local activists that I spoke to. Fernando distinguishes a socialist from a liberal democratic institution here:

Justice in this set-up (socialist model) means the protection of the State. The State needs to be protected from anybody who challenges the State, anybody who protests, anybody who does not accept the ideology of the state, the functioning of the state, those who question, all the people who are threatening the State.

So the principle was to turn the liberal democratic idea into the protection of the State from its own people. Citizens must behave as the State tells them how to behave. It is the citizens who had to be shaped in a particular way of thinking, in a particular way of obedience.

This explains why, Losh Sao, one of the protestors who demanded an increase of the minimum wage for garment workers, and who barely escaped death after he was shot in the back of his head, should not have been surprised at how the security forces reacted. But he nevertheless could not come to terms and could not understand why persons demanding of wage increase should be shot:

I saw one of the protestor who was shot dying on the street. He was bleeding profusely. I felt sorry for that person (the man who was shot and dying on street) because he was only demanding for increase of minimum wage, and the police just shoot him like that.

And, it should also not have been a surprise that, nearly two months after the incident happened, no credible investigation has ever been conducted by the government for the purpose of identifying those responsible for the deaths and wounding of the protester. Apart from the reports of the Fact Finding Mission (*please see: "A week that shook Cambodia"*) and the field investigation conducted by Prof. Surya Subedi, Special Rapporteur on the situation of human rights in Cambodia, in January 2014 the government did not investigate at all.

I asked Khong Athit, a Cambodian labour leader, for his views on how the government usually responds to demands and pressure when the security forces commit violations of rights. He said:

According to experience, there is always a Committee after a problem happened, but they are very unlikely to be effective. So we have very limited confidence on that Committee.

And, despite the wide publicity and pressure on the Cambodian government from the international community to hold the security forces responsible for the killing, wounding and detention of protestors, Athit noted:

Since the fact finding finished, the families of the dead still works with human rights organisations in filing a complaint against the murderer, the killer. They also plan to file complain in Cambodia court and also to international court.

Yes. None of them have been charged at the moment.

In other developed countries where the institutions of criminal justice are founded on the ideals of justice and democracy, to conduct an investigation, prosecution and trial for violations of

“ In other developed countries to conduct an investigation, prosecution and trial for violations of criminal laws, is a role their institutions take seriously. ”

criminal laws, whether committed by private persons or persons who are public figures, is a role their institutions take seriously.

“The killing of four persons, the disappearance of one, the wounding of dozens of others, and the detention of 21 persons for demanding an increase of their minimum wage for the garment workers, cannot be taken lightly.”

In fact, the responsibility to investigate, prosecute and subject to trial agents of state—the police, military and public officials, who committed such violations, is considered to have higher importance in comparison to those perpetrated by private persons. It is grounded on an assumption that a State, who is supposed to enforce that law, must not violate the law.

However, judging from how the Cambodian government responded to the January 2 and 3 incidents, it is clear that: first, for the government to delay its investigation into the crackdown of workers, means they either felt no obligation to investigate or; second, if the State think they do not feel it is obliged to investigate, then there can never be prosecution and adjudication of cases in court at all. As a result of the unwillingness of the government to investigate, it is not likely that those who were killed, wounded will have any remedy; and those who suffer economic losses, will have relief.

To seek any form of relief many victims have resorted to accepting assistance from private individuals and NGOs. Say for example, in the absence of compensation from the Cambodian government, the wounded victims at the hospital had to line up in corridors or alleyways and waited for donations from foreign and domestic organisations, politicians, private persons, celebrities working for international organisations, and others.

The reason why the government did not feel the need to provide any compensation or assistance is because at the time of writing, none of those who gave orders to open fire on the protestors, the security forces who severely beat, arrested and detained the protestors, have been held to account. Clearly, unless the government accepts and recognizes what is has done there cannot be an official compensation and acknowledgement of the wrongdoing.

Clearly, the killing of four persons, the disappearance of one, the wounding of dozens of others, and the detention of 21 persons for demanding an increase of their minimum wage for the garment workers, cannot be taken lightly.

However, as is plainly evident by how the government responded to these demands, it shows that those responsible will never be held to account. Once again, at the time of writing, no action has been taken to identify those who gave orders to the security forces, or even the individuals who shot at the protestors. Interestingly, some of the victims were able to identify some of the individuals who shot at them. And, despite clear photographic and video recorded evidence of the identities of the security forces that opened fire with live ammunition, no effort has been made to initiate an investigation and prosecute them.

Fernando went on to say:

So if five (one of the victims has disappeared) people were shot dead, those five people will never get any relief by way of law in Cambodian courts. That really does not exist. There is no mechanism to investigate against the State. There is a certain rudimentary mechanism, like going into some things like small issues, like robbery or even murder; even that is not properly systematically developed in Cambodia.

But when it comes to a problem between the state and the citizens, no jurisprudence has been developed; there is no improvement.

However, despite the absence of the possibility of holding the perpetrators to account, keeping in mind Cambodia's past—from the genocide in Khmer Rouge regime, and that its government has been in power for three decades—the Cambodians see these emerging protests as their watershed to have bigger democratic space. In fact, this is a crucial period in which the Cambodians should be supported.

In July 2013, the International Labour Organisation (ILO), indicated in their report titled, *“Thirtieth Synthesis Report on Working conditions in Cambodia’s Garment Sector,”* the increase of 170 percent in strikes during the period from 2010 to 2012. The report covers 152 and three garment and footwear factories respectively.

I asked Athit what his views are on the significance of these protests in the Cambodian context. He said:

Many people in Cambodia now are ready, but they still need motivation for them to fight against this authoritarian government, the fight against injustice will come soon in Cambodia.

I want the people in the world to know that we need solidarity. We need to work together to provide a concrete democratic rights to the people, and also to promote that the people should live in dignity. We have to fight together.

Cambodians alone cannot fight, cannot struggle for this better future unless the people around the globe and the people in the country who love democracy, loves dignity and support Cambodian people to overcome this hard struggle.

I also asked Prof. George Katsiaficas, author of the books on *“Asia’s Unknown Uprisings,”* what he thinks could have motivated the Cambodians to protest. Was it only because they wanted to have their salary increased or was it something else (*read this interview: “People realized that they can make change”*). And based on this emerging protest, what other effects this would have in the thinking of the ordinary Cambodians:

Not only in Asia but in most countries, when people are being starved, there will often be reactions that are immediate. And when situations are very desperate the people will react.

But in such a situation it is very difficult for people to formulate what kind of society they want to live in. Their immediate concern is feeding their families.

“ The Cambodians see these emerging protests as their watershed to have bigger democratic space.”

Hun Sen has been in power for years. The people realize that the terror of the Khmer Rouge days has passed. So there is some possibility of creating change within the present system itself no matter how limited the window of opportunity may be.

“Despite the absence of the possibility of justice and accountability in Cambodia, the value of emerging protests demanding social and political change is unimaginable.”

In conclusion, I am of the opinion that in emerging protests in Cambodia today we are witnessing profound aspirations amongst Cambodians to demand from their government that their fundamental rights be protected. But, as we have shown in this edition of *article 2*, the emerging protests in Cambodia in the last three years, notably the January 2 and 3 crackdowns of protesters, the government has clearly indicated its intolerance to any form of protest and dissent. They kill, injure, arrest, detain and prosecute anyone who challenges their authority without fear of repercussion.

In my view, the ability of the government to use force and violence to suppress anyone who opposed, should not only be condemned, but must be thoroughly understood. How can a country established, amongst others, by the UN by incorporating norms and standards of protection of fundamental rights, end up having no possibility of justice at all? The question is also significant to developing countries where people are demanding protection of rights as they emerge from their dictatorial past, like Indonesia and the Philippines.

However, despite the absence of the possibility of justice and accountability in Cambodia, the value of emerging protests demanding social and political change is unimaginable. What happened has provoked the imagination of the Cambodian people that, to protest demanding for protection of one's rights is a fundamental right. I'm told that this kind of thinking is emerging due to the awareness of young Cambodians about democratic ideals. I was told a story about a young Cambodian from a rural village who had been taking video recordings of the street protests in Phnom Penh, and had shown it to his neighbours in the village. And to the surprise of the rural villagers, particularly the elderly Cambodians who were curious of the events in Phnom Penh, the young man was told: "Take more videos, show them to us. We have not seen this kind of thing before."

It means while the Cambodians, who themselves lived in the horror of the genocide, have now realised the unimaginable. That they can protest against the government to demand protection of right.

Finally, there are even more challenges on how to transform the people's aspiration into reality; so that they can see, not just imagine, that the government should be held to account for committing wrong doing to its own people. It means if living in dire condition is wrong, the government must correct this; if the government and its security forces gave orders to shoot at protesters, they must take full responsibility. Only in doing this would justice and accountability have a real meaning.

INSIGHTS AND REPORT ON CAMBODIA

‘The possibility of justice does not exist in Cambodia’



Basil Fernando, former senior officer at the Human Rights Centre,
United Nations Transitional Authority in Cambodia (UNTAC)

It is not a surprise that these people who have been engaged in protests and calling for change are not really talking about issues as to what happens to those who have been killed and what happens to those in prisons and things like that.

Why is it not a surprise? It is because the possibility of justice does not exist in Cambodia. The contradiction that has been there from the very beginning of the new period which began under the UN Transitional Authority of Cambodia (UNTAC) has continued up to the present day. Pol Pot’s regime wiped out whatever system that existed in Cambodia in terms of justice and democracy.

Of course that system that existed was also very limited one. It was a short period, after the French Revolution and the Monarchical system that was there was the very foundation of Cambodia for centuries. A small beginning of democracy was made in a few decades and that whole thing was wiped out during what happened during the Khmer Rouge. And the magnitude of what happened has been openly spoken in terms of the number of lives lost.

But what is not very much discussed is what happened to the peoples’ memory? What happens to the people? What happened

“They invented at that time what was known as the socialist model of jurisprudence or the Stalinist model.”

to the understanding that was there collectively in the society? Certain understandings were there in the previous society about the fact that Monarchy had to be removed and that democracy was necessary. And that democracy always accompanied by a system of justice, executed, and implemented through a system of judicial institutions.

Now the overall understanding about that was already established during this period although the system that came about was not comparable to systems in developed countries. What understanding and collective understanding was there about that system? Now, with the physical extermination of all the educated classes, now when you say educated classes in Cambodia it is not really the elite, like those who has university degrees and things like that, but also the average person who will be intellectually interested on the issues of society and the issues of justice and things like that, including court clerks. Those who are capable of understanding; all of them were wiped out.

And about that, the next important issue is where the rebuilding of Cambodia took place, the new conception was introduced by the Vietnamese as mentors, there are people who are experts, who are put into work in various fields, and in many fields they did a great job. For example, the re-establishing of the whole agricultural set-up which was shattered during that period, clearing the basic roadways, beginning, even though slow and in small ways, the infrastructure. To that the Vietnamese also brought their conception of what the justice institutions are.

And that constitution idea was based on socialism. Because Vietnam at that time was a communist country, and their intellectuals were trained in the Soviet Union, and in many other Eastern European Countries. They invented at that time what was known as the socialist model of jurisprudence or the Stalinist model. The person who was mainly responsible for ideologically reshaping that was called Andrey Vyshinsky.

He was the one who reinvented jurisprudence, turning the liberal democratic principles the other way around. It was a complete turning upside down; a kind of liberal democratic understanding of justice. Justice in this set-up means the protection of the State. The state needs to be protected from anybody who challenges the State, anybody who protests, anybody who does not accept the ideology of the state, the functioning of the state, those who question, all the people who are threatening the State. So the principle was to turn the liberal democratic idea into the protection of the State from its own people. Citizens must behave as the state tells them to behave. It is the citizens who had to be shaped in a particular way of thinking, in a particular way of obedience.

Now that particular way of obedience is what the state structure was supposed to impose. So, the people who were appointed as

judges with a very limited education for years were trained to act in this fashion. So the whole system which arose was kind of a system to protect the state from the citizen. That did not undergo a fundamental reform when the UN intervened. The reform started in 1992 leading to the 1993 elections, and to the 1993 Constitution at the end of the year.

In the development of these things, to achieve a reform of the system the constitution adopted the liberal democratic principles in the abstract. I think that in very few places there will be such a vast difference, vast disconnection between the constitution and the actual practice, what is actually happening in practice. So although the constitution looks very nice, there is separation of powers, independence of the judiciary, and all these things are there. There was no medium by which attempts were made to get these ideas transformed into the reform of the system that is based on the opposite principles.

There were neither intellectual discussions on those things, nor documents available to train people. It continued. The whole system continued. Whenever there is a conflict between the state and the individual there will be protection of the State. So if five (one of the victims has disappeared) people were shot dead, those five people will never get any relief by way of law in Cambodian courts. That really does not exist. There is no mechanism to investigate against the state. There is a certain rudimentary mechanism, like going into some things like small issues, like robbery or even murder; even that is not properly systematically developed in Cambodia.

But when it comes to a problem between the state and the citizens, no jurisprudence has been developed; there is no improvement. And this system cannot improve that. And if they try to improve that there will be an explosion, and probably anybody who tries to do that within the institutions will be sacked by the people who are running the state. In other words, there is no justice unless the government and the state agrees that on basic areas that there is space for protection of the people's right, people cannot legally enforced rights so long as that apparatus is there.

Of course morally you can enforce rights. You can say that you have a right, but unless legally there are openings, like people going to courts and the courts to making decisions, that kind of system has never come into being.

The big contradiction that needs to be understood is that, the mere fact that the government signed and ratified some documents, UN documents or they may make constitutional provisions, does not mean that the system is changing. The system is institutions. What you would have to say is, what is this document, and how does this document relate to the institutions. What obligations do the institutions have to abide by these laws or obligations?

“When it comes to a problem between the State and the citizens, no jurisprudence has been developed; there is no improvement.”

“ The political authority thinks that the people who are working within the judicial institutions must act according to the opinion of the political leader.”

Within the institutions: the prosecutor, the investigator feels no obligation to follow this. So this will remain some kind of you know a book. So you have to create the obligation in fact, not merely by writing something. And that happens by way of the government and the state agreeing that the institutions will have those powers, and that others are being convinced and trained that they have those powers. At the present time the judge does not feel that he has those powers, that he will be removed from his office the moment he tries to protect the rights of the individuals. That is what I said: books are books, institutions are institutions.

Institutions in Cambodia are run by other principles, not the principles in the constitution and the law books. So the judge of the prosecutors and anybody else has to abide by the instructions of the government. They are selected by the government by way of those criteria or their opinions of a particular ideology. So in those terms, the idea of justice did not enter into the institutions. What is happening lately is that the people are asserting their rights: we have rights and you have to recognize them, but the recognition process has not come yet. People are demanding and they are even sacrificing their lives, but there is no transfer of actual physical protest to a political discourse leading to legal and institutional reforms.

But the first step is taking place. The important thing is unless the people themselves begin to protest, the state on its own will not give the people their rights under those circumstances. So the fact that the people are asserting their rights is a beginning. But this beginning must consciously be brought, not into political discourse, but the political discourse leading into the discussion about the law, the discussion about the institutions, and how to reform the institutions. And this kind of discussion had never taken in place in Cambodia.

So that is the crux. The idea was so completely lost that justice can be achieved through institutions. It was so, for example, I have been saying in many places. During the UNTAC period, and immediately afterwards the UN Human Rights Centre. I have participated in discussions with the Ministry of Justice at that time. It was around 1990, the end of 90s period at that time. Now when we went and told the Minister that the judiciary needs independence he said, “Well, I will make them independent.” So, that shows that he did not even grasp the principle. He was not hostile, but he thought it was as simple as that. His thinking framework was this idea that there are institutions, and within those institutions there will be independent people, like judges and others, who will form independent opinions of their own, that basis does not exist. Those people must act according to his opinion. This is the idea.

