

# QUESTIONS & ANSWERS

## Crimes against humanity in Cambodia from July 2002 until present

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel,



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Cover photo: Security forces forcibly evicted the Spean Ches community, in Mittapheap District, Sihanoukville, Cambodia (20 April 2007).

On behalf of individual Cambodian victims Richard J Rogers submits a Communication to the Office of the Prosecutor (OTP) of the International Criminal Court (ICC). The Communication is endorsed and supported by FIDH.

The Communication outlines the mass human rights violations allegedly perpetrated against the Cambodian civilian population by senior members of the Royal Government of Cambodia, senior members of State security forces, and government-connected business leaders (the “Ruling Elite”), from July 2002 to present. In furtherance of the twin-objectives of self-enrichment and maintaining power at all costs, the Ruling Elite have committed serious crimes as part of a widespread or systematic attack against the civilian population. When taken cumulatively, these amount to crimes against humanity.

## Does the ICC have jurisdiction to consider this Communication?

Cambodia ratified the ICC Statute on 11 March 2002, giving the ICC jurisdiction over crimes of genocide, crimes against humanity, and war crimes committed since 1 July 2002 in the territory of Cambodia.

The alleged crimes have taken place in Cambodia since July 2002. They have been perpetrated as part of a widespread and systematic attack against the civilian population, pursuant to a state policy.

Therefore, the acts fall under the ICC’s jurisdiction.

## What is the definition of crimes against humanity?

Crimes against humanity are specific acts committed as part of a **widespread or systematic attack** directed against any **civilian population**, with knowledge of the attack, and committed in furtherance of a **state or organisational policy**. The specific acts include (but are not limited to):

- Murder;
- Deportation or forcible transfer of populations;
- Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health;
- Persecution.

Under international law, crimes against humanity can be committed during peacetime; unlike war crimes, there is no requirement that an armed conflict must be taking place. According to ICC case law, violent events “although reaching varying levels of intensity at different location and at different times” may be treated as a single situation and may amount to crimes against humanity, even when committed over a prolonged period, such as from 2002 to 2010.

## Who are the victims?

The victims of the crimes outlined in the Communication may be categorised into two main groups:

- Victims of crimes stemming from land grabbing: This group is made up of poor rural and urban communities. Credible NGOs estimate that 770,000 people have been adversely affected by land grabbing, amounting to 6% of the total Cambodian population. At least 4,000,000 hectares of land have been confiscated, which represents 22% of Cambodia’s land area. Mass forcible population transfers have been accompanied by the destruction of homes and crops, leaving entire communities destitute. Those who resist have been murdered, illegally imprisoned, and / or persecuted. Indigenous minority ethnic groups have suffered disproportionately – it is estimated that about half have already lost land.
- Victims who have been targeted for (legally) challenging the Ruling Elite’s power structure: These includes civil society leaders, monks, journalists, lawyers, environmental activists, trade unionists, civilian protestors, and opposition politicians (“dissidents”). Dissidents have been murdered, imprisoned on trumped-up charges, or persecuted because of their political beliefs or resistance.



*Boeung Kak Lake  
children sing in front of  
the Ministry of Justice  
for the release of their  
parents who have been  
jailed following a land  
dispute, Phnom Penh  
(31 may 2012)  
credit LICADHO.*



## **How do the crimes stemming from land grabbing qualify as crimes against humanity?**

Firstly, the Communication alleges that, in furtherance of the Ruling Elite's objective of self-enrichment through land grabbing, several prohibited acts have been committed which are explicitly listed in the ICC's Rome Statute. These so-called underlying acts include: Forcible transfer of population, murder, illegal imprisonment, other inhuman acts, and persecution.

Secondly, the Communication alleges that the above underlying acts were committed as part of an attack on the civilian population. This attack was widespread or systematic in nature and was committed pursuant to a policy of the Cambodian State. Therefore, all the legal elements of crime against humanity are satisfied.

More specifically, the existence of an 'attack' is demonstrated by the multiple commission of the underlying crimes, week after week, month after month, since July 2002. All the victims targeted were civilians. The widespread nature of the attack is demonstrated by the huge number of victims – a significant proportion of the 770,000 people adversely affected by land grabbing have already become victims of one or more of the underlying crimes. The most prevalent crime is forcible transfer. NGOs estimate that, between years 2000 and 2013, 145,000 people were evicted (forcible transferred) from the capital, Phnom Penh, alone. The attack was also systematic, as the crimes were perpetrated as part of an organised course of conduct.

