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Corporate Land-Grabbing & Fabricated Charges in Cambodia: What Can Canadian Lawyers Do?

Canadian Bar Association
International Assistance Section
Vancouver, BC, Canada

Catherine Morris¹
February 12, 2014
Speaking notes

I have been invited to speak to your section about the work of Lawyers' Rights Watch Canada (LRWC), a committee of Canadian lawyers who campaign on a *pro bono* basis for lawyers and other human rights defenders around the world who are threatened as a result of their advocacy. LRWC also conducts research and education to promote the independence of lawyers and judges and the integrity of legal systems.

The best way for me to illustrate the work of LRWC is to tell you about some of my own work on Cambodia. I will discuss three cases in which LRWC intervened in Cambodia. I will conclude by summarizing what LRWC does around the world and mentioning two major challenges we face in our work. First, I will provide some briefly background about Cambodia.

Background on Cambodia

The first things that often come to mind about Cambodia are the atrocities of the Khmer Rouge period from 1974-1979 when close to a quarter of the population perished or was slaughtered. Canadian lawyers interested in Cambodia tend to focus on the Khmer Rouge tribunal that is working to hold top leaders of that regime accountable.² While this is important, it will not be the focus of my talk today. Nevertheless, it is important to note that the Khmer Rouge period and its aftermath continue to form the violent backdrop for happenings in Cambodia today. Cambodia's historical context also includes centuries of Thai and Vietnamese regional expansionism, the legacy of the French protectorate from 1864 to 1953 and the United States' unlawful 230,488 bombing sorties on 113,716 sites which killed about 150,000 civilians between 1965 and 1973.³

Cambodia's national elections

The 1991 Paris Peace Accords provided for a UN Transitional Authority in Cambodia (UNTAC) which

¹ Catherine Morris, BA, JD, LL.M., is an adjunct professor at the University of Victoria. She has been visiting and writing about Cambodia since 1995. She also monitors Cambodia for Lawyers' Rights Watch Canada.

² Extraordinary Chambers in the Courts of Cambodia, see <http://www.eccc.gov.kh/en>; also see Khmer Rouge Trial Monitor, <http://krtmonitor.org/>

³ Cambodia was subject to Vietnamese and Thai expansionism during the 1700s and 1800s to the point that rulers invited a French protectorate in 1864 to stem the encroachment on its territories. While Cambodia was not quite as deeply colonized as Vietnam, the French legacy included an anti-colonial nationalist movement. After World War II, from 1945-1953, a number of Cambodians were educated in France where they were exposed to communism. Pol Pot was one of them. By the time King Sihanouk declared independence in 1953, Cambodia had functioning Cambodian opposition communist party. The US bombings of Cambodia from 1965-1973 created a ripe climate for Cambodia youth to join the "red Khmer" movement in the jungle to support King Sihanouk who had been deposed in US-supported coup in 1970. In 1975, the Khmer Rouge, led by the Pol Pot faction, captured Phnom Penh and took over the country. For more detail on the history of Cambodia, see David Chandler. *A History of Cambodia*. 4th ed. Boulder, CO: Westview Press, 2007; Ben Kiernan, *How Pol Pot Came to Power: A History of Communism in Kampuchea, 1930-1975* (London: UK: Thetford Press, Limited, 1985); William Shawcross, *Sideshow: Kissinger, Nixon and the Destruction of Cambodia* (New York: Simon and Schuster, 1979); Ben Kiernan and Taylor Owen, "Roots of U.S. Troubles in Afghanistan: Civilian Bombing Casualties and the Cambodian Precedent," *The Asia-Pacific Journal*, 26-4-10, June 28, 2010, available at <http://www.japanfocus.org/-ben-kiernan/3380>; Taylor Owen and Ben Kiernan, "Bombs Over Cambodia," *Walrus*, October 2006, available <http://walrusmagazine.com/articles/2006.10-history-bombing-cambodia/>

organized the first national election in 1993.⁴ Ever since then, election manoeuvring⁵ has enabled the Cambodian People's Party (CPP), headed by Prime Minister Hun Sen, to retain and increase its centralized power. Hun Sen has now been Prime Minister of Cambodia since 1985, including under the Vietnamese-backed regime that ruled Cambodia after the overthrow of the Khmer Rouge by Vietnam in 1979. For the past two decades, Cambodia's elections have been described as "little more than a sideshow, helping to bolster the electoral-authoritarian regime that Hun Sen has built."⁶

The most recent election in July 2013 may have changed the pattern. Cambodia's major opposition parties united into the Cambodia National Rescue Party (CNRP) and achieved significant gains despite considerable doubt about the integrity of the election. Independent observers report that at least a million of Cambodia's 9.6 million voters were disenfranchised as a result of irregularities in voter registration.⁷ Opinions differ as to whether the opposition would have won the election had it not been for irregularities, but Transparency International Cambodia's final report in September 2013 stated deep concern about large-scale disenfranchisement and said it could not "express with confidence that the outcome of the election reflects the will of the Cambodian people."⁸ Such findings bolster the CNRP's claim that it would have won a majority of seats in parliament if the government had not rigged the election. The opposition party is currently boycotting parliament, so the CPP is ruling alone.

