

Testimony Before the Lantos Human Rights Commission of the United States Congress on the Current and Ongoing Challenges to Human Rights and Democracy in Cambodia

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I would like to thank Chairman McGovern, Congressman Lowenthal, Congresswoman Sheila Jackson Lee and members of the Commission for convening today to discuss the human rights crisis in Cambodia and Laos.

We are experiencing a particularly challenging time of crisis right now in Cambodia with respect to meaningful human rights and democratic reform for the Cambodian people. In just the past 30 days, nearly all of the opposition party leadership has been removed from power. Mr. Sam Rainsy was removed from the National Assembly in a unilateral move by the ruling Cambodian People's Party and threatened with jail if he returns to Cambodia. The Hun Sen government has: physically attacked and severely beaten two key members of the National Assembly, Nhay Chamroeun and Kong Sakphea ¹, as they were leaving the Parliament building, imprisoned a key Senator, Hong Sok Hour, for challenging the government's policies involving border disputes with Vietnam, sentenced the media director of the opposition political party and ten of his colleagues to 20 years in prison for participating in anti-government demonstrations, and has removed from office the opposition Deputy Speaker of the National Assembly Kem Sokha.

These events prompted the U.S. State Department to issue a statement on November 16th calling for an end to the "harassment and intimidation of Cambodia's opposition". The UN Special Rapporteur Rhona Smith also expressed her deep concern regarding "Cambodia reaching a dangerous tipping point". And on December 3rd, 16 members of Congress led by Congressman Lowenthal called on Prime Minister Hun Sen to immediately cease the harassment and persecution of Cambodia's opposition....The people of Cambodia deserve to have their voices heard in a society that welcomes open debate and respects democratic values."

The intimidation of the current leaders of the political opposition is just a small part of a widespread and ongoing campaign that has been going on since Hun Sen placed himself in power more than thirty years ago, including putting in prison and physically assaulting members of the political opposition and critics of government policies, and preventing meaningful democratic elections from taking place. Why these practices have reached a crisis point is that, in anticipation of the scheduled national elections of 2018, the Hun Sen government has initiated an all-out effort to prevent meaningful political participation and activity in Cambodia, aimed at assuring that the Hun Sen government remains in power at all costs.

Recent new election laws and NGO laws were passed that allow the government to control and restrict the political activities of grass-roots groups and those seeking to participate in the political process. A union law currently under proposal will further restrict the rights of workers to strike and to organize unions. Hun Sen has even taken action to close off the efforts

of the United Nation's tribunal to investigate and prosecute the Khmer Rouge genocide, by forcing the retirement and removal from office of all of the international judges who were seeking meaningful prosecution of cases, and by blocking the proceedings of the tribunal, in order to prevent proper investigation and disclosure of information indicating that high level government officials, including Hun Sen and other high level officials may themselves have been involved in the Khmer Rouge atrocities.

To be sure, there are many serious and threatening actions being taken by the Hun Sen government that need to be addressed and challenged. Their decision to expel and forcibly return to Vietnam hundreds of Montagnard indigenous refugees from Vietnam and Laos who have been seeking refuge in Cambodia is a direct and serious violation of the Convention on the Status of Refugees, and also constitutes complicity in genocide, since that is what these indigenous peoples face if expelled from Cambodia and returned to their home countries ². Although the Cambodian government signed the 1991 Paris Peace Accords ³, which guaranteed Cambodia's territorial integrity, human rights and fundamental freedoms, and was meant to prevent a "return to the practices of the past", the Hun Sen government has been violating its major provisions, specifically:

- 1- Territorial integrity: by acceding to incursions by the government of Vietnam into Cambodian lands in the border areas between the two countries, never lodging any protests when Cambodian citizens get inhumanely evicted from their ancestral lands, sometimes via the use of chemical defoliant on crops and farmlands and preventing its own Members of Parliament from performing their duties in investigating these border incursions ⁴.
- 2- Human rights: by resorting to unlawful land evictions, disguised as economic development and land concessions, carried out to benefit senior members of the Cambodian government, its security forces, and government connected business leaders from domestic and multinational companies ⁵. Fueled by the profits allowed by the European Union "Everything but Arms" initiative (EBA) ⁶, domestic, multinational corporations and public officials have inhumanely, unjustly and illegally expelled over 800,000 Cambodians from their farms and properties, representing more than 6 percent of the Cambodian population ⁵. The human cost of this policy is such that it prompted the filing of a legal brief at the International Criminal Court (ICC) on October 7th 2014, by the International Federation for Human Rights (FIDH) and Global Diligence, alleging that the widespread and systematic land grabbing conducted by the Cambodian ruling elite for over a decade amounts to a crime against humanity ^{7, 8}.
- 3- Democracy: by taking repressive actions against its critics and members of the political opposition, and by passing laws that violate the Cambodian constitution such as the National Elections (NEC) laws and the NGO laws ⁹ insuring that the CPP ruling party will stay in power, prompting Brad Adams Asia director of Human Rights Watch to remark that "laws like these limiting freedom of expression, association, and assembly will make it likely that any future Cambodian election is undemocratic".

