



Legal Analysis of the Charging and Sentencing of Cambodian Journalist and Human Rights Defender Mam Sonando (Criminal Case Number 2207)

1. Introduction

On 1 October 2012 Mam Sonando (the “Defendant”), owner of Beehive Radio¹ and President of a well-known non-governmental organization (“NGO”) called the Democrat Association, was found guilty of six charges (the “Charges”) under the Penal Code 2009 (the “Penal Code”) after a four-day trial at the Phnom Penh Municipal Court from 11 to 14 September 2012 inclusive (the “Trial”). The Charges were as follows: Articles 456 and 457, which prohibit insurrection and stipulate the attached penalties, respectively; Article 464, which prohibits incitement to take up arms against the state authority; Article 504, which prohibits the obstruction of public officials with aggravating circumstances; Article 609, which prohibits unlawful interference in the discharge of public functions; and Article 28, which establishes criminal liability for the instigation of a felony or misdemeanor under the laws of the Kingdom of Cambodia (“Cambodia”).² As a result, the Defendant was sentenced to 20 years in prison and a 10 million riel fine. Under Article 382 of the Criminal Procedure Code 2007 (the “CPC”), defendants have one month to appeal their sentences. The Defendant submitted his request for an appeal on 12 October 2012, the Court of Appeal accepted the appeal submission on 18 October 2012, and the appeal hearing is due to be heard on 5 March 2013. All relevant dates and facts are included in a Timeline of Events in the Annex to this Legal Analysis.

13 other men were tried along with the Defendant: Bun Ratha, Bun Chhorn and Sok Tong, the three alleged ringleaders of the so-called secession (please see below) (the “Alleged Ringleaders”), who were ultimately sentenced *in absentia* to 30, 15 and 15 years’ imprisonment, respectively; Saroeun Rum, also tried *in absentia* had his one-year sentence suspended; Touch Ream, Kann Sovann and Phorn Sroeun, who were sentenced to five years’, three years’ and ten months’ imprisonment, respectively; and Pum Vannak, Hang Phal, Heng Thoeun, Mao Veasna, Khatt Saroeun and Ma Chhang, who provided evidence against the Defendant and the Alleged Ringleaders, and had their sentences of two years, three years, ten years, two years, four years and five years, respectively, suspended as a result. Touch Ream, Kann Sovann and Phorn Sroeun denied any involvement in events, claimed not to even know the Defendant, and also claimed in court that police had taken advantage of their illiteracy to deceive them into corroborating statements with their thumbprints – statements that did not tally with those that they had provided verbally in custody. This Legal Analysis, however, focuses solely on the Charges relating to the Defendant, and only refers to the other defendants when such references either assist with

¹ Beehive Radio was founded by the Defendant in 1995 and is one of only three independent radio stations in Cambodia.

² Unless otherwise stated, all references to legislative articles in this Legal Analysis are references to the Penal Code.

the analysis of the Charges, are integral to the evidence produced in court, or provide a clearer picture by way of background.

The Charges ostensibly relate to events that took place in Pro Ma village, Kampong Domrei commune, Chhlong district, Kratie province, in the first few months of 2012. A private Russian-owned company, Casotim Co. Ltd (“Casotim”), was granted a forest concession in the area in 1996, 15,000 hectares of which encroached on Pro Ma village, creating a land dispute with around 1,000 farmers and their families (the “Villagers”), who also claimed ownership of the land. In response, the Villagers organized and mobilized themselves to protect their land and livelihoods and to resist the intrusions of Casotim.

Then, on 16 May 2012, hundreds of heavily-armed soldiers, military police and local police stormed Pro Ma village with the aid of a helicopter gunship, apparently in an attempt to break up the Villagers’ resistance and to remove them from the affected area. The soldiers and police used disproportionate force against the Villagers, causing the death of a 14-year-old girl, Heng Chantha, who was shot dead as she and her family sheltered from the armed intervention. After the event, the authorities claimed that the Villagers were responsible for an attempted secessionist movement to break away from the rest of Cambodia and form an autonomous state-within-a-state (the “Alleged Secession”). Throughout the remainder of this Legal Analysis, the events of 16 May 2012 will be referred to as the “Pro Ma Incident”.

2. Executive Summary

This Legal Analysis: (1) provides a factual background to the arrest, charging and sentencing of the Defendant as well as to the Alleged Secession and the Pro Ma Incident; (2) provides an overview of the fundamental human rights that have been compromised by the Charges, namely the rights to freedom of expression, freedom of association, and liberty (as well as the non-binding right to defend human rights), and establishes that these rights have all been grossly violated with respect to the Defendant; (3) conducts a step-by-step analysis of the Charges, examining each of them in turn and applying the law to the facts as they have been reported, arguing that, for the most part, the law has been incorrectly applied; (4) examines the judicial process both at the pre-trial and trial stages, and finds that the Defendant’s rights to a fair trial were breached in numerous fundamental ways; and (5) concludes that the sentencing of the Defendant represents a gross miscarriage of justice and that there are therefore clear, solid and substantial grounds for appeal.

This Legal Analysis is made available to (1) the Court of Appeal to assist in its handling of the appeal hearing, (2) the Defendant and his legal counsel to use as a reference point in the formulation of their appeal case, and (3) to any other parties for advocacy purposes. It should be noted, however, that this Legal Analysis aims to take a completely objective stance, analyzing all relevant law and facts critically – as a court is supposed to do – rather than building a case and arguing in favor of the Defendant (or indeed the Prosecution).

This Legal Analysis is written by the Cambodian Center for Human Rights (“CCHR”), a leading, non-aligned, independent NGO that works to promote and protect democracy and respect for human rights – primarily civil and political rights – in Cambodia.

3. The Facts

The Defendant

A team of CCHR monitors attended the Trial, took comprehensive notes on all of the witness statements, other evidence and arguments submitted by the Defense and the Prosecution. These sources – in addition to media and NGO reports and the official verdict handed down by the Phnom Penh Municipal Court in the Trial (the “Verdict”)³ – form the factual and evidential basis for this Legal Analysis.

The Defendant has been arrested and charged at other points in the past due to reports and interviews broadcast on Beehive Radio – one of only three independent radio stations in Cambodia. Beehive Radio was established in 1995 and is an important source of unbiased news in a country where the media is dominated by the ruling Cambodian People’s Party (the “CPP”). In 2003 the Defendant spent two weeks in prison following the broadcast of a telephone call made to Beehive Radio, which the Royal Government of Cambodia (the “RGC”) deemed to be incitement to commit crimes and to discriminate, arguing that it “[gave] *false information to the public*”,⁴ under the Criminal Law of the United Nations (“UN”) Transitional Authority in Cambodia (the “UNTAC Law”).⁵ The charges in this instance were in response to allegations that Beehive Radio helped to incite the anti-Thai riots that occurred on 29 January 2003. The Defendant was imprisoned again for three months in 2005 on charges of defamation and incitement under the UNTAC Law, following an interview that he broadcast with France-based expert Sean Peng Se relating to a bilateral border demarcation treaty that the RGC planned to enter into with Vietnam. The interview allegedly criticized Prime Minister Hun Sen’s involvement in the territorial concessions made to Vietnam in the controversial border treaty signed that year.⁶

In the run-up to his most recent arrest, the Defendant spoke at meetings organized by the Khmer Peoples Power Movement (the “KPPM”) in Stockton and Fresno, California, United States (the “US”) on 30 and 31 March 2012, respectively. The KPPM was founded in the US, and is an association of Cambodian people living abroad including advocates calling for democratic reform in Cambodia through legal and legitimate means. The Defendant had attended conferences held by the KPPM in the past, and has a journalistic relationship with the KPPM’s leader, Suon Serey Ratha. However, Voice of America reported on 22 May 2012⁷ that, while the Defendant was abroad, he had heard from an unreported source that he was going to be called for questioning in relation to the Alleged Secession and then arrested. As

³ Please see http://www.sithi.org/temp.php?url=media_view2.php&mid=6648.

⁴ The International Federation for Human Rights (“FIDH”), ‘CAMBODIA: Independent radio station director Mam Sonando arrested and charged’ (17 July 2012) <<http://www.fidh.org/CAMBODIA-Independent-radio-station>>.

⁵ Article 59, 61 and 62 of the UNTAC Law, 1992-1993, which was established to ensure the implementation of the Paris Peace Accords, signed in October 1991. The UN was given unprecedented powers in a sovereign state, and was responsible for, amongst other things: organizing free and fair elections, the rehabilitation of Cambodia’s infrastructure after years of civil war, and to promote and protect human rights. For more information, please see <http://www.un.org/en/peacekeeping/missions/past/untac.htm>.

⁶ The Committee to Protect Journalists, ‘CPJ condemns detention of radio journalist in letter to Hun Sen’ (18 November 2005) <<http://cpj.org/2005/11/cpj-condemns-detention-of-radio-journalist-in-lett.php#more>>.

⁷ Voice of America, ‘Police Continue Sweep for Suspected Secessionists’ (22 May 2012) <<http://www.voacambodia.com/content/police-continue-sweep-for-suspected-secessionists-152630205/1359025.html>>.

a result, he extended his trip abroad, saying that he did not want to miss the opportunity to go to The Hague to report on a complaint to the Office of the Prosecutor General at the International Criminal Court (the “ICC”), which the KPPM planned to submit in June 2012 (please see below).

On 22 June 2012 the Defendant interviewed Suon Serey Ratha at The Hague. Suon Serey Ratha had submitted a complaint to the ICC accusing the RGC of involvement in crimes against humanity related to the current land rights crisis in Cambodia, which was acknowledged by the ICC the same day. The interview, along with a full report by the Defendant on the submission of the complaint (together, the “ICC Report”), was broadcast on Beehive Radio on 25 June 2012. The following day, Prime Minister Hun Sen gave a public speech at Phnom Penh’s Koh Pich (Diamond Island), in which he called for the arrest of the Defendant, linking him to the Alleged Secession. By 2 July 2012 the Investigating Judge at Kratie Provincial Court, Chok Nguon, had issued an arrest warrant for the Defendant. At the time, the Defendant was still abroad, but he insisted upon returning to Cambodia to prove his innocence and to clear his name.⁸

On 6 July 2012 the Democrat Association held a press conference at which it denied any links between the Defendant and the Alleged Secession, and confirmed that Bun Ratha was not an active member of the NGO. Bun Ratha has himself separately denied any involvement of the Defendant or the Democrat Association in the Alleged Secession – during an interview with Radio Free Asia on 21 August 2012,⁹ and again from exile on 16 December 2012.¹⁰

On 15 July 2012, only three days after returning to Cambodia, the Defendant was arrested at his home by a group of around 20 police. The arrest of the prominent human rights defender (“HRD”) came just one day after the close of the Association of South East Asian Nations (“ASEAN”) Regional Forum in Phnom Penh, which was attended by US Secretary of State Hilary Clinton, European Union (“EU”) High Commissioner of Foreign Affairs Catherine Ashton, and representatives of other ASEAN member countries.

The allegations, the arrest, the Charges and the subsequent conviction of the Defendant have been strongly criticized both in Cambodia and abroad. During his pre-trial detention at Phnom Penh’s notoriously overcrowded Prey Sar prison, Amnesty International deemed the Defendant a “prisoner of conscience”,¹¹ due to the belief that he had been charged and arrested as a result of exercising his right to freedom of expression. The guilty verdict provoked strong reactions from Cambodian NGOs, civil society and grassroots communities, not to mention the EU, the US State Department, the French Ministry of Foreign Affairs, and

⁸ Taken from a meeting between CCHR and the Defendant at Prey Sar Prison, during his period of pre-trial detention.

⁹ — ‘Alleged Secessionist Plot Leader Has Fighting Words for PM Hun Sen’ *The Phnom Penh Post* (Phnom Penh 21 August 2012).

¹⁰ ‘On the Run, Kratie “Secessionist” Ringleader Defends Sonando’ *The Cambodia Daily* (Phnom Penh 17 December 2012).