The political authority thinks that the people who are working within the judicial institutions must act according to the opinion of the political leader. These people cannot form their own

independent opinions in terms of principles of justice even though leaders may form their own opinion for their own reasons. But the judicial officers form their opinions on that basis. The judicial officers have to form their opinion on those terms, and there is no application of those principles based on rational decisions. When the judiciary act on the basis of opinion of these people, politicians, you have a vacuum. The court is another place where the political opinion of the government is reimposed.

So it's an institution where political opinions of the government are reimposed. That space that should be there for judge, to see that I'm bound only to these laws and principles, that I will look at this facts on my own, meaning for him to form his opinion. This is that area that needs to be developed. This can't come overnight. These are things that people have to fight for, and people themselves have to understand that beyond the political struggle, there needs to be an intellectual struggle for the people to understand: "what does justice mean?" and how to create a struggle for institutional change, not only for salary changes. It is very important to fight for salaries because justice is also about your need to have good way of living; that is what justice is also for. It is not the same thing. It is not completely equal. So there is a discourse on justice. So there have to be intellectuals in Cambodia to understand this, go to the people, educate the people, and bring this into a political discourse to create an institutional change.

Unfortunately this is an area which is even difficult for the UN to deal with because today if you are living in a developed country, a justice framework exists. If you make laws thereafter these institutions exist. This has happened for many, many years. For many reasons in their history that is how it happened. Now the UN leaders should understand that these countries, are not Europe.

Therefore to achieve standards that today Europe has achieved, the changes that need to come out from the ground has to be caused, not assumed. You can't just assume it is there. You have to help them. The justice process, justice education, and people are made to understand these things. They must be educated on these things so that they will participate in changes. These did not happen in Cambodia for the last 20 years. There is certain area where in practical level there had been changes. The old fear to some extent has disappeared. But the people have no sense of protection, no sense that the state will protect their rights. They still have the idea that they have to live by the opinion of their political leaders. The government believes that everybody should live on the basis of their opinion.

Until that situation exists, there is not going to be justice. You can get killed. Somebody may erect a statue for you; but that is it. You know for them, for their family and for their future—in order to avoid that (killing) from happening—nothing has happened. So it can happen again.

“ The soldier does not think that: “I’m under obligation not to hurt the life of a person, not to hurt the liberty of a person.” ”

“ If they come in conflict with the government, at that point repression is used. And for that repression there is no protection.”

The soldier does not think that: “I’m under obligation not to hurt the life of a person, not to hurt the liberty of a person.” He, on the basis of political opinion of the government and the State thinks, ‘I must carry out the opinion of the political leaders irrespective of anything. So everybody is made to think that all that matter is the opinion of the political leaders’. So everybody acts and conforms themselves on the opinion of the government. If you come in conflict with that, then you would also be punished. People will be punished if they do not obey the opinion of the government, not the law. There is no uniformity between the opinion of the government and the law. The government is above the law. There are some books of law. But people have their lives. They have their needs, and if they come in conflict with the government, at that point repression is used. And for that repression there is no protection.

What matters is that you conform to the opinion of the authority. You conform to the political authority. The real law is that. The judge must conform to that, prosecutor must conform to that, the investigator must conform to that, and everyone should conform. There is no investigator. The government should allow the investigator to investigate. Investigators are state officers. For this to happen, the state officers must (first) feel that he has to investigate according to law. But if he feels that he also needs to obey the political opinion of the government, then how can he investigate?

So the overreaching principle on which the Cambodian people live in is the political opinion of the government. So that transformation is what is needed, and for that (to happen) there has to be an understanding of that, by everybody, by the people, by the government, by the intellectuals. That is why there is no space for intellectuals in the country because it is the intellectuals who bring these things, who ask questions. They are the ones who bring all these.

So a state that is governed only by the political opinion of the leaders is not a state. The intellectuals also have this task to carry the opinion of the political leaders. So there is an intellectual dessert. No thinking, no creativity, no will to oppose anything. So within that set-up, because of their life condition, they conflict with the state. At that point the state will use repression, and for that there is no solution.

‘People realized that they can make change’



Prof. George Katsiaficas,
author of the books on “Asia’s Unknown Uprisings”

Article 2: With regards to the protest by the workers in Cambodia, do you think the reason is only because the people were hungry or did they have other reasons to protest?

George: Not only in Asia but in most countries, when people are being starved, there will often be reactions that are immediate. And when situations are very desperate the people will react. But in such a situation it is very difficult for people to formulate what kind of society they want to live in. Their immediate concern is feeding their families.

In Cambodia, in the last decades there has been a great change for the better. From the days of American bombing, and of the Khmer Rouge up until today, Cambodia has gradually seen improvements in opportunities available to people.

So I think as desperate as the situation is for workers, who are earning what is not enough, the overall situation in Cambodia is one on which people gain hope. They see in countries around them that are great deal more prosperous, and that more security as possible.

“ The people realize that the terror of the Khmer Rouge days has passed. So there is some possibility of creating change within the present system itself no matter how limited the window of opportunity may be.”

In my experience of studying other Asian countries, you can see that once protests start they (the issues they represent) tend to build upon each other. So even if they start over wage demands, very soon when people realize that they are able to win control over streets, to organize into trade unions or demand for a wage increase. They begin to see that they can in fact have more than what they have now.

Cambodia's situation with people being forced off the land, few families enriching themselves while many go hungry, is one, in which we can, I think expect, more and more protests on the streets as time goes on.

Article 2: Why do people protest even though they could get hurt and they know their regime is authoritarian, like in Cambodia, Hun Sen has been in power for decades?

George: You answered your question in some ways yourself. Hun Sen has been in power for years. The people realize that the terror of the Khmer Rouge days has passed. So there is some possibility of creating change within the present system itself no matter how limited the window of opportunity may be. The very stability of the Hun Sen regime gives the idea that the government should be more responsive to the people's needs.

The Hun Sen regime is not a government that is completely blind to the needs of its people because his regime has been there for decades now. In that context, the people feel that the pattern of distribution of wealth should have included the workers, the people who have given so much effort of their time to these companies, but receive so little in return.

Article 2: So, it means that this is not entirely a demand from a hungry people, but a demand for a more democratic space?

George: Yes, I think so. Going into the streets, even though four people died and dozens were wounded or injured, the fact that the people dared to go on streets shows that there is a belief that the system will respond to make changes.

And it is all over in the world today. People realized that they can make change. I think there are examples we have seen recently. For instance, in Ukraine, their President who refused to leave power ultimately did leave power because of these protests.

In Cambodia, that (workers protest and the crackdown) was covered. People see that. The people realize that the street is not part of it (the regime). The people can assert power.

Article 2: Even after the protest, the worker's demands were not met fully. So, in countries like Cambodia protests may not bring immediate results?

George: That is right. And the response of the workers today does not mean it was their final response. But they know that the (regime) was put on notice, and that the workers are unhappy. The resulting deaths and injuries were because they are so unhappy, so the companies must take action. I think there is no other option for them (companies and regime but to meet the workers demands) because they realize that their economy depends on people going to work every day.

The people are unhappy, so unhappy that they went on the streets even though there were already deaths and injured people on the streets. The event does say something that the government should change.

Article 2: Most of the labour leaders and activists are in their late 30s. Is there any significance in the demographic that contributes to the increasing protests?

George: Early 30s means they were born after the Khmer Rouge regime. So after the Khmer Rouge was deposed, there was a whole new system of thinking in Cambodia. The terror of the war years was removed. Certainly with the younger generations they thought it's time for Cambodians to be able to live just like other people in other countries. People are aware that there is a great deal of prosperity in the world. They should have a fair share of it.

Absolutely, this demographic change, the movement of the people from countryside into urban areas is such that the people are no longer isolated from one another. In the city, there are anonymous connections. The people no longer feel that their neighbours are reporting to the communist, coming and going, as it was in the past.

So there is more freedom of movement. There are more job opportunities. Urban life gives more opportunities to people to express their perspectives: to come into contact with different kinds of people, and of different kinds of thinking. That in itself is a demographic transition and the urbanization of the country is a contributing factor, I think; and the change of expectations.

Article 2: I've heard stories about protesters taking videos of the protests, and taking the videos to their village to show them to their elders and people in their village. I'm told people in the village were encouraged, amazed and in disbelief.

George: Absolutely, modern technology, social media and the fact the people can now take videos on their cell phone increases the capacity of people to have their experiences shared, rather than the information being kept isolated. So when experiences are shared, people realize that change could happen very quickly.

“ Certainly with the younger generations they thought it's time for Cambodians to be able to live just like other people in other countries.”

“A week that shook Cambodia”

Fact Finding Mission Report, an extract of the report on the crackdown of protests of workers

(Editor’s note: The mission was conducted by the Asia Monitor Resource Centre, Hong Kong • Asian Labour Study Group, The School of Oriental and African Studies, University of London, UK • Asian Human Rights Commission, Hong Kong • Center for Trade Union and Human Rights, Philippines • Korean Confederation of Trade Union, South Korea • Korean House for International Solidarity, South Korea • Oxfam Solidarity Belgium • Serve People Association, Taiwan)

EXECUTIVE SUMMARY

The garment industry has been the chief engine of the Cambodian economy for the past two decades since its establishment in 1994. However, garment workers still account for a large part of the country’s working poor. The minimum wage for garment workers has been rising slower than productivity increases and the price inflation of certain daily necessities, thereby yielding negative real wage increases. Workers were universally unhappy about the quality of life in general and the minimum wage in particular. To maintain basic livelihoods, they must work increasingly more overtime, to the point of exhaustion and beyond as seen in the mass fainting at work of more than 4,000 garment workers in the past two years. On December 24th 2013, despite the workers’ demands to increase the minimum wage to US\$ 160, the Labour Advisory Committee (LAC) of Cambodia announced its decision to increase the minimum wage from US\$ 80 to US\$ 95 a month by April 2014. It also outlined a plan to increase the wages to US\$ 160 by 2018. Representatives from six major labour federations and confederations rejected the LAC plan and called for a general strike, demanding an immediate rise in the living wage to US\$ 160, which was consistent with the Ministry of Labour’s assessment of the minimum wage of US\$ 157-177 a month to survive in Cambodia in 2013. The government decision triggered workers’ demonstrations that same afternoon of December 24th and led to a massive protest by the majority of workers over the next few days.

The peaceful strike on December 29th was the largest protest.

Many different groups participated in the strike together with garment workers and labour groups including Boeung Kak Lake activists, a group of monks, tuk-tuk drivers, domestic workers, street vendors, and civil servants. All the while the number of demonstrators increased as the general public joined and supported the protest. A major feature of this strike was that it was a 'self-generated strike' by rank-and-file workers almost unanimously supporting the demand to raise the minimum wage. Employers and the government took increasingly aggressive steps to bring the strikes under control, but the strikes and mass rallies continued until December 31st. On December 31st, the Ministry of Labour announced a slightly modified proposal to increase the minimum wage to US\$ 100 but protests continued; workers marched to the Council of Ministers where they were met with barbed wire roadblocks and riot police. Tensions were building between the workers and the authorities.

Between January 2nd and 3rd 2014, the authorities violently suppressed the protests. Numerous media reports, workers, and witnesses confirmed the excessive use of brutal force by the police and armed forces that killed at least four workers and severely injured at least 38 other workers and supporters. One person remains missing and is presumed dead. The authorities also arrested 23 workers and to date 21 of them remain in detention. Many workers and witnesses have reported that the security forces started the violent clash with strikers. Support, protest actions and solidarity messages have flooded in from labour rights groups and labour unions across the world expressing outrage at the brutal repression.

The demand of Cambodian workers to lift the minimum wage to US\$ 160 is fair and reasonable, as their real wages have been stagnant despite their tremendous contribution to Cambodia's economic growth. The ineffective response of the Labour Advisory Committee in meeting this demand has compelled the majority of workers to strike and protest. The disproportionate use of force by the government to suppress these legitimate protests demonstrate that the government is more concerned with protecting the interests and profits of the employers of the Garment Manufacturers Association of Cambodia than protecting the workers' rights to a decent living wage, freedom of association and other basic human rights.

IV. INCIDENTS AND THE CRACKDOWN

Amid growing tensions, January 1st 2014 dawned without protests. Despite the Ministry of Labour's call for workers to get back to work by January 2nd, the strikes were to continue into the New Year. In the meantime, the CNRP was encouraging garment workers to join its third nation-wide protest on January 5th. On the morning of January 2nd, all eight unions involved in

the strike confirmed at a press conference that the strike was not over and striking workers would get full support from the union federations. Meanwhile, many workers did not go to work and were mobilising gatherings in industrial zones instead. This time, the government changed gears and took a heavy-handed approach. A special army unit, police and military police were deployed to stop workers' protests. It turned out to be the trigger for violent clashes between strikers and armed forces.

In front of Yakjin on the morning of January 2nd 2014

The first clash occurred in front of Yakjin (Cambodia) Inc., a Korean and US-owned company located in the Pursenchey district of Phnom Penh. Almost all of 2,800 Yakjin workers, including members of C.CAWDU, had participated in the strike since December 25th 2013. Only about 50 to 200 workers were still working during the strike, said one Yakjin worker interviewed on January 15th. On January 2nd, some workers returned to work while others continued to strike. At around 9AM, striking workers from Yakjin and nearby factories were demonstrating outside the factory, encouraging workers inside to join the strike. Many workers inside the factory were eager to join but were unable to, as the gate was locked and guarded, said a Yakjin worker. It was when a few workers tried to open the gate to talk to workers inside, that the Paratrooper Special Forces Brigade 911 (whose Head Commander is Chap Pheakadey, a three-star general) intervened. It was the first time that striking workers faced army intervention.

The base of Brigade 911 is adjacent to the Yakjin factory building, and witnesses state that the base is directly connected to the factory through a single door and that the company provides electricity to the base. It is also known that the company has a special relationship with this brigade. A Yakjin worker, interviewed on January 15th, testified that some former soldiers of Brigade 911 were currently working for Yakjin. A Korean newspaper, the *Kyunghyang Daily* reported on January 5th that the employer of Yakjin (Cambodia) Inc. 'called for the army's intervention using his personal relationship with army personnel'.¹ The intervention was needed 'because the factory was forced to suspend production due to the strikers' and 'the police were not very responsive', according to a telephone interview with the Korean Embassy in Phnom Penh.²

"The soldiers are working as private security guards at Yakjin factory. Half of their salary is paid by the government and the other half by the factory."

(A former soldier of Brigade 911 interviewed on January 16th 2014).

1 The *Kyunghyang Daily*, 5th January 2014. http://news.khan.co.kr/kh_news/khan_art_view.html?artid=201401052116375

2 The *Kyunghyang Daily*, 5 January 2014, http://news.khan.co.kr/kh_news/khan_art_view.html?artid=201401052116375.

At around 9:30AM, about 50 soldiers from the brigade beat up workers who were trying to open the gate and arrested three wounded workers from a Taiwan-owned footwear factory Sky Nice located on the National Road No. 4. The news about the clash and arrests reached union organisers and strikers in the area, attracting a bigger crowd in front of Yakjin. More soldiers armed with AK-47 rifles appeared at the scene and confronted the crowd. At around 10AM, a team of union organisers including Vorn Pao, President of IDEA, arrived at the scene to support the workers in their negotiations with the company. Upon their arrival, the team was struck by what they saw: almost 100 soldiers from the 911 brigade were guarding the Yakjin factory in a stand-off against about 600 workers. Vorn Pao therefore decided to call the United Nations High Commissioner for Refugees (UNHCR) and human rights organisations for additional support. Later, two UN officers arrived and began to negotiate with the army for the release of the three arrested workers. A commander of the 911 brigade, Chap Sophorn, was also present at the scene. Many journalists came as well. When the negotiations failed, the UN officers came out of the factory.

