

ODDAR MEANCHEY, KINGDOM OF CAMBODIA - LEGAL ANALYSIS OF THE EVENTS OF 11 SEPTEMBER 2009 THAT RESULTED IN THE DEATH OF YON RITH AND SEVERE INJURY TO MAO KLEUNG

By



I. INTRODUCTION AND EXECUTIVE SUMMARY

1. The purpose of this Cambodian Center for Human Rights (CCHR)¹ short report (the Report) is to analyze the facts and legal implications of the recent events of 11 September 2009 in Oddar Meanchey Province, Kingdom of Cambodia (Cambodia) (the Recent Events). The Recent Events resulted in the burning-to-death of 16-year-old Yon Rith and serious injury to 18-year-old Mao Kleung from Kroch Sarkhorn village, Kon Kreal commune, Samrong district, Oddar Meanchey Province, Cambodia. We submit the Report to the Royal Government of Cambodia (the RGC) for its urgent consideration regarding violations by the Kingdom of Thailand (Thailand) and its soldiers of Cambodian, Thai and international law. This Report is not intended to be a conclusive or authoritative account of what happened on the 11 September 2009, rather it is a starting point for further investigations into and analysis of the Recent Events by a bilateral, regional or international body. The Report is not confidential and will be made available to the public.²
2. The Recent Events should be considered within the context of day-to-day village life in areas immediately adjacent to the Thai-Cambodian border where traditional tensions on either side of the border have been heightened as a result of disputes regarding the demarcation of the border. As stated above, the Recent Events resulted in the burning-to-death of 16-year-old Yon Rith and serious injury to 18-year-old Mao Kleung. Further to our investigations and an examination of the relevant Cambodian, Thai and international law, the Report finds that it is probable that Thai soldiers murdered Yon Rith and attempted to murder Mao Kleung, and that Thailand has violated the International Covenant on Civil and Political Rights, the Convention Against Torture and the Convention on the Rights of the Child. The CCHR recognizes the restraint of the RGC in reacting to the Recent Events, and makes a series of recommendations that include: further investigation by a bilateral, regional, or national body and if it is found that Thai soldiers acted illegally a request for Thailand to pay compensation to Yon Rith's family and Mao Kleung and consider

¹ The CCHR is a non-political, independent, non-governmental organization that works to promote and protect democracy and respect for human rights throughout Cambodia. We focus primarily on civil and political rights, although we work on a variety of interlinked human rights issues.

² The Report will be available on the CCHR website (www.cchrcambodia.org) and the new Cambodia Human Rights Portal for Cambodia (www.sithi.org).

commencing legal proceedings against the responsible Thai soldiers.

II. METHODOLOGY

3. This Report is based on facts ascertained by on-the-ground investigations conducted by the CCHR between 15 and 16 September 2009. A CCHR Investigator interviewed the victim Mao Kleung and his family, the family of Yon Rith, other villagers who found the charred remains of Yon Rith, a villager who saw the shooting of Yon Rith, and the local investigating police officer³. CCHR researchers and legal staff carried out background factual and legal research from 14 September 2009 to 13 October 2009.

III. BACKGROUND

4. Kroch Sarkhorn, the village of the victims Yon Rith and Mao Kleung, is located in the Samraong District of the Oddar Meanchey Province, Cambodia and is approximately 40 kilometres from Samraong Town. The village shares an experience that is typical for some of the more remote rural communities of Cambodia; it is extremely isolated, barely accessible by road, and has no access to water or electrical utilities. There are some small plots for rice farming around the village but for most, due to the ineptitude of land for agriculture, the lumber trade offers the only means of livelihood. Felling requires the inhabitants to trek deep into the forest at the foot of the Dângrêk Mountains on the Cambodian-Thai border in order to search for valuable trees such as Kra Gnoung.
5. The dispute between Cambodia and Thailand as to the demarcation of the Cambodian-Thai border in the area near the foot of the Dângrêk Mountains and the ownership of forests therein is very relevant, and is continuing in the context of heightened tensions between the two countries arising from the dispute regarding the ownership of the Preah Vihear Temple and adjacent territory. The history of the area is complex. It was occupied by Khmer Rouge troops from 1970 who rebuilt their former bases in the Dângrêk mountain range from 1989 to 1997 following their fall from power in 1979. Khmer Rouge control during this period extended to the summit of these mountains. Thai troops during this period were operating 10 to 20 kilometres away. In more recent years, however, Thai military activity has become more pervasive in the area and in turn has gradually led to Thailand's assertion of a deeper territorial claim. Whilst conducting its investigations, the CCHR learnt of allegations that the Thai military had moved border stones further into Cambodian territory and are now operating in areas where Khmer-Rouge cannons were once situated.
6. Inevitably, this proximity of Cambodian and Thai activities has resulted in regular encounters between villagers of Samraong District and Thai forces. During the course of our investigations, the CCHR was informed by several villagers that these confrontations are often violent and degrading. Accounts revealed the prevalence of such practices as setting attack-dogs on, shooting at, and arresting Cambodian loggers when Thai authorities have considered them to be working 'illegally'. It has been well reported that Cambodians have been arrested by the Thai military for logging illegally

