

## TABLE OF CONTENTS

Introduction .....	1
Who is a human rights defender? .....	3
The shrinking space for human rights defence.....	4
Representatives of communities at risk .....	4
Arbitrary arrest and unfair trial: Battambang province .....	4
A pattern of unfair arrests and prosecutions.....	6
Threat of arrest and detention .....	8
Human rights workers .....	11
Human rights monitors.....	11
Legal aid lawyers.....	14
Conclusions.....	16
Recommendations .....	17



# Cambodia

## A risky business – defending the right to housing

### Introduction

Human rights defenders act as individuals or together with others to promote or protect human rights through peaceful and non-violent means. They play a crucial role in protecting and promoting the right of Cambodians to adequate housing and other rights associated with the gross human rights violations that forced evictions involve.

In 2008, some 150,000 Cambodians were known to live at risk of being forcibly evicted in the wake of land disputes, land grabbing, and agro-industrial and urban redevelopment projects.<sup>1</sup> Tens of thousands have already been forcibly evicted in recent years, many left homeless, others relocated to inadequate resettlement sites with poor infrastructure, lacking basic amenities including sanitation, and with limited access to work opportunities. In a report released in February 2008, Amnesty International showed how the Cambodian authorities are failing to protect - in law and practice - the population against forced evictions. By contrast, those with political or economic power are allowed to act with impunity in arbitrarily expropriating land. They do so by colluding with local authorities in ways that lead to the issuing of dubious land titles and eviction orders, and the misuse of the court system to prevent victims from acting to defend their rights.

The spate of forced evictions shows little sign of abating. Amnesty International is aware of 60 land disputes across Cambodia that came to a head during the first six months of 2008, through evictions, protests, violence or court cases. Of these evictions, at least 13 appear to have been forced evictions, defined by the UN Committee on Economic, Social and Cultural Rights as “*the permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.*”<sup>2</sup> Provisional estimates based on media

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<sup>1</sup> For an analysis on the wider subject of evictions, see Amnesty International, *Rights Razed – Forced evictions in Cambodia*, ASA 23/02/2008.

<sup>2</sup> Committee on Economic, Social and Cultural Rights General Comment 7, Sixteenth session (1997)(58): The right to adequate housing (art. 11 (1) of the International Covenant on Economic, Social and Cultural Rights): forced evictions, para. 3.

reports and communications with land activists suggest that at least 2,800 families, or approximately 14,000 people, were affected in these 13 evictions.

During the same period, at least 33 villagers were arrested. Of these, at least 14 have been released. Those remaining in prison have been charged with offences under the so-called UNTAC Law<sup>3</sup> and penal provisions of the 2001 Land Law including wrongful damage to property, and infringements against property. Some of those detained were ordinary villagers, others formal or informal village representatives, considered by Amnesty International as human rights defenders.

Over the past two years, local human rights group Adhoc has tallied the number of land activists arrested: the number went from 78 in 2006 to 149 in 2007. This rise corresponds with an increase in the number of reports alleging that police have unfairly arrested land activists, prosecutors have pressed spurious criminal charges against such activists, and law enforcement and court officials have threatened people protesting against land disputes with arrest or imprisonment.

Amnesty International is concerned that this marks a trend whereby the rich and powerful are increasingly using their leverage to silence their adversaries through the criminal justice system. As pressures on land and marginalised groups continue amidst land speculation and lack of rule of law, the space for the work of human rights defenders is shrinking. Police operations, arrests, detentions and charges are made in order to intimidate and punish the weaker party in land disputes or those opposing development projects rather than in the true interest of justice.

This briefing paper sets out the context and provides examples of violations of the rights of human rights defenders working for the promotion of land rights and against forced evictions in Cambodia in 2006-2007, and is based on Amnesty International field research carried out in March 2008. Attacks against such activists violate international human rights law provisions guaranteeing the rights to freedom of expression, association and assembly and the right to participate in public life. They run counter to the UN Declaration on Human Rights Defenders,<sup>4</sup> which reflects and details these rights with particular focus on human rights defenders. In many cases,

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<sup>3</sup> “Provisions Relating To The Judiciary And Criminal Law And Procedure Applicable In Cambodia During The Transitional Period” The Supreme National Council, Decision of September 10, 1992.