A while after, soldiers provoked the workers by throwing an empty water bottle at them, which was the start of an escalation of violence. When the bottle hit a worker, other workers shouted at the soldiers, who then threw more plastic bottles at the workers. Workers threw the bottles back at the soldiers. When they found no more bottles, workers began to throw stones at the soldiers, who threw them back at the workers. The army also used slingshots. Finally, the soldiers charged at the workers with electric batons at around 12PM.

The workers fled the charge in all different directions, but not everyone managed to escape. Some tried to hide in nearby houses and shops. Vorn Pao escaped to a nearby coffee house but was arrested, dragged out and severely beaten up by a few soldiers. Two journalists (one Australian and one Cambodian) and several monks were also beaten. The UN representatives, still at the scene, tried to stop the beating. When they took pictures, the soldiers confiscated their camera. The coordinator of the Coalition of Cambodian Farmers Community (CCFC), Theng Savoeun, tried to help Vorn Pao but to no avail. Thengwas also beaten and arrested. A witness described the moment of violence:

“When the army charged towards the workers, I went into a coffee shop near Yakjin, trying to hide. Vorn Pao stood close to the coffee shop as well. A soldier pointed at Vorn Pao and said that he was the leader of the workers. Vorn Pao then came into the coffee shop to escape but there was no back door in the coffee shop. Soldiers followed Vorn Pao and caught him in the coffee shop. They dragged him out and started beating him heavily. UN representatives tried to stop the beating but the soldiers did not care and took away their cameras. The coffee shop owner witnessed it. The soldiers tried to find more workers. The owner told soldiers that there were no more workers hiding in the shop. So they did not find me. There were around 10 women workers in the coffee shop too. A woman was

hit hard on her head by the soldiers. The head injury was bad and she was bleeding.”

(A witness interviewed on January 15th 2014).

A total of ten workers and activists were beaten and arrested by soldiers in front of Yakjin on January 2nd, including the workers who had been arrested in the morning. Five monks were also arrested and detained in the army base, but they were released the next morning. After the arrests were made, the army went back to guarding Yakjin, standing in front of the gate. The soldiers kept provoking the workers by telling them loudly that the workers could come closer again if they were brave enough. The workers stayed nearby and did not leave. At around 3:30 PM, around 1,000 supporters gathered and blocked National Road No.4 (Russian Boulevard), demanding the release of those arrested. At around 6:30 PM they marched to Phnom Penh Special Economic Zone. No information about the arrests was released by authorities till 6 PM.

Other violent clashes were developing in the Canadia Industrial Zone on Veng Sreng Road on the same day. This could mean that the actions of the security forces were planned, rather than a reaction to violence initiated by workers. Indeed, the events on Veng Sreng Road proved to be the result of deliberate provocation of the security forces.

On Veng Sreng Road, late afternoon and evening of January 2nd 2014

The violence started when military police attacked the striking workers who were dancing in front of Canadia Bank on Veng Sreng Road. The dancing was one of the protest events and meant to encourage more workers to join the strike. At around 3 PM the military police arrived at the scene in two military trucks. The military asked the workers to disperse. The workers agreed and told the police that they would finish the event after two more songs. Meanwhile, some workers at the scene called the CLC for help as they saw the military coming into the area, said one worker from the Canadia Zone, (interview on January 16th). According to eyewitnesses, the military police ignored the workers' requests and soon began to beat up workers indiscriminately, including women workers. The workers ran away in fear and tried to enter the Canadia Zone, but the security guards locked the gate so that the workers were trapped and could not escape to the zone. It was at this time that the workers began to pick up stones and throw them at the soldiers to hold them off. Soldiers picked them up and threw them back at the workers. It was then already around 4 PM.

“While the policemen were beating me with their stick, I pleaded with them to stop beating me. They kept on beating and pushed me hard. I nearly lost consciousness. I told them, “Sir, if you keep on beating me, I might die.”

(A worker at the Canadia Industrial Zone, interviewed on January 15th 2014)

Once the workers fought back, the military police could not get very close to them. Workers started to set up roadblocks with old tires. Then someone brought gasoline and bottles. At the beginning there were only plastic water bottles. People put petrol in those bottles and threw them onto the tires to set them on fire. But later these bottles were also used to prepare Molotov cocktails. It is not clear, according to eyewitnesses, who initiated the tire barricades and brought materials for Molotov cocktails as it happened quickly in a very chaotic situation. The workers were very 'angry and at the same time very vulnerable' because 'the army had all the gear and guns and the workers had only stones', said one of the workers from the Canadia Zone interviewed on January 16th. They wanted to protect themselves and began to prepare those bottles and road blocks. The clash between workers and the military with stones being thrown on both sides lasted until around 1 AM in the night.

On Veng Sreng Road, early morning on January 3rd 2014

At this time the workers were occupying Veng Sreng Road, when the military police surrounded the area, then advanced on the protestors from all different directions.

Many residents in the area heard gunshot sounds at around 1AM and said the shooting continued until 2:30 AM, although it stopped from time to time during that period. When the shooting started, workers living in nearby multi-story accommodation fled to the roofs or the upper stories of the buildings and cheered on the workers in the street below. Sporadic clashes continued until early in the morning. The army also used smoke grenades and some workers fainted. Some workers also ran into the buildings and continued to shout at the military from the 2nd and 3rd floors.

"Many workers got injured on January 2nd. It was cruel. The workers were beaten by the police with some 'electric bars'. Many workers were knocked unconscious and the police just threw them into the truck. We think this is not acceptable, so we decided to join the strike on 3 January 3rd."

(An injured worker at Canadia Industrial Zone, interviewed on January 15th 2014)

In the early morning, some of the workers got angry with the guards of Canadia Zone as they locked the gate to prevent workers from entering the zone to hide, and in their anger the workers burned a guard's motorbike.

At around 7 AM, workers gathered in groups in front of the factories in the Canadia Zone but did not go into the factories. They were 'all angry as the news about last night's violent crackdown was spreading among the workers', said a worker

from the Canadia Zone interviewed on January 16th. Later some workers destroyed the sliding gate of the Canadia Zone. They dragged it to Veng Sreng Road and set fire to it with gasoline at around 8 AM. Up to this point, the motorbike of the security guard and the gate of the zone were the only private properties that were destroyed by the workers. Still in the early morning the workers also began to reinforce the road blocks. At around 8:30 AM, some workers again threw bottled petrol onto the burning tires located between Huy Chen factory and the Canadia Bank on Veng Sreng Road. Residents of the area were not angry at the striking workers. They even provided the workers with some packs of rice and water. People from a nearby school also brought water to them.

On Veng Sreng Road, late morning on January 3rd

At around 9 AM, the army approached from two different directions. A group of soldiers moved from the Canadia Zone to Huy Chen (a six-storey factory) and another group of soldiers moved from north to south toward Veng Sreng Road. When the workers found the soldiers approaching, they began to throw stones. There were around 500 workers at the beginning of this, but some soon ran away and the number was reduced to around 300. The military started firing in the air, and many workers got scared and dropped the stones. Only a few workers continued to confront them, while many more ran and hid. The military began to shoot at protesters again between 9:10 and 9:20 AM. "When the workers who were hiding tried to stick their heads out to see what was going on, the army did not hesitate to shoot at them", said a worker from the Canadia Zone, interviewed on January 16th). Some workers occasionally threw stones at the soldiers, but no more molotov cocktails were used. Many workers were hiding in their rented rooms located in a small alley between the Canadia Industrial Zone Market and Canadia Bank. The army shot at the doors of workers' houses randomly. About 50 workers were hiding in those rooms and about 100 workers were hiding in the three-storey apartment building next to the rooms. [See picture 3] Between 10:30 and 11AM, a worker was found lying in Veng Sreng Road. He seemed dead according to an eyewitness. When he was shot was not clear. But he was 'abandoned' there, said a worker from the Canadia Zone, interviewed on January 16th).

"At around 10 AM I saw a worker get shot and some of us were trying to pull him out. We tried to call an ambulance but it was denied because the roads were blocked. No ambulance or emergency unit could access us. We pulled out the injured to put on the side of the road near a bank at the corner of the Canadia Industrial Zone. At that time the sound of guns shooting was coming closer and closer. Many people closed their doors and their shops, except one house that was still open. We pulled the injured into that house."

(A woman worker in the Canadia Industrial Zone, interviewed on January 16th 2014)

Some soldiers were standing around the body so that no one could see it clearly. No one could take a picture of him. Workers saw that two military trucks were approaching the area and the body was then thrown into the military truck. The person was not moving and seemed dead or unconscious. In the truck, there were some workers who had been captured by the military. It was between 12 and 1 PM. From 11AM, the army began to indiscriminately beat anyone appearing on the street, so workers could not go out. However, whenever soldiers were not seen, some workers still came out to Veng Sreng Road. Between 11 AM and 12 PM, a group of around 10 workers came on motorbikes and set up six barricades with pieces of wood and tires. The army were patrolling the surrounding areas and were not at the scene. Some workers from neighbouring houses were looking at them, but they were not participating in the action. After setting up the barricades, that group drove away. There were six of them every 100 meters. One was set up between Huy Chen factory and the gate of the Canadia Zone.

According to an eyewitness, between 11 AM and 12 PM some people carried out an injured man and left him at the doorstep of the Independent Clinic. He was left there alone. The military were around but did not pay attention to him. When he was seen the first time, he was still moving. But later on, he was not. Once the military moved away, two members of the clinic staff came out and checked him, then went back inside, leaving him at the doorstep. Someone then shouted that there was an injured worker at the gate of the clinic. Some people approached him and took him away on a motorbike. The workers became very angry at the clinic staff as they did not want to treat the workers. Once the military retreated, some workers looted the clinic in revenge, breaking windows with stones. They carried out equipment, and bed mattresses, as well as medicines and burned them on the street. Workers in the neighbourhood came out to observe what was going on whenever the military retreated. Workers went back into their houses to hide whenever the military passed through the area.

After 1 PM, the military police pointed a gun at a UN vehicle to stop it from entering the area. The vehicle stopped at the spot and observed. Some workers on the roof of an apartment were trying to look out. The soldiers threw stones at them and workers threw bottles at the soldiers. Then, the owner of the apartment opened the door to let the soldiers in. Witnesses heard six to seven gunshots from inside the building after the soldiers went in. The soldiers shot at the doors of buildings where workers could be hiding and beat them up if they found any. It was around 1:30 PM when the last gunshot was heard on the day.

On Veng Sreng Road, afternoon of January 3rd

At around 2 PM, the army marched into the area and asked the neighbours to get back in their houses. About 100 soldiers were

there. More than 20 military trucks were seen entering the area. The soldiers threatened the residents at gunpoint if they tried to take pictures. The soldiers told the residents to get back in their houses otherwise “they would get shot”, said a worker from the Canadia Zone, interviewed on January 16th 2014). After that, many female workers packed their belongings to leave for their hometowns. When they came out to do so, the soldiers told them it was a good idea. The male workers were still hiding.

Another group of soldiers came from the east and joined other soldiers around the Canadia Zone gate. Then the soldiers marched to the east, dragging one captured man. His hands were tied behind his back and he was wearing only his underwear. He was beaten badly and bleeding. This incident was witnessed by a worker from the 3rd floor of the worker’s apartment building. (A worker from the Canadia Zone interviewed on January 16th 2014). From around 2 PM, there were no more conflicts and protests. The street was very quiet. Many workers who had witnessed the violent crackdown felt overwhelmed and shocked. To many workers, it was the first time to see such a thing. They were ‘in nervous shock’ and at the same time ‘very worried about their friends and colleagues’, said one worker from the Canadia Zone, interviewed on January 16th 2014).

“I never experienced this kind of violence before. My parents told me about the Pol Pot regime, but I feel that this is worse than that, because they said that during Pol Pot they asked you before they shot you. Now those people, who are more educated, they kill who they want to kill. We have no weapons or anything to respond to them. I thought I was going to be killed at any time.”

(A worker, Canadia Industrial Zone, interviewed on January 16th 2014)

In front of the Phnom Penh court, early afternoon on January 3rd 2014

While the bloody crackdown on Veng Sreng Road was ending, IDEA, other unions and human right activists held a protest in front of the Phnom Penh First Instance Court where the authorities had brought the 10 people arrested at Yakjin, after spending the night in the army detention centre. Later Vorn Pao reported that the police beat him on the way to the court and that he received no treatment for his injuries. He asked for a doctor but his request was refused. It was only in the court that he obtained assistance from a doctor and lawyer provided by LICADHO, a human rights NGO. While the protesters were demonstrating at the court, they heard that the situation at the Canadia Industrial Zone was very serious. At 2 PM, the military police started violently dispersing people in the demonstration in front of the court. Two tuk-tuks were damaged by military policemen using iron pipes. The protest at the court finished at around 2 PM.

The Aftermath

The next day it became clear that 13 more protesters were arrested with excessive use of force. The protesters had seen numerous people getting injured or even killed; but the exact numbers were still very unclear.

On January 4th 2014, the unions met in emergency meetings to discuss future plans. Meanwhile, the CNRP supporters and workers in Freedom Park were attacked by private militia. The two leaders of the CNRP, the CCU president Rong Chhun and the C.CAWDU president Ath Thorn were summoned by the court to explain their role in the incidents. From January 4th, Phnom Penh was full of military police officers and roadblocks. The Phnom Penh Municipal Government and the Ministry of Interior announced a ban on public assembly of more than nine people. Five female Beoung Kak Lake activists were arrested during a protest demanding the release of those arrested during the strike. The women activists were released in the evening.

In the Canadia Zone, soldiers were guarding the gates of the big factories after the incident. Soldiers were also seen on Veng Sreng Road. The presence of the military scared people in the area; commuters were warned by soldiers not to travel along Veng Sreng Road. From January 3rd onwards, shop owners moved their products to other safer places and only resumed their business on January 7th or 8th. About half of the workers in the neighbourhood took leave and went back to their hometowns. Many did not come back for some time as there was a rumour that the military would come back to arrest people on January 14th. Workers were scared. Many workers did not go back to work and those who did were very fearful.

“Looking back on the experience, I am still hopeful because I saw that the power of workers was strong. But the violent crackdown by the military is very discouraging. I want to demand US\$160 minimum wage. But the fear was just overwhelming. People got arrested and unionists were put in prison. No one takes responsibility for it. Fear is overwhelming. It is painful to watch. Workers were demanding the minimum wage. For that, they are now dead and in prison. The TV and other media portray the workers as if they are criminals. They show only one angle of the story. They show workers throwing stones at the military and wounded soldiers. They only focus on those things. We are in fear and we lost our friends. We could not get what we wanted. And how come we are responsible for everything? Why should we be blamed for everything? When I returned to the city on January 8th, a worker who shared a taxi with me told me that she did not come back to the city to work. She came back to get her wages and then wanted to go back home to her village. This will affect not only garment workers but also many families relying on the income of garment workers”.

(A garment worker from a Taiwanese-owned factory, interviewed on January 16th 2014)

VIII. CONCLUSION

Thanks to the testimonies and honest accounts of all the interviewees, the fact-finding team was able to gain an understanding of the workers' perspective of the events that occurred between December 2013 and January 2014. Through the detailed interviews, the fact-finding team identified the main drivers behind the workers' protest, established the sequence of events during and after the protests and assess who is responsible for the workers' suffering as a result of the violent incidents. What also became clear from the different accounts was that the repression and the violence witnessed by the workers was unprecedented—something that the young Cambodian workers had never seen or experienced before, despite having grown up in a country with a history of violence. It has left them visibly scarred and scared, and many struggled even to talk about the events, revealing an atmosphere of fear that continues to exist even now. The main conclusions of the fact-finding team are presented below in three statements.