³ In the interests of confidence and witness protection, the names of those interviewed are included in this public report.

in these disputed border forests. For example, in August 2009, Thai soldiers arrested 12 Cambodians on suspicion of illegal logging.⁴ They were presumed missing for nearly a month, but in fact they were being detained. Further, two other men who were allegedly logging illegally were discovered dead in August 2009 - the Thai military said that Thai soldiers fired on the group in self-defense.⁵ Further, 16 Cambodian loggers were caught by Thai soldiers and found guilty of illegal logging, being tried and sentenced to an astonishing nine years and three months imprisonment by the Court in Ubon Province, Thailand.⁶ Not only were these sentences excessive, but the loggers were mistreated, being brought to court with their hands and legs chained and shackled.⁷ More recently, on the 19 October 2009 another group of Thai military are reported to have shot 58 year-old Sim Bun Chimm for illegal logging; he later passed away from his wounds.⁸ This treatment and the ongoing violent and degrading encounters outlined above serve as a reminder of the Thai soldier's harsh treatment of Cambodian refugees in refugee camps in Thailand during the late 1970s and throughout the 1980s.⁹

IV. RECENT EVENTS - THE FACTS

7. At approximately 6 a.m. 11 September 2009, three groups - each made up of six villagers - departed from three different villages in the Samraong District with the intention of logging in nearby forests. According to CCHR sources, at 11 a.m. one of the groups - that which included Yon Rith - decided to rest for lunch at a spot approximately six kilometres west of the Kroch Sarkhorn village between border stones 12 and 13 on the Thai-Cambodia border. Soon after a second group of loggers joined them - this group included Mao Kleung. This potentially places the location of the Recent Events within Cambodian territory, a fact that is relevant to the legal analysis in terms of the applicability of Thai or Cambodia law. Regardless of the location of the Recent Events, Thai law will be applicable insofar as provisions regulating the conduct of military are concerned.
8. At approximately 11.30 a.m. as the villagers rested, a group of ten Thai soldiers in black-clad uniforms (reported by the press to be members of unit 2608¹⁰) opened gunfire on the villagers. Yon Rith was the first to be shot and was heard by witnesses shouting out in agony. CCHR interviews with witnesses, who fled the shooting, stated that they then saw the Thai soldiers seize and arrest Yon Rith. Moreover, officials in Oddar Meanchey Province interviewed ten witnesses who saw the Thai soldiers grab

⁴ Thet Sambath, "Thais Provide Photos of Missing Loggers," THE PHNOM PENH POST, 01 Sept 2009

⁵ Thet Sambath, "Officials say 16-year-old Burned Alive," THE PHNOM PENH POST, 14 Sept. 2009.

⁶ "Sixteen Cambodian loggers sentenced by Thai Court," Preahvihear.com, by KOH SANTEPHEAP NEWSPAPER, reported in English by Khmerization 26 Sept. 2009.

⁷ "Sixteen Cambodian loggers sentenced by Thai Court," Preahvihear.com, by KOH SANTEPHEAP NEWSPAPER, reported in English by Khmerization. 26 Sept. 2009.

⁸ Thet Sambath, "Thai Soliders Killed One More Cambodian Logger," KHMER EXPRESS NEWS, reported in English by Khmerization, 21 Oct. 2009.

⁹ Barbara Crossette, "Cambodian Refugee Abuse Reported," THE NEW YORK TIMES, 19 Feb. 1987. "More than 250,000 Cambodians, many of them survivors of the Khmer Rouge era ... continue to be vulnerable to abuse in refugee camps in Thailand," according to the New York-based Lawyers Committee for Human Rights. "All too often, however," the report concludes, "ranger units are ill-disciplined, unruly, and even violent. Some relief workers suspect that many ranger units include juvenile delinquents and paroled convicts."

¹⁰ REAKSMEI KAMPUCHEA NEWSPAPER, 14 Sept. 2009, available at http://www.everyday.com.kh/non_members/channels/news/khmer/2009/09/14/17222_thai.htm

Yon Rith in order to prevent him from fleeing.¹¹ Mao Kleung was also injured during this confrontation. He was around two metres away from Yon Rith, and as he began to flee a bullet perforated his body near his left hip. Mao Kleung's brother, on hearing his screams, ran back and managed to carry him to safety and then back to Kroch Sarkhorn village. Evidencing the attack, the bullet still remains lodged in Mao Kleung's body (see appendix B). The Thai soldiers had given no warning to the villagers and seemingly shot at will.