## **What are typical examples of forcible transfer?**

According to Article 7(2)(d) of the ICC Statute, forcible transfer of population means "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present without grounds permitted under international law". By carrying out illegal forced evictions on a massive scale - as part of an attack on the civilian population - the Ruling Elite and their subordinates have committed the crime against humanity of forcible transfer.

### ***Dey Krahorm Eviction – 24 January 2009:***

A clear example of forcible transfer is the Dey Krahorm eviction in Phnom Penh. Approximately 800 families had been living peacefully for many years at Dey Krahorm, in central Phnom Penh. In or around 2005, a company with close links to the Government was granted rights to develop the site where the families lived. NGOs describe how the company and local authorities “waged a concerted battle to persuade the community – family by family, house by house – to give up their land [with] threats and physical violence, repeated acts of provocation and the filing of unjustified criminal complaints...” Around half the families were displaced under these coercive circumstances.

On 24 January 2009, approximately 500 demolition workers escorted by 300 police in full riot gear surrounded the community and forcibly evicted the remaining 400 families. Police were armed with guns, electric and steel batons, wooden sticks, tear gas, and water cannons. Members of the community erected barricades and stood defiantly. Police broke through the villagers’ lines and dispersed them with tear gas, water cannons, and rubber bullets. Within hours, the demolition workers completely destroyed the remaining houses and personal belongings. The families were forcibly transferred from the area. At least 18 people were injured, five seriously. A community social worker and victim described the scene:

“I saw the rubber bullets and the shields and the sticks. My sons were crying. I never thought this forced eviction would happen. I never believed that they would send in the armed forces to destroy community property. But at the end it happened differently. When I saw the eviction it really was worse than Pol Pot. During the Khmer Rouge people were evacuated from Phnom Penh, but they did not destroy the houses and give all the land to an individual.”

### ***Indigenous minority communities***

Indigenous minority people have suffered disproportionately from the crime of forcible transfer. Despite making up less than 1.5% of the population, they are 10 times more likely to fall victim to land grabbing than the Cambodian majority. Forty percent of all land concessions have been granted in Northeastern provinces, where most of Cambodia's indigenous minority people reside.

Those who fight against the land grabbing and its related crimes are ruthlessly suppressed or persecuted, sometimes through the corrupt legal system. Human rights defenders have faced harassment, threats, and imprisonment on false charges. According to NGOs, in 2012 alone, 232 rights workers and activists were arbitrarily arrested in relation to land and housing issues.

### **Has the ICC already dealt with crimes stemming from land grabbing?**

The ICC has not dealt with a case in which the bulk of the allegations relate to crimes flowing from land grabbing during peacetime. However, the ICC has addressed the crimes of deportation and forcible transfer during its investigations into the situations in Darfur (Sudan), the Democratic Republic of the Congo, and Kenya.

In the situation of Kenya, President Uhuru Kenyatta, Vice-President William Ruto, and ethnic leader Joseph Sang were charged with forcible transfer of populations. The prosecution case against William Ruto has involved an element of land grabbing related to Ruto's confiscation of a 100-acre farmland during the 2007 post-election violence.

In an era where land-related human rights violations have reached shocking levels, where millions of poor people around the world have been violently dispossessed of their land and homes, this Communication provides the OTP with a rare opportunity to confirm the crucial role of international criminal law in protecting peacetime populations from mass forcible transfer.

### **Who are the alleged perpetrators?**

Due to the huge number and variety of crimes outlined in the Communication, Richard J Rogers defers to the discretion of the OTP to determine the individual perpetrators who should be investigated. He does not ask the OTP to investigate any particular individual.

However, it is apparent that the most prevalent crime – forcible transfer – was implemented by one or a combination of the National Police, Royal Gendarmerie, and the Royal Cambodian Armed Forces. To assist the OTP focus its efforts, the Communication recommends that it examines the role of the specific police or military units directly involved in the perpetration of the forcible transfers. The ultimate military and civilian commanders exercising effective control over these units should be investigated.



*Boeung Kak lake residents peacefully gathered in front of the Phnom Penh court to show support for six of community representatives who were summoned by the court (18 October 2011).*

## **What are the next steps for the ICC Prosecutor following this submission?**

For the ICC to open an official investigation it must be satisfied that there is a “reasonable basis to believe” that crimes against humanity may have been committed. At this stage the Communication need not “prove” the commission of crimes against humanity.

The Prosecutor has an obligation to examine the information received. This takes the form of a preliminary examination, which can lead to the opening of an official investigation, if the Prosecutor is authorised by the Pre Trial Chamber.

