



សម្ព័ន្ធនៃទ្រព្យធិការការពារសិទ្ធិមនុស្ស លីកាដូ

LICADHO

CAMBODIAN LEAGUE FOR THE PROMOTION
AND DEFENSE OF HUMAN RIGHTS

Mailing Address: P.O. Box 499

Phnom Penh, Cambodia

Main Office: #16, Street 99

Khan Chamkar Morn, Phnom Penh

Phone/Fax: (855) 23 727 102

E-mail: contact@licadho-cambodia.org

Website: <http://www.licadho-cambodia.org/>

April 10, 2009

Cambodian League for the Promotion & Defense of Human Rights (LICADHO) submission to the United Nations Universal Periodic Review, Cambodia

Introduction & Executive Summary

1. The Cambodian League for the Promotion & Defense of Human Rights (LICADHO) is a Cambodian non-government NGO operating since 1992. Employing more than 100 staff, with offices in Phnom Penh and 12 provinces, LICADHO investigates and documents rights violations; provides legal, medical and other assistance to victims; conducts human rights education and awareness-raising; and advocates for tangible improvements in rule of law and human rights in Cambodia.
2. This submission focuses on a selection of major rights issues in Cambodia, based on LICADHO's experience and knowledge in these areas. Presented below under OHCHR's Promotion and Protection of Human Rights on the Ground thematic sub-categories, these issues are: persecution of human rights defenders; prison conditions; unlawful detention centers; torture; and impunity and lack of rule of law. This submission covers the past four years (2005 until early 2009).
3. The past four years has seen a continuation of a long-standing pattern of serious and systematic human rights violation, in contravention of Cambodia's obligations under international human rights instruments and of the country's Constitution and domestic law. Human rights defenders continued to be targeted for harassment, threats, unjustified criminal charges and violence. Prison conditions remained extremely poor and in violation of UN Minimum Rules for the Treatment of Prisoners. The government operated at least two unlawful detention centers for homeless persons, beggars, the mentally ill, sex workers, drug users and other persons who were arbitrarily arrested from the streets; detainees were subjected to violence and inhumane living conditions. The use of torture remained institutionalized throughout the country, most commonly by the police in order to secure confessions from criminal suspects, and State torturers continued to enjoy impunity, in violation of Cambodia's commitments under the Convention Against Torture. The nation's corrupt and politically-influenced justice system continued to persecute government opponents, perpetuate impunity for State personnel and their associates, and protect the economic interests of the rich and powerful, while failing to provide justice to countless human rights victims.

Civil and political rights & fundamental freedoms

Persecution of Human Rights Defenders

4. There continues to be a consistent pattern of threats and attacks against Cambodian human rights defenders. In the years 2005-2007, at least 120 cases of persecution of rights defenders were recorded by LICADHO, ranging from verbal intimidation and death threats, to unjustified criminal charges, to murder. Victims included land rights activists, trade unionists, journalists, Buddhist monks, and private citizens who helped asylum seekers. There were no serious investigations by the authorities, let alone prosecution of the perpetrators, in the vast majority of cases.
5. One of the most serious cases in the past four years was the February 24, 2007 murder of unionist Hy Vuthy, from the Free Trade Union of Workers of the Kingdom of Cambodia. No one has been brought to justice for the crime. The police repeatedly claimed that they had identified two suspects and obtained court warrants for them, but could not find them. Contradicting this, the Phnom Penh Municipal Court publicly confirmed in September 2008 that it had officially closed the case because it had "no suspects". Hy Vuthy was the third Free Trade Union official assassinated in three years; none of their killers have been brought to justice (in the two other cases, innocent scapegoats were framed by police and convicted by the courts).
6. Other particularly grievous cases involved Buddhist monks who advocated for the rights of Khmer Krom (ethnic Khmer from southern Vietnam). Khmer Krom monk Eang Sok Thoeun died in suspicious circumstances on the night of February 27, 2007, hours after he took part in a demonstration outside the Vietnamese embassy in Phnom

Penh in support of persecuted fellow monks in Vietnam. His throat was slashed in three places. Authorities immediately declared his death a suicide and quickly buried his body. A prosecutor refused to order an exhumation and autopsy. Four months later, in June 2007, another Khmer Krom monk, Tim Sakhorn, was arbitrarily arrested, defrocked and secretly and unlawfully deported – in violation of his status as a Cambodian citizen – to Vietnam by Cambodian authorities. He was later tried and sentenced to a year in prison in Vietnam for political offenses.

