

Access to Land and Justice: Anatomy of a State without the Rule of Law¹

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“One does not need expertise in human rights to recognise that many policies of the government have subverted the essential principles of democracy and due process, deprived people of their economic resources and means of livelihood, and denied them their dignity. I have come to believe that these policies are integral to the political and economic systems through which the government rules, which has manipulated democratic process, undermined legitimate political opposition, used the state for the accumulation of private wealth. In short I believe that the deliberate rejection of the concept of a state governed by the rule of law has been central to the ruling party’s hold on power” (Special Representative of the Secretary General on Human Rights in Cambodia, statement to the UN Human Rights Council, 26 September 2006).

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I. Abstract

Focusing on land issues, the paper discusses the consequences of the absence of the rule of law and the consequent unequal access to justice in Cambodia. During the Khmer Rouge regime, the systems both of land and law and courts were destroyed. Land was collectivized, private ownership was abolished, and records of land titles were destroyed. There was significant resettlement of people, with the emptying of towns. After the defeat of the regime and the subsequent withdrawal of the Vietnamese in 1989, a programme of land reform was instituted. A land law was passed in 2001, which constitutes the legal framework for land rights and transactions. The State is the primary owner of land. However, private ownership of land is permitted; earlier decrees had provided for the grant of private rights on the basis of possession for a year. The 2001 entitles an individual or group to registration as owner after possession of land for five years. Distinction is made between different kinds of land (e.g., farming, forestry, urban, and industrial), the primary distinction being between public and private land and land belonging to indigenous communities. There is a lengthy chapter which defines indigenous communities and the legal nature of their land (which are collectively owned) and in which transactions are restricted to protect their interests ('no authority outside the community may acquire any rights to immovable properties belonging to an indigenous community').

As the 2001 law sets up a new regime of land (on what might be called *tabula rasa*), there were considerable opportunities for individuals and groups to stake their claims for private ownership of land. The government has considerable powers to grant limited forms of occupation and use of land. Other agencies of the state play an important role in the management of the Land Law. Disputes are resolved by the courts, the cadastral commission, communes and other authorities connected to the state. Since land is one of the most important assets in Cambodia, and since the vast majority of the people depend on land for livelihood or other modes of occupation, the manner in which land rights are recognized and allocated has a profound impact on social and economic development—and the distribution of resources among different groups and communities. It is for this reason essential that the process of recognition and allocation should be conducted in strict conformity with the letter and the spirit of the law and policy, i.e., by adherence to the Rule of Law, in which all have access to institutions of justice.

The Khmer Rouge had also destroyed institutions of the state and the policy of neutrality as between different classes and communities. Laws were abolished and compilations of legislation destroyed. Most lawyers and judges were killed or went into exile (and a few survived by hiding in the country). The succeeding regime started the task of rebuilding—but on communist lines which did not recognize the independence of the judiciary or prosecution. The UNTAC placed a high priority on the re-establishment of legal institutions and the enactment of laws to develop the legal system. Progress has been very slow. The government has shown little interest in establishing independent institutions. Neither the judiciary nor the prosecution is independent, the legal profession has come under great pressure from the government, and a faction of the Bar Association which now runs the administration, is closely allied to the government. Cambodia fails to satisfy any of the criteria of the Rule of Law. The consequences of the failure of the Rule of Law are obvious, and widely commented. In relation to land, it has grossly disadvantaged rural communities and indigenous peoples, and people living in urban settlements. A rich class has developed through the patronage of the ruling elite; it enjoys great impunities, while their victims are harassed through the legal process and in other ways.

This paper begins by a brief survey of land regimes in Cambodia, marked by fundamental transformations. It then points to the importance of the rule of law and surveys briefly the situation of the rule of law in Cambodia. This is followed by an examination of the relevant provisions of land law and their systematic evasion and breach, which results in total denial of access to justice of any kind. The violations of the Rule of Law regarding land have brought great hardship to the people, impoverished the country, led to gross disparities of wealth, and destroyed faith in the legal system.

II. Land Regimes in Cambodia³

A precondition for social and economic development in any society is its ability to define and enforce property rights. Property rights to land are particularly critical. Economic growth, the development of markets, and increased population density tend to raise the value of land, which can lead to either the development of institutions that define and protect property right or costly conflicts over land rights. The necessary institutions are unlikely to develop spontaneously, leaving an important role for the state.

The benefits from appropriate interventions to strengthen property rights and tenure security can be significant, both in terms of equity and reduced expenditure on defensive activities and in terms of economic growth, as a result of improved access to credits and higher investments among the land holders. However, to increase the security of property rights, legal and institutional issues need to be handled together with the broader social and economic environment within which land rights are embedded. On the legal side, the definition of property rights to land and the way in which people can acquire and transfer such rights must be clear and equitable, consistent with traditions and practices, and defined over sufficiently long periods of time. The risk of losing the rights to discretionary bureaucratic behavior must be minimized. On the institutional side, the procedures need to be simple, transparent, and accessible, and the services should be provided effectively and at low cost.

Cambodia has gone through dramatic political changes during the past four decades, and each new government has introduced its own system for the use and ownership of land - these changes have created both confusion and conflict. The legal and institutional framework set up by the French colonial administration was completely destroyed when the Khmer Rouge took control of the country in 1975. They rejected private ownership of land, and instituted a comprehensive program for the resettlement of people, to break up the existing fabric of society. After the Khmer Rouge regime, under the People's Republic of Cambodia (1979-1989), land remained under collective ownership and was used according to the socialist ideology of the regime.

Soon after the departure of the Vietnamese in early 1989, it became clear that Cambodia needed a new national constitution, including a land reform and a new land law, to recognize private property and to mark the shift from socialism to a market economy. Shortly before the adoption of the Constitution establishing the State of Cambodia (1989-1993), Sub-Decree No. 25 was issued. This act, along with the passage of a complementary land management policy later in the year, led to the redistribution of collectively owned land to

³ This section is based on *Land and Human Development in Cambodia* (UNDP Funded Discussion Paper No. 5, Phnom Penh, 2007).

the population and the establishment of private land rights. The land rights were only available to Khmer citizens who had used and cultivated their land continuously for at least one year before the promulgation of the market oriented policies. The reform recognized ownership rights to residential land-plots not bigger than 2 000 square meters, possession rights for cultivated land-plots of less than 5 hectares, and concession rights for plantation land-plots larger than 5 hectares. The ownership rights from the earlier regimes were not recognized in the land allocation process: instead, the redistribution was based on a formula including household size and other household characteristics. The reason was that there were no documents left to prove formal land ownership from the colonial period, at the same time as claims based on historical or traditional land ownership rights were considered too vague or imprecise. One consequence was that the nominal distribution of land after the reforms in 1989 was remarkably egalitarian.