9. The CCHR recorded an account from a witness who emerged out of hiding after hearing the shots to look for the rest of the group and reportedly saw smoke from a fire at the site of the shootings. Closer inspection of the area by the witness 15 minutes later revealed the presence of a burned body with blocks of charred wood remaining on the ankles, pelvis, and torso. A group of six men were later able to bring some of the body back to Kroch Sarkhorn village. The total body was irretrievable due to the state of disintegration the body had suffered and the remaining threat of Thai military presence (a military helicopter was reportedly flying in the area from the 11 to 13 September 2009). Though the remains were deeply disfigured the body was later collaboratively identified as Yon Rith (see appendix A).
10. Thai General Wiboolsak Neparn initially denied the presence of forces in the area and therefore the shooting of the villagers.¹² This version of events was changed, Thai military officers subsequently rejected - in a meeting with Cambodian officials - the suggestion that the fire was lit whilst Yon Rith was still alive, postulating instead that the post-mortem revealed that he had died from a gunshot wound and that Thai soldiers had simply burnt his corpse.¹³ However, the evidence suggests that the contrary is true and that Yon Rith was in fact burned-to-death. As noted above, the first witness to return to the scene found the body of Yon Rith weighed down by blocks of wood on his ankles, pelvis and torso. Furthermore, eyewitnesses also reported to the CCHR that the boy's arms were tied to a nearby ox-cart during the burning. Significantly, the eyewitnesses have also informed the CCHR of footprints and floor markings surrounding the charred body of Yon Rith, clearly evidencing the boy's struggle to free himself from the fire. In light of the foregoing, the CCHR concludes that Yon Rith was burned alive. CCHR is also unsure as to when, or even if, the Thai authorities were able to enact a post-mortem considering the haste at which Yon Rith's body was returned to his family's village and comments regarding a post mortem by Thai authorities serve only to confuse the matter further.

V. RELEVANT LAW

11. The law that applies to the Recent Events depends partly on where they occurred. If they occurred on Cambodian territory, Cambodian law is applicable; however if the Recent Events happened on Thai territory, Thai law is applicable. In either scenario, international law and Thai laws regulating the conduct of the Thai military apply.

Cambodian Law

¹¹ PHNOM PENH POST, "Report says teen burned alive," 9 Oct. 2009, p.5

¹² Thet Sambath, "Logger killing denied," PHNOM PENH POST, 17 Sept. 2009, available at <http://www.phnompenhpost.com/index.php/2009091728432/National-news/logger-killing-denied.html>

¹³ Thet Sambath, "Thai's say Soldiers burned teen post-mortem," PHNOM PENH POST, 29 Sept. 2009, available at <http://www.phnompenhpost.com/index.php/2009092928632/National-news/thais-say-soldiers-burned-teen-post-mortem.html>

12. Based on the accounts given to the CCHR by villagers in the area, the land where Yon Rith was killed and Mao Kleung injured belonged to Cambodia. Under the Constitution of the Kingdom of Cambodia (the "Cambodian Constitution"), "The territorial integrity of the Kingdom of Cambodia" shall not be violated.¹⁴ Further, every Khmer citizen shall have the right to life, personal freedom and security.¹⁵ Also, international human rights law – namely the United Nations Charter, the Universal Declaration of Human Rights and the covenants and conventions related to human rights, women's and children's right – is part of Cambodian Law via Article 31 of the Constitution.
13. Article 31 of the Provisions Relating to the Judiciary and Criminal Law and Procedure in Cambodia during the Transitional Period (the "UNTAC Criminal Law") provides that "anyone who kills or attempts to kill another person after premeditating the crime, or by preparing an ambush, or who kills or attempts to kill another person in the course of theft or rape, is guilty of murder, and shall be liable to a punishment of imprisonment for a term of ten to twenty years."¹⁶ The UNTAC Criminal Law defines premeditation as "the process of conceiving and preparing an attack on another person before the actual execution of the attack."¹⁷
14. Additionally, Article 32 of the UNTAC Criminal Law provides for the crime of voluntary manslaughter and includes attempt within its definition, defining it as "attempts to kill another person without any of the aggravating circumstances mentioned in Article 31."¹⁸ The UNTAC Criminal Law also includes a definition for involuntary manslaughter: "any person who through carelessness, negligence, inattention or failure to heed regulations involuntarily kills another person is guilty of the misdemeanor of involuntary manslaughter and shall be liable to a term of imprisonment of one to three years."¹⁹
15. Article 41 of the UNTAC Criminal Law describes assault and battery as "voluntary strikes."²⁰ Sentencing is determined by the nature and severity of the disability inflicted, and - under Article 41(4) - the use of weapons results in the doubling of imprisonment sentences.²¹
16. Article 27(1) of the UNTAC Criminal Law allows for victims or their beneficiaries to bring about a civil claim for damages in a criminal case. Article 27(2) finds that "parties guilty of the offense and their accomplices are jointly liable"²² to pay for reparations or compensation, as outlined in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.²³ This is detailed in the overview of relevant international law below. In addition, the Code of Criminal Procedure of

