FACT SHEET: THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY IN RELATION TO LAND DISPUTES IN CAMBODIA

Snapshot: The right to peaceful assembly is a vital component of individuals’ ability to assert, protect and advocate for their rights. Whilst it is protected by both the Cambodian Constitution and international human rights law, in practice, it is all too often infringed upon in an unjustified manner. This is particularly true in relation to land disputes, where authorities often preclude people from protesting, use disproportionate force towards the protesters, or subsequently punish them for having protested. After outlining the contents of the right to peaceful assembly, this Fact Sheet explores the link between land disputes and freedom of peaceful assembly. Finally, it ends with recommendations encouraging the Royal Government of Cambodia to effectively protect peaceful assembly rights throughout Cambodia.

THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

Freedom of peaceful assembly is the right to gather publicly or privately and collectively express, promote, pursue and defend common interests, in a peaceful manner. This right includes the right to participate in assemblies, meetings, protests, strikes, sit-ins, demonstrations and other temporary gatherings for a specific purpose. It is protected under the Constitution of the Kingdom Cambodia (“the Constitution”), the Universal Declaration of Human Rights (“UDHR”) and the International Covenant on Civil and Political Rights (“ICCPR”), amongst others. Article 41 of the Constitution provides that all Khmer citizens have the right to “freedom of expression, press, publication and assembly,” while Article 31 states that Cambodia shall acknowledge and respect the UDHR and all covenants and conventions relating to human rights.1 Article 21 of the ICCPR, in addition to recognizing the right of peaceful assembly, provides guidance on potential restrictions to freedom of assembly: “no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society 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.”

THE USE OF FORCE DURING PEACEFUL ASSEMBLIES

International legal standards dictate that any use of force during peaceful assembly must comply with the principles of legality, precaution, necessity and proportionality.2 The law must specifically restrict the use of weapons and tactics during assemblies, including protests, and must include a formal approval and deployment process for weaponry and equipment.3 Further, the necessity principle requires that the least harmful means of force available be used in every context.4 The principle of


3 4 February 2016 UN Special Rapporteurs Joint Report, para. 51.

4 4 February 2016 UN Special Rapporteurs Joint Report, para. 57.
precaution requires that all feasible steps be taken in planning, preparing, and conducting an operation related to an assembly to avoid or, when force is unavoidable, minimize the use of force. Any force used should be targeted at individuals using violence or other imminent threats. States must ensure that their law enforcement officials are periodically trained in and tested on the lawful use of force, and on the use of the weapons with which they are equipped.

The Cambodian legal framework regulating the state use of force at assemblies is strong and, on paper, complies with international human rights law and standards. For instance, Article 20(2) of the Law on Peaceful Demonstration states that “in case a peaceful assembly turns violent, competent authorities shall take proper measures to prevent and stop the demonstration immediately.” Articles 23-27 specify how authorities should respond in instances where demonstrations become violent or demonstrators commit crimes. Responses range from confiscating weapons, to taking a person into custody, to application of the criminal law. The law makes no provision for the use of force by the authorities, although it does not explicitly prohibit it. It therefore complies with international standards requiring that law enforcement officials restrict the use of weapons during assemblies, and avoid or minimize the use of force to the extent possible.

Article 3-6-4 of the Implementation Guide to the Law on Peaceful Demonstration further states that an assembly can only be dispersed “when no other option exists.” Authorities are also required to try to isolate troublemakers who use “derogatory words”, and to contain violence, as opposed to dispersing demonstrations completely. Similarly, any intervention by the police must be proportional to the situation, and be only used to the extent necessary to promptly restore order (Art. 3-6-5). This provision is consistent with the requirement to use the least harmful means of force available in every context; therefore, these measures comply with the principles of proportionality and necessity.

However, neither the Law on Peaceful Demonstration nor its implementation guide explicitly require periodic training on the lawful use of force for security forces charged with policing assemblies, which would be essential to ensure that those public authorities charged of ensuring peace and order during peaceful assemblies act with all due safeguards. Most importantly, the standards set out above, and particularly the requirements of necessity and proportionality, should be implemented in practice.