¹¹ Amnesty International Press Release, ‘Cambodia: Baseless conviction of government critic reflects shrinking space for free speech’ (1 October 2012) <<http://www.amnesty.org/en/for-media/press-releases/cambodia-baseless-conviction-government-critic-reflects-shrinking-space-fre>>.

various international commentators, all expressing grave concern regarding the conviction, and in many cases calling for the Defendant's unconditional release.

Casotim, the Alleged Secession and the Pro Ma Incident

The Defendant was arrested in connection with alleged insurrectionary activities resulting from a long-running land dispute in Kratie province involving Casotim, the beneficiary of a 131,380 hectare forest concession in Kratie province in 1996,¹² 15,000-hectares of which encroached upon Pro Ma village. When Casotim began to develop a rubber plantation in the area, a conflict arose between it and the Villagers upon whose farming land it was encroaching.¹³ Casotim is likely to be a subsidiary company of Kastin LLC, a Russian company,¹⁴ however the details of the company group ownership are nebulous and unclear. In fact, it is rumored that Casotim is no longer in Russian hands but has been sold back to Cambodians, one of whom is closely linked to Bun Rany, wife of Prime Minister Hun Sen. It is also believed that Casotim is closely linked to TTY Co Ltd., owned by powerful tycoon Na Marady, whose security guards were behind the shooting of four protesters in Kratie's Snoul district in January 2012.¹⁵

In either late January or early February 2012,¹⁶ the Defendant met some of the Villagers, several of whom were affiliated with Bun Ratha, at the Defendant's house in Phnom Penh, where they spoke in the Defendant's garden for between ten minutes and half an hour (estimates vary according to different sources) (the "February Meeting"). Some of the participants at the February Meeting were called as witnesses for the Prosecution during the Trial. They claimed that the Defendant had told them that if they "*cleared the land they could take it*", and that he had promised to help them if they encountered problems as a result. He allegedly said that the land was Cambodian land, not Vietnamese land, implying that it rightfully belonged to the Villagers. Yet the Defendant denied these allegations, saying that he refused to comment on the land conflict given that the Villagers did not have their official documents. He says that they spoke only about bringing electricity to Pro Ma village. One of the defendants, Khatt Saroeun, who attended the February Meeting, confirmed that the Defendant requested their official documents before he would agree to speak to them about land disputes, yet also claimed that they discussed the land conflict.

Radio Free Asia reported that community representatives such as Bun Ratha,¹⁷ who was a member of and volunteer for the Democratic Association until November 2011, led the Villagers in protecting their land and had taken actions such as organizing meetings and demonstrations. Indeed, Bun Ratha was arrested in March 2012, when Ly Hout, a Casotim representative, accused him of inciting the Villagers to cause intentional destruction to

¹² <http://www.forestry.gov.kh/Statistic/Forestcover.htm>.

¹³ — 'Mourning Villagers Flee Kratie after Bloody Eviction' *The Phnom Penh Post* (Phnom Penh 18 May 2012).

¹⁴ Human Rights Now, 'Fact Finding Report for Cambodia: In Cambodia People are Deprived of Land' (October 2012) <<http://hrn.or.jp/eng/activity/HRN%20Cambodia%20Report%20on%20Land%20Rights%202012.pdf>>.

¹⁵ — 'Protesters injured as guards fire' *The Phnom Penh Post* (Phnom Penh 19 January 2012).

¹⁶ Witness statements differ as to when the February Meeting took place: some say late January, others early February.

¹⁷ — 'Activist in Hiding Denies Claims' *Radio Free Asia* (20 August 2012)

<<http://www.rfa.org/english/news/cambodia/claims-08202012181938.html>>.

company property,¹⁸ and filed a complaint claiming that he had incited some Villagers to burn Casotim's branch office on 12 March 2012.¹⁹ However, he was released on 10 April 2012, when the Villagers blocked local roads in order to force his release.²⁰

On 22 April 2012 Bun Ratha and his group (all of the defendants except for the Defendant) allegedly surrounded the police station in Pro Ma village. According to the Verdict, they carried knives and axes. Bun Ratha allegedly ordered the police to hand over all records of the questioning of newcomers to Pro Ma village – who had allegedly come to clear the forest and occupy the land – before tearing the records up. According to the Verdict, on 30 April 2012 Bun Ratha and his group provoked the Villagers to clear the forest and to measure land plots for distribution, without the permission of the local authorities. Again, according to the Verdict, this provocation came as a result of the February Meeting.

Also subsequent to the release of Bun Ratha, on 2 May 2012 (the date cited in the Verdict) the Villagers erected barricades around Pro Ma village and prevented motorbikes and other vehicles from passing through unchecked. Some Villagers' accounts indicate that the barricades were erected in order to prevent a repeat of such an arrest and to protect the people and their land, whereas witnesses for the Prosecution suggested that Bun Ratha forced the Villagers to erect and man the barricades. Some cited the possession of weapons, such as hunting tools, by those guarding the barricades. The Chief of Pro Ma village, who acted as a witness for the Prosecution, claimed that Bun Ratha had told those manning the barricades not to allow him access to Pro Ma village.

On 16 May 2012 hundreds of heavily-armed soldiers, military police and local police stormed Pro Ma village with the aid of a helicopter gunship, apparently in an attempt to break up the Villagers' resistance and to remove them from the affected area. Reports from the Villagers allege that authorities opened fire on the evictees, causing the death of 14-year-old Heng Chantha.²¹ The armed forces were also accused of other acts of brutality during the violent eviction, such as forcing women to strip and stand in the sun for prolonged periods.²² *The Phnom Penh Post* reported that the order for the eviction came from the Joint Commission of the Minister of Interior, Sar Kheng, the National Police Chief Neth Savoem, and the Kratie Provincial Governor Sar Chem Rong.²³

Directly after the Pro Ma Incident, the police and armed forces continued to block access to Pro Ma village, and even human rights workers and journalists were refused permission to enter the site.²⁴ Although the Villagers insisted that *"the attack was motivated by an*

¹⁸ May Titthara, 'Villager freed after road block' *The Phnom Penh Post* (Phnom Penh 10 April 2012).

¹⁹ May Titthara, 'Villagers to continue road block' *The Phnom Penh Post* (Phnom Penh 9 April 2012).

²⁰ *Ibid.*

²¹ May Titthara and David Boyle, 'Mourning villagers flee Kratie after bloody eviction' *The Phnom Penh Post* (Phnom Penh 18 May 2012).

²² May Titthara, 'Security forces strip, handcuff women during eviction' *The Phnom Penh Post* (Phnom Penh 22 May 2012).

²³ — 'Teenage Girl Gunned down by Security Forces in Eviction' *The Phnom Penh Post* (Phnom Penh 17 May 2012).

²⁴ Cambodian League for the Promotion and Defense of Human Rights ("LICADHO"), 'Press Release: LICADHO Calls for Investigation into Deadly Kratie Shooting' (17 May 2012) <<http://www.licadho-cambodia.org/pressrelease.php?perm=277>>.

ongoing land dispute with Casotim”,²⁵ the brutal and excessive operation was justified by the RGC on the grounds that the Villagers – victims of a land dispute – were attempting to secede from Cambodia and create a self-governing zone in Kratie province, with the help of the Democrat Association. Authorities claimed that the Villagers were using home-made weapons against them, however the lack of injury suffered by military police would seem to contradict this claim. On the contrary, reports allege that the military police treated unarmed Villagers harshly during the crackdown.

Police arrested a number of individuals from the area whom they said were secessionists seeking to gain independence from Cambodia and create an autonomous state-within-a-state. On 31 May 2012 five of the eight people who had been arrested were released. Meanwhile, no investigation was ever carried out into the shooting dead of Heng Chantha, with the authorities dismissing the need for an investigation on the grounds that it was an “*accident*”.²⁶ Claims by the authorities that Heng Chantha was shot as a result of a bullet ricocheting from a nearby surface were ill-founded: the hospital record shows that the entry wound was clean and that she was shot twice rather than once as originally thought.

4. The Law

Fundamental freedoms

Considering (1) the lack of evidence linking the Defendant to the Alleged Secession or to the Pro Ma Incident (as demonstrated in the Charges and Evidence section below), (2) the timing of Prime Minister Hun Sen’s speech, one day after the broadcast of the ICC Report on Beehive Radio, (3) the role of Beehive Radio in the context of a climate of censorship and shrinking civil society space, and (4) the fact that the Defendant has been targeted in the past for his radio broadcasts, CCHR believes that the Defendant was targeted again on this occasion as a result of exercising his fundamental right to freedom of expression. In addition, CCHR argues that the Defendant was targeted for exercising his fundamental rights to expression and association in meeting with the Villagers at the February Meeting, attending the KPPM conferences for journalistic ends, and maintaining contact with Suon Serey Ratha. Furthermore, the Defendant was incriminated as a result of the fact that Bun Ratha was formerly a member of the Democrat Association, which also amounts to a violation of the Defendant’s right to freedom of association. These fundamental freedoms are protected under both domestic and international law as set out below.

Article 41 of the Constitution of the Kingdom of Cambodia (the “Constitution”) states that all citizens shall have the right to freedom of expression, while Article 42 protects the right to establish associations. Article 31 states that Cambodia shall recognize and respect the Universal Declaration of Human Rights (the “UDHR”) and the covenants and conventions related to human rights, which includes the International Covenant on Civil and Political Rights (the “ICCPR”). Furthermore, the ICCPR is directly incorporated into Cambodian domestic law by virtue of being ratified by Cambodia in 1992, with such incorporation

²⁵ *Ibid.*

²⁶ Zsombor Peter, ‘Europe adopts resolution on Cambodian rights situation’ *The Cambodia Daily* (Phnom Penh 29 October 2012) <<http://www.cambodiadaily.com/news/europe-adopts-resolution-on-cambodian-rights-situation-4862/>>.

confirmed by a decision of the Constitutional Council dated 10 July 2007, which stated that *“international conventions that Cambodia has recognized”* form part of Cambodian law.²⁷ Article 19 of both the UDHR and the ICCPR provide for the right to freedom of expression for everyone, while Article 20 of the UDHR and Article 22 of the ICCPR protect the right to freedom of association.

Limitations on fundamental freedoms

There are, however, certain restrictions to these fundamental freedoms, and this Legal Analysis also examines whether the facts of this case justify the use of such restrictions. For example, Article 19(3) of the ICCPR restricts the right to freedom of expression on the grounds of *“respect of the rights or reputations of others”* and the *“protection of national security or of public order (ordre public), or of public health or morals”*, to the extent that the restrictions are “provided by law” and are “necessary”.²⁸ Limitations on the right to freedom of association under Article 22 of the ICCPR are almost identical (*“in conformity with the law”* and *“necessary in a democratic society”*). Moreover, Article 20 of the ICCPR – containing further limitations on the right to freedom of expression under Article 19 of the ICCPR – prohibits the right to freedom of expression if it represents *“propaganda for war”* or *“advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”*.

It cannot seriously be claimed that the Defendant’s actions threatened public health or morals, or amounted to war propaganda or advocacy of national, racial or religious hatred. It could feasibly be argued that they may have threatened national security or public order, and/or compromised the rights or reputations of others, *i.e.*, the local and national authorities, although such arguments do not hold much water on a closer analysis, as discussed below.

The reputation of the RGC was undoubtedly compromised by the ICC Report. However, UN General Comment 34 on Freedom of Opinion and Expression, adopted by the UN Human Rights Committee in July 2011, serves to clarify certain contested points pertaining to the restrictions on Article 19 of the ICCPR, stating that *“the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties”*.²⁹ General Comment 34 also states that all public figures, including the highest political authorities such as the heads of state and government, are legitimately subject to criticism.³⁰ In addition, according to the UN Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR (the *“Siracusa Principles”*)³¹ – published by the Human Rights Committee as interpretation of the relevant ICCPR provisions – *“a limitation to a human right based upon the reputation of others shall not be used to protect the state and its officials from public opinion or criticism”* (Principle 37). Therefore, this limitation, based on compromising the rights or reputations of others, cannot be validly used to restrict the

²⁷ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, 10 July 2007.