The reforms also attempted to create a land use and possession registration program by establishing a Department of Land Titles. However, the Department was overwhelmed by the receipt of 4.5 million applications for titles over the course of two years and quickly became permanently backlogged. Most of the land holdings established through the 1989 land redistribution program are therefore not properly documented. Three years later the National Assembly passed the 1992 Land Law. This act formally completed the process of land reform that had begun with Sub-Decree No. 25. The Land Law was very similar to previous Cambodian Civil Codes, recognizing succession, will, sale, gift, and possession as the processes by which ownership could be transferred. To acquire ownership through possession, the possessor of the land had to a) be in possession of the land for at least five years, b) submit a written application to the local authorities and c) regularly pay taxes (State of Cambodia 1992, Article 65),

With the departure of UNTAC in 1993, the National Assembly passed a new constitution establishing the Kingdom of Cambodia, finally returning full control of the country to its own people. The constitution reasserted the right of individuals to own land but limited it to Cambodian citizens. However, it soon became clear that the 1992 Land Law had significant weaknesses (Williams, 1999). In particular, the possibility to claim ownership solely on the basis of possession, coupled with the lack of documentation of the ownership and possession rights established through the 1989 land reforms and the 1992 Land Law, set the stage for land grabbing and power abuses. As the Vietnamese withdrew from Cambodia, a massive land grab began, especially in Phnom Penh. Some officials began to act as though State property and vacant private property (or property that could be rendered vacant by the use of force) was theirs to occupy, "own" and therefore sell. The rushed passage of the 1992 Land Law to some extent legitimized these expropriations. It has even been claimed that the 1992 law became a "get rich quick" manual for the upwardly mobile who knew how to satisfy the formal registration requirements: few rural families had managed to secure the necessary documentation to prove their land ownership rights.

Over the course of the next decade numerous drafts for a new land law were put forth. A new law was finally passed in August 2001, addressing many of the weaknesses of the 1992 legislation. For instance, in the new law temporary possession is removed as a means of acquiring land. Only those people who were already in legal possession of a plot of unoccupied land at the time of passage were allowed to complete the 5-year period of occupation required to become legal owner (Kingdom of Cambodia 2001, Article 31); No-one who attempts to acquire land by temporarily possessing a plot after the law came into effect is allowed to gain ownership. Also, for those who had taken possession of their land before the law was enacted, the part of the 1992 law that required a written application in

order for a household to secure legal ownership was removed (State of Cambodia 1992, Article 42).

To make up for the removal of temporary possession as an avenue to ownership, the new law creates the possibility to establish social concessions. While the government granted large-scale economic concessions to large firms in the 1990s, the social concessions under the new law allow landless people to apply for a piece of land to be used for residence or subsistence farming free of charge (Kingdom of Cambodia 2001, Article 51). The new law also provides for the implementation of a nationwide land titling system, including a simpler land registration system that can be implemented at the village level. Thanks to these adjustments, there is consensus that the formal legal law is now sufficient to handle most of the challenges related to the land market. The 2001 Land Law provides legal protection to establish the security of land tenure. It provides a fundamental basis for the reduction of land disputes, and facilitates land management by clarifying the ownership regime for land and creating protection for state property.

For effective implementation of the Land Law a number of sub-decrees and regulations in the area of land management are required. These include e.g. sub-decrees to ensure a fair and just resolution of land disputes, to register land ownership, and to manage social land concessions. The process of setting up this supporting legislation has been underway since 2001, and some important advances have been made. For instance, to ease the pressure on the overburdened and inefficient judicial system, a Cadastral Commission was established in 2002 to resolve land disputes outside the formal legal system. Yet, the promulgation of other necessary sub-decrees and regulations has been slow. The legal and institutional framework in this area is therefore still weak, and the existing laws are not implemented in a fully satisfactory manner.

Since Cambodia is still a predominantly agrarian society, with over 70 percent of the population engaged in agriculture and subsistence consumption absorbing nearly two-thirds of agricultural output, it is obvious that access to land is a crucial determinant of human development. To survive, most rural families need access to farm land. To escape poverty, they need enough land to feed their families and property rights that are secure enough to motivate long-term investments in land improvements and technical progress. However, many rural households in Cambodia suffer either from landlessness or near landlessness, or lack formal property rights to the land they live on. Consequently, poverty is widespread in Cambodia's rural areas, and agricultural productivity growth is lower than in most other parts of East Asia. Land conflict is common, and there are signs that the number of land disputes is actually increasing: both the formal court system and the NGOs monitoring the land sector report an increase in land disputes since the late 1990s. A likely consequence of the many disputes is that landlessness or near landlessness is also on the rise. This, in turn, constrains rural development.

III. Rule of Law

The rule of law means that the affairs of the state, and its relations with the people, are conducted strictly in accordance with the law, especially the constitution. All state authority must be founded on the law. Laws or state policies which are inconsistent with the constitution are invalid. The law must be fair and respect fundamental human rights. It is up to the courts, not the government, to determine whether a law is invalid or what is the

meaning of a provision of the law. The law must bind all, including the government, and all citizens must receive equal treatment before the law. No one is above the law. The law must be administered impartially, without fear or favour. An important function of the rule of law is to limit the powers of the state and to protect citizens and communities against the arbitrary acts of the state or other forces.

The establishment of the rule of law depends on a combination of laws, institutions and procedures. The laws must be just and enunciated in accordance with constitutional norms—and therefore must not derogate from constitutionally protected fundamental rights. Laws must be made in accordance with prescribed rules and procedures. Laws which do not meet these criteria are void. Ultimately it is up to the courts to decide whether a law is valid. But it is important that a person who considers that a law violates his or her rights or is in breach of the constitution should be able to challenge it without being victimised. The public must have access to the laws. This means that the law must be written in clear language and a person who wants to know the law should be able to find it easily. Consequently laws must be published and be available to the public. Publicity of the law is intended to enable a person to conduct his or her affairs in accordance with the law, and thus encourages obedience to the law. It is an important legal principle that no one can be punished for an act that was not prohibited at the time the act was committed. So criminal laws cannot be retrospective.

