



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

**1. Background**

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

The Charges ostensibly relate to events that took place in Pro Ma village, Kampong Domrei commune, Chhlong district, Kratie province, in the first few months of 2012. A powerful private Russian-owned company, Casotim Co. Ltd (“Casotim”), was granted a forest concession in the area in 1996, 15,000 hectares of which encroached on Pro Ma village, creating a land dispute with around 1,000 farmers and their families from the village (the “Villagers”), who also claimed ownership of the land. In response, the Villagers reportedly organized and mobilized themselves to protect their land and livelihoods and to resist the intrusions of Casotim. On 16 May 2012 hundreds of heavily-armed soldiers, military police and local police stormed Pro Ma village with the aid of a helicopter gunship, apparently in an attempt to break up the Villagers’ resistance and to remove them from the affected area. The soldiers and police used disproportionate force against the Villagers, causing the death of a 14-year-old girl, Heng Chantha, who was shot dead as she and her family sheltered from the armed intervention. After the event, the authorities claimed that the Villagers were responsible for an attempted secessionist movement to break away from the rest of Cambodia and form an autonomous state-within-a-state (the “Alleged Secession”). The events of 16 May 2012 will be referred to as the “Pro Ma Incident”.

This Summary is written by the Cambodian Center for Human Rights (“CCHR”), a leading, non-aligned, independent NGO that works to promote and protect democracy and respect for human rights – primarily civil and political rights – in Cambodia. It is a summary of the “Legal Analysis of the Charging and Sentencing of Cambodian Journalist and Human Rights Defender Mam Sonando” (the “Legal Analysis”), also released by CCHR on 3 March 2013, and is designed as a quick reference to

the lengthier Legal Analysis, which includes a significantly more detailed breakdown of the facts and analysis of the Charges. Furthermore, in the interests of brevity, this Summary does not contain any footnotes, which can be found in the Legal Analysis.

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

## **2. The Law**

### **Fundamental freedoms**

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

Article 41 of the Constitution of the Kingdom of Cambodia (the "Constitution") states that all citizens shall have the right to freedom of expression, while Article 42 protects the right to establish associations. Article 31 states that Cambodia shall recognize and respect the Universal Declaration of Human Rights (the "UDHR") and the covenants and conventions related to human rights, including the International Covenant on Civil and Political Rights (the "ICCPR"). Furthermore, the ICCPR is directly incorporated into Cambodian domestic law by virtue of ratification by Cambodia in 1992, with such incorporation confirmed by a decision of the Constitutional Council dated 10 July 2007, which stated that "*international conventions that Cambodia has recognized*" form part of Cambodian law. Article 19 of both the UDHR and the ICCPR provide for the right to freedom of expression for everyone, while Article 20 of the UDHR and Article 22 of the ICCPR protect the right to freedom of association.

### **Right to liberty and freedom from arbitrary arrest or detention**

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

### **Right to defend human rights**

In his role as Director of the Democrat Association, and as a reporter and radio station owner delivering independent news to the Cambodian people, the Defendant was exercising his right to defend human rights. He protected the right of citizens to participate in the political life of their nation and, as a journalist and broadcaster, he upheld the right of the Cambodian people to freedom of information. The United Nations (“UN”) Declaration on Human Rights Defenders, adopted by the UN General Assembly in 1998, although not legally binding, is based upon a series of rights and principles contained in other international instruments, such as the ICCPR, that are binding.

### **3. The Charges and Evidence**

The Trial took place from 11 to 14 September 2012 inclusive at the Phnom Penh Municipal Court. Presiding Judge Chang Sinat, and Judges Leang Samnatt and Lim Makarin, handed down the Defendant’s verdict on 1 October 2012. He was found guilty of the Charges – all of which fall under the Penal Code – as follows:

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

This section aims to analyze the Charges objectively – as the court so evidently failed to do in the first instance. This Summary will focus on Article 28, since all the other Charges are contingent upon it in that the Defendant was charged as an instigator of the other offenses; the Legal Analysis examines all the Charges in greater detail.

