



Fédération internationale des ligues des droits de l'Homme

ORGANISATION INTERNATIONALE NON GOUVERNEMENTALE AYANT STATUT CONSULTATIF AUPRES DES NATIONS UNIES, DE L'UNESCO,
DU CONSEIL DE L'EUROPE ET D'OBSERVATEUR AUPRES DE LA COMMISSION AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

International Federation
for Human Rights

Federación Internacional
de los Derechos Humanos

الفيدرالية الدولية لحقوق الإنسان

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FIDH - UPR Submission on Cambodia

Political system : one party "democracy" ?

Despite improved economic growth, the Cambodian government's policy is still focused on maintaining power at all costs. The government has been slow to make reforms – such as fighting corruption and improving the judiciary – which would have tangible benefits for the lives of Cambodians. Free speech and free assembly has been consistently restricted, ostensibly under pretence of protecting national security or public order.

Over the last decade, the country has moved closer to being a one party system. This has obvious negative effects for the opposition and on freedom of expression. The 2006 law on adultery promulgated by the National Assembly, which made adultery a criminal offence, is used as a tool to block political opposition. Prince Ranariddh, the leader of the Funcinpec party, was indicted under this law in March 2007 shortly before the communal elections on 1 April 2007.

Key institutions – including the judiciary, the Constitutional Council and the Supreme Council of Magistracy – lack independence and do not exercise their control over the Executive. Judges are often corrupted or follow blindly the orders of the executive out of fear of repression and negative consequences on their professional development.

The only example of successful *quasi* institution-building is the establishment of the “Labour Arbitration Council.” Yet, the Council reaches non-binding decisions and it is therefore deemed less threatening for the government. In practice, although the decisions are non-binding, they are usually implemented.

Access to Land and the issue of forced evictions

During the Khmer Rouge regime, all private property was abolished in Cambodia and most title documents were destroyed. The right to own land was reintroduced in 1989 and from that time onwards, the government took a series of measures to address land issues and ensure efficient land privatisation and management. The 1993 **Cambodian Constitution** recognizes the right to enjoy private land ownership. Article 44 of the Constitution states that the government can only deprive

someone of his/her property for “public interest” purposes and requires that the government pay victims a fair and just compensation. The **2001 Land Law** provides significant new tenure rights for the poor. It grants the right to apply for a land ownership title to occupiers of land whose peaceful and uncontested occupation exceeds five years (art. 38) and prohibits deprivation of ownership without due process. The Land Law sets forth the different legal regimes of private ownership (individual, collective, undivided and co-ownership). These regimes vary in accordance with “the requirements of the Cambodian society”.

The first forced evictions carried out by the Municipality of Phnom Penh for the construction of infrastructure or city beautification projects accompanied the development of squatter settlements in Phnom Penh between 1990 and 1996. Since 1992, the number of households living in informal settlements has rapidly increased. Evicted families rarely have been given compensation or resettlement options. Evictions often have been initiated by private investors/developers on land occupied by households who could provide some form of documentation. Most of the households have purchase contracts but no recognised title. Many residents have lost their land despite having evidence they had uncontested occupation of the land for more than five years – meaning they had valid claims to the property under the Land Law.

Land grabbing has worsened over the last two years with the issuance of more economic land concessions. The new Sub-Decree on Economic Land Concession (ELCs) of December 2005 an ambiguous legal text, has led to additional pressure on small landholders. It is a conglomeration of well-intentioned principles that are supposed to be implemented by a complicated network of mechanisms for which seemingly competent institutions do not exist. The sub-decree has further exacerbated the problem of the already weak mechanisms of land regulations and protections that existed before.

Blatantly ignoring the land law which limits the size of concessions to 10,000 hectares, the government has granted to companies concessions of more than 100,000 hectares. It became apparent during the mission that large populations, *i.e.*, those who have no means to resist, are losing their land possessions and are relocated to places to live under despicable circumstances without access to the most basic services.

FIDH has documented series of serious human rights violations related to the illegal practice of forced evictions. For example, Community leaders who are directly involved in land conflicts that led to repression and attacks on their rights to freedom of expression and assembly. The living conditions in the relocation sites are bleak. The recent evictions bear striking similarities, which include:

- Riot police armed with guns, shock batons, tear gas and shields cordon off the eviction sites before dawn to bar human rights monitors, UN observers and journalists. Police often uses or threatens to use unnecessary or excessive force to remove residents and tear down their homes.
- Affected communities are not adequately informed or consulted about the pending evictions, nor are they provided due process or adequate legal assistance.
- Compensation, if offered, is far below the market value of the properties that communities are vacating. Resettlement sites, typically located in remote, undeveloped areas far from the city centre, rarely provide basic government services.