14 The Constitution of the Kingdom of Cambodia, Chapter I, Article 2.

15 The Constitution of the Kingdom of Cambodia, Chapter III, Article. 32

16 UNTAC Title IV: FELONIES Article 31(1).

17 UNTAC Title IV: FELONIES Article 31(2).

18 UNTAC Title IV: FELONIES Article 31(1).

19 UNTAC TITLE V: MISDEAMNORS Article 40.

20 UNTAC TITLE V: MISDEAMNORS Article 41(1).

21 UNTAC TITLE V: MISDEAMNORS Article 41(4).

22 UNTAC Title IV: FELONIES, Article 27(2).

23 Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations 29 Nov. 1985, U.N. Doc. No. A/Res/40/34.

the Kingdom of Cambodia²⁴ Article 13 provides that civil action for compensation may be brought by the victim of an offense who is physically or psychologically harmed as a direct consequence. Article 14 suggests the damages should be proportionate to the injury suffered and Article 16 allows for a victims successor to bring about action in the event of death. Article 21 suggests that liability for offenses that result in injury are not limited to their perpetrator's rather it extends to accomplices, accessories, and other individuals of liability.

Thai Law

17. The Constitution of the Kingdom of Thailand (the "Thai Constitution") protects individuals' human rights and holds that "the human dignity, rights, liberty and equality of the people shall be protected."²⁵ Further, the Thai Constitution prohibits torture, brutal acts or punishments by cruel or inhumane means.²⁶ The Thai Constitution also holds that punishment "shall not be heavier than that provided by the law in force" at the time of the commission of the offense.²⁷ Admittedly, it is unclear whether the Thai Constitution applies to and therefore protects foreigners.²⁸ Importantly however, the Thai Constitution provides that Thailand "shall comply with human rights conventions to which Thailand is a party as well as international obligations concluded with other countries and international organizations."²⁹
18. The Thai Criminal Procedure Code (the "Thai CPC") provides for the offense of murder and states that it shall result in death of the murderer or his/her imprisonment for between fifteen and twenty years.³⁰ In particular, whoever commits premeditated murder or murder through torture or acts of cruelty shall be punished with death.³¹ Murder caused by an infliction of injury upon the body of a person without intending to cause the death is punishable by imprisonment of three to fifteen years.³²
19. The Thai CPC also states that anyone who causes injury to another person "in body or mind" is said to commit "bodily harm" and shall be punished with imprisonment not exceeding two years, or a fine, not exceeding four thousand Baht, or both.³³ If the act causing such injury is premeditated, then the imposed sanctions of imprisonment or fines will in turn be subject to increased severity.³⁴
20. Thailand has also incorporated the United Nations (UN) guidelines on the *Code of*

²⁴ Code of Criminal Procedure of the Kingdom of Cambodia, 7 June 2007.

²⁵ Constitution of the Kingdom of Thailand, B.E. 2550 (2007), Somdet Phra Paramintharamaha Bhumibol Adulyadej Sayammintharathirat Borommanatthabophit [hereinafter Thai Constitution], Chapter. I, Section 4.

²⁶ Thai Constitution, Chapter III, Part 3, Section 32.

²⁷ Thai Constitution, Chapter III, Part 4, Section 39.

²⁸ The Thai Constitution specifically says that it is in the interest of the Thai people. However, other Constitutions, such as the United States' cover foreigners in the country as well, despite the fact that the Constitution was written for citizens of the United States.

²⁹ Thai Constitution, Chapter.. V, Part 6, Section 82.

³⁰ Thai Criminal Procedural Code, Title X, Chapter I, Section 288

³¹ Thai Criminal Code, Title X, Chapter I, Section 289(4),(5).

³² Thai Criminal Code, Title X, Chapter 1, Section 290.

³³ Thai Criminal Code, Title X, Chapter I, Section 295.

³⁴ Thai Criminal Code, Title X, Chapter II, Section 296; Chapter I, Section 289.