²⁸ Emphasis added.

²⁹ UN Human Rights Committee, CCPR General Comment No. 34 on Article 19: Freedom of Opinion and Expression (July 2011) UN Doc CCPR/C/GC/34.

³⁰ *Ibid.*

³¹ Annex, UN Doc E/CN.4/1984/4 (1984).

Defendant's right to freedom of expression. In any event, the ICC Report was not a stated part of the Trial, and did not explicitly form the basis for any of the Charges.

As regards the restriction on the grounds of public order, it should be argued that the February Meeting was peaceful, and that even if the Defendant had told the Villagers to protect their land against the intrusions of Casotim, no evidence was submitted in court to suggest that any violence was encouraged. As for the Prosecution's other argument – namely that the Defendant's journalistic relationship with Suon Serey Ratha and the KPPM proved that the Defendant held similar opinions and therefore was guilty of instigating an insurrection and inciting people to take up arms against the state – such a flimsy connection in no way amounts to conclusive proof that the Defendant even held any subversive opinions, let alone acted upon them to the extent of advocating violence that would threaten public order or national security. In any event, given that this Legal Analysis establishes in the Charges and Evidence Section below that there was no proven connection between the Defendant and the Alleged Secession, and that all the Charges brought against him were therefore bogus, his actions cannot in fact be deemed to have threatened national security or public order. The public order and national security limitations cannot therefore be validly or justifiably applied to the Defendant's rights to freedom of expression and association.

In any event, it is difficult to argue that any restrictions on the Defendant's rights to freedom of expression and association would be "*provided by law*" and "*necessary*". The Siracusa Principles again lend some clarification: "*provided by law*" means "*provided for by national law of general application which is consistent with the Covenant and is in force at the time the limitation is applied*" (Principle 15). Furthermore, according to Principle 16, "*[l]aws imposing limitations on the exercise of human rights shall not be arbitrary or unreasonable*". It is in fact arguable that applicable domestic legislation, such as the Penal Code, is not consistent with the aim of the ICCPR to protect these fundamental freedoms, and is arbitrary and unreasonable in that there is no discernible reason to limit fundamental freedoms in Cambodia beyond international standards. In other words, the presumption should always be in favor of the fundamental freedom rather than the limitation. Finally, according to Principle 18, "*[a]dequate safeguards and effective remedies shall be provided by law against illegal or abusive imposition or application of limitations on human rights*". Such safeguards and remedies are not provided by the Penal Code.

The Siracusa Principles are also helpful in interpreting the requirement that any restriction be "*necessary in a democratic society*", another of the qualifications of limitations under the ICCPR. Principle 20 states that "*[t]he expression 'in a democratic society' shall be interpreted as imposing a further restriction on the limitation clauses it qualifies*", while Principle 21 states that "*[t]he burden is upon a state imposing limitations so qualified to demonstrate that the limitations do not impair the democratic functioning of the society*". Therefore, any restrictions imposed on the Defendant's rights to freedom of expression and association in this case would indeed impair his ability to participate democratically in Cambodian society (as per the Constitution), since open discussion and criticism is an essential hallmark of any healthy and fully-functioning democracy.

There do not in fact seem to be any valid and legal reasons why limitations or restrictions should be applied to the Defendant's rights to freedom of expression and association. The Defendant was merely exercising his fundamental rights, and there is no evidence to suggest that any of the specific restrictions are applicable or justifiable. Consequently, quite apart from its injustice and its lack of proportionality, the deprivation of his liberty does not represent a valid and legal restriction on his fundamental freedoms as anticipated and prescribed by the ICCPR.

Right to liberty and freedom from arbitrary arrest or detention

Furthermore, the fact that the Defendant was held in detention for almost three months before the Trial (and also since the Trial, as part of his 20-year sentence) is also a violation of his right to liberty. The right to liberty and freedom from arbitrary arrest or detention is guaranteed under Article 32 of the Constitution and Article 9(1) of the ICCPR, as well as under Article 3 of the UDHR. Both Cambodian and international law consider that when someone is charged with an offense, release pending trial should be considered the default option, and pre-trial detention the last resort.³² Furthermore, Article 205 of the CPC sets out a number of justifications for ordering pre-trial detention, namely when it is necessary to:

- 1. stop the offense or prevent the offense from happening again;*
- 2. prevent any harassment of witnesses or victims or prevent any collusion between the charged person and accomplices;*
- 3. preserve evidence or exhibits;*
- 4. guarantee the presence of the charged person during the proceedings against him;*
- 5. protect the security of the charged person; or*
- 6. preserve public order from any trouble caused by the offense.*

The Defendant is 71-years-old, he returned from abroad to answer the Charges against him, and there is no evidence to suggest that he had any contact whatsoever with the Alleged Ringleaders, who fled Cambodia. There was nothing to suggest then that he would either pose a threat to anyone, endanger public order, flee the country before the Trial, or collude with other defendants. There was therefore no justifiable argument for not granting the Defendant bail for the period before the Trial. The Defendant fell ill several times during his pre-trial detention, and yet was refused bail twice despite a lack of any legal justification. On 14 December 2012 he was refused bail again, the first time he has submitted an application since his sentencing. Since the Defendant's arrest on 15 July 2012, he has therefore been arbitrarily deprived of his liberty – a fundamental human right.

³² Article 203 of the CPC states: "*In principle, the charged person shall remain at liberty. Exceptionally, the charged person may be provisionally detained under the conditions stated in this section.*" Article 9(3) of the ICCPR states: "*It shall not be the general rule that persons awaiting trial shall be detained in custody.*"

Right to defend human rights

In his role as Director of the Democrat Association, and as a reporter and radio station owner delivering independent news to the Cambodian people, the Defendant was exercising his right to defend human rights. He protected the right of citizens to participate in the political life of their nation, as protected under Article 35 of the Constitution and Article 25 of the ICCPR; and, as a journalist and broadcaster, he upheld the right of the Cambodian people to freedom of information, as protected under Article 41 of the Constitution and Article 19 of the ICCPR. In meeting with the Villagers, the Defendant was merely acting as an HRD. He affirmed in court that he regularly holds meetings with communities affected by land conflicts, but explained that the Democrat Association occasionally offered help only through peaceful means, such as negotiating with local authorities to reach a compromise. In fact, the Defendant claimed that on this occasion – the February Meeting – the Villagers did not have their papers with them, and that he therefore chose not to discuss the land conflict with them.

The UN Declaration on Human Rights Defenders (the “Declaration”), adopted by the UN General Assembly in 1998, although not a legally binding instrument, is based upon a series of rights and principles contained in other international instruments, such as the ICCPR, that are binding. States are increasingly considering adopting the Declaration as national legislation, although Cambodia has not done so. Even so, its force is persuasive, and something that HRDs worldwide can point to as protection for their human rights activities. In this case, it lends added weight in support of the Defendant’s actions, and casts further doubt over the legality of the actions of the enforcement agencies and public officials in arresting, charging and sentencing the Defendant. These actions – silencing an HRD – also confirm any lingering doubts that anyone may have had about the RGC’s attitude towards HRDs and their protection, which completely contradict the Declaration.

5. The Charges and Evidence

The Trial took place from 11 to 14 September 2012 inclusive at the Phnom Penh Municipal Court. The Defendant’s case was heard alongside those of 13 other men from Kratie province, who were accused of participating in, or in some instances leading, the Alleged Secession. Presiding Judge Chang Sinat, and Judges Leang Samnatt and Lim Makarin, subsequently handed down the Defendant’s verdict on 1 October 2012. He was found guilty of the Charges – all of which fall under the Penal Code – as follows:

- Instigation of a felony or a misdemeanor (Article 28);
- Participation in an insurrectionary movement (Articles 456 and 457);
- Incitement of people to take up arms against the state authority (Article 464);
- Obstruction of a public official with aggravating circumstances (Article 504); and
- Unlawful interference in the discharge of public functions (Article 609).

This section aims to analyze the Charges rigorously, scientifically and objectively – as the court so evidently failed to do in the first instance – breaking down each Charge into its legal components, assessing the available evidence in each case, and trying to establish whether the Defendant is guilty of the relevant Charge.

Article 28: Instigation of a felony or a misdemeanour:

This Article defines an “instigator” as any person who:

- “(1) Gives instructions or order to commit a felony or misdemeanor;*
- (2) Provokes the commission of a felony or misdemeanor by means of a gift, promise, threat, instigation, persuasion or abuse of authority or power [...].”*

Under Article 28, an instigator is punishable only if the felony or the misdemeanor is carried out or was attempted, and, if this is found to be the case, the instigator receives the same penalties as the perpetrator, as indeed happened with the Defendant. The felonies upon which this Charge hinges – participation in an insurrectionary movement, incitement of people to take up arms against the state authority, obstruction of a public official with aggravating circumstances, and unlawful interference in the discharge of public functions – are discussed individually in more detail below. However, in order to assess whether the Defendant can be found guilty under this Charge, it is necessary to consider whether he “[gave] *instructions or order[s]*”, or “[provoked] [...] *by means of a gift, promise, threat, instigation, persuasion or abuse of authority of power.*” In other words, it is necessary to establish whether or not the Defendant was connected to the Alleged Secession or not, regardless of whether the Alleged Secession was in fact a genuine attempt to secede. As part of this process, the substance of the evidence submitted by the Prosecution in court will be discussed in order to ascertain the Defendant’s guilt under this Charge. The procedure of the submission of evidence, on the other hand, will be discussed in the Fair Trial Rights section below.

1. The February Meeting

The first piece of evidence which the Prosecutor sought to rely upon as proof of the Defendant’s involvement in the Alleged Secession, was the February Meeting. Two of the accused – Khatt Saroeun and Ma Chhang – and several witnesses, who henceforth will be referred to as the “Participants”, testified that they attended the February Meeting. According to these testimonies, the Defendant told the Participants that they could take the cleared land for their own use, as it was Cambodian land. It was further alleged that the Defendant promised that if they encountered trouble with the authorities, he would step in and “help”. However, no explanation was provided by the Prosecution as to what this “help” might have entailed. There were also significant variations in the testimonies in a number of key respects, for example: some Participants stated that the February Meeting lasted 10 to 15 minutes, while others said half an hour; some of the Participants stated that they subsequently stayed with the Defendant that night in Phnom Penh, while others denied that anyone did; most of the Participants mentioned that the meeting took place in the Defendant’s garden whereas one said that the meeting was inside the Defendant’s house; one Participant stated that the Defendant told them to fight the authorities if they resisted, whereas others stated that he merely advised them to work on the land to which they were entitled; finally, one Participant stated that he did not remember directly hearing the Defendant saying that they should clear the land, but rather that he had only heard it from the other Participants.

In his testimony, the Defendant was adamant that he did not discuss the land conflict during the February Meeting, not because such a subject is outside his remit, but because the Participants did not have valid family books and ID cards with them.³³ However the Participants claim that, having left the Defendant's house and stayed in Phnom Penh overnight, on their return the next day to the Defendant's house, he told them that they could clear and use the land. Because the Participants still did not have family books or ID cards with them the following day, it does not seem likely that the Defendant discussed the land conflict with them. The Defendant explained to the court that, as the founder and President of the Democrat Association, people come to him for advice every day, and that its policy is to work with the authorities, not against them. He stated that if people seeking advice come to him, with valid family documents, then he tried to help them by engaging with the authorities to find a solution and reach an agreement. He explained that the ethos of the Democrat Association was one of non-violence and lawful action, and that the Democrat Association would never recommend anything in contravention of this ethos. He also explained that the Democrat Association did not have lawyers to file legal complaints, and so would not get involved in legal challenges.

The Defendant proceeded to explain that because the Participants did not have their valid family books or identification cards with them, they only discussed the provision of electricity to their village, about which he duly advised them. He noted that the February Meeting was held outside in his garden, and that it only lasted 10 to 15 minutes. He suggested that, in the circumstances, it would have been highly unlikely that they would have discussed anything covert or illegal, and that it would have been impossible for him to truly incite the Participants to act against the authorities within such a short space of time.

