

Appendices to Document

Parallel Report on ICESCR

Prepared for

United Nations Committee on Economic, Social and Cultural Rights

By

NGO Working Group

Concerning

Cambodia

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Annex I:

**Cambodian Report on the International covenant on
Economic, Social and Cultural Rights,**

2002 Parallel Report

**Submitted to the United Nations Committee on Economic, Social and
Cultural Rights**

April 2009

**CAMBODIAN REPORT ON THE
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL & CULTURAL RIGHTS
[ICESCR]**

Prepared by

NGO Working Group on ICESCR, Cambodia
C/O

Tel:

Fax:

E-mail:

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Members of NGO Working Group

ADD	Action on Disability and Development
ADHOC	Cambodian Human Rights and Development Association
CCTUF
CDPO	Cambodian Disabled People’s Organization
CEPA	Cultural and Environmental Preservation Association
CIHR	Cambodian Institute for Human Rights
CLO	Cambodian Labor Organization
CHHRA	Cambodian Health and Human Rights Alliance
CSD	Center for Social Development
CWDA	Cambodian Women’s Development Agency
GAD	Gender and Development in Cambodia
FTUWKS
KHRACO	Khmer Human Rights and Against Corruption Organization
KKKHRA	Khmer Kampuchea Krom Human Rights Association
KKKHRDA	Khmer Kampuchea Krom Human Rights and Development Association
KYA	Khmer Youth Association
LAC	Legal Aid of Cambodia
LICADHO
Medicam
NGO-CRC	Children’s House
NGO-Forum
PADEK	Partnership for Development in Kampuchea
Oxfam GB
SILAKA
USG	Urban Sector Group
URC	Urban Resource Center
UPWD	Urban Poor Women Development
UPDF	Urban Poor Development Fund
VIGILANCE

NB: The opinions expressed in this report do not necessarily reflect those of any specific organizations.

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Executive Summary

The Paris peace Agreement of October 1991 ended more than two decades of civil war and international isolation which had reduced Cambodia to a state of near collapse. The rapid transition to an open-market economy and generous terms for foreign investment during the 1990s took place in a climate of ongoing political instability amidst strong external pressure for political and administrative reform.

The political consequences of almost thirty years of conflict have received much analysis and discussion. The consequences for the people, in terms of their economic, social and cultural rights to development have so far not been comprehensively examined.

This is the first country report compiled by the NGO community since Cambodia signed the International Covenant on Economic, Social and Cultural Rights in 1992. It reports on Articles 1 through 13, exclusive of Articles 4 and 5, and the current status of people's rights in relation to the conditions stipulated by those articles.

Article 1, concerning the right to self-determination focuses on the people's right to the means of subsistence. Where 84% of the population still depend on their natural resource base for subsistence, access to land, to forests and to fisheries is vital for their very survival. Denial of that access as a result of the concession system has severely affected people's livelihood, especially in relation to food security, and poverty incidence and absolute poverty in rural Cambodia is high. Rural poverty has a direct flow-on effect, as farmers defeated by flood and drought, by debt and by increasing landlessness drift to the city and take shelter in one of at least 500 urban poor settlements which currently house around 35,000 families. This trend is discussed in relation to Article 11 concerning the right to an adequate standard of living. The report expresses deep concern about a widespread trend in the countryside towards violent conflict between local communities and fishing lot operators and forestry concessionaires, characterized by armed violence and an absence of formal mechanisms to address confrontation of this nature. In the city, poor communities are constantly threatened with eviction for the purposes of "development" or for plans for the "beautification" of the urban landscape. At least ten evictions occurred during 2001, displacing thousands of families, many with little notice and to relocation areas with inadequate provision for basic infrastructure and services.

Poor governance and entrenched corruption contribute directly to poverty. This is discussed in relation to Article 2 which concerns the adoption of legislative measures. The report notes that there has been a marked increase in official corruption but no real effective action taken to put a stop to that trend. In particular, the failure of the government to provide proper salaries to its workers compels them to extort illegal payments from users of all public services, including roads, schools and hospitals. Poor people who cannot make illegal payments, the report notes, go without health care and education. This theme is picked up in relation to Article 12, the right to health, and Article 13, the right to education. Despite official policy pronouncements and some genuine efforts to reform the health and education sectors, structural obstacles, most particularly low budgetary allocations and disbursement systems which are slow and not always transparent, block progress and have a debilitating effect on the quality and delivery of services to the people. The report on Article 12 argues that these deep structural macro-economic problems worsen year after year and paralyse the whole public health sector. By way of illustration, it reports on the current status of maternal and child health and the poor health care given to prisoners. Because of the private cost of public

education, prohibitively high for the rural and urban poor, the majority of children in Cambodia still fail to complete their basic schooling.

Access to proper health and education services is a major concern of Cambodia's indigenous and other ethnic minority groups who constitute around 10% of the total population. Indigenous people suffer considerably from loss of their traditional rights to land and forests. Above all, it is the sense of exclusion and the pain of discrimination which affects them and all ethnic minority groups most strongly, as the report on Article 10 discusses. Other groups vulnerable to discrimination include women and children, and disabled people. Despite adequate laws and rights under the Constitution, these groups have failed to receive the protection they require to benefit from those laws. Children are greatly at risk. Illegal adoption practices, child pornography, and the sexual exploitation of children are matters of most serious concern. It is estimated that there are 80,000 – 100,000 commercial sex workers in Cambodia of whom about 30% are said to be under 18 years of age. The sexual exploitation of children, mainly girls, is directly related to prevailing attitudes towards gender roles. The report on Article 3 deals with gender equality.