*Conduct of Law Enforcement Officials*³⁵ and *Basic Principles of Use of Force and Firearms by Law Enforcement Officials*³⁶ into regulatory practice and domestic law. Thai soldiers fall under these regulations if exercising of police powers, such as arrest, in performing their function. Military personnel are also under an obligation to respect human rights and dignity as enshrined by international law and domestic provisions, such as the Thai Constitution, when carrying out their duties.³⁷ The UN guidelines provide that the use of force is explicitly deemed permissible only when necessary,³⁸ and should be assessed by reasonable cause related to the circumstances³⁹ and principles of proportionality.⁴⁰ The use of firearms, as in this case, may be used to prevent escape but only when less extreme provisions are insufficient to achieve this objective and mandatory warnings of the intention to use firearms has been given. Similarly, any injury caused by firearms must be minimized⁴¹ and law enforcement officials are also required to take immediate action to secure medical attention whenever required.⁴² Torture is an expressly forbidden practice and is not subject to derogation.⁴³ Thailand itself is obligated to take mandatory independent investigative action, and provide detailed reports to administrative and prosecutorial services when death results from the use of firearms by law enforcement officials.⁴⁴ Yon Rith's family and legal representatives also have a limited right of access to these independent proceedings.⁴⁵ The Thai Constitution stipulates that an injured person is entitled to proper treatment and appropriate compensation from the State as provided by domestic law.⁴⁶ This amounts to two alternative means of seeking redress for the victim, to; (i) institute a criminal complaint or charge the perpetrator in criminal court and file a civil case in connection with the offense (similar to the aforementioned Cambodian legal means); or (ii) apply for a compensation award from the Victim Compensation and Restitution Board (the "VCRB").

21. Under the Thai CPC an injured party has the right to file a civil lawsuit if: (i) a crime has been committed; (ii) the injured person has a right to claim restitution for the wrongful acts; and (iii) the right to claim restitution is connected with the offense. Once an applicant is recognized as a victim (an injured person who has received injury through the commission of any offenses⁴⁷) it establishes the right to file a civil lawsuit as a *non-compoundable* offense⁴⁸, under Section 420 of the Civil and

³⁵ Code of Conduct for Law Enforcement Officials adopted by UN GA resolution 34/169, 17 Dec. 1979.

³⁶ 'Basic Principles on the Use of Firearms by Law Enforcement Officials' Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

³⁷ Code of Conduct for Law Enforcement Officials, Article 2.

³⁸ Code of Conduct for Law Enforcement Officials, Article 3.

³⁹ Code of Conduct for Law Enforcement Officials, Article 3, Commentary (a).

⁴⁰ Code of Conduct for Law Enforcement Officials, Article 3, Commentary (b).

⁴¹ Basic Principles on the Use of Firearms by Law Enforcement Officials, Article 5(b); Article 11(b).

⁴² Code of Conduct for Law Enforcement Officials, Article 6.

⁴³ Code of Conduct for Law Enforcement Officials, Article 5.

⁴⁴ Basic Principles on the Use of Firearms by Law Enforcement Officials, Article 22.

⁴⁵ Basic Principles on the Use of Firearms by Law Enforcement Officials, Article 23.

⁴⁶ Thai Constitution, Chapter III, Part 4, Section 40(5).

⁴⁷ Thai Criminal Procedure Code B.E. 2477 (1934), Section 2(4).

⁴⁸ Thai Civil and Commercial Code B.E. 2499 (1956).

Commercial Code⁴⁹. The facts of this case will be limited to those as found in the conclusive criminal judgment.

22. The Crime Victim Compensation and Restitution for the Accused law came into effect on 12 November 2001 and allows for individual complaints to be lodged with specialized sub-committees who deliberate and act on behalf of the VCR.⁵⁰

International Law

23. Thailand is a party to the International Covenant for Civil and Political Rights (the ICCPR) that ensures the right to life⁵¹ and the prohibition against torture or cruel, inhuman or degrading treatment or punishment.⁵² There can be no derogation from any of the fundamental human rights, including the right to life.⁵³ Further, the ICCPR states that all Member States must respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant.⁵⁴ The ICCPR provides that nothing therein may be interpreted to imply that a State or group or person has any right to engage in any activity or perform any act aimed at undermining any of the rights and freedoms that are recognized within the ICCPR. Further, the ICCPR holds that anyone arrested on a criminal charge shall be brought promptly before a judge or other authorized officer and that anyone who has been a victim of unlawful arrest shall have an enforceable right to compensation.⁵⁵
24. Article 13 of the ICCPR provides that, "an alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision in accordance with law" ⁵⁶ [w]hen there is a question as to whether the alien is lawfully or unlawfully on the land, the Human Rights Committee, when interpreting the ICCPR, found that any decision on this point leading to expulsion or deportation should be taken in accordance with Article 13.⁵⁷ While the ICCPR does not recognize the right of aliens to enter or reside in the territory of a State party,

⁴⁹ Civil and Commercial Code of Thailand B.E. 2466 (1923).