Laws must be applied fairly and without discrimination. As no one is above the law, everyone is accountable for his or her conduct or wrongdoing. No person can escape the law because that person is well connected with the ruling party or a powerful politician. If a law is not applied to a person because of his or her connections or status, we say that the person has impunity from the legal process. And when a person has impunity, we can be sure that the law is not being applied fairly. Equally, no person can be punished or penalised who has not broken the law. If such a person is penalised, then we say that that person is being victimised. If there are systematic impunities or victimisation, the law is being abused and in which case there is no rule of law.

Since the law is often a protection of a person or community against the state or another person or organisation, it is very important that institutions which are involved in the decisions to prosecute a person or organisation or to decide what the law is and whether it has been broken, should be separate from the government and independent of it. The government should not be able to tell the prosecutor who to prosecute; the prosecutor must make this decision in accordance with the law. Similarly a judge should not be told or influenced either by the government or a rich or powerful person to find an accused guilty. The determination of guilt must be made on the basis of evidence properly submitted to the court and the application of law to that evidence. In order to ensure that this is indeed the case, the trial must be transparent and open to the public. And because the law can be technical and hard for an ordinary person to understand fully, an accused person must be able to have the assistance and advice of a lawyer. If necessary the state must provide for the costs of a lawyer.

Thus it is important that the personnel of the law must be independent and perform their tasks and duties in accordance with the law and with fairness and integrity. The judges must be independent. This means that their appointment or removal must not depend on the government. Judges must be appointed by an independent body and they must be qualified for the job in terms of their training and experience as well as moral integrity. A judge can only be removed for a crime or abuse of power. Similar principles apply for the appointment or removal of prosecutors, so that the powers of prosecution cannot be used to punish those persons that the government does not like or to protect its friends from the due process of the

law. Lawyers who advise the public and provide legal representation to an accused person must also be independent. The Bar Association must be free to manage the affairs of the legal profession without interference by the government. Relations between a lawyer and his or client should be confidential, that is to say the lawyer cannot be forced to disclose what the client has told him or her—not even to the Bar Association. Without these safeguards, the rights of a person who is or may be accused of a crime or seeks legal advice on other matters cannot be protected. The police play an important role in the way in which the law is enforced, by ensuring security in which the people can enjoy their rights, in the way they make investigations into breaches of the law, and in the way they exercise their powers to arrest or detain persons. Therefore the police should be free from influence of the government or other well connected persons in the performance of these tasks.

An extremely important element of the rule of law is that a person whose rights have been violated or who has suffered from the breach of the law is able to get a remedy—even if the violation or breach has been done by or on the order of the highest official in the state. International human rights instruments as well as national laws place a particular emphasis on the availability of remedies to victims (e.g., article 8 of the Universal Declaration of Human Rights and article 2 of the ICCPR). The importance of remedies was emphasised in a recent Resolution of the UN General Assembly which requires states to adopt ‘appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice’. The General Assembly said that ‘in honouring the victims’ rights to benefit from remedies and reparation, the international community keeps faith with the plight of victims, survivors and future generations...and the international community affirms its human solidarity with the plight of victims and with humanity at large’. The state has the obligation to prevent violations; to investigate violations ‘effectively, promptly, thoroughly and impartially’; and to prosecute those responsible for the violations. Every one should have ‘equal and effective access to justice’ and is entitled to ‘legal or expert assistance’.

Without access to justice, particularly of the vulnerable and disadvantaged persons and communities, the rule of law will have no meaning for them. Access to justice requires that a person should be able to secure legal assistance and representation (with legal aid if necessary), courts are within easy geographical reach, that he or she can present the case in the language that the person understands, fees for filing or conducting the case is not prohibitive, the person is not intimidated against seeking legal advice or the help of the court, that the judges are not biased against members of his community, and that if a judgment is given in that person’s favour, it would be promptly enforced.

The concept of the rule of law is therefore complex. It is not about the absence of law. Just having some laws or judges is not sufficient, as governments sometimes claim. Fundamentally, the rule of law is about attitudes to the use of state power and about respect for the dignity and rights of individuals and communities. The spirit of the rule of law requires that the law be taken seriously, particularly by the state. The disregard by the government of the law is often the biggest threat to the rule of law. Corruption among public servants also means that people lose the benefit of the rule of law. Judges or prosecutors who are not independent and take orders from the government or seek or accept bribes from the parties to a case are likewise destroy the rule of law. If lawyers are intimidated by the government or influential persons or even by the Bar Association, they may not be able to protect their clients.

III. 1. The provisions in the Cambodian Constitution

These values are also fully reflected in Cambodia's Constitution. The Constitution was adopted in 1993 by the Constituent Assembly whose members were freely elected in elections, under the auspices of the UN Transitional Authority in Cambodia, in which an overwhelming number of Cambodia's citizens took part. The drafting and adoption of the Constitution were entirely the responsibility of Cambodians. Thus the Constitution reflects the values and goals to which the Cambodian people have committed themselves. The Constitution was intended to symbolize the re-birth of the nation and state. It is supreme law and any laws or policies inconsistent with it are void. The central values of the Constitution are liberal and pluralistic democracy and human rights. All adult citizens have the right to vote, to choose their representatives, and the legislature may remove the executive if it loses confidence in the executive. Most human rights, civil and political as well as economic and social, are included in the Constitution, reinforced by the adherence, stipulated in the Constitution, to the core international human rights treaties. The Constitution upholds freedom of expression, the rights of association and assembly and those of participation. It provides protection to trade unions and civil society organisations. Along with the principle of constitutional monarchy, so fundamental are human rights and democracy, and the procedures to give effect to them, that they cannot be repealed or amended. An accompanying principle is the separation of powers, so that each institution of the state is free within its sphere, particularly the judiciary, whose independence is protected through various provisions. Cambodia's Constitution specifically stipulates that the legislative, executive and judicial branches shall be separate. Article 128 prescribes that "the judicial power shall be an independent power" and article 130 goes further to say that "Judicial power shall not be granted to the legislative or executive branches".

IV. Negation of the Rule of Law

Despite this excellent constitution, the record of the rule of law is abysmal. A leading and respect NGOs in Cambodia (LICADHO) begins its 2007 report (Human Rights in Cambodia: The Charade of Justice) by the following statement:

"The Cambodian justice system has failed. Despite the UNTAC intervention and 15 years of aid to legal and judicial reform², in 2007 the primary functions of the courts continue to be:

- Prosecute political opponents and other critics of the government
- Perpetuate impunity for state actors and their associates
- Promote the economic interests of the rich and powerful."