These abuses that form the basis for the series of highly repressive actions that the Hun Sen government has been taking must be given the highest priority, or the prospects for democratic reform in Cambodia will be lost for the foreseeable future. These abuses, most

specifically the restrictions on unions and worker rights that are embodied in the recently passed non-governmental organization laws, the proposed union laws, and the recent law providing only a negligible increase in the minimum wage of garment workers to \$140 per month (less than 60 cents an hour, and only \$12 a month more than the current wage), place at serious risk the assurances that President Obama and the U.S. Congress have given that the Trans Pacific Partnership (TPP) trade agreement will not adversely affect workers here in the U.S., hurt U.S. companies, and jeopardize U.S. consumer protections.

Although Cambodia and Laos are not part of the TPP, many foreign companies investing in Cambodia and Laos, especially those from the neighboring TPP country of Vietnam may exploit this lack of worker protection and government corruption to gain an unfair competitive advantage over U.S. and other TPP companies that do not profit from human rights and workers rights abuses. U.S. workers and companies cannot realistically compete on a fair trade basis when Cambodian wages are kept at an artificially low level, when efforts by Cambodian workers to organize and bargain collectively are met with police metal pipes, electric stun guns, 20 year prison sentences and even lethal forces from Cambodian elite military units ^{10,11}. When companies in Cambodia like the state owned Vietnam Rubber Group and HAGL (Hoang Anh Gia Lai), and numerous sugar companies, are given land concessions based on unlawful and uncompensated land evictions, make use of government manpower such as the Vietnamese soldiers, government employees and corps of engineer, the result amounts to government subsidy, that substantially reduce their costs and make fair trade for U.S. companies an impossibility ^{12,13,14,15,16,17}.

Treaties should be negotiated in good faith and are based on precedence. Whether in trade, peace treaties or economic agreements, there has been a consistent history by the Vietnamese government of non-compliance and of circumventing agreements, while giving the appearance of compliance on paper. The government of Vietnam has shown little regards with respect to labor laws, human right laws or environmental concerns when it comes to resources exploitation in Laos, Cambodia and in Vietnam itself ^{12,13,14,15,16}. All three dictators take cues from each other and can pass any law designed to keep themselves in power and suppress dissent and restrict workers' rights, even violating their own constitutions ^{9,18,19}. The effect of the TPP will be even worse than the effects of the EBA on all three countries and will accelerate the land-grabbing from the rural poor, by the same ruling elites as they will now have additional export markets in Asia and America. In Vietnam itself, the first casualties usually are the indigenous populations as their ancestral lands make room for "development projects" that are in reality excuses to eliminate ethnic minorities and their cultures ²⁰.

In a recently published statement in Newsweek, Ms. Olivia Enos from the Davis Institute for National Security and Foreign Policy at The Heritage Foundation stated that "Cambodia's latest actions should remind the international community of the commitments it made in the [1991] Paris Peace Accords which ended the 1978-1991 war in Cambodia. The agreements did not only formalize the end of the war begun by Vietnam's invasion and establish the basis for elections, but parties to the accords also committed to hold Cambodia to liberal ideals. The U.S. must uphold commitments made during the Paris Peace Accord and ensure that it is taking sufficient action to ensure political freedom for the people of Cambodia" ²¹.

The United States government and the Congress have a special responsibility to take action to condemn these violations of human rights and democracy standards, and to support

and protect a more meaningful form of civic participation. There are several steps that the U.S. Congress in particular can and must take to make clear that the U.S. government does not condone Hun Sen's practices and abuses:

1. As the Parliament of the European Union did on November 26th, the Congress should pass a resolution condemning the series of recent anti-democratic actions by the government of Cambodia, and demanding an end to the practice of misusing the judicial and law enforcement systems to intimidate political opponents and critics of the Hun Sen government.
2. Military assistance, training and exchange programs with Cambodia should be suspended as prescribed by the Leahy law, in protest against the use of military personnel, including members of Prime Minister Hun Sen's personal Body Guard Unit, to carry out attacks and assaults on members of the political opposition party and those demonstrating against government policies. It should be noted in this regard that members of Hun Sen's personal Body Guard Unit have been implicated in the recent attacks on members of Parliament Nhay Chamroeun and Kong Sakphea, and that the Federal Bureau of Investigation made similar findings that Hun Sen's personal bodyguards were heavily involved in past attacks on political opponents, including the 1997 grenade attacks against Sam Rainsy and political demonstrators.
3. Numerous provisions have been included in the past in foreign assistance and international organization bills passed by Congress that require withholding of funding if human rights violations continue in Cambodia. These provisions should now be enforced, including the withholding of funding for the World Bank, if they continue their policy of helping to support massive land grabbing and land eviction practices in Cambodia ²². Pressure should be put on the Cambodian government and businesses to adhere to internationally recognized standards such as the Extractive Industries Transparency Initiative (EITI), the UN Guiding Principles on Business and Human Rights (UNGPs) and the Organization for Economic Co-operation and Development (OECD).
4. Travel and financial sanctions should be imposed on high-level officials of Cambodia, particularly those directly implicated in major human rights abuses and violation of democracy standards, including Hun Sen, and his sons Hun Manet (who is head of the country's national security forces) and Hun Many (who is linked to the youth groups responsible for the attacks on Nhay Chamroeun and Kong Sakphea). The sanctions should also apply to companies and their officers and owners found to resort to egregious human rights abuse, land evictions and labor workers abuses so that American consumers do not become unwitting consumers of "blood product", and American jobs are not lost through unfair and unethical business practices from competitors abroad.