On the second day of the Trial, Chea Bamrong, the Vice President of the Democrat Association, supported the Defendant's testimony when he told the court that the Democrat Association taught people the principles of democracy, while always respecting the rule of law and the Cambodian authorities. He confirmed that the Defendant had never even visited Kampong Damrei district in Kratie province, and stated that he had certainly not led an insurrectionary movement there. It should also be pointed out, as highlighted by the Defense, that the meeting was requested by the Participants rather than by the Defendant.

As there are no records of the February Meeting to clarify which Participants are telling the truth, it remains difficult to establish what was discussed. Therefore the Prosecutor's evidence in this regard remains in dispute, and cannot be relied upon as proof of the Defendant's having instigated the Alleged Secession.

³³ Each family must hold a family book issued and certified by the local police, in which all its members, their dates of birth and their occupation are recorded. Any change of address must be notified to the police. Each family must also hold a residence book in which all living in the same household, including guests, are recorded (Asian Human Rights Commission, 29 February 2008, <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-041-2008>).

2. The Democrat Association

The second piece of evidence which the Prosecutor sought to rely upon to prove that the Defendant instigated the Alleged Secession leading up to the Pro Ma Incident concerned an alleged connection between the Democrat Association and the Alleged Ringleaders. The Prosecutor claimed that Bun Ratha was a member of the Democrat Association, and that he allegedly brandished the Democrat Association logo and the Defendant's photograph at meetings, while encouraging and sometimes pressurizing others to become members of the Association. It is worth noting as an aside, however, that several of the accused and witnesses claimed to have seen CPP logos brandished by Bun Ratha and the members of his group, which would seem to undermine the Prosecution's argument. These allegations, however, are as yet unsubstantiated. The Prosecutor then called witnesses, the majority of whom were not members of the Democrat Association, who claimed that the Alleged Ringleaders displayed posters bearing the Democrat Association's logo and encouraged people to join the NGO in order to protect their land.

Sok Tong was the chief of the Democrat Association in Memot district, Kampong Cham province. However, as Chea Bamrong, the Vice President of the Democrat Association, pointed out, the activities in Kratie province carried out by Bun Ratha and Sok Tong – regardless of whether they used the Democrat Association's name – were not instigated by the Democrat Association; if they were, not only the Provincial representative for Kratie province, Vich Kimchhean, but also the Permanent Committee would have had to have approved a clear plan in advance. Seeing as no plan was approved by the Democrat Association with respect to the events in Pro Ma village, Chea Bamrong argued that Bun Ratha and Sok Tong must have acted as individuals, not as representatives of the Democrat Association. In addition, membership of the Democrat Association must first be approved by headquarters in Phnom Penh. The memberships issued by Sok Tong were not approved and therefore cannot be valid.

As far as the Democrat Association argument goes then, this Charge appears to be based solely on the assumption that the Defendant was inextricably linked to the actions of the Alleged Ringleaders, particularly those of Bun Ratha, purely on the basis of their tenuous and/or alleged links to the Democrat Association. Furthermore, no credence has been given to the idea that, even if the Alleged Secession were actually proven to be a genuine attempt at secession, the Alleged Ringleaders may just have been using the Democrat Association connection to their advantage without the permission or knowledge of the Defendant. In other words, even if the Alleged Ringleaders had displayed the name and the logo of the Democrat Association, it does not follow that the Defendant as President of the Democrat Association was involved in the land conflict or the Alleged Secession.

More likely is the possibility that the connection with the Democrat Association is completely spurious and the evidence fabricated: despite the alleged close affiliation between the Democrat Association and the Alleged Ringleaders, Bun Ratha was in fact a former member of the Democrat Association, his membership having expired in October 2011. During an interview with Radio Free Asia on 21 August 2012, Bun Ratha personally

denied any current connection with the Defendant or the Democrat Association. He also accused the Prime Minister of creating false evidence in order to silence those speaking out about the land conflict in Pro Ma village. However, the radio interview was not permitted as evidence in the Trial, on the basis that the police had not verified its authenticity.

At no stage in the Trial was any genuine evidence produced to prove a connection between the Democrat Association and the activities of the Alleged Ringleaders, let alone a connection that would suggest that the Defendant had instigated the criminal acts covered by the Charges. Therefore the Prosecutor's evidence in this regard cannot be relied upon to prove that the Defendant was guilty of this Charge.

3. The KPPM link

The final piece of evidence which the Prosecutor sought to rely upon to prove that the Defendant instigated the Alleged Secession leading up to the Pro Ma Incident concerned his contact with Suon Serey Ratha of the KPPM. The Prosecutor referred to the fact that the Defendant had attended several conferences and meetings held by the KPPM, and presented to the court an invitation from the KPPM to the Defendant to speak at a conference in the US on behalf of the Democrat Association. The aim of the conference was to discuss a political resolution to liberate Cambodia from the alleged colonization of Hanoi.³⁴ The Prosecutor thus implied that the Democrat Association shared the same ethos as the KPPM and that the Defendant was also therefore seeking to persuade people to rebel against the RGC. The Verdict concluded that, because the Defendant could not prove that he did not hold the same views as Suon Serey Ratha and the KPPM, then he must share the same views. There is no legal or logical basis for this implication as it does not necessarily follow that the Defendant shared the ethos of the KPPM just because he attended several KPPM conferences and because he could not disprove the allegation. Besides, as discussed further below in the Fair Trial Rights section, such an argument flouts the principle of the presumption of innocence enshrined in Cambodian and international law.

The Prosecutor also referred to a press statement issued by Suon Serey Ratha shortly after the Pro Ma Incident, to which the Defendant's lawyer objected on the basis of relevance. The press statement may perhaps have been relevant in terms of attempting to establish a clearer impression of Suon Serey Ratha and the KPPM, however the statement itself has no link or relevance to the Defendant or the Charges. Despite the objection from the Defense, the Judges allowed the Prosecutor to read the statement aloud in court. In short, the press statement asserted that the situation of freedom of expression in Cambodia is critical, that the RGC was selling Cambodian land to other countries, and that people should stop voting for, and cease recognizing the power of, the RGC. The Prosecutor maintained that the Defendant should have responded to this statement at the time of its release, in order to refute it, which seems in effect to be a way of condemning him for someone else's actions – which are themselves protected by domestic and international law on the right to freedom of expression (please see the section on Fundamental Freedoms above).

³⁴ Please see the English translation of the Verdict.

In response to the allegations, the Defendant stated that he met with Suon Serey Ratha and attended the KPPM conferences for journalistic ends – in other words, he wanted to promote human rights in Cambodia and also interview Khmer people abroad so as to ascertain their perspectives on various topics. He also pointed out that the KPPM has a right to express opinions about the RGC. He said that he was honest and transparent about his attendance at the conferences, and that he sent his notes of the conferences to the Ministry of Information but never received a response. As the Defendant’s lawyer explained, there is no legal or factual basis for the argument that, just because the Defendant met with Suon Serey Ratha and attended the KPPM conferences, they share the same views. Or, more importantly, it does not prove in any way that the Defendant was responsible for instigating the Alleged Secession. Therefore the Prosecutor’s evidence as regards the Defendant’s contact with Suon Serey Ratha and the KPPM cannot be relied upon as proof of the Defendant’s instigation of the Alleged Secession under this Charge.

Once these three strands of evidence are closely examined, it is clear that there is no sound basis for establishing that the Defendant gave instructions, or ordered, or provoked the commission of a felony or misdemeanor. Indeed, no evidence was produced by the Prosecution to show that he had even visited Pro Ma village, or that he had ever been in contact with the Alleged Ringleaders. In fact, he was not even in Cambodia at the time of the Alleged Secession since he was abroad from 12 March 2012 until 12 July 2012, when he returned to face the Charges. Despite these evidential shortcomings, the Defendant was nevertheless found to be an instigator as defined under Article 28 of the Penal Code. As such, he received the same penalties as the Alleged Ringleaders for committing or attempting to commit the felonies discussed below.

Article 456: Participation in an insurrectionary movement

Article 456 defines an insurrection as: *“any collective violence liable to endanger the institutions of the Kingdom of Cambodia or violate the integrity of the national territory.”*

The first element is the requirement that the action was collective, *i.e.*, it was carried out as a group. It is clear that the Villagers involved in the Alleged Secession were acting collectively, thereby easily satisfying this element of the Charge.

The second element to examine is violence. While violence is not defined in the Penal Code, it is defined by the World Health Organization as the *“intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation”*. During the Trial, the Prosecution referred to the Villagers’ farming tools and hunting materials as “weapons”. Article 81 defines “weapons and items deemed to be weapons” as:

“[A]ny item designed to kill or to wound. Weapon includes any other item liable to be dangerous to a person if:

- 1. it was used to kill, to wound or threaten; or*

2. *it was intended to be used to kill, wound or to threaten.”*

Despite claims from some witnesses that the Alleged Ringleaders had forced them to use arms against the authorities, it has been confirmed that the armed forces or authorities suffered no physical harm during the Pro Ma Incident or at any point beforehand. Seeing as no injuries were reported, any claim that the tools were used to kill or to wound must be unfounded. However, due to the discrepancies in witnesses' testimonies, it is difficult to verify whether the farming and hunting tools were in fact used with the intention of killing, wounding or threatening. Hunting and farming tools – such as machetes, axes and crossbows – certainly could be used for any of those purposes, yet differences in the statements of the witnesses make it difficult to establish whether hunting and farming tools were actually used for this purpose. On the one hand, in a rural, agricultural area such as that around Pro Ma village, it is hardly surprising that many people would possess such tools for farming and hunting purposes. Yet, on the other, it is likely that that they would have turned to these ready-to-hand tools in the absence of real weapons, which is what the Prosecution claimed. The presence of the tools in Pro Ma village really says nothing about the likelihood that the Villagers used them as weapons against the authorities during the Pro Ma Incident, especially seeing as several accused said that they were told by the authorities to hold the weapons while their photographs were taken for evidence.

However, even if these weapons were not used against the authorities during the Pro Ma Incident, the majority of witness testimony suggests that these weapons were used, at least with the attention of threatening, in several instances: several witness statements assert that the Alleged Ringleaders and approximately 100 of the Villagers stormed the Pro Ma police station, while brandishing such weapons, and forced the officers to hand over recent files documenting the questioning of Villagers by the police. Bun Ratha then allegedly tore up these documents. According to statements by two military officers, on 22 April 2012 Bun Ratha and a group of Villagers detained them when they entered Pro Ma village to gather soldiers for training, on the orders of their superior. Bun Ratha and the Villagers assumed that the two officers were working in support of Casotim; therefore they detained and disarmed them to ask them for information. Once they realized that they were mistaken, they released the officers. In addition, according to many of the witnesses, barricades were erected at the entrance points to Pro Ma village and those entering had their identification cards checked and were questioned before being allowed to pass. Some witnesses reported having seen the weapons mentioned above at these barricades.

It is worth noting that a stash of AK47s would have been far more suspicious and would arguably have lent some weight to the claim that the Villagers were attempting to secede. However, there is no way that the alleged use of such hunting and farming tools, even with the intention to kill, wound or threaten, would have been a match for the forces of the Cambodian military. It is therefore highly unlikely that they would realistically have been used to carry out an insurrection. Moreover, even if the farming and hunting materials had been used as weapons (which has not been proven), the use of force by public officials in response was grossly disproportionate. International standards require that law

enforcement officials only use force when absolutely necessary for carrying out their duties. The UN Code of Conduct for Law Enforcement Officials states that:

“The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children.³⁵ In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.”³⁶

To this effect, the number of heavily-armed troops, the military helicopter gunship, the lockdown on Pro Ma village, and the firing of live ammunition which resulted in the death of a child are completely unjustified, and should be investigated with immediate effect.

