

Legal Assessment of the Incidents on 29th January, 2003

A) Behavior of the Demonstrators

I) Constitution, 21st September, 1993:

Art. 31: ... Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status.
The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom of others. The exercise of such rights and freedom shall be in accordance with the law.

Art. 37: The right to strike and to non-violent demonstration shall be implemented in the framework of a law.

Art. 38: The law guarantees there shall be no physical abuse against any individual. The law shall protect life, honor, and dignity of the citizens. ...

Art. 41: Khmer citizens shall have freedom of expression, press, publication and assembly. No one shall exercise this right to infringe upon the rights of others, to effect the good traditions of the society, to violate public law and order and national security.
The regime of the media shall be determined by law.

II) Law on Demonstration, 27th December, 1991:

Art. 1: Meetings and gathering of groups and crowds for staging demonstrations are acceptable. However, meetings of groups or crowds in public places or on public roads, or marching demonstrations which can be detrimental to public tranquility, order or security, are categorically prohibited.

Art. 2: Marching demonstrations on public roads to express views of any issue may be held under the following conditions:

1. violence cannot be used and arms or any other dangerous instruments cannot be carried;
2. public tranquility, order and security cannot be jeopardized; and
3. ...

If demonstrations are to be held in provincial towns or city, they should be reported in writing to the authorities there.

Art. 7 Any demonstrator resorting to violence to cause damage to other people's property or public property or to create bodily harm or death to other people or officials on duty shall be punished according to the law in effect, depending on the decree of the committed offense. ...

Art. 8 If any official carrying out his duty at a demonstration commits an offence, causing damage to people's property or public property, or causing injury or death to other people, shall be punished according to the law currently in effect, depending on the degree of the offence committed.

Art. 9 Anybody taking advantage of a demonstration to commit burglary, looting, robbery or other offences shall be punished to the maximum degree according to the law currently in effect. ...

III) Criminal Code, 10th September, 1992:

Art. 32: Voluntary manslaughter

Anyone who voluntarily kills or attempts to kill another person without any of the aggravating circumstances mentioned in Art. 31, whether or not a weapon is used, is guilty of the crime of voluntary manslaughter, and shall be liable to imprisonment for a term of eight to fifteen years.

Comment: Here the Prosecution must prove whether the demonstrators had a general intent to kill.

Art. 34: Robbery

1. Anyone who steals or attempts to steal from another person under the following aggravating circumstances is guilty of the crime of robbery and shall be liable to a term of imprisonment of three to ten years:

- if the theft is accompanied by force, whether or not a weapon is used or the victim sustains injury;
- or if the theft is committed by several persons or by breaking and entering.

2. Theft is the fraudulent taking of another person's property with the intent of appropriating it.

Art. 36: Organized Crime

Any individual who has taken part in a formal or informal association set up for the purpose of planning one or more crimes or misdemeanors against persons or

property, if specific acts of preparation of these offenses have taken place, shall be liable to a term of imprisonment from three to fifteen years.

Comment: Here the Criminal Court has to be convinced that among the demonstrators a conspiracy to commit a felony or misdemeanor was agreed upon.

Art. 41: Assault and Battery

1. Anyone who voluntarily strikes another resulting in injury leading to permanent disability or temporary disability lasting more than six months, is guilty of battery and shall be liable to a term of imprisonment of one to three years.
2. If the disability lasts less than six months, the offence shall be punished by a term of imprisonment of six months to two years.
3. If there is no disability, the punishment shall be a term of imprisonment of two months to one year.
4. If any weapon is used to strike the blows, the period of imprisonment shall be doubled.

Art. 43: Theft

Any person who steals or attempts to steal the property of any natural or artificial person, in the absence of any of the aggravating circumstances set forth in Art. 34, is guilty of the misdemeanor of theft, and shall be liable to a term of prison of six months to five years.

Art. 52: Intentional Defacement

Any person who intentionally defaces or attempts to deface the property of others is guilty of the misdemeanor of intentional defacement and faces a punishment of one to three years in prison. If the defacement is minor or the property of little value the punishment shall be reduced to two months to one year. ...

Art. 59: Instigating Crimes and Misdemeanors with consequences

Punishment as accomplices to an action classified as a crime by the present text will apply to those who, by oration, shouts or threats made in public places, or by writings, printings, drawings, engravings, paintings, emblems, films or any other mode of writing, speech, or film which is solid, distributed, offered for sale or displayed in public places, either by signs or posters shown to the public, or by any other means of audiovisual communication, directly provokes perpetration of an aforesaid action, if the action has consequences. This shall also be the case when the provocation is followed merely by an attempted crime.

