



Report for the Human Rights Committee’s Task Force for the adoption of the list of issues on Cambodia

Introduction – FIDH and LICADHO

Founded in 1922 by 15 human rights groups, FIDH (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 140 staff and has offices in Phnom Penh and 12 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, collecting and analyzing data and advocating on behalf of prisoners. As part of its prison program, LICADHO provides legal representation and services, medical/sanitation services, and other basic needs to inmates and, in some cases, to their families.

Executive Summary

As Cambodia prepares for the Human Rights Committee (the Committee) to consider the country’s second State Party Report (State Report), we must note that corruption remains endemic and violence against government critics is systematic. The nation’s corrupt and politically-influenced justice system continues to prosecute more government opponents, while State actors and well-connected individuals continue to enjoy unfettered 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 skewed system of justice is most apparent with respect to land rights, land concessions and land confiscation. Human rights defenders are targeted for harassment, threats, unjustified criminal charges and violence while influential business figures and politicians are routinely allowed to break the law, intimidate opponents, and benefit from a corrupt and weak court system. It must be noted, however, that the targeting of human rights defenders is not restricted to land right issues but involve the full spectrum of human rights issues.

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.

As the time this report was drafted, a blanket ban on all public demonstrations and marches announced on 4 January 2014 remains in effect. The ban followed three days of demonstrations by garment and footwear workers in support of an adequate minimum wage. In response to the demonstrations, the government used lethal force to suppress the demonstrators. At least four people were killed as a result.

List of Issues

Article 2.3 (Access to Effective Remedies)

The State Report section addressing Article 2 fails to mention access to effective remedies. This omission is telling as lack of access to effective remedies remains a serious concern in Cambodia. Access is undermined by corruption and impunity and 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 been met by inaction from the courts.¹

The government has still not ratified the Optional Protocol to the ICCPR. 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 Yentheng, 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 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. The Prime Minister 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

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).

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

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

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 Human Rights Committee regarding alleged violations of the rights in the ICCPR.

Call on the government to ensure that the new national human rights institution is established in compliance with international standards to include the Paris Principles. In order to provide for a strong national human rights institution that is capable of operating effectively and independently, the institution must explicitly provide for an inclusive and transparent selection process of the members.

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 the garment and textile factories. An additional 38 people were hospitalized during the attack, 25 of whom suffered bullet wounds. One person, 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 have 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 has neglected to properly investigate the disappearance of a 16 year old boy who has not been seen since that day when the young garment worker lying on the ground with a bullet wound to his chest, according to witnesses.

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>

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>

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 followed by failure to investigate or punish. During 2012-2013, LICADHO monitors investigated 10 fatalities related to police or military action. Some examples include:⁶

- 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, killing 49-year-old street vendor Eng Sokhum and injuring nine others. One man was paralyzed as a result of his injury. 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 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 accused the police officer and initiated legal proceedings.
- On 23 January 2013, in Preak Hour commune, Takhmau District, Kandal Province, a 29-year-old worker was shot in the head and killed by a soldier who caught the victim fishing illegally in an area that he guarded. The suspect was arrested and charged with murder by the prosecutor, the case is being investigated by the investigating judge.

So far, in nine out of the ten fatal cases there has been no credible prosecution or investigation.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.

Recommendations:

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

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>

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>

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, and that there have been few investigations or prosecutions in respect of allegations of torture and ill treatment.”¹⁰ The present State Report describes provisions of the law prohibiting acts of torture but does not discuss implementation of these provisions.¹¹

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 or prison officials.¹² 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.

During that same time period, 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 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 weaponry for torture.

Objects used during beatings included guns, sticks, iron rods, stun batons, walkie-talkies, chains, ropes, electric cables and belts. Some had their faces covered with plastic bags or other items during the beatings. 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 couldn’t read Khmer were often forced to thumbprint confessions they did not understand.

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 weaponry for torture.

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 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.

¹⁰ Concluding Observations para. 13.

¹¹ State Report para. 75-84.

¹² 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).

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.¹³ This, combined with the lack of monitoring at police stations, the overreliance 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.

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 to 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.¹⁴ This issue remains a serious concern but it is not mentioned at all in the State Report.¹⁵

¹³ 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.

¹⁴ See Concluding Observations, para. 16.

¹⁵ See State Report, para. 85-88.

In 2013 alone, LICADHO investigated a total of 117 human trafficking cases affecting 336 individuals. Nearly 90% of them were victims of labor trafficking, predominantly to Malaysia and Thailand.

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, those domestic workers already in Malaysia have 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 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.

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 Law on Suppression of Human Trafficking and Sexual Exploitation. Investigations to identify and secure arrest warrants for other leaders within Giant Ocean, including Lin Yu Shin's husband, are ongoing. A verdict on Lin Yu Shin's trial is expected to be reached by the Phnom Penh Municipal Court on 29 April 2014.

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 penal provisions – to regulate recruitment agencies.

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

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. Recent guidelines sent to all judges on the use of new procedures when ordering pre-trial detention seek to remedy this by requiring adversarial hearings, arguments, and supporting evidence when deciding on pre-trial detention, and written reasons for the decision. However, LICADHO has yet to see any evidence that these new procedures are already being followed.