The right to social security is discussed in relation to Article 9 of the Covenant. The current national budget allocation to the social affairs sector is just 0.23% of GDP. This is by far inadequate for the needs of the population groups most at risk. These groups include the thousands of war and landmine disabled people, the elderly and elderly widows in particular, the unemployed and the large number of under-employed who are struggling to raise their children, and the ever-growing number of widows and orphans who are victims of the AIDS epidemic in Cambodia.

The right to work and the right to organize and freely form trade unions, contained in Articles 6,7 and 8 of the covenant, are thoroughly discussed in this report. The Cambodian Labour Law of 1997 is judged to be fair and comprehensive. Apart from the garment and shoe-making factories, however, very few employees have benefited from the enactment of this law. Even within the foreign-owned garment and shoe factories, ignorance of the law and abuse of the workers' right to organize is widespread, according to a recent ILO report and studies by a local NGO. The main fault lies with the government which has failed to provide an efficient monitoring tool for assessing working conditions and which does not intervene to protect unions from interference from employers.

In summary, this NGO report suggests that the Royal Government of Cambodia has so far failed to meet its obligations to the Cambodian people "to respect, to protect and to fulfil" their economic, social and cultural rights as defined by the Covenant.

Article 1: Right to Self-Determination

The first article of the Convention has been poorly implemented by the State and its institutions, most particularly in relation to deprivation of means of subsistence.

Cambodia is endowed with a diverse natural resource base that supports the livelihoods of rural people who constitute 84% of the total population. Fisheries and forestry remain important sources of food for people in the country. However, during the past decade these resources have been largely privatised and people's traditional access has been seriously affected.

Article 59 of the Constitution of the Kingdom of Cambodia declares that the State must protect the environment, maintain the balance of the ecosystem and make clear plans for managing lands, water, air, mines, forests, fisheries and wildlife. However, the Constitution failed to recognize the traditional right of local people to natural resources, especially land, forests and fisheries belonging to the State.

A royal decree on the protection of the environment was issued in 1996, aimed at protecting natural resources, and reinforcing the government position on managing natural resources and administering protected areas and national parks; the decree also served to restrict the access of local people living in areas adjacent to these resource areas. Article 16 of that decree encourages public participation in environmental protection and natural resources management but it does not provide adequate rights for local people to make their living in their traditional areas. Several environmental sub-decrees have also been passed including those on water pollution, solid waste management, air pollution, and on conducting environmental impact assessments. Due to the weak position of the Ministry of Environment within the Royal Government, these sub-decrees have not been fully enforced.

The Cambodian diet is based on two important sources: rice and fish. Rice is a main food staple for Cambodians with 85% of total population involved in rice cultivation. Second to rice, fish provide 75% of animal protein intake for Cambodians. Non-timber forest products also provide valuable food sources for rural communities and timber is widely used for construction materials. Therefore, housing is closely linked with access to forest areas. Without access to timber cutting, and any efforts to disturb the access of local community to forest resources, housing needs cannot be met.

Since the access of local people to natural resources has been denied, people's livelihood has been severely affected, especially in relation to food security. Because of this, many rural people live in absolute poverty and poverty incidence is high.

In the current situation, state mechanisms are inadequate to protect the livelihoods of poor people. Moreover, legal frameworks developed to protect the form of concessions given to private ownership, aimed at generating revenue for national budgets, have left local people in a vulnerable position. A customary right which has existed since time immemorial has been neglected by the State which determines natural resources to be state property, ignoring local people's rights, roles, and responsibilities. Corruption has continued to grow unabated and impunity has become a tool to protect corrupt officials from punishment. Corruption exists at every step of the legal process from the police to the courts which deny justice to the poor in most cases. Independence of the court remains a great concern of civil society.

- **Rights to Fisheries Access**

Fish and access to fisheries are vital to Cambodia's poor. The fair and equitable distribution of these resources, alongside effective long-term management is vital to the food security of Cambodia's largely rural population. The State has declared these resources to be state property and management of freshwater fisheries is dominated by concessions awarded according to the fishing lot system¹. Management of fisheries has been characterized by weak and selective enforcement of fisheries legislation, inability to control widespread illegal and destructive fishing practices, loss of critical habitat, inability to prevent or resolve fishing conflicts and inability to collect sufficient state revenue. There is growing evidence of over-fishing and widespread use of stock-damaging fishing practices by commercial fisheries.

The limit to family scale fishing by the 1987 Fisheries Law has placed fishermen around the Great Tonle Sap Lake in extreme poverty. People living below the poverty line constitute 38% of the total population in the Tonle Sap Lake region.

The commercial fisheries have not only destroyed fishery resources, they have also created a widespread trend towards violent conflict between local communities and fishing lot operators characterized by armed violence and an absence of formal mechanisms to address confrontation of this nature. There also appears to be a trend towards increasing denial of access for local fishers to fishing areas through illegal expropriation of these areas for sale to commercial interests. These have affected the rural poor throughout the country.

Widespread protests by local people against the commercial fishing operators have led to reform being undertaken by the Royal Government of Cambodia (RGC) through removal of fishing lots and a reorganization of the fisheries administration. Following the reform, about 56% of the fishing grounds were released for local communities to establish community fisheries. Although the figure suggests vast tracts of fishing grounds have been allocated to local people for community fisheries management, some are identified as unproductive areas, including rice-fields and villages. The reform has had slow impact at local levels.

Marine fisheries face similar threats. They are generally thought to be increasingly less productive due to habitat destruction, increase in fisher numbers, employment of modern methods, prohibited gear, and the degradation of the environment. The catch per unit of effort has declined at such a rate that it has threatened the small-scale fishers who depend entirely on fishing activities. Illegal fishing activities in the sea is popular and increasing. The responsible agencies are aware of the illegal fishing activities but are unable to stop them. For instance, trawling in water depths less than 20m is prohibited by the Fisheries Law, but it is very common. There are also problems of fishing with explosives and electricity in some areas. Subsistence fishers are more vulnerable in this situation due to threats from the large-scale fishermen, foreign boats, armed forces and illegal fishers. The conflicts between small-scale fishers and large-scale fishers are alarming in the coastal provinces. Foreign boats from neighbouring countries equipped with high-tech fishing gears encroach on Cambodia seas illegally with support from marine armed forces. They fish with highly destructive gears such as cyanide fishing and electricity, freely and without licence.