The muzzling of human rights defenders, in particular on land related issues

Impunity in Cambodia remains a grave concern. Several attacks against human rights defenders, local activists and community as well as trade union leaders go unpunished; The authorities seem

unwilling to conduct proper and impartial investigations and bring to justice those responsible.

On July 4, 2007, Mr. **Seng Sarorn**, a member of the « Culture and Environment Preservation Association » (CEPA), an activist for ADHOC human rights NGO, and a leader of the community of Sre Kor village (Stung Treng province), was shot dead by an unknown person while at home with his wife. Mr. Seng Sarorn actively encouraged people in his community to protest about forestry, fishery, and land-grabbing issues. Recently, Mr. Sarorn had also been involved in protests demanding that a company named Sal Sophea Pheanich give the State's forestry land it had illegally acquired back to the poor people of the community. Although the provincial Military Police arrived at the crime scene immediately after the killing, an improper investigation was conducted.

Similar to communities, NGOs and journalists working on land issues, trade union leaders are also challenging, through peaceful and legal means, powerful economic interests. They may as a consequence suffer severe repression. On 24 February 2007 Mr. Hy Vuthy, President of the Free Trade Union of Workers in the Kingdom of Cambodia (FTUWKC) at the Suntex garment factory, was shot dead while riding his motorbike home after finishing his night shift at the Suntex factory in Phnom Penh's Dangkao district. Mr. Vuthy is the third FTUWKC official to be killed in three years. Mr. Chea Vichea, the Union's President, was shot dead in January 2004. In May 2004, Ros Sovannareth, the FTUWKC President at the Tringgal Komara factory, was murdered.

Mr. Sok Sam Oeun and Mr. Born Samnang were arrested and detained in PJ prison for the death of Mr. Chea Vichea, President of the Free Trade Union of the Workers of the Kingdom of Cambodia (FTUWKC) and who was shot dead on 22 January 2004. Their trial marred with irregularities, Mr. Sok and Mr. Born were found guilty of murder on 1 August 2005 and were sentenced by the Phnom Penh Municipal Court to 20 years imprisonment and a fine. In 2007, their appeal against their convictions was heard by the Court of Appeal. The Prosecutor, in his concluding statement at the hearing, acknowledged there were gaps in the original police investigation and recommended the Court conduct additional investigation to find the truth. However, the court upheld their convictions. The Court of Appeal verdict was denounced by the UN Secretary-General's Special Representative for Human Rights in Cambodia, who again used the term "grave injustice". The two men were released earlier this year following active international mobilisation.

Extraordinary Chambers :

After lengthy negotiations between the United Nations and the Cambodian Government, the Extraordinary Chambers became operational in November 2005. Their jurisdiction enabling them to try the top Khmer Rouge leaders led to the investigation and arrest of five leaders of a regime (Kaing Guek Eav, alias Duch, former director of the S21 detention centre; Nuon Chea former right-hand man to Pol Pot; Ieng Sary, former minister of foreign affairs; Ieng Thirith, former minister of social affairs, and Khieu Samphan, former president of the state presidium of Cambodia), that caused the death of over three million victims between 1975 and 1979. The International Federation for Human Rights (FIDH) and its member organisations in Cambodia, the Cambodian Human Rights and Development Association (ADHOC) and the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), welcome the opening of the first trial of the Extraordinary Chambers in the Courts of Cambodia (ECCC) against Kaing Guek Eav, alias 'Duch', on March 30 2009.

Through this first trial, concerning Case 001, the ECCC should establish and strictly apply the principles of fair and independent justice. FIDH welcomes the significant progress that the ECCC has made towards to this goal, and acknowledge the efforts the Court has made to make the trial a success.

However, FIDH is concerned that since its establishment in 2006, the ECCC has faced persistent allegations of corruption and political interference. Furthermore, although the ECCC is the first international criminal jurisdiction to recognise the rights of victims to participate as civil parties, the ECCC has in practice undermined the rights originally accorded to victims. The latest example of these restrictions, is the ECCC's revision of the Internal Rules in March 2009, which removed the right of Civil Parties to directly address the Court, and maintained restrictive deadlines on victims applications to join the trial as Civil Parties, limited their appeal rights, limited their right to choose their own lawyers, and prohibited victims, or their legal representatives, from making opening statements at the start of the trial. The Internal Rules are increasingly restricting victims' rights and demonstrate a concerning tendency by the ECCC to narrow the role of victims in this Tribunal. A second trial, concerning Case 002, will take place at a later stage, against four senior leaders of the Khmer rouge regime, NUON Chea, IENG Sary, IENG Thirith, and KHIEU Samphan. FIDH, ADHOC and LICADHO hope that these trials will finally ensure that Cambodian people see fair justice for the crimes committed during the Khmer Rouge regime.