<sup>4</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by UN General Assembly, 8 March 1999.

other rights of human rights defenders have been violated, including the right to equality before the courts and freedom from arbitrary arrest and detention.<sup>5</sup>

## **Who is a human rights defender?**

Anyone, regardless of their occupation, can be a human rights defender: they are identified primarily by what they do rather than by their profession. Some human rights defenders are professional human rights activists, lawyers working on human rights cases, journalists, trade unionists or development workers. But a local government official, a policeman or a celebrity who actively promotes respect for human rights can also be a human rights defender.

Defenders may act on their own or in association with others, in a professional or personal capacity. Many defend human rights in their ongoing work, while others become human rights defenders because of one individual action or stance they have taken promoting human rights.

Human rights defenders have several characteristics in common. They all:

- uphold the fundamental principle of universality - that is, that all human beings are equal in dignity and rights, regardless of gender, race, ethnicity, or any other status
- are committed to the realization of international human rights standards
- respect the rights and freedoms of others in their own actions.

The actions taken by human rights defenders must be peaceful in order to comply with the Declaration on Human Rights Defenders and to fall within the scope of the term as used by Amnesty International.

The Universal Declaration on Human Rights and the international human rights treaties that Cambodia has ratified have the force of law in Cambodia through Article 31 of Cambodia's 1993 Constitution.<sup>6</sup> The Constitution also explicitly protects the right of all Cambodians to participate actively in political, economic, social and cultural life (article 35), and the rights to freedom of expression, press, publication and assembly (article 41).

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<sup>5</sup> Article 14 and article 9 of the International Covenant on Civil and Political Rights.

<sup>6</sup> "Article 31: The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women's and children's rights."

A wide range of individuals and groups are currently engaged in fields that have a direct impact on the protection of human rights in relation to forced evictions and who Amnesty International views as human rights defenders. Among these are informal or formal community representatives who defend the human rights to adequate housing, health and association of the communities in which they live. Others include lawyers in legal aid organisations who take up cases in support of communities facing forced eviction, non governmental organization (NGO) workers who are raising awareness of land rights or who monitor land disputes, and journalists who cover related stories.

## **The shrinking space for human rights defence**

*“.. the oppression of defenders is typically an indicator of a much wider lack of respect for human rights within a State and is directly proportional to this wider situation.”*

Hina Jilani, Special Representative of the Secretary-General on Human Rights Defenders (2000-2008), 2007

### ***Representatives of communities at risk***

At the frontline of the defence of the right to adequate housing and other rights related to land and housing are the individuals and groups who have formally or informally come to represent the community in which they live. Community representatives from across the country, in both urban and rural areas, have told Amnesty International how arrests, the threat of legal action, including prosecution, have emerged as one of the most serious hindrances to their activism.<sup>7</sup>

### **Arbitrary arrest and unfair trial: Battambang province**

*“I was chained and held in a dark prison cell for one week. I was so miserable. And I was not allowed to wash. After one week they removed the chain from my legs; it was a chain for elephants. When they took off the chain they let me stay outside in daylight, and they offered an apology; they said they had made a mistake and [punished] the wrong man.”*

Chhea Ny, an informal leader of Boeung Pram village, in Battambang Province’s Bavel District, was arrested on 1 August 2006 over a long-standing land dispute with local officials, business people and high-ranking military.

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<sup>7</sup> Interviews and meetings with representatives from over 30 communities entangled in land disputes, at risk of eviction or victims of forced eviction in February and March 2008.

Over 100 police, military police and soldiers came to arrest Chhea Ny, without producing an arrest warrant. Several hundred villagers, including his wife, staged a stand-off to protect Ny from arrest. After security forces had fired shots in the air and beaten several of the villagers, the stand-off ended and the security forces arrested Chhea Ny and detained him in Battambang. After three months, he was transferred to the capital Phnom Penh, where he was first held in isolation and shackled by a chain. The Battambang Court repeatedly ignored requests from Ny's legal counsel that he be transferred to Battambang for the trial. In February 2007 Chhea Ny was convicted *in absentia* in the Battambang Court.