The third element of this Charge is that any collective violence must be used “to the endangerment of the institutions of the Kingdom of Cambodia or to violate the integrity of the national territory”. Even if collective violence was used and if the Villagers carried these farming and hunting tools as weapons with a view to threaten or intimidate, no evidence was produced in court to suggest that it was in pursuit of the objectives outlined, namely to endanger the institutions of Cambodia or to violate the integrity of the country’s territory. Instead, circumstantial evidence was presented during the Trial in an attempt to prove the existence of an insurrectionary movement. However, no evidence was submitted that suggested that the Alleged Secession was anything more than a land conflict between the Villagers and a well-connected company, whose land Bun Ratha distributed to the Villagers, which in turn resulted in a confrontation with local officials. Equally, judging from reports of the Pro Ma Incident, there is no evidence to suggest that it was anything other than yet another violent crackdown on communities protesting and organizing themselves against land grabs and land evictions.

Finally, it should be noted that this Charge is dependent upon the presumption that the Defendant was the “instigator” (under Article 28), for which, as discussed above, no concrete evidence has been produced.

Article 457: Applicable penalty (participation in an insurrectionary movement)

Article 457 states that the “applicable penalty” for those found to have been participating in an insurrectionary movement is imprisonment from 7 to fifteen years. Article 457 also elaborates on the offenses that can comprise this Charge, outlining the relevant acts that might constitute participating in an insurrection. In this case, the following acts were referred to by the Prosecutor directly and indirectly during the course of Trial, and CCHR has included any relevant discussion under each offense:

³⁵ Emphasis added.

³⁶ Article 3(c) of the UN Code on the Conduct of Law Enforcement Officials
<<http://www2.ohchr.org/english/law/codeofconduct.htm>>.

1. *“Building barricades, fortifications or by any construction whose objective is to prevent or obstruct the action of the public forces;*

Witness testimony produced at the Trial confirmed that barricades were built around Pro Ma village, and that in some cases the barricades were used to block roads, allegedly on the orders of the Alleged Ringleaders. This testimony has also been separately and informally verified by some NGO accounts of the Alleged Secession; therefore, the first limb of this offense, namely the building of barricades, is likely to have been satisfied. The roads had also been blocked twice in March 2012 as a protest against the initial arrest and detention of Bun Ratha.

The second limb of this offense, namely establishing that the objective of the barricades was to prevent or obstruct the action of the public forces, arguably might also be satisfied, although it does once again depend upon the reliability of witness statements in court. Some witness statements suggest that the barricades were indeed manned in order to prevent public officials from accessing the area, again on the orders of Bun Ratha.

2. *Occupying with force or by deceit any building or installation;*

As detailed above, there is evidence from witness statements to suggest that on 22 April 2012 the Pro Ma police station was stormed by Bun Ratha and approximately 100 Villagers carrying hunting and farming tools as weapons. The storming of the police station was carried out with the objective of destroying recent paperwork containing records of the questioning of Villagers by the police. In carrying out this act, Bun Ratha and the Villagers would have occupied the police station for a short time and they would have used force to do so. This element of the Charge is therefore likely to have been satisfied.

3. *Destroying any building or installation;*

In March 2012, in response to the refusal of Casotim to meet their compensation demands, some of the Villagers set fire to Casotim’s supply shed. In a literal sense, the offense is satisfied. However, it should be noted that the motive of the Villagers was very clear – they did not burn the supply shed to attempt an insurrection, but rather to show their anger and dissatisfaction at Casotim’s refusal to provide them with sufficient compensation.

5. *Directly inciting the insurgents to gather;*

Many witnesses testified that Bun Ratha did indeed hold meetings at local pagodas to discuss the land conflict, though the fact that the Village Chief was also reportedly present at these meetings suggests that there was no talk of insurrection. Furthermore, unless there is genuine evidence of some kind of revolution or uprising, the Villagers should not be labeled “insurgents”. For these reasons, then, this offense would not appear to be satisfied.

6. *Personally holding or carrying a weapon, explosive or ammunition; and*

In order to prove this offense, the Prosecutor submitted the Villagers' farming and hunting tools to the court as evidence that they were holding and carrying weapons. Several witnesses mentioned that they had seen these types of instruments being held by men standing guard at the checkpoints and barricades that had been set up around Pro Ma village. Many said that they had either never seen them before, or, insofar as they had, they had only seen them in the homes of people who used them for farming or hunting purposes. As to how the presence of such weapons in Pro Ma village should be considered, please see the discussion above in the sub-section on Article 28. As for explosives or ammunition, there is no suggestion that the Villagers possessed such weapons.

7. *Usurping a lawfully authority."*

Some of the testimony from the witnesses and the accused suggested that Bun Ratha had taken it upon himself to divide the disputed land among the Villagers, and had accepted a type of land tax. Several of the testimonies also claimed that Bun Ratha was appointing new people as village authorities, thereby overriding the officially appointed Village Chief and other officials. The first element of the offense – "usurping" – is defined as taking the place of someone in power illegally or by force. While the actions of the Alleged Ringleaders could perhaps have been regarded as usurping power through the use of weapons (the tools described above), numerous discrepancies between the testimonies and a significant lack of concrete evidence, make this claim very difficult to verify. The lawful authority in this case refers to the local authorities, such as the Village Chief, who were prevented from entering Pro Ma village. It is also worth questioning whether usurping the duties of a lawful authority when such duties are neglected – for example, when insufficient effort is made to solve a controversial land conflict with severe implications for residents' land rights – might be justified. Such arguments are, however, beyond the scope of this Legal Analysis.

With regard to the majority of the above offenses under this Charge, there is no way that the Defendant could be directly accused of carrying them out, since he was not present in Kratie province at the time of the Alleged Secession. This Charge is therefore contingent upon Article 28, and is based upon the presumption that the Defendant was the "instigator". As discussed above, however, no concrete evidence has been produced to link the Defendant to the Alleged Secession, which means that regardless of the legitimacy of the underlying charges against the Alleged Ringleaders or the Villagers, the Defendant should not be held to be guilty of instigating such offenses.

Article 464: Incitement of people to take up arms against state authority

If this Charge is proven, and if the incitement is "effective", it is punishable by 15 to 30 years' imprisonment. The Defendant was found guilty of all the Charges, but as this Charge carried

the highest sentence of all the Charges – he was sentenced to 20 years under this Charge – he was given a concurrent sentence of 20 years in total.

There is no evidence to prove that the Defendant directly incited the Villagers to take up arms against the authorities, since the one time that the Defendant met any of the Villagers, varying accounts of the meeting – the February Meeting – have made it impossible to know what exactly was said. Aside from this lack of evidence, the February Meeting took place over a short space of time and in an outdoor setting, therefore making it unlikely that the Defendant committed incitement along the lines alleged; nor did the Participants say that the Defendant mentioned arms or state authorities. Some of them claimed that the Defendant told them to clear the forest and plant their land, but no arms were mentioned.

However the Verdict indicates that this Charge is indirect, *i.e.*, contingent upon Article 28 as all the other Charges are, and that it refers to the Defendant's instigation of Bun Ratha to incite the villagers. According to some witness statements, the Alleged Ringleaders provoked them to take up arms – hunting and farming tools – to face the authorities during the Pro Ma Incident. Discrepancies between statements make this allegation difficult to confirm, however, as well as the fact that no military or police were reported injured during the Pro Ma Incident. Furthermore, the only contact that the Villagers had with the Defendant was the February Meeting, at which Bun Ratha was not even present. At no point in the February Meeting did the Defendant mention taking up arms – this point is confirmed by all of the different accounts of the meeting. Therefore even if the Alleged Ringleaders began to incite the Villagers to take up arms against the state after the February Meeting and used the Defendant's photograph and the name of the Democrat Association to bolster this action, the Defendant cannot legally be held responsible.

Article 504: Aggravating circumstances (obstruction of public official)

Obstruction of a public official is defined under Article 503 as “*violent resistance against a public official acting in the discharge of his or her office for the enforcement of laws, orders from a public authority or judicial decisions*”. This Charge presumably refers to the resistance shown by the Villagers during the Alleged Secession.

The first element of the Charge is “*violent resistance*”. As stated above, some farming and hunting tools were produced in court as evidence that the Villagers used weapons; however, discrepancies between witness statements make it very difficult to prove that the Villagers did in fact use the tools as weapons and were violent in their resistance, for example at the barricades. However, in the case of the storming of the police station, for example, this element of the offense is satisfied. One civil party to the case, a police officer named Kol Ponleu, claimed that Bun Ratha and the Villagers prevented him from doing his job gathering statistics of the village population. When he went to gather information by questioning the Villagers, Bun Ratha and a group of approximately 50 allegedly came upon him with crossbows, and told him that he would have to go through Bun Ratha before speaking with the Villagers. He was therefore obstructed in his duties.

The second element – “*against a public official*” – refers to the local authorities that were

prevented from entering Pro Ma village as well as those already working there, such as the police. This element is therefore easily satisfied.

The third element – *“in the discharge of his or her office for the enforcement of laws, orders from a public authority or judicial decisions”* – is again easily satisfied, since there does not seem to be any doubt that the authorities were doing what they were told to do – in trying to allocate the disputed land, break up the resistance, enter Pro Ma village, and quell the Alleged Secession during the Pro Ma Incident. In this sense, the element is satisfied, but it is worth noting here that the actions of the authorities certainly did not stem from any law or any judicial decision, while the *“orders from a public authority”* in this case were flawed and not necessarily in accordance with the law themselves.

Obstruction of a public official with aggravating circumstances (Article 504) is punishable by imprisonment of six months to one year when committed by several perpetrators, co-perpetrators, instigators or accomplices, or by an armed perpetrator. This Charge against the Defendant is indirect, *i.e.*, based on the presumption that the Defendant was the “instigator” of the obstruction of a public official by others, since he was out of the country at the time of the Alleged Secession and the Pro Ma Incident. However, as mentioned above, no concrete evidence has been produced to suggest that he was in any way connected to either.

Article 609: Unlawful interference in the discharge of public functions

This Charge again carries one of the lesser penalties of one to three years’ imprisonment and a fine, if one is found guilty. Through erecting barricades around Pro Ma village and preventing the access of local authorities, through storming the police station and destroying documents, and through detaining two military officers, the Villagers did indeed interfere in the discharge of public functions, thereby satisfying the elements of this Charge. It is worth noting as a non-legal aside, however, that the public functions in question were not being carried out for the good of the public, but for the good of the private company, Casotim. It could therefore be argued that there was moral justification for breaching the law in this instance, but that is beyond the legal scope of this Legal Analysis.

More importantly – and once again – there is no evidence to prove that the Defendant instigated or was in any way connected to such actions. This Charge is again contingent upon the presumption that the Defendant was the “instigator”, for which no concrete evidence has been produced.

It is clear from the above analysis, therefore, that the Charges – for which he was heavily sentenced – are totally unjustifiable under Cambodian law, principally by virtue of the fact that there is no evidence to prove that the Defendant was the instigator of any of the other offenses or to connect him to the Alleged Secession in any way whatsoever. That fact alone means that he should have been acquitted of all the Charges, regardless of whether certain of the Charges – or rather certain elements of certain Charges – were proven as regards other defendants, particularly given that there is no evidence suggesting that the Alleged Secession was anything other than an organized protest against a long-running and

intractable land dispute.

6. Fair Trial Rights

The right to a fair trial is recognized by the UDHR and the ICCPR, the latter of which is incorporated into Cambodian law by virtue of being ratified by Cambodia in 1992 (please see the section on Fundamental Freedoms above). Article 38 of the Constitution itself states:

“Every citizen shall enjoy the right to defense through judicial recourse.”

Article 10 of the UDHR states:

“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

Article 14(1) of the ICCPR states:

“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

This Article encompasses a number of elements that, on a close examination of the circumstances and facts, were not upheld in the Defendant’s case. Most fundamentally, for a hearing to be fair, all of a person’s fair trial rights must be respected. Insofar as one or more of them are violated, a hearing cannot be deemed fair. As will be shown below, many of the Defendant’s specific fair trial rights were violated, which means that it would be hard to argue that he received a fair hearing.