7. The largest category of rights defenders targeted for persecution in recent years is grassroots activists who help their communities to defend themselves from the theft of their land or other natural resources by the rich and powerful. Threats, harassment, violence, unjustified criminal charges and imprisonment are regularly faced by community representatives who assist their fellow villagers to protect their land rights. In 2007-2008, at least 102 individuals were arrested and imprisoned in connection with land conflicts – the majority of them community representatives who faced bogus criminal charges filed against them without credible evidence.
8. LICADHO fears the situation of rights defenders will become significantly more precarious if and when the government passes a proposed new Law on Local Associations and NGOs. Officials from the ruling Cambodian People's Party have stated that the law is intended for NGOs which are "too freely speaking" and those which "rock the boat" by advocating on issues such as corruption and deforestation.¹ The latest version of the draft law has not been made public by the government but previous drafts included restrictions on foreign funding of local NGOs; complex registration requirements that would provide legal means to delay or deny registration to NGOs and association which fall out of favor with the government; and provisions for authorities to close down organizations deemed to have conducted (undefined) "political" activities.

Recommendations:

Recommendation 1: Take effective steps to ensure full respect by all State authorities of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

Recommendation 2: Investigate and prosecute all acts of violence and intimidation against human rights defenders.

Recommendation 3: Suspend plans to enact a Law on Local Associations and NGOs.

Personal liberties and security

Prison Conditions

9. Conditions in Cambodia's 26 prisons remain extremely poor and in violation of numerous provisions of the UN Standard Minimum Rules for the Treatment of Prisoners. Overcrowding, poor hygiene and sanitation facilities, insufficient food and clean drinking water, inadequate exercise and sunlight, and lack of medical services are common. In the 14 prisons regularly visited by LICADHO doctors, the most common health problems of prisoners are directly due to their poor living conditions: skin diseases, beriberi, respiratory infections, diarrhea and gastrointestinal complaints, tuberculosis. Prison rations are notoriously poor (in quantity and nutritious value) and it is extremely difficult for prisoners to survive without extra food being provided by their families.
10. The prison population has rapidly increased in recent years, contributing to acute overcrowding and related health problems. In 2008, the total population in the 18 prisons monitored by LICADHO was 10,592 (including 703 minors), compared to 8,238 (including 447 minors) in 2005. These 18 prisons were built to accommodate a total of 6,365 inmates, meaning on average each prison was 166% over-capacity in 2008.
11. Corruption is endemic in prisons. Prison staff extort money from prisoners and their families for a multitude of rights and privileges: to receive visitors; to be assigned a better, less over-crowded cell; to be allowed outdoors recreation time; to receive medical treatment. The poorest prisoners suffer the most, as their health deteriorates – sometimes fatally – because they are unable to pay for livable conditions.

Recommendations:

Recommendation 4: 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.

¹ Kay Kimsong, "Heng Samrin: NGOs Will be Directed by the Government", The Cambodia Daily, June 16, 2006; Emily Lodish & Neou Vannarin, "Premier's Call for New Law Alarms NGOs", The Cambodia Daily, September 29, 2008.

Recommendation 5: Transfer responsibility for prison administration from the Ministry of Interior to the Ministry of Justice, ensuring a division between police officers who are responsible for investigating crime and prison staff who are responsible for the safe and humane incarceration and rehabilitation of prisoners.