This is in clear violation of fair trial rights under international law. Article 12(3)(d) of the International Covenant on Civil and Political Rights (ICCPR), to which Cambodia is a state party, provides that "Everyone charged with a criminal offence shall have the right to... be tried in his presence". Since Ny was in police custody at the time of trial,



*Chhea Ny spent 16 months in prison for his activism.*

there can be no justification for the failure to bring him to court. In addition, no evidence was produced to support charges of "infringements against ownership",<sup>8</sup> a charge that disregarded the fact that the question underlying the dispute – whether the land was owned by the state or private individuals – had not been clarified. After

<sup>8</sup> Chhea Ny was reportedly charged for offences including under Article 253 (Chapter 19 of the 2001 Land Law, outlining the Penalty Provisions of the law) which reads: "Any person who uses violence against a possessor in good faith of an immovable property; whether or not his title has been established or it is disputed, shall be fined from 1,500,000 Riel to 25,000,000 Riel and/or imprisoned from six (6) months to two (2) years irrespective of the penalty for violence against a person.

*In addition to the above penalty, the violator shall be liable for civil damages that were caused by his violent acts.*

*If the violence was ordered by a person other than the perpetrator, who did not personally participate in the commission of such violence, he shall be subject to the same penalties as the perpetrators of the violence."* No evidence was presented to show that Chhea Ny had committed any acts of violence.

a successful appeal against being tried *in absentia*, Chhea Ny was re-tried three months later, and this time allowed to be present, along with his lawyer. Again he was found guilty, though in the verdict the charge had changed from “private” to “public” property. He was sentenced to nine months imprisonment, time he had already served. Pending a prosecutorial appeal, Chhea Ny remained in prison until December 2007, when he was released on bail. The appeal is still pending.

Many of the Boeung Pram villagers had lived on the site since 1997, when they claim local authorities gave it to them as reintegrated former Khmer Rouge families for farming. The dispute began when some military officers claimed to have owned it and sold it on to private business people. Chhea Ny and the other representatives then organised the community to file a petition to the government, disputing these claims and seeking a “social land concession,” a mechanism for distribution of land to the landless under the 2001 Land Law, by which the government can distribute state owned land for residential or farming use to poor and landless groups.<sup>9</sup>

Two other community representatives arrested on 1 August 2006 with Chhea Ny for having tried to protect him, were released on bail on the following day, while another two fled and have since remained in hiding. These two were convicted and both sentenced to one year in prison and compensation at the first hearing of Chhea Ny, also *in absentia*. A month later, another two men were arrested, Hem Lack and Mou Sab. They were convicted and sentenced to six months in prison each, and were released from prison in May 2007, after having served their sentences.

### **A pattern of unfair arrests and prosecutions**

Chhea Ny and the other Boeung Pram leaders are far from the only community representatives to be arrested in what appears to be an attempt to silence them and stop their peaceful activities. Cambodian human rights group LICADHO has provided some 50 accounts of arrests of community representatives across the country since January 2006, in both urban and rural areas.<sup>10</sup>

“Wrongful damage to property” and “infringements against private ownership” are among the grounds most commonly used to arrest community representatives and these are also the most commonly used charges. Prosecutors routinely refuse to take into consideration whether the legal ownership of the land has been clarified before pressing such charges. Instead they have charged community representatives for

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<sup>9</sup> As detailed in Sub Decree On Social Land Concessions, No. 19 ANK/BK/ March 19, 2003.

<sup>10</sup> Cambodian League for Promotion and Defense of Human Rights (LICADHO), *Attacks and threats against human rights defenders in Cambodia 2006*, , December 2006; *Attacks and threats against human rights defenders in Cambodia 2007*, September 2008.



incidents which include their removal of signposts or fencing from land they claim to be theirs, for planning peaceful protests, or raising protest banners on the disputed land, charges that community members, human rights monitors and other observers describe as spurious and groundless.

In other cases courts and prosecutors have accused representatives of other offences, including robbery, battery with injury, unlawful forest clearance, and defamation, and in many instances prosecutors have filed charges on these grounds. Amnesty International is aware of two cases where community representatives have been charged with robbery<sup>11</sup> when they harvested the rice fields they cultivated and that have come under dispute. Those were the circumstances when in January 2007, two representatives of over 220 families from Preah Net Preah district, Banteay Meanchey province, were prosecuted for robbery,<sup>12</sup> and in May 2007, community representatives in Prey Veng's Peam Chor District were arrested and charged with the same offence.<sup>13</sup>

In August 2007, the Siem Reap Court summoned two male informal leaders of 100 families embroiled in a land dispute in Siem Reap Province's Puok District, arrested them on arrival to the court, after which the Prosecutor charged them with wrongful damage to property. According to human rights workers who monitored the case, the charge related to the families having ploughed the land they claimed was rightfully theirs. Following protests in front of the Siem Reap Court by fellow villagers the pair were released within days, but charges are believed to be pending.

