

Document

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## **I. INTRODUCTION**

United Nations General Assembly resolutions leading to system-wide human rights institutional reform have brought about major opportunities for the implementation of human rights in all UN Member States. One of the most important of these developments is the institution of the Universal Periodic Review (UPR) mechanism. On 18 June 2007, the 5th Human Rights Council adopted unanimously a text on setting out the modalities of the Universal Periodic Review, taking Office of the High Commissioner for Human Rights (OHCHR) with the preparation for Council two 10-page texts on each country coming under UPR assessment. The first of these documents is to summarize material included in the reports of treaty bodies and special procedures regarding the country concerned. The second document summarizes “additional credible and reliable information” coming to the attention of the OHCHR.

The endorsing organisations herewith offer the present submission with the aims of (i) assisting the work of the OHCHR in providing the Human Rights Council with high quality reporting in these areas; as well as (ii) facilitating civil society input into this important procedure. It is our hope that the material provided herein can provide a sound basis for engagement with the authorities of the country at issue.

The present submission concerns implementation of the right to adequate housing in Cambodia. It focuses on:

- Legislative Framework on Security of Tenure and Forced Evictions;
- Absence of Secure Tenure;
- Forced Evictions; and
- Forced Evictions, Housing Rights Defenders and the Courts.

It makes recommendations as to policy reforms in these areas.

The submission is endorsed by the following organisations:

Bridges Across Borders South East Asia (BABSEA);  
Centre on Housing Rights and Evictions (COHRE);  
; [insert other organisations].

The submission is based on the parallel report to the Committee on Economic, Social and Cultural Rights (CESCR) produced by land and housing rights organisations in Cambodia. Although it relates most directly to the right to adequate housing under Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the issues set out below also relate to rights under other human rights treaties ratified by the Kingdom of Cambodia, including the International Covenant on Civil and Political Rights (ICCPR), and the treaties on women’s, children’s and indigenous people’s rights. The full land and housing parallel report is annexed to this document (Annex I).

## **II. LEGISLATIVE FRAMEWORK ON SECURITY OF TENURE AND FORCED EVICTIONS**

Article 31 of the Constitution of the Kingdom of Cambodia (1993) incorporates into Cambodian domestic law rights under human rights treaties, including the right to adequate housing. Article 44 of the Constitution and Article 5 of the Land Law (2001) provide legislative protections against the arbitrary expropriation of property, which can only occur in the public interest with prior provision of fair and just compensation. In recognition of the absence of widespread land registration and titling in Cambodia, the Land Law recognises possession rights for possession commencing before 2001, which can be converted into full ownership rights through the

issuance of title.<sup>1</sup> The Land Law also recognises collective ownership rights of indigenous communities over their land, including all of the rights and protections of ownership enjoyed by private owners.<sup>2</sup>

These legislative provisions provide a basis for the guarantee of secure tenure for legal possessors and owners as required by the ICESCR. However there is a notable absence of legal guarantees for secure tenure for renters, informal settlements and other groups.

The Government claims in its State Party Report to CESCR<sup>3</sup> that “[a]ll people in Cambodia are well protected by law” with respect to forced evictions.<sup>4</sup> However, in contradiction to this claim, comprehensive laws and regulations setting out the rules and procedures to govern land expropriation and evictions, the definition of ‘public interest,’ the valuation and payment of compensation and conditions of resettlement do not exist. Cambodia urgently needs such a legal framework, which is compliant with its human rights obligations. The failure of the Government to take steps to enact a comprehensive and human rights-compliant legislative framework on security of tenure for all households and on evictions constitutes a violation of its obligations to progressively fulfill the right to adequate housing.

### III. ABSENCE OF SECURE TENURE

Violations of the right to adequate housing under ICESCR are also occurring as a result of the lack of implementation of the constitutional and legislative protections that do exist. Despite the recognition of possession rights in the Land Law and the legal right to convert possession rights into full ownership rights, these provisions are being implemented in an arbitrary manner. In effect, possession rights are not being recognised for those households most vulnerable to forced evictions because they live on land that is sought after by powerful individuals and companies. Authorities have also refused to issue titles to such households despite evidence of valid possession rights. The land registration and titling system under the donor-funded Land Management and Administration Project (LMAP), which commenced in 2002, has thus far failed to provide secure tenure to many of the most vulnerable households. The failure to recognise and respect possession rights, including the right to acquire title, is particularly prevalent for poor urban households situated on prime real estate. Such households are commonly labelled by the Government and land-grabbers as ‘anarchic’ and ‘illegal squatters without title’, despite their possession rights under the Land Law.<sup>5</sup> Both possession rights and the titling system are thus ineffective in terms of guaranteeing tenure security for the most vulnerable of households.

