



Shadow Report for the UN Human Rights Committee's Consideration of the Second Report of Cambodia

113rd Session, Geneva, 17-18 March 2015

Introduction – FIDH, LICADHO, and ADHOC

Founded in 1922 by 15 human rights groups, FIDH (the International Federation for Human Rights) now unites 178 national organizations from 117 countries to collaborate on strategies and activities to promote universal human rights standards. FIDH acts with its member and partner organizations to monitor, document, and alert the international community on human rights violations. The focus of FIDH's activities is on six priority areas: protecting and supporting human rights defenders; promoting women's and migrants' rights; building and utilizing effective justice systems to bring perpetrators to justice; strengthening respect for human rights in the context of globalization; and supporting victims of serious violations in times of conflict or transition.

The Cambodian League for the Promotion & Defense of Human Rights (LICADHO) is a Cambodian NGO that was founded in 1992. LICADHO employs more than 130 staff and has offices in Phnom Penh and 13 provinces. LICADHO's primary mission is to investigate and document rights violations. In conjunction with its investigations, LICADHO provides legal, medical, and other assistance to victims and communities affected by rights abuses. LICADHO also conducts human rights education and awareness-raising and advocates for tangible improvements in rule of law in Cambodia. Since 1993, LICADHO has been monitoring prison conditions. The monitoring process includes collecting and analyzing data, and advocating on behalf of prisoners. As part of its prison program, LICADHO provides inmates with legal representation and services, medical/sanitation services, and other basic needs. In some cases assistance is also provided to the inmates' families.

The Cambodian Human Rights and Development Association (ADHOC) was founded by a group of former political prisoners in December 1991, after the signing of the Paris Peace Agreements. ADHOC is an independent, non-partisan, non-profit, and non-governmental organization. ADHOC's goal is to address the absence of basic rights, freedoms, and liberties in Cambodia by monitoring and acting in response to specific human rights violations. The organization provides people with knowledge and understanding of human rights, law, and democracy, and empowers them to defend their rights and freedoms. ADHOC also provides free legal and material to victims of human rights violations through its five lawyers and network of volunteers. ADHOC is the only human rights organization in Cambodia with a permanent presence in 22 of the country's 24 provinces. ADHOC also provides free legal and material assistance to victims of human rights violations through its five lawyers and wide network of volunteers.

Executive Summary

As Cambodia prepares for the Human Rights Committee (hereinafter, 'the Committee') to consider the country's second State Party Report (hereinafter, 'the State Report'), we must first note the political environment that currently exists. Corruption remains rampant and violence against government critics is systematic. The nation's politically influenced justice system continues to prosecute more government opponents, while State actors and well-connected individuals continue to enjoy impunity. Activists and journalists have been murdered and the authorities have consistently failed to properly investigate these crimes and bring the perpetrators to justice.

The government's use of the criminal justice system to carry out its political agenda has become increasingly brazen and the system of justice applied to land rights, land concessions, and land confiscation is blatantly skewed. In addition, human rights defenders are targeted for harassment, threats, unjustified criminal charges and violence.

Prison conditions remain extremely poor and often fail to comply with the 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 torture and inhumane living conditions.

The first half of 2014 was marked by a blanket ban on all public demonstrations and marches that followed three days of large-scale demonstrations by garment and footwear workers in support of an adequate minimum wage. In response to the demonstrations, the government used lethal force to subdue the demonstrators. At least four people were killed as a result and one remains missing. While the ban was lifted in July, the government continues to frequently deploy security forces to suppress politicians, human rights defenders, and activists.

Article 2.3 (Access to Effective Remedies)

The State Report section addressing Article 2 fails to mention access to effective remedies. This omission is significant as lack of access to effective remedies remains a serious concern in Cambodia. Access is undermined by corruption and impunity that often involves state agents. Notably, state agents responsible for killing Cambodian citizens often receive lenient punishment, if they are punished at all. On the opposite end of the spectrum, urban, rural and indigenous communities victimized by illegal land grabbing and forced evictions have generally not been able to obtain any redress from the courts.¹

The government has still not ratified the Optional Protocol to the ICCPR. In addition, the Cambodian Human Rights Committee (CHRC), established by the government in 1998 to investigate and provide remedies for human rights violations in the country, has come under fire for its lack of impartiality and its failure to investigate complaints of human rights abuses committed by politically connected people.

The CHRC lacks sufficient independence from the executive branch. The CHRC Chairman, Om Yentieng, is a close advisor to Prime Minister Hun Sen and a high-ranking member of the ruling Cambodian People's Party (CPP). In May 2013, the CHRC claimed that the report by UN Special Rapporteur on human rights in Cambodia Surya

¹ These two issues are discussed in more detail below in the sections on Article 6 (Right to Life) and Article 14 (Right to Equality before Courts and Tribunals and to a Fair Trial).

Subedi was mistaken on nearly every point and it accused him of not having read the CHRC's own human rights report.² Subsequently, at the UN Human Rights Council's Universal Periodic Review (UPR) of Cambodia in January 2014, Mak Sambath, the CHRC Vice-Chairman and CPP member, made the outrageous accusation that villagers affected by land confiscation and forced evictions had inflated their numbers in order to be granted more land.

Civil society groups, and the Cambodia Working Group, a group composed of several local NGOs, have called on the government to set up an independent national human rights institution in accordance with international standards set forth by the Paris Principles. Prime Minister Hun Sen publicly committed to doing so in 2006, but has since failed to act.³

Given the silence of the CHRC during the suppression of the right to freedom of expression and peaceful assembly and the use of deadly force against protesters (discussed in more detail below), and its previous claims that the government had adequately addressed the Boeung Kak Lake dispute,⁴ it is clear that the CHRC, in its current form, is unable and unwilling to function as an effective human rights body.

Recommendations:

Call on the government to ratify the Optional Protocol to the ICCPR to allow individuals, including HRDs, to submit complaints to the UN Human Rights Committee regarding alleged violations of the rights listed in the ICCPR.

Call on the government to ensure that the new national human rights institution is established in compliance with the Paris Principles.

Call on the government to ensure that the selection process for members of the new human rights institution is transparent and inclusive. Members must be free of conflicts of interest. This is the only way the body will be capable of operating effectively and independently.

Article 6 (Right to Life)

In the 1999 Concluding Observations, paragraph 11, the Committee noted that it was "alarmed at reports of killings by the security forces, other disappearances and deaths in custody, and at the failure of the State party to investigate fully all these allegations and to bring the perpetrators to justice."

In paragraph 61 of the State Report, the government claims that "the right to life and personal security is strictly protected by the law for every national under its jurisdiction," and that the "perpetrators, the offenders and the accomplice shall be punishable in accordance with applicable laws."

In reality, the concerns expressed by the Committee in 1999 remain valid and pressing. In January 2014, police and military personnel shot and killed at least four persons using live ammunition at the Canadia Industrial Park in southwest Phnom Penh to suppress workers demonstrating for better wages and better working conditions at

² Phnom Penh Post, *UN Envoy's Fairness Questioned*, 23 May 2013

³ Cambodia Daily, *Groups Want Independent Human Rights Body*, 30 November 2013

⁴ See infra regarding Yorm Bopha, an Amnesty International Prisoner of Conscience. For more details see also "The Yorm Bopha Case," LICADHO Briefing Paper, April 2013, available at <http://www.licadho-cambodia.org/reports.php?perm=177>

the garment and textile factories. Another man, who was beaten and sustained severe head injuries, died three months later. An additional 38 people were hospitalized because of injuries suffered during the attack, 25 of whom suffered bullet wounds. A 16-year-old boy, who a witness says was shot in the chest by security forces, remains missing.⁵

The government has failed to thoroughly and transparently investigate the deaths, injuries, and disappearance that resulted from this violent suppression. Three weeks after the shooting, the government announced that an investigation into the violence had been completed. High-ranking officials stated that the focus of investigation was to determine responsibility for initiating the violence not to determine responsibility for causing the death and injury of protesters. Moreover, the government neglected to properly investigate the disappearance of the 16 year-old boy who has not been seen since that day when the young garment worker was lying on the ground with a bullet wound to his chest, according to witnesses.

Investigations by LICADHO show that these recent tragedies were not exceptional. In fact, they illustrate a pattern of use of excessive and lethal force which is typically followed by a failure to properly investigate and punish those responsible for injuries or deaths.