In Phnom Penh's Dey Kraham village, police arrested female community representative Ros Pouy in September 2007 and the Phnom Penh court convicted her in January 2008 for "battery with injury" against private development company workers, sentencing her to six months' imprisonment and a further 18 months' suspended sentence.<sup>14</sup> The battery charge was made in the context of an ongoing land dispute between the local community and the company. Witnesses of the incident for which she was imprisoned report having seen no violence on the part of Ros Pouy, and observers stated that during the trial the prosecution failed to demonstrate that she had injured any of the company workers.

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<sup>11</sup> Untac Law Article 34 provides that robbery is theft or attempted theft under aggravating circumstances, such as by force or when committed by several persons.

<sup>12</sup> *Land Grabbing, Corruption and the Absence of Rule of Law in Cambodia*, Asian Legal Resource Centre, 4 March 2007.

<sup>13</sup> One of them was later released on bail, while the other remained in pre-trial detention. By September 2008, the court had not scheduled a trial. LICADHO, *Attacks and threats against human rights defenders in Cambodia 2007*, September 2008.

<sup>14</sup> *LICADHO 6 Month Activity Report – Promoting and defending human rights in Cambodia*, January-June 2008, August 2008.

### **Threat of arrest and detention**

*“There is no clearer example in Cambodia today of the rich and powerful exploiting the poor and marginalized. And no better opportunity for the judicial system to finally play its role in upholding the law and protecting the rights of ordinary citizens against the abuse of power.”<sup>15</sup>*

Peung Yok Hiep, Director of Legal Aid of Cambodia, about a land dispute involving Jarai Indigenous Peoples in Ratanakiri.

In north-eastern Ratanakiri province, 18 representatives from Kong Yu and Kong Thom villages of the Jarai ethnicity, an Indigenous People of Cambodia, are the subjects of a criminal complaint filed in June 2007, accusing them of fraud and defamation.<sup>16</sup> Behind the accusations is a business woman, Keat Kolney, sister of the Minister of Finance and Economy and wife of a high-ranking official within the Ministry of Land Management who claims to have purchased 450 hectares of land from the villagers, to be turned into a rubber plantation. The group who stand accused of these two crimes, of which fraud can carry a custodial sentence of up to five years, represent the community in the land dispute that emerged in 2004 and has deprived them of collectively-owned Indigenous Peoples’ land in what appears to be a forced eviction.<sup>17</sup> To date, some 270 hectares of land has been cleared for the rubber plantation. In the remaining 180 hectares, there is still farm land as well as forest areas of cultural and religious utility, such as spirit forest and burial grounds of the two villages.

Immediately after the complaint reached the Ratanakiri Court, the Provincial Criminal Prosecutor called the representatives in for questioning, opening a criminal investigation, with the risk of arrest looming. One of the representatives told Amnesty International about direct threats they had received from a high ranking law enforcement official with links to the case:

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<sup>15</sup> *Joint Press Statement*, 23 January 2007, Cambodian Human Rights Action Committee; The NGO Forum on Cambodia; Community Forestry International; The Community Legal Education Center; Legal Aid of Cambodia, International Labor Organization - Cambodia’s Indigenous and Tribal Peoples Project.

<sup>16</sup> For further information about forced evictions and Indigenous Peoples in Cambodia, see Amnesty International Appeal Case: *Cambodia: Ignoring the rights of Indigenous Peoples*; Amnesty International, June 2008

<sup>17</sup> This conclusion is disputed by Chhe Vibol, Keat Kolney’s lawyer, who told Amnesty International that she is the rightful owner of the land, and has “all the documents to prove it”.

*“If you continue to protest, I will arrest you and put you in prison. And if you cut other people’s trees, you have to go to prison’, the district police chief told us.”*

Without having formally summoned the villagers for questioning, the Prosecutor allowed 41 statements made by villagers to be filed in the criminal investigation in July 2007, stating they had willingly sold the disputed land. Most of the villagers, however, subsequently said they had been asked to thumbprint the majority Khmer language statements they did not understand<sup>18</sup> and that they had been threatened by Keat Kolney’s associates who were present at the time, if they refused. A number of other villagers who gave statements had no involvement in the land dispute in the first place and admitted to having provided statements in return for money. The General Prosecutor at the Court of Appeal however, has subsequently reprimanded the Provincial Criminal Prosecutor and ordered him to act in accordance with the law, but no further disciplinary measures were known to have been taken by the authorities.

