



**Communication Under Article 15 of the
Rome Statute of the International Criminal Court**

**The Commission of Crimes Against Humanity in
Cambodia**

July 2002 to Present

I. EXECUTIVE SUMMARY

“The government talks about poverty reduction, but what they are really trying to do is to get rid of the poor. They destroy us by taking our forested land, 70% of the population has to disappear, so that 30% can live on. Under Pol Pot we died quickly, but we kept our forests. Under the democratic system it is a slow, protracted death. There will be violence, because we do not want to die.” (A Cambodian victim)

A. INTRODUCTION

1. This Article 15 Communication notifies the Office of the Prosecutor (“OTP”) of the International Criminal Court (“ICC”) of the crimes against humanity committed through the Cambodian State apparatus against Cambodian civilians. A group of individual and independent Cambodian victims (“Filing Victims”) has instructed international lawyer, Richard J Rogers (partner in Global Diligence LLP), to file this Communication before the ICC.
2. The Communication is based on evidence of mass human rights violations collected for well over a decade by multiple independent sources, including United Nations (“UN”) human rights offices, UN Special Rapporteurs, international human rights organisations, Cambodian Non-Governmental Organisations (“NGOs”), and media. The International Federation for Human Rights (FIDH) fully endorses and supports the Communication.
3. The Communication outlines the mass human rights violations perpetrated against the Cambodian civilian population by senior members of the Royal Government of Cambodia (“RGC”), senior members of State

security forces, and government-connected business leaders (hereinafter collectively referred to as the “**Ruling Elite**”), from July 2002 to present.

4. The cumulative effect of these violations has pushed this situation beyond the boundaries of human rights abuses and domestic crimes. In furtherance of its twin-objectives of self-enrichment and maintaining power at all costs, the Ruling Elite have committed serious crimes as part of a widespread and systematic attack against the Cambodian civilian population, pursuant to a State policy. The crimes fulfil all the legal elements of crimes against humanity.

B. FACTUAL BACKGROUND

5. After seizing power in the 1980s, the Ruling Elite have sought to construct a kleptocratic system subjugating the apparatus of a nominally democratic State through patronage and violence for the twin objectives of self-enrichment and maintaining power at all costs. It has succeeded in gaining effective control over all the vital national and regional state institutions, the civil service, State security forces, as well as components of the judiciary and the media – a system sometimes referred to as a ‘Shadow State.’¹ To implement its objectives, the Ruling Elite has committed international crimes.

¹ ‘Shadow State’ is a term used to describe a style of government which involves the use of informal networks to accumulate personal wealth and exercise power, deliberate undermining of formal institutions of government and a highly personalised style of rule that makes no reference to the law: see William Reno, “*Clandestine Economies, Violence and States in Africa*”, *Journal of International Affairs*, Vol. 53, 2000; The Shadow State in Cambodia is described below in paras 48 – 52

1. Self-enrichment

6. The Ruling Elite's primary source of self-enrichment stems from land grabbing, which has been perpetrated on a truly massive scale.² The crimes flowing from land grabbing form the backbone of this Communication. Capitalising on widespread tenure insecurity resulting from decades of civil war, the Ruling Elite have illegally seized and re-allocated millions of hectares of valuable land from poor Cambodians for exploitation or speculation by its members and foreign investors. Rubber-stamped by the corrupt judiciary and civil service, and enforced by armed State security forces, the Ruling Elite have forcibly transferred³ hundreds of thousands of poor Cambodians from their homes and/or ancestral land. Those who resist evictions have faced brutal violence, trumped-up criminal charges and other forms of persecution.

7. In the absence of official statistics precise figures are difficult to ascertain. However, credible NGOs estimate that 770,000 people have been adversely affected by land grabbing since the year 2000.⁴ This figure amounts to 6% of the total population of Cambodia. A significant proportion of the 770,000 people have already been illegally and forcibly transferred and left in squalid conditions. In Phnom Penh alone, over 145,000 people (10% of the capital city's population) have been forcibly displaced. Today, thousands more face the imminent threat of eviction

² Land grabbing was defined in the International Land Coalition's Tirana Declaration as: "Acquisitions or concessions that are: in violation of human rights, particularly the equal rights of women; (ii) not based on free, prior and informed consent of the affected land-users; (iii) not based on a thorough assessment, or are in disregard of social, economic and environmental impacts, including the way they are gendered; (iv) not based on transparent contracts that specify clear and binding commitments about activities, employment and benefits sharing, and; (v) not based on effective democratic planning, independent oversight and meaningful participation" - available at: <http://www.landcoalition.org/fr/node/1109> (last accessed: 8/08/2014).