From 2012 to-2014, in addition to the killings described above, LICADHO investigated 13 fatalities related to police or military action. Some examples include:⁶

- On 25 November 2014, a 24-year-old farmer was shot dead by a group of district police officers during a raid on an illegal gambling den in Chan Mul Commune, Memot District, Tbong Khmum Province. The victim was shot three times when he attempted to flee on a bicycle. No investigation into the killing has been conducted.
- On 12 October 2014, a journalist investigating alleged illegal logging trade was shot dead by a military soldier and two accomplices - a commune police officer and a military police officer - in Khsuem Commune, Snuol District, Kratie Province. All three perpetrators were arrested and are now under investigation.
- On 27 July 2014 in Srayang Commune, Kulen District, Preah Vihear Province, a soldier shot and killed 19-year-old farmer Try Chamroeur because he was allegedly farming a plot of land owned by the soldier's superior. One soldier was arrested and was in pre-trial detention as of January 2015. Despite being imprisoned in pre-trial detention for nearly six months now, LICADHO is unaware of any active police investigations.
- On 12 November 2013, in Phnom Penh's Stung Meanchey District, police fired indiscriminately at a crowd of striking factory workers, local residents, and bystanders. Street vendor Eng Sokhum, 49, was killed and nine others were wounded. One man was paralyzed as a result of his bullet wound. The government scoffed at demands for an investigation claiming that the violence was simply in the service of protecting the state.⁷
- On 15 September 2013, at Kbal Thnal Bridge, Phnom Penh, 29-year-old Mao Sok Chan was killed instantly when he was shot in the head. The killing took place following a day of post-election protests during which

⁵ For details see "Public Letter Urging an Immediate Investigation into the Disappearance of Khem Sophath," Joint public letter, 23 March 2014, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=341>

⁶ For additional cases see "On the International Day to End Impunity, LICADHO Publishes Data on 10 Fatal Shootings by the Cambodian Police and Military," LICADHO statement, 23 November 2013, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=329>

⁷ See Joint Statement "One Dead, Seven Injured Amid Violent Clashes in SL Garment Workers Strike," 12 November 2013, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=327>

the authorities set up barbed wire road blocks throughout the city. Mao Sok Chan was killed as he tried to make his way home when police fired indiscriminately on a crowd of commuters, local residents and demonstrators caught up in the ensuing traffic chaos. There has been no credible investigation into the killing.⁸

- On 2 April 2013, a local police officer shot dead a 28-year-old factory worker in Mes Thngak Commune, Chantrea District, Svay Rieng Province. The police officer opened fire on a group of youths after a fight broke out at a wedding party. The victim's relatives accepted a compensation of 2,800 USD from the perpetrator but after LICADHO sent a report to the prosecutor urging an investigation, the investigating judge charged the police officer and initiated legal proceedings.

So far, there has only been one conviction in the above-noted fatalities.⁹ The most frequent outcome for a victim's family was financial compensation of between 1,500 and 2,800 USD which was paid in return for agreement to withhold or withdraw a legal complaint.

Non-refoulement

Cambodia is blatantly failing in its non-refoulement obligations under the ICCPR in its treatment of the Montagnards, a colonial term referring to indigenous minorities from Vietnam's Central Highlands, fleeing religious persecution in Vietnam and seeking asylum in Cambodia.¹⁰

A group of 13 Jarai Montagnards entered the country in early November 2014. Fearing deportation, and chased by Cambodian authorities, they hid in the malaria-infested Rattanakiri jungles in precarious conditions for weeks. Following pressures by the United Nations and local human rights organizations, the government eventually agreed to escort the individuals to Phnom Penh where they were allowed to pursue refugee claims. This was reportedly due to a request by the Vietnamese government, "which wanted to reduce the amount of international attention paid to human rights violations in Vietnam."¹¹

However, when a second group of nine Jarai Montagnards crossed the border at the beginning of January 2015, Cambodian authorities arrested a family of five, including two children and an infant, after they were discovered in Rattanakiri Province. They were handcuffed and transferred to an unknown location before being forcibly repatriated. They were not given the opportunity to submit an application for asylum and their asylum claims were not investigated by the authorities. When ADHOC released a statement reporting the arrest of the five Montagnards, government spokesman and four-star General Kieu Sopheak threatened to sue Chhay Thy, ADHOC provincial coordinator in Rattanakiri, for making politically-motivated allegations.

⁸ See Joint Statement "Indiscriminate Police Brutality and Death amid Mass Post-Election Protest Condemned by Civil Society," 16 September 2013, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=323>

⁹ The state authorities have also failed to investigate killings, especially high profile killings involving human rights defenders and union leaders. For additional information see "Human Rights in Cambodia: The Façade of Stability," LICADHO report, May 2006, available at <http://www.licadho-cambodia.org/reports.php?perm=86>; and "Cambodian League for the Promotion & Defense of Human Rights (LICADHO) submission to the United Nations Universal Periodic Review, Cambodia," LICADHO report, April 2010, available at <http://www.licadho-cambodia.org/reports.php?perm=133>

¹⁰ See "Montagnard Christians in Vietnam: A Case Study in Religious Repression", HRW report, 30 March 2011, available at <http://www.hrw.org/node/97632>

¹¹ See Radio Free Asia, "Rights Group Tells Cambodia to Stop Treating Montagnards as 'Illegal Aliens'," available at <http://www.rfa.org/english/news/cambodia/hrw-cambodia-montagnards-02092015162722.html>, 9 February 2015

The government has repeatedly denied the presence of the Montagnards in northeast Cambodia, considering these individuals “illegal aliens”, stating that they are unable to provide proper identification or documents upholding their asylum claims. However, deporting these individuals before allowing them to pursue refugee claims and without investigating their requests is in clear violation of Cambodia’s international obligations, including Article 2 of the ICCPR which imposes an obligation for the State Parties “not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.”¹²

Currently, 32 more Montagnards – believed to belong to the Jarai ethnic minority - are still in hiding in the jungle.

Recommendations:

Call on the government to conduct thorough investigations and hold to account those responsible for deaths and injuries of human rights defenders, protesters, activists, and innocent civilians.

Call on the government to halt the non-refoulement of the Montagnards, provide due process to anyone claiming to seek asylum as per the government's international obligations.

Article 7 (Prohibition of Torture)

In 1999, the Committee concluded that it was “seriously concerned at statements in the report relating to the frequency of physical and mental coercion of accused persons and the beating of detainees during interrogation. In addition, the Committee noted that there have been few investigations or prosecutions in respect to allegations of torture and ill treatment.”¹³ The present State Report describes provisions of the law prohibiting acts of torture but does not discuss implementation of these provisions.¹⁴

Between January 2010 and December 2013, LICADHO received 397 credible reports of torture and other cruel, inhuman or degrading treatment or punishment by Cambodian police and/or prison officials.¹⁵ More than 90% of these complaints involved abuse by officials in police custody, including the abuse of 19 female inmates. One woman, who was four-months pregnant, complained of abuse in prison. In 2014, LICADHO documented another 164 allegations of torture or ill-treatment, 18 of which occurred inside the prisons while the remaining 146 cases occurred during arrest or in police custody.

¹² General Comment No. 31 “The Nature of the General Legal Obligation Imposed on States Parties to the Covenant,” 26 May 2004, para. 12

¹³ Concluding Observations para. 13.

¹⁴ State Report para. 75-84.

¹⁵ For a recent detailed report on torture in Cambodia’s prisons see LICADHO Report “Rights at a Price: Life Inside Cambodia’s Prisons”, available at http://www.licadho-cambodia.org/collection/25/life_inside_cambodia_prison. For prior reports regarding torture see LICADHO Report “Human Rights in Cambodia: The Facade of Stability Report 2006,” available at <http://www.licadho-cambodia.org/reports.php?perm=86> (noting that between January 2000 and November 2005, LICADHO received complaints of 145 incidents of torture by law enforcement and other state actors but is aware only of one case during that time in which convictions were secured); see also LICADHO Briefing Paper “LICADHO UN Universal Periodic Review Submission for Cambodia,” April 2009, available at <http://www.licadho-cambodia.org/reports.php?perm=133> (finding that during 2005-2008, some 500 prison inmates interviewed by LICADHO stated that they had been tortured while in police custody following their arrests).

During the period between 2010 and 2013, LICADHO's prison researchers interviewed a total of 6,481 detained individuals or those recently released. More than 6% of those interviewed reported that police or prison officials subjected them to torture or ill treatment. In 2014, LICADHO's prison researchers interviewed another 1,370 prisoners with 11% of those interviewed alleging torture or ill-treatment. In addition, reports of abuse by other prisoners, ordered or sanctioned by authorities, are very common.

Most of those who reported brutality by police or prison officials described being beaten, kicked, slapped or punched, often until becoming unconscious. Some had their heads smashed against walls. Others had their faces covered with plastic bags or other items during the beatings. LICADHO also received reports of: inmates being dragged on the ground by their hair; guards standing and stamping on bodies and faces; objects being forced into mouths; cigarette burns; forced prolonged kneeling, including in direct sunlight; choking; and the use of electro-shock devices.

