

Fact Sheet: Case Study Series: Unlawful Use of Guns by Military Officials

Timeline: 13 December 2011 and 18 January 2012



Snapshot: In two recent cases, military police have used guns to help private companies resolve land disputes, with the result that protesters have been injured, some seriously. Certainly in the first case, the military official in question was not authorized to carry or use a gun. The Cambodian Center for Human Rights (“CCHR”) calls for immediate, full and frank judicial investigations into both cases, in order to guard against the pervasive culture of impunity that currently prevails.

Introduction

This fact sheet highlights two instances in recent weeks whereby military police have used guns to help private companies resolve land disputes – one on 13 December 2011 in Battambang province and the other on 18 January 2012 in Kratie province – and analyses whether such possession and use of weapons is illegal. This fact sheet is written by CCHR, a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia (“Cambodia”).

Battambang shooting

On 13 December 2011, over 100 villagers from Phnom Proek district in Battambang province gathered to protest against the measuring of land by officials and representatives of developer Suon Mean Sambath Company. As employees of the company were measuring a section of the land concession, a group of farmers began taking photographs with mobile phones. Lieutenant Colonel Chan Ry, a provincial military police official allegedly hired to act as private security personnel, confiscated one of the villagers’ phones. When the villagers tried to take the phone back, Lieutenant Colonel Chan Ry used his pistol to shoot three of the farmers – each in the right leg – while two other military police officers with AK-47 assault rifles sprayed the ground and air with bullets.

Violations of legislation applicable to the use of guns by military officials

As per the Law on the Management of Weapons, Explosives, and Ammunition (the “LMWEA”), the Ministry of National Defense (the “MND”) is responsible for the supply, control, and management of weapons, explosives and ammunition of any and all types by the Royal Cambodian Armed Forces. The MND could therefore be held responsible for violations of the LMWEA or any related sub-decrees. If the MND authorizes the use of weapons improperly, those members of the MND are subject to the provisions of Article 22 of the LMWEA: *“the designated competent authorities by the Ministries, who issue improper authorization for the use of weapons, [...] contrary to their jurisdiction”* shall be liable to two to five years’ imprisonment and a fine of three to six million riels. Furthermore, *“those who, without competence under the law, issue authorization for the use of weapons”*, shall be liable to five to eight years’ imprisonment and a fine of four to ten million riels. In the Battambang case, there is therefore a question of culpability under Article 22, depending on the circumstances in which Lieutenant Colonel Chan Ry obtained or was issued with the gun.

Lieutenant Colonel Chan Ry acted in violation of Article 13 of Sub-decree No. 38 on the Administration and Control of the Import, Production, Sale, Purchase, Distribution and Use of Weapons and Explosives of All Types (the “Sub-decree”), as his rank does not permit him to handle a pistol as private property. According to Article 13, officials of the Royal Gendarmerie under the rank of General are not permitted to handle a pistol privately. Furthermore, Lieutenant Colonel Chan Ry

acted in violation of Article 14 of the Sub-decree, as he reportedly did not have the requisite mission and authorization papers from the MND for “collective weapon utilization”. As such, the shooting of protesters in Battambang was not an authorized mission from the MND. Given that Lieutenant Colonel Chan Ry was not authorized to use a weapon, he is also subject to Article 20 of the LMWEA, which states that “those who equip, carry, possess, use, [...] weapons without authorization” are liable to six months’ to two years’ imprisonment and a fine of half a million to two million riels, “without taking other criminal acts into account”. “Other criminal acts” include those under the Penal Code, such as Article 218 – “Intentional acts of violence with aggravating circumstances”. If found guilty of committing the crime “with the use of or threat to use a weapon”, Lieutenant Colonel Chan Ry will be liable to two to five years’ imprisonment and a fine of four to ten million riels.

Kratie shooting

The Battambang shooting is not, however, an isolated incident: on 18 January 2012, villagers in Snuol district in Kratie province gathered to protest against the bulldozing of their farmland by TTY Company, another private company. Military personnel, again acting as private security personnel to help clear the land for TTY Company, then opened fire on the protesters with AK-47 assault rifles. According to witnesses and local officials, up to six villagers were injured, two seriously. Villagers are now requesting a revocation of TTY Company’s concession. TTY Company’s representative Ith Sarin is an advisor to Cambodia’s military commander-in-chief.

As regards the use of military personnel by private companies, it has been suggested that such an arrangement reflects Cambodia’s traditional patronage system, whereby private companies sponsor military police units, and in return expect to avail themselves of their services. This is an issue of some significance that is beyond the remit of this fact sheet but which warrants further scrutiny.

Conclusion

While reports that the Royal Government of Cambodia (the “RGC”) has ordered the perpetrators of the Kratie shooting to be arrested are welcome, CCHR calls for immediate, full and frank judicial investigations into the events surrounding both these cases. It is not yet clear what military rank the perpetrators of the Kratie shooting are, but the same legal analysis as regards the possession and use of guns will apply in that case too. However, it is apparent from Article 20 of the Sub-decree, which states that “evidence linked to any crime related to this sub-decree shall be confiscated to keep as the State’s property and shall be sent to the National Police Department General to administer, except heavy weapons which shall be sent to the Royal Cambodian Armed Forces”, that the RGC has an established policy as regards the military and the use of guns that lacks transparency: evidence in connection with any crime related to the Sub-decree must be confiscated. Transparency is vital to a functioning democracy, as it allows for full accountability, open dialogue and responsible politics. When governments encourage elements of secrecy within the political system, such an approach generally goes hand in hand with corruption and widespread impunity among all levels of government and all sectors of society. As yet, there is no indication that the perpetrators of these crimes will be brought to justice, to the detriment of Cambodian society as a whole.

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