³ The terms 'forced evictions', 'forced displacements', 'forced removals', and 'forced expulsions' have been used interchangeably in this Communication to describe the factual underpinnings of the crime of forcible transfer.

⁴ Whilst the temporal jurisdiction of the ICC starts in July 2002, these NGO figures have been calculated from the year 2000 to present.

throughout Cambodia - in the first three months of 2014 an estimated 20,000 Cambodians became new victims of land grabbing conflicts.

8. Land grabbing and associated deforestation has disproportionately affected the indigenous minority population. Of the estimated 190,000 minorities, more than half may have already been forcibly excluded from communal and ancestral land. Due to their particular dependence on and cultural attachment to land, the land grabbing has devastated their livelihood and threatened their ethnic identity.

2. Maintaining power at all costs

9. Pursuant to a separate but inter-related objective, the Ruling Elite have relied on the (Shadow) State apparatus to maintain power at all costs. The State's legal and security systems have been used to quell resistance, often violently, in order to promote the private and personal interests of the Ruling Elite. These attacks were not limited to Cambodians who challenged the land grabbing, but targeted more broadly those who were seen as a threat to the Ruling Elite's power. Victims included civil society leaders, monks, journalists, lawyers, environmental activists, trade unionists, civilian protestors, and opposition politicians (hereinafter the "dissidents").
10. Dissidents have been assassinated, murdered, beaten-up, subjected to trumped-up charges and illegal detention, and persecuted due their opposition to the Ruling Elite. Initially resorting to tactics such as grenade attacks and drive-by shootings, it is estimated that the Ruling Elite has orchestrated over 300 politically motivated murders since the 1990s. In recent years the Ruling Elite have relied heavily on a corrupt judiciary to crush dissent.

C. CRIMES AGAINST HUMANITY

11. There is a reasonable basis to believe that members of the Ruling Elite have committed, aided and abetted, ordered and/or incited the crimes of forcible transfer, murder, illegal imprisonment, other inhumane acts, and persecution, since Cambodia signed the Rome Statute in July 2002. These crimes form part of a widespread and systematic attack against the civilian population, pursuant to a State policy, and amount to crimes against humanity.

1. Underlying Crimes Committed Pursuant to the Objective of Self-Enrichment

12. In furtherance of its objective of self-enrichment, the Ruling Elite have committed forcible transfer, murder, illegal imprisonment, other inhumane acts, and persecution.

13. *Forcible transfer*: Of the 770,000 persons affected by land grabbing, a significant proportion has been forcibly transferred from an area where they were lawfully present, without legal justification. The force used has ranged from coercion (such as threats and intimidation) to brutal or deadly violence. Entire villages have been burned to the ground and possessions stolen or destroyed. The evictions have been perpetrated by armed police, gendarmes, the Royal Cambodian Armed Forces, as well as by private security forces with the support of the State apparatus.

14. *Murder, illegal imprisonment, other inhumane acts*: Those who challenged the land grabbing and/or resisted the evictions - whether community activists or villagers defending their homes - have been murdered and illegally detained before, during, or after the evictions. Once displaced, many evictees have been forced to live in squalid conditions and have suffered from food insecurity and life-threatening illnesses as the authorities omit

to provide adequate housing, healthcare, or sanitation, in full awareness of the consequences. In the most serious cases, this further harm amounts to the crime of 'other inhumane acts.'

15. *Persecution*: The crimes and other intentional deprivations of human rights perpetrated against those who challenge or resist evictions constitute the underlying crime of persecution on political grounds. Members of Cambodia's indigenous minority population have been targeted as part of a persecution on ethnic grounds.

2. Underlying Crimes Committed Pursuant to the Objective of Maintaining Power

16. In furtherance of its objective of maintaining power at all costs, the Ruling Elite have committed murder, illegal imprisonment, and persecution.

17. Those who criticised or protested against the Ruling Elite's power, patronage network, corrupt governance and policies have been targeted for their political opposition. Peaceful demonstrators have been shot and killed in the streets or dragged away and unlawfully detained in pre-trial detention and/or convicted as a result of unfair trials. Dissidents have been brutally murdered by professional assassins or condemned to linger in jails on spurious charges. Alongside other serious deprivations of fundamental rights, this targeting amounts to persecution on political grounds.