To most observers' surprise, for months there have been large demonstrations protesting the results of the election. After one large peaceful opposition protest on September 15th, 2013, police road blocks were greeted by angry rock-throwing youth. Police responded with live fire from automatic weapons, killing a bystander.⁹

New vitality among Cambodia's youth

There is considerable vitality among Cambodia's youth born after the end of the Khmer Rouge period.

⁴ UNTAC has been considered to be a partial success; it failed to cease fire, disarmament and demobilization goals, but succeeded in holding elections that enfranchised 90% of the Cambodian electorate, albeit amidst ongoing conflict and political violence. UNTAC succeeded in repatriating and resettling 370,000 refugees... while neither democracy nor human rights were evident in the post-UNTAC governance of Cambodia, the operation's efforts did lay foundations for continued reform efforts, including through civil society organizations notable for their vibrancy in an otherwise authoritarian state." Jeni Whalan, "Evaluating Peace Operations: The Case of Cambodia," *Journal of International Peacekeeping* 16 (2012) 226–251. Also see the following works on UNTAC not reviewed for this paper: Caroline Hughes, *UNTAC in Cambodia: The Impact on Human Rights* (Singapore: Institute of Southeast Asian Studies, 1996); Stephen R. Heder, and Judy Ledgerwood, eds, *Propaganda, Politics, and Violence in Cambodia: Democratic Transition Under United Nations Peacekeeping* (New York: M.E. Sharpe, Inc, 1996); Sorpong Peou, *Conflict Neutralization in the Cambodia War: From Battlefield to Ballot Box* (Kuala Lumpur, Singapore, and New York: Oxford University Press, 1997); Michael Doyle, "Peacebuilding in Cambodia: Legitimacy and Power," in *Peacebuilding as Politics: Cultivating Peace in Fragile Societies*, edited by Elizabeth M. Cousens, and Chetan Kumar (Boulder, CO: Lynne Rienner, 2000); Benny Widyono, *Dancing in Shadows: Sihanouk, the Khmer Rouge, and the United Nations in Cambodia* (New York: Rowman & Littlefield, 2007); Yakushi Akashi, "An Assessment of the UN Transitional Authority in Cambodia (UNTAC)," Chapter 12 in *Cambodia: Progress and Challenges Since 1991*, ed. Pou Sothirak, Geoff Wade, Mark Hong (Singapore: Institute of Southeast Asian Studies, 2012).

⁵ McCargo, Duncan. Cambodia: Getting Away with Authoritarianism? *Journal of Democracy* 16(4)(October 2005): 98-112.

⁶ Ibid at 98

⁷ Months before the election, the US-based National Democratic Institute reported that up to 11% of people who registered did not appear on the voter list. *Report on the Voter Registry Audit (VRA) in Cambodia*. NDI, 2013, www.ndi.org/files/Cambodia-Voter-Registry-Audit-2013.pdf. During the campaign, Human Rights Watch denounced unequal media access for opposition parties and a pro-CPP bias within the National Election Committee. Human Rights Watch. "Cambodia: Systematic Problems Undermine Elections: Unequal Media Access, Official Bias, Opposition Leader's Exclusion Mar Polls, HRW, July 26, 2013, <http://www.hrw.org/news/2013/07/26/cambodia-systematic-problems-undermine-elections>. Transparency International reported that in 60% of polling stations, citizens who had registered could not vote because their names were missing from voter lists. At 26% of stations officials allowed people to vote without proper identification. "Disenfranchisement at Polls as Citizens Unable to Vote and Illegal Voting Allowed," Transparency International Cambodia press release, www.ndi.org/files/TI-Cambodia-PR-072913.pdf; Transparency International Cambodia. Final Election Observation Report on Cambodia's 2013 National Election. Phnom Penh: TIC, September 2013, http://www.sithi.org/temp.php?url=publication_detail.php&mid=9586. Also see LICADHO. Conduct and Irregularities of the 2013 Cambodian Elections. Phnom Penh: LICADHO, December 2013, <http://www.licadho-cambodia.org/reports.php?perm=184>.

