



សម្ព័ន្ធខ្មែរជំរឿន និងការពារសិទ្ធិមនុស្ស លីកាដូ

LICADHO

CAMBODIAN LEAGUE FOR THE PROMOTION AND DEFENSE OF HUMAN RIGHTS

#16, Street 99, PO Box 499, Phnom Penh, Cambodia

Tel: (855) 23 727 102/216 602 • Fax: (855) 23 727 102/217 626 • Email: contact@licadho-cambodia.org

Written Statement presented by Ms. Eva Schueller, Legal Consultant for the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), to the United States House of Representatives, Committee on Foreign Affairs.

Hearing entitled, "Cambodia's Looming Political and Social Crisis," before the Subcommittee on Asia and the Pacific, on Tuesday, July 9, 2013, at 2:00 p.m.

Introduction & Executive Summary

The Cambodian League for the Promotion & Defense of Human Rights (LICADHO) is a Cambodian NGO operating since 1992. Employing more than 140 staff, with offices in Phnom Penh and 12 provinces out of 24, LICADHO investigates and documents rights violations; provides legal, medical and other assistance to victims and affected communities; conducts human rights campaigns and events with unions, grassroots groups and communities; and advocates for tangible improvements in rule of law in Cambodia.

The past couple of years have seen a marked deterioration of the human rights landscape in Cambodia. The issuance of long-term, large-scale land leases has accelerated significantly, while the safeguards expressly provided for in Cambodian land laws have continued to be almost entirely ignored. Human rights defenders have been targeted for harassment, threats, unjustified criminal charges and violence, particularly when their activism has related to land rights.

The nation's corrupt and politically-influenced justice system has prosecuted more and more high-profile government opponents, while State personnel and well-connected individuals have continued to enjoy almost unfettered impunity.

Military Abuses in Relation to Land Grabbing

State forces, including military soldiers, continue to provide assistance and protection to private companies involved in land disputes with villagers, as well as taking part in forceful - and occasionally lethally violent - evictions. The following is a non-exhaustive list of recent violence perpetrated by members of the military.

On December 12, 2011, a commanding military officer from Battambang's Phnom Preuk district shot at a group of villagers,

Online: licadho-cambodia.org • www.facebook.com/licadho • www.twitter.com/licadho

Provincial Offices: Battambang: (053) 952 828 • Banteay Meanchey: (054) 958 861 • Koh Kong (035) 936 116 • Kampong Cham (042) 941 464 • Kampong Chhnang (026) 988 637
Kampong Speu: (025) 987 220 • Kampong Thom: (062) 961 292 • Kampot (033) 932 663 • Pursat (052) 951 496 • Siem Reap: (063) 964 066 • Sihanoukville (034) 933 716 • Svay Rieng (044) 945 833



injuring three. The villagers had been demonstrating against the clearing of farmland by Soun Mean Sambath company, which was granted a 4,095 hectare Economic Land Concession (ELC) in the area in April 2011, resulting in the ongoing land conflict with residents. The military officer was acting as a security guard for the company.

On January 18, 2012, military personnel acting as security guards for TTY Co. Ltd opened fire on a group of civilians who had gathered to prevent clearing of their farmland by the company's excavators in Kratie's Snuol district. Four villagers were injured by bullets. None of the authorities present during the shooting proceeded to arrest the perpetrators at the time. Four men - three security guards and TTY's general manager - were quietly tried in late December 2012, and convicted of illegal use of firearms and intentional acts of violence with aggravating circumstances. Their sentences ranged from two to three years, though in each case the sentence was suspended for between six months and a year.

On April 26, 2012, well-known environmental activist Chut Wutty was shot dead in a remote corner of the Cardamom Mountains while investigating illegal logging. Military police officer In Rattana was also killed by gunfire, and two other members of the military were present. Government officials put forward an array of bizarre and contradictory explanations for Wutty's death, before finally pinning the shooting on Rattana, based on an implausible scenario which was never substantiated with evidence, and closing the case.

On May 16, 2012, a large military operation saw hundreds of soldiers, military police and police, aided by a helicopter, storm a village in Kampong Domrey commune, Kratie province. Authorities claim the operation was organized solely to arrest three ringleaders in an alleged "secession" plot. Villagers, meanwhile, say that the attack was motivated by an ongoing land dispute with Casotim, a firm that claims villagers are infringing on its large land concession. The operation resulted in the shooting dead of a 14-year-old girl, Heng Chantha. There has been no indication of any investigation into this shooting, nor have there been any arrests. The government has dismissed the killing, calling it an accident.