The Government’s 2003 commitment to upgrading urban poor settlements and ensuring their tenure security, referred to in the CESCR State Party Report<sup>6</sup> appears to have been abandoned in the face of rapid urban development spurred by an influx of foreign investment. In its report, the Government states that four sites have been chosen for land-sharing projects: Dey Krahorm Area, Borei Keila Area, Train Station-A and Train Station-B. While these urban poor areas were indeed designated in 2003 as social land concessions, with plans to improve housing conditions

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<sup>1</sup> Land Law 2001, Chapter 4.

<sup>2</sup> Land Law 2001, Article 26, However, the legal and policy framework for the registration of collective titles for indigenous communities is yet to be finalized.

<sup>3</sup> See <http://www2.ohchr.org/english/bodies/cescr/docs/AdvanceVersions/E-C12-KHM-1.pdf>

<sup>4</sup> Cambodia State Party Report to CESCR, 10 November 2008, paragraph 513.

<sup>5</sup> See, for example, Bethany Lindsay et al, ‘Experts Dispute Boeng Kak Impact Report,’ *The Cambodia Daily*, 26 March, 2009, page 1. Also, NGO Forum *NGO Position Papers on Cambodia’s Development in 2007-2008: Monitoring the implementation of 2007 CDCF Joint Monitoring Indicators and the National Strategic Development Plan 2006-2010*. Phnom Penh: The NGO Forum on Cambodia, 2008.

<sup>6</sup> Cambodia State Party Report to CESCR, 10 November 2008, paragraph 537.

through land-sharing projects, the Government failed to mention in its CESC Report what has become of these projects since 2003.

Rather than providing on-site upgrading and tenure security, three out of four of the areas were sold or leased to private companies for commercial development with local resident communities forcibly evicted and/or resettled to peri-urban areas. On 24 January 2009, just two months after the submission of the CESC State Party Report, over 400 families (including approximately 150 with possession rights that could not access the titling system) were forcibly evicted from Dey Krahom, and relocated to a distant resettlement site with inadequate basic services and facilities. As of April 2009, remaining residents of the Train Station A and B communities have received “final eviction notices.” Community leaders of the Dey Krahom and Train Station A and B communities have been convicted on spurious criminal charges because they have advocated for their rights to fair compensation.

Of the four urban poor communities which were supposed to benefit from onsite upgrading and tenure security through land-sharing in 2003, only the Borei Keila land-sharing project has gone forward. While this was a positive development in some respects, namely because long-term renters were among the beneficiaries, the Borei Keila land-sharing project was marred by corruption and poor planning. Scores of families have been left “off the list” to receive housing and hundreds of families live in deplorable temporary shelters on the site’s construction zone as they wait for their flats to be constructed.

The Government has also failed to uphold the legal protections for indigenous communities in the Land Law, and has illegally granted economic land concessions and mining licences over indigenous land, leading to the displacement of communities and hindering their access to forests traditionally used as a source for food and other basic needs.

#### IV. FORCED EVICTIONS

The absence of security of tenure, in the context of endemic corruption and a rapid influx of foreign investment and economic development, has resulted in a land rights crisis in Cambodia. At least 150,000 Cambodians currently live under the threat of forced eviction, including approximately 70,000 in Phnom Penh.<sup>7</sup>

The rate and scale of land-grabbing and forced evictions has increased in recent years. In Phnom Penh, between 1990 and 1996, 3100 families were displaced, between 1997-2003, 9200 families were displaced, and between 2004-2008, 14,300 families were displaced. In total approximately 133,000 Phnom Penh residents, or eleven percent of the city’s population of 1.2 million, have been evicted since 1990.<sup>8</sup> While precise nationwide figures are difficult to ascertain, the rate of forced evictions appears to have increased in conjunction with, inter alia, the granting of concessions over vast tracts of land to private investors. Rural landlessness, often caused by forced evictions, rose from 13 percent in 1997 to between 20 and 25 percent in 2007.<sup>9</sup>

The causes of evictions include the granting of economic land concessions (ELCs), extractive industry licenses/concessions, infrastructure development, so-called “city beautification”, private development projects, including tourist industry development, and land speculation.