Objects used during beatings included guns, sticks, iron rods, stun batons, walkie-talkies, chains, ropes, electric cables and belts. The majority of those interviewed said that they were beaten in order to force them to confess or to pay money to their abusers. Those who could not read Khmer were often forced to thumbprint confessions they did not understand.

Many reported being threatened, or having their family threatened, by police or prison officials, again usually to extract money or a confession. Some were threatened with death or sexual abuse, others had guns pointed at their heads or were threatened with electric shocks. Threats of nail extraction were also reported. Many also reported being denied food and water in police custody. Reducing out-of-cell time and restricting family visits were regularly reported as forms of punishment.

From LICADHO's interviews, it is clear that police brutality often goes unreported because it is considered normal behavior and, while reports of abuse by prison authorities are less common, it should be noted that LICADHO's prison visits are becoming increasingly restrictive.

The term 'torture and acts of cruelty' remains undefined under Cambodian law and those who have suffered or witnessed acts of torture or ill-treatment have no effective way to make complaints against those responsible.

Detainees are rarely informed of their rights upon arrest and are not allowed to contact a lawyer during the first 24 hours of custody. Moreover, there is a severe shortage of legal aid attorneys and private attorneys are often too expensive or unreliable.¹⁶ This, combined with the lack of monitoring at police stations, the over reliance on confessions as admissible evidence, and the tendency of the courts to dismiss or ignore evidence of forced confessions fosters an environment in which torture and other forms of ill-treatment are widespread.

Those wishing to make complaints may not have access to legal representation and any investigation is unlikely to be prompt or impartial. Cambodia's judiciary is notoriously corrupt and susceptible to political interference. The inter-ministerial committee set up by Cambodian authorities in place of an independent National Preventative Mechanism (NPM) consists entirely of government officials and is headed by the Minister of Interior. Despite a visit in December 2013 by the UN Subcommittee on the Prevention of Torture and high level discussions regarding the establishment of an independent NPM, no progress has been made to date.

¹⁶ Recent OHCHR research shows that there were only 119 legal aid lawyers in Cambodia in 2010, and that the number has since fallen to 76. In several provinces, there are no legal aid lawyers at all.

LICADHO is not aware of any prosecutions of law enforcement officials for torture-related crimes in the past eight years. Those who have attempted to make complaints inside prison told LICADHO that they were subjected to further abuse. Fear of reprisal is a major barrier to making any formal complaint and the State does not provide victims and witnesses with any form of material protection. In addition, there is no comprehensive system of compensation and rehabilitation for victims of torture in Cambodia.

Recommendations:

Urge the government to investigate credible allegations of torture or cruel, inhuman or degrading treatment or punishment and ensure that perpetrators are held accountable.

Call on the government to permit legal and human rights NGOs to routinely visit police stations to monitor detention conditions and interview detainees.

Call for the establishment, without delay, of a truly independent National Preventative Mechanism as required under the OPCAT.

Article 8 (Prohibition of Slavery)

In 1999, the Committee noted serious concerns over reports of extensive trafficking of men and women for labor.¹⁷ This issue remains a serious concern but it is not mentioned at all in the State Report.¹⁸

In 2013-2014, LICADHO investigated a total of 203 human trafficking cases affecting 526 individuals. In 2013, nearly 90% of them were victims of labor trafficking, predominantly to Malaysia and Thailand. In 2014, ADHOC investigated 160 cases of trafficking, affecting 372 people. In 2014, both LICADHO and ADHOC received an increasing number of complaints regarding women who were sent to China as brides.

After several years of documented systematic abuse of Cambodian domestic workers in Malaysia that typically involved trafficking through debt bondage by recruitment agencies, the Cambodian government declared a moratorium on sending domestic workers to Malaysia at the end of 2011. However, domestic workers already in Malaysia received little help or protection from Cambodian authorities. They are often forced into additional years of work and remain vulnerable to abuse.

The governments of Cambodia and Malaysia are currently in discussions on lifting the moratorium on domestic workers despite the fact that many of the underlying causes of abuse have not been addressed. Gaps in the regulation of Cambodian recruitment agencies remain and legal protections, as well as complaint and support mechanisms, for victims are not yet in place. It is also worrying that Cambodian authorities have failed to prosecute the majority of the documented offenders and, to this day, have failed to prosecute any agency under the 2008 Law on Suppression of Human Trafficking and Sexual Exploitation (Anti-Trafficking Law) provisions. Investigations by LICADHO in 2013 found evidence that at least three Cambodian recruitment agencies that were involved in sending Cambodian women into exploitative working conditions in Malaysia are now accused by numerous victims of labor trafficking to Thailand. Since late 2013, two agencies with known abusive track records prior to the moratorium are now recruiting women for work in Singapore.

¹⁷ See Concluding Observations, para. 16.

¹⁸ See State Report, para. 85-88.

Another ongoing labor trafficking issue concerns Cambodians who are forced to work in exploitative conditions on long-haul fishing trawlers in the South China Sea and off the coasts of Africa. In 2013, LICADHO investigated 12 new cases of human trafficking of Cambodian fishermen affecting 88 men. In general, the victims are either tricked by Cambodian labor agencies or trafficked by brokers and crime syndicates. They are kept at sea for months and sometimes years, working 20-hour days without pay, adequate food, or freedom to leave. They are often physically abused, suffering beatings, torture, and drugging at the hands of the boat crew.

One notable case involved the Giant Ocean International Fishery recruitment agency. Giant Ocean is a recruitment agency that purported to offer Cambodians work in Malaysia, Thailand, and Japan. In March 2012, organizations throughout Cambodia began receiving numerous complaints from workers recruited by Giant Ocean International Fishery who had managed to return to Cambodia. In violation of their employment contracts and Giant Ocean's operating license, the vast majority of Cambodians were not sent to the countries identified in their contracts and in some cases they were sent to more distant locations including South Africa, Senegal, and Mauritius.

On 10 May 2013, one of the heads of Giant Ocean, Lin Yu Shin, was arrested in Siem Reap and charged under the Anti-Trafficking Law. Nearly a year later, the Phnom Penh Municipal Court found Lin guilty and sentenced her to 10 years in prison. However, Lin Yu Shin's husband and Giant Ocean's five shareholders remain at large. Several Cambodian government ministries have verbally committed to pursuing investigations to find the missing victims but, as yet, no concrete plans have been publicized.

Cambodian women being sent as brides to China is increasingly becoming one of the biggest trafficking concerns in Cambodia. In 2014, LICADHO received 36 complaints involving 55 victims trafficked to China as brides. While the brokers use different promises to convince the women to travel to China, upon arrival they are taken to a local broker's house where they are held until they can be sold. After they are sold, the women are often confined in the husband's house, forced to work long hours, and are sexually and physically abused.

Recommendations:

Call on the government to actively help and protect vulnerable Cambodian women who are trapped in abusive working environments outside of Cambodia.

Urge the government to maintain the moratorium on domestic workers being sent to Malaysia to prevent an increase in the systematic abuse against Cambodian migrant workers.

Urge the government to develop proper legislation – including criminal provisions – to regulate recruitment agencies.

Urge authorities to investigate and prosecute documented labor trafficking offenders, including exploitive recruitment agencies, individual brokers, and criminal syndicates.

Urge the government to increase efforts to investigate and prosecute brokers responsible for selling Cambodian women into abusive marriages in China. Further urge the Cambodian government to act promptly and urgently assist abused Cambodian women in China once the Embassy or Consulates have received complaints by the women or on their behalf.

Urge the government to assume the sole responsibility for the registration and regulation of migrant workers applying for jobs overseas. Initiate government-to-government MOUs on wages and working conditions for migrant workers in the accepting country. Ensure that accepting countries promptly investigate allegations of abuse and/or violations of working conditions.

Article 9 (Arbitrary Detention)

Incarceration continues to be the default punishment for those awaiting trial, regardless of the nature of their crime, family situation, and age. New procedures and guidelines recently sent to all judges concerning pre-trial detention seek to remedy this situation by requiring adversarial hearings, arguments, and supporting evidence when deciding on pre-trial detention followed by a written explanation that elaborates on the reasons for the decision. However, LICADHO has seen little evidence that these new procedures have been fully implemented. The new pre-trial detention forms introduced in the beginning of 2014 are not being used in all of the courts. Judges, who do use the new forms, often fail to provide strong reasoning for ordering pre-trial detention.

The new procedures also encourage judges to opt for alternative measures, which should be considered especially with regard to juvenile inmates. However detention still remains the norm for the majority of accused individuals, including juvenile defendants. Under child rights conventions, imprisoning offenders under the age of 18 should only be the last resort in the most exceptional cases. Domestic law also emphasizes that alternatives to prison should be considered in sentencing children. Moreover, no separate juvenile system or juvenile justice specific detention facilities exist, with the result that children are in most cases incarcerated with adult criminals.