VIOLATIONS OF THE RIGHT OF PEACEFUL ASSEMBLY & USE OF JUDICIAL HARASSMENT TO DETER PROTESTERS

Despite a strong legal framework, the right to peaceful assembly is regularly infringed upon in Cambodia. As an example, between April 2018 and March 2019, CCHR’s Fundamental Freedoms Monitoring Project (“FFMP”) recorded 99 incidents which involved violations of the freedom of peaceful assembly, indicating a systematic misapplication of the Law on Peaceful Demonstration. Notably, 30% of all land disputes related incidents recorded between April 2018 and March 2019 resulted in violations of fundamental freedoms, including through the use of force and judicial harassment. There was one instance of state use of force in relation to land protests recorded during the same period, which was not compliant with international standards. Of the many legal actions

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5 4 February 2016 UN Special Rapporteurs Joint Report, para. 52.
6 4 February 2016 UN Special Rapporteurs Joint Report, para. 57.
7 4 February 2016 UN Special Rapporteurs Joint Report, para. 52.
8 The difference between a restriction and a violation of a right is that a restriction can be legally permissible under certain circumstances, while a violation prima facie contravenes international legal standards. See Key Milestone Two, Cambodia Fundamental Freedoms Monitor Third Annual Report’, CCHR, SC/ACILS and ADHOC, July 2019, https://cchrcambodia.org/index_old.php?url=media/media.php&p=report_detail.php&reid=130&id=5&lang=eng (‘FFMP Third Annual Report’).
9 Of 139 land dispute incidents recorded, 42 resulted in violations of fundamental freedoms. See Key Milestone Two, FFMP Third Annual Report.
10 In comparison, from April 2017 to March 2018, there were seven instances of state use of force in relation to land protests recorded during the same period, none of which were compliant with international standards. FFMP Second Annual Report https://cchrcambodia.org/admin/media/report/report/english/FFMP_Second%20Annual%20Report_EN.pdf
which were recorded: **19 individuals were arrested, 15 summoned, 21 detained, 45 questioned, and five convicted, in relation to land disputes.** Disruptions most common in Cambodia include:

- Prohibition from holding the peaceful assembly
- Removal from the place of peaceful assembly by security personnel
- Threats of legal actions
- Threats of arrests
- Beatings
- Arrests
- Legal actions for crimes typically used against Human Rights Defenders, such as insult to public officials or destruction of public property, or incitement to violence.

For instance, in the land dispute between the Phanimex Company and inhabitants of the Borei Keila neighborhood in Phnom Penh, which has been ongoing since 2012, two residents were dragged away by security personnel while attempting to deliver a petition to Prime Minister Hun Sen in January 2018. That same month, the Phnom Penh authorities reportedly threatened legal action if the Borei Keila residents continued to protest. In February 2018, the Phnom Penh authorities warned the residents they would be arrested if they continued to protest, and characterized the protests as illegal, and later that month, district security guards beat residents for continuing to protest. In March 2018, two activists were threatened by legal action if they continued their advocacy.

The prevention or interruption of peaceful protests to assert land rights continues to be a problem in Cambodia with several assembly organizers and protesters having been arrested, questioned and injured by the security forces. Of particular concern are cases where protesters’ release was made conditional upon the signing of contract wherein they agreed not to exercise their right freedom of peaceful assembly.

- In February 2018 in Pir Thnu Commune, Snuol District, Kratie province, two villagers were arrested and detained after having protested against the demarcation of an economic land concession (‘ELC’) for the Memot Rubber Plantation Company. They were later released, but only after signing a document agreeing they would no longer protest. In March 2018, in relation to this same dispute, four protesters were arrested and subsequently released only after signing a contract promising to stop protesting.

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11 Paragraph C.10 Key Milestone Two, FFMP Third Annual Report.
On 9 January 2019, four villagers\textsuperscript{18} of the Kampenh Chas community, in Sangkat III, Preah Sihanouk province, who had been arrested the day before while protesting the entry of a Chinese Company to bulldoze their land, were only released after being forced to sign a document confirming they would not protest again on the disputed land, that any protest must be pre-authorized by the authorities, and that the villagers must be “good citizens”.

Cambodia also regularly witnesses the disproportionate use of force against protesters.