⁵⁰ A complaint must be lodged within a year from the day the victim became aware that an offense had been committed against them. The VCR are able to award compensation on behalf of the state for injury or death resulting from crime, its activities are governed by the following legislation and regulation: (i) Victim Compensation, Restitution and Benefits of the Accused; (ii) Ministerial Regulation on Standards, Methods and rates for Compensation, Restitution and Benefits; (iii) Regulation for the Compensation and Restitution for the Accused Board on the Application and Procedure for Compensation, Restitution and Benefits. Compensation will cover expenses for necessary medical care and rehabilitation, compensation for victim's death (capped at 100,000 Thai Baht; the equivalent 12,535,300 Cambodian Riel), and loss of earnings. The act itself allows for discretion with regards to these guidelines in special circumstances, explicitly with regards to the seriousness, nature of the loss, and gravity of the offense. It is likely, if it is factually established, that torture would be taken into account in this discretionary category.

⁵¹ International Covenant on Civil and Political Rights (hereinafter ICCPR), U.N. GA Res. 2200A [XXI], 16 December 1966, Part III, Article 6.

⁵² ICCPR, Part III, Article 7.

⁵³ ICCPR, Part II, Article 5.

⁵⁴ ICCPR, Part II, Article 2.

⁵⁵ ICCPR, Part III, Article 9.

⁵⁶ ICCPR, Part III, Article 13.

⁵⁷ Human Rights Committee, General Comment 15, The position of aliens under the Covenant (Twenty-seventh session, 1986), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 18 (1994), paragraph 13.

aliens have an inherent right to life, protected by law, and may not be arbitrarily deprived of life. They must not be subjected to torture or to cruel, inhuman or degrading treatment or punishment.⁵⁸ Aliens therefore have the full right to liberty and security of the person and it is for the competent authorities of the State party in good faith and in the exercise of their powers, to apply and interpret the domestic law, observing, however, such requirements under the Covenant as equality before the law (art. 26).⁵⁹

25. Further, the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which they live⁶⁰ defines aliens so as to include any individual who is not a national of the State in which he or she is present.⁶¹ This declaration reaffirms the principle that whilst any State has the right to promulgate laws concerning the entry of aliens such laws and regulations shall not be incompatible with the International legal obligations of that State, including those in the field of human rights.⁶² Furthermore, this Declaration goes on to state that [n]o alien shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.⁶³
26. Thailand is also a party to the Convention on the Rights of the Child (the "CRC"). In particular, State Parties recognize that every child, who is under the age of 18, has the inherent right to life. Further, State Parties shall ensure to the maximum extent possible, the survival of the child.⁶⁴
27. Thailand is a party also to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "CAT"). Article 1 of the CAT defines torture as punishment by which severe pain or suffering, whether physical or mental, is intentionally inflicted on someone, by a public official or other person acting in an official capacity, for an act he or a third person committed or is suspected of having committed.⁶⁵ The CAT specifically prohibits the use of torture.
28. The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides the foundation for both Cambodian and Thai compensation provisions. It stipulates in Article 12 that when compensation is not fully available from the offender or other sources, states should endeavor to provide financial compensation when victims who have sustained significant bodily injury or impairment of physical or mental health as a result of crimes⁶⁶ and for family

⁵⁸ Human Rights Committee, General Comment 15, The position of aliens under the Covenant (Twenty-seventh session, 1986), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 18 (1994), paragraphs 5, 7, 9.

⁵⁹ Human Rights Committee, General Comment 15, The position of aliens under the Covenant (Twenty-seventh session, 1986), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 18 (1994), paragraph 9.

⁶⁰ Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, G.A. res. 40/144, annex, 40 U.N. GAOR Supp. (No. 53) at 252, U.N. Doc. A/40/53 (1985).

⁶¹ *Ibid*, Article 1.

⁶² *Ibid*, Article 2.

⁶³ *Ibid*, Article 6.

⁶⁴ Convention on the Rights of the Child, G.A. Res. 44/25, 20 Nov.1989, Arts. 1, 6. *See also* Thailand's Measures in Prevention and Suppression of Trafficking in Women and Children Act, B.E. 2540 (1997). Bhumibol Adulyadej, Rex., Section 4, "child means a person whose age is not over eighteen years."

⁶⁵ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations 10 December 1984, GA/Res/39/46 (hereinafter referred to as CAT), Article 1.