One effective way to apply these sanctions to Cambodia would be the passage and prompt implementation of the Global Magnitsky Human Rights Accountability Act to the Cambodian officials and companies responsible for the recent series of violent attacks, arrests and intimidation against leaders of the political opposition party (CNRP), and other actions designed to restrict or eliminate the exercise of human rights and democratic reform activities. Travel restrictions, financial sanctions by the U.S. and the international community against those responsible for extralegal executions, assaults,

torture and other major violations of internationally accepted human rights and democratic process standards would also be consistent with the goals of the Global Magnitsky Act.

5. The U.S. government, working with key government supported election monitoring groups such as the National Democratic Institute (NDI) and the International Republican Institute (IRI), should immediately organize a joint election monitoring team to go to Cambodia to assess and report on actions being taken by the Hun Sen government that threaten democracy and make a free and fair national election in 2018 an impossibility. These actions should be started urgently, well ahead of 2018. Mr. Hun Sen will continue to abuse his powers unless the U.S. government gives unmistakable signs that his illegal actions will no longer be tolerated.
6. The U.S. government should start the process of consulting the signatory countries of the Paris Peace Accord³, as Ms. Enos suggested. The recent series of human rights abuses and efforts to undercut democracy in Cambodia indicate the need for the U.S. Government and the other Paris Peace Accord signatories to form a working group "to evaluate the state of human rights, and political and economic freedom in Cambodia, as well as provide assistance to ensure that Cambodia remains on a path to democracy."

Cambodians abroad and within Cambodia have been urging the United Nations and the U.S. for a re-examination of the Paris Peace Accords now nearly 25 years later. At a time when the principles of democracy and human rights in the Southeast Asia region are being highlighted and supported by the historic positive developments in Burma, it is essential that the United States not stand by when similar opportunities in Cambodia are being harshly suppressed. Cambodia and South East Asia ask for and deserve a better future. We appreciate the opportunity to present these concerns to Congress and look forward to working with you on these issues.

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- TITLE VII, East Asia and the Pacific, Sec.7043. (c) Cambodia-*
- (1) Of the funds appropriated under title III of this Act for assistance for Cambodia, 10 percent shall be withheld from obligation until the Secretary of State submits to the Committees on Appropriations the financial assessment and comparative analysis report on Cambodia required under such heading in Senate Report 113-81.
 - (2) None of the funds appropriated by titles III and IV of this Act may be made available for assistance for the central Government of Cambodia unless the Secretary of State certifies to the Committees on Appropriations that--
 - (A) such government is conducting and implementing, with the concurrence of the political opposition in Cambodia, an independent and credible investigation into irregularities associated with the July 28, 2013 parliamentary elections, and comprehensive reform of the National Election Committee; or
 - (B) all parties that won parliamentary seats in such elections have agreed to join the National Assembly, and the National Assembly is conducting business in accordance with the Cambodian constitution.
 - (3) The requirements of paragraph (2) shall not apply to assistance for global health, food security, humanitarian demining programs, human rights training for the Royal Cambodian Armed Forces, or to enhance maritime security capabilities, except that any such programs shall be subject to the regular notification procedures of the Committees on Appropriations.

- (4) Funds appropriated by this Act for a United States contribution to a Khmer Rouge tribunal should not be made available unless the Secretary of State certifies to the Committees on Appropriations that the Government of Cambodia has provided, or otherwise secured, funding for the national side of such tribunal.
- (5) The Secretary of the Treasury shall direct the United States executive director to the World Bank to report to the Committees on Appropriations not later than 45 days after enactment of this Act and every 90 days thereafter until September 30, 2014, on the steps being taken by the World Bank to provide appropriate redress for the Boeung Kak Lake families who were harmed by the Land Management and Administration Project, as determined by the World Bank Inspection Panel, and as described in Senate Report 113-81: *Provided*, That such report shall also include steps taken by the executive director to postpone reengagement of World Bank programs in Cambodia until the requirements of paragraph (2) are met. <http://thomas.loc.gov>