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.¹⁶ Conditions 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 Government has done little to address this grave situation.¹⁷ In contrast, local authorities have announced their intention to create an additional center to lock away beggars in April 2014.¹⁸

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.

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."¹⁹ The State Report on prison conditions lists relevant legal provisions that are ignored in practice.²⁰

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.

¹⁶ 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." See "Clean Sweep for ASEAN," Khouth Sophak Chakrya, Mom Kunthear and Shane Worrell, Phnom Penh Post, November 9, 2012.

¹⁷ For more information see the recent 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>

¹⁸ Cambodia Daily, *Phnom Penh Seeks to Create New Center for Homeless, Beggars*, 9 April 2014;

<http://www.cambodiadaily.com/news/phnom-penh-seeks-to-create-new-center-for-homeless-beggars-56142/>

¹⁹ Concluding Observations, para. 14.

²⁰ State Report, para. 99-113.

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 151% capacity at the end of March 2014, with some prisons still operating at well over 200% capacity. Levels of overcrowding are not uniform across prisons or within prisons. Some cells or buildings are 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 March 2014, there were 54 children living with their mothers in the 18 prisons monitored by LICADHO. Six of these children were over the age of three, in contravention of the 2011 Prison Law.

Following a 10-year drafting period, the new Law on Children in Conflict with the Law was recently finalized, but is not yet being implemented. 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 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 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 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 implement 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.²¹

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 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 beating some and holding 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 whereabouts of the 23 individuals, including one minor, who were arrested on 2-3 January remained incommunicado until January 8 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 remain in prison awaiting trial, some without access to necessary medical treatment in hospitals.²²

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, 14 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 remains in prison awaiting trial despite the existence of exculpatory evidence.

On 15 September 2013, when police shot and killed an innocent bystander firing live ammunition into a mixed crowd of local residents, commuters and peaceful demonstrators they also arrested six people, charging 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 to three years in prison.

²¹ State Report, para. 123-136.

²² 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>

In each of the cases identified above, no investigation has been conducted to determine who bore responsibility for the killings perpetrated by the state agents.

Furthermore, the courts also continue to be used to persecute and impede the work of human rights defenders. After spending eight months in prison, Mam Sonando, owner of independent radio station Beehive, and his co-defendants were released on 15 March 2013, ending a bizarre saga that originally saw him imprisoned for leading a so-called “secession movement” in Kratie Province. Sonando had been arrested in July 2012 and convicted four months later on charges of leading a secession movement, for which he was sentenced to 20 years in prison. In the end, the Court of Appeal inexplicably changed Sonando’s charges to illegal-logging related crimes, reduced his sentence to five years, and suspended all but the eight months that he had already served.

On 4 September 2012, authorities arrested Yorm Bopha for allegedly arranging the beating of a man near her home. Bopha was active in the protest movement to release 15 other members of the Boeung Kak Lake community in 2012, and authorities warned her that she would face trouble in retaliation for her activism.²³ Despite a total lack of evidence connecting her to the assault, she was convicted in December 2012 and sentenced to three years in prison. Bopha, who was named an Amnesty International prisoner of conscience, was active in the protest movement to release 15 other members of the Boeung Kak community in 2012, and authorities warned her that she would face trouble in retaliation for her activism. On 14 June, the Court of Appeal altered the charges against Bopha and suspended one year of her sentence, but refused to overturn her conviction.²⁴ On 22 November, following an extensive national and international advocacy campaign, the Supreme Court released Bopha on bail after more than 14 months in prison. The Supreme Court remanded her case to the Court of Appeals. No date has been set yet for the re-trial.

On the contrary, former Bavet city Governor Chhouk Bandith remains at large despite the existence of an arrest warrant and a criminal conviction finding that he fired his gun at a crowd of striking garment workers in 2012, seriously injuring three.²⁵ After a year-long legal journey that saw charges briefly dropped altogether, Bandith was tried in absentia and convicted of causing ‘unintentional injury’ on 25 June, and sentenced to one-and-a-half years in prison. An arrest warrant has been issued, but he remains at large.

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.²⁶

Recommendations:

Call for 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, and focus instead on bringing to justice perpetrators of human rights violations against them.

²³ See “The Yorm Bopha Case,” LICADHO Briefing Paper, April 2013, available at <http://www.licadho-cambodia.org/reports.php?perm=177>

²⁴ *Id.*

²⁵ See “Ex-Governor’s Slap on Wrist for Shooting a Stark Contrast to Harsh Penalties for Human Rights Defenders,” Joint Statement, 25 June 2013, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=314>

²⁶ The number of people affected by state-involved land conflicts in Cambodia since 2000 passed the half-million mark in March, 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>

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.²⁷ 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).