Poverty wages and dismal working conditions drove workers to protest

The strike and the protests were driven by the severe socio-economic hardship workers face as the result of low wages and long working hours. Due to inflation, workers experienced a substantial net loss in wages over the last decade. This was exacerbated in 2013 following peaks in food, fuel and housing prices. Working in fixed-duration employment arrangements—now the norm—has further contributed to a loss in benefits, making it harder for the garment workers to make ends meet and support their families. Most workers interviewed expressed that they could not continue to work and live under such conditions. Their testimonies demonstrate that they understood their situation to be unjust and intolerable.

Lack of democratic space to address workers' concerns

The process and outcomes of the December 2013 wage negotiations undertaken by the tripartite Labour Advisory Committee(LAC) demonstrated the inadequacy of this committee to fairly represent the workers' interests and the lack of neutrality of the government. The workers' demands for a minimum wage of US\$ 160 a month was based on the results of a survey commissioned by the LAC. Although a minimum wage for a decent standard of living is provided for in Cambodian Law,³ the LAC has consistently failed to take the interests of the workers into account. In fact, during the December 2013 wage negotiations—as was the

3 See Cambodian Constitution and in Articles 104 and 107 of Cambodia's Labour Law, which state that “[the minimum wage] must ensure every worker of a decent standard of living compatible with human dignity”, and that minimum wage should take into consideration “the needs of workers and their families in relation to the general level of salary in the country, the cost of living, social security allowances”.

case during the 2010 wage review—no real dialogue between the workers’ representatives, the government and the employers took place. The failure of this process can be attributed to the uneven composition of the LAC, which consists of representatives from the MOL, an employers’ association (GMAC) that is openly hostile to independent trade unions and a high number of pro-government trade union federations.

Faced with deteriorating and intolerable employment and living conditions, and an ineffectual administration that does not effectively address their grievances, workers felt that they had no choice but to undertake strike actions and protests, in this case even before union leaders called for them.

The violent repression of workers’ protests causing deaths was unprecedented, excessive and unnecessary causing a Human Rights Emergency

The violent attacks on unarmed protestors, which included beating them mercilessly, were carried out at times in the presence of the UN representatives, showing not only the complete disregard of the government towards protecting the human rights of its citizens, but also indicates that the Cambodian government prioritises the interests of the employers and the garment industry over the protection of the workers’ human and labour rights.

In the period prior to December 29th 2013, the employers and the government attempted to quell the strike and protests through various means, such as encouraging workers to stay or return to work by providing incentives or by threatening the workers, activists, union leaders and their families.

At the industrial zones where the violence erupted in January 2014, eyewitnesses stated that the military attacked the protesters with weapons, at which point the protesters resorted to acts of violence and public disorder in retaliation. The conflict later escalated with the military attacking and firing indiscriminately at the protesters, leading to the tragic deaths and dozens severely injured.

The government used particularly brutal means to repress the workers’ protests in January 2014. The GMAC is known to have pressured the government to take more aggressive action to quell the protests so production could resume and losses to business mitigated. Some interviewees were of the opinion that the government took swift action because it feared that more supporters would have joined the protests and the opposition party would co-opt some unions into their own movement.

The Cambodian government continues to violate the rights of the workers, as evidenced by the ongoing harassment, discrimination and arbitrary detention of activists and union leaders, the civil and criminal cases brought against union leaders for legitimate strike actions, and the banning of public gatherings.

TORTURE IN SOUTHEAST ASIA

INDONESIA

‘None of the torturers were punished for their crimes’



Era Purnama Sari, LBH Padang

Era: We were colonized by the Dutch so many of our laws and legal systems were influenced by the Dutch. In the criminal justice system there are two main laws: first, the Penal Code; second, the Criminal Procedure Code.

The Penal Code was written by the Dutch ages ago. We use the Criminal Procedure Code originally written by the Dutch, but amended in 1981. If you compare the proficiency of the current Criminal Procedure Code with the one written by the Dutch they are not the same anymore. Human rights concepts and principles have been adopted. Before 1981, torture was allowed under the Criminal Procedure Code.

Article 2: After this amendment in 1981, were attempts made by the victims, the families or the lawyers to assert these concepts and principles to demand accountability for the period 1981 to 1998?

Era: You mean what did the victims do to force recognition of their rights?

Article 2: Yes, whether they have asserted their rights through legal mechanisms like prosecution and the courts, as operative during Soeharto's period. We want to know what actions people took, if any.

Era: Under Soeharto's regime, there was widespread violence. Much of it actually contributed to gross human rights violations. Of course, during that time there were no prosecutions against Soeharto because he was powerful and held all the power.

Torture of individual victims also took place. But, needless to say, the victims did not have the courage to submit complaints to the police or the prosecutors because it was a very authoritarian regime which involved all sections of the government. The judiciary were actually Soeharto's appointees who supported him. Therefore, no one had the courage to challenge any area of the government. All efforts to prosecute torture cases and gross human rights violations only took place after the reform period. After 1998, there was a law enacted on human rights, but before that there was nothing.

Article 2: We are aware that after 1998, there was a law enacted on the Ad Hoc Human Rights Court. From what we know, none of the findings conducted by Komnas HAM resulted in any policeman and or member of the military being punished for violations. There were convictions but the offenders received light sentences. In fact, if they were convicted they still remained in military service. We want to know why. What is the reason for this?

Era: None of the cases were successful.

My observation is: when Indonesia was trying to reform, the actors who wanted to reform the country were not prepared for the results. They were not ready in the sense that they lacked sufficient knowledge. They had no idea what would happen next. They just wanted to remove Soeharto as quickly as possible. In actuality, what did happen after the Reform was that all the important, influential positions were still occupied by Soeharto's friends. Basically there was no punishment for the police and government officials who broke the law despite the law on the Human Rights Court.

After the reform, until 2011, 84 commissions were established by the government. Many of them actually related to law enforcement. The law enforcement agencies included the Anti-Corruption Commission, the Judicial Commission and the Witnesses and Victims Protection agency. Komnas HAM is one of those. It does not have power and its authority is still not clear.

“When Indonesia was trying to reform, the actors who wanted to reform the country were not prepared for the results.”

“Several numbers of the soldiers involved in torture were promoted in Aceh; and as for the victims, we got nothing. Because it’s not a crime in Indonesia.”

Komnas HAM can only make recommendations. People working for Komnas HAM admit to themselves that the organization is a complementary one, the concept of democracy a symbol. They are like a condiment or a decoration. Yet, they still see the country as beautiful and an ideal. Komnas HAM complained that it is quite difficult to get appropriated money from the state budget. Some Commissions and State institutions are deliberately neglected.

I recall that one of the members of parliament mentioned that Komnas HAM is not a respectable body because even experts in the law would not apply to be a member of this institution. They take complaints, enter them in a data base and that is about all they can do.

And in the instance of the torture of two minors, there were no recommendations. This sad conclusion came about even though the local Komnas HAM and the Komnas HAM Commissioner from Jakarta, conducted the investigation. Their findings were for the prosecution of the case. The Commissioner who conducted the investigation was nevertheless very brave in making a public statement saying that the victims did not commit suicide.

Article 2: Are you talking about the case of Faizal and Budri?

Era: Yes, it was a case of premeditated murder which had a very interesting twist to it. Even though the Commissioner had made the public statement that it was not a suicide, when you read the investigation report there is no mention of premeditated murder or suicide. This means that there is a gap between the public report and the official report that they published.

(For details about this case, see: SPECIAL REPORT: A facade of justice for torture victims in Indonesia, at: <http://www.article2.org/pdf/v12n02.pdf>)

Article 2: In some cases did Komnas HAM make some recommendations? For example, there are cases in which they did make recommendations and in which they identified the perpetrators. There are also circumstances where the Attorney General’s Office caused obstructions to justice by not filing charges for prosecution. I would like to know whether this is allowed by law and why it happens.

Era: The reason is simply because there is no enforcement of the law. There is no way to enforce recommendations made by Komnas HAM. In the case above it was decided by law. In the strict sense it was not a violation of the law because once they obstruct the process they make a statement that appears to be legal by saying there is no evidence. If the investigation conducted by the police is not good enough according to the prosecutors, the prosecutors can say they will leave the case with the police. That is one way to stall a case and it can go on for years and years.

Article 2: Do you think it is more a matter of politics than the law itself?

Era: It is a matter of both politics and the law itself. In relation to the law if you see the political context, of course, it answers as well. So, the perpetrators of these violations, no longer in power, still have influence. They have people in various places in government, whom they trust; who control and influence others. So, it's not the individual contacts but rather the people they control, that they indirectly influence. That is why it is so difficult to ask for prosecution.

Once I spoke with a staff member of the Human Rights and Law Minister. The person basically said: if they were to admit that the 1965 communist massacre took place, can you imagine how much compensation would have to be paid out? How could we manage?

Article 2: They said it openly?

Era: No, not in public, but in a hall.

The biggest challenge human rights activists in Indonesia have these days is that human rights is no longer a hot topic. Now the discussion focuses on corruption; everyday people talk about corruption, everyday people say they are concerned about corruption. Children, peasants-- they all talk about corruption. It demonstrates that General Prabowo, a human rights violator and member of the military who was responsible for the abduction of activists in 1997-1998, is still very, very popular in society.

No matter how many campaigns in Indonesia have been carried out by different organizations against General Prabowo, accusing him of human rights violations, the general public doesn't care about these claims. Therefore, I do not think it presents a significant obstacle for him in seeking the presidency, no matter how loud people scream about human rights.

(Editor's note: In March 6, 2014, JakartaGlobe reports the result of a survey in an article: "*In Military We Trust? Strongman Nostalgia Runs Strong Among Indonesian Voters*" indicating that 60 percent of Indonesians would vote for a Presidential candidate in the upcoming July 2014 elections with a military background)

“ The biggest challenge human rights activists in Indonesia have these days is that human rights is no longer a hot topic.”

‘Police officials do not understand that torture is always wrong’



Sultan, Komnas HAM

Sultan: Our challenge is: if state officials are involved in human rights violations, they do not cooperate with us in terms of subpoenas or petitions we send them. Our measure of redress is to enlist the Commissioner from Jakarta to put pressure on these officials to comply.

Every year we investigate about 145 cases divided into themes of: civil and political rights; social cultural rights, protection for children, the elderly and the disabled. State officials who commit violations are: 1st the police, 2nd the local government, 3rd corporations 4th husbands who commit domestic violence.

Article 2: You mentioned that there are more complaints against police officers; what is the nature of these complaints?

Sultan: They are mostly acts of violence, including torture. Some of the cases manage to reach the courts for prosecution, for example, the case of Faizal and Budri. In this case the perpetrators were sentenced to 10 months to 1 year of imprisonment. There are some cases of land conflicts in which indigenous people were involved that reached the courts. Our number of staff to investigate and monitor these cases is very small.

In terms of coordination with the witness and victims protection agency, we do coordinate with them. We have been working as well with the LPSKA. However, there are concerns about the transparency and impartiality of members of the LPSKA staff. On one occasion the victims found out that some staff were related to the perpetrators.

Article 2: So, you mean there is no transparency in terms of processing the provisions of protection to witnesses?

Sultan: Yes, there is no transparency. For instance, in the Sijunjung case, they were asking for protection for the families of the victims. Up to now they have not received any assistance, not even a letter informing Komnas HAM about what protection will be given to the victims and their families. This is one of our problems.

Article 2: Are state officials cooperating with Komnas HAM?

Sultan: Partly-yes. If there is an investigation some of them come but others do not. Those who actually do come are from the companies, while those who do not come are State officials. Some State officials are quite cooperative most being from the local government level.

In terms of investigation by the court, they are cooperative. But, at the end of the trial, the sentences meted out to the perpetrators are very lenient.

Article 2: We are curious about police attitude towards the use of torture in conducting investigations. Why do police torture suspects when they conduct investigations and why do they think they can make use of torture?

Sultan: Police torture because some do not have sufficient understanding about human rights. This ignorance persists even though there is a parliament issue regulation that police should not use torture against suspects. The high-ranking officials, of course, understand about human rights; they know that you cannot torture as well. However, what I found is that the lower level police officers, the investigators, the ones you have in sub-stations, they actually do not understand that torture is always wrong. They think that using torture is useful in conducting criminal investigations.

Another reason the police use torture is: it is the easiest and quickest way to obtain information. They want to be seen as officers who can effectively and efficiently conduct their investigations. In the end, torture benefits the officials. For example, if the lesser-ranked officials want to get promoted, they conduct quick investigations to solve the cases quickly.

“What I found is that the lower level police officers, the investigators, the ones you have in sub-stations, they actually do not understand that torture is always wrong.”

“ Victims would like their complaints to be handled very quickly whereas for us it is not that simple because there are limitations.”

Article 2: So, how do police and even the military or the public officials understand the principle of the absolute prohibition of torture? Do they grasp the severity, the absolute nature of torture or do they think it's an ordinary form of abuse or crime?

Sultan: The understanding that you are talking about is that freedom from torture is an absolute right. I don't think they have fully comprehended that idea yet. Even though the convention has been ratified by Indonesia, in cases of torture we can only use the Penal Code, which is actually less severe.

Article 2: I have one last question. Like the Philippines, Indonesia also has a history of authoritarian rule. For 30 years, during Soeharto's regime, torture was a State policy and sanctioned by the government as a form of punishment and interrogation. Komnas HAM was created in 1993 as a result of demands by the people to provide remedies for their complaints of torture.

My question is: First, has there been a transition in terms of the State's attitude towards the development of law after the restoration of democracy and in terms of the use of torture as no longer being a State policy according to the standard of the law; second, what is the attitude of the victims now towards the Komnas HAM in comparison to before 1998? Were there more complaints before 1998 or were there more complaints after 1998?

Sultan: Yes, there are positive changes in terms of the attitudes and behaviour of public officials. Transformations are gradually taking place. At the level of the politicians, we have this law in human rights; we have also ratified the ICCPR. The government actually uses rights orientation on implementation or the implication of laws. Notwithstanding all of this, torture is still happening.

In relation to the victim's perception of Komnas HAM, his opinion is: before 1998 Komnas HAM was actually quite well respected because some of the Commissioners during that time were honourable persons. After 1998, the number of complaints increased but interestingly Komnas HAM became less respected by the people at large. I am not sure why. Maybe there is an internal factor, or maybe its current Commissioners are not ready to cooperate with each other yet.

On the other hand, the victims would like their complaints to be handled very quickly whereas for us it is not that simple because there are limitations in terms of our mandate.

Article 2: Thank you very much.

PHILIPPINES

‘I’ve seen obvious bias against poor, innocent persons’



Abina Rombaoa,
Moro Women Center, Inc.

Abina: The perpetrators are biased. Why do we say that they are biased? Because, during the raid when they were arrested, the police did not have sufficient evidence to arrest them. Once a person has been pointed out by another as a suspect, they immediately arrest him. There is no investigation.

Then, they take the person to the police station. They say that they were merely inviting the person, but actually they were interrogating the person. They put pressure on the alleged suspect to confess to the crime. The suspects usually confess because they are severely injured, suffering not only verbal abuse, but physical assault.

In terms of protection, our system in the Philippines does not really protect all victims, only some, like the rich. The prisons are not for the rich, but for the poor. Once a poor person is accused or commits a crime, they have no ability to defend themselves. As a result, they are sent to prison even if they are innocent.