▶▶▶ Recommendations:

We respectfully suggest that the United States urge the Royal Cambodian Armed Forces (RCAF) to issue a written order calling for all military personnel not to take part in civilian land conflicts. We also suggest that the United States review its



military aid and cooperation with the Cambodian military to take into consideration the deteriorating conditions of human rights in Cambodia.

Elections

Events over the past month have significantly undermined Cambodia's July 2013 National Assembly Election and are threatening its legitimacy.

Key opposition party leader from the Cambodia National Rescue Party (CNRP), Sam Rainsy, remains in exile, and the CNRP deputy leader, Kem Sokha, has been under a character assassination campaign which has included a criminal complaint for defamation and multiple lawsuits. The Committee for Free and Fair Elections in Cambodia (Comfrel), an association which includes LICADHO as a member, said in March 2013 that Cambodia's fifth National Assembly elections in July are likely to be the least fair in the 20 years since the United Nations organized the historic 1993 poll. Comfrel concluded that Cambodia's democracy is "increasingly fragile" and "showed trends toward authoritarianism."

Pluralism has degraded significantly since Cambodia's UN-sponsored elections in 1993. The CPP currently holds 1,592 of 1,633 commune chief positions nationwide, and 90 of 123 National Assembly seats. The number of National Assembly seats won by the CPP has consistently risen with each election, from 58 seats in 1993, to 64 in 1998, 73 in 2003, and 90 in 2008. Voter turnout and voter registration numbers have fallen with each election.

These numbers should not be taken merely as a sign of increasing CPP support. Voting irregularity is rampant, and increasing with each year. An independent audit of 4,900 voters conducted in 2013 found that 10.4% of registered voters simply did not exist, and that at least 9% of past voters were unfairly removed from voting lists. The audit was conducted by the National Democratic Institute (NDI) and the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (Nicfec), and covered voters in all 24 provinces. For the 2008 elections, only 7.7% of names on the election rolls were found to not match real people. The audit also found that birth dates for voters only matched election rolls 63% of the time, compared to 78% in 2008. This alone could lead to hundreds of thousands of voters being turned away when they go to vote in July.

LICADHO has also investigated numerous attempts to intimidate or obstruct members and supporters of opposition parties at the commune and village levels. In the first five months of 2013, a



total of 18 cases of politically-motivated intimidation were documented. In recent weeks, LICADHO noted a sharp increase in destruction of opposition party sign boards, especially in Svay Rieng, Prey Veng, Kandal, and Takeo provinces. Such acts have often been preceded by verbal threats from political activists and/or local officials affiliated with the ruling party.

In February for instance, authorities in a village in Kampong Chhnang province threatened more than 500 villagers that their names would be removed from voter lists if they attended a public forum with Kem Sokha. A number of villagers were pressured into thumbprinting documents which they did not understand. In March, a CPP deputy village chief and an accomplice attacked a CNRP activist with a knife and a wooden stick after the victim started to discuss politics in a village of Svay Rieng province. The activist escaped unharmed. And when a CNRP member put up a party signboard in another village in Svay Rieng province in April, a machete-wielding CPP supporter destroyed the signboard and threatened the activist.

As the election nears, more election-related machinations have come to light. In June of this year, the National Assembly's Permanent Committee, which is comprised entirely of ruling Cambodian People's Party members, stripped all 27 opposition party Members of Parliament (MPs) of their parliamentary status, as well as two additional non-ruling party affiliated MPs. As per Cambodia's Constitution, because this expulsion took place within 6 months of a national election, the seats left empty by the purged legislators were effectively terminated and will remain so under until after the election.

Cambodia's Constitution, however, also states that the National Assembly (NA) - the country's key legislative organ - must consist of at least 120 members. With all opposition party members unseated without possibility of replacement, the NA now consists of just 94 members. Regardless, the body has continued to pass politically-motivated legislation and to begin consideration and debate of the country's 2014 budget. The removed parliamentarians have also been stripped of their parliamentary salaries and immunity, leaving them far more vulnerable to politically-motivated lawsuits or trumped-up criminal charges during election campaign.

In late June the government also issued two separate orders seeking to drastically censor the media in the run up to the elections. The more expansive of the two orders issued by the Ministry of Information prohibited FM radio stations from broadcasting all Khmer-language foreign news programs and from reporting on foreigners playing any role in the campaign. It was



initially designed to last through election day, but was revoked on June 29 following loud public outrage over the information black-out. We are extremely grateful to the United States and its Ambassador to Cambodia, William E. Todd, for taking an immediate and firm public position against the ban - an act which no doubt played a large role in the ban's reversal.

An earlier order, issued on June 21, also bans all media from broadcasting foreign media reports regarding opinion polls, surveys and election results. This ban remains in place, and will take effect on July 23, five days before election day.