The ECCC is providing a first-ever opportunity, in the history of international criminal justice, for victims of crimes to participate in trial proceedings as civil parties. However, very few victims demands have been accepted up to date as civil parties and have been awarded the right to address the court directly. FIDH encouraged the creation of the Victims Unit which became operational in November 2007. Our Organisation is very concerned about the lack of resources for this Unit, which, for this reason, may not be able to carry out its unique and innovative mandate. FIDH regrets that the supplementary budget proposed by the Extraordinary Chambers for approval by the United Nations does not request for additional resources for the Victims Unit, which is sorely short of funds considering the scope and importance of its mandate.

Conclusions and Recommendations

FIDH expresses its fear that the ruling elite uses the instruments of the state for personal enrichment with deplorable consequences for the already marginalised populations. No strong institutions exist that could remedy the disastrous impact on economic and social rights of the massive and inequitable land "redistribution process". Challenges and criticism to executive power are often met with intimidation, prosecution, imprisonment and violence towards those who represent the dispossessed. The judiciary is incapable or unwilling to protect the citizens of Cambodia against arbitrary policies and systematic human rights violations. The ECCC could set an example for the fight against impunity in Cambodia and the right of Cambodians to justice and true.

Consequently FIDH calls upon the Royal Government of Cambodia :

General recommendations :

1. To ensure adoption as soon as possible of the eight fundamental laws recommended by the Consultative Group, in the aftermath of the Paris Agreement, and to ensure that the laws are in full compliance with Cambodia's international obligations in the field of human rights, and more specifically ensuring:
 - Respect for Article 19 and 21 of the ICCPR.
 - Respect for the UN Basic principles on the independence of the judiciary and on the role of lawyers.
2. To fully implement the recommendations made by various UN treaty bodies and special mechanisms, in particular those of the Special Rapporteur and of the previous Special Representatives of the UN Secretary General on the situation of human rights in Cambodia, in particular those regarding impunity and the building of democratic institutions.

3. to set up an independent human rights commission, in keeping with the Paris Principles.

On freedom of expression and assembly

1. To immediately stop using disinformation and incitement charges to curb freedom of expression.
2. Put an end to impunity for acts of repression against community leaders, journalists and human rights defenders reporting on forced evictions or supporting evicted communities, as well as trade unionists
3. Adopt the draft law on public assembly only if it is full conformity with international human rights standards and cannot be not used to restrain freedom of assembly in violation of Article 21 of the ICCPR
4. To conform with the UN declaration on human rights defenders of 1998 – in particular its Articles 5 and 6, as well as international human rights instruments ratified by Cambodia, in particular Articles 19 and 21 of the ICCPR and the ILO Conventions

Regarding in particular the grave issue of forced evictions:

1. Enshrine the right to housing in domestic legislation and expressly prohibit forced evictions as a principle; only very limited exceptions should be admitted, in conformity with the ICESCR. Such legislation should notably include:
 - the right of residents affected by the projects to be effectively and meaningfully consulted on the project involving their eviction and to be informed timely of the proposed eviction,
 - effective legal remedies,
 - legal aid for needy parties seeking redress from court,
 - a clear prohibition of eviction and demolition as long as disputes between the residents and the real estate company are not settled,
 - adequate compensation of evicted residents,
 - sanctions in case of forced evictions carried out, without appropriate safeguards, by state agents or private persons or bodies.

Such legal framework should also be in conformity with the *Basic principles and guidelines on development-based evictions and displacement* presented by the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living.

2. Establish a meaningful and well-funded welfare housing program in order to ensure full respect of Article 11 combined with Article 2.1 of the ICESCR, which obliges States to use "all appropriate means" to promote the right to adequate housing. As stated by the UN Committee on Economic, Social and Cultural Rights, "the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available,"
3. Immediately suspend all forced evictions until such time as it adopts a comprehensive national housing and resettlement policy in accordance with its national and international human rights obligations.
4. Ensure that legal provisions are enforced against State agents or third parties who carry out forced evictions,

5. Allow NGOs and lawyers free access to residents arrested in the framework of forced evictions.
6. Put an immediate end to all form of repression against lawyers and activists defending the rights of urban and rural populations evicted, and more generally fully respect the UN Declaration on Human Rights Defenders of 1998.

Regarding the ECCC :

1. Engage with the UN to promptly investigate any allegations of corruption at the ECCC and, should those allegations prove to be true, immediately put an end to such acts.
2. Strengthen the independence and supply the resources further needed by the ECCC so that it can achieve its mandate to put an end to impunity for crimes committed during the Period of the Democratic Kampuchea.
- 3. Establish, in coordination with the ECCC, a special unit which could support the ECCC's protection orders and carry on other activities, such as implementation of reparation orders, examining the rights of the accused, once the Chambers' mandate will have come to an end.**