



## Submission to the UN's Universal Periodic Review, Cambodia

### Introduction & Executive Summary

1. 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, LICADHO investigates and documents rights violations; provides legal, medical and other assistance to victims and affected communities; conducts human rights education and awareness-raising; and advocates for tangible improvements in rule of law in Cambodia.
2. This submission focuses on a selection of major rights issues in Cambodia, based on LICADHO's experience and knowledge in these areas. The discussion focuses on the implementation of certain recommendations accepted by the government during the first UPR cycle, namely: land rights; military abuses; prison and unlawful detention center conditions; and access to justice/lack of rule of law. This submission covers the past four-and-a-half years.
3. The past four-and-a-half years have seen a sharp deterioration of the human rights landscape in Cambodia. The issuance of long-term large-scale land leases for industrial agriculture has accelerated significantly, before being temporarily suspended in mid-2012, while the safeguards expressly provided for in Cambodian land laws continue to be almost entirely ignored. Human rights defenders continued to be targeted for harassment, threats, unjustified criminal charges and violence, particularly when their activism relates to land rights. Prison conditions remain extremely poor and in violation of UN Standard Minimum Rules for the Treatment of Prisoners. The government continues to operate unlawful detention centers for the homeless, beggars, the mentally ill, sex workers, drug users and other persons arbitrarily arrested from the streets; detainees are subjected to violence and inhumane living conditions. 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 unfettered impunity.

### Land Rights and Tenure<sup>1</sup>

4. In just the half of the country where LICADHO has offices, land grabbing has affected an estimated 400,000 Cambodians since 2003, creating a growing underclass of landless villagers with no means for self-sustenance. In 2011 alone, 11,000 families were affected. As of May 2013, over 2.2 million hectares have been granted to private firms as long-term leases, mostly through the country's Economic Land Concession (ELC) scheme. The vast majority of ELCs have been issued in violation of Cambodia's 2001 Land Law and its Subdecree on ELCs. Their 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.

<sup>1</sup> As the focus of eleven recommendations, land rights were appropriately the most frequently discussed theme in Cambodia's previous UPR. (See Recommendations 51, 54, and 60- 68.)

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5. 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.” The situation is so bad that the Special Rapporteur even questioned the impact of concessions on Cambodia’s long-term economic and political stability.
6. The government has asserted 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. However, the suspension took months to be truly implemented, and the systematic review mandate has been largely ignored. According to the government, any ELC that was in some undefined stage of “negotiations” prior to the directive may continue through to issuance. Given the lack of transparency surrounding the ELC process, this vague exception has resulted in the continuing issuance of new ELCs. Since the May 7 directive, there have been at least 16 new ELCs granted, totaling well over 80,000 hectares.
7. 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 concessions that had been revoked in 2011 had actually been reinstated. The Prime Minister did sign a directive reviewing a small handful of concessions. It revoked four “ghost” concessions, which had appeared abandoned regardless, and left in place a large problematic concession in Prey Lang forest, which is continuing with its improper clearing activities.
8. More importantly, the May 7 directive does nothing to address past violent forced evictions and rights violations. It does not offer compensation or legal remedies to assist the hundreds of families who continue to suffer after losing their homes and/or their farmland to previously awarded concessions. It also does not address ongoing abuses such as exploitative labor conditions, environmental degradation and threats to water supplies, and the refusal to allow residents to free access community forests. Most egregiously, multiple reports have recently confirmed the extensive use of child labor on certain concessions.
9. 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, based on the May directive described above. It 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 bypassed established state institutions set up explicitly to perform such duties. It has been described by some as a massive act of vote-buying by the ruling Cambodian People’s Party (CPP), and is in fact entirely funded by private donations from top CPP members. The program is also being implemented in a secretive manner, with no provisions for independent monitoring. There have been numerous credible reports of landholders, especially in indigenous communities, being intimidated or tricked into accepting terms dictated by the volunteers. 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 CPP 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.

*Recommendation 1:* Urge the Cambodian government to conduct a transparent and publicly disclosed land demarcation/classification as soon as possible. There is still no national registry of state public versus private land. The confusion over classifications perpetuates conflict and confusion.



*Recommendation 2:* Call 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.

### **Military Abuses<sup>2</sup>**

10. 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 often violent – evictions. The following are just a few examples out of several others.
11. On December 12, 2011, a commanding military officer from Battambang’s Phnom Preuk district shot at a group of villagers, injuring three. The villagers had been demonstrating against the clearing of farmland by Soun Mean Sambath company, which was granted a 4,095 hectare ELC in the area in April 2011, resulting in the ongoing land conflict. The military officer was acting as a security guard for the company.
12. On January 18, 2012, military personnel acting as security guards for TTY Co. Ltd opened fire on a group of villagers who had gathered to prevent clearing of their farmland by company 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 a TTY’s general manager – were quietly tried in 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 between six months and a year.
13. 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 and closing the case.
14. 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 large rubber firm. The operation resulted in the shooting death 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 authorities have simply labeled the death accidental.

*Recommendation 3:* Urge the Royal Cambodian Armed Forces to issue a written order calling for all military personnel not to take part in civilian land conflicts.

*Recommendation 4:* Dismantle the private sector sponsorship of military units to avoid further conflict of interests and misuse of armed forces.