Innocent civilians are arrested to benefit police officers; firstly, to be promoted to a higher rank: secondly, to add to a yearly

budget for intelligence funds, supposedly to look for criminals. But if we thoroughly analyse their actions, they have no proof and no evidence to justify the arrest and detention of a person.

“Those they suspected as bombers are just ordinary farmers, side-walk vendors, day labourers, or porters at the fish market.”

For example, in the arrest of the bombing suspects, the question is, have they arrested the real bomber? No, most of those arrested are innocent people. Those who were arrested in bombing incidents many years ago, still languish in prison. And those they suspected as bombers are just ordinary farmers, side-walk vendors, day labourers, or porters at the fish market. They are arrested even though there is no basis or proof for doing so.

None of the real bombers have been arrested by the police because the terrorists quickly go into hiding. So, since they could not arrest the real offenders, they randomly pick up and arrest those whom they think would not be able to defend themselves in court.

This is a pattern that we have seen repeatedly.

For me, particularly, in the many years of work from 1992 to the present, I have seen an obvious bias against poor and innocent persons in prison. We have seen bias, for example, in those arrests that are purportedly carried out for purposes of protecting civilians, protecting people, or protecting those innocent civilians who could be victims of bomb attacks.

Why? If the person arrested is poor, he has no space; he is a nobody in court. And when it comes to court hearings, a suspect's case would be heard only once a year. They would be lucky if their hearing pushes through. Sometimes these scheduled hearings are postponed, Rescheduling a hearing can occur for various reasons such as no judge, no prosecutor, no stenographer to take notes. These are some of the reasons put forth in postponing or cancelling hearings.

And, I ask the court: “Why is there a huge gap from the day a case is heard until its second hearing?” For example, if a hearing is postponed in January, the court will reset the hearing from July onwards. Sometimes they are scheduled in the month of December. It is common knowledge that the court's working days for the month of December is only the first and second week. Usually a case is heard in court only once or twice a year. That is how slow things are.

In observing cases in other countries, the situation is completely different. In Japan or Hong Kong, I appreciate how speedily their case trials are conducted in court. If they see that the accused or the suspect is innocent, or if there is insufficient evidence for the prosecution, the case is dismissed, having lasted for only a few months

In terms of cases in the Philippines, whether you are guilty of the charges or not, the trial will take ten to twenty years. It is much worse if you cannot post bail. The difference is, if you are out on bail, the length of time is lessened.

Article 2: Concerning those things that you mentioned earlier: first, that the police arrest without evidence and a proper investigation; second, that when the case is taken to court, hearings take place only once or twice a year. Do you think there are other reasons for these delays?

Abina: YES. I have visited many jails and seen for myself that most of those in detention are Moro. And, as a Moro, I have witnessed this strong discrimination against Moro's. Why is it, if there are incidents of bombings or robberies, the immediate suspects are Moro's? They are charged as terrorists. Long before the term "terrorist" was in use, negative perceptions against the Moro's already existed.

The public perception is: "Oh those Moro, their attitudes are really bad, they are bombers and murderers." So I asked one of the lawyers, who I thought was different from most others, did he feel that there is strong discrimination against the Moro people? YES.

Article 2: So, you understand that the Moro people suffer more: firstly, because they are poor; secondly, because there is unequal treatment for them in terms of the criminal justice process. Now, for those who availed themselves of your services, do they still have confidence in seeking justice through the system, and if not, why not?

Abina: There are some who understand better, who file complaints. But many of them no longer file complaints. They are disillusioned and become close-minded. For example, when we conduct paralegal training in the community to help them understand more and know what to do when they are arrested, they are reluctant. So, it is very difficult for us as human rights defenders and educators to try to afford them this kind of learning. As a Moro I feel nervous once I hear about a bombing incident and I have to make a statement to the media, either as a warning or a prediction. Usually, from previous experience, no other groups would be targeted for arrest but the Moro.

And in most cases, this is what happens. They do arrest a Moro.

Subsequently, the police make public the identity sketches of the supposed suspect. They then arrest anyone who in anyway looks similar to the artist's sketch, declaring openly that "this is the real suspect."

This happens not only for Moros but also for other indigenous people whom we have helped. On one occasion, there was an

“ But many of them no longer file complaints. They are disillusioned and become close-minded. ”

“They are not really protecting the people who are in need, but are only protecting the few.”

indigenous person, married to a Cebuano whose face was similar to one of the suspects in the Maguindanao massacre. Although their eyes were similar he was not the same person the police claimed him to be. Nevertheless, he was arrested and taken to Taguig, a prison in Metro Manila. There was another Moro whose looks were completely different, but whom the police were insisting was the real suspect.

For us, as educators, we want to see authentic police investigations. This means that when the police or the military make arrests, they should have accurate information as to the reasons for the arrests, that the suspicions regarding the suspects they intend to arrest are accurate. What is obvious is that most of their suspicions are baseless. For the most part, they arrest innocent persons, like farmers, side-walk vendors or day labourers who can do nothing to defend themselves. Of course, once you are tortured, you will admit to anything. Torture includes such things as clipping your fingers, or passing electricity through your genitals.

You asked about Alex Salipada and Pedro Hamsa who told me that their private parts were subjected to electrodes. They tortured the victims for nine days to force them to admit guilt, but guilt for what? They were innocent. All this time they were prevented from any contact with families and relatives. One of them is a side-walk vendor, another a day labourer, another a porter at the fish market. These are some of the kinds of biases that I have seen. They are not really protecting the people who are in need, but are only protecting the few. It means they concentrate on protecting people who are capable of protecting themselves, like those who are rich, influential and of the elite. Even drug addicts who are rich are treated well in prison. By contrast, those prisoners who are poor receive completely different treatment.

Rich prisoners in confinement set up their cells with many of the comforts they have at home. Not only do they have soft mattresses on their beds, with television sets, but various other luxuries that are supposed to be prohibited in prisons. It is evident that the treatment between the rich and the poor is not fair. In addition, they can afford to bribe prison staff to accommodate their every desire but freedom.

Article 2: In all of the cases that you are handling, are most of them torture victims?

Abina: Yes, they are tortured to force them to admit to crimes they did not commit.

Article 2: For those who were tortured, have there been any cases where the victims filed complaints of torture against the police or the military? If so, what happened to their cases?

Abina: So far, I have not come across torture victims who filed complaints against their perpetrators. Mostly, they wanted to get back to their old way of life, to their livelihoods. Simply, with what they have left to them, they just want to return to their same status in life. Mostly, they prefer not to remember what they experienced in the past. They close their eyes to the torture that happened to them. They want only to remember who they were before they were tortured.

Next, let us consider the case of the GenSan 3. I believe that the intention of the police was not only to arrest, but to rob. Why? for the following reasons. The luggage that the police took from the victim's house has disappeared. The luggage contained gold, imported goods, and other sundries. The owner has lost all hope that his goods will be recovered.

Of late, the owner of the goods had asked me: "Can we still recover the goods? Can we file charges against the police?" So far, I have only encountered this one case where the complainants are willing to file a complaint against the police. So we filed a case against the police officers for the loss of the goods involved.

Article 2: Are those perpetrators who are involved in the torture of the GenSan 3, are they still in police service?

Abina: Some of them are still in service. Colonel Bartolome (Baluyot) should be the one held responsible. I asked at the time of the crime: "Sir, why are you carrying this luggage? It has nothing to do with this arrest." He completely ignored me and my question.

Article 2: From what has happened to the GenSan 3, what impact did it have for your family and for your work as a human rights defender?

Abina: It impacted me a great deal in that it helped me strengthen myself to serve the victims more effectively, and to help other victims later on. It was a profound learning experience for me. I remember what an old woman, a relative of one of the victims, said: "Oh, such inhuman actions that were thrust on us was the first time in our life that we were treated in such a way. What really were their reasons for this kind of behaviour toward us? We are innocent.

This is how the elderly think of it now. Fear has entered their lives. They fear because they have young grandsons. They think: "What will happen to them in future?" Although they are successful in rearing good children, why are their children being treated so poorly? Why are they made to have such bad experiences?

A second impact is on our local government, especially those involved in arresting people. They should be careful. If a person

“ Fear has entered their lives. They fear because they have young grandsons. They think: “What will happen to them in future?”. ”

“When you arrest anyone, you should to have a strong basis for arresting, prosecuting or detaining the person.”

is really guilty, then they should have a basis for making the arrest. They should conduct a thorough investigation including going to the communities where the crime took place. Why don't they ask the communities about the background of the person whom they arrested? If they really want to get to the truth these are the things that should be done.

I therefore challenge the local government. When you arrest anyone, you should have a strong basis for arresting, prosecuting or detaining the person. The evidence and the investigation you are conducting on the accused must be solid. And if you want to know the truth of a situation, you must also go to the community.

(Editor's note: Abina Rombaoa speaks about the illegal arrest, torture and detention of Jejhon Macalinsal, one of her relatives and Abubakar Amilhasan and Arsul Ginta, collectively known as the GenSan three.

The GenSan three were arrested during a police raid on April 24, 2002 in Calumpang village, General Santos City, on allegations that they were responsible for bombing a shopping mall which killed 16 people, and wounded many others.

In October 29, 2010, after eight years, all the accused were acquitted of charges of illegal possession of explosives. The evidence against them was planted by the police.)

‘Police, prosecutors & judges do not perform according to the law’



Atty. Dominador Lagare,
lawyer for torture victims

Article 2: Based on your long experience in trial situations, I would like to get your insights into what you think about our criminal justice institutions. Basically, how do the police, prosecutor’s and judge’s deal with cases?

Dominador: I would like to share what I have observed in my experience as a lawyer in the Philippines. The way I see what is happening in the Philippines now, is that things are getting worse. Money in the Philippines is considered to be the most important thing. The old cliché that the rich are getting richer and the poor are getting poorer holds true. In all aspects of legal matters, the rich always means the rich person and the poor always means the poor person.

For instance, I had a trial in court. Under the law, during the pre-trial, the petitioner has to be personally present in the court. I have handled the case for more than a year already, but have yet to see the petitioner even once. The judge tolerated that the petitioner did not make an appearance and he was able to get away with it. Unfortunately, after a year of handling the case, it was postponed for three or four months.

The petitioner in this case is a very rich man. He has influence. Even the judge is relegated to the background as if he is no longer a judge. And, to add to this, my client is poor. I mean he did not

hire me or pay me. In preparing court documents he could not pay me even a single centavo. On my part, I am trying to facilitate his right to a court trial.

“I’ve even heard that some cases were won in court because the judge was given money for a favourable judgement.”

That is how the case went. On that day the judge was scheduled to hear thirty cases. Our case was supposedly scheduled for 2pm, but the judge only came out from his chambers at 3pm. Reading the cases to be heard that day could take some time. My case was listed as number 16th. When it was read, it was almost 5pm. There were about six cases made ready for trial, but the judge ran out of time.

So, what actually happened was that the judge only read the list of cases. And the cases had to be postponed without reason or an unreasonable reason. For example, the case is postponed because the counsel is not present, probably due to a lack of discipline. Lawyers simply do not show up causing postponement of a case which requires his presence.

Article 2: In your opinion, do you think that when judges perform their roles or implement the rules of the court, they are acting or giving judgment according to the law?

Dominador: No. They are not in accordance with the law. Take my case for example. The other party was not around, so the judge should have dismissed the case. Under the rules, it is important that all parties should be present because that is required of a pre-trial. The pre-trial cannot be terminated without a conference in which both parties must be present. But, in absence of the other party, the judge postponed the pre-trial conference.

I even told the judge: “Your Honor, I have been appearing in this case for more than a year. I have yet to see the face of the petitioner.” And, then the petitioner’s lawyer was asked: “where is your client?” He said: “somewhere in Cagayan de Oro city.” In this case the person who is absent is your client. As the petitioner, he is the one asking the court to do something, but he has not shown up in court without giving any reason for his absence.

Article 2: So this is a classic example of a judge not complying with the law, and getting away with it?

Dominador: Yes, and he is not alone. I’ve even heard that some cases were won in court because the judge was given money for a favourable judgement. Say, from the beginning, the judge only asks for Php30,000; later he would request Php20,000 for marketing, then another amount because he wants to go on a holiday. At last the case was won in court after the judge was given Php300,000. This is what is happening today.

Our judges will have 30 to 40 cases docketed to hear in one day. How can they cope? He is only one judge. There is a promise that General Santos City and South Cotabato will both be given

an additional three judges. Aside from that, not only in the local courts but even in the national offices where I appeared recently, I have to spend my own money in going to Manila to attend a hearing. We lost one particular case, not because of the issues/merit of our case, but because the other parties had already paid off the judges.

Article 2: You mean this judicial corruption in an endemic practice?

Dominador: Yes. It is everywhere. As you know in the Congress, there is the Pork barrel issue, wherein money was released to Congressmen and to Senators. The money is spent without going through public bidding. The concerned Congressman or Senator will just give it to a non-government organisation. Nothing good is coming out of this present administration.

There are times that have made me think that there is something basically wrong in our system of government. Here in General Santos City, if you are rich you are given a lot of privileges. We have malls with the owners of the malls being exempted from paying taxes. These malls are given an exemption from paying real property taxes or machineries put thereon for nine years.

For instance, department stores in shopping malls are free from paying business taxes for nine years from the time they open their businesses. I attended a city council/legislative council hearing, and requested them to review the present taxation system now, because with the present system, I see the poor are getting poorer.

A shopping mall engaged in business will be exempted from payment of taxes. On the other hand, small stores are the ones paying the business tax. You see the disparity. It is not the council of people in the General Santos City Hall, but the big business firms who are the ones who pass these kinds of laws. Not only that, there are many more laws that are really not for the good of the ordinary people.

“There is something basically wrong in our system of government. If you are rich you are given a lot of privileges.”

THAILAND

‘Victims are not sons of rich men, they are poor’



Pornpen, Khongkachonkiet,
Cross Cultural Foundation

Article 2: We would like to get your insights on the importance of an effective criminal justice system and on protection of rights in Thailand. What do you think is the link between human rights and criminal justice?

Pornpen: Definitely the two are interrelated. Of course, criminal justice is related to the law; and the law tells us what we can do and what we cannot do in our community. But, when it comes to enforcing the law, of course it will affect our rights. On human rights, I think there are some absolutes where violation is prohibited, torture being one of them. Absolute prohibition of torture is very important; it needs to be protected and respected. The State has the duty to provide law enforcement officers with the basic tools of investigation needed in their profession. These tools, garnered through further education, will help to prevent police, in circumstances where they might use force or torture, to extract information to gain a confession in the name of protection of society.

When it comes to the criminal justice system where we have the law, drafted and set-up, we definitely need to further educate on two fronts: on the one who enforces the law, and on the one who might be affected by those enforcements.

For example, in many cases in Thailand, it is permitted for traffic police, at times, to strike the head of a motorcycle driver. Although the driver may have violated the traffic rules, it is not right to give them a blow to the head. We don't see this type of behaviour very much anymore, but I remember in the past I saw it quite often.

Sorry to say, I hear people talking about this kind of aggressive action by police in many developing countries, like India, Bangladesh and Vietnam. Traffic can be very stressful in any country, but this does not warrant the use of violence by police on ordinary citizens. So, law enforcement needs to consider the two entities: the enforcers and the ordinary civilians.

Article 2: You mentioned two circumstances about the enforcement of law: first, the enforcement of the law that affects ordinary people; second, the consciousness, not only on the part of the law enforcers but also on the victims of what is right and what is wrong.

Pornpen: The ordinary people should know that they should not be beaten.

The case I mentioned above seems like a minor case, yet it points to an acceptance of this practice. So, when we were talking about remedies for minor cases, again, both sides did not think that they needed to complain. If a victim complains that he was beaten, the traffic officer's supervisor would not take any action. They would think of it as a part of everyday life that happens. It should not be like that. The deeper meaning is that it can affect attitudes on other major incidents that occur in society.