⁶⁶ Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations

members of particular dependents of persons who have died.⁶⁷

VI. APPLYING THE LAW

Recent Events in Cambodia Territory

If the Recent Events occurred within Cambodian territory, provisions of Cambodian Criminal Law and of International Law have been violated, as follows:

Cambodian Law

29. If, as CCHR investigations suggest - Yon Rith was burned alive, the responsible Thai soldier(s) have committed murder pursuant to Article 31 of the UNTAC Criminal Law. As set out above, CCHR investigations found that Yon Rith's body had been tied down to an ox-cart and the floor-markings near his remains exhibit his desperate struggle to escape. This demonstrates that not only was Yon Rith alive at the time of the burning but also, that this act was premeditated.⁶⁸
30. Even if Thai accounts that Yon Rith was dead before he was burned are true, Thai soldiers have committed murder by shooting and killing Yon Rith. The approach and attack without warning by trained military personnel could also amount to an ambush such that the killing of Yon Rith could constitute a premeditated one under Article 31 of the UNTAC Criminal Law. At the very least, the soldiers are guilty of involuntary manslaughter pursuant to Article 40 of the UNTAC Criminal Law, for the shooting death of Yon Rith, if it is found that the shooting was unintentional. Furthermore, the soldiers violated the Cambodian Constitution by depriving Yon Rith of his right to life and security contained in Article 32 therein.
31. With regards to the shooting of Mao Kleung, several provisions of the UNTAC Criminal Law are relevant. These include those relating to murder, voluntary manslaughter, or assault and battery. The murder provision of Article 31 includes attempt in its definition, and culpable parties could potentially be prosecuted under this provision if it is deemed premeditation or ambush preconditions were established as defined in Article 31(2). If the conditions for murder are deemed insufficient, voluntary manslaughter also provides an alternative means of redress. Article 32 once again includes attempt within its definition, stating "attempts to kill another person without any of the aggravating circumstances mentioned in Article 31".⁶⁹

International Law

32. Thailand breached the ICCPR, in particular, the non-derogable right to life⁷⁰ when its soldiers killed Yon Rith.
33. Applying Article 1 of CAT, Thai soldiers tortured Yon Rith by intentionally burning him alive, which qualifies as "severe pain or suffering". Article 5(2) of CAT provides

29 November 1985, A/Res/40/34, Article 12 (a).

⁶⁷ Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations 29 November 1985, A/Res/40/34, Article 12 (b).

⁶⁸ UNTAC Provisions Dated 10 September 1992, Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the transitional period. Title IV: FELONIES Article 31(1).

⁶⁹ UNTAC Title IV: FELONIES, Article 32(1).

⁷⁰ ICCPR, Article 6.

that Thailand has an obligation to assert its jurisdiction, even if the crime did not take place on Thai soil and to prosecute the soldiers, or, extradite the soldiers to Cambodia for prosecution.

34. The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power stipulates in Article 12 that when compensation is not fully available from the offender or other sources, states should endeavor to provide financial compensation when victims who have sustained significant bodily injury or impairment of physical or mental health as a result of crimes and for family members in particular dependants of persons who have died.⁷¹

Recent Events in Thai Territory

If the Recent Events occurred within Thai territory, provisions of Thai Criminal Law and of international law have been violated, as follows:

Thai Law

35. The Thai soldier(s) who killed Yon Rith have committed murder under the Thai Criminal Code. The murder of Yon Rith was premeditated if, as CCHR opines, it is found to have been caused by burning. Moreover, the silent approach of the soldiers and their failing to warn the victims and villagers could give rise to a finding of a premeditated murder even if Yon Rith was killed by his gunshot wounds.⁷²
36. While it is illegal to enter Thailand without permission, the Thai immigration law only allows arrest of the person who enters illegally.⁷³ Thai soldiers, instead, failed to use proportionate means when they shot Mao Kleung and shot and burned-to-death Yon Rith. Further, the Thai soldiers' shooting of Mao Kleung was in violation of the Thai CPC and his injuries are considered "bodily harm."⁷⁴
37. Despite the existence of border disputes the regulatory provisions regarding law enforcement conduct still remain functional and legally binding. Yon Rith's and Mao Kleung's tragic cases evidence Thai soldiers operating in flagrant disregard of the required codes of conduct, in particular the *Code of Conduct for Law Enforcement Officials* and *Basic Principles on the Use of Firearms by Law Enforcement Officials*. There is little evidence to the effect that correct warnings were given in relation to the use of force, or due care for the villagers' human rights and health, in the exercise of using firearms as a means of facilitating arrest. Regardless of the accusation of torture made in this case, Thai authorities are under a mandatory legal obligation to independently assess the death of Yon Rith as a direct result of the acts of their officials, and hold perpetrators and superior officers involved in the illegal actions responsible. We note also that Yon Rith's family and Mao Kleung need to be accommodated in the investigatory and judicial procedures of the event to a greater extent.