The case of Men Sok Sambath, a 15-year-old boy arrested during a demonstration by striking garment workers in November 2013, is emblematic. Sambath, who suffers from epilepsy and learning disabilities, was beaten with electric batons, kicked, and punched in the face during his arrest and while being detained at the district police station, where he was held for two days. He was then transferred to Phnom Penh's Prey Sar prison, despite the lack of evidence, and his diminished mental capacity and young age. Charges against him included aggravated intentional violence, damage to public property and insulting civil servants. However, the only evidence produced in court against the 15-year-old boy was a video of Sambath collecting metal from a burning motorbike. He was eventually released on bail after two months of detention.

The arrest, detention or imprisonment of juvenile offenders should be carried out in conformity with domestic law and international law standards – according to which the placement of a juvenile in an institution shall always be a measure of last resort and for the minimum necessary period. That basic procedural safeguards should be guaranteed at all stages of proceedings, giving special consideration to the particular situation of the minor and to his special need for protection.

Of continuing concern is the existence of unlawful detention centers, such as the Social Affairs and Drug Rehabilitation Centers, which operate outside the scope of the criminal justice system. These centers exist solely to lock-up members of society deemed 'undesirable' by the authorities without due process of law.¹⁹ Conditions

¹⁹ 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

at these centers are often inhuman and there has been evidence of numerous human rights abuses, including torture and other forms of cruel, inhuman, or degrading treatment. The abusive nature of these centers was highlighted by the death on 26 November 2014 of a man who was arbitrarily detained and denied medical treatment at Prey Speu's Po Senchey Vocational Training Center outside Phnom Penh.²⁰

Recommendations:

Urge the government to ensure that new pre-trial detention procedures are followed.

Urge the government to put an end to arbitrary and extrajudicial detention of beggars, drug users, and homeless people. Centers used to detain such individuals should be permanently dismantled.

Urge the government to consider alternative measures to detention for minor offenses, especially when the offender is a minor.

Urge the government to accelerate the creation of a juvenile justice system and specific detention facilities.

Article 10 (Conditions of Detention)

In 1999 the Committee expressed concerns over "reports of serious overcrowding in prisons and at the level of ill-health among prisoners and the lack of health care."²¹ The State Report on prison conditions lists relevant legal provisions that are ignored in practice.²²

Conditions of detention in most Cambodian prisons amount to cruel, inhuman, and degrading treatment, due to: severe overcrowding; inadequate sanitation and food; poor sleeping arrangements; and lack of appropriate medical services. Many prisoners are denied regular and adequate recreation time. Contact with the outside world, including family visits, is often limited and like access to most other basic rights, contingent on bribes.

Many former inmates reported having less than 30 minutes out-of-cell time each day and some reported being allowed out of their cell only once every two weeks. In Oddar Meanchey's temporary prison facility, inmates are locked in their cells 24 hours a day with less than 0.5 square meters of space per person. Similarly, in the temporary prison at Pailin, prisoners are locked down 24 hours a day.

Overcrowding

According to LICADHO's calculations, the 18 prisons regularly monitored by the organization were operating at an approximate average of 158% capacity at the end of January 2015, with some prisons operating at over 200% capacity. Levels of overcrowding are not uniform across prisons or within prisons. Some cells or buildings are

street, they might speak negatively to the government." See "Clean Sweep for ASEAN," Khouth Sophak Chakrya, Mom Kunthear and Shane Worrell, Phnom Penh Post, November 9, 2012.

²⁰ For more information see the recent Human Rights Watch and LICADHO joint statement: "Death in Prey Speu Highlights Detention Center Abuses," available at <http://www.licadho-cambodia.org/pressrelease.php?perm=365>. See also the detailed Human Rights Watch report "They treat us like animals Mistreatment of Drug Users and "Undesirables" in Cambodia's Drug Detention Centers" <http://www.hrw.org/node/120957> (documenting how guards and other staff whip detainees with rubber water hoses, beat them with bamboo sticks or palm fronds, shock them with electric batons, sexually abuse them, and punish them with physical exercises intended to cause intense physical pain).

²¹ Concluding Observations, para. 14.

²² State Report, para. 99-113.

much more overcrowded than others. Cell living arrangements are often determined by the social and financial status of individual inmates.

Detention of children

As of January 2015, there were 39 children living with their mothers in the 18 prisons monitored by LICADHO. Seven of these children were over the age of three, in contravention of the 2011 Prison Law.

After more than a 10-year drafting period, Cambodia's Law on Children in Conflict with the Law had still not been finalized. Currently, juveniles are subject to the same abuse as adults and are just as likely to be treated according to their financial status rather than their age.

Inadequate healthcare

Cambodian law provides no guarantee of access to medical care for suspects in police custody. As a result medical care during interrogations is virtually non-existent.

While prisons should have rooms for medical treatment and a prison medical officer on duty on a permanent basis, prison medical staff are often poorly trained or lacking in any medical qualifications. Prison health facilities usually lack sufficient medication and appropriate equipment. Inmates regularly report to LICADHO that medical care and medication is only provided to those inmates who can afford to pay for it. Inmates with mental health problems are rarely offered any support or treatment. LICADHO remains concerned that these individuals are at particular risk of abuse in police custody and prison.

The denial of appropriate and timely health care can be linked to unnecessary inmate deaths. Inmates with serious health problems are often transferred to a hospital too late because their conditions were not diagnosed or were misdiagnosed and wrongly treated. LICADHO receives only basic information about the causes of inmate deaths and, in some cases, no information at all. LICADHO is particularly concerned at the high rate of deaths of previously healthy young male inmates.

Recommendations:

Urge the government to 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.

Urge the government to pass the new Law on Children in Conflict with the Law without delay.

Urge the government to put an end to arbitrary and extrajudicial detention of beggars, drug users, and homeless people. Centers used to detain such individuals should be permanently dismantled.

Article 14 (Right to Equality before Courts and Tribunals and to a Fair Trial)

In 1999, the Committee expressed concerns that the justice system was weak "due to the killing or expulsion of professionally trained lawyers during the conflict, the lack of training and resources for the new judiciary, and their susceptibility to bribery and political pressure." Although overall training and resources may have improved, little has changed in the susceptibility of judicial officers to bribery and political pressure. The

procedural and legal safeguards outlined in the State Report are often ignored or only given cursory attention by the courts, especially in highly political cases.²³

An independent judiciary and strong rule of law are fundamental to building public trust in the government and to protecting Cambodian society against abuses of power by those in office. In July 2014, three long sought after fundamental laws on the judiciary were finally enacted after a decade-long drafting process. Unfortunately, while these laws were supposed to help enforce the constitutional mandate requiring an independent judiciary, they were used instead to legitimize the government's control over all aspects of the judiciary.²⁴ The new laws, passed by a single-party National Assembly without consultation or credible debate, give the Minister of Justice inappropriate control over a number of aspects of the judiciary, including the promotion of judges as well as the assignment of judges and cases.²⁵

Corruption and political interference in the police and judiciary are still the major obstacles to the 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 agents, including government officials, police and military officers, as well as 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.

On 2 January 2014, armed soldiers violently suppressed a labor strike in front of a factory in Phnom Penh's Pursenchey District, where union leaders were peacefully protesting the insufficient increase in the minimum wage for garment workers. In two violent clashes, soldiers chased and beat workers with slingshots, batons, and metal pipes. During these clashes, the soldiers detained ten protesters, severely beat some, and held them all overnight at a military base without access to adequate medical treatment.

On the following day, police and military personnel shot and killed at least four striking workers and injured 38. The mixed security forces also arrested 13 more protesters during the crackdown. The 23 individuals, including one minor, who were arrested on 2-3 January were detained incommunicado until 8 January when it was announced that they were all being held at Correctional Centre 3 (CC3) prison, a remote prison located in Kampong Cham Province. Despite significant international pressure, 21 of the 23 remained in prison throughout the trial process, some without access to necessary medical treatment in hospitals.²⁶

On 12 November 2013, the day security forces killed an innocent bystander when they used live ammunition to disperse garment workers in Phnom Penh's Meanchey District, two boys, 15 and 19 years-old respectively, were arrested on various charges, including committing acts of violence and intentional damage with aggravating circumstances. The minor was eventually released on bail by the Court of Appeals in January 2014 but the older boy remained in prison before and throughout the trial despite the existence of exculpatory evidence.

On 15 September 2013, when police shot and killed an innocent bystander when they fired live ammunition into a crowd of local residents, commuters, and peaceful demonstrators, they also arrested six people and charged

²³ State Report, para. 123-136.

²⁴ The three new fundamental laws on the judiciary are: the Law on the Organization and Functioning of the Supreme Council of Magistracy; the Law on the Status of Judges and Prosecutors of the Kingdom of Cambodia; and the Law on the Organization and Functioning of the Courts.