Regarding torture and violence, we need to tell others: "Don't do that again, don't create a red light". Now, we will talk about something more serious. Are there are law enforcement officers who are in situations where they need to use force and violence to get a confession or information. Or-maybe they just want to use torture?

For example, drug users; there are some cases where the officer wants to get information from the person. The victims are poor, thin, they look drunk, they are drug addicts. The police think they can be abused. It will come to a point where the police will use force in suppressing illegal drugs against, what we call small fry, vulnerable persons who are drug users, selling or buying drugs. The police do this to get information to suppress illegal drugs.

Now, when we talk about solutions, we have to talk about complaints. Would drug users make a complaint, of course not! Drug users will not complain. They know that they are illegal in a way. They think that no one is helping them; so, no reporting, no complaint. As a result, we do not affect a remedy.

“ The victims are poor, thin, they look drunk, they are drug addicts. The police think they can be abused.”

“In southern Thailand, intelligence officers victimized persons whom they perceived as enemies.”

In Thailand, if you want to complain, to start up an investigation in order to receive compensation or to bring someone to justice, you have to go to the police. In doing this, police become both law enforcement officers and abusers. And the victims would hardly think about lodging a complaint. Things then become stuck that way.

In Thailand, we have a number of agencies with social workers and other offices that provide services. But, if you are a drug user or an ordinary person who violated the traffic rules and file a complaint with a competent officer—it is very rare that he would take up the case. It will not happen except where the victim and the family feel that it is not right and lodging a complaint will be more effective.

Like in the National Human Rights Commission, an Ombudsman, or the police office, or the media would take up a case. This is usually how the criminal justice process starts in Thailand. But it is a difficult way to start. So, when we talk about criminal justice and remedies, it is not easy. There are some circumstances where we need a lot of pressure from the public and the media. The most important consideration should be for the victims. We can sum it up by saying that the public knows that torture is not right.

Article 2: In what you have explained about torture, three points stand out: first, expectations by state agents that they can harm those who violate the law; second, victims coming from poor sections of society, who are vulnerable, usually find it difficult to seek redress; third, persons perceived to be criminals, are not likely to receive any form of assistance.

Pornpen: A good summation. These are the most visible circumstances in Thailand when we talk about torture victims. Normally, victims are not sons of rich men. They would be migrant workers, persons without registration, persons who can be bribed—something like that.

In southern Thailand, intelligence officers victimized persons whom they perceived as enemies. This is the usual way torture happens, so we need a good deal of educative campaigning in the communities. First, we need to support the people who speak out in their own community. Later, we can help the local lawyer who is able to speak the local language. He/she can communicate with the local population to tell them: “Torture is not ok.” So, we can take up some cases in order to give victims some room to think about: “Oh, torture is not ok. We can do certain things to help victims, which could be effective over a period of time.

In the future, if we see an increased reporting or documentation of torture cases, then we would be able to communicate these facts to the government, policy makers and the media. Additionally,

international organisations could put forth some accumulated data reports. If this is done, the number of torture cases would reduce somewhat but not on a permanent basis. When the issue is not continually highlighted or no longer draws public attention, there will be a resurgence in torture cases. The difference being, torture will be done secretly, not openly.

If, in fact, we can identify these small, secret, torture camps, there will be a flare-up of attention on the issue of torture. However, we cannot rely entirely on this method. As human rights campaigners we know that using the same old stories is not effective. So, if we do not have good media friends who understand and try to cover the story consistently, the situation will be difficult as there only a handful of these journalists operative at best.

And in situations like war and counter-insurgency in southern Thailand, there are thousands of people fighting, even among themselves. What surfaced is a need to pay attention to the issues of the complaint mechanisms as well as the investigation itself. NGOs and independent agencies can only do an initial investigation. In our system, it is the duty of the police to do the official investigation.

And to continue on in this subject, not one officer accused of torture has been subject to an investigation by police, prosecutors or judges. In effect, there is no justice because the criminal justice system does not prosecute police or military perpetrators. In southern Thailand, many of the victims of torture have themselves become defendants in the criminal justice process. They are being prosecuted by their torturers for making allegations of torture against them.

The torture victim's complaints have become part of the evidence for the victim's defence and not as evidence for the prosecution of the perpetrators of torture. Therefore, we see that the victim's complaints/allegations of torture are not used as evidence in bringing the perpetrators of torture to justice.

So, on one side, the criminal justice system favours the perpetrators, but on the other side, it does not support the victim's allegations of torture.

Article 2: Freedom from torture is an absolute right. In Thailand, how is this right understood? Do people comprehend its absolute nature or understand something else?

Pornpen: In general, the people understand that torture is not right. For example, in cases where the accused was tortured by the police and they are hurt or injured- these stories and pictures are no longer published in the local newspapers, in comparison to the past.

“ Not one officer accused of torture has been subject to an investigation by police, prosecutors or judges.”

“Prohibition on torture has forced and pressured some officers to commit other forms of violations of human rights. Enforced disappearances is one.”

Nowadays, we rarely see pictures in the newspapers of suspects who still have visible injuries when they are presented at a press conference. Previously, we have seen this kind of practice, but not anymore. As the police and law enforcement officers now know that torture is wrong, they have developed rules and regulation prohibiting torture.

In the past, suspects were presented in public in horrible conditions. Today, for the general populace, torture is not acceptable. However, in cases of national security or suppression of illegal drugs, some victims are presented in public with visible injuries from torture though the reporting may not be obvious.

So, in our society, there is compromise up to a point. I don't have the explanation on where, how and why torture is accepted. Again in the south, both the local people and the activists have to take precautions. If you release anything on torture, you will be reported by the local people themselves to relevant government agencies or even to the supervisor of the local army unit.

The National Human Rights Commission (NHRC) has regular meetings in the south, and I am a member of the southern Committee. These issues are being raised officially when writing reports or talking to the senior officials of the place. There is a common agreement that torture is not acceptable. As to why it happens, I think there are reasons why the higher superior would allow subordinates to keep rooms for torture. One explanation is: as we are in a guerrilla war, we can torture.

What we do is monitor the places of detention and communicate to complainants in the case. We have raised a report on torture per se, but what is happening now is that there are other situations evolving. Apart from torture, there is a trend of extrajudicial killings which are more brutal in nature. Some of the bodies of those killed had signs of injuries from torture. It means this practice which is outside the law is allowed by some officers. So it is becoming even more difficult to tackle and to prevent torture.

The prohibition on torture has forced and pressured some officers to commit other forms of violations of human rights. Enforced disappearances is one of the most horrible violations. In Thailand, they just keep on disappearing people. There is another NGO, Justice and Peace Foundation (JPF), which has already documented cases of enforced disappearances (see related interview on this).

At present we do not have many reports on enforced disappearances. The trend seems to be that persons are being shot dead and their bodies are deliberately left in public places for people to see. It is another type of violation. It is done in a brutal manner. The way they put the body on public display is to make sure that the family sees the bodies of their loved ones and the people in the community observe and subsequently talk about it.

The manner of this torture is not adopted, but it is still happening. Another form of violations is extrajudicial killings which really hurt us. We have been trying to use other tools in campaigning against this.

Now, let us talk a bit about solutions. In southern Thailand, we are holding peace talks between the insurgent groups and government agencies, because of the outcry for other options besides civil war to resolve the conflict. So the government has been using corrective measures to heal the situation. A big portion of the budget and a good deal of money is being paid in compensation to victims and their families, including the Tak Bai incident, where 78 people died in a truck.

Of course, what happened to them was a form of ill-treatment, yes? They were herded into the truck like animals and they ended up dying in the truck. Their families were compensated 7.5 million baht which is quite a large sum. Each of the detainees at that time was also given financial compensation, but nothing close to achieving justice was done.

We are working on both civil and criminal cases- but they go nowhere. The use of compensation, I think, is similar to the proposal of paying compensation for those who died during the crackdown in Bangkok, Thailand. The proposal to pay compensation to the Red Shirts only serves political interests and benefits the government. They are paying compensation, but at the same time there are still numerous cases of human rights violations committed, including in the south. No to be bothered, they just allocate money to compensate the victims.

Article 2: You mentioned two purposes of the use of torture as first, to sow fear and second, to extract confessions. Are these purposes still heavily relied upon by the police and the military when they make arrests?

Pornpen: Yes, they are still heavily relied upon.

To keep up with the modern world, they are trying to gather more forensic evidence now. In the past they used intelligence information in order to get news or to try to reduce crime. In other circumstance in Thailand, in general, they are using more of the new technologies, like CCTV, as their source of forensic evidence. They also have their own techniques.

I think the Thai police are quite good, using a lot of telephone tapping. Actually they are violating peoples' privacy, but in a way that is not as abusive as in the past. Now, they are more professional because society no longer accepts violence, and how it is used. We see psychological pressure being exerted, negotiations and telecommunications used to extract information instead of bullying and torturing.

“We are working on both civil and criminal cases - but they go nowhere.”

“ There were other police officers who sued eleven people who also filed complaints of torture against them in 2004.”

So I think there is a need to consider the issue about the amendment of the Criminal Court and Criminal Procedure Court. The law itself must exclude confessions taken by the police in their investigations if they are taken by force. In that law, which was amended after Thailand ratified CAT, it actually gives a signal to the police that the court will not accept this kind of evidence extracted through abuse.

There are some lawyers in the field who say that the Amendment did help the police in the way they write up their prosecution files. They think that, if the courts will not listen to them, why should they waste their time torturing a subject to get a confession. So the rules on evidence give the police a signal and a good lesson. Some of the lawyers think: that's it. The Police don't do that anymore, right, because the court does not accept that kind of evidence. Yes, there have been some positive efforts to reduce torture.

But we cannot yet say that there is no torture and ill-treatment going on when law enforcement officers are going about their duties.

Article 2: You mentioned there are two types of complainants. First, those who no longer complain because nothing happens; second, those who complain because they think torture is wrong. For these two types of persons, how much confidence do they have in the system of justice?

Pornpen: I can give you examples about cases in the south that we worked on. As we started forming a team of lawyers and paralegals, we gained some confidence from the local people. We prepared a lot of reports when we came to know immediately after an arrest some personal information about the victim as to where he/she was taken, and who took him/her.

In the period 2004 to 2006, there were some cases that we took up and filed a report on. Later on, there was a significant instance in which a man was tortured and the victim's lawyer, one Somchai Neelapaijit, disappeared. As time went on, the criminal justice process was not going anywhere, including the torture complaint. In 2009 or 2010, the torture victim was sued by the police officer who tortured him and was allegedly involved in the disappearance of his lawyer, Somchai. The case against the torture victim went to court. This occurred in Bangkok and we provided legal assistance for him. The court found the victim guilty of defaming the police officer by making allegations of torture against him. He was sentenced to two years imprisonment. This is justice gone awry.

There were other police officers who sued eleven people who also filed complaints of torture against them in 2004. So it is many long years of battle where torture victims need to face accusations and prosecution by the police. They are being prosecuted for

defamation for “reporting wrong information” against the police. The victims are being sued for making a complaint. As there is no free legal aid, most of the victims who are poor go to jail.

However, in one particular case, we managed to bail the victim out, we wrote appeals, and luckily the court of appeals found him not guilty. He is free now. But just imagine how many things end up causing so much suffering for the torture victims who stood up and fought for their rights. Many victims either wanted to run away or join insurgent groups, as there is no way out for them. If we manage to convince a torture victim to fight back, the police would also fight back, and what they are able to do hurts the victims more.

We also have cases where the victims are not willing to file lawsuits or complaints against the police or the army. The situation becomes even more difficult if you file a complaint against the army. You will have to face an army court, with the different circumstances of martial law and emergency decrees. Actually, martial law has obstructed other criminal justice processes against other officers because all things are subject to the Martial Court.

Article 2: You have seen and assisted numerous torture victims and their families. From the last example of a torture case, you say, it did not go anywhere in the justice institution. What is it that keeps you and other legal professionals battling on, even though you know very well your cases will not be successful?

Pornpen: In Thailand at present, there is some room for change. We have come so far as to where solutions and compensation were accepted by the courts as a national policy, but not law. In general, we see that judges, police, army and the public were actually talking and communicating with one another. These exchanges are being monitored by civil society and communities. A change in their behaviour and performance has been effected. They say, like the Ministry of Justice, that the criminalization of torture is on its way. In some Departments and Committees, there are also discussions about becoming a member of the OPCAT (Optional Protocol to the CAT Convention), which is related to torture and monitoring the places of detention.

I think the discussions about CAT and the discussions about torture prevention have reached Government level. I think we have made some great efforts besides having experienced some successes. Since the public has been talking about torture cases, and we have been documenting and facilitating cases, it has helped in reducing the cases of torture. We certainly contributed to the attitudinal changes among law enforcement officers themselves. The Ministry of Justice is trying to communicate the message to other agencies, such as prisons, military commanders, and other public institutions, including the police and the army. It

“Since the public has been talking about torture cases, and we have been documenting and facilitating cases, it has helped in reducing the cases of torture.”

certainly will have a positive effect on the rights and liberties of all the people.

To be noted is that the local civil society has found some good friends at the national level who are involved in the criminal justice system. We have a Law Reform Committee which is positive in bringing forth issues from the ground level up to cause changes in the law and in policies. In our various civil societies there are multiple groups with whom we can cooperate, especially organisations like the AHRC, in order to bring vital issues to the table.

Let us not forget that there are still particular areas that we need to think about, like rehabilitation of torture victims. We have documented many cases of rehabilitation. I am of the opinion that basically the victims heal themselves through their religion, through community interaction, through friends. There still remains a negative perception in our society against torture. We must keep on working.

‘Disappearances is a systematic pattern of extra-legal policing’



Pratubjit Neelapaijit, daughter of disappeared lawyer Somchai Neelapaijit

The Justice for Peace Foundation (JPF) prepared a report on the issue of disappearances as a systematic pattern of extra-legal policing. The JPF has found cases of disappearances in every region in Thailand and has personally documented 40 incidents of disappearances involving 59 people. Twelve people were disappeared in the North, five from the West, seven from the northeast, and 33 from the Deep South.

Disappearances are not a new problem as information exists on cases as early as 1952. Indeed, there are numerous cases of disappearances from such periods of history involving victims such as suspected communists in the early 1970s, northern farmers in the late 1970s, and victims of 1992 military crackdown of protesters. Research conducted by the JPF found that in the last decade, two government policies have contributed directly to the increased cases of enforced disappearances in Thailand: the highly militarized counter-insurgency approach adopted by the government; and the war on narcotic drugs during 2002-03.

In addition, the JPF has found that there are particular categories of people who are vulnerable to enforced disappearances throughout Thailand. Firstly people that have conflicts with officials and secondly, activists engaged in human rights, political or anti-corruption activism; thirdly, the witnesses of human rights violations; lastly, men from the ethnic minority groups. It is their communities that are mostly targeted in enforced disappearances.

In the cases documented by the JPF, 94 percent of victims were men while 86 percent of them are from ethnic minority groups in Thailand. Enforced disappearance in Thailand take place

“We believe that some of the officers might know something, but they didn’t make any progress.”

within the broader context of state violence and is used to silence dissenting views, and to eliminate suspected criminals outside the rule of law. Enforced disappearances are part of the systematic pattern of extra-legal policing employed by the security forces, which, because of impunity their illegal actions are condoned by the state, and thus the likelihood of legal action against them is extremely low.

These are the patterns that the JPF has found in Thailand. The most serious is the taking of people from public locations by uniformed or non-uniformed security personnel. To-date the JPF still receives complaints from the relatives of the disappeared. We have also recently received a complaint from a person regarding the enforced disappearance during the protest of the ‘red-shirts’.