Most of the country studies in the series, *Access to Justice*, prepared for this, Vienna Forum, are based on the assumption that there exists a functioning legal system which for some reason is insufficiently responsive to the concerns of what marginalised communities. They might have practical difficulties locating lawyers or reaching courts, or may not have the knowledge or the means to invoke the law, or their cultural or political background differs so markedly from those who service the legal system, that the prospects that they can secure

or defend their rights are small. There may be alternative forms of dispute settlement or mediation that may be more suitable for some rural communities still attached to communal values and traditions. There may be gaps in the law resulting in the failure to recognise the rights of the marginalised communities. But the concern with securing justice in Cambodia is of a totally different kind. There are indeed physical, financial, political and cultural problems of access to lawyers and courts; and there are gaps in the law. There is a court system. Some problems that people encounter in accessing justice can be attributed to the destruction of the Khmer Rouge regime, and the inevitable time, efforts and resources needed to establish a legislative, legal and judicial system almost from scratch.

But that is not the fundamental problem in Cambodia. The problem is the pervasive disregard of the law and the subversion of legal institutions. Rights and liabilities are not determined by the law. Prosecutors and judges do not observe or enforce the law. Judgments are extremely brief—rarely more than two or three pages. Neither a clear account of facts nor the principles of law can be discerned from the judgements, which are statements of such “facts” as suits the judge’s project, and the ruling is given without any discussion of the law. It is impossible in these circumstances to follow the kind of analysis that some country studies have made of the nature of legal reasoning or the amplification or qualification of rights. Some decision can be given within minutes of the end of the hearing—and sometimes after years (depending on the temporal preferences of those in power). The paper examines how the legal infrastructure has been deformed in the process of subordination and manipulation. The lack of the autonomy of courts compels attention to the wider political system within which they operate—and this paper is largely about that. As Pritchett and Woolcock say, institutional reform conducted without engaging in issues of power may facilitate reform in a formal sense, but will risk building institutions that find themselves sidelined or undermined by endemic corruption and elite capture.

V. Some narratives

(a) In the Kong Yu village, commune officials were involved in facilitating the ‘sale’ of the villagers land to Keat Kolney, related to high state officials. In 2004, the then commune and village chiefs, who the villagers see as parental figures, tried to persuade them to sell some of their land. When the villagers refused, they were told that it was state land and was to be given to disabled soldiers. After the villagers agreed to donate 50 hectares of land to disabled soldiers, the commune and village chiefs asked the villagers to place thumbprints on blank pieces of paper on three occasions, including at night, and while they were inebriated. In August 2004, district, commune and village chiefs were present when villagers were asked to place thumbprints on documents for the transfer of land, written in Khmer which they could not read. When the company started clearing land for rubber plantations, the villagers were told that they had sold 450 hectares of land to Keat Kolney and others. When they brought their concerns to the commune chief, he accused them of holding a demonstration; and the following day, members of the district police and gendarmerie called in seven and threatened them with prosecution and imprisonment if they continued to complain about the company’s activities. As a result of this apparently fraudulent land deal, which was facilitated and supported by commune and district authorities, villagers complained that they have lost access to vegetation they used to collect from the forest, will have insufficient land for future use, and are unable to leave their cattle free to roam, in case they wander onto the rubber

plantation: the company has confiscated cattle on two or three occasions, demanding \$100 for their return, failing which they will kill the cow and eat it. Hence children are being kept home from school in order to take care of the cattle. When the villagers filed a case against Keat Kolney, the court made no attempt to proceed with the case, but when she complained about criminal defamation, the court began investigations at once.

(b) In Boeng Praim village in Battambang province, there is a long-running land dispute over unregistered land, involving 3,000 families who had settled on vacant land in the area, and businessmen who claimed to have ownership rights over the land. The land was formerly occupied by the Khmer Rouge during the civil war, and was then taken over by Military Brigade 53. Chhea Nee, a community representative and former soldier, had been advocating for the land to be allocated for the use of landless families (including demobilized soldiers), and drawn attention to the involvement of two military officials from Military Brigade 53 in the illegal sale of land to the businessmen. In August 2006, Chhea Nee was arrested and charged with infringement of private property, infringement of individual rights, destruction of state forest, and fraud and infringement of private property. No charges have been pursued against the two military officials or others involved in illegal land deals in the area. There were several irregularities in the judicial process, including Chhea Nee's absence from the trial on the charge of infringement of private property in February 2007 (as he had been transferred to the central prison in Phnom Penh for no apparent reason), and the alteration of two charges at or following trial (the charge of infringement of private property was changed to infringement of public property at the delivery of judgement for the retrial in May 2007; and the second charge of infringement of private property was changed to wrongful damage of private property at trial in August 2007). Chhea Nee was acquitted of two charges and convicted of two amended charges, and sentenced to a total of 12 months imprisonment, with a 3 month suspended sentence and a fine of 400,000 riel (\$100). The charge of infringement of individual rights is yet to be heard, and Chhea Nee was granted bail on this charge in November 2006. Although Chhea Nee had served the cumulative sentences received, he remained in detention because the prosecutor appealed the change of one of the charges; and under Cambodian law, the defendant must remain in detention pending the hearing of the prosecutor's appeal.

(c) Following the violent eviction of over 100 families in Spean Ches, Sihanoukville municipality by armed police officers in April 2007, 13 villagers were arrested and charged with battery with injury and wrongful damage to property, or complicity in these crimes. No action has been taken against police officers who used excessive force, destroying homes and assaulting residents. Despite the lack of concrete evidence, eight of the villagers were convicted of battery with injury. Most of them had served their sentences in pre-trial detention and were eligible for release, but they all remain in detention due to the prosecutor's appeal against their sentences. In this case, the General Prosecutor and President of the Appeal Court (You Bunleng, who is also an investigating judge at the Extraordinary Chambers of Cambodia) have refused to apply Article 398 of the new Criminal Procedure Code, which gives prosecutors the discretion to order the temporary release of defendants pending prosecutorial appeals. Their reasoning is that this provision does not apply to cases initially heard under the previous criminal procedure law; however this interpretation is disputed by the defendants' lawyers and the Battambang prosecutor has exercised this discretion in the case of Chhea Nee, who was also tried under the previous criminal procedure law.