⁸ Transparency International Cambodia. Final Election Observation Report on Cambodia's 2013 National Election. Phnom Penh: TIC, September 2013, http://www.sithi.org/temp.php?url=publication_detail.php&mid=9586.

⁹ Cambodia: Killing & Attacks on Demonstrators; Violations of rights to freedoms of assembly and expression, LRWC Letter, 26 September 2013, <http://www.lrwc.org/cambodia-killing-violations-of-rights-to-freedoms-of-assembly-and-expression-letter/>

They are better educated. They want better government and better economic prospects. They have motorcycles and mobile phones (which are cheap to operate in Cambodia), and they use Facebook and Twitter to mobilize.

Landgrabbing, inequality and corruption: Cambodia lopsided economic growth

The Cambodian public is increasingly intolerant of land grabbing, landlessness, corruption and inequality. Over the past decade, Cambodia has experienced rapid economic growth, mainly through logging, agribusiness and the textile and garment industry. Much of the development is done unlawfully and disadvantages poor people and indigenous communities. Most of the benefits of development are enjoyed by a small, wealthy elite. Cambodia remains one of the world's poorest countries, with 80% of the population living in poverty in rural areas.

Despite the work of UNTAC in creating space for still-energetic human rights organizations, there has been little improvement in the human rights situation in Cambodia since the 1990s. There is now severe and endemic corruption of government officials, including police, court officials and judges. Television, radio and most Khmer language newspapers are controlled by the CPP or by associates of family members of Hun Sen.¹⁰ There is no independence of judges and lawyers from the executive. Attacks on human rights defenders or political opponents of wealthy or politically powerful people are not investigated, resulting in a climate of impunity. Human rights defenders experience official harassment, including threats, baseless criminal charges, attacks and sometimes murders. Mr. Chut Wutty, a 46-year-old environmental and human rights activist investigating illegal logging, was murdered in front of two *Cambodia Daily* journalists in April 2012, and there has been no proper investigation.¹¹ While such murders are less frequent than they were during the 1990s, the strategy over the past decade has shifted to abusing laws to harass critics.

Rapacious land grabbing has been increasing in Cambodia for the past decade. Rampant allocation of Economic Land Concessions (ELCs) in rural Cambodia over the past decade means that more than 50% of the arable land is now controlled by foreign investors and wealthy Cambodian elites who are often affiliated with senior government officials.¹² This kind of development is contributing to growing environmental concerns and landlessness because of dislocation of communities including indigenous peoples.

Land disputes have affected about 400,000 people over the past decade.¹³ Forced evictions are frequent and often violent. One of the worst examples occurred in 2012, when hundreds of heavily armed soldiers and police converged on a village to forcibly evict the people and clear the land around a rubber plantation. They fired on protesting residents and fatally shot a 14-year-old girl.¹⁴ A 72-year old journalist and political activist, Mam Sanando, spoke out about this incident. He was charged and convicted of

¹⁰ Cambodia: Freedom of the Press 2013, USA: Freedom House, 108-110, <http://www.freedomhouse.org/sites/default/files/FOTP%202013%20Full%20Report.pdf> . There are two English language newspapers, *The Cambodia Daily* and the *Phnom Penh Post*.

¹¹ Cambodian police shoot dead leading anti-logging campaigner, *The Guardian*, 26 April 2012, <http://www.theguardian.com/world/2012/apr/26/cambodia-police-shoot-dead-antilogging-activist>; "Cambodia: Escalation of Serious Human Rights Violations by Government Authorities," Letter from LRWC 12 May 2013.

¹² Andreas Neef, Siphath Touch, and Jamaree Chiengthong. "The Politics and Ethics of Land Concessions in Rural Cambodia." *Journal of Agricultural and Environmental Ethics* 26(6)(December 2013): 1085-1103. Available at <http://link.springer.com/article/10.1007%2Fs10806-013-9446-y>

¹³ LICADHO. The Great Cambodian Giveaway: Visualizing Land Concessions over Time, Phnom Penh: LICADHO, approximately March 2013, http://www.licadho-cambodia.org/concession_timelapse/

¹⁴ ASIA: Business enterprises and attacks on human rights defenders and protestors. Oral Statement to the 20th Session of the UN Human Rights Council from Lawyers' Rights Watch Canada (LRWC), a non-governmental organization in special consultative status, and Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status, 21 June 2012, <http://www.lrwc.org/oral-statement-asia-business-enterprises-and-attacks-on-human-rights-defenders-and-protestors-joint-statement-by-lrwc-and-asian-legal-resource-centre/>

aiding insurrection and sentenced to 20 years in jail. He spent eight months in jail before international advocacy¹⁵ resulted in his release in March 2013.¹⁶