¹ Fishing gears are classified as small scale, middle scale and large scale depending on the size and catch potential. Small scale fishing is free of charge and permitted throughout the year while middle scale and large scale is subject to leases for commercial exploitation

The government's responses to these problems have been inadequate. Illegal activities are widespread, occurring every day but nobody can stop them. The Fisheries Law provides authority only to the Department of Fisheries (DoF) to manage these fishing activities but in reality, sometimes the military acts instead of DoF personnel.

- **Rights to Forest Access**

The rate of deforestation inside Cambodia has risen dramatically since 1991 and has had a great impact on local people's livelihoods. The causes of forest decline are due to the granting of large commercial timber concessions, and forestland concessions for plantations. Deforestation is encouraged by vested economic interests and a deficient and poorly administered regulatory framework².

About 64% of Cambodia's total land area is covered by forest concessions and protected zones. Before 1994, eleven concessions, totalling 2.2 million hectares were established. In 1998, the government allocated forest areas of more than 6 million hectares, which include over 3 million hectares that are well-stocked. These concessions have been awarded to large commercial interests through a process which is not transparent³.

The large tracts of forest concessions given to private concessionaires leave limited areas for community uses. Inevitably, traditional rights and practices of local communities are being disrupted. In some provinces, forest areas that have been traditionally used by local communities have been placed in a new concession with the community still continuing to use these areas for farming and other activities. Conflicts arise as a result. In other areas, road building and other activities by the concessionaires encroach on community areas. Roads also provide opportunities for immigration which cause conflicts with both concessionaires and the original communities⁴.

Under the investment agreements, a concessionaire agrees to invest in wood processing facilities and the government agrees to give it inclusive harvesting rights to a specific area. The concessionaires are required to operate under principles of sustainable yields. To date, however, the implementation of wood processing investments has been negligible. Although forest timber licenses state that harvesting must be carried out in a sustainable manner, the concessionaires exploit forests in an unsustainable way. In some areas, the concessionaires have denied local people access to forest areas and threatened the resource users from extracting non-timber forest products. Resin trees which people use have been cut by forest concession companies with poor compensation to users which is totally contradictory to the forestry law. Mismanagement of the timber concessions has led not only to loss of forest cover but also to loss of government royalties from the sale of these concessions. The granting of concessions is contrary to Cambodia's international obligations and fundamentally unsustainable on indigenous people's land. The government has allocated these lands without consultation or the consent of local people⁵.

² SEDPI, 1996.

³ NEAP, 1998.

⁴ MacAndrew, C. 1998. *Strengthening Institutions for Implementation of Forest Policy in Cambodia*, Phnom Penh, Cambodia.

⁵ Global Witness, 2000. 'Chainsaws Speak Louder than Words', *A Briefing Document by Global Witness*, May 2000.

RECOMMENDATIONS

- Alternatives must be found to the concession system. In particular, the role of communities in managing forests and fisheries should increase and support given to the management of new protected areas. While the current concession system continues, the development of sustainable management plans, including ESIA's (impact assessments), has to be made transparent and stakeholder participation needs to be increased to fulfil the legal requirements.
- Bans should be imposed on illegal land concessions in forest areas, and existing contracts which lack popular consultation should be reviewed.
- Cardamom Mountains and Lake Tonle Sap which are regions of national and world heritage should be accorded special priority for protection and good management.
- The government should publish a clear, time-bound process for full consultation on the fisheries legislation with local communities and civil society.
- A review of the impact of recent reforms on rural livelihoods and the sustainability of fisheries should be conducted urgently.
- Efforts should be made to build the capacity of the Department of Fisheries to facilitate the organization of community fisheries.

Article 2: The Adoption of Legislative Measures

The issues of governance and corruption have been identified by several major reports as critical to the development of Cambodia, and in particular to the alleviation of poverty. The Asian Development Bank (ADB) described the question of governance as “the determining factor in whether Cambodia can achieve sustainable development or will remain dependent on aid”. The World Bank suggested that a failure to improve governance problems and to implement other necessary reforms would impede growth and the poverty situation in Cambodia would fail to improve.

Following the establishment of the Royal Government of Cambodia in 1993, members of the National Assembly and the government dedicated themselves to a policy for the eradication of corruption. The Cambodian Constitution Annexes 5,6 and 7 state: “We are all committed to fight against all kinds of corruption, social injustice, and to struggle for national reconciliation to help build national unity, peace and prosperity for Cambodian citizens and for the greater glory of Cambodia.”

In recent years, however, there has been a marked increase in corruption and no real effective action taken to put a stop to that trend. On October 27, 1999 the RGC announced the creation of an Anti-Corruption Commission but no specific powers were allocated to that body. Meanwhile, draft laws initiated by the Center for Social Development for the establishment of an independent Anti-Corruption Commission presented to the government in 1996 have not been acted upon.

Poor governance and entrenched corruption contribute directly to poverty. The failure of the government to properly collect public revenue, either due to inefficiency or embezzlement of that revenue by corrupt officials, means that the government has less money to spend on providing basic infrastructure such as roads, water supply, electricity, health care and education. The failure of the government to provide proper salaries to its workers compels them to extort illegal payments from users of all public services, including roads, schools and hospitals. Poor people who cannot make illegal payments go without health care and education. For the poor, the cycle of poverty continues.