On January 27, 2014, 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*). Hundreds of security forces advanced on the demonstrators, detonating smoke grenades and using electric batons against both demonstrators and bystanders. During this violent suppression, security forces injured at least 10 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, Voice of America, Radio France International, and ABC Radio Australia.²⁸ However, this was withdrawn shortly after as the ban sparked heavy criticism from foreign and local rights groups and the broadcasters themselves.²⁹

Several laws currently in force contain vague language or cumbersome criteria often manipulated to harass civil society and human rights defenders (HRDs) and prevent them from speaking out against the government. The Criminal Code, which entered into force in December 2010, contains several articles that are often misused in cases regarding 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.³⁰ Additionally, two sections restricting publication of comments intended to influence a court or criticizing a judicial decision could be used to criminalize HRD's public advocacy for the reform of the justice system and may deter lawyers from speaking about their cases.³¹

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 the information he provides leads to an undefined "useless inquiry."³²

²⁷ 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

²⁸ 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/>

²⁹ 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/>

³⁰ Articles 305 ("defamation"), 307 ("insult"), 495 ("incitement"), 502 ("insult against a public official"), 2009 Cambodia Criminal Code

³¹ Articles 522 ("comments intended to unlawfully coerce judicial authorities") and 523 ("discrediting judicial decisions"), 2009 Cambodia Criminal Code

³² Article 41 ("defamation and disinformation"), 2011 Anti-Corruption Law

A secretive draft Cybercrime Law, developed 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.³³

Recommendations:

Call on the government to provide television channels 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 simply 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 publically release the latest draft. The government must conduct inclusive and meaningful consultations with civil society and other stakeholders to ensure the law complies with Article 19 of the ICCPR.

Article 21 (Freedom of 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.” The government’s actions, however, largely contradict this claim, particularly by maintaining the ongoing ban on all public gatherings and marches.

The Law on Peaceful Assembly came into force in 2009 and specifies cumbersome notification and approval requirements for demonstrations. The authorities often use the law to prohibit peaceful protests likely to be critical of the government on the vague grounds of 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.

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 fire upon crowds including local residents, commuters and protesters. 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,

³³ 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.).

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.³⁴ 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 remains in effect and, while it has not been systematically enforced, it has led to repeated violent suppression, harassment, and arbitrary detention of human rights activists and demonstrators. Notably, human rights defenders have been 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.³⁵

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.

Recommendations:

Call on the government to immediately revoke the ban on all public assembly, which is in violation of the government’s obligations to the fundamental freedoms of assembly and expression under the ICCPR.

Call on the government to ensure that spaces designated for peaceful demonstrations and public expression, such as Freedom Park, remain open for that purpose at all times. A “threat to public order” must be defined as narrowly as possible such that it does not justify a blanket ban on all assembly nor does it justify the violent repression of individuals who peacefully gather to express their views.

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 developed 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.³⁶

³⁴ See Articles 14 and 28 of the Law on Peaceful Assembly.

³⁵ See LICADHO Report “When Freedom Meets Oppression: Timeline of Recent Events,” 9 February 2014, available at <http://www.licadho-cambodia.org/articles/20140209/137/index.html>

³⁶ 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>.

Another concern is the Law on Trade Unions that has been in draft form for over two years and includes worrying 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 “[w]orkers and employers have, without distinction whatsoever and prior authorization, the right to form professional organizations of their own choice.”³⁷ However, the draft Law on Trade Unions contains burdensome registration and reporting requirements and hefty fines for vaguely defined violations. The proposed law also allows the government to dissolve or suspend unions on arbitrary grounds. The government recently stated that it plans to pass the law by the end of 2014.

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 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.³⁸ Remarkably narrow, given the evidence of fraud, vote-rigging, and other election irregularities witnessed across the country. These violations have gone unchecked by Cambodia’s election body, under the control of the ruling party.³⁹ In response, Cambodia National Rescue Party (CNRP) members and supporters embarked on months of 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 frauds. To date, they have not taken up their seats in the National Assembly.

In the run-up to the 2013 elections, politically motivated threats became common. In February 2013, authorities in a village in Kampong Chnang 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 Cambodia National Rescue Party (CNRP). CPP supporters and local authorities also made several assaults and attempts on the lives of CNRP backers, including bludgeoning a supporter to unconsciousness 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.

³⁷ Cambodia Labor Law, Article 266.

³⁸ 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.

³⁹ 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

Serious threats were also common, with a CNRP secretary receiving 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 CNRP support. In order to be freed and have charges dropped, many were forced to sign documents pledging their loyalty to 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 and inexplicably missing names and similar denials of the right to vote; indications of intentional fraud or vote rigging; and intimidation or harassment.⁴⁰

In most polling stations visited, LICADHO observers spoke with individuals who had verified their registration prior to the 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 – often the earlier voter had used a commune chief-awarded identity certificate in lieu of a photo ID. 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.⁴¹

The National Election Committee's (NEC) own figures also showed that the voter rolls contained over 250,000 exact duplicate names (including date of birth and all other ID information) and 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 which 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.⁴²

Recommendations:

Call on the government to establish a thorough, transparent, and independent investigation into serious allegations of election fraud and irregularities during the July 2013 polls.

Call on the government to establish an all-inclusive, transparent, and accountable mechanism tasked with carrying out a comprehensive election reform that ensures that future elections are free, fair, and representative.

⁴⁰ Id.

⁴¹ Id.

⁴² Id.