Unlawful detention centers

12. For more than a decade, the government has operated unlawful detention centers for people arbitrarily arrested from the streets of Phnom Penh in the interests of beautifying the city. In the past four years, hundreds of people have been detained at two such centers, known as Prey Speu and Koh Kor, run by the Ministry of Social Affairs. Officially, the centers exist to provide rehabilitation services to the homeless and other poor persons who voluntarily stay at them. In reality, they have been used for the systematic unlawful detention of ‘undesirables’ – homeless families, beggars, sex workers, drug users, the mentally ill, and so on – who live or work on the streets. Arbitrarily arrested during regular street round-ups by the police and other authorities, these people were not charged with any crime but were detained without lawful basis for indefinite periods.
13. Conditions at both centers were abysmal – even worse than exist in Cambodian prisons – and included gross overcrowding and lack of adequate food, clean drinking water and medical care. In June 2008, LICADHO gained access to the Koh Kor center, despite efforts to prevent this by staff there, and photographed hungry men, women and children detained in padlocked rooms.² They included a four-year-old boy, a nine-month pregnant woman, and a comatose elderly woman who subsequently died inside her locked room.
14. At Prey Speu center, detainees were routinely subjected to sadistic violence. Guards raped female prisoners and severely beat detainees who tried to escape or complained about conditions, according to former detainees interviewed by LICADHO. At least three detainees, possibly more, were beaten to death by guards at Prey Speu during 2006-2008, and five others reportedly committed suicide, according to LICADHO investigations.³
15. LICADHO complaints to the government in mid-2008 led to the release of detainees at Koh Kor and Prey Speu. However, the Ministry of Social Affairs has rejected calls to permanently close the centers, and LICADHO fears that unlawful detentions may resume at either or both of them at any time. There has been no serious government investigation into abuses at the centers, and no prosecution of perpetrators. Staff at Prey Speu center who have allegedly committed rapes and murders - and whom LICADHO has asked the government to suspend pending a full investigation - continue to work there.

Recommendation 6: Permanently close the Social Affairs Centers at Prey Speu and Koh Kor, and ensure a proper investigation and prosecution of perpetrators of abuses there.

Recommendation 7: Put an end to the arbitrary arrest and detention of homeless persons and other individuals from the streets.

Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment

16. Torture is systematically used by the police, including the military police, throughout Cambodia. It is primarily used to extract confessions from criminal suspects, to extort money from them for their release, or to punish them for their alleged crimes. During 2005-2008, some 500 prison inmates interviewed by LICADHO stated that they had been tortured while in police custody following their arrests. (The amount of torture is likely to be under-reported, as most inmates were not interviewed in private.)
17. The risk of torture of arrested persons is increased because they are usually detained incommunicado in police stations, and because there is no independent scrutiny of conditions of detention. Regrettably, a new Criminal Procedure Code passed in 2007 perpetuated this situation by specifying that criminal suspects have no right to see a lawyer or other person of their choice during the first 24 hours of police detention.⁴
18. The police’s long-standing reliance on obtaining confessions from alleged offenders is encouraged by the courts’ willingness to accept forced confessions as evidence of guilt, and by their failure to take any action when

² See http://licadho-cambodia.org/album/view_photo.php?cat=40 and <http://licadho-cambodia.org/pressrelease.php?perm=185>

³ See http://licadho-cambodia.org/album/view_photo.php?cat=41 and <http://licadho-cambodia.org/pressrelease.php?perm=193>

⁴ Art. 98, Criminal Procedure Code, 2007. Previously, Cambodian law was vague on whether or not lawyers had access to suspects in police custody, though in reality this was rarely permitted.

defendants do report that they were tortured. As such, judges frequently violate Cambodia's Constitution⁵ as well as the Convention Against Torture.