The failure of the government to implement and respect the rule of law contributes directly to poverty by failing to provide an independent mechanism for the resolution of disputes with respect to land. Without secure title backed up by an independent dispute resolution mechanism, poor people cannot use their land for collateral in hard times. If powerful people want a poor person’s land, the powerful can simply force them off the land at gunpoint or/and make illicit documents to force them out of their legitimately entitled land ownership.

Impunity in one section of the society - politicians and officials, their families and their friends, the military and the rich – means that Cambodia is a country with two laws – one for the rich and powerful and one for the poor. Political interference with the judiciary, together with the ability to buy justice and the practice of permitting a privileged section of society to be above the law, mean that rights of property and contract cannot be guaranteed in Cambodia. Unfair practices, such as breach of labour laws, cannot be remedied by recourse to the courts and the result is labour unrest. These issues, together with the lack of both law and enforcement generally, are all disincentives to legitimate private sector business investment in Cambodia.

- **Institutional Weaknesses**

- The system of patronage that permeates all levels of the government works against the promotion of competent persons based on merit within the government and other institutions, and hence militates against institutional reform.
- The failure of the government to make the transition from a military to a civilian state has permitted the squandering of natural resources such as the illegal sale and leasing of land and illegal logging of the forests. Authority of civilian courts has been further undermined by the use of military courts to try civilian cases.
- The inability of public institutions, including the National Assembly, to fulfil their constitutional roles through either incapacity or simply out of fear of those more powerful than them, has permitted the situation of total government control over all aspects of society to continue unchecked. The rule of sub-decree has failed to be replaced by the rule of legislation.
- Lack of accountability to any independent bodies of review has permitted the wholesale looting and squandering of donor funds, loan monies and revenue. There are no functioning political or legal institutions to prevent the continuation of this situation.
- The failure to implement legislative measures to curb corruption by state and government officials violates the people's fundamental economic, social and cultural rights and counteracts efforts to secure social justice and genuine poverty reduction.

RECOMMENDATIONS

- The government must do all that is possible to ensure that all national budget allocations, international loans or donor funds reach their intended project targets, and do not become part of the cycle of externally funded corruption.
- The government must closely monitor project financial expenditure, and provide follow-up and any necessary corrective action in terms of upgrading the skills and capacities of the administration.
- The government must ensure greater transparency and accountability from its administration and not offer mere promises, rhetoric or the implementation of inconsequential measures by the administration in the place of real or substantial reform.
- In the specific case of the pressing need for an effective anti-corruption law and an independent anti-corruption body, donors should only disburse donor funds in settlements based upon satisfactory evidence of progress towards the creation of a truly independent anti-corruption body, preferably with the assistance of civil society.
- The government must strengthen mechanisms for a national audit authority to carry out a genuinely independent mandate.
- All citizens must have the right to access information concerning government revenue and expenditures.
- The Land Law that has just been passed must have an implementation plan that is agreed upon by the RGC and the donor community and this approach should be used as a model to solve other social and economic issues.

Article 3: Equal Rights of Men and Women

These rights under the convention are related to a fair and democratic workplace, a secure living environment, and access to adequate resources for a healthy and fulfilling life. Article 35 of the Constitution of the Kingdom of Cambodia guarantees the equality of men and women in all spheres of life: political, social, economic, and cultural. Article 36 states that men and women must receive equal pay for equal work, and that housework should have the same value as work outside the home. There are also a number of important laws, including the Labour Law, the Law on Marriage and the Family, the Criminal Code, and the Civil Code which is now being drafted, which are based on these fundamental tenets.

There is nothing in the Cambodian Constitution or in Cambodian law which discriminates against men or women in the family, the workplace, or the society generally. Gender-based discrimination, when it occurs, is due to poor implementation of the law and ineffective implementation and monitoring of the regulations stemming from the law. In turn, this is due to traditional attitudes towards the value of women and especially women's work. For example, on average, male monthly wages are 27% higher than female wages; and while 67% of all manufacturing workers are female, women manufacturing workers are paid 30% less than men in the same industry.⁶ Physically disabled women claim discrimination by employers in the garment manufacturing industry. Despite proof of requisite skills training, disabled women have only been able to find jobs in one or two of the country's more than 200 such factories.

Class-based discrimination is not considered to be a major issue in Cambodia. The largest disparity is that between city and countryside because city people have much greater access to all services and facilities. City people therefore have greater opportunities for education, jobs and professions, and for essential services including clean water, electricity, health, transport, and so on.

Threats to Cambodia's social equality come from the growing disparity between rich and poor, city and country. Landlessness, previously almost unheard of in Cambodia, is becoming an increasing problem with 13% of previous landowners now having lost their land.⁷ Shrinking areas of land ownership is also a problem as it suggests a lowering in the standard of living and nutrition among sections of the rural population. Female-headed households report the smallest landholdings, with nearly 80% of them owning less than one hectare of land.⁸

RECOMMENDATIONS

- The Law on Land Management, approved by the National Assembly on 20 August 2001, could be Cambodia's strongest weapon in the fight against growing rural poverty. It is vital that this law be implemented and monitored carefully so that the interests of the people, particularly female-headed households with small landholdings, are protected.
- Implementation of the Labour Law needs constant monitoring in order to ensure that fair and equitable conditions of work and pay are respected in all sectors of the economy.
- The construction industry is a significant employer of cheap and unskilled labour, including the labour of young women. The Labour Law should extend its reach to the small privatized economic sectors and ensure that wage discrimination and other forms of gender-based discrimination do not occur.

⁶ GAD/C, 'Gender Scoreboard', Phnom Penh, 2001.

⁷ Oxfam, 'Interim Report on Findings of Landlessness and Development Information Tool Research September 1999 to April 2000', Phnom Penh, 15 June 2000.