International Law

⁷¹ Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations November 1985, A/Res/40/34, Article 12 (b)

⁷² Thai Criminal Code, B.E. 2499 (1956) Title X, Chapter 2, Section 296; Chapter 1, Section 289.

⁷³ Immigration Act B.E. 2522 (1979), Immigration Act in the name of Majesty King Bhumibol, enacted on the 25 February B.E. 2522, Section 29.

⁷⁴ Thai Criminal Procedural Code, Title X, Chapter II, Section 296.

38. Thai soldiers disregarded the ICCPR by intentionally taking Yon Rith's life without just reason or cause, and without any judicial proceeding. Further, Thailand failed to use "good faith" as required under Article 13 of the ICCPR, when Thai soldiers murdered Yon Rith. According to the Human Rights Committee, all aliens still have the inherent right to life, and may not be tortured. Regardless of whether Yon Rith was burned alive or not, his killing was murder and an arbitrary taking of life, a violation of the ICCPR. Thailand also violated the CRC, by murdering Yon Rith, who has an inherent right to life and who was only 16-years old at the time of his death. Finally, Thailand violated the CAT, by burning alive Yon Rith for allegedly felling trees, a punishment that falls under severe pain or suffering.

VII. RECOMMENDATIONS TO THE ROYAL GOVERNMENT OF CAMBODIA

39. The RGC should be commended for the restraint it has shown in reacting to the death of Yon Rith and the shooting and severe injury of Mao Kleung, despite the current tensions between Cambodia and Thailand and the ongoing mistreatment of Cambodian loggers by Thai military on the Thai-Cambodia border. The CCHR supports the RGC in its initial requests for explanations from the Thai Government and the RGC's initial investigations. In the interests of the families of Yon Rith, Mao Kleung, the villagers of Oddar Meanchey and the people of Cambodia, we make the following recommendations to the RGC:

Call for an immediate end to Thai mistreatment of Cambodia loggers

40. Demand a guarantee from the Thai Government that attacks on and mistreatment of Cambodian loggers by Thai forces on the Thai-Cambodian border will cease immediately regardless of which territory loggers are believed to be operating in. The RGC should meet with their Thai counterparts in this regard.

Investigations

41. Call on Thailand to mount a fair and thorough investigation into their military personnel's actions during the Recent Events.
42. Call on ASEAN, the UN or another neutral body to commence an impartial investigation into the Recent Events and to consider their international legal implications. Request that Thailand consent to this investigation. One of ASEAN's core principles is a respect for territorial integrity and sovereignty. A clear demarcation of borders between Thailand and Cambodia is required.
43. Call on the UN Special Rapporteur on extra-judicial executions to commence an impartial and thorough investigation into the extra-judicial killing of Yon Rith.
44. Call on the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to commence an impartial and thorough investigation into the shooting and burning to death of Yon Rith as well as the shooting of Mao Kleung.

Request for Compensation

45. Should the neutral fact-finding body determine that Yon Rith was burned alive, request Thailand to justly compensate Yon Rith's family for his death, under Part III,

Article 9 of the ICCPR.

46. If criminal proceedings are commenced in the Cambodian courts and Thai soldiers are found guilty of committing a crime or crimes, utilize domestic compensatory provisions, as detailed in paragraph 15 and the international principles detailed in paragraph 27, to ascertain compensation due to Yon Rith's family and Mao Kleung.
47. If criminal proceedings are commenced in the Thai courts, we propose that the RGC should proceed to use the Criminal Procedural Code of Thailand and file a civil lawsuit for damages in conjunction with the criminal case, as detailed in paragraph 20. We commend the RGC to lodge a complaint with the VCR, as detailed in paragraph 21 above, by 11 September 2010.

International Lobbying

48. Request friendly countries, ASEAN and the UN, to encourage Thailand to reach agreement with Cambodia regarding the demarcation of the Thai and Cambodian border.
49. If the neutral fact-finding body determines that the land is owned by Cambodia, then, recommend the issue to the Security Council to determine whether Thailand breached Cambodian sovereignty and peace under Chapter VII of the UN Charter, specifically Articles 39, 40.

Legal Proceedings

50. Issue arrest warrants for Thai soldiers and request extradition.
51. Reach an agreement with the Thai government to arrest those soldiers responsible for the death of Yon Rith and try them in a Cambodian court.

Cambodian Center for Human Rights (CCHR)
Phnom Penh, Kingdom of Cambodia, 26 October 2009

Due to the graphic nature of the following photographic content, reader discretion is advised.

1. Head
2. Mouth
3. Missing Limb
4. Upper Torso
5. Spine
6. Missing lower body



APPENDIX A

Charred Remains of Yon Rith

APPENDIX B



Gun Shot Wound of Mao Kleung