19. Torture also occurs within prisons, primarily for punishing inmates who attempt to escape or otherwise violate prison rules. The torture is usually committed by other inmates, on the instructions of guards. There is an institutionalized system in Cambodian prisons whereby certain inmates are given responsibility for maintaining discipline and order among other prisoners – a violation of the UN Minimum Standard Rules for the Treatment of Prisoners. In addition to the outright use of torture as a punishment, it is LICADHO's opinion that the poor living conditions in Cambodian prisons (referred to in paragraphs 9-11) often amount to torture, and certainly to cruel, inhuman or degrading treatment or punishment, under the Convention Against Torture. The same can also be said for conditions in the unlawful detention centers run by the Ministry of Social Affairs (paragraphs 13-14).
20. Serious investigations into torture by State personnel are rarely conducted. Prosecutions, convictions and appropriate sentences are even rarer. The last known conviction of police officers was in 2002 when three policemen were convicted of physical assault and received three-month suspended prison terms for torturing two children. The last time a police officer actually went to jail for committing torture was in 1995 when a military policeman spent four months in prison for beating a 13-year-old boy who died during interrogation. In Prey Veng province, three police officers have since 2002 been charged with voluntary manslaughter, in regard to the death of a detainee who died after torture, but have yet to be brought to trial; they continue working as police.⁶ No prison officers have been convicted of torture in the past 15 years, and there has been only one attempted prosecution. In that case, in 2002, a court acquitted five prison guards of torturing prisoners in Kampong Cham province, despite victim testimony, eyewitness testimony and medical evidence of torture being presented to court. Despite acquitting the guards, the judge recommended internal disciplinary action against them – an explicit acknowledgment of their wrongdoing.

Recommendations:

Recommendation 8: Establish an independent body to directly receive and investigate complaints of torture and other abuses committed by law enforcement officers.

Recommendation 9: Permit legal and human rights NGOs to routinely visit police stations to monitor detention conditions and interview detainees.

Recommendation 10: Amend the Criminal Procedure Code to: guarantee detainees the right to communicate with a lawyer, relative, friend or other person at any time while in police custody, and to have a legal representative present during police questioning; prohibit the use of confessions as admissible evidence in court unless the confessions were made in the presence of a judge or lawyer.

Administration of Justice

Impunity & Lack of Rule of Law

21. The past four years have seen little if any improvement in Cambodia's justice system, which systematically fails to uphold the rule of law and on a daily basis deprives justice to countless victims of crimes and rights abuses. In reality, the primary functions of the justice system, in LICADHO's opinion, is to perpetuate impunity for State personnel and their associates; persecute political opponents and other critics of the government; and protect the economic interests of the rich and powerful. Given the lack of progress made in judicial reform over the past 15 years, there is no reason to believe that the Cambodian government's repeated promises of reform are sincere.
22. Corruption and political interference in the police and judiciary are the major obstacles to rule of law in Cambodia. The gravest of crimes – including murder, torture, rape, and trafficking of woman and children – frequently go unpunished if the perpetrators have money or influential connections. In particular, State personnel – including government officials, police and military officers – and their families enjoy a high level of impunity to commit crimes and abuses, both in the course of their duties and in their private time. The higher-ranking an official, the more protection from prosecution he or she enjoys.

⁵ Art. 38 of the Constitution prohibits the use of forced confessions as evidence in court. It also states that persons who commit, participate or conspire in acts of mistreatment against detainees shall be prosecuted.

⁶ In the seven years since the three policemen were charged, the provincial court has only once scheduled a trial of them but cancelled it when the police chief informed the judge that the accused were "too busy" with their police work to attend the trial. Prak Chan Thul, "Policemen Charged with Murder 'Too Busy' for Trial", The Cambodia Daily, February 9, 2007.