⁸ GAD/C, 'Gender Scoreboard'.

Articles 6,7,8: The Right to Work and Organize

The right to work and the right to organize as outlined by the Covenant, are protected by the Cambodian Labour Law of 1997. While the law is comprehensive, its implementation does not yet guarantee that these rights apply equally to all Cambodian workers.

The right to work

Cambodia has a population of 11.4 million of whom 5.1 million are economically productive; of this latter figure, 5.3% are currently unemployed. This does not include farmers who have only six months of productive work per year. In 1998 only 52.7% of the labour force was employed full-time for the whole year and this figure had fallen to 50.9% by 2001.⁹ According to Cambodian labour market surveys, the demand for labour is many times greater than supply. According to the report of the Ministry of Social Affairs 2001, the number of people seeking work had increased by 5,063 over the previous year.

- **Training**

The Labour Law of 1997, Article 57 requires enterprises which employ upwards of sixty workers to train apprentices "equal to one-tenth of the number of workers in service of that enterprise...". The Ministry of Social Affairs' Prakas (regulatory law) No. 004 on Apprenticeship Training Within Enterprises stipulates exact percentages and sets a maximum number of apprentices in any one enterprises at 110.

In actual practice, there are no formal apprenticeships and this matter is not being encouraged. Most factories do not have apprentices; a few do but not in sufficient numbers or in accordance with the law. According to the report of the Ministry of Social Affairs, the ministry trained 504 people in 1999; in 2001 the number was 840. According to the ministry's report for 2000, 31% of the female labour force have no training of any kind.

- **Conditions of Work**

- a) **Guaranteed Wages**

The Labour Law of 1997, Article 104 states that "The wage must be at least equal to the guaranteed minimum wage, that is, it must ensure every worker of a decent standard of living compatible with human dignity." Article 107 states:

- 1) The guaranteed minimum wage is established without distinction among professions or jobs. It may vary according to region based on economic factors that determine the standard of living.
- 2) The minimum wage is set by a prakas of the ministry in charge of labour, after receiving recommendations from the Labour Advisory Committee. The wage is adjusted from time to time in accordance with the evolution of economic conditions and the cost of living.

To date, the Ministry of Social Affairs has not issued a prakas on the minimum wage. It has merely issued memos, No. 06 and No. 017, which apply only to the garment and shoe-making factories.

⁹ Integrated by the report of the Ministry of Social Affairs and the National Census, 1998.

According to research conducted by the Cambodian Labour Organization (CLO), at present, the average wage which workers receive is as follows:

	<i>Location</i>	<i>Average Rate*</i>
Garment workers	Phnom Penh	\$45/month
Construction workers	Phnom Penh	6,500 r/day
Unskilled construction workers	Siem Reap	4,000 r/day
Restaurant workers	Siem Reap	\$40/month
Hotel workers	Siem Reap	\$45/month
Restaurant workers	Phnom Penh	\$30/month
Hotel workers	Phnom Penh	\$47.50/month
Rubber plantation workers	K.Cham	3,300 r/day

*1USD = 3,950 riel

According to the wages survey, these wages can secure a living but they are not sufficient for human dignity. It is not enough for food, study, clothing, healthcare, etc. According to a survey by CLO in 2000, a minimum wage of \$78/month can secure an appropriate living standard.

b) Occupational Health and Safety

In the 1997 Labour Law, concerning hygiene and security of employees, Article 229 and Article 230 clearly set out safe working conditions to guarantee worker health. The Ministry for Social Affairs issued Prakas No. 052 concerning the provision of toilets and Prakas No. 054 concerning clean water. Both prakas suggest the commitment of the government to the workers' welfare but strategies for their proper implementation remain unclear.

Because the government has failed to issue directives on implementation, it is difficult for factories and enterprises to ensure favourable conditions for the occupational health and safety of their workers. Moreover, the Ministry for Social Affairs does not have a tool to monitor and investigate the factories. According to the First Synthesis Report of ILO which surveyed thirty garment factories, twenty-four factories did not have a hygiene, health and safety policy. Not even one factory reported accidents or illness to the authorities. The CLO study in Phnom Penh and some provinces (Siem Reap and Kompong Cham) made findings similar to those of the ILO report. The annual report for 2001 by the Ministry for Social Affairs states that "Although accidents in factories or enterprises occurred often, the department officially investigated only six cases." This was because the employers did not report the accidents to the ministry and the two parties usually reached a compromise; it was also a result of the lack of means to investigate problems. The main problem is that the ministry lacks the competence to pressure the companies and factories to abide by the regulations to prevent accidents.

c) Discrimination

The 1997 Labour Law, Chapter 1, Part 2, Article 12 forbids discrimination of any kind apart from qualification in selection of employees. Because of limited encouragement to enforce the law in Cambodia, however, all are not equal before the law and there is nepotism, intolerance, and discrimination in the civil service, factories and enterprises.

According to the research and investigations of CLO, most garment factories are unwilling to recruit men because they think that men are more aggressive than women and more difficult to control.

d) Leave, Wages and Hours of Work

The Labour Law forbids employers to use the same worker for more than six days per week, guarantees workers a minimum of 20 consecutive hours' rest per week, paid annual leave at the rate of one and a half days per month of continuous service, and the right to special leave. Women are entitled to ninety days' paid maternity leave and protection of their right to work.

In actual practice, civil servants take leave two days per week on Saturday and Sunday. They also have all public holidays and maternity leave with pay. According to the ILO research, among thirty factories, twenty-five of them make their employees work on public holidays; 77% of workers interviewed said they worked on public holidays and 71% of them said they did so involuntarily. The CLO study showed that most of the workers did not understand their rights to paid annual leave. In all, 44% of workers interviewed did not understand their rights in law about maternity leave. As for working hours, 88% of workers said that they work 48 hours per week. Almost all, 97.6% did not take paid annual leave. Hotels and restaurants put off female workers who are pregnant.