²⁵ See above

²⁶ See FIDH, LICADHO, ADHOC press release, "Bail refused for 21 workers and human rights defenders", February 11, 2014, available at <http://www.fidh.org/en/asia/cambodia/14627-cambodia-bail-refused-for-21-workers-and-human-rights-defenders>

them with intentional violence and causing property damage. Their subsequent trial on 17 February 2014 epitomized the deficiencies of the Cambodian justice system. All the police who testified before the court said that they could not identify a single defendant and all of them denied that their unit was responsible for any of the arrests. Despite this utter lack of evidence, three of the six were convicted and sentenced to three years in prison.

Furthermore, the courts continue to be used to persecute and impede human rights defenders and activists. Court proceedings are conducted with a complete absence of fair trial rights. The presumption of innocence or the prosecution's burden to prove guilt beyond reasonable doubt are simply ignored in cases involving HRDs and activists, as presence alone at a protest is often the only evidence necessary to secure a conviction.

In the cases involving the 25 people arrested in early January 2014 and November 2013, all 25 were convicted through a flawed trial process and despite a lack of evidence against them. In each case, the remainder of the sentence was suspended and those still in prison were finally released within hours of the court's decision.²⁷

At the time of this submission, 19 men and women remain wrongfully imprisoned in Phnom Penh's Prey Sar prison as a result of a wave of arrests between September and November 2014 which targeted opposition party members, activist monks, and long-term land rights activists.²⁸ While the charges against the 19 vary, the circumstances of the arrests and convictions indicate a concerted effort by the authorities to quash dissent and to harass and intimidate activists. Eight remain in pre-trial detention, including five Cambodia National Rescue Party (CNRP) members and supporters, two Buddhist monks, and one woman enmeshed in a long-running land dispute with the municipality and a well-connected land development company.²⁹

The other 11 include ten women land activists and one monk who were hastily convicted for acts of peaceful protest and now wait for their appeal to be heard by the Supreme Court. On 11 November 2014, seven of the ten women land activists were charged, tried, convicted, and sentenced to one year in prison for obstructing public traffic within 24 hours of their arrest. On the day of their trial, another three women activists and a Buddhist monk were arrested outside the courthouse and charged with aggravated obstruction of public officials. The four arrested on November 11 were also charged, tried, convicted and sentenced to one year in prison within 24 hours of their arrest.³⁰

Both cases were subsequently heard simultaneously at the Court of Appeals in a single afternoon session that lasted a mere four hours. During the trial, judges interrupted the defense lawyers on numerous occasions, with instructions to speed up their pleadings. The initial trials and appellate hearings were also marked by a lack of incriminating evidence. In the second case, the prosecution failed to provide any evidence that the defendants bore any personal responsibility for the crimes alleged. None of the three prosecution witnesses could positively identify the defendants during their testimony. Furthermore, neither the judges nor prosecution established

²⁷ See "Phnom Penh Court orders Conviction with Suspended Sentences for 25 Workers and Activists," Joint Statement, 30 May 2014, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=344>. For more details see "Free the 23' Trial," LICADHO's Livestream of each day of the trial, available at http://stream.licadho-cambodia.org/free_the_23_trial/

²⁸ See "LICADHO Calls for the Release of the 19 Men and Women Wrongfully Imprisoned in Prey Sar's CC1 and CC2 Prisons," LICADHO Statement, last updated 21 January 2015, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=366>

²⁹ For more details on this dispute see "Spotlight on the 19: Ly Seav Minh," LICADHO Article, 28 January 2015, available at <http://www.licadho-cambodia.org/articles/20150128/143/index.html>

³⁰ See "Civil Society Groups Condemn the Ongoing Detention of 11 Activists," Joint Statement, 26 January 2015, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=370>

that the defendants had committed any violence during the protest, a fundamental component of the article under which they were convicted. Despite the lack of evidence, the Court of Appeals upheld the decisions of the Phnom Penh Municipal Court, partially reducing some sentences and fines.

Political interference in the courts has been particularly conspicuous in 2014 as a distinct correlation developed between the timing of political concessions demanded by the opposition and criminal proceedings against their members and supporters. On 15 July 2014, a peaceful demonstration by the opposition at Phnom Penh's at Freedom Park turned violent as security forces once again began to violently disperse supporters. This time, however, some of the demonstrators fought back and some of the security forces were injured in the ensuing melee. The events that followed indicate that recent political agreements have been more the result of ruling party pressure through the judicial system than meaningful negotiations:³¹

Days after the violence at Freedom Park, eight CNRP officials, including seven MPs-elect, were arrested and charged with several spurious offences, including leading an insurrectional movement. On 22 July, both parties issued statements announcing that a top-level political meeting would be held.

After the 22 July top-level meeting, the parties announced a vaguely provisioned agreement under which the CNRP MPs-elect would agree to take their seats in the National Assembly after more than a year-long boycott following strong claims of election fraud in the wake of the July 2013 national elections. All eight imprisoned CNRP officials were released later that day.

On 2 August, three CNRP youth leaders were arrested just days after CNRP announced conditions that needed to be met before they ended their boycott of the National Assembly.

Over the next few months', five more CNRP officials and supporters were arrested and imprisoned on charges of aggravated intentional violence and leading or participating in an insurrectional movement in relation to the 15 July violence as political negotiations continued in particular over the formation of a new National Election Committee (NEC).

After an agreement between Prime Minister Hun Sen and CNRP President Sam Rainsy stating that all issues surrounding the drafting of the NEC had been resolved, the investigating judge separated the case against 11 CNRP member and supporters from the case against the current CNRP MPs. The 11 CNRP members and supporters are scheduled for trial on 23 February 2015. The case against the MPs has not been closed, but rather remains under investigation and the case file continues to contemplate additional 'unknown' perpetrators.

Another significant concern is that the courts have been used against poor urban, rural, and indigenous communities struggling to maintain possession of individual and community lands against land grabbing and forced evictions.³² In sharp contrast, villagers' complaints against private companies or authorities are systematically left unanswered or dismissed.

³¹ For a full timeline of the relevant events see "Freedom Park Violence, CNRP Arrests, and Political Deal: Timeline of Events July – November 2014," LICADHO Briefing Paper, December 2014, available at <http://www.licadho-cambodia.org/reports.php?perm=201>

³² The number of people affected by state-involved land conflicts in Cambodia since 2000 passed the half-million mark in March 2014, according to data collected by LICADHO. For more details see "2014 Brings a New Wave of Cambodian Land Conflicts," LICADHO Statement, 1 April 2014, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=342>. LICADHO's most recent data also shows that the number of people affected by land conflicts tripled in 2014 compared to 2013, a national election year.

Recommendations:

Call on the government to implement the numerous recommendations made by successive UN Special Rapporteurs on human rights in Cambodia with regard to strengthening the rule of law and the judiciary.

Call for an end to judicial persecution against human rights defenders, union leaders, political opposition members, and civil society activists.

Urge the government to immediately begin amending the three fundamental laws on the judiciary to ensure the judiciary is able to operate independently as is required by the Cambodian Constitution.

Call on the government to immediately cease abusing the criminal justice system to impose its political agenda.

Article 19 (Freedom of Expression)

In paragraphs 163 and 164 of the State Report, the government claims that 64 television stations and 166 radio stations operating in the country contribute to freedom of expression in Cambodia. However, these numbers do not accurately reflect freedom of expression in the country as the number of independent media sources allowed to operate remains low.

Of the 64 television stations that the government claims are operating in Cambodia, none are independently owned and operated as all stations are owned or affiliated with the ruling party.³³ Notably, Mam Sonando – owner of Beehive Radio, one of the few independent broadcasters in Cambodia – has repeatedly been unsuccessful in trying to secure a license to operate a television channel from the Ministry of Information (MOI).

Restrictions on television and radio stations are particularly troubling, as approximately 80% of Cambodia's population lives in rural areas and relies on TV and radio for news.

On 27 January 2014, state security forces mobilized in response to a demonstration calling for the license to be granted. The demonstration came after the government announced a blanket ban on all forms of assembly (See above, *Executive Summary*). As the security forces advanced on the demonstrators, they detonated smoke grenades and used electric batons against both demonstrators and bystanders. During this violent suppression, security forces injured at least ten people, including six who were hospitalized. The security personnel also confiscated cameras from monks and journalists.