Comment: Here the Prosecution must prove that an incitement, i.e. encouragement or provocation (here radio show or newspaper article) led to the commission of a felony. There must have been a strong direct link between the encouragement and the resulting

Art. 60: Instigation Crimes and Misdemeanors without consequences

Those who, through one of the means enunciated in the preceding article, directly provoke a crime or misdemeanor outlined in the present text, will be punished, in the event that this provocation is without consequences, by one to five years in prison.

Art. 61: Instigating Discrimination

1. ...
2. Any outrageous communication, scornful term or abusive language which does not verify or disprove an alleged fact is a libel. ...

Art. 63: Defamation and Libel

1. Any bad faith allegation or imputation of a given fact which harms the honor or reputation of an individual is a defamation. The original publication or reputation of allegation or imputation is punishable, even if it refers to a person who is not explicitly named by whose identify is made evident from the defamatory speech, shout, threat, writing, printing, sign, poster, or audiovisual dissemination. Any allegation or imputation against a public figure which the author, the journalist, publisher, editor, or producer knows to be false and nevertheless distributes, publishes, writes or circulates with malicious intent is also a defamation.
2. Any insult, contemptuous remark or abusive language which does not claim to impute fact constitutes libel.
3. Defamation or libel made by one of the means listed in article 59 shall be punished by imprisonment of eight days to one year, a fine of one million to ten million Riels, or both.
4. In the event of conviction under paragraph 3 above, the court may order that its decision be posted at specified locations, at the expenses of the convicted party or parties, and published in one or more newspapers, also at the expenses of the convicted party or parties, not to exceed ten million Riels. Any association established pursuant to rules approved by the Supreme National Council, may intervene and bring a civil action against the party accused of the acts covered by this Article by registering a complaint with the competent prosecutor and by petitioning the court to intervene.
5. In all cases, the employer, printer, publisher, or publishing or distribution company are jointly liable for the payment of damages which may be awarded to the victim(s).

Art. 69: Complicity

He or she who supplies the modalities of an offence, orders that the offence be committed or facilitates commission of the offence shall be considered an accomplice and punished with the same punishment applicable to the principal instigator.

B) Omissions of the State Authorities:

(Hun Sen in Cambodia Daily, 4th February, 2003: “We issued an order not to touch the demonstrators, even the extreme demonstrators who provoke violence.”)

I) Constitution, 21st September, 1993:

Art. 52: ... The Royal Government of Cambodia shall preserve and protect the law and ensure public order and security. ...

Art. 53: ... The Kingdom of Cambodia follows a policy of peaceful co-existence with its neighbors and with all other countries throughout the world. The Kingdom of Cambodia shall not invade any country, nor interfere in any other country's internal affairs, directly or indirectly, and shall solve any problems peacefully with due respect for mutual interests. ...

II) Law on Demonstration, 27th December, 1991:

“**Art. 4** If any demonstration takes place without local authorities being informed beforehand or without authorization from local authorities, the later can take measures to forbid the demonstrators on the site.

After issuing the ban twice, if the demonstrators still adamantly refuse to discontinue their activities, the local authorities shall act to disperse the demonstrators with the use of equipment that does not endanger life.

Art. 5 If demonstrators are armed with dangerous weapons or equipment, security forces can remove the weapons and equipment.

If the demonstrators persistently refuse to hand over the weapons and equipment, the security forces will be able to detain the demonstrators temporarily and remove their weapons and equipment. ...

Art. 6: If a peaceful demonstration turns into violent demonstration or riot, competent authorities will take the most appropriate measures to stop the demonstration or riot.

The measures mentioned in Art. 4 should be applied on a preliminary basis.

III) Two Prakas (Declarations) of the Ministry of Interior, 15th February and 22nd April 1994:

These two Prakas regulate the duties of the Governor and the Police of Phnom Penh. They state clearly that it is the Governor's responsibility to guarantee public security

and to take appropriate measures in case public security is endangered. The police is obliged to follow the instructions of the Governor and has to maintain or restore public security. A so-called “Central Office of Public Order” was established to ensure the security of citizens as well as of international people.

IV) Anukret (Sub-Decree) Nr. 77 on the Duties and General Structure of the Royal Gendarmerie, 21st December, 1994:

Art. 4: The Royal Gendarmerie shall have duties as follows:

- a.) undertaking the activities as administrative police to
 - maintain security and public orders,
 - ensure the respect of law and regulations...
- ...

In the framework of this duty, the Royal Gendarmerie shall comply with the orders of the Co-Ministers of Interior and other competent administrative authorities.

V) Preah Reach Kram (Royal Decree) on the Establishment of the Ministry of Interior, 24th January, 1996:

Art. 2: The Ministry of Interior shall have the mandate to guide and control all levels of provincial authorities, supervise the National Police, protect social order and security, and provide safety to the people of the Kingdom of Cambodia.