Local Khmer media are not as free to report on sensitive issues as their foreign counterparts, in part due to their vulnerability to domestic judicial threats. This can result in self-censorship. Ownership of local media is also dominated by the ruling party and television networks are entirely controlled by the ruling party. As a result, foreign-produced Khmer-language radio, such as Voice of America and Radio Free Asia, remain the predominant sources of reliable information for the majority of the Cambodian population.

Perhaps most alarmingly, the past week has seen 13 individuals working for outspoken local human rights NGOs receive death threats expressly referring to their activism. Twelve of the threats were delivered over the phone from a man identifying himself as a Colonel, which is a ranking in both Cambodia's military and police forces.

▶▶▶ **Recommendation:**

We suggest that the United States consider these recent attacks on Cambodia's fragile democracy and review its aid package as noted above.

Land Rights and Tenure

As of May 2013, over 2.2 million hectares have been granted to private firms in the form of long-term leases, mostly through the country's Economic Land Concession (ELC) scheme. In just the half of the country where LICADHO has offices, land grabbing has affected over an estimated 400,000 Cambodians since 2003, helping to create a growing underclass of landless villagers with no means for self-sustenance. The vast majority of, if not all, ELCs have been issued in violation of either Cambodia's 2001 Land Law, its Subdecree on ELCs, or both. The laws' requirements regarding size, prior Environmental and Social Impact reports, prior consultations and consent of affected communities, transparency, and fair and adequate compensation have been routinely ignored.



Efforts to enforce the requirements in civil lawsuits have been met with years of court inaction or retaliatory criminal charges.

In late 2012, the UN Special Rapporteur on the situation of human rights in Cambodia Surya P. Subedi assessed the impact of land concessions in a detailed report, and concluded that "[t]here are well documented serious and widespread human rights violations associated with land concessions." He went on to state that "the overwhelming conclusion drawn from petitions, letters, studies, peaceful protests, violent demonstrations, legal complaints, land-dispute statistics and my own direct observations is that land concessions are only benefiting a minority." The Special Rapporteur questioned the impact of concessions on Cambodia's long term economic and political stability.

The government has asserted that Cambodia's land problems have been addressed by the Prime Minister's May 2012 directive suspending new ELCs and mandating a review of existing ELCs. Both aspects of the directive, however, have been problematic. According to the Cambodian government, any ELC that was in some undefined stage of private "negotiations" prior to the directive could continue through to issuance. Given the wholesale lack of transparency surrounding the ELC process, this vague exception allowed for at least 16 new ELCs to be granted after the purported ban, totaling well over 80,000 hectares.

Similarly, LICADHO is unaware of any systematic review taking place, as required under the directive, and none of the problematic concessions repeatedly detailed in reports have been cancelled. On the contrary, in July 2012, the government published a list of ELCs that revealed that two large problematic concessions that had been revoked in 2011 had actually since been reinstated.

More importantly, the May 7 directive does nothing to address past violent forced evictions and rights violations such as crackdowns on demonstrations and arbitrary criminal prosecutions. Nor does it offer any compensation or legal remedies to assist the hundreds of families who continue to suffer as a result of losing their homes and/or their farmland to previously awarded concessions. The directive also does not address ongoing abuses such as exploitative labor conditions, environmental degradation and threats to water supplies, and the refusal to allow residents free access to community forests. Most egregiously, multiple reports have recently confirmed the extensive use of child labor on certain concessions.

In response to increasing outcry over land conflicts, and as a pre-election strategy, the Prime Minister announced a new land



titling scheme in June 2012, as a follow up to the earlier directive on ELCs. The scheme involves over 2,000 student volunteers dressed in military uniforms, who have since crisscrossed the country to measure land and issue titles. While a push to expedite the issuance of land titles is laudable in theory, the program completely bypassed established state institutions set up explicitly to perform such duties. The program is also being implemented in a secretive manner, with no provisions for independent monitoring, with civil society organizations explicitly told to stay away. There have been numerous credible reports of landholders, especially in indigenous communities, being intimidated or tricked into accepting terms dictated by the volunteer students. Such individual titles undermine extensive efforts to protect indigenous communities through communal land titling. There are also credible reports of landholders being told their new titles would be revoked if the ruling party loses the elections, or being told their official title would only be delivered after a successful election. Exclusions from adjudication have also been documented, especially in Phnom Penh.

Most notably, the Prime Minister has publicly asserted that his land titling program would disappear if his party was not re-elected, and that titles issued as part of the program would be revoked. This highlights one of the most glaring flaws of the ad hoc titling program: it is privately funded by the Prime Minister and his party allies, and is not a government program in the traditional sense of the word.