(d) At least 14 community representatives from Dey Krahom in central Phnom Penh have faced unsubstantiated criminal charges following attempts to prevent evictions at the site. It appears that these charges have been pursued to curtail the activism of community members in resisting the evictions by a development company in which senior government officials have an interest. Three people were found guilty of battery with injury, despite the lack of evidence to support the charge and eyewitness accounts that no injuries were sustained. Five other community members were charged with wrongful damage to property over an attempt to dismantle a fence which the company later removed, and one woman has been charged with battery with injury and remains in detention. In addition, the company filed a legal action against 58 families for breach of contract, alleging they had agreed to sell their land but then failed to comply with the contract. The villagers either deny putting their thumbprints to the agreements, or say they were coerced into placing thumbprints; yet the court found in favour of the company on 8 November 2007, and gave them three weeks to vacate their land.

(e) The negative impact on the market mechanism and the misuse of resources that follow from the absence of the rule of law are clearly demonstrated in the report of the international NGO, Global Witness, *Cambodia's Family Tree: Illegal logging and the stripping of public assets by Cambodia's elite* (June 2007). The report shows how numerous provisions of the law protecting national forests (a major asset of Cambodia) and other laws have been violated by a Cambodian company which is linked to the highest officials in the RGC. Its principal finding is that this industry (and indeed many others) is run by a network of alliances and companies that rely on the support of the government institutions which is facilitated by the most senior ministers (which Global Witness calls the 'shadow shade'). It depends on massive violations of the law, including those on state and private property, taxation, and the penal code—all this with total impunity. Those who become victims of this illicit economy, whether through the appropriation of their property, intimidation or illegal detentions, have no redress through courts or other formal or informal mechanisms.

The report shows, with copious examples, that the 'shadow state' generates much of its illicit wealth via the appropriation of public assets, particularly natural resources, as well as through institutionalised corruption. It states that in relation to the forest sector, 'this involves the allocation of concessions on forests, land, mineral deposits, fisheries and heritage sites, together with 'land swap' deals on state-owned buildings. Many of these transactions are unlawful. The beneficiaries are a relatively small group of tycoons with political, business or familial ties to senior officials. The effect is to place valuable public assets under private control of individuals who are themselves part of the shadow state structure' (p. 10).

Global Witness records, 'In the mid-1990s, senior government ministers secretly awarded between 30 and 40 logging concessions to Cambodian and foreign-owned companies, giving away 39% of Cambodia's land area, 'on terms that greatly favoured the interests of the concessionaires over those of Cambodia. All these concessionaires proceeded to break the law or the terms of their contracts or both. By the end of the decade, they were responsible for most of the illegal logging in Cambodia' (p. 12).

The use of state institutions, including armed forces, in the exploitation of the people and resources is marked. There is widespread use of police and army to carry out the logging and other operations of the company (Brigade 70, closely connected to the prime minister,

acts as a specialist provider of transport and protection to the most powerful of Cambodia's timber barons (p. 72). The army has its own illegal logging operations. A whole network of relations and transactions are built on corruption, around local authorities.

Some of the laws that the company and their associates have broken include intimidation, detention and illegal confinement; attempts to kill; harvesting of forest products without permit; destruction of property; illegal transport of timber; processing of timber in the forest; corruption of forestry officials; organised crime; extortion from employees of the Forest Administration; and evading import duties and export taxes.

(f) The case of Born Samnang and Sok Sam Ouen, the two men convicted of the killing of independent trade union leader, Chea Vichea, in 2004 illustrates how impunity works. They were convicted for the murder, in part of the basis of a confession which was subsequently retracted, despite an overwhelming body of evidence demonstrated that neither men could have taken part (seemingly in breach of the protection the Constitution protects against the use of forced confessions). They received twenty-year sentences. On 12 April 2007, the Appeal Court upheld the Municipal Court's conviction. During the appeal hearing, the prosecution failed once again to present any credible evidence linking the two men to the killing. The court ignored new key witness evidence and the complaint made by Born Samnang that he had been forced to confess to the crime under duress. The decision to uphold the verdict was maintained despite the prosecutor's conclusion, expressed publicly before the court, that there were "huge gaps in the police investigation" of the case and his call for a reinvestigation to find the 'real killers'. There has been wide spread condemnation of the verdict, including by the International Labour Office.

VI. The abuses of land legislation

VI. 1. Economic concessions

The Land Law (in Article 30) states that any person who enjoyed peaceful, uncontested possession of land that can lawfully be privately possessed for at least five years prior to the promulgation of the Land Law (on 30 August 2001) has the right to request a definitive title of ownership. A person who was in possession of land prior to the promulgation of the Land Law, but had not yet possessed the land for five years, may extend his/her possession with the authorization of the competent authority, and claim this right upon accruing five years' possession (Article 31).

The Land Law and Sub-Decree on Economic Land Concessions establish the framework for the grant and management of economic land concessions, and set out prerequisites to the grant of concessions, size limits, restrictions on ownership of multiple concessions, and provisions for the cancellation of non-compliant concessions.

In his June 2007 report on "Economic land concessions in Cambodia: a human rights perspective", the SRSG found that many concessions of large tracts of land were given to private companies which have encroached upon the land and forest resources of local communities, leading to the destruction and loss of farm land and other sources of livelihoods, adverse impacts on areas of cultural and spiritual significance, displacement and

environmental destruction. In so doing, these concessions have compromised communities' basic human rights and their rights under Cambodian law. The alienation of indigenous land through the grant of concessions is undermining the ability of indigenous communities to register collective ownership of their traditional lands, and enforce their rights to land under the Land Law.

Concessions have been granted in breach of the law, over land occupied and cultivated by communities, and over forested areas. For example, the 100,852 hectare Green Sea concession in Stung Treng province was granted following the passage of the Land Law, which states that concessions shall not exceed 10,000 hectares. Many of these oversized concessions, granted to politically well connected families have not been reviewed or reduced in size as required by the Sub-Decree on Economic Land Concessions. In Koh Kong province, two adjacent concessions were granted to companies in which Senator Ly Yong Phat has ownership interests, jointly totalling 19,100 hectares (contrary to Article 59 of the Land Law). Public consultations and environmental and social impact assessments were not carried out first, as required by the Sub-Decree on Economic Land Concessions, and as a result, the concessions have encroached upon and resulted in the destruction of the rice fields and orchards of local communities.