Our report also shares some updates on the case of Mr. Somchai Nilaphajit which is used as an emblematic case.

In 2009, the civil court announced that Mr. Somchai Nilaphajit is a ‘missing person’ according to civil court; a fact that everybody already knew.

In 2011, the court of appeals rendered a judgment absolving five police officers of any criminal responsibility of the disappearance of Mr. Somchai Nilaphajit, and did not allow the family to be the plaintiff. The Supreme Court only allowed the family to be the co-plaintiff in the case. And now the case of murder of Mr. Somchai Nilaphajit is now under the Department of Special Investigation (DSI).

But unfortunately the DSI appears to have done very little, if anything in the way of investigation. In the middle of 2012, Khun Angkhana (Somchai’s wife) asked the Minister of Justice about the progress of its investigation. Later Khun Angkhana received a one page summary prepared by the DSI indicating that there is no progress in the investigation of the case. This is despite the fact that earlier the DSI had verbally reported to Khun Angkhana about what had happened to Mr. Somchai they did not document anything on this case. So the JPF highlights the failure of the work of the DSI.

We believe that some of the officers might know something, but they didn’t make any progress. The viewpoints of the JPF and the family of Mr. Somchai are that the present defendants in this case are police officers. One person is missing and the remaining persons have changed their names so that the people would not recognize them.

The second points, which is very important in the context of Thai society, is that at present a retired high-ranking officer against whom complaints were filed alleging his involvement in torture in many cases in southern Thailand, and who may have been involved in the disappearance of Khun Somchai is now in a very high ranking position in Thailand as Assistant Deputy Secretary to the Prime Minister. So this highlights the context of

Thailand society again after it signed the International Convention for the Protection of All Persons from Enforced Disappearance.

In terms of remedy, the JPF believes that this is the most pressing issue, as it seldom happens in Thailand. The same situation occurs with compensation. In November 2012, only the cases that occurred in the southern border provinces have been provided with some compensation. But that was only in 29 cases. For compensation payment, some are paid higher amounts than others because this is based on the evidence linking that state officers alleged to have been involved in the disappearance.

The JPF continues to help the families with the aim at ensuring that the relatives are sufficiently and fully compensated, not only in the deep south of Thailand, but also we try to campaign on behalf of victims from other countries. However, there is no progress in other important areas. There were also no attempts by the government to investigate cases of past disappearances, even the disappearance of two young men which happened as recently as 2011 in the deep south. The case has not been investigated and the whereabouts of these men remains unknown. Even if the security sector admits verbally that they are the perpetrators, there is no action against them.

In 2012, we tried to do more in our campaigns in Thailand and expand them in regional campaigns by involving in the case of Mr. Sombath Somphone we believe that Thais, not directly, but indirectly would be willing to get involved in many developments which happened in Laos. So, we believe that in this way we can do more in our campaigns, not only in the case of Mr. Somchai.

With regard to international mechanisms, we have just submitted 25 more cases of enforced disappearance in Thailand. These were for families that wanted to submit their cases to the UN Working Group on Enforced or Involuntary Disappearances from the north, south and Northeastern part of the country. We also used the Universal Periodic Review (UPR) mechanism. Also the JPF and other alliance organisations in Thailand have just organised a meeting on drafting legislation for the criminalisation of enforced disappearance in Thailand.

We believe that Thailand is no different from any other country, but the important context that we looked into is that: firstly, the context of impunity among the security sector in Thailand; and secondly the protracted conflict that is happening in the deep south of Thailand.

These are the contexts that challenged our work a great deal because we heard more cases that the separatists were using enforced disappearances to eliminate their opponents.

(Editor's note: This is the transcript of a statement by Praturajit Neelapaijit, daughter of Somchai Nilaphajit, given during a dialogue with officials from the Government of Thailand in Bangkok, Thailand in July 2013. Somchai, who was the lawyer for torture victims, disappeared after he was abducted in March 2004. Article 2 was present during the dialogue)

“The important context that we looked into is that: firstly, the context of impunity among the security sector in Thailand; and secondly the protracted conflict that is happening in the deep south of Thailand.”

ALRC-CWS-25-05-2014
February 21, 2014

HUMAN RIGHTS COUNCIL
Twenty fifth session, Agenda Item 3, General Debate

A joint written submission to the UN Human Rights Council by the Asian Legal Resource Centre and Padang Legal Aid Institute (LBH Padang)

INDONESIA: For justice to be more accessible to victims, an anti-torture law is needed

1. The Asian Legal Resource Centre (ALRC) and Padang Legal Aid Institute (LBH Padang) wish to bring the attention of the Human Rights Council (HRC) to the matter of Indonesia's urgent need to adopt a separate anti-torture law. Both organisations welcomed consideration of the issue of torture during the HRC's 25th session and the significant work of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We expect the Indonesian government to extend its cooperation to the Rapporteur's mandates by inviting him to conduct a follow-up visit to the country.
2. Indonesia has been a state party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) for almost 16 years. Its Constitution firmly establishes that freedom from torture is a basic right which should not be limited in any circumstances. Such provision can also be found in a number of other legislations – including Laws No. 39 Year 1999 on Human Rights, No. 26 Year 2000 on Human Rights Court, and No. 12 Year 2005 on the Ratification of the International Covenant on Civil and Political Rights. However, as rightly pointed out by the Special Rapporteur in his last report after visiting Indonesia, those legislations do not provide effective mechanisms to prevent and punish the practice of torture. Although the Human Rights law provides a definition of torture, it does not establish an effective individual complaint mechanism.

The Indonesian human rights court's jurisdiction to examine torture cases is limited to those perpetrated in the context of genocide or crimes against humanity.

3. The continuous failure of Indonesia to establish an effective prevention and punishment mechanism is evidenced by the absence of a criminal provision prohibiting torture. This amounts to a violation of Article 2 of CAT and disrespects the Special Rapporteur's recommendations in his 2007 report. Criminal trial on torture cases in Indonesia, therefore, has so far been based on general criminal provisions under the Penal Code. They are notably Articles 351-358 on maltreatment, which elements are not in accordance with the torture definition provided by the Convention.
4. Article 351 (1) of the Penal Code concerning maltreatment, for instance, was used for charging and convicting three police officers in the *Sijunjung* case. In this case, the victims – who were two under-aged brothers named Faisal and Budri – were found dead, hanging in the toilet of the Sijunjung sub-district police station in 2011. After being held for almost a week in the police station their bodies showed various wounds and bruises. Similar criminal provision was charged to four police officers responsible for torturing Erik Alamsyah to death in 2011 and two police officers who were involved in the torture and shooting of 23-year old Yusli in Tangerang. Recently in February 2014, two prison guards of the Solok Correctional Facility beat up and electrocuted an inmate, Riko Yeyandra. They were also indicted under the article on maltreatment. In accordance with the Committee against Torture's General Comment No. 2, the ALRC and LBH Padang are of the opinion that the prosecution, indictment and conviction of perpetrators based on the maltreatment article in these cases are contrary to Indonesia's obligations under the anti-torture convention.
5. The ALRC and LBH Padang noted the Indonesian government's plan to prohibit torture in its draft revision to the Penal Code (RKUHP). However, the unreasonably long revision process has led both organisations to question the plan's suitability to address such an urgent problem as torture. More importantly, the ALRC and LBH Padang doubt that a single criminal provision prohibiting torture under the Penal Code alone will increase the accessibility of justice for victims and their families. More than merely penalising torture, the ALRC and LBH Padang firmly believe that a special criminal procedure on torture is equally important but also needs to be regulated.
6. One of torture's special features which distinguish it from other crimes is that such abuse is, by definition, perpetrated by state officials. This feature makes the general provisions under the Criminal Procedure Code ineffective when they

are used for investigating torture cases and for prosecuting, trying and convicting perpetrators. Lodging a criminal complaint with the police under the Criminal Procedure Code might work for other cases but not for torture – an abuse which, in Indonesia, is practised mostly by the police. The ALRC and LBH Padang note that the police hardly follow up complaints on torture except in extraordinary circumstances, such as when the victim is dead and/or if there is a strong public demand for an investigation. Yet even in such cases, the investigation conducted typically tends to protect the perpetrators. They do this by selectively picking the charges and limiting the number of the accused, as evidenced in the *Sijunjung* case.

7. The *Sijunjung* case was ‘investigated’ by the police for almost a year. Despite the death of the victims in this case, the police refused to charge the accused officers with murder (Article 338 of the Penal Code) or maltreatment resulting in death (Article 351 (3)). The tendency by the Police to protect the perpetrators was also apparent from the fact that there were only four officers brought to court. This was eight less than the total number of officers disciplined internally due to their involvement in torturing the two under-aged brothers.
8. Indonesian Criminal Procedure Code imposes the burden of proof on the prosecutor. It requires at least two categories of legitimate evidence for an accused to be convicted. In practice, witnesses’ testimonies are essential in concluding guilt. In ordinary criminal cases, such provisions are meant to ensure that innocent people are not wrongly convicted and sentenced. In torture cases, however, such provisions are excessively burdensome for the prosecutors and make torture too difficult to prove. As an example, in the *Sijunjung* case, the prosecutor was struggling to prove that the victims had not committed suicide but were hung by police officers. Eventually, the District Court eventually ruled that the officers were not responsible for the death of the victims. The reason cited was the absence of witnesses’ testimonies, despite the obvious fact that no non-police officers would be able to witness the crime as it took place in a police station.
9. An anti-torture law is furthermore needed, because the existing laws in Indonesia – including the Criminal Procedure Code and its draft revision – have failed. No clear procedures were provided for the judges on measures to be taken when a torture claim is made by an accused in a criminal case. Due to this vacuum in procedures, judges tend to overlook such claims and dismiss them without proper examination, as in the recent case of *Six Street Singers* in Jakarta. In this case, six street singers – four of them minors – were charged and tried for murder. The ALRC has received information from the Jakarta Legal Aid Institute (LBH Jakarta), that the

charges were fabricated. There were reports indicating that, during the investigation of the six singers by officers of the Jakarta Metropolitan Police, they were beaten, blindfolded, electrocuted and forced to confess to murder.

10. During the trial, the street singers retracted their statement made under police coercion and claimed they were subjected to torture. The judges responded by summoning two officers who had nothing to do with the alleged torture. They concluded that torture had not taken place. They dismissed the singers' claim after merely asking them whether the summoned officers were the ones who tortured them. Four of the under-aged singers were found guilty and sentenced to three to four years of imprisonment, whereas the rest were given seven year prison sentences. Their torture complaint before the court of law did not lead to any criminal investigation.
11. The enactment of an anti-torture law can be used as a means to revise the existing law and regulations regarding monetary compensation for victims of torture and their families. Although there are several provisions on monetary compensation for victims of human rights violations under Law No. 13 Year 2006 concerning Witnesses and Victims Protection and Government Regulation No. 44 Year 2008, many of them are not in accordance with international standards. Among others, the existing laws and regulations established that compensation given to the victims should only cover pecuniary damage. They also imposed onerous requirements for the victims and their families by asking them to provide receipts, giving the impression that the payment is more cost reimbursement than compensation. In the *Erik Alamsyah* case, the family's request for compensation was dismissed due to the failure to provide receipts for the court.
12. There is a lack of clarity under the existing laws and regulations on the compensation mechanism for torture victims. This forces the judges to examine compensation requests based on their own interpretation that may not be in accordance with international human rights standards. In the *Sijunjung* case, for example, the judges refused the family's compensation request as it was not proven that they died from torture. The judges therefore interpreted that compensation could be given to the family only if the victims had died from torture, running contrary to General Comment No. 3 of the Committee against Torture.
13. Given the above arguments, the ALRC and LBH Padang are calling for the HRC to intervene to urge the Indonesian government to:

- a. Comply with its international obligations under the anti-torture convention, *inter alia*, by enacting a separate, comprehensive law on anti-torture. The law should declare torture as a crime punishable with proportionate penalties. It should also provide effective mechanisms to prevent and punish torture so justice is more accessible to victims and their families. The enactment of the law should be seen by the government as a chance to revise existing laws or legal provisions concerning compensation for torture victims which are not in accordance with international human rights standards, and;
- b. Invite the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to conduct an official visit to Indonesia. This visit should assess the current situation in the country as well as the government's compliance with the recommendations made by the Rapporteur in his 2007 visit.

Appendix II

ALRC-CWS-25-09-2014
February 25, 2014

HUMAN RIGHTS COUNCIL

Twenty fifth session, Agenda Item 3, Interactive Dialogue with the Special Representative of the Secretary General on violence against children

A joint written submission to the UN Human Rights Council by the Asian Legal Resource Centre and Bahay Tuluyan

PHILIPPINES: Torture and violence against children in child care institutions must end

1. The Asian Legal Resource Centre (ALRC) and Bahay Tuluyan, a local partner of the ALRC working on the issue of children in need of special protection, welcomes the annual report of the Special Representative on Violence against Children (A/HRC/25/47). We unequivocally support the imperatives pursuing the “ban on all forms of violence against children” to be acted on as a matter of urgency (para. 25).
2. In line with this, the ALRC and Bahay Tuluyan, an NGO providing child-care for 27 years in Manila, the Philippines, are deeply concerned by cases of torture, inhumane and degrading treatment, violence and assaults, threats and intimidation of children in custodial centres, that ought to be protecting and caring for children. In the SR’s report (A/HRC/25/47, para 21), it notes that for “millions of children, life is defined by one word: fear.” This holds true for children in Philippine public child-care institutions.
3. Among these institutions are the Reception and Action Centre (RAC) Manila, a custodial and rehabilitation centre, where children in conflict with the law, street children and orphans are kept in custody. The RAC is under the supervision and control of local Social Welfare and Development Office and the local government. This child-care institution is neither a detention nor interrogation centres; however, in practice children live in fear in this place. Here they are tortured to

confess to crimes, inhumanely treated, assaulted and verbally abused, and neglected by their 'house parents'.

4. In Manila City, the RAC is a place where children in conflict with the law, street children, orphans and abandoned children, fear to be taken and kept. The RAC is supposedly a temporary shelter for children; however, due to perpetual operations by village officials, social workers and policemen to clear the streets of homeless people or 'vagrants', street children end up repeatedly held and kept in this centre—regardless of whether they are abandoned, orphaned or children making a living on streets or children with parents.
5. In the past 27 years, Bahay Tuluyan has either observed or has had personal knowledge of children complaining about torturous, inhumane and degrading conditions, and poor management of its operations by RAC staff. In fact, the AHRC, sister organisation of the ALRC, and Bahay Tuluyan, have documented this pattern of violence against children, as follows:
 6. **Torture, inhumane treatment & bullying:** Many children have complained about physical abuse, assault and torture by: a) staff or *de-facto* staff of the RAC; and b) civil servants, public officials and security forces who turn them over to the RAC for custody. This includes village (barangay) and police officials. Staff of the RAC use violence against children to impose control and punishment on them. The *de facto* staff (or adults performing the role of RAC staff) assault children with hard objects, slap them and verbally and emotionally abuse them.
 7. Although the RAC requires a medico-legal certificate before admitting children into their custody it is a common practice that government officials bring children to the RAC secure these certificates first then afterwards torture and beat the children. Thus, even when medico-legal certificates are secured they are very superficial. Often, the examinations are done in the presence of the same civil servants or security officers who had beaten the child. Obviously this practice prevents the child from disclosing what actually happened to her/him.
 8. **Use of violence by fellow children is condoned:** There exists within the RAC a system where older children are 'ruling over' younger children. These children frequently use violence and bully the young ones to impose control and 'discipline'. It is understandable that shortage of the RAC staff contributes to this practice; however, by not taking adequate action to prevent this practice, the RAC staff have become not only perpetrators, but accomplices in committing violence against children. On many occasions, children have been severely beaten (*bugbug sarado*) by older children with the

full knowledge of RAC staff. They staff chose not to intervene and did nothing to prevent this violence. Their failure to act, much less their outright tolerance of these practices, has caused massive stress and anxiety for children, with children frequently choosing to escape to escape the violence. The RAC has become a place where children live in fear.