Increasing rural landlessness results in migration of workers to cities for jobs, such as in Cambodia's booming US\$4 to \$5 billion textile and garment industry that comprises 80% of Cambodia's exports.¹⁷ Garment workers currently earn about \$80 a month, and many live communally in shared apartments or dormitories.¹⁸ It is estimated that a family of four needs about \$260 per month.¹⁹ While the government has raised the minimum wage for garment workers to about \$95 per month garment workers are demanding \$160. In November 2013, during a protest of workers of the SL Garment Factory, police fired live ammunition at neighbourhood youth who joined the demonstrators and threw rocks. The bullets killed a bystanding street vendor and wounded nine others.²⁰ LRWC's letter was featured in the *Cambodia Daily*.²¹

This is the political climate in which human rights work is conducted in Cambodia. LRWC intervened in all situations mentioned above, but I would like to discuss three other cases in which LRWC intervened. I see these cases as emblematic.

Case study 1

Taking control of the bar: The case of Kong Sam Onn

Let me take you back to 2009. At that time, opposition parliamentarian, Ms. Mu Sochua, was speaking out strongly about land grabbing. One day during the previous year's election campaign, an army general grabbed a camera from Mu Sochua's hand after she photographed use of a military vehicle by the ruling party in violation of the Election Law. In the struggle for the camera, Mu Sochua's blouse popped open. Her advocacy was exasperating the Prime Minister, and some months after the election, Hun Sen, in a nationally broadcast speech, warned Cambodian villagers not to take their complaints about land to a "strong legs"²² women politician who had "rushed to hug a man and unbuttoned her shirt to attract his

¹⁵ Numerous organizations conducted advocacy, including LRWC: Cambodia: Detention of Mam Sonando, independent broadcaster and President of the Democrats Association. Letter, LRWC and the Centre for Law and Democracy, 3 August 2012, <http://www.lrwc.org/cambodia-detention-of-mam-sonando/>.

¹⁶ Joshua Lipen, "Journalist's Case Raised by Obama," RFA, 27 November 2012, <http://www.rfa.org/english/news/cambodia/journalist-11272012165221.html>

¹⁷ Chan Muy Hong, "Cambodia's garment exports rise," *Phnom Penh Post*, 26 December 2013, available at <http://www.phnompenhpost.com/business/cambodias-garment-exports-rise>. For more information on Cambodia's garment factories, see International Labour Organization and Better Factories Cambodia. Thirtieth Synthesis Report on Working Conditions in Cambodia's Garment Sector. Geneva: International Labour Organization (ILO) and International Finance Corporation (IFC), July 2013 <http://betterfactories.org/wp-content/uploads/2013/07/30th-Synthesis-Report-Final-EN.pdf>. Factories make garments for GAP, Puma, H & S, Victoria's Secret and others.

¹⁸ Peter Maguire. "Cambodia's People Power." *The Diplomat*, 20 January 2014, <http://thediplomat.com/2014/01/cambodias-people-power/>

¹⁹ International Trade Union Confederation. "Cambodia: Statement from International Trade Union Mission," ITUC, 13 January 2014, <http://www.ituc-csi.org/cambodia-statement-from?lang=en>. Also see Dr. Kang Chandararot, and Liv Danne. *Living Wage Survey for Cambodia's Garment Industry*, prepared by Cambodia Institute of Development Study Financed by the Friedrich Ebert Stiftung in Cooperation with TWARO-ITGLWF, February 2009, http://www.fes.or.id/fes/download/Survey_Result_Cambodia.pdf. This study defines a living wage as "a wage that provides for decent living for a worker and his/her dependents, within regulated working hours (not including overtime) from one income source, and should allow for some savings." (p. 5). In Phnom Penh in 2009, it was calculated that the living wage would be US\$120.

²⁰ Cambodia: Police Behaviour at Protest of SL Garment Factory Workers, LRWC Letter, 14 November 2013, <http://www.lrwc.org/cambodia-police-behaviour-at-protest-of-sl-garment-factory-workers-letter/>

²¹ Lauren Crothers, "Lawyers Condemn Police Shooting of SL Factory Protesters," *Cambodia Daily*, 16 November 2013, <http://www.cambodiadaily.com/archives/lawyers-condemn-police-shooting-of-sl-factory-protesters-47126/>

²² The Khmer term is *cheung klang*. For more details, see Prak Chan Thul, "Mu Sochua Stands Trial for Defamation." *Cambodia Daily*, 25 July 2009, <http://www.cambodiadaily.com/archives/mu-sochua-stands-trial-for-defamation-1433/>; Dustin Roasa, "Cambodia's Democratic Warrior." *New Republic*, 2 December 2010, <http://www.newrepublic.com/article/world/79558/cambodias-democratic-warrior-mu-sochua-political-reform>; Why should an MP defamation plaintiff be sued and have her immunity suspended? Asian Human Rights Commission, 30 April 2009, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-092-2009>

attention."²³ The Cambodian term "strong legs" is a colloquial term for "someone who is like a gangster, a woman gangster, a prostitute."²⁴ There was no doubt that the Prime Minister's comments referred to Mu Sochua.