VI. 2. Rights of indigenous peoples to land

The Land Law (Articles 25 and 26) recognizes the right of indigenous communities to collective ownership of their lands, including land used for residences and traditional agriculture. Agricultural land encompasses land actually cultivated and land reserved for shifting cultivation. Article 23 states that indigenous communities shall continue to manage their communities and land according to traditional customs, pending the finalization of legislation to register indigenous communities as legal entities, which will enable them to apply for the registration of collective title.

Article 265 of the Land Law states that where an infringement is committed against the land rights of indigenous communities by an authority that is responsible for the management of the zone in which the land is located, the authority shall be fined between 1,500,000 and 9,000,000 riel (\$375-\$2,250) and/or imprisoned for two to five years, in addition to administrative sanctions.

The process of establishing the framework for the registration of indigenous communities as legal entities, and for the registration of collective title over land, has been lengthy and drawn out. Since the promulgation of the Land Law in 2001, not one single collective title has been issued. Through a pilot process that began in 2003, three indigenous communities were registered as legal entities in 2007, but their land is yet to be titled.

In the meantime, the Government continues to grant economic land concessions and other concessions (like eco-tourism concessions and mining licences) over indigenous land. (See the June 2007 report on economic land concessions, from pages 15 to 17.) In fact, the Government has announced that it plans for the north-eastern provinces of Cambodia (like Ratanakiri and Mondulhiri provinces, which have majority indigenous populations) to become the "fourth development pole" of Cambodia by 2015, with agro-industry, mining and eco-tourism seen as the drivers of this growth (see reference on page 16 of the June 2007 report on economic land concessions).

Government authorities have also failed to uphold and protect indigenous rights to land, in the face of land grabbing and the illegal, coercive or fraudulent acquisition of land. In some cases, it is reported that Government authorities have been involved in facilitating such land sales.

The effective implementation of the provision on collective title is subject to the adoption of a sub-decree, the elaboration of which awaits the adoption of legislation to define indigenous peoples/minorities in Cambodia currently being drafted by the Ministry of the Interior. Illegal land transactions have taken place pending its adoption. Individual land sales, for example, are being used to dispossess indigenous communities from their communal lands. Many cases of sale of indigenous property by community members or commune chiefs without prior consultation with the community have been reported. There are numerous complaints of payment of non-official fees for the issuance of forged titles. The transfer of collective ownership of a given indigenous community to the private ownership of one member of this community can only take place after the adoption of the above-mentioned sub-decree. At the moment, there is no established procedure to allow such transfers. Therefore, any sale of indigenous people's land by an individual member of the community is illegal.

Many of the properties irregularly acquired from indigenous communities are used for logging activities, which also represent a threat to the habitability and sustainability of the environment where these communities have been living for generations. The expansion of environmentally hazardous activities in indigenous inhabited areas is also a consequence of an increasing number of economic concessions and large scale development projects. Many of such projects are negotiated by the Government with no involvement of indigenous communities, although the concessions will be exercised over what is considered their ancestral lands. According to testimonies received and site visits carried out by the Special Rapporteur, indigenous communities deprived of their traditional sustainable livelihood due to logging activities, military concessions and major tourism enhancement projects, are now increasingly forced to leave their traditional homes and move elsewhere.

These operations have been carried out often in the absence of proper informed participation of indigenous communities, with intimidation and threats, and have resulted in unfulfilled promises, displacement and harm to their environment and traditional heritage. The enjoyment of the right of these communities to equal protection of the law and personal security has been jeopardized. They have also encountered restrictions on their freedoms of association, assembly, expression and movement.

Reports have also been received of the involvement of Government officials in cases of land alienation and land grabbing in indigenous communities, which have resulted in communities losing access to traditional burial grounds. In Yeak Lom commune, Ratanakiri province, it was reported that the head of the provincial finance department was involved in an illegal land transaction affecting traditional burial grounds used by Tampouen villagers, and had obtained a court order prohibiting them from burying their dead on this land. In Romonea commune, Mondulkiri province, the military engineering department constructed a road which cut across the traditional burial grounds of Phnong villagers, and it was reported that a military officer was then involved in 'grabbing' villagers' land along the new road. There have been other reports of the desecration of indigenous burial grounds through illegal land alienation in Ratanakiri and Mondulkiri provinces.

VI. 3. Evictions

Article 44 of the Constitution states that all Khmer citizens have the right to own land, and property may only be confiscated from people in the public interest as provided for under the law, and with the payment of fair and just compensation in advance.

Article 35 of the Land Law addresses evictions or involuntary removal from property, and who can authorize evictions:

- Where the State or public legal entities are involved (ie where the State is claiming land), only competent authorities may force occupants without title or insufficient titles to vacate land. “Competent authorities” is not defined, nor is the procedure for eviction. Further, this part of Article 35 does not address cases where occupants have title or rights to ownership.
- Where the State or public legal entities are not involved (ie where the dispute is between private individuals), a court order is required to remove an occupant holding valid title.

While this is not explicitly addressed in the Land Law, prior to authorizing an eviction, the first step must be to determine the legal possessor or owner of land, and to assess the claims made. Even if municipal authorities are “competent authorities” that may force occupants without title or insufficient title to vacate land, this eviction must have a legal basis.

Many families at various eviction sites have been peacefully occupying land in accordance with Article 30 of the Land Law, and prima facie have the right to request titles of ownership. If authorities assert that the land is actually state public land, then this must be substantiated. If authorities assert that land is required for public purposes (which assumes that it is not currently state public land), then in accordance with Article 44 of the Constitution, the public interest should be demonstrated, and fair and just compensation paid in advance. In some cases where authorities claim that land is state public land (for example, in the eviction led by Russei Keo district authorities in Chroy Changva on 2 November 2007) or is required for public purposes (for example, the land occupied by the Group 78 village), it is reported that private interests actually lie behind these claims, and that the land will in fact be used for private development projects.

At least 14 community representatives from Dey Kraham in central Phnom Penh have faced unsubstantiated criminal charges following attempts to prevent evictions at the site. It appears that these charges have been pursued to curtail the activism of community members in resisting the evictions. Three people were found guilty of battery with injury, despite the lack of evidence to support the charge and eyewitness accounts that no injuries were sustained. Five other community members were charged with wrongful damage to property over an attempt to dismantle a fence which the company later removed, and one woman has been charged with battery with injury and remains in detention. In addition, the company, 7NG, filed a legal action against 58 families for breach of contract, alleging they had agreed to sell their land but then failed to comply with the contract. The villagers either deny putting their thumbprints to the agreements, or say they were coerced into placing thumbprints; yet the court found in favour of 7NG on 8 November 2007, and gave them three weeks to vacate their land.