The Right to Organize

At present, according to the report of the Ministry of Social Affairs, there are ten federations and 267 registered unions in Cambodia. So far, no Cambodian federation has taken out membership of an international labour alliance.

Under the 1997 Labour Law, workers and employers have the right to form professional organizations "...for the exclusive purpose of studying, promoting the interests, and protecting the rights, as well as the moral and material interests, both collectively and individually, of the persons covered by the organization's statutes." All workers are free to be members of a union.

In practice, many companies, factories and enterprises use various means to prevent the formation or the leadership of unions. They say they do not try to prevent employees from joining unions but in fact they apply methods to suppress or expel union leaders and union members from their companies, organizations or enterprises. According to the ILO report from their study of thirty factories, in eleven of those factories no union was present and eight factories showed indications that there were circumstances that hampered workers in freely organizing. Workers who tried to set up a union were dismissed without a valid reason and they were afraid of possible management reaction if they tried to set up or join a union. According to the CLO study, apart from garment factories and shoe factories, almost no companies, factories or enterprises had a union. Most workers did not understand what unions were for.

a) The Right of Unions to Operate Freely and without Restrictions beyond those Stipulated by Law

Article 280 of the Labour Law forbids "acts of interference" in the unions' operations.

The Ministry of Social Affairs issued Prakas No. 305 on 22 November 2001 concerning representation of workers' trades organizations in enterprises and the right of collective bargaining, ensuring "All employees who are candidates for election to leadership of unions are protected from dismissal, as are staff delegates...."

In practice, many unions do not have the right to free association. Many unions are restricted by employers and some companies or factories do not arrange for worker representatives.

The ILO report states that according to their observations, 13 of the 30 factories did not elect shop stewards and shop steward assistants in accordance with the applicable rules and procedures because workers/unions were not allowed to nominate their candidates and/or the workers were not given the required time to decide who to vote for.

b) The Right to Strike

The Constitution and the Labour Law both guarantee the right to strike and to non-violent demonstrations or lock-outs. The Law sets out regulations for a strike. The Ministry for Social Affairs issued Circular No. 005 of 6 March 2000 concerning the right to strike.

The Ministry of Social Affairs compiled a summary report for 2001 and objectives for 2002 which explained that in 2001 alone, there were 95 strikes but the ministry did not differentiate between strikes which took place according to the law and those which did not. Cambodia does not have a labour court system which allows the differences to be determined and judged.

The ILO study said that none of the 27 strikes held (the study was of 30 factories) were organised by workers/unions in accordance with the applicable rules and procedures.

The CLO study found that most workers did not understand their rights and did not understand the regulations for holding strikes. Most of them were afraid of participating in strikes.

RECOMMENDATIONS

- The government should have measures to find jobs for the estimated 200,000 people who join the workforce each year and provide technical training programmes and technical means to give people worthwhile jobs.
- A prakas concerning a minimum wage for the various sectors apart from the garment manufacturing and shoe manufacturing sectors should be issued urgently;
- The Ministry of Social Affairs must provide a tool for measuring working conditions for the inspectorate to assess whether factories or other work places have appropriate and proper working conditions, and monitor industrial health;
- The prakas for maternity leave, rest, limits on the maximum number of working hours, and public holidays must be implemented effectively;
- The Ministry of Social Affairs should be serious about the right to join unions and to form unions freely and should take steps to intervene to protect unions from interference by employers.
- The Ministry of Social Affairs should investigate the living standards and working conditions of the many young women who are employed as domestic helpers in Phnom Penh.
- The matter of sexual harassment in the workplace needs to be documented and investigated.
- Employee strikes or demonstrations provide a lot of evidence that civilian groups have come to disrupt violently or intimidate worker solidarity. The government should investigate and take measures to deal with these cases.
- The government should increase civil servant salaries so they can have a decent standard of living and ensure the dignity of their work.
- The government should establish a Labour Court.

Article 9: The Right To Social Security

For the purposes of this report, “social security, including social insurance” shall mean “need-based assistance offered to individuals from public funds raised through tax revenues” as well as “benefits for workers and their families raised through contributions to insurance funds”.

Whether or not Cambodian people have paid contributions to social insurance funds, their needs for public assistance will be for benefits and payments to cover costs in relation to:

- medical services and care, including maternity costs, and loss of income through accident and disability;
- support to families in event of the death of the breadwinner, and to the elderly who are no longer able to earn a sustainable income;
- assistance to the unemployed and the families of the unemployed;
- raising their children.

Concerning State provision for medical services and care, on average, the government budget contributes just one dollar per head per year.¹⁰ There is a lack of hospitals, particularly in rural areas, a lack of doctors, medical staff and supplies. For example, as of 1998, when the national census reported a total population of 11.4 million, there were 4,738 doctors/medical assistants in the country. Only 38% of pregnant women receive any form of hospital care before giving birth. Consequently, the maternal and infant mortality rates in Cambodia remain among the highest in the world (437 per 100,000 maternal deaths, and 95 per 1,000 infant deaths per year).¹¹

The problem of disability in Cambodia affects more than 2% of the total population, of whom 220,000 are physically disabled.¹² The majority of disabled people, 81.5%, live in rural areas. Congenital illness and disease are the principal causes of disability, followed by land mine accidents, and those related to armed conflict.¹³ As a result of the protracted civil war in Cambodia, there are at least 40,000 people disabled by landmine accidents. For those who received their injury while they served in the army, and if their names are on the list of invalid veterans, each receives a monthly, although frequently irregular, pension from the government of around 150,000 *riel*. The Ministry of Women’s and Veterans’ Affairs is responsible for pensions of disabled veterans. Families of deceased soldiers receive a stipend of 3,000 *riel* per month. For those other Cambodian citizens disabled by landmines, by childhood disease, or other accidents, assistance may be provided by a number of non-government organisations who provide the same free medical treatment, prostheses and vocational training skills, as they provide to the veterans. Despite some pension entitlement to war veterans, the standard of living of disabled people is generally very low. Article 74 of the 1993 Constitution of the Kingdom of Cambodia avers, “The State supports the disabled and the families of deceased veterans who have died in the cause of their country.” It does not, however, stipulate how that support should take effect.