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<sup>7</sup> Amnesty International, *Rights Razed: Forced Evictions in Cambodia*, AI Index: ASA 23/002/2008, February 2008, page 7.

<sup>8</sup> Sahmakum Teang Tnaut, Report prepared for UNOHCHR (unpublished), 2008.

<sup>9</sup> *Cambodia, Halving Poverty by 2015? Poverty Assessment 2006*, page 85, prepared for the Consultative Group Meeting by the World Bank, Phnom Penh, February 2006; and *Sharing Growth: Equity and Development in Cambodia*, World Bank Equity Report, 2007.

The instigators of forced evictions throughout the country include well-connected private individuals, domestic and foreign companies, and government authorities including the Royal Cambodian Armed Forces (RCAF). The Government is not only failing in its obligations to protect against forced evictions but Government authorities are often actively involved in illegal land-grabbing.

The Government claims in its CESCR State Party Report that forced evictions are carried out only when necessary in the public interest; that evictees are provided with fair and just compensation in advance;<sup>10</sup> and that those evicted are provided with financial support or rehoused in development areas with full access to necessary public services and amenities.<sup>11</sup> The reality completely contradicts the Government's claims. In fact, Cambodia is consistently failing to meet the international human rights law requirements as set out in CESCR General Comment No. 7 on Forced Evictions. Evictions are carried out in the absence of exceptional circumstances, and very often for private developments or land speculation for private profit. Feasible alternatives to eviction are not explored. Those affected by evictions have had no opportunity for genuine participation and consultation beforehand – rather, “take it or leave it” offers are made, in the form of monetary compensation or resettlement, which are consistently inadequate and well below the market value of people's house and/or land.

Information about the eviction or the purpose for which the land will be used is generally scant or non-existent. While eviction notices are issued in some cases, these often do not correlate with the actual date that the eviction is carried out. In other cases, communities hear about the pending eviction through other sources such as media or NGOs. In many cases no concrete plan for the site appears to exist, and so various conflicting and erroneous information is given about what the site will be used for. In cases of private land disputes, eviction notices are frequently issued by local and provincial authorities on behalf of powerful parties to the dispute, despite a requirement in the Land Law that a court order be issued prior to an eviction in such cases.<sup>12</sup>

Evictions are often carried out violently by police, military police and with the use of private armed forces, despite prohibitions under the Land Law.<sup>13</sup> In cases in which government officials are present, their role does not appear to be to provide protection to the community and ensure the avoidance of violence. Forced evictions frequently begin in the middle of the night or the early hours of the morning.

Those affected by evictions are often made homeless and landless. In rural areas, families are deprived of farming land for livelihoods as well as shelter. In urban areas, people are either evicted without any form of compensation, or are offered inadequate cash payments and/or woefully inadequate resettlement on the outskirts of the city without access to basic services and facilities.

## **V. FORCED EVICTIONS, HOUSING RIGHTS DEFENDERS AND THE COURTS**

The absence of an independent uncorrupted judicial system has meant that effective legal remedies for victims of forced evictions are unattainable. Instigators and perpetrators of forced evictions consistently act with impunity. Rather than upholding the rule of law and punishing violators, the court system has instead been used as a tool by land-grabbers, including

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<sup>10</sup> Cambodia State Party Report to CESCR, 10 November 2008, paragraphs 513, 516, 518, 528, 529.

<sup>11</sup> Cambodia State Party Report to CESCR, 10 November 2008, paragraph 534.

<sup>12</sup> Land Law 2001, Article 35.

<sup>13</sup> Land Law 2001, Articles 253 and 254.

government authorities, private companies and powerful individuals, to legitimize forced evictions and falsely prosecute housing rights defenders.