The loss of land started in 2004, when local officials during several meetings, held in an intimidating atmosphere, asked the community to agree to sell some of their collective farm land, threatening that otherwise it would be confiscated by the state. The community reluctantly agreed to give 50 hectares to disabled, demobilised soldiers on behalf of the Prime Minister, as they claim they had been instructed to do. After the agreement was reached verbally, in July 2004, officials from the provincial and commune levels brought food and alcohol for the villagers and arranged a ceremony. Later that evening, the official produced Khmer language documents for the villagers to thumbprint. One of the villagers told Amnesty International: *“They did not explain or read it out, but just asked us to put the thumbprints.”*

Village representatives told Amnesty International that not until later did they find out that the thumb-printing amounted to permission to hand over “hundreds of hectares” of communal land to a middleman, who in turn then sold the land on for a rubber plantation to an association of which Keat Kolney is the President. This association, called the Progressive Farmers’ Association, was registered as an association with the Ministry of Interior on 25 February 2005, which was after Keat Kolney claimed she bought the land. A village representative told Amnesty International that the contract, in the Khmer language, dated the sale to 2001, three years earlier and before the enactment of the Land Law. *“They forbade [us] from telling strangers that this land was sold not sold in 2001, but in 2004.”* Land clearing ensued and villagers staged protests.

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<sup>18</sup> The majority of middle-aged villagers do not read Khmer and cannot speak Khmer confidently. See Culture Report by Dr. Meas Nee, filed in Court on 15 January 2008, p.10

The criminal complaint appears to have been made in response to a civil suit filed by community representatives against Keat Kolney six months earlier, in January 2007. The suit challenged the validity of a sales contract between Keat Kolney and the residents in the two Jarai villages Kong Yu and Kong Thom. According to village representatives a middleman and local authorities tricked, coerced, cheated and harassed them into agreeing to the land sale, which in itself appears to ignore the 2001 Land Law.<sup>19</sup> In addition to the civil suit, the community lodged a criminal complaint to the Ratanakiri Prosecutor accusing Keat Kolney of having unlawfully appropriated their land. Chhe Vibol, Keat Kolney's lawyer, disputed the accusations levelled against his client in both complaints and told Amnesty International that although the Land Law protects Indigenous land, this land transfer had followed due process. *"They needed to sell the land; [partly] because they did not have enough food"*, Chhe Vibol said, claiming that his client possesses all required documents to prove ownership over the disputed land.

On 24 April 2008, the trial judge, Dr Yar Narin, President of the Provincial Court in Ratanakiri and a judge in the Supreme Court Chamber in the Extraordinary Chambers in the Courts of Cambodia, went to visit the site as part of his investigation. The villagers attempted to tell him their version of the 2004 events. When the villagers explained that the local authorities had told them that Hun Sen needed the land for his disabled soldiers, the judge said: *"You should not mention the name of the Prime Minister, because involving his name makes this case political. In previous cases I have put villagers in jail for making cases political. This Court will not consider this case if politics are involved"*.<sup>20</sup>

Four years on, the case has not been resolved.

Meanwhile, village representatives told Amnesty International that all families in the two affected villages find it harder to make ends meet after they lost communal land. The land dispute has taken time, money and other resources from the villagers.

Violence, arrests and threats are part of the reality for village representatives involved in land disputes and forced evictions, and those seeking to support them. In

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<sup>19</sup> Article 23 of the Land Law: "An indigenous community is a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use.

Prior to their legal status being determined under a law on communities, the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law."

<sup>20</sup> The trial judge's behaviour at the site investigation is captured on video.

November 2007 in one of the most violent evictions in the past year, police shot and killed Toeun Chheng, 29, the wife of a community representative and a mother of four in Kantuot commune, Preah Vihear province, as security forces were searching for her husband, whom they sought to arrest for infringement against public ownership, or encroachment on public land. Her husband, who had been attempting to protect some level of tenure security for the community he informally represented, was arrested hours later as the security forces demolished their village and arrested other villagers. He remains in pre-trial detention in Phnom Penh along with another five fellow villagers. At the time of writing, no investigation had taken place into the killing of Toeun Chheng.

The cases in Kong Yu, Boeung Pram and others mentioned demonstrate a pattern of how officials, including law enforcement officers, have targeted community representatives defending human rights. In these cases officials have clearly acted in support of powerful individuals or groups instead of ensuring the protection of human rights without discrimination and allowing for due process. Moreover Amnesty International is not aware of any legal action against officials suspected of having acted outside the law in these cases.

