

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

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2 September 2014

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Your Excellencies:

Re: Judicial harassment and arbitrary detention of Lor Peang community activists, Mr. SEANG Heng, Mr. MANG Yav, SNGOEUN Nhoern, Mr. SRUN Tha, and Mr. KUCH Hok

I am writing on behalf of Lawyers Rights Watch Canada (LRWC), a committee of Canadian lawyers who promote human rights and the rule of law internationally. LRWC also campaigns for lawyers and other human rights defenders in danger because of their advocacy.

LRWC is concerned about the arrest and detention and prosecution of five land rights activists from Lor Peang village, Taches commune, Kompong Tralach district, Kompong Chhnang province. Two members of the Community Peace Network, Mr SEANG Heng and Mr. MANG Yav, were arrested on 21 July 2014 and not provided with pre-trial release until 29 August 2014, after more than nearly six weeks of imprisonment. On 12 August 2014, three more Lor Peang community activists were arrested, Mr. SNGOEUN Nhoern (husband of a Lor Peang community leader Ms. UM Sophy), Mr. SRUN Tha, and Mr. KUCH Hok (a 67-year-old elderly villager); they did not receive pre-trial release until after they had been in prison for more than two weeks. There are apparently outstanding arrest warrants against five additional villagers. None of the employees of

Re: Judicial harassment and arbitrary detention of Mr. Seang Heng and Mr. Mang Yav, human rights defenders from Lor Peang Village, Kompong Chhnang Province

KDC International Company Ltd (KDC) suspected of instigating violence on 21 July 2014 have been summoned, charged or arrested.

The charges against the five land rights activists are related to a land dispute between Lor Peang villagers and KDC dating back to 2002. KDC is owned by Mrs. CHEA Kheng, the wife of Mines and Energy Minister, Mr. SUY Sem. Villagers commenced a court action against KDC in 2007, claiming that the land had been illegally taken by KDC in 2002. This case has never proceeded in the court. Despite the fact that the land dispute has not been settled, officials have issued permits to KDC to commence construction. KDC recently started to build a two-metre concrete wall around 182 hectares of land that has been farmed by local villagers since the 1980s. Construction of the wall has continued despite a call from the United Nations (UN) Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi that construction on contested land be halted “until all claims by individual families have been properly assessed by an appropriate independent body in a fair and transparent way.” On 10 July 2014, the Special Rapporteur stated:

Forced evictions cannot continue to be justified by claims that those evicted lack documentation or title, or are occupying state land. The majority of households involved in land disputes do not possess secure tenure and are simply unable to access dispute resolution procedures whilst land concessions are continually being developed on unregistered or disputed land. Until occupants’ rights are properly determined, no eviction is legal.¹

The Special Rapporteur also noted that “too often court cases submitted by families contesting ownership of land with wealthy business owners are denied their day in court, whereas those filed by the company against the villagers have been diligently processed and resulted in numerous convictions.”²

Arrests on 21 July 2014

On 21 July 2014, villagers were protesting KDC’s construction of the concrete wall. The protest became violent after several KDC employees began to use sling-shots to shoot stones and iron chunks at protesting village residents. Later that day, Mr Seang Heng and Mr. Mang Yav were arrested by about 100 police officers at their homes. Police officers reportedly tore down part of the roof of Seang Heng’s house during the arrest. The police officers reportedly failed to show arrest warrants and refused to state the reason for the arrest, instead advising Mr Seang Heng and Mr. Mang Yav that they must go to provincial police headquarters to learn the nature of the charges. Mang Yav and Seang Heng appeared in the Kompong Provincial Court on 22 July 2014 where the judge ordered that they be held in pre-trial detention pending a trial on charges of intentional damage of property and causing injuries during violent clashes between villagers and employees of KDC. LRWC has learned that on 29 August 2014, lawyers for Seang Heng and Mang Yav appealed their detention, resulting in pre-trial release under judicial supervision, but that the charges have not been dropped.

Arrests on 12 August 2014

Another three Lor Peang community activists were arrested on 12 August 2014 during the violent dispersal by police and military police of more than 50 Lor Peang villagers of a 70-km peaceful march from Kampong Chhnang province to Phnom Penh calling for a resolution to their long-standing land dispute and to seek the release of Seang Heng and Mang Yav. Police and military police armed with batons and shields met the marchers on National Road 5 in Kompong Chhnang’s Chhouk Sar, and reportedly started to destroy the marchers’ possessions, including rice pots, plates and clothing. When villagers confronted police about their

¹ Development for Cambodia, but not at any price – UN expert calls for oversight and remedy on land concessions, OHCHR, 10 July 2014, available online:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14845&LangID=E>

² *Ibid.*

actions, police officers reportedly slapped and used batons to strike villagers. It is reported that eight villagers were injured. Three leaders were arrested, Mr. SNGOEUN Nhoern (husband of a Lor Peang community leader Ms. UM Sophy), Mr. SRUN Tha, and Mr. KUCH Hok (a 67-year-old elderly villager); they were loaded into a truck and taken to the provincial police headquarters before being sent to the court and charged with the intentional destruction of property and causing intentional violence with aggravating circumstances. They were denied pre-trial release until 28 August LRWC has learned that on 28 August 2014, another application for pre-trial release was made resulting in their release under judicial supervision, but that the charges have not been dropped.