At that time, the government was regularly threatening and pressing defamation charges against persons who criticized the government. Mu Sochua decided it was time for a defamation lawsuit against the Prime Minister. She retained a lawyer, Mr. Kong Sam Onn. The Prime Minister's lawyer, Mr. Ky Tech, who was the past president of the Bar Association of the Kingdom of Cambodia (Bar Association), turned around and charged Mu Sochua – and her lawyer – with defamation after they held a press conference announcing the law suit. Ky Tech also made a complaint to the Bar Association about her lawyer, and Kong Sam Onn was now at considerable risk of disbarment.

In May, 2009, LRWC wrote a letter offering moral support to the President and members of the Council of the Bar Association "in fulfilling its function to uphold and defend the independence of the legal profession from interference by those acting on behalf of members of the executive branch of government" and urging the Bar Association "to ensure that it does everything possible to uphold its independence and withstands any and all external pressure" and "to take all possible steps to ensure that Mr. Kong receives a fair and impartial trial" in the defamation case.²⁵ In June, 2009, LRWC wrote to the Prime Minister urging him to "instruct all government officials and their representatives to respect the independence of the Bar Council and all prosecutors and judges in this and all other cases in Cambodia."²⁶

However, the Bar Council was perceived to be under government control. Kong Sam Onn was pressured²⁷ to withdraw from Mu Sochua's case, apologize to the Prime Minister and join the Cambodia People's Party. In return, the government dropped the charges and the complaint to the Bar Association. Mu Sochua said she had trouble finding another lawyer willing to defend her. She was stripped of her parliamentary immunity, convicted and fined.²⁸ She refused to pay the fine, expecting she would be sent to jail. Knowing that it was not politically expedient to imprison the locally and internationally popular Mu Sochua, the government garnisheed her parliamentary salary instead.²⁹

Advocacy by LRWC (and others) was not successful in the case of Kong Sam Onn. LRWC's advocacy was brought to the attention of the UN Special Rapporteur on Independence of Lawyers and Judges in a summary of trends from 2004-2009 of limitations on independence of the bar and judiciary.³⁰ LRWC also provided a written statement to the Human Rights Council on this subject in August 2009.³¹ This case illustrates the pattern by which Cambodia's institutions are brought under government control and manipulated through a combination of harassment and intimidation.

²³ Cambodia Case N° CMBD/47 – Mu Sochua, Inter-Parliamentary Union, 21 October 2009, <http://www.ipu.org/hr-e/185/cmbd47.htm>

²⁴ Mu Sochua in "Why should an MP defamation plaintiff be sued and have her immunity suspended?" Asian Human Rights Commission, 30 April 2009, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-092-2009>

²⁵ Independence of the Bar in Cambodia: Re KONG Sam Onn, LRWC letter, May 21, 2009, <http://www.lrwc.org/independence-of-the-bar-in-cambodia-re-kong-sam-onn-letter/>

²⁶ Independence of the Bar in Cambodia and Mr. KONG Sam Onn, lawyer, LRWC letter 30 June 2009, <http://www.lrwc.org/re-mr-kong-sam-onn/>

²⁷ Meas Sokchea. "PM's lawyer says he will withdraw suit if Bar punishes Kong Sam Onn," Phnom Penh Post, 27 May 2009, <http://www.phnompenhpost.com/national/pms-lawyer-says-he-will-withdraw-suit-if-bar-punishes-kong-sam-onn>

²⁸ Yun Samean, "Mu Sochua Convicted, Fined \$4,100," Cambodia Daily, August 5, 2009, <http://www.cambodiadaily.com/archives/mu-sochua-convicted-fined-4100-1437/>

²⁹ Mu Sochua Seeks Reform of Judiciary After Lawsuit, FN-JSK-Cambodia (SP), 26 August 2010, <http://1fn.blogspot.ca/2010/08/mu-sochua-seeks-reform-of-judiciary.html>

³⁰ Catherine Morris. Cambodia: Concerns about independence of lawyers and judges: Trends from 2004 – 2009, July 2009, http://www.lrwc.org/ws/wp-content/uploads/2012/03/Cambodia_Independence_of_Jurists.pdf

³¹ Concerns about the Independence of Lawyers and Judges in Cambodia. Written Statement submitted to the Human Rights Council by LRWC, 26 August 2009, http://www.lrwc.org/ws/wp-content/uploads/2012/03/Cambodia.Independence.Jurists.Aug_.26.09.pdf