During the preliminary examination stage, the OTP evaluates if the admissibility criteria (complementarity and gravity) have been met.

Under the complementarity principle the OTP must assess whether there have been any relevant and genuine national criminal investigations or proceedings relating to the crimes alleged in the Communication. In Cambodia, there have been no such cases. It is also clear that the Cambodian Government is not willing to take the alleged crimes



seriously: After learning of the investigation leading to this Communication, Cambodian Foreign Minister Hor Namhong stated: “The Investigation is like a balloon: when there is wind, it flies, but when there is no wind, it will drop down anywhere, even if it is a dirty place.” Similarly, Council of Ministers Spokesman Phay Siphon declared: “We are not interested in this at all. They can do whatever they want, but we don’t care. We are not interested.”

The OTP is required to assess the gravity of the alleged crimes. This involves an evaluation of their scale, nature, and manner of commission as well as their impact on victims and affected communities. In terms of scale, it is estimated that 6% of Cambodia’s population - 770,000 people - have been affected by land grabbing since year 2000. A significant proportion of these have already become victims of crimes listed under the ICC Statute. Few situations can claim such a massive number of victims, either as an absolute number or a percentage of population. To give a sense of scale, if this magnitude (as a percentage of population) had been adversely affected in the USA, it would amount to the entire populations of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, Montana, Wyoming, Idaho, and Hawaii added together. Tolerating this scale of human rights violations against middle-class/educated communities anywhere in the world would be unthinkable; poor Cambodians deserve no less protection.

In addition to the forcible transfer, the Ruling Elite have perpetuated murder, illegal detention, other inhumane acts and persecution as part of their twin objectives of self-enrichment and maintaining power at all costs. These crimes have been committed consistently since the ICC Statute came into force in July 2002. When considered cumulatively, these crimes meet the gravity threshold.

### **What impact could an OTP preliminary examination have?**

The threat of a preliminary examination leading to the opening of an investigation would have a significant deterrent effect on the commission of further such crimes in Cambodia. It may force the Cambodian Government to re-consider its approach to land grabbing and suppression of dissidents.

The ICC’s engagement could spur genuine national judicial proceedings, since the ICC’s jurisdiction is complementary (not superior) to national courts.

## More information on land grabbing

The rush for control over land by governments and companies to implement large-scale investment, infrastructure, and development projects is a well-documented global trend. According to Land Matrix, a database maintained by a global alliance of civil society and intergovernmental organisations, land deals covering an area of 200 hectares or more worldwide since the year 2000 amount to a total of more than 37 million hectares. This represents a surface slightly larger than the size of Germany. Deals under negotiation amount to a further 15 million hectares, roughly the size of Greece and Albania combined.

In many countries characterized by a weak legal framework, poor governance, and the lack of an effective and independent justice system, land deals are responsible for massive human rights violations as well as increasing conflicts and disputes. Land grabbing, forced evictions and forcible transfer of populations, loss of livelihood, and environmental degradation are the most common abuses associated with land deals.

## Who are Richard J Rogers and FIDH?

Richard J Rogers is an international lawyer and Partner at Global Diligence LLP, an international legal advisory firm doing public interest work. Richard specialises in international human rights and international criminal law and represents clients across Europe, Africa, and Asia. He is qualified in California, USA, as well as in England and Wales. He has previously held senior positions in the United Nations and the Organisation for Security and Cooperation in Europe, including Principal Defender at the Extraordinary Chambers in the Courts of Cambodia, and head of legal support in the Appeals Chamber at the UN International Criminal Tribunal for Yugoslavia.

FIDH is an international NGO defending all civil, political, economic, social and cultural rights set out in the Universal Declaration of Human Rights. It is a movement of 178 member organisations present in more than 100 countries. FIDH is the only international human rights organisation with a general mandate, regularly involved in providing judicial support for victims of international crimes. FIDH has acquired unique experience in fighting impunity before national, regional and international tribunals, including the ICC through its permanent representative at the ICC in The Hague.

### Establishing the facts

#### Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

### Supporting civil society

#### Training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

### Mobilising the international community

#### Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

### Informing and reporting

#### Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.



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**FIDH**  
**represents 178**  
**human rights organisations**  
**on 5 continents**



inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest, detention or exile. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty

## ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

### **A broad mandate**

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

### **A universal movement**

FIDH was established in 1922, and today unites 178 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

### **An independent organisation**

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

**fidh**

Find information concerning FIDH's 178 member organisations on **[www.fidh.org](http://www.fidh.org)**