**Article 28: Instigation of a felony or a misdemeanor:** This Article defines an “instigator” as any person who:

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

Under Article 28, an instigator is punishable only if the felony or the misdemeanor is carried out or was attempted, and, if so, the instigator receives the same penalties as the perpetrator. The Defendant was charged and found guilty as an instigator of the five felonies under Articles 456, 457, 464, 504 and 609. In order to assess whether the Defendant can be found guilty of being an instigator of these felonies, it is necessary to consider whether or not the Defendant was connected

to the Alleged Secession, regardless of whether the Alleged Secession was in fact a genuine attempt to secede. In order to do so, the substance of the evidence submitted by the Prosecution in court will be discussed in order to ascertain the Defendant's guilt under this Charge. Three main strands of evidence were produced by the Prosecution to implicate the Defendant:

1. The February Meeting: In either late January or early February 2012, the Defendant allegedly met several Villagers and so-called secessionists (the "Participants"), who claimed that they discussed the land conflict in Pro Ma village with the Defendant, who in turn reportedly told them that they should clear the land to farm and that if they encountered trouble he would help them. While the Defendant acknowledged that the February Meeting took place, and explained that the Democrat Association sometimes helps to resolve land conflicts through peaceful and legal means, he claimed that he did not offer the Participants any help, instead claiming that they spoke only about bringing electricity to Pro Ma village. As there are no records of the February Meeting to clarify which Participants are telling the truth, it remains difficult to establish what was discussed. Therefore the Prosecutor's evidence in this regard remains in dispute, and cannot be relied upon as proof of the Defendant's having instigated the Alleged Secession.

2. The Democrat Association: The Prosecutor claimed that Bun Ratha was a current member of the Democrat Association, and that he allegedly brandished the Democrat Association logo and the Defendant's photograph at meetings, while encouraging and sometimes pressurizing others to become members. However, even if the Alleged Secession were actually proven to be a genuine attempt at secession, the Alleged Ringleaders may just have been using the Democrat Association connection to their advantage without the permission or knowledge of the Defendant. At no stage in the Trial was any genuine evidence produced to prove a connection between the Democrat Association and the activities of the Alleged Ringleaders, let alone a connection that would suggest that the Defendant had instigated the offenses covered by the Charges. Therefore the Prosecutor's evidence in this regard cannot be relied upon to prove that the Defendant was guilty of this Charge.

3. The KPPM link: The Prosecution claimed that because the Defendant was in contact with Suon Serey Ratha and attended KPPM events, and because the Defendant could not prove that he did not hold the same views as Suon Serey Ratha and the KPPM, he and the Democrat Association must share the KPPM's goal of peacefully overturning the Royal Government of Cambodia ("RGC"). There is no legal or logical basis for this implication, however, and such an argument flouts the principle of the presumption of innocence enshrined in Cambodian and international law. The Defendant claimed that he attended KPPM meetings for journalistic purposes and acted within his rights in doing so, which in no way links him to the Alleged Secession. Therefore the Prosecutor's evidence as regards the Defendant's contact with Suon Serey Ratha and the KPPM cannot be relied upon as proof of the Defendant's instigation of the Alleged Secession under this Charge.

Once these three strands of evidence are closely examined, it is clear that there is no sound basis for establishing that the Defendant gave instructions, or ordered, or provoked the commission of a felony or misdemeanor. No evidence was produced by the Prosecution to show that he had even visited Pro Ma village, or that he had ever been in contact with the Alleged Ringleaders, other than at the February Meeting. In fact, he was not even in Cambodia at the time of the Alleged Secession – he was abroad from 12 March 2012 to 12 July 2012, when he returned to face the Charges. Despite these evidential shortcomings, the Defendant was found to be an instigator as defined

under Article 28 of the Penal Code. As such, he received the same penalties as the Alleged Ringleaders for committing or attempting to commit the other felonies with which he was charged.

The other five Charges are dependent upon the presumption that the Defendant was the “instigator” (under Article 28), for which no concrete evidence has been produced, as discussed above. The Defendant should therefore not have been found guilty of the other Charges either.

#### **4. Fair Trial Rights**

The right to a fair trial is recognized by the UDHR (Article 10) and the ICCPR (Article 14), the latter of which is incorporated into Cambodian law by virtue of being ratified by Cambodia in 1992 (please see the section on Fundamental Freedoms above). Fair trial rights are also recognized under Article 38 of the Constitution. From close monitoring of the Trial, it was found that several of the Defendant’s fair trial rights were not respected, such as his rights: to a fair and public hearing; to be presumed innocent before proven guilty; to examine, or have examined, the witnesses against him; and to be entitled to equality of arms in terms of calling witnesses.