23. The courts have long been used to persecute the ruling party's political opponents. The gravest example in recent years was the August 2005 conviction of opposition MP Cheam Channy on unsubstantiated charges of creating a rebel army. Convicted without credible evidence in a blatantly unfair trial, he spent a year in prison before receiving a pardon in a political deal done with the Prime Minister. The UN Working Group on Arbitrary Detention found his detention unlawful under Cambodian and international law.⁷
24. In the past four years, the government has continued to use the courts to restrict freedom of expression and silence outspoken civil society leaders. This included the arrests and imprisonment of journalist Mam Sonando, unionist Rong Chhun and NGO leaders Kem Sokha, Yeng Vireak and Pa Nguon Teang in late 2005 and early 2006. All were charged with criminal defamation, disinformation and/or incitement, for allegedly making or publicizing comments critical of the government. The arrests were orchestrated by the Prime Minister, with minimal pretence of judicial independence, and all the accused were eventually released at his behest too. A more recent example is that of Teang Narith, a university professor convicted and sentenced to two-and-a-half years in prison in February 2007 for teaching from a self-written book that was highly critical of the Prime Minister and the government.
25. Cambodia has a history of assassinations and other violence against journalists, unionists and opposition politicians and their supporters, and in such cases the perpetrators are rarely brought to justice. In some instances, the justice system has been used to prosecute innocent scapegoats in order to protect the real perpetrators. The most glaring example of miscarriage of justice and executive interference in the judiciary in recent years is the case of Born Samnang and Sok Sam Oeun, two men convicted in August 2005 of the assassination of union leader Chea Vichea. There was an overwhelming lack of evidence against the two men, both of whom had alibis (one of them was 60km away from the scene of the assassination). An investigating judge who initially dropped the charges against them was, four days later, disciplined for unspecified judicial mistakes and transferred to a remote province. The charges were reinstated, and the two men convicted. After nearly five years in prison, Born Samnang and Sok Sam Oeun were released on bail by the Supreme Court in December 2008 but have yet to have their names cleared. In a virtually identical case, another man, Thach Saveth, is still serving a 15-year prison sentence after being unfairly convicted of the murder of another unionist, Ros Sovannareth. Thach Saveth was arrested by the same police officers who were responsible for the framing of Born Samnang and Sok Sam Oeun. He was convicted in February 2005 in a grossly unfair trial, which lasted barely an hour. No prosecution witnesses testified, and the judge rejected the testimony of defense witnesses who gave an alibi for Thach Saveth at the time of the murder. Despite the lack of evidence against him, the Appeal Court upheld his conviction in February 2009.
26. The rich and powerful continue to use the judiciary to protect their economic interests, particularly relating to land and natural resources. As noted previously (paragraph 7), grassroots activists who lead their communities to try to protect their land rights are regularly targeted for malicious lawsuits by land-grabbers. The threat of arrest and imprisonment is used to frighten villagers into giving up their land, and to punish their leaders who help them to organize and advocate against that. Judges and prosecutors are often willing accomplices to land-grabbers, as they fail to protect the land rights of villagers but are quick to file charges – even if there is not a shred of evidence – against villagers and their representatives.
27. Not surprisingly, public trust in the judiciary remains extremely low. In a 2005 survey of 2,000 households across Cambodia, the courts came second only to the customs authority as being most dishonest, whilst providing the worst service.⁸ In a survey of 1,200 businesses conducted in 2006, the judiciary was viewed as the most corrupt public institution in the country.⁹

Recommendations:

Recommendation 11: Implement the numerous recommendations made by successive Special Representatives of the Secretary-General for human rights in Cambodia with regard to strengthening rule of law and the judiciary.

Recommendation 12: Take effective action to improve the independence, impartiality and efficiency of the Constitutional Council and the Supreme Council of Magistracy.

Recommendation 13: Conduct serious investigations into unresolved grave human rights violations, including the assassinations of politicians, journalists and trade unionists, and bring the persons responsible to justice; in this regard, the murders of Chea Vichea, Ros Sovannareth and Hy Vuthy should be prioritized.

⁷ UN WGAD Opinion 39/2005, November 25, 2005.

⁸ Corruption and Cambodian Households, Center for Social Development, March 2005.

⁹ Assessment of Corruption in Cambodia's Private Sector, Economic Institute of Cambodia, July 2006.