Case study 2

Attempts to control civil society: The draft NGO Law

In 2009, the government started to draft a law on non-governmental organizations (NGOs).³² Despite much urging to provide enabling legislation as per international standards, the government was intent on restrictive legislation to provide authorities with maximum control over registration, deregistration and NGO activities. In 2011, LRWC and the Centre for Law and Democracy (CLD) in Halifax were among many organizations providing letters and advice. LRWC and the CLD provided analyses on the 2nd, 3rd and 4th drafts of the NGO law.³³ Fortunately, united advocacy from more than 60 international NGOs including large development NGOs, caused the government to shelve the draft law with a promise to seek consensus in the future.³⁴

Two years later, in December 2013, the government announced its plans to resurrect the legislation.³⁵ But there has been none of the promised consultation. The Council of Ministers is said to have unanimously passed a 5th draft in late January or early February³⁶ without any consultation at all. Local and international organizations are now trying to obtain a copy.³⁷

The government has largely succeeded in getting parliament, the media, the judiciary and lawyers under control. Now it appears to be making a concerted push to get NGOs – including human rights organizations – under control.

Case study 3

Escalating harassment and violence against activists: The case of Yorm Bopha

Ms. Yorm Bopha is a 30-year-old mother of a 10-year-old boy. In 2012, she was arrested, prosecuted on fabricated charges, convicted and sentenced in unfair court proceedings. She was imprisoned for more than a year.

Yorm Bopha is one of Cambodia's "accidental activists." She is a resident of the Boeung Kak Lake community in Phnom Penh. Since 2007, this community has been in conflict over land with a powerful company, Shukaku Inc., which has strong connections to senior government officials and an owner who is a member of Cambodia's Senate.³⁸ In 2007, the municipality of Phnom Penh gave a long term lease of a 133-hectare area of Boeung Kak Lake to the company for development purposes. The development plan affected 4,252 Boeung Kak Lake families but a number of residents did not receive proper compensation. Members of the Boeung Kak Lake community started demanding acceptable solutions through protests, advocacy and negotiations with company representatives and government officials.

³² "Cambodia needs a rights-based NGO law," Asian Human Rights Commission, 4 March 2009, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-047-2009>

³³ LRWC and CLD, April 2011, joint statement on the 2nd draft, <http://www.lrwc.org/joint-statement-on-cambodia-ngos/>; September 2011 joint letter re 3rd draft, <http://www.lrwc.org/cambodia-lrwc-and-cld-criticize-draft-ngo-law/>; December 2011 joint letter on the 4th draft, <http://www.lrwc.org/cambodia-fourth-draft-law/>.

³⁴ Boruthy Lun, Resistance and Solidarity: Cambodian CSOs confront a repressive draft law on associations and NGOs, State of Civil Society Report 2013, CIVICUS, <http://socs.civicus.org/?p=3765>

³⁵ Phorn Bopha and Zsombor Peter Government Pushes Ahead With NGO Law," Cambodia Daily 2 December 2013, <http://www.cambodiadaily.com/archives/government-pushes-ahead-with-ngo-law-48245/>

³⁶ International Centre for Not-For-Profit Law, NGO Law Monitor: Cambodia, 9 February 2014, <http://www.icnl.org/research/monitor/cambodia.html>

³⁷ Update: NGO Law Monitor: Cambodia, 9 February 2014, International Centre for Not-For-Profit Law, <http://www.icnl.org/research/monitor/cambodia.html>

³⁸ Petition to the United Nations Working Group on Arbitrary Detention Regarding the Arbitrary Detention of Yorm Bopha, LRWC, 12 August 2013, <http://www.lrwc.org/cambodia-petition-to-the-united-nations-working-group-on-arbitrary-detention-regarding-the-arbitrary-detention-of-yorm-bopha-report/>

Authorities have invariably supported the company in forcible evictions. There is considerable video footage showing the violence of these evictions. Local and foreign human rights workers and journalists have documented the terrible conditions people must endure in the places miles away from the city where they have been relocated without proper shelter, sanitation, running water or other services.³⁹

The company and authorities have used prosecutions as a tool to suppress the community's demands. There have been numerous criminal cases against Boeung Kak Lake community members. In 2012, a number of women, including the award winning activist, Ms. Tep Vanny,⁴⁰ were jailed as a result of demonstrating peacefully. Yorm Bopha was among those advocating for their release along with local and international human rights organizations such as Amnesty International and Human Rights Watch. Yorm Bopha and Tep Vanny are now among Cambodia's best known activists.