## ***Human rights workers***

### **Human rights monitors**

The right to freedom of assembly is provided for in Article 21 of the ICCPR, and thus obliges Cambodia to uphold this right. The Article provides for restrictions of this right, including “in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. However, Amnesty International is concerned that the Cambodian authorities have violated this right, also guaranteed by Article 41 of the Cambodian Constitution, by denying it in circumstances where this is not justified by any of these considerations.

Human rights workers also find themselves at risk for their defence of land and housing rights. Security forces are known to have cut off access for lawyers to the villages of their clients, and in Ratanakiri and Mondulkiri, provincial authorities have required written application for permission to pay visits to communities at risk forced eviction or to monitor peaceful protests. Authorities routinely block human rights monitors from accessing eviction sites. In May and June 2006, security forces blocked the entry to human rights workers and journalists who sought to cover forced

evictions from Sambok Chap and the Preah Monivong Hospital area in Phnom Penh,<sup>21</sup> and in November 2007, security forces cordoned off access to Chong Chruoy village in Phnom Penh's Russei Keo District and confiscated photo equipment as the village was forcibly evicted in a pre-dawn operation.<sup>22</sup> The same month, human rights workers were not allowed to enter a torched and dismantled community in Kantuot commune, Preah Vihear province.

Local officials also habitually deny requests from civil society to hold meetings or events. On numerous occasions the Cambodian Centre for Human Rights (CCHR) has been barred from staging public forums on land rights or evictions, including in Kratie, Svay Rieng and Ratanakiri Provinces, officials of the organisation have told Amnesty International.<sup>23</sup> In Ratanakiri, local authorities have blocked both CCHR, Voice of Democracy and others from holding land rights forums in or near Kong Yu village without providing any explanation. On 3 December 2007 armed police, military and the district governor intercepted the UN Special Representative of the Secretary General for Human Rights in Cambodia, Professor Yash Ghai, and staff of the Office of the High Commissioner for Human Rights, asking why they had not sought written permission for the visit.<sup>24</sup>

Article 12 of the UN Declaration on Human Rights Defenders emphasises that “Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms” and that the state must “take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.”

However, human rights workers protecting the rights of communities exposed to forced evictions are harassed and intimidated during the performance of their work. There are numerous instances in which authorities or security forces have taken human rights monitors in for questioning, or threatened them in the context of evictions. An example is the detention in May 2006 in Chhouk District, Kampot

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<sup>21</sup> See e.g. *Rights Razed – Forced evictions in Cambodia*, Amnesty International 2008, and *Attacks and Threats to Human Rights Defenders in Cambodia 2006*, Licadho, December 2006.

<sup>22</sup> See e.g. *Amnesty International: Cambodia: Forced eviction, Urgent Action*, 22 November 2007, [<http://www.amnesty.org/en/library/asset/ASA23/009/2007/en/dom-ASA230092007en.html>]

<sup>23</sup> Meetings with CCHR in February 2008.

<sup>24</sup> *Report of the Special Representative of the Secretary-General for human rights in Cambodia, Yash Ghai, A/HRC/7/42*; 29 February 2008, para 70.

Province of four rights workers from LICADHO, Adhoc and CCHR. When attempting to monitor an incident in Trapeang Plang commune where security forces had burnt some 20 houses, police, military police and military surrounded the four at gunpoint and confiscated a camera and forced them out of the area.

One of the four was Chhim Savuth, a human rights monitor of CCHR, who a year later was threatened for his activities in neighbouring Kampong Som municipality. In 2006, municipal authorities told him that Mittapheap 4 village, also called Spean Chhes, needed to register as a community in order to jointly nominate a representative in an emerging land dispute. Chhim Savuth assisted the community with the paperwork. The assistance did not help avert a forced eviction: on 20 April 2007, 105 families of the village in Sihanoukville were made homeless as police, military and military police burnt and bulldozed their houses. Thirteen villagers were arrested.<sup>25</sup>

The incident received media coverage domestically, and reactions, including from Amnesty International, reached the government from abroad. Within weeks, Chhim Savuth was warned by a well-placed source that he would have to go into hiding to evade imminent arrest. The source told him that a top official within the municipality had, at a meeting with Ministry of Interior inspectors, requested his arrest. On 7 May 2007, then Municipal Governor Say Hak told journalists that he had submitted evidence to the Sihanoukville Court that showed that Chhim Savuth had “invited villagers to form a breakaway zone independent of government rule”.<sup>26</sup> Court officials later confirmed to two human rights organisations that they had received the complaint from the then Municipal Governor Say Hak, in which Chhim Savuth was accused of inciting villagers to form an independent zone.