¹⁰ Ministry of Planning and Ministry of Health. *Demographic and Health Survey 2000*, Phnom Penh, June 2001, p. 3 (Khmer version).

¹¹ *Ibid.*

¹² Ministry of Planning, *General Population Census 1998*.

¹³ Cambodian Disabled People’s Organization, ‘Five Year Programme’, July 2001, p. 4.

As discussed in the previous paragraph, families of deceased veterans will receive a small monthly pension from the State. For regular families, in the event of the death of the main breadwinner, there is no State support. Usually the wife will assume the duty of caring for the children, perhaps with some financial assistance from her own family. The AIDS epidemic in Cambodia has made this special situation become more common and support for widows is a pressing need. Some ministries have created their own social funds which provide assistance for funerals and for ongoing family assistance to their former colleagues. All schools belonging to the Ministry of Education, Youth and Sport, for example, have a teachers' association to provide assistance to its members in crisis situations.

The retired and the elderly who are no longer able to earn a sustainable income usually depend on their children to support them. According to the Civil Service Statutes, women and men are required to retire at the age of 60. Civil service pensions, paid irregularly, are approximately 20,000 - 40,000 *riel* per month, for both men and women according to their former salaried status. Obviously, this is insufficient to live on. The regime of Democratic Kampuchea, 1975 – 1979, left a gender imbalance in Cambodia. In 1980, the population count showed that 53.6% of the population was female with gender discrepancies in all ages above 15 years. Therefore, older women outnumber older men; within the age group 40 – 44 years, in 1997, there were only 65.5 men for every 100 women.¹⁴ Not only will the aging population become more and more feminized, but women who now have aging parents and are also likely to be widows will be responsible for caring for both their own children and their parents by themselves. Moreover, while the majority of older men are married, more than half of all older women (over 55 years) are widows.

The elderly, especially elderly widows are among the most vulnerable of all vulnerable groups. A 1998 Survey reported that only between one and two per cent of older people who had stopped working said that they had stopped working because they had enough savings.¹⁵ Many older people do manage to put aside savings in some form. For example, one common method of saving in the countryside is to plant fruit trees in early old age so that the fruit can be sold to help support them when they can no longer work.

There are many disadvantaged groups within Cambodian society who are outside of any available social security net, no matter how small the services that net provides. Ethnic groups, especially those in the highland border areas of the country, receive very little in the way of government services and nothing in the form of social security benefits. Poor rural women, particularly those who are widowed or abandoned by their husband, or who are caring for husbands through protracted illness are frequently without support of any kind.

With regard to the unemployed, there is no state-supplied unemployment benefit in Cambodia. The unemployment rate stands at around five per cent of the economically active population in rural areas and seven per cent (for men) in the city.¹⁶

Child endowment, in fact benefits for all dependants including spouses, is still paid to civil servants, at the rate of 2,500 *riel* per month per child and 2,000 *riel* for the spouse.

¹⁴ HelpAge International, 'Summary Report on the Situation of Older People in Cambodia', Phnom Penh, May 1998, p.10.

¹⁵ Ibid., p. 25.

¹⁶ Ministry of Planning, 'Cambodian Human Development Report', Phnom Penh, 2000.

The main obstacle to sufficient provision of social security by the State is inadequate funding by the National Budget to the social welfare and veterans' affairs sectors. From 1994 to 1998, national expenditure on social affairs fluctuated between 0.45% and 0.54% of Gross Domestic Product (GDP). In 1998, responsibility for veterans' affairs was passed to the then Ministry of Women's Affairs. In 1999, social affairs expenditure fell to only 0.16% of GDP, while the Ministry of Women's Affairs increased its share of expenditure from 0.01% to 0.38%.¹⁷ These statistics reveal the relative importance of expenditure on pensions to disabled veterans within overall spending on social security benefits in Cambodia.

RECOMMENDATIONS

- The 2002 National Budget increased the Social Affairs Sector budget allocation to 0.23% of GDP which is in line with the 0.01% increase per annum over the past three years. While this amount is by far inadequate for both the demands and the needs of Cambodia's vulnerable population, it represents a positive trend. The government should ensure that increases in budgetary allocations to the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation be spent on technical support and social security benefits to the people, not on staff salaries.
- Because it is unlikely that the State will be able to increase this expenditure significantly in the foreseeable future, the role of the State might be more influential as a monitor and enforcer of its own laws and regulations concerning social security provisions to workers and retirees from the private sector as well as the public sector.
- Social security payments should be paid on time and fraudulent practices which exist within the system of payments should be investigated and eradicated as soon as possible.
- The State should also take a more active role in encouraging and praising those small rural societies which take care of their own members who are in great need.

¹⁷ Ministry of Economy and Finance, 'The Cambodia Economy: a mid-term review', Phnom Penh, May 2001, p. 27.

Article 10: Rights of Ethnic Minorities and Vulnerable Groups

Despite generally adequate legal instruments, while poverty, low education, and the widening gulf between rich and poor remain concrete realities for a large proportion of the Cambodian population, the social rights guaranteed by Article 10 of the Covenant will be very difficult to attain.