Furthermore, the Trial was not open to the public at large. While Article 14 of the ICCPR does permit the exclusion of the public and the press in certain circumstances, CCHR does not see any reasonable justification for those circumstances applying in this case. Extreme security measures were implemented, with the police and military barricading all roads leading to the Phnom Penh Municipal Court, and refusing access to the whole area surrounding the court building, not to mention the courtroom itself, to all except embassy and international NGO representatives and those whom they knew. On the first morning of the Trial, several NGO staff – including CCHR staff – as well as all media personnel and members of the general public, were prevented from entering the courtroom or even accessing the streets surrounding the court building. Protesters were kept out of sight, some distance from the court building, and all businesses that share a street with the court were closed down for the duration of the Trial. Eventually some media personnel did gain access on the subsequent days of the Trial but, aside from the Defendant’s wife, the families of the accused men were not allowed inside the courtroom. In view of these restrictions, the Trial cannot be deemed in any sense to have been a public hearing.

Furthermore, international jurisprudence states that information should be made available to the public regarding the date and venue of a trial as a component of the right to public hearings, together with the requirement to make available adequate facilities for public attendance.³⁷ In this case, no notice of the Trial was posted on the public notice board outside the courtroom.

The impartiality of the judiciary was in question from the moment that the Investigating Judge issued an arrest warrant for the Defendant on 2 July 2012. This action appeared to be taken pursuant to a public speech made on 26 June 2012 by the Cambodian Prime Minister, who called for the Defendant's arrest on charges of instigating the Alleged Secession. Notwithstanding this blurring of the separation of powers between the executive and the judiciary, the conduct of the Judges throughout the Trial demonstrated a clear bias. For example, the Judges asked the witnesses and the accused men leading questions, particularly when their answers differed from their original written statements that were transcribed by the police in Kratie province. Moreover, the Judges permitted the Prosecutor to submit circumstantial and arguably irrelevant evidence such as the KPPM's invitation to the Defendant to speak at a conference in the US. Finally, the disproportionately severe 20-year sentence handed down to the Defendant, despite an overwhelming lack of evidence against him, suggests that the Judges were ultimately guided by the Cambodian Prime Minister's comments and that they were neither independent nor impartial.

Article 14(2) of the ICCPR states:

"Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."

The Defendant was denied the right to be presumed innocent until proven guilty from the moment that he was charged. Despite returning from abroad on 15 July 2012 to face the Charges, and so clearly posing no risk of absconding, he was twice refused bail, implying that the judicial and executive authorities already considered him to be guilty. Article 204 of the CPC states that "[i]n principle, the charged person shall remain at liberty. Exceptionally, the charged person may be provisionally detained [...]". There is clearly then a presumption in favor of the accused, but in this case this presumption has not been recognized. While the CPC does not specifically define what it means by "exceptionally", CCHR argues that such circumstances, whereby provisional detention would be warranted,³⁸ do not apply to the case of the Defendant by any reasonable interpretation of the situation. It should be noted, however, that it is common in contemporary Cambodia for pre-trial or provisional detention to be resorted to in cases which have political undertones, whereas charged people who pose a genuine threat to society – such as repeat child sex offenders – are often granted

³⁷ UN HRC, Communication No. 215/1986, *Van Meurs v. The Netherlands*, para. 62.

³⁸ Article 205 of the CPC states that: "Provisional detention may be ordered when it is necessary to: stop the offense or prevent the offense from happening again; prevent any harassment of witnesses or victims or prevent any collusion between the charged person and accomplices; preserve evidence or exhibits; guarantee the presence of the charged person during the proceedings against him; protect the security of the charged person; or preserve public order from any trouble caused by the offense."

bail.³⁹ The injustice of these refusals was compounded by the fact that the Defendant, a man in his early 70s, became ill as a result of the conditions at the notorious Prey Sar Prison in Phnom Penh. Furthermore, as discussed above, despite there being no sound evidence submitted in court to prove the Charges against the Defendant, he was nevertheless found guilty. It appears then that he was not presumed innocent by the judiciary at any stage of proceedings.

It should also be noted that the three other accused held in pre-trial detention – Touch Ream, Kann Sovann and Phorn Sroeun, – were brought to the Trial wearing prison uniforms. Such practice is generally deemed unacceptable by national and international trial monitors, who argue that having defendants dressed in prison uniform counters their right to be considered innocent before proven guilty.

It is also worth analyzing the facts of the case relating to both the pre-trial and trial stages, by looking at the various elements of Article 14(3) of the ICCPR in turn: *“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:*

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

Article 9(2) of the ICCPR states that *“anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him”*, so that the individual arrested can *“request a prompt decision on the lawfulness of his or her detention by a competent judicial authority”* (according to the Human Rights Committee).⁴⁰ Furthermore, Article 48 of the CPC states that the Prosecutor shall promptly inform the person in question about the charge and the type of offense. It is clear that if a person does not understand the charge against himself, he cannot be expected to defend himself adequately. While the Defendant may have been informed promptly and in detail of the nature and cause of the Charges, the same cannot be said for the other accused men. The three men detained along with the Defendant – Touch Ream, Kann Sovann and Phorn Sroeun – all stated in court that they had been confused by the charges against them and that they did not fully understand their meaning. In view of these admissions, the evidence against them – including any evidence allegedly linking them to the Defendant – cannot be deemed sound, as they could not have had the opportunity to properly challenge it as an integral part of their defense. While technically outside the scope of this Legal Analysis, it is important to consider how this fair trial right was breached in respect of the other defendants, as it sheds negative light on the validity of the evidence submitted in court that was used to help convict the Defendant. However, as regards the Defendant himself, this fair trial right was in fact satisfied.

³⁹ CCHR Media Comment, ‘CCHR Highlights Concerns about the Abuse of Pre-trial Detention in Cambodia’ (Phnom Penh 13 August 2012) <http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=press_detail.php&prid=279&id=5>.

⁴⁰ UN HRC, Communication No. 248/1987, *G. Campbell v. Jamaica*, p. 246, para 6.3.

(b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;

Human Rights Committee General Comment no. 13, paragraph 9, states: “*The accused must have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing. What is ‘adequate time’ depends on the circumstances of each case, but the facilities must include access to documents and other evidence which the accused requires to prepare his case, as well as the opportunity to engage and communicate with counsel.*” In this case, it is true that the Defendant had sufficient time to prepare his defense with the legal counsel of his choosing; however, the same cannot be said for the other accused. Once again, though, such discussion is beyond the scope of this Legal Analysis.

(c) To be tried without undue delay;

This provision was unproblematic in the case of the Trial, with only just over two months between the Defendant’s arrest and the Trial. However, there has been substantial delay in judicial proceedings since the Defendant filed for appeal on 12 October 2012: the appeal hearing, scheduled to take place on 5 March 2013, comes almost five months after the Defendant filed for appeal. Discussion of the appeal hearing is, however, beyond the scope of this Legal Analysis.

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing;

While the Defendant was present at the Trial, and was able to choose his own legal counsel, the same cannot be said for those who were accused and tried alongside him, including the Alleged Ringleaders, who were tried *in absentia*. Again, while discussion of these accused men is technically beyond the scope of this Legal Analysis, it is important to consider this point, not so much from a fair trial rights perspective, but from an evidential one. Given that they did not have the opportunity to defend themselves, and were subsequently found guilty, the evidence allegedly linking them to the Defendant cannot be deemed sound, as they did not have the opportunity to properly challenge it as an integral part of their defense. Because the Charges are contingent upon offenses committed by other defendants being properly established, if such defendants are not able to defend themselves properly, there will inevitably be a negative impact upon the likelihood of the Defendant’s being found guilty – as indeed he was.

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

In this case, the witness evidence played a significant role in securing the conviction of the Defendant. In total 14 witnesses appeared for the Prosecution – not including

the accused and civil parties, the majority of whom also testified for the Prosecution – and seven for the Defense. There were a number of concerns regarding the witness statements, relating primarily to their accuracy and even veracity. Many of the accused men were hesitant with their answers in court, and also referred to hearsay evidence rather than to first-hand knowledge. Moreover, in many regards, the witness statements were unsubstantiated and uncorroborated. One example is the witness evidence relating to the February Meeting, as discussed in the Charges and Evidence section above. Another example is the contradiction between the original statement given to the police by one of the accused men, Ma Chhang, which said that the Defendant was the leader of the Alleged Secession, and his claim in court that he did not know who was behind Bun Ratha's actions. The Judge subsequently corrected him, reminded him of his original statement, and asked him which answer he wished to maintain. Ma Chhang hesitated, and then said that he would stand by his first answer, which he had given during his alleged confession in Kratie province.

Moreover, not all of the witnesses for the Prosecution gave testimonies in court and so they could not be subjected to any cross-examination by the Defense. Even so, several testimonies in the form of statements to the judicial police officer were read aloud in court, and were awarded the same weight as the testimonies of those witnesses who did attend court to give evidence.

This development is even more concerning in view of the fact that many of the witnesses who were cross-examined in court provided different evidence to that given to the judicial police during the initial investigation in Kratie province. One possible explanation is that the judicial police officers did not record the witnesses' statements accurately. If so, however, the Judges should not have accepted these witness statements as evidence. Furthermore, some of the accused men – namely Touch Ream, Kann Sovann and Phorn Sroeun – claimed that they had been told to thumbprint their statements, which, due to their illiteracy, they could not review.

The judicial police officer who took their statements in Kratie province then appeared himself as a witness at the Trial. It is noteworthy that, despite giving evidence in court, he was not obliged to take an oath, and was present throughout the submission of the statements from the other witnesses as well as the accused. Moreover, in response to Touch Ream's, Kann Sovann's and Phorn Sroeun's claims, he stated that, when reading the statements back to the accused at the police station, he had summarized their statements on the grounds that they would not understand them otherwise. He also directly addressed them in court and told them that they should tell the truth. Not only is it unacceptable that the judicial police officer was not required to give evidence on oath and yet was allowed to intimidate witnesses in court, it is of course wholly improper for any accused person not to have his entire statement read back to him for his verification. It is also not for a judicial police officer, or any other public official, to record their version of a person's evidence, which should be recorded verbatim. In view of these gross errors

in procedure, it is clear that much of the witness evidence was unsound and should not have been relied upon. It is a travesty of justice that the court appears to have done just that.

It should also be noted that some of the witness evidence that the Defense wished to introduce was not permitted, for example the aforementioned radio interview with Bun Ratha, which took place on 21 August 2012. In sharp contrast, speculative evidence for the Prosecution was permitted, for example the KPPM's invitation and the statements of witnesses who were not present and therefore could not be verified or challenged by Defense counsel.

Finally, the veracity of the testimonies provided by the witnesses must be considered. It cannot be reasonably conceived that those men – who received significantly shorter sentences as a result of their alleged confessions and the evidence which they provided against the Defendant and the Alleged Ringleaders – were unbiased in their accounts. Their witness evidence did not stand up during questioning, and so should clearly not have been relied upon to secure any convictions.

In view of these shortcomings as regards witness evidence, the Defendant's right to examine – or have examined – the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him, was clearly and severely violated.

(g) Not to be compelled to testify against himself or to confess guilt;

Violation of this fair trial right does not apply directly to the Defendant. However, as mentioned above, the three accused men who were detained alongside the Defendant – Touch Ream, Kann Sovann and Phorn Sroeun – all said that they were told by the judicial police officer in Kratie province to thumbprint their statements despite being unsure of the content. Again, while discussion of these accused men's fair trial rights is technically beyond the scope of this Legal Analysis, it is again important to consider this point, not so much from a fair trial rights perspective, but from an evidential one. Not only can this evidence not be relied upon since it is unsound, but insofar as this evidence was allowed by the court and played a part in incriminating the Defendant, their right not to be compelled to testify against themselves or confess guilt was violated and was damaging to the interests and rights of the Defendant.

Furthermore, other procedural irregularities were observed as regards the Trial, such as that the Judges failed to explain the Defendant's right to either answer or not answer questions, or his right to appeal (rather than simply informing him of these rights), both of which domestic and international trial monitors generally consider to be important components of a fair trial.