*Chhim Savuth had tried to assist a community facing eviction when he received indirect threats. 13 villagers were arrested at the time of eviction.*

<sup>25</sup> See e.g. *Cambodia: Making the poor homeless (Update)*, Amnesty International, May 2008; *Rights Razed – Forced evictions in Cambodia*, Amnesty International 2008, and *Attacks*

<sup>26</sup> *CCHR Official Incited Villagers: Sihanoukville Governor*, The Cambodia Daily, 8 May 2007.

On hearing about the serious accusations against him and receiving warnings of impending arrest, Savuth went into hiding in various provinces – Koh Kong, Kampong Thom and Banteay Meanchey. *“I didn’t work for two months, turned off the phone; no one could contact me, I only used public phones,”* he told Amnesty International.

Thereafter, the accusations gradually died down. Chhim Savuth said to Amnesty International that an intervention by the Asian Human Rights Commission had had noticeable effect.<sup>27</sup> *“But I assume the complaint remains in place. I am still worried that one day when I have been active again, they would look into the issue.*

*They wouldn’t simply withdraw such a complaint, but may have kept [it], waiting for another opportunity [...]”*



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*Chhim Savuth went into hiding for two months after being warned that he would be arrested.*

Chhim Savuth continues to work as a human rights investigator, but is now based in Phnom Penh. He goes to Sihanoukville from time to time, but has lingering concerns. *“I hide my face a little. I am still worried,”* he told Amnesty International.

*“I am not too worried about being arrested, but I am afraid for more*

*hidden plans, such as a traffic accident or robbery to eliminate evidence. I’d be less concerned if they arrested me. If ordinary people can go to jail, so can I.”*

## Legal aid lawyers

Legal aid lawyers constitute another group of human rights defenders who have come under threat while working to assist victims of forced eviction or land disputes.

A case in point is that of the lawyers representing the Jarai Indigenous People in Kong Yu and Kong Thom villages. In the criminal complaint lodged against the

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<sup>27</sup> *A human rights investigator and 5 villagers are being accused of incitement to create a secession area, Asian Human Rights Commission, 10 May 2007.*



village representatives cited above, plaintiff Keat Kolney included the ten lawyers representing the case, accusing them of incitement, fraud and defamation. Seven of the lawyers came from Community Legal Education Center and three from Legal Aid of Cambodia, both local non-governmental organizations.

Keat Kolney's lawyer Chhe Vibol confirmed to Amnesty International that the lawyers had been included in the complaint. According to Chhe Vibol, two or three of the ten lawyers had been named in the complaint, but regardless, it gave the Provincial Prosecutor an opportunity to launch a criminal investigation against all of them. The investigation is reportedly ongoing.

Keat Kolney also wrote to the President of the Cambodian Bar Association, naming each of the NGO lawyers, accusing them of incitement and of acting for political motives. She requested the President to "take legal measures to investigate".<sup>28</sup> The President of the Bar Association called the lawyers to a meeting, but has publicly denied that he has placed them under any kind of investigation.

In October 2007 the NGO lawyers reported that district police blocked the access for the lawyers to meet with their Kong Yu clients on the grounds that police could not guarantee the safety of the lawyers in the village. Only after intervention from a Ministry of Interior official, did the police allow the lawyers to see their clients the following day.

On 1 August 2008 the trial judge called the lawyers to the Court. He told them that he was not threatening them, but that the criminal investigation into the lawyers was not finished. The trial judge also warned them to be careful about working with the media because they may otherwise face criminal defamation charges.

Four days later, the lawyers filed a motion to remove the trial judge from hearing the case for not having fulfilled his judicial obligations of diligence, impartiality and his duty to resolve disputes in accordance with the law.

Since the complaint was filed in June 2007, eight of the lawyers in the complaints are no longer working on the case. Other lawyers have taken up their work.

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<sup>28</sup> Unpublished document on file with Amnesty International, 19 June 2007.