Although the government has allowed some independent radio stations to operate within a limited range, several of those stations have been targets for government censorship, especially in the lead-up to the last general elections, held on 28 July 2013. In June 2013, the Ministry of Information issued a ban on local radio stations from rebroadcasting Khmer language radio programs from foreign broadcasters such as Radio Free Asia,

³³ See The Electoral Reform Alliance, "Joint Report on the Conduct of the 2013 Cambodian Elections," pages 9-10, available at www.licadho-cambodia.org/reports/files/184ERAREport-NationalElection2013Irregularities-English.pdf

Voice of America, Radio France International, and ABC Radio Australia.³⁴ However, the ban was rescinded shortly after heavy criticism from foreign and local rights groups and the broadcasters themselves.³⁵

Several laws currently in force contain vague language or cumbersome criteria that are used to manipulate or harass civil society and human rights defenders (HRDs) and prevent them from openly criticizing the government. The Criminal Code, which entered into force in December 2010, contains several articles that are often misused in cases involving HRDs. Offenses such as defamation, insult, or incitement prohibit vaguely-defined conduct and are often employed by the government to harass, threaten, and obstruct HRDs.³⁶ Additionally, two sections restricting publication of comments intended to influence a court or criticizing a judicial decision could be used to criminalize HRDs' public advocacy for the reform of the justice system and may deter lawyers from speaking about their cases.³⁷

The government has also stated during recent negotiations on electoral reform that new measures could be introduced to ban staff of civil society organizations from giving media interviews or making statements deemed to have "insulted" political parties during election periods.³⁸

ADHOC notes with concern an increasing tension between the government and civil society organizations. In 2014, many cases emerged of reprisals against NGOs workers due to their activism.

In the latest act of harassment against human rights defenders, in February 2015 Interior Minister Ser Kheng ordered Immigration Department officials not to renew the visa of Mr. Alejandro Gonzalez-Davidson, a prominent environmental rights defender working with local NGO Mother Nature in Koh Kong Province.

Mr. Gonzalez-Davidson has been active in campaigning against the construction of the Chhay Areng dam in the Areng Valley. The project is currently being developed by Chinese company Sinohydro Resources, headed by CPP Senator Lao Meng King. If built, the dam will have catastrophic impacts on the environment and on the livelihood of the local populations, including the Jong indigenous minority, which will lose its ancestral land, sacred forests and burial sites.

On 17 February 2015, LICADHO, ADHOC, and 29 others civil society organizations issued a joint statement to urge the Cambodian government to reverse its decision and allow Mr. Gonzalez-Davidson to pursue his activities in the interest of local communities.³⁹

Several provisions of the Anti-Corruption Law, which entered into force in August 2011, threaten freedom of expression. Notably, under another vague defamation provision, a whistleblower is subject to imprisonment if

³⁴ One year prior, in June 2012, the government shut down independent broadcasting by stations Voice of America (VOA) and Radio Free Asia (RFA) during the commune election campaign. See "Killing the Radio Star," by Simon Lewis, Southeast Asia Globe, 9 January 2013, available at <http://sea-globe.com/killing-the-radio-star/>

³⁵ Cambodia Daily, *Ban on Radio Broadcasts Lifted Amid US Pressure*, 1 July 2013, available at

<http://www.cambodiadaily.com/elections/ban-on-radio-broadcasts-lifted-amid-us%E2%80%88pressure-32700/>

³⁶ Articles 305 ("defamation"), 307 ("insult"), 495 ("incitement"), 502 ("insult against a public official"), 2009 Cambodia Criminal Code

³⁷ Articles 522 ("comments intended to unlawfully coerce judicial authorities") and 523 ("discrediting judicial decisions"), 2009 Cambodia Criminal Code

³⁸ See "Civil Society Organizations Call on the Government and Political Parties to Respect Freedom of Expression," Joint Civil Society Statement, February 2015, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=371>

³⁹ See "Civil Society Groups Condemn Use of Visa Denial to Curb Activism", Joint Civil Society Statement, February 2015, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=373>

the information he provides leads to an undefined “useless inquiry.”⁴⁰

The government is also regularly blocking access to online sites, such as the government-critical website KI Media.⁴¹ Authorities also threatened to close down Internet cafes, a move that would seriously curtail access to independent news outlets.⁴²

As more and more Cambodians gain access to the Internet and social networking sites such as Twitter and Facebook gain popularity among the population, the government is finding new way to harass its critics. In one example from 2013, Phel Phearun, a teacher resident in Phnom Penh, complained on Facebook after his motorbike was unfairly impounded by police.⁴³ This prompted lively debate among Facebook users about the corruption faced at the hands of police in the country. A month later, Phearun received a request that he attend the police station for questioning in regard to defamation charges. No charges were eventually brought, but the incident was indicative of the authorities’ harassment of those who express dissatisfaction with the government online.

A secretive draft Cybercrime Law, drafted under the pretense of national security concerns and e-commerce, also continues to raise serious concerns about government censorship of the Internet, a tool that is increasingly relied upon by civil society and HRDs. A leaked draft contains worrying provisions for additional criminal penalties and sanctions for vaguely-defined offences of defamation, insult, and incitement as in the Criminal Code.⁴⁴

On 11 December 2014, a government official claimed that the Cybercrime Law had been put on hold.⁴⁵ Despite this statement, the government continues to demonstrate a steadfast determination to control Internet activity. Just two days prior to this statement, the government indicated that it planned to install surveillance equipment at Cambodia’s Internet Service Providers and mobile phone operators. One government representative was quoted as saying “(what) is important for us now is that we can strictly control people using the Internet and mobile [networks].”⁴⁶ This comment came less than two months after the Press and Quick Reaction Unit at the Council of Ministers ordered the creation of a Cyber War Team (CWT) to monitor and collect information from Facebook and other websites.⁴⁷

A draft Law on Telecommunications also exists. If passed in its current form, it would give the government discretionary authority to take over and shut down Internet Service Providers. Such powers give credence to a well-founded fear that the Internet, the last free space for expression in Cambodia, will soon be under strict government control.

⁴⁰ Article 41 (“defamation and disinformation”), 2011 Anti-Corruption Law

⁴¹ See “Opposition site blocked,” The Phnom Penh Post,, 14 February 2011, *available at* <http://www.phnompenhpost.com/national/opposition-site-blocked/>

⁴² See “Government order may close many of city’s Internet Cafes,” The Cambodia Daily December 2012, *available at* <http://www.cambodiadaily.com/archives/government-order-may-close-many-of-citys-internet-cafes-6660/>

⁴³ See “Police accuse teacher of defamation over Facebook post”, The Cambodia Daily, 27 February 2013, *available at* <http://cambodiadaily.com/archives/police-accuse-teacher-of-defamation-over-facebook-post-11780/>

⁴⁴ See “Cambodia: Secret Draft Cybercrime Law seeks to undermine free speech online,” Article 19 press release, 9 April 2014, *available at* <http://www.article19.org/resources.php/resource/37516/en/cambodia:-secret-draft-cybercrime-law-seeks-to-undermine-free-speech-online> (noting particular concern for Article 28 of the draft law regarding contents and Websites which criminalizes online activities hinder the sovereignty and integrity of the Kingdom of Cambodia; incite or instigate anarchism; generate insecurity, instability and political cohesiveness; slander or undermine the integrity of any government agencies, ministries at all levels; or damage moral and cultural values, such as family values.).

⁴⁵ See Chris Mueller and Khuon Narim, “Controversial Cybercrime Law ‘Scrapped,’” The Cambodia Daily, 12 December 2014, *available at* <https://www.cambodiadaily.com/news/controversial-cybercrime-law-scrapped-74057/>

⁴⁶ See Aun Pheap and Joshua Wilwohl, “Gov’t Plans to Install Surveillance Equipment,” The Cambodia Daily, 10 December 2014, *available at* <https://www.cambodiadaily.com/news/govt-plans-to-install-surveillance-equipment-73911/>

⁴⁷ See Matt Blomberg and Kuch Naren, “Cyber War Team’ to Monitor Web,” The Cambodia Daily, 20 November 2014, *available at* <https://www.cambodiadaily.com/news/cyber-war-team-to-monitor-web-72677/>

Journalists continue to face threats, harassment, and extrajudicial killings. In one of the latest attacks on journalists, on 2 May, 2014, Voice of Democracy reporter Lay Samean was beaten unconscious with wooden clubs and kicks by more than 10 district security guards while covering a demonstration in Phnom Penh. As a result, Samean needed facial reconstruction surgery.⁴⁸ ADHOC's data, together with information gathered from other local NGOs and media outlets, documented the killings of eleven journalists in Cambodia since 1994 in connection to their investigative reporting on the activities of the wealthy and politically connected.⁴⁹

Recommendations:

Call on the government to provide television licenses to independent broadcasters and ensure that all independent media sources are allowed to operate freely at all times.

Call on the government to adopt more concrete definitions of crimes such as defamation, insult, and incitement and ensure that these provisions are not used to harass and silence human rights defenders, civil society, and political opposition members engaged in lawful activities.

Call on the government to suspend plans to pass the draft Cybercrime Law and the Law on Telecommunications and publically release the latest drafts. The government must conduct inclusive and meaningful consultations with civil society and other stakeholders to ensure these laws comply with Article 19 of the ICCPR.