#### **5. Conclusion**

CCHR condemns in the strongest possible terms the guilty verdict brought against the Defendant. Over the course of four days of close monitoring of the Trial, CCHR heard not a shred of evidence that in any way connected the Defendant with the Alleged Secession. Furthermore, CCHR heard nothing that convincingly established that the Alleged Secession was not just another, rather better organized, protest against yet another land eviction, with the Pro Ma Incident just another, rather more brutal, suppression of yet another land protest. CCHR therefore argues that the Charges are totally unfounded and bogus. Given the lack of evidence, the only rational, reasonable and legal thing that the court could have done, as CCHR and many others urged during the Trial, would be to acquit the Defendant of all the Charges and set him free immediately. His sentencing represents a gross travesty of justice – an outrageous violation of his rights to freedom of expression and association, his right to liberty, and his fair trial rights, including the fundamental right to be deemed innocent until proven guilty. One of Cambodia’s most prominent human rights defenders, the Defendant said from prison shortly after his arrest: *“Even though I am incarcerated, in my heart I am free ... I have done nothing wrong, therefore I will not hide.”*

Moreover, the sentence is totally lacking in proportion: 20 years is practically a life sentence in many countries, and a death sentence for a man in his early 70s. At a time when Cambodia should be making amends for the depressing roll call of human rights violations last year, the judiciary has only brought further shame to the country. It is hoped that the judiciary will honor its legal obligations, and consider the Charges and the evidence as highlighted by this Summary and the Legal Analysis. If it does, CCHR expects the Defendant to be acquitted of the Charges at his appeal on 5 March 2013 and released immediately. If not, it will be the final death knell for the credibility of Cambodia’s judicial system.

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### Annex: Timeline of Events

<b>1996</b>	Casotim was granted a forest concession in Kratie province, 15,000 hectares of which was in Pro Ma village.
<b>10 May 2010</b>	The Democrat Association was formally registered with the Ministry of the Interior by the Defendant.
<b>2 Feb 2011</b>	Bun Ratha became a member of the Democrat Association.
<b>14 July 2011</b>	The Democrat Association set up a branch in Kratie province.
<b>Nov 2011</b>	Bun Ratha resigned from the Democrat Association.
<b>January 2012</b>	Start of the conflict in Pro Ma village between Casotim and the Villagers.
<b>Late Jan/Early Feb 2012</b>	Members of Bun Ratha's group went to Phnom Penh and met briefly with the Defendant; Bun Ratha did not attend.
<b>Feb-April 2012</b>	Meetings were conducted between Bun Ratha's group and the Villagers.
<b>10 March 2012</b>	Bun Ratha and his group moved to Pro Ma village.
<b>12 March 2012</b>	The Defendant left Cambodia for the United States ("US"). On the same day Casotim's company branch office was alleged to have been burnt following protests at Casotim's construction activities by 500 Villagers.
<b>17/18 March 2012</b>	The Defendant attended events in Lynnwood, Washington, US, with Suon Serey Ratha, leader of the KPPM.
<b>30 March 2012</b>	The Defendant attended another KPPM event in Stockton, California, US.
<b>31 March 2012</b>	The Defendant attended another KPPM event in Fresno, California, US.
<b>6 April 2012</b>	Bun Ratha was arrested and charged with destroying private property on 12 March 2012 in relation to attempts to defend Pro Ma village's land claims. 200 Villagers protested and blocked the road after Bun Ratha was arrested.
<b>9 April 2012</b>	Around 700 Villagers protested to persuade authorities to release Bun Ratha.
<b>10 April 2012</b>	Bun Ratha was released.
<b>22 April 2012</b>	Bun Ratha and a group of Villagers detained two officials to ask for information and then released them afterwards. On the same day they forced entry into the Kampong Damrei commune police station. They took police documents and tore up the police station's temporary settlement list.
<b>30 April 2012</b>	Bun Ratha measured land to give to the people.
<b>1 May 2012</b>	The Governor of Kratie province sent a report to the Ministry of Interior with respect to the "land conflict resolution dialogue" and the "anarchic acts by the group of the Democrat Association at Pro Ma village".
<b>2 May 2012</b>	Bun Ratha and others erected barriers at four entry points to Pro Ma village.
<b>4 May 2012</b>	The Minister of Interior authorized the Kratie provincial authorities to resolve the conflict according to the law, <i>i.e.</i> , through non-violent means.
<b>7 May 2012</b>	Prime Minister Hun Sen ordered an immediate moratorium on concessions.
<b>15 May 2012</b>	Hundreds of military and police established a "lock-down" on Pro Ma village in a military-style operation, claiming that the operation was organized solely to arrest the Alleged Ringleaders.
<b>16 May 2012</b>	Armed forces, aided by a helicopter gunship, stormed Pro Ma village in an effort to evict around a thousand families living in the concession area. A 14-