In its CESCR State Party Report, the State claims that it has supported all NGOs and associations in furthering the “rights and freedom of the people” and “there is no reason for the Royal Government to compress and constrain the citizen’s rights and freedom.”<sup>14</sup> In stark contradiction to this claim, in recent years there has been a reduction in the democratic space available to oppose land-grabbing and forced evictions. While attacks and threats against human rights defenders in Cambodia are generally increasing, intimidation and persecution of land and housing rights activists now constitutes the largest category of such attacks documented by civil society organisations. One of the most worrying emerging trends involves the abuse of the Cambodian court system to press unwarranted criminal charges against housing rights defenders.

## **VI. CONCLUSION AND RECOMMENDATIONS**

The absence of secure tenure and resulting forced evictions represent clear violations of the Cambodian Government’s housing rights obligations, notably under article 11 of ICESCR. The absence of a comprehensive legislative framework and the failure of other mechanisms to guarantee tenure security, including an independent and effective court system, constitute a failure of the Government to fulfill its housing rights obligations. The arbitrary and often violent evictions that occur in the absence of suitable procedural protections such as genuine consultation, the provision of adequate compensation and the opportunity for legal remedies, constitute a violation of the immediate duty to prevent illegal forced evictions. Furthermore, the Government is failing in its obligation to protect against forced evictions by third parties, including private individuals and companies. The poor conditions at resettlement sites constitute a failure by the Government to fulfill minimum core obligations of the components of right to adequate housing for those subject to resettlement.

In order to improve Cambodia’s compliance with its housing rights obligations, the endorsing organisations make the following recommendations:

1. The Government should incorporate all aspects of the right to adequate housing as set out inter alia in Article 11(1) of ICESCR and CESCR General Comment No 4 (1991) on the right to adequate housing and No 7 No (1997) on forced evictions into domestic law.
2. The Government should end the illegal practice of forced evictions and implement a moratorium on all evictions until there is a human rights compliant regulatory framework, including a mechanism to monitor implementation and ensure accountability. The regulatory framework should ensure that development projects that will result in displacement and other adverse consequences are only implemented where they are genuinely in the public interest and after feasible alternatives to displacement are fully explored, based on meaningful consultations with affected groups.
3. The Government should ensure that persons that will be evicted from their houses and land, or will otherwise be adversely affected by development projects, are offered adequate compensation and resettlement options in accordance with guidelines adopted by the Committee in its General Comment No. 7 (1997) on forced evictions. The Government should ensure that resettlement sites are located in suitable areas, close to employment opportunities, and that all households have access to adequate housing, including basic services (including drinking water, electricity, washing, sanitation and

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<sup>14</sup> Cambodia State Party Report to CESCR, 10 November 2008, paragraph 187.

waste disposal services) and facilities (including schools, health care centers and transportation), at the time resettlement takes place.

4. The Government should ensure that there are effective, fair and timely legal remedies for victims of housing, land and natural resource rights violations. Moreover the Government should end impunity for those implicated in violations of these rights, including government and military officials and private individuals and companies.
5. The Government should guarantee legal security of tenure to all households, including those in informal settlements, communal or cooperative arrangements and renters. The Government should adopt and implement a National Housing Policy, without further delay, which actualizes the Government's 2003 commitment to upgrading urban poor settlements and ensuring their tenure security.
6. The Government should guarantee that, in accordance with the Land Law (2001), all legal possessors have equal access to the titling system, irrespective of their background, social status, wealth or the neighbourhood they live in. Any denial of title must be justified by the law and legitimate reasons must be provided to the applicant. The Government should ensure that the land registration system targets vulnerable households and communities (in particular, households in disputed areas and areas targeted for development, urban poor households, households at resettlement sites and indigenous communities) as a priority, in order to ensure their land tenure security.
7. The Government should take steps to ensure that the legal and regulatory framework on land concessions, including the mitigation of adverse impacts to local communities, is made consistent with its housing rights obligations and is effectively implemented. The Government should suspend all land, tourist industry and mining concessions, in particular:
  - a. in areas populated by indigenous communities until it can guarantee their secure land tenure through *inter alia* registration of their land according to the Land Law (2001), and
  - b. in or near protected areas and protected forests until land classification, registration and zoning is fully implemented and the Protected Area Law (2008) is properly applied.
8. The Government should take urgent steps to protect defenders of economic, social and cultural rights, including by adopting the principles of the United Nations Declaration on Human Rights Defenders (1998) and ensuring human rights defenders are not made subject to false prosecutions or other acts of intimidation and pressure.