Call on the government to suspend plans to install surveillance equipment at Cambodia's ISPs and mobile phone operators. While there may be limited situations when surveillance is legitimate, the necessary safeguards to prevent government abuse will not be possible until the judiciary is able to act independently.

Call on the government to thoroughly investigate allegations of crimes committed against those who exercise their rights to freedom of opinion and expression and ensure that perpetrators are punished in accordance with the law.

Article 21 (Freedom of Peaceful Assembly)

In paragraphs 175 – 185 of the State Report, the government identifies Constitutional and legal provisions applicable to the freedom of assembly and concludes the section in paragraph 186 by claiming that “there have been people gathering in small groups to protest for the solutions of the problems,” and that “the competent authorities always tried to seek appropriate solutions in compliance with the policy of the government.” However, the government's actions largely contradict this claim, particularly by imposing a ban on all public gatherings and marches for over six months at the beginning of 2014.

The Law on Peaceful Assembly came into force in 2009 and specifies cumbersome notification and approval requirements for demonstrations. Articles 5 and 7 of the Law require that the organizers of a demonstration notify local authorities at least five working days before the proposed event. Other requirements, such as the necessity to provide contact details of three protest organizers and a photocopy of their national identity cards, may intimidate organizers, whom could risk harsh criminal penalties if something goes wrong in the protest. The law also gives the government absolute discretion in approving or denying protest permits. In addition, Article 20 gives the authorities permission to disperse a peaceful demonstration if no notification letter has been

⁴⁸ See Cambodian Center for independent media (CCIM), “CCIM condemns beating of VOD reporter”, 02 May 2014. available at <http://www.ccimcambodia.org/press-release/96-condemns-beating-of-vod-reporter>

⁴⁹ See “The Right to Remain Silenced,” ADHOC Report, 2014, available at <http://www.adhoc-cambodia.org/?p=4668>

submitted. The authorities often use the law to prohibit peaceful protests likely to be critical of the government on the vague grounds that the protests pose a threat to security, safety or public order. Additionally, the law stipulates that criminal charges can be filed against organizers of demonstrations for vaguely defined transgressions by any participants.

Article 14 of the Law on Peaceful Assembly allows for the creation in each provincial capital of “Freedom Parks”, spaces specifically designated for protests and demonstrations. When the law was promulgated, civil society expressed concern that rather than supporting freedom of assembly this provision could undermine the effectiveness of protests. In some cases, the authorities misinterpreted the law and broke-up protests for not taking place within the Freedom Parks.

The government often employs violent suppression tactics to disperse protesters and striking workers. For example, between January and September 2013 there were at least seven incidents of violence against striking workers by police, private security firms, and employers resulting in 41 injuries.

As discussed above, on 15 September 2013 and 12 November 2013 police shot and killed an innocent bystander when they used live ammunition to indiscriminately fire upon demonstrators and innocent bystanders. On 2 January 2014, armed soldiers suppressed a labor strike in front of a garment factory in Phnom Penh’s Pursenchey District that had been organized to peacefully protest the insufficient increase in the minimum wage for garment workers. In two violent clashes, soldiers chased and beat workers with slingshots, batons, and metal pipes. The following day, police and military personnel shot and killed at least four striking workers, injuring another 38.

On 4 January 2014, a mixed force of police, military police, and thugs – some visibly intoxicated - dispersed peaceful protesters at Freedom Park, the site in Phnom Penh designated for peaceful demonstrations and public expression consistent with the requirements of the Law on Peaceful Assembly.⁵⁰ Demonstrators had camped at Freedom Park since mid-December 2013 to call for election reforms and an investigation into the numerous irregularities reported in the July 2013 general election. Later that same day, the Ministry of the Interior issued a media statement banning all public gatherings and marches “until security and public order are secured and return to normal.”

The ban on all forms of public assembly remained in effect until 22 July 2014. While the ban was not systematically enforced, it led to repeated violent suppression, harassment, and arbitrary detention of human rights activists and peaceful demonstrators.⁵¹ Even after the ban was lifted following the 22 July political agreement, politicians, unionists and HRDs continued to face violence, harassment, and intimidation at the hands of state forces.

LICADHO and ADHOC monitors have noted the increasing use of public order guards as a para-police force at protests and demonstrations in Phnom Penh. LICADHO and ADHOC are concerned over the use of poorly trained

⁵⁰ See Articles 14 and 28 of the Law on Peaceful Assembly.

⁵¹ For instance, a number of human rights defenders were arrested while peacefully protesting for the release of the 23 who were arrested when the Cambodian security forces violently dispersed the garment protests at the beginning of January. In each case, the HRDs were released after spending several hours in police holding cells after signing a document stating that they would not lead, incite or participate in demonstrations again until the government determined that public order had been restored and lifted the ban on public gatherings. For more information see “When Freedom Meets Oppression: Timeline of Recent Events,” LICADHO Report, 9 February 2014, available at <http://www.licadho-cambodia.org/articles/20140209/137/index.html>

guards to police demonstrations and have witnessed the violent tactics of public order guards to crack down on peaceful protesters.

Another concern is that despite the Law on Peaceful Assembly being in force, authorities continue to rely on other laws to criminalize peaceful protests. Notably, on 11 November 2014, Nget Khun, Tep Vanny, Song Srey Leap, Kong Chantha, Phan Chhunreth, Po Chorvy, and Nong Sreng, all long-term Boeung Kak Lake (BKL) women activists, were convicted of obstructing public traffic for conducting a peaceful protest and received a maximum sentence of one year in prison and a 500 USD fine barely 24 hours after their arrest.⁵²

Recommendations:

Call on the government to ensure that the relevant law enforcement authorities, including public order guards, understand the right to freely assemble and punish those who fail to uphold this right.

Call on the government to rectify shortcomings in the Law on Peaceful Assembly which prevents citizen from exercising their right to freedom of peaceful assembly; in particular, the government must ensure that burdensome notification requirements do not hinder peaceful protest or intimidate activists and protest organizers.

Call on government to ensure that Freedom Parks remain an additional place to demonstrate rather than a measure aimed at reducing the impact of legitimate protests.

Article 22 (Freedom of Association)

Along with the issues discussed above under the sections on freedom of expression and freedom of assembly there are two pending pieces of legislation of particular concern for freedom of association in Cambodia.

In paragraph 198 of the State Report, the government states that it is drafting a law on associations and NGOs in order to “protect their rights.” In contrast, the draft Law on Associations and Non-Governmental Organizations (LANGO) is a highly controversial and unnecessary piece of legislation that was first drafted in 2010. The first three drafts received extensive criticism from local and international civil society organizations, donor governments, and legal analysts. Despite several revisions, the fourth and most recent draft still contains restrictions on the freedom of association, burdensome registration requirements for some organizations, excessive powers granted to unelected officials of the executive branch, and unreasonable restrictions on foreign NGOs.⁵³

Another concern is the Law on Trade Unions, which has been in draft form for over two years and includes disturbing provisions likely to increase the vulnerability of workers, especially those who join union activities. Currently, trade unions are governed by the Labor Law, which states that workers and employers have, without distinction whatsoever and prior authorization, the right to form professional organizations of their own choice.⁵⁴ However, the draft Law on Trade Unions contains burdensome registration and reporting requirements

⁵² See “Civil Society Groups Condemn the Ongoing Detention of 11 Activists,” Joint Statement, 26 January 2015, *available at* <http://www.licadho-cambodia.org/pressrelease.php?perm=370>

⁵³ See “Draft Law on Associations & NGOs: Comments on the Fourth Draft,” LICADHO briefing paper, December 2011, *available at* <http://www.licadho-cambodia.org/reports.php?perm=163>.

⁵⁴ Cambodia Labor Law, Article 266.

and hefty fines for vaguely-defined violations. The proposed law also allows the government to dissolve or suspend unions on arbitrary grounds.⁵⁵

Recommendations:

Call on the government to permanently discontinue plans to pass the draft Law on Associations and Non-Governmental Organizations.

Call on the government to suspend plans to pass the draft Law on Trade Unions. The government must conduct inclusive and meaningful consultations with existing trade union organizations, civil society, and other stakeholders to ensure the law does not contain provisions that can be abused to repress rights to freedom of association in violation of Cambodia's obligations under the ICCPR.

Article 25 (Electoral Rights)

Paragraphs 227-240 of the State Report identify Cambodian laws relating to elections but the July 2013 national elections demonstrated numerous ways in which the implementation of these laws has failed to protect the right of Cambodians to vote for the representatives of their choice in a free and fair manner.

