



Megha Bahree (<http://www.forbes.com/sites/meghabahree/>) Contributor
I write about business and development in India and its neighborhood.

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Cambodians Say Land Grabs Have Led To Crime Against Humanity; Want The ICC To Investigate

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A few Cambodian citizens are filing a complaint today (<http://www.ft.com/intl/cms/s/o/d88613bc-4d66-11e4-bf60-00144feab7de.html?siteedition=intl#axzz3FQKUoUCi>) at the Hague against a group of politicians, security chiefs and business tycoons, alleging that a systematic and sustained land grab by them amounts to a crime against humanity that needs to be tried at the International (<http://www.forbes.com/international/>) Criminal Court.

The allegation, which is called a Communication in ICC parlance, needs to go through a few steps before it can be considered a claim that will be investigated by the ICC.

The complaint, which is being filed on behalf of the Cambodians by Richard Rogers, an international lawyer and partner at Global Diligence LLP, outlines the alleged mass human rights violations 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, who are referred to in the complaint as the “Ruling Elite”, from July 2002 to present. Rogers has compiled data collected over the years by various local non profit organizations as well as United Nations human rights offices, UN Special Rapporteurs, and international human rights organizations.

According to the complaint, the ruling elite, who came into power in the 1980s after the defeat of the Khmer Rouge, allegedly have had a twin objective to date—of self-enrichment and of maintaining power at all costs. As a result, they allegedly “have committed serious crimes as part of a widespread and systematic attack against the Cambodian civilian population, pursuant to a State policy. The crimes fulfill all the legal elements of crimes against humanity.”

The complaint accuses the ruling elite of creating “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.’”

Rogers said he decided to compile the information and file this complaint when he saw news reports earlier this year in January when the army fired on unarmed demonstrators demanding a hike in minimum wage, killing five and injuring 38. (I detail some of that violence and dispute in a story I did for Forbes Asia last month.)

(<http://www.forbes.com/sites/meghabahree/2014/08/27/cambodias-garment-sector-is-getting-torn-between-poor-labor-and-unyielding-foreign-owners/>)

The complaint says that the ruling elite have enriched themselves primarily through land grabbing on a massive scale. (I detail some of that in a story for Forbes Asia this month

(<http://www.forbes.com/sites/meghabahree/2014/09/24/who-you-know-inc-in-cambodia-a-close-friendship-with-the-pm-leads-to-vast-wealth-for-one-power-couple/>.)

“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 transferred 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,” the complaint says.

The complaint cites estimates by NGOs that roughly 770,000 people, or 6% of the Cambodian population, have been adversely affected by land grabbing since the year 2000. In Phnom Penh alone, over 145,000 people, or 10% of the capital’s population, have been forcibly displaced, it says. In the first three months of 2014 an estimated 20,000 Cambodians became new victims of land grabbing conflicts, the complaint says.

The ruling elite used a slew of tactics ranging from threats and intimidation to brutal or deadly violence including burning villages to transfer a significant proportion of the 770,000 affected by the land grabs, the complaint alleges. “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.”

Dissidents, including civil society leaders, monks, journalists, trade unionists, environmental activists and opposition politicians, have been assassinated, murdered, beaten-up, subjected to trumped-up charges and illegal detention, and persecuted, Rogers alleges.

“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,” the complaint says.

The complaint also details the history of the alleged shadow state.

In 1977, Khmer Rouge battalion commander Hun Sen defected to Vietnam, it says. He returned the following year, alongside other defectors at the vanguard of a Vietnamese force that drove the Khmer Rouge out of Phnom Penh. Under the Vietnamese occupation, he was first appointed as Foreign Minister, then in 1985 as Prime Minister, a post he has held ever since. In practice, both the composition and the internal structure of the party remains the same to this day, the complaint alleges, and the ruling Cambodian Peoples Party has retained the network of provincial apparatchiks set up under its earlier avatar, ensuring full control of the resource-rich provinces.

According to Transparency International’s 2014 report:

“Whilst the governance system has been rebuilt on the principles of democracy, as enshrined in the Constitution...the foundations upon which the institutions depend have fostered a hierarchical system of political patronage in which corruption is commonplace. The lack of social security in the post-Khmer Rouge system may have contributed to a reliance on such patron-client relations for survival and protection. Today these patronage systems run both vertically and horizontally across government ministries.” (I highlight some of that system of political patronage in my story for Forbes Asia (<http://www.forbes.com/sites/meghabahree/2014/09/24/gateway-to-cambodia-the-mysterious-couple-who-bring-investments-in-to-cambodia/>).)

This system maintains interdependence between superiors who require loyalty and kickbacks, and subordinates who have a vested interest in the survival and power of their patrons, Rogers says. “Ultimately, this cohesion enables the Ruling Elite to commit crimes on a massive scale with absolute impunity.”

For the ICC to open an investigation on the claims made in the communication, the latter will have to meet a so-called test of gravity. The complaint lays out why it does meet that test: “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.”

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