3. A Widespread and Systematic Attack Against the Civilian Population

18. The above underlying crimes were committed as part of a widespread and systematic attack against the civilian population, pursuant to a State policy.

The existence of an attack is evidenced by the multiple commission of the crimes, month after month, for over a decade.

19. The tables on pages 52 – 67 list representative examples of the underlying crimes committed in furtherance of self-enrichment. They detail 72 events of forcible transfer (or attempt) often involving thousands of Cambodian families; ten examples where single or multiple murders accompanied the evictions; and 28 examples where those who resisted were falsely charged and/or illegally detained. The tables are non-exhaustive.

20. The tables on pages 71 – 74 list representative examples of the underlying crimes committed in furtherance of maintaining power. They detail 19 cases of single or multiple murders (or attempts), and 13 examples where one or more dissidents were illegally imprisoned. The tables are non-exhaustive.⁵

21. The victims of these crimes have all been civilians; the attack has targeted the civilian population. The massive number of victims and the geographical reach of the crimes evidence the widespread element of the attack. The organised nature and recurring pattern of criminal conduct demonstrate that the attack was also systematic. These crimes cannot be qualified as isolated or spontaneous acts of violence. Rather, they are part of an identifiable pattern of perpetration, implemented through the Cambodian State apparatus, directed by and for the benefit of the Ruling Elite. The attack was committed pursuant to a State policy.

⁵ Annex B, C and D provide greater detail with respect to selected cases of forcible transfer, murder and illegal imprisonment.

D. PERPETRATORS

22. Our investigation has uncovered a well-organised and recurring pattern of perpetration, which relies on the complicity between the RGC, State Security Forces, local authorities, private businesses, and judiciary.
23. We recommend an investigation into the role of Security Forces as direct perpetrators of the underlying crimes. The commanding officers of the specific police or military units directly involved in the perpetration of these crimes, as well as the military and civilian commanders exercising effective control, should be investigated.
24. In addition, civilians who planned, instigated, ordered, committed or otherwise aided and abetted the crimes should be investigated.

E. ADMISSIBILITY

25. *Complementarity*: On information and belief, there are no known genuine domestic proceedings in which those most responsible for the crimes alleged in this Communication have been, or are being, investigated or prosecuted. This is apparent both for the overall attack on the civilian population and the individual underlying crimes comprising the attack.
26. Cambodian domestic courts are tainted by corruption and manipulated by power interests. Police and courts are used by the Ruling Elite as important tools to facilitate the crimes associated with its twin objectives of self-enrichment and maintaining power. Any domestic proceedings conducted into facts relating to the alleged crimes have either been ineffective or constituted a deliberate attempt to cover-up the responsibility of those most responsible. There are reasonable grounds to

believe that the Ruling Elite have no intention of initiating proceedings to bring justice for the victims of the crimes in this Communication.

27. *Gravity*: When considered cumulatively, the crimes of the Ruling Elite reach the level of crimes against humanity and justifies engagement by the ICC: The victims were targeted *because* they were the most vulnerable in society; the number of direct and indirect victims has been enormous; the crimes were both widespread and systematic; the resultant suffering has affected entire communities throughout the country; and the crimes were perpetrated by the very actors, and using the very institutions and laws, that were meant to serve the public interest. This relentless, omnipresent, State-sponsored criminality reaches the level of gravity contemplated by the ICC Statute.⁶

28. *Interests of Justice*: There are no exceptional circumstances that should dissuade the OTP from opening a preliminary examination into the events described in this Communication. On the contrary, the possible consequences of failing to act provide additional and compelling reasons to initiate action in the ICC: Firstly, hundreds of thousands more Cambodians will likely fall victim to the land grabbing unless something is done to stop it. Secondly, Cambodia may descend into larger-scale violence, as societal stability is progressively undermined by the crimes and their consequences.

F. REQUEST

29. We respectfully request the OTP to consider the Communication according to its obligations under Article 15 of the ICC Statute with a view to initiating an investigation pursuant to Article 53 of the ICC Statute, on the basis that:

⁶ See Article 17(1)(d) of the ICC Statute.

- a. There is a reasonable basis to believe that a crime within the jurisdiction of the Court has been committed;
- b. The case is admissible under Article 17 of the ICC Statute; and
- c. Taking into account the gravity of the crime and the interests of victims, there are no substantial reasons to believe that an investigation would not serve the interests of justice.