VI) Anukret (Sub-Decree) Nr. 16 on the Organization and Functioning of the Ministry of Interior, 20th December, 1993:

Art. 2: The Ministry of Interior shall have the following mandates:

- to defend and protect lives, freedom, honor, properties and interests of the citizen,
- to protect and provide safety for local and foreign dignitaries
- to protect embassies, international organizations and foreign delegates and foreign citizen in Cambodia
- to prevent and suppress delinquency and other petty crimes
- ...

VII) Prakas (Declaration) Nr. 006 on the Discipline of the National Police Forces, 26th November, 1995:

In order to maintain effectiveness of the security, public order and social safety for the people, the National Police Forces at all levels shall strictly respect the discipline which consists primarily of the following:

Art. 1 Obligation, Moral and Behavior

1. ...
2. ... Shall serve justly the interests of the people and shall not affect the interests of the people.
3. Shall abide by the laws, rules and regulations and apply them strictly with justice and fairness.

VIII) Agreement between the Gvt. of the Kingdom of Cambodia and the Gvt. of the Kingdom of Thailand for the Promotion and Protection of Investments, 30th March, 1995:

Art. 3:

1. ...
2. Investments of investors of either Contracting Party shall at all time be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.

IX) Vienna Convention on Diplomatic Relations, 18th April, 1961:

Art. 22:

1. The premises of the diplomatic mission is inviolable. ...
2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.
3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

Art. 30:

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.
2. His papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability

C) Arrested Journalists

- (accused of - broadcasting false information,
- instigating discrimination and
- instigating the committing of crimes):

D) Criminal Code, 10th September, 1992:

Art. 59: Instigating Crimes and Misdemeanors with consequences

Punishment as accomplices to an action classified as a crime by the present text will apply to those who, by oration, shouts or threats made in public places, or by writings, printings, drawings, engravings, paintings, emblems, films or any other mode of writing, speech, or film which is solid, distributed, offered for sale or displayed in public places, either by signs or posters shown to the public, or by any other means of audiovisual communication, directly provokes perpetration of an aforesaid action, if the action has consequences. This shall also be the case when the provocation is followed merely by an attempted crime.

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6. Any bad faith allegation or imputation of a given fact which harms the honor or reputation of an individual is a defamation. The original publication or reputation of allegation or imputation is punishable, even if it refers to a person who is not explicitly named by whose identify is made evident from the defamatory speech, shout, threat, writing, printing, sign, poster, or audiovisual dissemination. Any allegation or imputation against a public figure which the author, the journalist, publisher, editor, or producer knows to be false and nevertheless distributes, publishes, writes or circulates with malicious intent is also a defamation.
7. Any insult, contemptuous remark or abusive language which does not claim to impute fact constitutes libel.
8. Defamation or libel made by one of the means listed in article 59 shall be punished by imprisonment of eight days to one year, a fine of one million to ten million Riels, or both.
9. In the event of conviction under paragraph 3 above, the court may order that its decision be posted at specified locations, at the expenses of the convicted party or parties, and published in one or more newspapers, also at the expenses of the convicted party or parties, not to exceed ten million Riels. Any association established pursuant to rules approved by the Supreme National Council, may intervene and bring a civil action against the party accused of the acts covered by this Article by registering a complaint

with the competent prosecutor and by petitioning the court to intervene.

10. In all cases, the employer, printer, publisher, or publishing or distribution company are jointly liable for the payment of damages which may be awarded to the victim(s).

Art. 69: Complicity

He or she who supplies the modalities of an offence, orders that the offence be committed or facilitates commission of the offence shall be considered an accomplice and punished with the same punishment applicable to the principal instigator.

Comment: Here the accused must have made it easier for the things to happen; he or she must have assisted in the actual carrying out of the offense.

To be guilty of incitement the inciter

*- must intend that the offense that is the subject of the incitement be committed **and***

- knows that all the necessary elements of the offense incited will be present at the time the offense is to take place.

II) Law on the Press of 18th July, 1995:

Art. 11: The press shall not publish anything which may affect public order by directly inciting one or more persons to commit violence.

Commitment of the offence mentioned above shall be penalized by a fine of 1.000.000 to 5.000.000 Riels.

Victims of the above acts have the right to file a civil suit in the court as a plaintiff.

In all cases, the court shall directly examine the relationship between the inciting article and the act. ...

Comment: In Cambodia, prosecutors are a "subordinate party" in civil actions, but in cases involving public order or the public interest, they may act as the complainant party, Art. 5 of the Law on the Organization and Activities of the Adjudicate Courts of Cambodia (SOC, 1993).

Art. 12: The press shall not publish or reproduce any information which may affect national security and political stability.

The employer, editor or author of the article may be subjected to a fine of 5.000.000 to 15.000.000 Riels, without taking into account possible punishment under the Criminal Law. ...

Art. 13: The press shall not publish or reproduce false information which humiliates or contempts national institutions. Such publication may be penalized by a fine of 2.000.000 to 10.000.000 Riels.