The ruling Cambodian People's Party (CPP) was declared the winner of the July 2013 national election by a very narrow margin.⁵⁶ Evidence of fraud, vote-rigging, and other election irregularities were witnessed across the country. These violations have gone unchecked by Cambodia's election body, under the control of the ruling party.⁵⁷ In response, Cambodia National Rescue Party (CNRP) members and supporters embarked on months of peaceful protests. The CNRP rejected the election results, demanded a recount of the ballots, and called for the creation of a task force to investigate the numerous alleged irregularities and fraud.

The CNRP refused taking up their seats in the National Assembly for nearly a year. In July 2014, a deal was reached between the ruling party and the opposition, putting an end to the political deadlock.⁵⁸

In the run-up to the 2013 elections, politically motivated threats became commonplace. In February 2013, authorities in a village in Kampong Chhnang Province threatened more than 500 villagers with the removal of their names from voter lists if they attended a public forum with Kem Sokha, leader of the opposition CNRP. CPP supporters and local authorities also made several assaults and attempts on the lives of CNRP backers, including bludgeoning a supporter unconscious with rocks and sticks, strangling a supporter for documenting the removal of a CNRP sign board, and a military police colonel firing his AK-47 rifle in the air to threaten a parade of CNRP youth supporters.

⁵⁵ See "Legal Analysis of Cambodia's Draft Law on Unions of Enterprises," CLEC and LICADHO Joint Briefing Paper, September 2014, available at http://www.licadho-cambodia.org/collection/23/legal_analysisius_drafr_law_unions

⁵⁶ On 12 August 2013, the National Election Committee (NEC) published preliminary results show that the nationwide difference between the Cambodia People's Party (CPP) and the Cambodian National Rescue Party (CNRP) amounts to 289,793 votes – a margin of just over 4% of the total.

⁵⁷ For more details see "Briefing Paper: Turned Away: Fraud, Irregularities, and Intimidation during the 2013 National Assembly Elections," LICADHO report, August 2013, available at <http://www.licadho-cambodia.org/reports.php?perm=181>; see also The Electoral Reform Alliance, "Joint Report on the Conduct of the 2013 Cambodian Elections," available at www.licadho-cambodia.org/reports/files/184ERAReport-NationalElection2013Irregularities-English.pdf

⁵⁸ See "Political Deadlock Broken", The Phnom Penh Post, 22 July 2014 available at <http://www.phnompenhpost.com/national/political-deadlock-broken>

Serious threats were also common. A CNRP secretary received phone threats before an attempt to burn down his house in Banteay Meanchey Province. A CNRP youth activist in Svay Rieng Province was terrorized via SMS, when a village assistant chief and CPP group leader sent a photo of a man pointing a gun to another's head. On the night of 19 July, the day opposition leader Sam Rainsy returned from a years-long self-exile, bullets were fired through the window of the CNRP headquarters, fortunately missing 10 supporters inside. LICADHO also documented numerous cases of people illegally detained on false accusations and arrested without warrants because of their support for the CNRP. In order to be freed and have charges dropped, many were forced to sign documents pledging their loyalty to the CPP.

During the election process itself, observers witnessed serious discrepancies in an alarming percentage of the polling stations visited. The issues can be grouped into three main areas: voter roll irregularities, including ghost voter names, inexplicably missing names, and similar denials of the right to vote; indications of intentional fraud or vote rigging; and intimidation or harassment.⁵⁹

In most polling stations visited, LICADHO observers spoke with numerous individuals who had verified their registration prior to election day only to find their names missing from the voter rolls upon arrival at their polling station. Similarly, several individuals were turned away after being told that someone else had already voted in their name. In many cases, the earlier voter had used a commune chief-awarded identity certificate in lieu of a photo ID card. Would-be voters were also denied their right to vote on improper bases, such as their failure to bring their voter information slip to the polls.⁶⁰

The National Election Committee's (NEC) own figures showed that the voter rolls contained over 250,000 exact duplicate names (including date of birth and all other ID information) and that approximately 290,000 names were missing from the voter rolls – undoubtedly a large underestimation when compared to the estimates calculated by all independent monitoring groups. An independent audit of 4,900 voters conducted by the National Democratic Institute (NDI) and Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC) covering voters in all 24 provinces 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 also found that birth dates for voters only matched election rolls 63% of the time. This alone could have led to hundreds of thousands of voters being turned away. These figures are doubly troubling when considering that most areas had many more registered voters than residents.⁶¹ Many of the irregularities and fraud documented by NGOs were facilitated by the NEC itself, stressing the need for electoral reforms in Cambodia to begin with its main election body. A new law to regulate the functioning of the NEC was earmarked for further discussion in the political agreement that led the opposition party to end its boycott of the National Assembly in July 2014, as were relevant amendments to the Constitution and revisions to the Law on the Election of the Members of the National Assembly (LEMNA). As noted above, however, this agreement and the ones that followed have been marred by groundless criminal proceedings against opposition members and supporters.

Some constitutional amendments have already been passed but are insufficient to ensure an independent election monitoring body. Notably, the new constitutional provisions do not secure sufficient control for the election monitoring body over the registration and maintenance of the voter list. The new constitutional

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Id.

amendments also fail to provide a neutral election monitoring body and instead seek merely to enforce a balance between the political parties in the appointment of election committee members.

The July political agreement failed to set a concrete time frame for the negotiations of a new law on the NEC and revisions to LEMNA. In addition to the coercion through groundless criminal prosecutions of CNRP members, the negotiation process has been characterized by lack of transparency. This lack of transparency is particularly troubling given reports of problematic provisions being given serious consideration by both parties. One alleged provision would ban NGOs from making statements deemed “insulting” to politicians or parties in the lead-up to polls and another would impose a significant restriction on the duration of the campaign period ahead of the next elections.

Recommendations:

Call on both political parties to adopt a more transparent process for drafting the new NEC law and revising LEMNA. The parties should release the most recent draft of each law immediately and allow for public comment.

Call on both parties to prioritize the creation of a new voter list by an independent election monitoring body to minimize the harmful impact of irregularities caused by ghost names and names inexplicably missing from the voter list.

Call on both parties to ensure that provisions in the new and revised electoral reform laws do not impose unconstitutional restrictions on freedom of expression or other fundamental rights.

Article 27 (Rights of persons belonging to minorities)

Under the 2001 Land Law, indigenous people can exercise collective rights over land “where they have established their residence and where they carry out traditional agriculture.” However there are many unresolved issues surrounding the collective land registration process, which is detailed in the 2009 Sub-Decree on Procedures of Registration of Land of Indigenous Communities.

First, communities receive little or no support from authorities in the registration process. In some instances indigenous groups were refused the right to be recognized as legal entities that may register land for collective ownership. Authorities disregard indigenous peoples’ traditions and religious practices. They often operate in collusion with land concession holders and illegal loggers and favor the progressive encroachment on indigenous peoples’ land by delaying the registration process. Secondly, the complexity and length of the process often results in members of communities opting for individual land titles. This choice is also due to a widespread propaganda against communal land titling conducted by local authorities or outsiders linked to land concession holders or the authorities. Once isolated from the rest of the community, it is easier for land concession holders to convince individuals or families to sell their land. The pressure put on indigenous people to give up their collective rights is easily explainable by the fact that the land reserved for shifting agriculture, ancestral burial sites, and sacred forests is not included in individual titles delivered through the land titling scheme. This means that a considerable part of the land originally intended as CLT will be lost to the benefit of the state or the land concession holders. As for now, only eight indigenous communities have successfully been granted collective ownership.

Public consultations with indigenous communities are rarely conducted before the allocation of land to private companies for mining, hydropower, and agro-forestry projects, despite this being a pre-condition for the

approval of the projects, along with the provision of adequate resettlement solutions and the completion of an Environmental Impact Assessment (EIA). A draft EIA Law is currently under scrutiny. However, it fails to integrate the rights of indigenous people as recognized in the Land Law and the national indigenous people policy and does not meet Free, Prior, and Informed Consent (FPIC) standards.

In paragraph 264 of the State Report, the government claims that “instruments have been made for the purpose to protect rights and freedom of the indigenous groups such as language, belief, religion, culture, tradition and custom and traditional use of natural resources of the indigenous groups.” However, in practice little has been done to preserve indigenous traditions and to halt the encroachment upon and the destruction of sacred forests and burial sites by illegal loggers and land concession holders, which continue unabated. In many instances, communities have been left with no other choice but to protect their sacred sites through self-organized and self-funded patrols, exposing themselves to threats and intimidation, as those orchestrating illegal logging activities are often powerful and well-connected and operate in collusion with local authorities.

Recommendations:

Urge the government to accelerate the registration of indigenous communities as legal entities and prioritize the registration of their land in accordance with the Land Law.

Urge the government to ratify the ILO Convention 169 on Indigenous People.

Call on the government to urgently adopt and review the draft EIA Law by including specific provisions concerning indigenous people’s rights.