As a result of this advocacy, Yorm Bopha and her husband were arrested, prosecuted and convicted of completely fabricated charges in unfair court proceedings. Her husband was given a suspended sentence, but Yorm Bopha was sentenced to three years in jail. On 19 March 2013, while Yorm Bopha's appeal was pending, the Prime Minister himself spoke out against her on national television.⁴¹

LRWC contributed to the international advocacy for Yorm Bopha through letters and statements. In 2013, LRWC worked with local Cambodian human rights organizations to draft and send a petition to the UN Working Group on Arbitrary Detention (WGAD) setting out the facts and the international and domestic legal arguments. The WGAD transmitted its opinion made 21 October 2013 that Yorm Bopha's detention was arbitrary.⁴²

On 1 November 2013, Yorm Bopha was notified that her final appeal to Cambodia's Supreme Court was scheduled for 22 November. With encouragement and help from Cambodian NGOs, LRWC drafted an *amicus* brief, had it translated into Khmer and sent it to the Cambodia Supreme Court in time for the appeal.⁴³ Intense, coordinated advocacy by numerous local and international organizations is credited in the decision of Cambodia's Supreme Court that day to allow her release. However, there is little doubt that ultimately the decision to release her was a political one.

Since her release, Yorm Bopha and several of her colleagues have been arrested on at least two occasions during peaceful protests during January 2013.⁴⁴ The government has also used a "divide and conquer" tactic by influencing Yorm Bopha's husband. Just prior to the Supreme Court hearing, the Phnom Penh Governor reportedly met with Yorm Bopha's husband to try to "end the case."⁴⁵ LRWC does not know what kind of negotiation took place or what settlement was arranged. What is known is that since Yorm Bopha has been released, her husband is described as having "become very close with local authorities" and has demanded that Yorm Bopha cease her activism. There are allegations of domestic violence and that he has on at least one occasion prevented her from going out by locking her into the house.⁴⁶ So far, Yorm Bopha is continuing her activism.

³⁹ See Zoe Daniel's excellent documentary, "We will not be moved." Foreign Correspondent, ABC, 27 November 2012, <http://www.abc.net.au/foreign/content/2012/s3638845.htm>

⁴⁰ Tep Vanny received the Leadership in Public Life Award from Vital Voices in 2013, <http://www.vitalvoices.org/node/3512>

⁴¹ Cambodia: Supreme Court Keeps Activist Jailed: Donors Should Step Up Pressure for Unconditional Release of Yorm Bopha, Human Rights Watch, 29 March 2013, <http://www.hrw.org/news/2013/03/29/cambodia-supreme-court-keeps-activist-jailed>

⁴² United Nations Working Group on Arbitrary Detention, opinion dated 21 October and transmitted to LRWC on 29 November 2013 A/HRC/WGAD/2013/

⁴³ Amicus Brief re: Yorm Bopha: Submission to the Cambodia Supreme Court, 19 November 2013 (English and Khmer), <http://www.lrwc.org/yorm-bopha-submission-to-the-cambodia-supreme-court/>

⁴⁴ Cambodian Center for Human Rights, "Temporary arrest of Yorm Bopha and 4 other land activists in Cambodia: demonstrations banned in Phnom Penh," IFEX, 6 January 2014, http://www.ifex.org/cambodia/2014/01/06/bopha_arrested/

⁴⁵ Khouth Sophak Chakrya, "City Hall intervenes in Bopha case," *Phnom Penh Post*, 19 November 2013, <http://www.phnompenhpost.com/national/city-hall-intervenes-bopha-case;>

⁴⁶ Sek Odom and Matt Blomberg, "Husband Locks Anti-Eviction Activist Yorm Bopha in House," *Cambodia Daily*, January 15, 2014,

Intimidation of human rights defenders continues. On 11 February, three human rights defenders were among 21 people denied bail after being arrested at demonstrations on 2 and 3 January, 2014.⁴⁷

It is difficult to measure the success of human rights work in Cambodia, but I am convinced that without vigorous human rights advocacy of local and international organizations, things would be much worse there.

The work of LRWC lawyers around the world

Let me conclude with a very brief overview of work done last year by Lawyers' Rights Watch Canada. LRWC volunteers worked with colleagues in several dozen human rights organizations around the world. Through this collaborative work:

- More than 60 lawyers, human rights defenders or prisoners of conscience were released from arbitrary detention in Bangladesh, Burma, Cambodia, China, Iran, Sudan, Turkey and Zimbabwe.
- Favourable decisions were received from the UN Working Group on Arbitrary Detention for imprisoned human rights defenders in Bangladesh, Cambodia and Viet Nam.
- Defamation suits against a law professor & others were dismissed with costs in Costa Rica.
- An amicus brief was provided to the Inter-American Commission on Human Rights on the State duty to prevent and prosecute attacks on lawyers in Colombia.
- Physical protection was organized for lawyers threatened in Cameroon.
- Several shadow reports were provided to UN treaty monitoring bodies and two formal complaints were made to UN Special Rapporteurs.
- Three reports were provided to the Office of the High Commissioner of Human Rights for the UN Human Rights Council's Universal Periodic Review process.