### **Prisons and Unlawful Detention Centers<sup>3</sup>**

1. In 2010, Cambodia’s prisons were filled to 167% of their capacity and the inmate population was growing by about 14% annually. By May 2011, the national prison occupancy rate had ballooned to 179%, while the 18 prisons monitored by LICADHO were filled to 181% of their

<sup>2</sup> Several recommendations related to land rights, in particular forced evictions, are relevant to this theme. (*See id.*)

<sup>3</sup> *See Recommendation 74.*



capacity. In the past year, the population has finally begun to shrink. As of the end of May 2013, the 18 prisons monitored by LICADHO were at about 158% of capacity. This is encouraging, but the overcrowding problem remains serious, and the prison population decrease must continue for a considerable period before the overcrowding crisis can be declared over.

15. Drug arrests nearly quadrupled in 2011, and the number of prisoners detained on drug charges nearly tripled in 2011 alone. One side-effect of the increase in drug arrests has been a corresponding rise in the number of children living with their mothers in some prisons. As of March 2011, only 36 children lived with their mothers in the 18 prisons monitored by LICADHO. By May 2012, that number had more than doubled, to 73.
16. Prison conditions remain abominable, with the authorities providing inadequate food, water, medical care, recreation time and living space. Prisoners are forced to purchase these commodities at their own expense, paying inflated prices to prison staff. Everything has a price, from clean water to sleeping space. The prison system is woefully underfunded and operates – like most Cambodian government entities – as a private enterprise used to generate income for staff.
17. There is still no parole system. Some 3,000 inmates languish in prison without a final verdict, leaving them at risk of being held past the expiration of their sentences.
18. Despite recommendations to close unlawful detention centers, the government has continued operating these centers, which are used to warehouse people arbitrarily arrested from the streets of Phnom Penh in the interests of beautifying the city. Hundreds of people continue to be detained in one such center, known as Prey Speu, run by the Ministry of Social Affairs. As noted in the 2009 UPR, the centers are used for the systematic unlawful detention of ‘undesirables.’ While the government has dismantled one of its worse centers, Koh Kor, conditions at the remaining centers have not improved over the past four-and-a-half years, and still include gross overcrowding and lack of adequate food, clean drinking water and medical care.
19. In January 2012, 24 women and six children who were protesting their violent forced eviction from Phnom Penh’s Borei Keila settlement were abducted from the street and taken to Prey Speu without any legal process whatsoever. The detainees eventually escaped by climbing over a high wall.
20. In November 2012, Phnom Penh City Hall announced it would be rounding up beggars and homeless children in preparation for the ASEAN Summit, and sending them to Orgkas Khnom, a drug “rehabilitation” center, for the duration of the event. Spokesman Long Dimanche justified the extrajudicial detentions thus: “If the leaders from across ASEAN and the world see beggars and children on the street, they might speak negatively to the government.”<sup>4</sup>

*Recommendation 5:* Undertake major reforms, including increasing the prison administration budget, to ensure that prison conditions fully comply with the UN Standard Minimum Rules for the Treatment of Prisoners. The government should also evaluate its criminal justice policy, and move away from its focus on imprisonment as the primary form of punishment for all transgressions, from drug addiction to petty theft to murder. Non-custodial measures should be aggressively implemented at all stages of the criminal justice chain – pretrial (supervised release), sentencing (community service and suspended sentences) and post-sentencing (parole and early release).

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<sup>4</sup> See “Clean Sweep for ASEAN,” Khouth Sophak Chakrya, Mom Kunthear and Shane Worrell, Phnom Penh Post, November 9, 2012.



*Recommendation 6:* Permanently close the remaining Social Affairs Centers, such as Prey Speu, as well as drug “rehabilitation” centers used to conduct unlawful detention and ensure a proper investigation and prosecution of perpetrators of abuses there.

### **Impunity & Lack of Rule of Law<sup>5</sup>**

21. The past four-and-a-half years have seen no improvements in adherence to rule of law throughout Cambodia’s justice system. In reality, the role of the justice system is still 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.
22. 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. As a rule, the higher-ranking an official, the more protection from prosecution he or she enjoys.
23. Members of Phnom Penh’s Boeung Kak Lake community, 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 fellow activists from her community that were imprisoned on false charges earlier in 2012. Bopha was named an Amnesty International Prisoner of Conscience in late 2012. She remains in prison.
24. The case of Chhouk Bandith, a former municipal governor who in February 2012 brazenly shot three garment workers in Svay Rieng province, is another example of ongoing impunity for well-connected officials. Charges against Bandith were actually dropped in December 2012, despite multiple eye-witnesses testifying to his culpability, but reinstated by the Court of Appeal in March 2013. The charges – “causing unintentional injury” – are woefully inadequate, and Bandith has yet to spend a single day in prison. His trial finally took place June 12-14, with Bandith absent. No verdict has been announced as of the time of this submission.
25. 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 turn. 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.

*Recommendation 9:* Implement the numerous recommendations made by successive Special Representatives of the Secretary-General for human rights in Cambodia with regard to strengthening rule of law and the judiciary. Implement the recommendations advising ratification of the Optional Protocols to the ICCPR and ICESCR.

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<sup>5</sup> See Recommendations 17, 21, 38-40, 42.



*Recommendation 10:* Take effective action to improve the independence, impartiality and efficiency of the Constitutional Council and the Supreme Council of Magistracy. Implement the recommendation related to promulgating a Law on the Status of Judges, and a Law Amending the Supreme Council of the Magistracy.

*Recommendation 12:* 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.

*Recommendation 13:* Release and vacate the spurious convictions against Yorm Bopha, Born Samnang and Sok Sam Oeun, and others being held for political reasons.