These five arrests appear to be reprisals against the peaceful and legitimate work of land activists defending their land rights and the rights of other villagers. Seang Heng and Mang Yav have been active in land rights work since 2007. The arrests are part of an alarming pattern of arbitrary arrests and detentions of human rights defenders and community activists. Most frequently, the victims of arbitrary arrest and detention are people asserting community members' rights in land disputes with powerful corporate land concession holders who have influence with government officials. Since 2001, at least 24 villagers involved in the dispute have reportedly been charged or imprisoned for peaceful protest to protect the land alleged to be illegally taken by KDC.

While we appreciate that all five have now been granted pre-trial release, it is important to emphasize the international legal obligations of Cambodia concerning pre-trial release and fair trial rights. All arrested persons are entitled to the presumption of innocence and to release pending trial in accordance with provisions of the *International Covenant on Civil and Political Rights* (ICCPR) to which Cambodia is a party. The right to be presumed innocent until proven guilty is recognized by the *Universal Declaration of Human Rights* (UDHR), Article 11. (1) and guaranteed by the ICCPR (Article 14.(2)). Freedom from arbitrary detention and the right to pre-trial release is recognized by Articles 3 and 9 of the UDHR and guaranteed by Article 14. (2) of the ICCPR. These provisions of the UDHR and the ICCPR prohibit pre-trial detention except when detention is both necessary and the only means to protect public safety, ensure attendance in court and/or prevent interference with evidence. Cambodia's Constitution specifically guarantees recognition and respect for the UDHR and the ICCPR, and states in Article 38 that accused persons "shall be considered innocent until the court has judged finally on the case." Cambodia's *Code of Criminal Procedure*. Article 203, confirms these principles and must be read in conformity with the UDHR and the ICCPR. LRWC is aware of no allegations or evidence provided to the court of any lawful reason for continued detention of those arrested on 21 July or 12 August, and they should have been released immediately.

These and all land rights activists and other human rights defenders are entitled to conduct peaceful human rights advocacy and to be protected from all forms of retaliation including arbitrary arrest and detention, malicious prosecution and judicial harassment. The *Declaration on Human Rights Defenders*, adopted 9 December 1998 by consensus of the member States of the United Nations General Assembly, states that:

- "everyone has the right, individually or in association with others, to promote the protection and realization of human rights and fundamental freedoms at the national and international levels" (Article 12.1);
- "everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms" (Article 1);
- "the State shall 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." (Article 12.2)

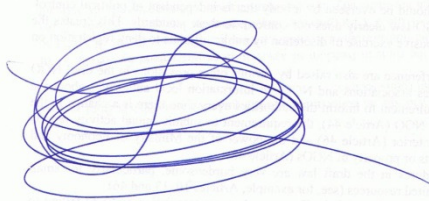
The prosecution of these five land rights activists contravenes domestic and international law obligations and constitutes a misuse of criminal law to prohibit and punish lawful protest and to provide commercial actors with unlawful advantages.

LRWC requests that your government ensure:

- Withdrawal of charges against Mr. SEANG Heng, Mr. MANG Yav, SNGOEUN Nhoern, Mr. SRUN Tha, and Mr. KUCH Hok;
- That judges, prosecutors and other law enforcement officials in Cambodia are mandated and empowered to act independently and in accordance with law, including the legal obligations recognized and created by the UDHR, ICCPR and the *Basic Principles on the Independence of the Judiciary*;
- The liberty, safety and right to protest of all land activists or human rights defenders advocating for community and individual rights to the occupation and use of lands and resources;
- An immediate halt to all forms of intimidation and harassment of human rights defenders including land rights advocates, journalists and others calling for adherence by state authorities and corporate actors to Cambodia's international law and Constitutional obligations.

We request the favour of a reply.

Sincerely,



Gail Davidson, Executive Director
Lawyers' Rights Watch Canada

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Re: Judicial harassment of Lor Peang community activists, Mr. SEANG Heng, Mr. MANG Yav, SNGOEUN Nhoern,
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