It is clear from the above analysis, therefore, that a significant proportion of the Defendant's key fair trial rights were violated in a number of respects, which means that his conviction is unjustifiable and illegal under both international and Cambodian law on procedural – as well as substantive human rights and legislative – grounds.

7. Conclusion

CCHR condemns in the strongest possible terms the guilty verdict brought against the Defendant. Over the course of four days of close monitoring of the Trial, CCHR heard not a shred of evidence that in any way connected the Defendant with the Alleged Secession. Furthermore, CCHR heard nothing that convincingly established that the Alleged Secession was not just another, rather better organized, protest against yet another land eviction, with the Pro Ma Incident just another, rather more brutal, suppression of yet another land protest. CCHR therefore argues that the Charges are totally unfounded and bogus.

Given the lack of evidence, the only rational, reasonable and legal thing that the court could have done, as CCHR and many others urged during the Trial, would be to acquit the Defendant of all the Charges and set him free immediately. His sentencing represents a gross travesty of justice – an outrageous violation of his rights to freedom of expression and association, his right to liberty, and his fair trial rights, including the fundamental right to be deemed innocent until proven guilty. One of Cambodia's most prominent HRDs, the Defendant said from prison shortly after his arrest: *“Even though I am incarcerated, in my heart I am free ... I have done nothing wrong, therefore I will not hide.”*

This verdict came towards the end of a year which saw Cambodia's image on human rights take a real battering, with female garment factory protestors shot by the city governor in Svay Rieng province in February 2012, a leading environmental activist shot dead by the military in Koh Kong province in April 2012, 13 women from Phnom Penh's Boeng Kak community sentenced for protesting for their land and housing rights in May 2012, and whole communities violently evicted from their homes all around the country throughout the year. The Trial was an opportunity for the Cambodian judiciary to set the record straight on fair trial rights and ensure that the Defendant received a fair hearing, in line with Cambodia's domestic and international legal commitments. Tragically, it has misguidedly decided to pass up this opportunity, and fallen woefully short of its moral and legal obligations, in the process drawing international attention to its unsophisticated and brazen methods and proving that it is not fit for purpose. There has been no effort whatsoever to disguise the political interference, and it will be no surprise now if whatever faith Cambodians still had in the judiciary to deliver justice evaporates for good.

Moreover, the sentence is totally lacking in proportion: 20 years is practically a life sentence in many countries, and a death sentence for a man in his early 70s. At a time when Cambodia should be making amends for the depressing roll call of human rights violations last year, the judiciary has only brought further shame to the country.

It is hoped that the judiciary will honor its legal obligations, and consider the Charges and the evidence as highlighted by this Legal Analysis. If it does, CCHR expects the Defendant to

be acquitted of the Charges at his appeal on 5 March 2013 and released immediately. If not, it will be the final death knell for the credibility of Cambodia's judicial system.

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Notes on CCHR:

CCHR, founded in November 2002, is a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

CCHR is a member of the International Freedom of Expression Exchange (IFEX), the global network for freedom of expression.

The Cambodian Human Rights Portal www.sithi.org is the 2011 winner of the Information Society Innovation Fund Award in the category of Rights and Freedoms.

Annex: Timeline of Events

The table below sets out in chronological order the key events that relate to the case of the Defendant, the land dispute in Kratie province, the Alleged Secession and the Pro Ma Incident.

1996	Casotim was granted a 15,000-hectare forest concession in Kratie province, ⁴¹ 15,000 hectares of which was in Pro Ma village.
10 May 2010	The Democrat Association was formally registered with the Ministry of the Interior by the Defendant. ⁴²
21 August 2010	Bun Ratha led 600 families in a protest in Phnom Penh, successfully requesting that Prime Minister Hun Sen intervene and help resolve a land dispute in Kampong Cham province. ⁴³
16 September 2010	The Democrat Association set up a branch in Kampong Cham province. ⁴⁴
2 February 2011	Bun Ratha became a member of the Democrat Association. ⁴⁵
March 2011	Bun Ratha became a volunteer for the Democrat Association. ⁴⁶
14 July 2011	The Democrat Association set up a branch in Kratie province. ⁴⁷
3 August 2011	Sok Tong was appointed by the Democrat Association to lead it in Memot district, Kampong Cham province. ⁴⁸
10 August 2011	Bun Chhaun was appointed by the Democrat Association as Sok Tong's deputy in Memot district, Kampong Cham province. ⁴⁹
November 2011	Bun Ratha resigned from the Democrat Association. ⁵⁰
January 2012	Start of the conflict in Kratie between Casotim and the Villagers. ⁵¹
Early January 2012	Ly Hout and Pich Punreay, representatives of Casotim, deployed police officers from Chhlaung district and the Police Station of Kampong Damrei commune to defend Casotim while the conflicted land was cleared.
18 January 2012	Four villagers were shot with AK-47s in Snuol district, Kratie province, in a land dispute with TTY Corporation Co Ltd. ⁵²
Late January/Early February 2012	Members of Bun Ratha's group went to Phnom Penh and met briefly with the Defendant; Bun Ratha did not attend. ⁵³
February-April 2012	Meetings were conducted between Bun Ratha's group and the Villagers. ⁵⁴
10 March 2012	Bun Ratha and his group moved to Pro Ma village. ⁵⁵
12 March 2012	The Defendant left Cambodia for the US. ⁵⁶ On the same day Ly Hout

⁴¹ — 'Villagers to continue road block' *The Phnom Penh Post* (Phnom Penh 9 April 2012).

⁴² Magistrate's Court of Phnom Penh, Decision 2207/1410/65, p.59.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ LICADHO, 'The Mam Sonando Case Explained' (Briefing Paper) (August 2012) <<http://licadho-cambodia.org/reports/files/170LICADHOBriefingPaper-MamSonandoExplained2012-English.pdf>>.

⁵² — 'Hard road to resolution' *The Phnom Penh Post* (Phnom Penh 20 January 2012).

⁵³ Magistrate's Court of Phnom Penh, Decision 2207/1410/65, p.59.

⁵⁴ *Ibid.* pp.14-15, 17.

⁵⁵ *Ibid.* p.60.

	transported log and construction materials to build a construction site on the land belonging to Villager Srit Tun. Roughly 500 Villagers intervened to demonstrate in defense of Srit Tun, interrupting Casotim's activities. Casotim's company branch office was alleged to have been burnt.
13 March 2012	The local authorities in Kampong Damrei commune went to question Srit Tun, intending to arrest him, but the Villagers once again intervened. The authorities claimed that such intervention was led by Bun Ratha.
17/18 March 2012	The Defendant attended events in Lynnwood, Washington, US, with Suon Serey Ratha, leader of the KPPM, a US-based group opposed to the CPP and advocating democratic reforms. ⁵⁷
30 March 2012	The Defendant attended another KPPM event in Stockton, California, US.
31 March 2012	The Defendant attended another KPPM event in Fresno, California, US.
6 April 2012	Bun Ratha was arrested and charged with destroying private property in relation to attempts to defend Pro Ma village's community land claims. Ly Hout, a Casotim representative, said that Casotim had filed a complaint against Bun Ratha because he had incited the Villagers to burn the company branch office on 12 March 2012. ⁵⁸ 200 Villagers protested and blocked the road after Bun Ratha was arrested. ⁵⁹
9 April 2012	Around 700 Villagers in Kratie province protested to persuade provincial authorities to release Bun Ratha. ⁶⁰
10 April 2012	Bun Ratha was released. ⁶¹
22 April 2012	Based on the testimony of two military officials named Chhoeun Phoeun and Roemun Rum, at 11.30am Bun Ratha and a group of Villagers detained them to ask for information and then released them afterwards. The two officials claimed that they had gone to the area on the orders of their commissioning officer so as to invite soldiers to attend a training session, but the Villagers accused them of defending Casotim. On the same day, at approximately 1.20pm, Bun Ratha and a group of Villagers gathered together to force entry into the Kampong Damrei commune police station. They forcefully acquired police documents and tore up the police station's temporary settlement list. ⁶²
27 April 2012	At 4.00pm, Bun Ratha and a group of Villagers chased out three security guards working for Chan Sophea Aphivath Company and arrested eight Casotim workers, while 13 fled the area.
28 April 2012	Based on police records, those arrested were released. However, according to

⁵⁶ *Ibid.* p.11.

⁵⁷ The KPPM, 'Re: Mr. Mam Sonando Prisoner of Conscience in Cambodia & other land rights activists' (Letter) (7 November 2012) <http://www.kppmradio.org/letter_to_the_president_of_the_us.pdf>.

⁵⁸ — 'Villagers to continue road block' *The Phnom Penh Post* (Phnom Penh 9 April 2012).

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ Open Development Cambodia, 'Villager freed after road block' (10 April 2012)

<<http://www.opendevelopmentcambodia.net/tag/bun-ratha/page/3/>>.

⁶² Magistrate's Court of Phnom Penh, Decision 2207/1410/65, p.60.

	witnesses during the Trial, the Villagers did not in fact detain the Casotim workers but merely demanded that Casotim return their land to them. ⁶³ The committee managing the conflict area in Kampong Damrei commune went to the area to solve the conflict but stepped back when they allegedly received information that the Villagers possessed weapons and intended to use them against the state authority. However, the Villagers testified that they in fact engaged with this committee. ⁶⁴
30 April 2012	Bun Ratha measured land to give to the people. ⁶⁵
1 May 2012	The Governor of Kratie province sent a report to the Ministry of Interior with respect to the “land conflict resolution dialogue” and the “anarchic acts by the group of the Democrat Association at Pro Ma village”. ⁶⁶
2 May 2012	Bun Ratha organized a group of people to erect barriers at four points of access to Pro Ma village. ⁶⁷
4 May 2012	Based on the report from the Governor of Kratie province, the Minister of Interior authorized the Kratie provincial authorities to resolve the conflict according to the law, <i>i.e.</i> , through non-violent means. ⁶⁸
7 May 2012	Prime Minister Hun Sen ordered an immediate moratorium on concessions. ⁶⁹
14 May 2012	Deputy Prosecutor of the First Provincial Court of Kratie issued a summons to interrogate five suspects – Sok Tong, Bun Chhorn, Bun Ratha, Khatt Saroeun, and Ma Chhang – based on criminal case number 203, dated 14 April 2012.
15 May 2012	Hundreds of military and police established a “lock-down” on Pro Ma village in a military-style operation, claiming that the operation was organized solely to arrest the Alleged Ringleaders. The Villagers said that the attack was motivated by the ongoing land dispute with Casotim. ⁷⁰
16 May 2012	Armed forces, aided by a helicopter gunship, stormed Pro Ma village in an effort to evict around a thousand families living in the concession area. A 14-year-old girl, Heng Chantha, was shot and later died of her injuries. ⁷¹ Police arrested numerous individuals said to be plotting with the Democrat Association. ⁷² The Villagers alleged that military police forced men and women to strip naked, handcuffed them, and imprisoned the men while the women (including

⁶³ *Ibid.*

⁶⁴ *Ibid.*, p.61.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ Magistrate’s Court of Phnom Penh, Decision 2207/1410/65, p.9.

⁶⁸ *Ibid.*, p. 62.

⁶⁹ — ‘Girl killed in land row’ *IOL News* (16 May 2012)

<http://www.cchrcambodia.org/media/files/news/684_201igkilr_en.pdf>.

⁷⁰ LICADHO, ‘LICADHO Calls for Investigation into Deadly Kratie Shooting’ (Press Release) (17 May 2012)

<<http://www.licadho-cambodia.org/pressrelease.php?perm=277>>.

⁷¹ — ‘Teenage girl shot dead in Kratie land eviction’ *The Phnom Penh Post* (Phnom Penh 16 May 2012).

⁷² CCHR, ‘Arrest of Mam Sonando a shameful attempt to muddy the waters over Kratie land conflict’ (Press Release) (15 July 2012)

<http://www.cchrcambodia.org/media/files/press_release/265_201cpraoms%28_en.pdf>.

⁷³ LICADHO, ‘LICADHO Calls for Investigation into Deadly Kratie Shooting’ (Press Release) (17 May 2012)

<<http://www.licadho-cambodia.org/pressrelease.php?perm=277>>.