There are numerous reports of threats and intimidations, as well as physical violence, being used prior to or during forced evictions. There are numerous cases of threats and intimidation by local authorities and private developers leading to involuntary deals and relocation or resettlement. A number of such cases allegedly involved the presence of military and police forces. Cases of physical violence seem to be more frequent in the provinces, especially in remote and rural areas.

VI. 4. Land exchanges

The law provides for the appropriation of land, with the consent of parties concerned, provided land is provided elsewhere for the needs of the people who move out of the land they have lived previously. The UN Special Rapporteur on housing, reviewing a number of land exchanges, concluded that ‘Most of the families affected by land exchanges have been living on State land for more than ten years - building, upgrading and expanding their homes. In accordance with the 2001 Land Law, these families have property rights. Therefore, the loss of their property should have been at the very least subject to fair and just compensation. In practice, the rates of compensation offered by the private companies have been far under the market price and have been grossly inadequate. For example, the average compensation for Monivong Hospital and Royal University of Fine Arts was less than US\$ 20 per square meter when the market value is estimated up to US\$ 2,000 per square meter’. In most cases studied by the Special Rapporteur, threats and intimidation have also been used to push families to accept very unfair deals.’

VI. 5. The fragility of land law

The Special Rapporteur’s conclusion on the efficacy of land law and its impact on adequate housing are worth reiterating. ‘Laws and practices concerning property ownership have a deep impact on the abovementioned elements of adequate housing. Pending legislation or unclear legal provisions concerning the differences between private and state property, transactions involving public property, land concession and collective property of indigenous lands, for example, result in a situation of uncertainty that impacts negatively on the right to adequate housing. The legal uncertainty adds to a context of corruption, relatively weak judicial system, deficient mapping of state land and the fact that, due to lack of legal awareness, many of those who could request formal ownership titles simply do not know the procedure to be followed or do not recognize its importance.

‘A fragile legal system in this socio-political context facilitates a number of irregularities. The Special Rapporteur is concerned that such irregularities may impact negatively on the habitability, accessibility and cultural adequacy of housing and may result in forced evictions and displacement. According to information gathered by the Special Rapporteur during his mission, the housing and land management system in place until recently was unable to appropriately address this situation.’

VII. The role of institutions of justice

The penalty provisions in the Land Law create offences for infringements of land ownership and other rights to land, and can provide protection for the rights of individuals and groups whose lawful ownership or possession has been infringed by other individuals, authorities or corporate entities. In practice, however, these provisions have not been used to protect the rights of communities, including indigenous communities, whose rights to land have been violated by influential individuals, companies or Government entities. Instead, the courts have pursued criminal charges against those victimized by land disputes, using these and other legal provisions; however corresponding action has not been taken against individuals or Government officials who have illegally sold or bought land occupied by others, infringing their rights to land and forest resources. According to both the previous Law on Criminal Procedure and the new Criminal Procedure Code, where criminal charges hinge upon a determination of the ownership of land, they should be suspended until this preliminary question is determined in civil proceedings. Yet charges of infringement of private property (under the Land Law) continue to be pursued against community members involved in land disputes over unregistered land even before the question of legal title is resolved. State officials enjoy wide impunities while their victims are severely oppressed by legal institutions.

I show first how the institutions of justice operate and then reflect on the causes and consequences of their orientation.

VII. 1. Legal representation

The Cambodian legal profession is very small, and availability of services to the poor, who constitute the majority of the people, thus limited. The government does not have any scheme of legal aid. The Bar Association of Cambodia, with small financial assistance from foreign donors, has a limited provision of legal aid. However the principal source of legal advice and representation for the bulk of the people, especially in the rural areas, is a small number of NGOs. These NGOs have lawyers on their staff who represent the poor, and since the mid-1990s much of the work of representing the poor has been done by a handful of non-state organizations.

But these lawyers and NGOs face many obstacles, placed in their way by powerful members of the community, with assistance from the authorities, and, unfortunately, it seems by the Cambodian Bar Association. There is a pattern of rich or well-connected litigants trying to get the lawyers of their less powerful opponents investigated for criminal offences – such as incitement to commit crimes – simply for performing their professional responsibilities of acting for the poor. It is a serious abuse of legal procedures to use them for this purpose, and regrettably prosecutors sometimes seem to be more enthusiastic to proceed with these complaints than with those made by the poor against the rich.

NGOs complain that in various ways their work has become more difficult recently. They have experienced more difficulty in holding meetings with clients, including in getting access to prisoners. There are fewer land cases than would be expected; land cases (civil actions) tend to be litigated only if a free lawyer takes up a case. Certainly at the beginning of the decade there were larger volumes of cases as a result of increased activities by NGOs promoting legal assistance. New court fees have made it harder to bring certain sorts of cases

(and commune officials' demand for bribes in return for a certificate of financial status stands in the way of obtaining exemption for the poor from the fee requirement). And they claim that fresh restrictions that the Bar Association is trying to impose on their work has had negative effects, and the fear of further reprisals has led many lawyers working for NGOs to resign and move into private practice.

Rising court fees have further hindered access to courts, and made the work of NGOs more difficult. Under procedures recently promulgated, the courts would normally award costs to be covered by the losing party, which again threatened the financial security of legal aid organizations and those seeking justice.

There are a limited number of Appeal Courts, so either they are inaccessible due to costs of travel or they result in excessive delay in the disposition of the case. The new criminal procedure code which requires that three judges sit on the bench in criminal cases has not improved the situation—it is very hard to assemble three judges in a province!

VII. 2. Prosecutors

Inroads into the autonomy and independence of the Supreme Council of Magistracy also impacts negatively on the independence and work of the prosecution. Over several years the government has stripped the prosecution of its independence. Many prosecutors fail to meet national and international standards guaranteeing that investigations and prosecutions are pursued with impartiality and integrity, and in the public interest rather than partisan interests. Complaints filed by the wealthy and the well connected and senior government officials, even when based on weak or unsubstantiated evidence, are prosecuted with vigour, while the vast majority of the populace have little hope or expectation of having their grievances taken up by public prosecutors. There is a heavy reliance on forced confessions even when contrary evidence is available.

The police and prosecutors regularly fail to fulfil their obligations to investigate crimes that come to their attention, regardless of a formal complaint. And all too often the police and the prosecutors drop charges against the powerful on the payment of small sums to the victims—in itself evidence of their guilt.