9. **Lack of coordination with parents:** Many children held in the RAC report extreme levels of stress because they are taken into custody without the knowledge of their parents, and frequently little or no effort is made by RAC staff to inform their parents of their whereabouts even several days or weeks after they have been in custody. Some parents have to frantically search for their children only to discover that they children have been taken to RAC without their knowledge. Even once they have located their children, significant barriers are often in place to prevent the immediate reunification of the children with their parents, including the requirements to provide legal documents which are sometimes difficult to obtain. In one case a government official stated he would not release the required document unless the child's mother got on her knees and begged him for it.
10. **Is the RAC a place rehabilitation or detention?** It is clear that the RAC is neither a centre for detention nor interrogations however, the lack of clarity as to what types of children that the centre is supposed to take in has caused so much confusion as to who is supposed to be kept there.
11. There is a mixture of children kept in the RAC: first, children who appear to have been taken into protective custody as a result of neglect, abuse or exploitation; second, children who have been accused, but often not charged, with a criminal offence. In many cases, children taken in and kept in the RAC have no idea why they are there. Moreover they do not know for what purpose they are being kept or when they will be released. This is especially problematic for abandoned and orphaned children.
12. The most relevant law regulating the detention and rehabilitation of children: The Juvenile Justice and Welfare Act of 2006 (R.A. 9344), regulates procedures on detention of children in conflict with the law. In October 2013 RA 9344 was amended to deal with the issue of 'children at risk' and children below the age of criminal responsibility who commit offences. The amended provisions expand the power of government authorities to take children into custody in places like RAC. Children aged between 12 and 15 years of age who commit certain serious offences, despite having no criminal responsibility, are required to be mandatorily detained for at least one year in a center such as the RAC. This detention is implementable without the benefit of a trial or any of the most basic safeguards of natural justice and

as such in contravention of the Philippine Constitution and the UN Convention on the Rights of the Child.

13. The Special Protection of Children against Abuse, Exploitation and Discrimination Act (R.A. 7610), regulates protection for children that requiring shelter and protective custody. This law, while in line with the normative framework on protection of children fails to be realized in practice. The experience of children in public child-care institutions contradict the observations of a “promising process of change” (A/HRC/25/47, para 19) resulting from ratification of treaties on children protection from violence. In the Philippines, many international and domestic laws protecting children have not been effectively implemented.
14. In practice at the RAC, and some other public child-care institutions, there is no distinction between a child offender and a child in need of protection. In the RAC, there is no segregation of children who are in need of protective and child-care, and those who are alleged to be in conflict with the law. Thus, children in need of protection are perceived criminal offenders; while those in need of rehabilitation are not given adequate service.
15. **Overcrowding, lack of supervision and services:** Children are kept in the RAC beyond the capacity of the facilities and ability of its staff to provide adequate services. The standard required by the Department of Social Welfare and Development for centre facilities for street children requires a maximum of 5 beds for youth in a 24sqm room; however, in the room for males at RAC, size of about 24 – 30sqm, there are more than 80 children. None of these children have beds.
16. The children taken into the RAC, whether for protective custody or for coming into conflict with the law, have great need for effective and comprehensive services to cater to their medical, emotional, psycho-social and educational needs. However, the RAC is providing very few, if any, of these services. Thus, the RAC miserably fails in providing needed services for severely traumatised children, and as a result the trauma that they suffer certainly has long-term effects.
17. The ALRC and Bahay Tuluyan notes the SR’s report (A/HRC/25/47, para. 51) on the importance of addressing the trauma of children deprived of their liberty, and the severe consequences and lasting effects of these on children if not adequately addressed. The ALRC supports the initiatives of the SR on “preventing and eliminating violence against children in the justice system” (A/HRC/25/47, para. 50). It is clear that, after speaking to children and the RAC staff, many of the staff do not even know which children are in their care at any point in time. Some children report being taken in for a week without being seen by a social worker.

18. The facilities at the RAC are seriously deficient. The children do not have beds and often do not even have mats on which to sleep. They are extremely crowded and do not have regular access to sanitary facilities. Normally they are left with only a bucket in which to urinate. Far from being a child-friendly environment, the children are detained in what are essentially cells with house parents acting more like jail wardens. Many of the children report being woken at 3 or 4am to shower and then being forced to wait downstairs until around 10am to be given breakfast.
19. In light of above, we urge the government of the Philippines to:
 - a. Require institutions sheltering children, especially the RAC, to comply with minimum national and international standards for shelter facilities for children and require that monitoring be done on an ongoing and regular basis;
 - b. Repeal the amendments to RA 9344 that contradict principles of natural justice and allow for the mandatory detention of children without the benefit of a trial;
 - c. Establish an independent complaints mechanism for children who are taken into custody by government officials for any reason and ensure that this mechanism is child-friendly and accessible, and;
 - d. Bring to justice any person, whether a government official or not, who is alleged to have inflicted violence on children within government run shelters.

Appendix III

ALRC-CWS-22-12-2014
February 26, 2014

HUMAN RIGHTS COUNCIL
Twenty fifth session, Agenda Item 4, General Debate

A written submission to the UN Human Rights Council by the Asian Legal Resource Centre

Thailand: Ten years without justice for Somchai Neelaphaijit

1. The Asian Legal Resource Centre (ALRC) wishes to raise grave concerns with the Human Rights Council about ongoing impunity in the case of the disappearance of Somchai Neelaphaijit in Thailand. On 12 March 2014, the tenth anniversary of Somchai's disappearance will pass without the perpetrators being held to account. During the past ten years, the Government of Thailand has obstructed the investigation and judicial processes, at times actively and at times through inaction. The ongoing failure to hold the perpetrators responsible has resulted in both a failure to secure justice for Somchai Neelaphaijit as well as the further consolidation of a broad culture of impunity for state violence and violations of human rights in Thailand.
2. Somchai Neelaphaijit was a noted lawyer and human rights defender. At the time of his enforced disappearance, Somchai was working on behalf of five men who had alleged that they were tortured by state security officials while they were in state custody in Narathiwat, one of the three southern-most Thai provinces, which has been under martial law since January 2004 and under emergency regulations since July 2005. On 11 March 2004, the day before his enforced disappearance, Somchai submitted a complaint to the National Human Rights Commission, the Royal Thai Police, and the Senate which detailed the forms of torture experienced by the five men. He argued that this was both a violation of their rights and the Criminal Code, which prohibits torture. He also spoke out publicly and passionately on the case, accusing the police of gross wrongdoing. On 12 March 2004, one day after he submitted complaint, five policemen pulled Somchai

Neelaphaijit from his car on a main road in Bangkok. He has not been seen since then.

3. The very form of the crime of enforced disappearance often makes redress particularly difficult. In the case of the disappearance of Somchai Neelaphaijit, at every stage of the investigation, there was obfuscation by police officers, a lack of will by many inside the state (including at the highest level of the then-prime minister, Thaksin Shinawatra) to cooperate, and mishandling of evidence. After a labyrinthine legal case and courageous struggle by his wife, Angkhana Neelaphaijit, his children, and many human rights activists, the five police officers who pulled him from his car ten years ago have no charges outstanding against them. Four of them are known to be living outside prison. Uncertainty surrounds the whereabouts of Police Major Ngern Thongsuk, the only one of the five to be convicted (of coercion) by the Court of First Instance on January 12, 2006. He was immediately granted bail for the term of the appeal. Under conditions which remain unclear, he allegedly disappeared following a mudslide in September 2008. On March 11, 2011, the conviction of Police Major Ngern Thongsuk was overturned and the judgment of innocence of the four other involved police officers was upheld by the Appeal Court.
4. In particular, the lack of the category of disappearance as a crime within Thai criminal law has created a series of obstacles at each stage of the judicial process. At this time, the Court of First Instance and the Appeal Court have made rulings in the case, and it is currently under examination by the Supreme Court.
 - a. Under evidentiary rules in the Thai Criminal Procedure Code, without a body – which could never be located – a murder charge cannot be levied. Therefore, the involved police officers were charged and prosecuted for theft (of Somchai's vehicle) and coercion. Only one police officer out of five was found guilty by the Court of First Instance in January 2006. However, additional evidentiary problems led to his acquittal by the Appeal Court in March 2011.
 - b. In addition, in their ruling in this case, the Appeal Court dispossessed the rights of victims and families to seek accountability. In the case against the perpetrators, Angkhana Neelaphaijit and her children were joint plaintiffs with the public prosecutor. Under the Criminal Procedure Code, families can act on behalf of injured or dead person. The Appeal Court ruled that in this case, there was not sufficient proof that Somchai Neelaphaijit was dead, and therefore his family could not act on his behalf. In other words, the lack of the category of enforced disappearance within Thai law has made it

incredibly difficult to hold the perpetrators accountable for their crimes. At present, the case is being examined by the Supreme Court.

5. The Department of Special Investigation (DSI), a special elite government investigation unit, is the one responsible for the case of the disappearance of Somchai Neelaphaijit. The DSI has often seemed to actively obstruct the struggle for justice in this case. This has included the mishandling of evidence, a lack of interest in pursuing the investigation, and the failure to provide proper witness protection to Angkhana Neelaphaijit, Somchai's wife. In late 2013 and early 2014, the DSI engaged in a series of actions which suggested that there is an intensified lack of will inside the state to continue the search for justice in this case.
 - a. The first of these actions was a bizarre announcement by the DSI that the case file had been stolen, and then its speedy recovery. In December 2013, Niran Adulayasak, Director of DSI Special Criminal Case Office 1 made a statement in a news report on Thai PBS television that when members of the protests by the anti-government People's Democratic Reform Council broke into his building, they went to the cabinet containing the file of Somchai's case and removed it from the premises. Several days later, following criticism by the AHRC, Human Rights Watch, and other human rights advocates, Niran made a second statement in a news report on Thai PBS television that the file had been found in a corner of a steel cabinet.
 - b. During the same second news report, Niran announced that he planned to consult the prosecutor of special litigation to terminate investigation into the disappearance of Somchai Neelaphaijit in January 2014. At present, there has been no announcement from Niran himself, the DSI, or the Government of Thailand regarding whether or not the investigation will continue.

A decision to end the investigation will result not only in yet another obstacle to justice in this case, but will make it impossible.

6. Over two years ago, on 9 January 2012, the Thai Government signed the UN International Convention for the Protection of All Persons from Enforced Disappearance. To date, the convention has not been ratified nor has domestic law making disappearance a distinct crime moved forward in Thailand. The lack of a formal legal and investigatory framework accounting for disappearance in Thailand is part of what has caused the series of difficulties in the court case regarding Somchai Neelaphaijit's disappearance and what makes it possible for the DSI to arbitrarily announce that they plan to halt the investigation into his disappearance.

7. The Asian Legal Resource Centre is aware that ratification of the Convention will entail significant changes to both national law and the routine practices of law enforcement and the judiciary. However, these changes are necessary in order to combat impunity in the cases of the disappearance of Somchai Neelaphajit, and in the cases of 59 other persons disappeared between 2001 and 2012 documented by the Justice for Peace Foundation.
8. In particular, the Asian Legal Resource Centre would like to remind the Government of Thailand of three crucial articles contained in the Convention:
 - a. Article 3 of the Convention mandates that, “Each State Party shall take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.” It is clear that under the Convention, rather than curtailing the investigation into Somchai Neelaphajit’s disappearance, the DSI and other relevant agencies should recommit themselves to securing the truth and justice.
 - b. Article 4 of the Convention mandates that, “Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.” Either the amendment of the Thai Criminal Code or the passage of a separate law providing for the category of enforced disappearance is essential in order to facilitate the full criminal and judicial investigation can be carried out in cases of disappearance and to ensure that the relatives of victims are not dispossessed of their right to seek justice for their loved ones.
 - c. Article 5 of the Convention mandates that, “The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.” Given the significant number of disappearances documented in Thailand, and which may only represent a fraction of the total number of disappearances, the Government of Thailand should be mindful of the gravity of the crime.

As the Government of Thailand has not ratified the Convention, they are not legally bound to adhere to these articles. However, the delay in ratification should not be taken as permission to flagrantly disregard the spirit and proscriptions of the Convention.

9. The Asian Legal Resource Centre would like to mark the tenth anniversary of the disappearance of Somchai Neelaphajit

and call attention to the urgency of action for justice in his case and those of other disappeared in Thailand by sharing part of a recent article published in the Bangkok Post in January 2014 by Angkhana Neelaphajit, Somchai's widow and the chairperson of the Justice for Peace Foundation. In the article, Angkhana spoke of her husband's struggle and death, Angkhana and her children discussed her husband's life, ideas, and the years since his disappearance. She wrote: "Over the past 10 years, I have tried hard to reach for justice. But it is getting even harder given the situation. I have been through many things in my life, sorrow, disappointment and hardship, but nothing has warranted such extensive use of knowledge, patience and tolerance like this time. In many instances, my petitions for help have been turned down by the powers-that-be. It looms as an insurmountable obstacle for an ordinary person like me to reach out for justice and the rule of law in Thailand. No one knows how painful and traumatic the experience can be to bear witness to the fact that a person who had done so much for so many people cannot even be bestowed with a graveyard where his descendants could hold a service in memory of him."

10. In view of the above and in line with the principles for the protection and promotion of human rights through action to combat impunity, the Asian Legal Resource Centre calls on the UN Human Rights Council to:
 - a. Call on the Government of Thailand ensure that the Department of Special Investigation keeps the investigation into the disappearance of Somchai Neelaphajit open until the truth has been firmly and publicly established;
 - b. Call on the Government of Thailand to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, and;
 - c. Request that the Working Group on Enforced or Involuntary Disappearances continue to monitor the case of Somchai Neelaphajit and other cases of disappearance in Thailand.

Support online campaigns on Cambodia

On Facebook: **Freethe23** (www.facebook.com/FreeThe23)

On Twitter: www.twitter.com/freethe23

This online campaign provides updates on calls for the release of labour and human rights defenders, garment workers, and villagers imprisoned after crackdown on protests.



More articles on Cambodia in article 2 (www.article2.org)

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Public prosecuting in Cambodia

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Review of judicial process in Cambodia: 15th Workshop on Administration of Justice Reform

In this issue of *article 2*

Suppression of emerging protests in Cambodia

Editorial board, article 2

- What it means when emerging protest are suppressed

article 2

- ‘Help us find justice for my son, and others’

article 2 & Fact Finding Mission in Cambodia, January 2014

- ‘They shoot anyone on streets, in their homes’

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

- How and why the 23 protestors were arrested, prosecuted

Danilo Reyes, Editor, article 2

- Interviews on the idea of justice and accountability in Cambodia

INSIGHTS AND REPORT ON CAMBODIA

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- ‘Police officials do not understand that torture is always wrong’
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- ‘Victims are not son of a rich man, they are poor’
- ‘Disappearances is a systematic pattern of extra-legal policing’

Cover photo: Sous Samoul (left), father of Kim Phal Leap, one of the four protestors killed during a crackdown on January 3, 2014. He is with his daughter-in-law, Khat Samneang, and her son, in this photo taken at their home in the village. *Read the story in page 6. article 2/Danilo Reyes*

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ALRC invites submissions to *article 2* by interested persons and organisations concerned with implementation of human rights standards in the region.

For further details, email the editor: editor@article2.org

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