⁷⁴ LICADHO, ‘The Mam Sonando Case Explained’ (Briefing Paper) (August 2012) <<http://licadho-cambodia.org/reports/files/170LICADHOBriefingPaper-MamSonandoExplained2012-English.pdf>>.

	<p>pregnant women) were forced to stand in the sun for several hours. The Villagers also accused soldiers of stealing money and gasoline, as well as slaughtering livestock.</p> <p>Kratie Provincial Governor Sar Chamrong alleged that police had clashed with a large group of Villagers armed with axes, knives, hoes, crossbows and arrows.⁷³ Despite this claim, no injuries to government forces were reported. The authorities denied journalists, NGO and UN representatives access to the site. With the exception of a chaperoned visit by some UN officials, the lockdown continued for several days afterwards.⁷⁴</p>
17 May 2012	The Ministry of the Interior released a statement, alleging that demonstrators abducted two soldiers and seized their weapons. ⁷⁵ However, at the Trial, investigators were unable to establish when exactly this happened, instead referring to an “unidentified date”. ⁷⁶
20 May 2012	The Defendant informed a meeting in Virginia, US, that he feared that he would be arrested when he returned to Cambodia. ⁷⁷
23 May 2012	Dozens of police, in the search for the Alleged Ringleaders, stormed Bun Ratha’s mother’s home in Kampong Cham province. Bun Ratha and his father, Bun Chhorn, have been on the run from the authorities since the Pro Ma Incident. ⁷⁸
8 June 2012	Five out of eight individuals said to be involved in the Alleged Secession were released on bail. The men were charged with committing insurrection against a public authority, facing jail terms of between seven and 15 years. ⁷⁹
14 June 2012	Prime Minister Hun Sen called for Bun Ratha’s arrest. ⁸⁰
22 June 2012	At the Office of the Prosecutor General at the ICC in the Hague, the Defendant interviewed Suon Serey Ratha, head of the KPPM. Suon Serey Ratha had just submitted a resolution to the ICC accusing the RGC of crimes against humanity with respect to Cambodia’s land rights violations crisis. ⁸¹
25 June 2012	Beehive Radio broadcast the Defendant’s 22 June interview with Suon Serey Ratha that accused the RGC of crimes against humanity. ⁸²
26 June 2012	Prime Minister Hun Sen called for the Defendant’s arrest during a public speech at the Koh Pich Convention and Exhibition Centre, stating that he was leading a plot to overthrow the RGC and attempting to establish a state-within-a-state. ⁸³

⁷⁵ — ‘Cambodian troops seal off village after land clashes’ *The Guardian*, (London 17 May 2012)

<<http://www.guardian.co.uk/world/2012/may/17/cambodian-troops-land-clashes>>.

⁷⁶ Magistrate’s Court of Phnom Penh, Decision 2207/1410/65, p.102.

⁷⁷ — ‘Owner of Beehive Radio Remains in US on Fears of Arrest’ *VOA Khmer* (23 May 2012)

<<http://www.voacambodia.com/content/owner-of-beehive-radio-remains-in-us-on-fears-of-arrest-153134645/1356044.html>>.

⁷⁸ Open Development Cambodia, ‘Police Surround Homes in Search of Alleged Secessionists’ (23 May 2012)

<<http://www.opendevdevelopmentcambodia.net/tag/bun-ratha/page/2/>>.

⁷⁹ — ‘Bail for Kratie land activists’ *The Phnom Penh Post* (Phnom Penh 8 June 2012).

⁸⁰ — ‘Hun Sen Orders Arrest of Ring Leader in Kratie Land Dispute’ *Khmerization*, (14 June 2012)

<<http://khmerization.blogspot.com/2012/06/hun-sen-orders-arrest-of-ring-leader-in.html>>.

⁸¹ CCHR, “The Case of Human Rights Defender Mam Sonando” (Briefing Note) (2 August 2012)

<http://www.cchrcambodia.org/admin/media/analysis/english/2012_08_02_CCHR_Briefing_Note_on_the_Case_of_Mam_Sonando_%20Aug%202012.pdf>.

⁸² CCHR, ‘Tomorrow’s Mam Sonando hearing an opportunity to set the record straight on fair trial rights’ (Press Release) (10 September 2012) <http://www.cchrcambodia.org/media/files/press_release/285_2012ce_en.pdf>.

2 July 2012	Investigating Judge Chok Nguon of Kratie Provincial Court issued an arrest warrant accusing the Defendant of crimes relating to participation in an “insurrectionary movement”. ⁸⁴
6 July 2012	The Democrat Association held a press conference at which it denied any links between the Defendant and Bun Ratha. The Democrat Association also stated that Bun Ratha was not an active member of their organization. ⁸⁵
12 July 2012	The Defendant returned to Cambodia from a trip to Switzerland and the US in order to answer the accusations against him. ⁸⁶
14 July 2012	The last day of the ASEAN Regional Forum in Phnom Penh, attended by the US Secretary of State, Hilary Clinton, EU Commissioner of Foreign Affairs, Catherine Ashton, and representatives of ASEAN member countries. ⁸⁷
15 July 2012	The Defendant was arrested on accusations of leading a secessionist movement in Kratie province and held in pre-trial detention, without bail, in Prey Sar prison. ⁸⁸
16 July 2012	The Defendant was formally charged under Articles 28, 456, 457, 464, 504 and 609 of the Penal Code. ⁸⁹
17 July 2012	Bun Ratha confirmed in an interview with Voice Of America that the Defendant was in no way involved in the land dispute in Kratie province, and that he himself held no position in the Democrat Association. ⁹⁰
22 July 2012	The RGC announced that a total of six Villagers had confessed to secession in Kratie province, but it is widely believed that they were pressured into confessing to avoid arrest and prison.
2 August 2012	Amnesty International designated the Defendant a “prisoner of conscience”, expressly finding that he was arrested and imprisoned solely for exercising his fundamental right to freedom of expression. ⁹¹
15 August 2012	The Phnom Penh Municipal Court decided to pursue politically-motivated charges against Chan Soveth of the Cambodian Development and Human Rights

⁸³ CCHR, ‘The Case of Human Rights Defender Mam Sonando’ (Briefing Note) (2 August 2012) <http://www.cchrcambodia.org/admin/media/analysis/analysis/english/2012_08_02_CCHR_Briefing_Note_on_the_Case_of_Mam_Sonando_%20Aug%202012.pdf>.

⁸⁴ LICADHO, ‘Release Mam Sonando, Owner of Cambodia’s Oldest Independent Radio Station’ (Press Release) (16 July 2012) <<http://www.licadho-cambodia.org/pressrelease.php?perm=287>>.

⁸⁵ CCHR, ‘Arrest of Mam Sonando a shameful attempt to muddy the waters over Kratie land conflict’ (Press Release) (15 July 2012) <http://www.cchrcambodia.org/media/files/press_release/265_201cpraoms%28_en.pdf>.

⁸⁶ CCHR, ‘Tomorrow’s Mam Sonando hearing an opportunity to set the record straight on fair trial rights’ (Press Release) (10 September 2012) <http://www.cchrcambodia.org/media/files/press_release/285_201ce_en.pdf>.

⁸⁷ CCHR, ‘The Case of Human Rights Defender Mam Sonando’ (Briefing Note) (2 August 2012). <http://www.cchrcambodia.org/admin/media/analysis/analysis/english/2012_08_02_CCHR_Briefing_Note_on_the_Case_of_Mam_Sonando_%20Aug%202012.pdf>.

⁸⁸ CCHR, ‘Arrest of Mam Sonando a shameful attempt to muddy the waters over Kratie land conflict’ (Press Release) (15 July 2012) <http://www.cchrcambodia.org/media/files/press_release/265_201cpraoms%28_en.pdf>.

⁸⁹ LICADHO, ‘Release Mam Sonando, Owner of Cambodia’s Oldest Independent Radio Station’ (Press Release) (16 July 2012) <<http://www.licadho-cambodia.org/pressrelease.php?perm=287>>.

⁹⁰ CCHR, ‘Tomorrow’s Mam Sonando hearing an opportunity to set the record straight on fair trial rights’ (Press Release) (10 September 2012) <http://www.cchrcambodia.org/media/files/press_release/285_201ce_en.pdf>.

⁹¹ Amnesty International, ‘Cambodia: Baseless conviction of government critic reflects shrinking space for free speech’ (Press Release) (1 October 2012) <<http://www.amnesty.org/en/for-media/press-releases/cambodia-baseless-conviction-government-critic-reflects-shrinking-space-fre>>.

	Association (“ADHOC”). He was summonsed to answer charges that he illegally aided a resident of a Kratie village. It was alleged that Chan Soveth offered unspecified assistance to one of the Alleged Ringleaders. ⁹²
23 August 2012	The Phnom Penh Municipal Court Judge approved a proposal to delay the case against Chan Soveth. ⁹³
11-14 September 2012	The Defendant’s hearing at the Phnom Penh Municipal Court.
1 October 2012	The Verdict was handed down at the Phnom Penh Municipal Court: the Defendant was found guilty of all the Charges, under Articles 28, 456, 457, 464, 504 and 609 of the Penal Code. He was sentenced to 20 years in prison and a fine of 10 million riel. Bun Ratha was sentenced <i>in absentia</i> to 30 years in prison.
12 October 2012	The Defendant filed an appeal submission with the Phnom Penh Municipal Court.
18 October 2012	The Phnom Penh Municipal Court accepted the appeal submission.
19 November 2012	Prior to the ASEAN/East Asia Summit, US President Barack Obama urged Prime Minister Hun Sen to release the Defendant and all other political prisoners with immediate effect, to which Hun Sen replied that there were no political prisoners in Cambodia. ⁹⁴
22 November 2012	The Defendant’s case was transferred to the Court of Appeal. ⁹⁵
13 December 2012	The Defendant was denied bail in advance of his appeal hearing; the judge claimed that his dual citizenship made him a flight risk, as well as a risk to public order. ⁹⁶
24 December 2012	Chan Soveth appeared for questioning at the Phnom Penh Municipal Court regarding allegations that he assisted one of the Alleged Ringleaders.
8 February 2013	The Charges against Chan Soveth were dropped.
17 February 2013	A date was set for the Defendant’s appeal hearing – 5 March 2013.
26 February 2013	An Amicus Brief on Freedom of Expression, written by Media Legal Defence Initiative (“MLDI”) and Media Defence South East Asia (“MDSEA”), was submitted by CCHR to the Court of Appeal. ⁹⁷
5 March 2013	The Defendant’s appeal hearing is due.

⁹² LICADHO, ‘Charges Against ADHOC Staffer Mark Decade’s Most Serious Threat to Human Rights Work in Cambodia’ (Press Release) (15 August 2012) <<http://www.licadho-cambodia.org/pressrelease.php?perm=289>>.

⁹³ Open Development Cambodia, ‘Rights worker’s hearing delayed’ (24 August 2012) <<http://www.opendevelopmentcambodia.net/tag/bun-ratha/>>.

⁹⁴ — ‘Obama Presses Hun Sen on Human Rights’ *The Cambodia Daily* (Phnom Penh 20 November 2012) <<http://www.cambodiadaily.com/news/obama-presses-hun-sen-on-human-rights-record-6174/>>.

⁹⁵ — ‘Beehive Radio Case moves to Appeals Court’ *VOA Khmer* (26 November 2012) <<http://www.voacambodia.com/content/beehive-radio-case-moves-to-appeals-court/1553006.html>>.

⁹⁶ — ‘Court of Appeal rejects Sonando bail request’ *The Phnom Penh Post* (Phnom Penh 13 December 2012).

⁹⁷ MLDI – MD-SEA – CCHR Joint Press Release, ‘MLDI and MD-SEA Submit an Amicus Brief to the Court of Appeal Regarding the Case of Mam Sonando’ (27 February 2013) <http://www.cchrcambodia.org/index_old.php?url=media/media.php&p=press_detail.php&pid=363&id=5&lang=eng>.