- During the 8 March 2018 protest by villagers against the Memot Rubber Plantation Company, live ammunitions were fired on the protesters, leading to four being injured.
- On 24 January 2019, in Kokir Village, Preah Sihanouk Province, the security forces fired dozens of shots of live ammunition into the air as well as into the crowd of people who were protesting in relation to a land dispute.\textsuperscript{19} A 28-year-old construction worker was seriously wounded by a bullet in his spine, and was left bleeding on the ground for some time, before being taken to the hospital.\textsuperscript{20} Footage also emerged showing people being tied up and being kicked by military police officers.\textsuperscript{21}

While international human rights law allows for the regulation of assembly in order to protect law and order, as discussed above, any reaction must be strictly proportional to the threat faced. In particular, specific rules apply to the use of firearms for law enforcement officials:

- Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate);
- In addition, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life (making the force necessary);
- Firearms should never be used simply to disperse an assembly;
- Indiscriminate firing into a crowd is always unlawful; and,
- Intentional lethal use of force is only lawful where it is strictly unavoidable to protect another life from an imminent threat; this is sometimes referred to as the protect life principle.\textsuperscript{22}

**THE ROYAL GOVERNMENT OF CAMBODIA’S APPROACH TO LAND RIGHTS**

The RGC recognized that progress was required in relation to protection of those asserting their land rights. Back in 2015, Prime Minister Hun Sen stated: “My regret is the lateness of land reform. And solving land disputes... [W]e should have given land titles to the people more speedily, but we delayed for 10 years giving land titles to the people.”\textsuperscript{23} Prime Minister Hun Sen in 2006 also reportedly stated that no one should be arrested or imprisoned for protesting for their land, a statement which does not seem to be respected at the local level, given the arrests documented above.\textsuperscript{24}

\textsuperscript{18} Authorities in Preah Sihanouk province have arrested four citizens who have been fighting land for Chinese companies to clearing community land, Khmer Share, 9 Jan 2019, \url{http://www.khmershare.news/political/article/13268/} (only available in Khmer).
\textsuperscript{19} ‘Police to probe Sihanoukville Clash’, 31 Jan 2019, \url{https://www.khmertimeskh.com/50573950/police-to-probe-sihanoukville-clash/}.
\textsuperscript{22} 4 February 2016 UN Special Rapporteurs Joint Report, paras 59-60, \url{http://freeassembly.net/wp-content/uploads/2016/02/A_HRC_31.66_E_with_addendum.pdf}.
\textsuperscript{24} ‘Land Dispute Prisoners in Siem Reap has a highest number’, RFA, 14 August 2010, \url{https://www.rfa.org/khmer/indepth/siemreap_landdispute-08142010075154.html} RFA 14 August 2010. (Original article in
The RGC has intervened positively in some cases. In March 2016, Hun Manith and Hun Many settled a land dispute in Kompong Speu province on orders from their father, Prime Minister Hun Sen. In February 2019, in relation with the investigation into the injuries that occurred during the 24 January 2019 protest in Sihanoukville province, the Minister of Interior Sar Kheng addressed a message to local authorities “You have the power; don’t just use guns, you must find a solution by using the art of solving problems. If you do choose to act against demonstrators, please know the law and make sure that your officials do, too.” In March 2019, a task force was created to resolve the land dispute; four military police received administrative punishment for the violence; and in late February 2019, a military officer and a soldier were sent to court over the beatings of protesters.

Furthermore, in its national report submitted ahead of the Third Universal Periodic Review of Cambodia, the RGC indicated it will accelerate the process for the resolution of land disputes.

These statements of intention and assistance in individual disputes are a welcome support for the rights of freedom of assembly in relation to land dispute. Such efforts could be significantly enhanced by the implementation of the recommendations set out below.

**RECOMMENDATIONS**

In order to ensure the full respect for the right to freedom of peaceful assembly in Cambodia, especially in relation to land disputes, we recommend that the Royal Government of Cambodia:

1. Engages in **meaningful consultation** with affected communities and respond to early protests and requests for meeting prior to land disputes arising;

2. Ensure that the **use of force at assemblies** is exceptional and strictly complies with principles of **legality, precaution, necessity, proportionality and accountability**, and provide comprehensive and periodic training to security forces charged with policing assemblies;

3. **Immediately and impartially investigates** all instances of extrajudicial killings, enforced disappearances and excessive use of force committed by security forces during assemblies, bring the perpetrators to justice and provide remedy to victims;

4. Ceases all restrictions on freedom of peaceful assembly, including threats, intimidations, judicial harassment and other forms of harassment.

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