

# RESTRICTIONS ON THE LEGAL PROFESSION BY THE BAR ASSOCIATION: A THREAT TO FREE & INDEPENDENT LEGAL AID IN CAMBODIA

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**LICADHO**

CAMBODIAN LEAGUE FOR THE PROMOTION  
AND DEFENCE OF HUMAN RIGHTS

## Introduction

The independence of the legal profession faces a serious threat due to attempts by the Bar Association of the Kingdom of Cambodia to limit the freedom of Cambodian lawyers to work for non-government organizations (NGOs). At stake is the future of legal aid services in the country, and whether NGOs are free to employ lawyers to represent Cambodia's poorest and most vulnerable citizens in court cases.

Over past months, the Bar Association ("the Bar") has taken a position that lawyers cannot work as employees of an NGO unless that NGO has signed a memorandum of understanding (MOU) with the Bar.

The Bar's assertions have no basis in Cambodia law, which does not require any such MOUs.

The potential implications for justice and rule of law in Cambodia are grave. NGOs provide the bulk of legal aid services in the country, and in particular it is NGO lawyers who represent victims of human rights abuses – such as land grabbing committed by the rich and powerful – who would otherwise have difficulty obtaining legal representation.

The role of lawyers, in the context of an extremely weak judiciary plagued by corruption and government control, is critical. Lawyers are one of the few potential forces for change within the system, able on a case-by-case basis to serve as watchdogs of their clients' rights, demand that the law be followed, and expose injustices and judicial improprieties. It is primarily lawyers employed by NGOs who are fulfilling this role, particularly on behalf of victims of abuses committed by influential persons. Given the endemic impunity in Cambodia, lawyers should be encouraged – not deterred – to do this even more strongly.

The Bar is closely aligned to the government and ruling party, and its efforts to place restrictions on NGO lawyers must be seen in this light. If successful, the Bar will effectively gain control over which NGOs are permitted to employ lawyers, and potentially be able to influence what types of cases those lawyers accept. The dangers – including that NGOs will be less able or willing to file lawsuits on behalf of victims against powerful persons such as government officials – are obvious.

It is unlikely to be coincidence that the Bar's move against NGO lawyers came shortly after lawyers employed by NGOs filed a well-publicized lawsuit, in relation to alleged land-grabbing, against a relative of a senior government official.

## The Position of the Bar

Since mid-2007, the Bar has adopted the position that NGOs must sign MOUs with it in order to be able to legally employ lawyers. Bar Secretary-General Ly Tayseng stated publicly that the Community Legal Education Center (CLEC) – an NGO which provides legal services to communities under threat of eviction – was in violation of the *Law on the Bar* for not having any such agreement. He also stated that two other NGOs – Legal Aid of Cambodia (LAC) and the Cambodian Defenders Project (CDP), which are the largest providers of legal aid in the country – could be in violation of the law as well.<sup>1</sup>

In May 2007, 12 new lawyers participating in a Law Fellows Program supported by the United States Agency for International Development (USAID)'s Program on Rights and Justice were forced to resign. The program, launched in 2005, placed trainee lawyers into internships at human rights and other NGOs for a period of one year. This served to fulfill a component of training required for admission to the Bar as per Article 35 of the *Law on the Bar*. The previous year's program participants completed their internships and were admitted to the Bar without incident, and no changes in the law concerning legal training nor in the program were made between 2005 and May 2007. However, threats from Bar President Ky Tech to refuse to admit the trainee lawyers to the Bar if they continued to participate in the program resulted in their resignation. The lawyers were also forced to submit written statements to the Bar confirming that they would not work with the program and NGOs in the future. At a meeting with USAID around this time, Ly Tayseng indicated that all human rights NGOs employing lawyers must sign a special agreement with the Bar or their lawyers will be sanctioned.

The Bar's claims are arbitrary and in bad faith. They have no legal basis in the *Law on the Bar*, the *Internal Regulations of the Bar*, or in the *Code of Ethics for Lawyers Licensed with the Bar*. No article of these laws and regulations requires an MOU or other special agreement between NGOs and the Bar.

Requiring an NGO to sign an MOU with the Bar would weaken the independence of the legal profession: it would give the Bar considerable influence over the terms and conditions of employment of lawyers working as NGO staff. It may enable the Bar to influence, openly or subtly, the types of cases NGO lawyers can accept. Most dangerously, the Bar would be in a position to block certain NGOs from employing lawyers at all - by refusing to sign MOUs with them or insisting on restrictive clauses in MOUs.

Such ramifications are likely, given the Bar's close ties with the government and the ruling Cambodian People's Party (CPP). In 2004, Prime Minister Hun Sen and three senior CPP-affiliated government officials were granted bar association membership even though they lacked legal credentials. Soon after, the government donated a building to the Bar, and the Prime Minister announced he had contributed his own money toward the building's repair.

The Bar's stance is symptomatic of a legal system compromised by the Cambodian government's interest in controlling the judiciary and undermining the development of rule of law. It is widely acknowledged that the nation's judges and prosecutors are subject to executive interference in their decisions, and it is in the government's interest to also seek control or influence over the nation's lawyers. NGO lawyers, who are virtually the only

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<sup>1</sup> Erika Kinetz and Yun Samean, "Bar Questions Aid Lawyers' Legal Standing," *The Cambodia Daily*, June 25, 2007.

lawyers willing to represent poor and vulnerable people abused and exploited by members of Cambodia's political and business elite, are an obvious target.

The timing of the Bar's move against NGO lawyers is revealing. It occurred after lawyers from two NGOs, CLEC and LAC, filed a lawsuit in early 2007 on behalf of indigenous villagers in Ratanakiri province engaged in a land dispute with Keat Kolney, the sister of a government senior minister and wife of a secretary of state. The case attracted considerable publicity and focused attention on the land dealings of people with political connections. On June 19, Keat Kolney filed a complaint with the Bar against seven CLEC lawyers and three LAC lawyers, accusing them - without evidence - of "inciting" the villagers to file the lawsuit against her. Within days, the Bar publicly declared that NGOs must have MOUs in order to employ lawyers - and singled out CLEC as being in violation of this.

The Bar's actions have already had a chilling effect on NGO lawyers; a number of them have chosen to resign from their positions at NGOs to work in private practice instead.

## Conclusion

There is no legal requirement under Cambodian law for NGOs employing lawyers to have MOUs with the Bar. As such, the Bar is acting arbitrarily and – given its political ties – its motives for doing so must be questioned.

The ramifications of a politicized Bar imposing unjustified restrictions on NGOs' employment of staff lawyers, in order to curb their public-interest activities, are serious. It will seriously undermine the provision of high-quality legal representation to Cambodia's most vulnerable people – including victims of land grabs; people who are tortured or otherwise abused by police or military personnel; human rights defenders who face unjustified criminal charges; and victims of trafficking and domestic violence. NGO lawyers take cases which most other lawyers will not touch, and they represent people who cannot afford to pay for legal representation. In a country with a fragile rule of law such as Cambodia, attempts to control the work of lawyers in the NGO sector will only weaken rule of law.

According to international principles, bar associations – at least in countries with rule of law – are intended to be nonpartisan organizations that promote and protect the independence of the lawyers from outside interference, especially government interference. In Cambodia, the Bar could and should be in the vanguard of preserving the independence of lawyers and contributing to the building of rule of law. Sadly, in the context of Cambodia's feeble and dysfunctional justice system, the Bar has shown itself to be part of the problem, not the solution.