## Conclusions

In the course of the dispute in Bavel, Battambang, Chhea Ny's wife, Oeun Sarim, also emerged as a representative of the Boeung Pram community, and a member of an informal network of activists nationwide. For her, her husband's imprisonment was not just the concern of her fellow villagers:

*"The case against Chhea Ny was an attack against the minds of people in all 21 provinces who share the same problems, to scare them". [...] "Arresting one man is to threaten hundreds of thousands of people, scaring them from struggling and advocating again. [...] I see this as an injustice for the Cambodian people,"* she told Amnesty International.

The rapid increase in the number of peaceful land activists in prison is a serious concern for Amnesty International in its own right. But as pointed out by Oeun Sarim, it is also a tool of intimidation for other human rights defenders, making detention, trials and imprisonment a palpable threat for them.

In relation to legal action against human rights defenders, the lack of integrity of the legal institutions and lack of equality before the courts deprives them of the protections that the legal system is set out to guarantee. In fact, the legal institutions play a central role in violating their human rights and the rights of those they represent. The UN Special Representative of the Secretary-General for human rights in Cambodia highlighted this in his most recent report about the lack of prosecutorial independence, reflected in the cases presented in this paper:

*"Offences under the law for infringement of rights to land have not been used to protect communities whose rights have been violated by influential individuals, companies or government entities. Action has not been taken against those who have illegally sold or bought land occupied by others, or infringed their rights to land and forest resources."*

*"Conversely, when legal proceedings are instituted against a well-placed person or company (or when communities resist evictions or the appropriation of their land), it is not unusual for the plaintiff (or community representatives) to be accused of some offence, for example "destruction of property" or "infringement of property". The result of such accusation may be that the person is taken into custody and is unable to pursue his or her rights under the law."<sup>29</sup>*

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<sup>29</sup> Report of the Special Representative of the Secretary-General for human rights in Cambodia, Yash Ghai, UN Doc. A/HRC/7/42, 29 February 2008, paras. 34-5

In his 2006 report on Cambodia, the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, noted a rise in intimidation and threats by local authorities and private developers to secure dubious land deals and evictions, including “*the threat to use force, the use of misinformation and rumours, incrimination of representatives for being “political”, or for committing criminal offences as well as limiting access of affected families to their houses and discouraging villagers to organize meetings*”.<sup>30</sup> Two years on, such threats have developed into a *modus operandi* against individuals and groups who defend rights related to land and housing. Meanwhile, those behind these threats and actions operate with widespread impunity.

Nevertheless, there are positive developments. Cambodian land activists have never been as well mobilized as they are today; informal networks of victims of forced evictions are emerging; and individuals share experiences and discuss solutions, including in terms of addressing human rights abuses.

## Recommendations

Amnesty International calls on the Cambodian government to:

- Respect and protect the right of human rights defenders, including those working on economic, social and cultural rights, to conduct their work without hindrance, intimidation or harassment, in line with the UN Declaration on Human Rights Defenders;<sup>31</sup>
- Ensure that those who seek to promote and protect the right to adequate housing and other rights associated with forced evictions and land disputes are able to work freely, while also ensuring an immediate end to forced evictions;
- Publicly condemn attacks against human rights defenders, and make public commitments that there will be no further arrests of human rights defenders or

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<sup>30</sup> Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, Addendum: Mission to Cambodia, UN Doc. E/CN.4/2006/41/Add.3, 21 March 2006, para. 61.

<sup>31</sup> As expressed in Amnesty International *Rights Razed – Forced evictions in Cambodia*, 11 February 2008, p. 47. See this report also for Amnesty International’s recommendations in relation to forced evictions. The organization calls for an immediate stop to forced evictions and a moratorium on mass evictions until a legal prohibition of forced eviction is in place and enforced and guidelines for evictions that comply with international human rights law have been adopted.

other individuals purely for engaging in the peaceful exercise of their right to freedom of opinion, belief, expression and association;

- Issue clear guidelines to law enforcement officials on the rights to freedom of expression, assembly and association, in line with international standards, and inform all law enforcement personnel, at all levels, of their obligations to respect and protect human rights, and make it clear that they will be held accountable for human rights violations perpetrated by them;
- Ensure that all human rights violations against human rights defenders, including community representatives, lawyers and human rights monitors are promptly, thoroughly, independently and impartially investigated, and that suspected perpetrators of such violations are brought to justice.
- Request the Special Rapporteur on Human Rights Defenders to undertake an official visit to Cambodia to investigate alleged cases of violations against human rights defenders in the context of forced evictions and land rights.