▶▶▶ Recommendations:

We respectfully suggest that the United States urge the Cambodian government to conduct a transparent and publicly disclosed land demarcation/classification process as soon as possible, and to bring the land titling program back within a relevant state institution, where it belongs. There is still no national registry of state public versus private land. The confusion over classifications perpetuates conflict and confusion.

We also ask that the United States renew its calls for a genuine end to forced evictions, and for fair and adequate compensation as guaranteed by Cambodian and international law to those who have already been forcibly displaced.

Lack of Rule of Law and Human Rights Defenders

Recent years have seen multiple high profile examples of a complete failure to adhere to rule of law throughout Cambodia's justice system. In reality, the role of the justice system, in



LICADHO's opinion, is still by large to perpetuate impunity for State personnel and their associates; persecute political opponents and other critics of the government; and protect the economic interests of the rich and powerful. Given the lack of progress made in judicial reform over the past 15 years, there is no reason to believe that the Cambodian government's repeated promises of reform are sincere.

Corruption and political interference in the police and judiciary are still the major obstacles to rule of law in Cambodia. The gravest of crimes - including murder, torture, rape, and trafficking of woman and children - continue to go unpunished if the perpetrators have money or influential connections. In particular, State personnel - including government officials, police and military officers - and their families enjoy a high level of impunity to commit crimes and abuses, both in the course of their duties and in their private time. The higher-ranking an official, the more protection from prosecution he or she enjoys.

The climate for human rights defenders in particular has soured dramatically since 2009, creating the country's worst human rights environment in more than a decade. The year 2012 was particularly bad. In April, environmental NGO leader Chhut Wutty was killed in the middle of the forest while investigating forestry crimes with journalists. Wutty's murder was followed by a 20-year prison sentence against independent radio station owner Mam Sonando in October in a blatantly political case dictated by the Prime Minister over national television. Sonando's release at the appellate level highlighted the political and baseless nature of the original conviction, as the court suddenly switched the charges to a lesser crime that had never been discussed prior to the verdict announcement. Numerous high-profile NGO staff were also harassed by the courts. And at least 17 leaders from Phnom Penh communities facing eviction spent time in prison on spurious charges related to their activism. At least ten human rights defenders remain in prison.

Members of Phnom Penh's Boeung Kak Lake community, who are involved in a long-running land dispute with a company run by a ruling party Senator, continue to be physically and judicially harassed by authorities. Leading Boeung Kak activist Yorm Bopha was arrested in September 2012 and convicted in December on charges of causing "intentional violence." She received a sentence of three years. There is no evidence - including from government witnesses - that Bopha physically harmed anyone. She was, however, a key leader in the movement calling for the release of the Boeung Kak 15, a group of activists from the Phnom Penh community that were imprisoned on false charges earlier in 2012. The Prime Minister has openly weighed in on the case,



claiming Bopha was a simple perpetrator and not a political prisoner, but it is clear that authorities targeted her for her activism. Bopha was named an Amnesty International Prisoner of Conscience in late 2012. Her appeal was unsuccessful, though the last year of her sentence was suspended. She remains in prison pending a review by the Supreme Court.

The case of Chhouk Bandith, a former municipal governor who in February 2012 brazenly shot at a crowd of striking garment workers, injuring three, in Svay Rieng province, is another example of ongoing impunity for well-connected officials. The charge against Bandith, a woefully inadequate allegation that he unintentionally caused injury, was actually dropped in December 2012, but reinstated by the Court of Appeal in March 2013. Bandith failed to appear for his trial in mid-June 2013, and was convicted and sentenced to a mere 1.5 years in prison. He has not yet been arrested.

Finally, the recent re-arrest of Born Samnang and Sok Sam Oeun - scapegoats in the 2004 murder of union leader Chea Vichea - was a shocking setback. The pair, widely acknowledged to have been framed, had been freed in December 2008 by the Supreme Court, in a decision which ordered further investigation into the killing amid extensive evidence of their innocence. The Court of Appeal reheard the case in November 2012, but prosecutors offered no new evidence. Nonetheless, the appeal judges found Born Samnang and Sok Sam Oeun guilty again and ordered them back to prison to serve the remainder of their 20-year sentences.

▶▶▶ Recommendations:

We respectfully suggest that the United States urge the Cambodian government to take effective action to improve the independence and impartiality of its legal system and to conduct serious investigations into unresolved grave human rights violations, including the assassinations of politicians, journalists and trade unionists, and bring the persons responsible to justice. Specifically, we suggest calling for the immediate release of Born Samnang and Sok Sam Oeun as a first step towards combatting impunity.