VII. 3. Courts

Human rights observers are generally agreed that 'despite repeated public pledges by the Royal Cambodian Government of its commitment to judicial and legal reforms, and millions of dollars invested by foreign donors in reform programmes since 1992, there has been no progress whatsoever in the single most important issue affecting the courts: their lack of independence from political and financial influence' (Licadho 2007). This assessment is endorsed by the president of a provincial court who is quoted as having said, 'If a judge is a clever man, he can find ways to make a lot of money' (*ibid.*, p. 22). The lack of independence and the corruption in Cambodia is not, as in some countries, in spite of the efforts of the government, but because of them. There is a very deliberate manipulation of the judiciary to serve political and economic interests of particular ministers or their business friends.

In the area of land, the investigative procedures adopted by courts to ensure the legitimacy and legality of ownership titles are perceived as insufficient. Consequently, court

decisions allegedly tend to favor those who have acquired titles illicitly, at the detriment of families who could possibly benefit from the 2001 Property Law provisions concerning ownership rights resulting from extended land possession and occupation.

Organizations litigating on housing cases identify another trend in ownership disputes: when civil cases are dismissed by the courts and sent to the Cadastral Commission, criminal complaints are filed against the same claimants, based on article 247 of the Property Law – infringement against ownership - even though ownership is still being contested before the Cadastral authorities.

As a result of bribes or instructions from the government, criminals, especially among the high placed, escape investigations or prosecutions. On the other hand, there are several notorious cases where prosecutions have been brought against persons either for political reasons or as scapegoats, to hide the perpetrators of crimes.

VIII. Consequences of the disregard of the Rule of Law

I have already discussed the emphasis placed on the establishment of the rule of law after the ravages of the Khmer Rouge. The international community has provided much support, through financial and technical resources, to prepare laws and strengthen institutions of justice. As we have seen, the Constitution established an admirable framework for constitutionalism and the rule of law. In the area of this paper, land, there is considerable legislation, most of which is pretty good, prepared under the watchful eyes of international “donors”. They have also shown considerable interest in property and property relations. So why has this sorry state of affairs come about?

Unless the institutions of justice (lawyers, prosecutors, judges) are deeply rooted in the communities they serve and are built on strong foundations of principles of independence and professional ethos, the broader political system will determine the way they will exercise their jurisdiction and powers. Unfortunately in Cambodia the political system has not allowed the logic, institutions and procedures of the rule of law to operate autonomously. The principal institutions of the rule of law have been completely subordinated to the will and whims of the executive. The executive itself is dominated by one party, and it has spread its tentacles to all state (and increasingly private) institutions. The Global Watch study of the major player in the logging industry has shown the interconnections between political, commercial and armed forces that neutralises or manipulates law and its institutions with total impunity—and considerable effectiveness.

The first consequence, which is implicit in the very definition of the rule of law, is the subordination of the prosecutorial and judicial functions to the executive. When instructions are given by the executive to prosecutors or judges, they are duly carried out, regardless of the evidence or the law. Control of prosecutors means that members of the executive and their friends enjoy wide impunity from the penalties of the law. It also means that persons that the executive or their friends do not like are prosecuted and convicted of offences they have not committed. In this way the rights of the people are denied and political opponents of the regime and defenders of human and legal rights are victimised and punished. In this way courts become the central arena of violations of the law and the denial of justice. So blatant has this unprincipled use of the machinery of justice become that the very threat of

legal action by the executive is often sufficient to force the targeted person to flee the country.

Those who try to use the law and courts to defend their or their clients' rights frequently become the victims of the machinery of the law. Communities fighting for their rights to land have come under intense pressure, particularly when the other party is politically well-connected. Indigenous villagers from Kong Yu village in Ratanakiri province have brought legal action against Keat Kolney, the wife and sister of high-ranking Government officials, in relation to an allegedly fraudulent land deal. In response, Keat Kolney has filed a criminal complaint with the provincial prosecutor, accusing the villagers of defamation. There have been irregularities in the judicial process, with villagers being questioned without their lawyers present, in the presence of former local level officials who threatened them.

NGOs assisting communities to uphold their rights and access justice have also faced restrictions. Of particular concern are the attacks upon lawyers who are advising and representing community members. The lawyers representing the villagers in the Keat Kolney case have been accused of inciting villagers in a complaint lodged with the Bar Association of the Kingdom of Cambodia, and in the criminal complaint to the Ratanakiri prosecutor. There have been increasing numbers of accusations from Government authorities and the media that NGOs are 'inciting' communities to protest or complain about the violation of their rights. Incitement leading or not leading to the commission of a crime is an offence under the UNTAC law, but many of the actions that are claimed to be the result of NGOs' incitement are not crimes.

The legal system has lost all legitimacy. NGO lawyers which provide most of the legal assistance to the people remark on the growing reluctance of the victims of oppression by the state or non-state actors to go to courts (for reasons which are obvious). There has been little improvements in court independence, ethos and practice from times of the Khmer Rouge judiciary. Research shows that Cambodians have little or no faith in the courts as institutions of justice. Similarly, respondents identified judges and prosecutors as the public officials whom they were least likely to trust. A World Bank study says these findings support other research and expert opinions, which stress the continued weaknesses of the Cambodian judicial system, including endemic corruption, lengthy delays before hearings, difficulties with the enforcement of judgments and a shortage of legal aid, all of which present major barriers to justice for the average Cambodian. "Identifying a range of constraints to reform, including the legacy of an unreconstituted communist judiciary, the continued strength of the executive vis-à-vis the judiciary, and the distance between the average Cambodian and the formal institutions of the law, the literature denotes a state with little room for institutions of justice that are functionally independent or responsive to the needs of the poor".

The government is unperturbed by this image of the law and the courts. Its "legitimacy" comes from its monopoly of the use of force. It is well content that the courts are instruments of oppression. The government thrives on unpredictability—which keeps the people and political parties in a state of suspense. As Holmes, and others, have said, keeping things fluid can be an essentially appealing strategy for a certain type of rulers. The prime minister Hun Sen feels so much in control over politics, economy and military that he can dispense with laws and legality. Laws, prosecutors and judges are important for their selective use. This selective use means that the friends of the government are above the law (except when they are its beneficiaries) and that its opponents can be prevented from the

protection of the law. There are serious doubts about the sustainability of such a strategy—as demonstrated by the experience of many states.