LRWC has special consultative status with the Economic and Social Council of the United Nations, (ECOSOC) which means it may attend meetings of some UN human rights bodies including the UN Human Rights Council (HRC). LRWC volunteers attend all sessions of the HRC in Geneva and in 2013 made statements concerning human rights in Burma, Canada, Cambodia, Sri Lanka and Thailand.

In addition, LRWC's research—often produced in cooperation with other NGOs—has resulted in handbooks on internationally protected rights. Examples include:

- International law right to pre-trial release,⁴⁸ and
- State obligations to ensure international human rights education and training.⁴⁹

LRWC is currently preparing a handbook on States international law obligations to provide legal aid.⁵⁰

<http://www.cambodiadaily.com/archives/husband-locks-anti-eviction-activist-yorm-bopha-in-house-50584/>

⁴⁷ Cambodia: Bail denied to 21 protesters, OMCT, 11 February 2014, <http://www.omct.org/urgent-campaigns/urgent-interventions/cambodia/2014/02/d22548/>

⁴⁸ Lois Leslie. Pre-trial release and the right to be presumed innocent: A handbook on international law rights to pre-trial release, Vancouver: LRWC, 2013, <http://www.lrwc.org/handbook-pre-trial-release-and-the-right-to-be-presumed-innocent/>

⁴⁹ Catherine Morris, and Gail Davidson, *The Right to Know Our Rights: International law obligations to ensure international human rights education and training*. Vancouver: LRWC, 2012, http://www.lrwc.org/ws/wp-content/uploads/2012/05/The_Right_to_._Know_._Our_._Rights.May2012online1.pdf. This handbook was produced with a grant from the British Columbia Law Foundation.

⁵⁰ This handbook is made possible by a grant from the British Columbia Law Foundation. Researched and drafted by Lois Leslie, it is scheduled for release in 2014. For a brief synopsis of some of the relevant international human rights law, see Gail Davidson, Catherine Morris, and Heather Neun. International Obligations to Provide Legal Aid. Submission to the BC Public Commission on Legal Aid. Vancouver: LRWC, 2010, <http://www.lrwc.org/ws/wp-content/uploads/2012/03/Legal-Aid-LRWC-Oct-25-2010.pdf>

Obstacles to Canadian international human rights advocacy

One of the obstacles to LRWC's work around the world is lack of knowledge among Canadian lawyers about international human rights law. LRWC research indicates that most lawyers and judges in Canada have very limited knowledge of international human rights law.⁵¹ Lack of knowledge about international human rights means Canadian lawyers have limited capacity to advocate for implementation -- and against erosion -- of international human rights standards internationally and at home in Canada. Lack of knowledge of international human rights also limits lawyers' capacity for discernment of human rights violations both in Canada and around the world. Lawyers and judges need to become educated about international human rights law and principles so as to use them to guide their practice and decisions at home, and to act knowledgeably in solidarity with other jurists and human rights defenders around the world.

Lawyers' Rights Watch Canada is committed to the cardinal principle of independence of lawyers, judges and human rights advocates. The stories I have told you about Cambodia illustrate abundantly the importance of ensuring that lawyers and human rights workers are never beholden to governments or any other organizations that, through levers of funding or board affiliations, could influence their independence to pursue international human rights standards wholeheartedly. This means LRWC insists on operating without government funding and without government or corporate representatives on its board of directors. Thus, a second obstacle LRWC faces is lack of adequate funding. LRWC is entirely reliant on funding from memberships to cover the costs of advocacy, and on charitable donations to cover the costs of research and education. While LRWC members work *pro bono*, there are costs including office expenses and travel expenses for field research visits to countries and to the UN Human Rights Council.

Increasingly, UN human rights bodies and international human rights organizations are seeking LRWC expertise. The demand for LRWC work outstrips its capacity. With more members and more funding, LRWC could considerably enlarge the scope of its international advocacy, research and education to address the increasing needs around the world.

⁵¹ Catherine Morris and Gail Davidson, *The Right to Know Our Rights: International law obligations to ensure international human rights education and training*. Vancouver: LRWC, 2012, <http://www.lrwc.org/ws/wp-content/uploads/2012/05/The.Right.to.Know.Our.Rights.May2012online1.pdf>.