	year-old girl, Heng Chantha, was shot and later died of her injuries. Police arrested numerous individuals said to be plotting with the Democrat Association. The authorities denied journalists, NGO and most UN representatives access to the site for several days afterwards.
<b>20 May 2012</b>	The Defendant informed a meeting in Virginia, US, that he feared that he would be arrested when he returned to Cambodia.
<b>8 June 2012</b>	Five out of eight individuals said to be involved in the Alleged Secession were released on bail. The men were charged with committing insurrection against a public authority, facing jail terms of between seven and 15 years.
<b>22 June 2012</b>	At the International Criminal Court in the Hague, the Defendant interviewed Suon Serey Ratha, who had just submitted a resolution accusing the RGC of crimes against humanity with respect to Cambodia's land rights violations crisis.
<b>25 June 2012</b>	Beehive Radio broadcast the Defendant's interview with Suon Serey Ratha.
<b>26 June 2012</b>	Prime Minister Hun Sen called for the Defendant's arrest during a public speech at the Koh Pich Convention and Exhibition Centre, stating that he was leading a plot to overthrow the RGC and establish a state-within-a-state.
<b>2 July 2012</b>	The Investigating Judge of Kratie Provincial Court issued an arrest warrant accusing the Defendant of participation in an "insurrectionary movement".
<b>6 July 2012</b>	The Democrat Association held a press conference at which it denied any links between the Defendant and Bun Ratha. The Democrat Association also stated that Bun Ratha was not an active member of the organization.
<b>12 July 2012</b>	The Defendant returned to Cambodia from a trip to Switzerland and the US in order to answer the accusations against him.
<b>15 July 2012</b>	The Defendant was arrested on accusations of leading a secessionist movement in Kratie province and held in pre-trial detention, without bail.
<b>16 July 2012</b>	The Defendant was formally charged under Articles 28, 456, 457, 464, 504 and 609 of the Penal Code.
<b>17 July 2012</b>	Bun Ratha denied that the Defendant was involved in the land dispute in Kratie province, and that he himself held any position in the Democrat Association.
<b>22 July 2012</b>	The RGC announced that a total of six Villagers had confessed to secession.
<b>11-14 Sept 2012</b>	The Defendant's hearing at the Phnom Penh Municipal Court.
<b>1 Oct 2012</b>	The Defendant was found guilty of all the Charges, under Articles 28, 456, 457, 464, 504 and 609 of the Penal Code, and sentenced to 20 years in prison and a 10 million riel fine. Bun Ratha was sentenced <i>in absentia</i> to 30 years in prison.
<b>12 Oct 2012</b>	The Defendant filed an appeal submission at the Phnom Penh Municipal Court.
<b>18 Oct 2012</b>	The Phnom Penh Municipal Court accepted the appeal submission.
<b>19 Nov 2012</b>	US President Barack Obama urged Prime Minister Hun Sen to release the Defendant and all other political prisoners with immediate effect.
<b>22 Nov 2012</b>	The Defendant's case was transferred to the Court of Appeal.
<b>13 Dec 2012</b>	The Defendant was denied bail in advance of his appeal hearing.
<b>17 Feb 2013</b>	A date was set for the Defendant's appeal hearing – 5 March 2013.
<b>5 March 2013</b>	The Defendant's appeal hearing is due.