Minority Groups

Non-Khmer ethnic groups constitute approximately ten percent of the population of Cambodia.¹⁸ The lack of reliable information – demographic, socio-economic, and cultural – on this segment of Cambodia's population contributes to ethnic misunderstandings and tensions and, in some cases, discriminatory practices against members of these groups which include the Vietnamese, Muslim Chams, Chinese, indigenous peoples (hill tribes or highlanders) located primarily in the northeast, as well as Kampuchea Krom, or ethnic Khmers who derive from southern Vietnam in an area once part of the Khmer empire. These discriminatory practices impact directly on those people's rights under the covenant to economic, social and cultural development.

Discrimination takes many forms. In general, however, it relates to:

- Citizenship and legal residence
- The right to participate in elections
- Rights and access to land, forests and fisheries
- Rights to full participation in the community in relation to languages, religions and cultures
- Rights to education and health care services.¹⁹

Cambodia is signatory to the Convention on the Elimination of all Forms of Racial Discrimination. The National Assembly adopted the Immigration Law in 1994 and the Nationality Law in 1996. Both laws are supported by sub-decrees and prakas for their proper implementation. In effect, however, the citizenship and legal residence rights of minority groups are commonly abused. Long-time Vietnamese-Cambodian citizens are frequently denied identification cards and family books. Khmer Kampuchea Krom are legally recognized as Cambodian citizens but are frequently refused identification cards, passports, family books or election cards.

As noted elsewhere in this report, many rural Cambodians are being denied access to land, forests and fisheries. In the case of indigenous peoples, not only their livelihood but their culture and beliefs are being threatened by land-grabbing by the powerful and incursions on their native territory by lowland groups. Cases of extortion and deceit are commonplace and this exacerbates their feeling of being scorned by the majority group as being “stupid and poor”.²⁰ Indigenous Cambodians feel they are excluded from decision-making roles and other civic roles, even meetings related to indigenous problems. For example, the existing forestry law and land law do not serve the best interests of indigenous people and some articles contradict their traditions and customs but they were not consulted prior to the drafting of these laws. Cham fisherman complain that when local authorities arrest fishermen, Khmers are released but Cham people are detained several days until

¹⁸ Pen Dareth, Introduction to *Interdisciplinary Research on Ethnic Groups in Cambodia*, Center for Advanced Study, Phnom Penh, July 1996.

¹⁹ Working Group on Minority and Indigenous People's Rights, *The Report on Public Forum on Rights of Minority and Indigenous People*, supported by UNCOHCHR, 21 August 2001.

²⁰ Ibid.

they pay for their release. Ethnic Vietnamese fishermen also complain of indiscriminate fines. Local authorities and the courts tend to ignore complaints from indigenous and minority groups and deny them justice

All minority groups suffer scorn and verbal harassment from the majority group. These negative social attitudes carry over to exclusion from or poor delivery of basic social services, especially health care and education. Transport and development projects rarely reach their communities. Poverty among indigenous people and other minorities means that doctors are reluctant to treat them. Their poverty also excludes many children from schooling. Indigenous and ethnic minority children rarely attain tertiary education and the few who do complain of discrimination from private companies and civil society groups when they apply for jobs. In the whole of Mondolkiri province, not one indigenous child has yet graduated from high school.

Women and Children

The 1989 Law on Marriage and the Family is highly supportive and protective of women's and children's rights. Its first article states categorically that marriage must be entered into only with the free consent of the intending spouses. The 1981 Constitution outlawed bigamous marriage and forced marriage. These provisions were maintained in the current 1993 Constitution. This constitution also protects the rights of the child from acts injurious to their educational opportunities, their health and welfare. Cambodia is signatory to the Convention on the Rights of the Child and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) which together should ensure that this article of the International Covenant be respected and observed.

Although forced marriage is outlawed in Cambodia, traditional practices, particularly in rural areas, do not always allow young people to marry the spouse of their own choice. Moreover, grassroots officials will not usually register a marriage entered into without the full agreement of the couple's parents. Official registration of marriage, despite the 1989 Law, is not the general rule. For example, among 375 cases recently investigated by staff of a leading Cambodian human rights organisation, only 25.8% of those marriages had been officially registered.²¹ Ignorance of the law and failure to register a marriage creates problems which can seriously disadvantage children should the marriage fail and the wife is left to raise the children by herself. Ignorance of the law also allows for many under-age marriages, particularly of young women under the age of eighteen.

According to the 1997 Labour Law, women have the right to ninety days' maternity leave with half-pay if they have one year of uninterrupted service. Note that the 1993 Constitution states that women can take ninety days' maternity leave on full pay. (Article 46) In effect, this law can only apply to government civil servants and to factories where monitoring of working conditions is regularly conducted. Some private companies and non-government organisations are known to abide by this regulation. In many other private sectors and the informal sector, this law is not enforceable. The International Labour Organisation (ILO) reported in November 2001 that eighty per cent of the factories it monitored provided maternity leave in accordance with the law. In only one of the thirty factories studied did the workers not understand that they had the right to maternity leave.²²

²¹ ADHOC lawyer, 'Minutes of Seminar on Law on Marriage and the Family', Phnom Penh, 4 December 2001.

²² ILO, 'First Synthesis Report on Working Conditions in Cambodia's Garment Sector', Phnom Penh, November 2001.

Article 73 of the 1993 Constitution makes provision for State daycare facilities and for support to mothers with many children. Article 186 of the Labour Law requires enterprises employing a minimum of 100 women or girls to establish a nursing room and a daycare centre. If the enterprise is unable to set up a daycare centre for children over eighteen months of age, women workers can place their children in any daycare centre and the charges will be paid by the employer. The ILO study found that none of the factories it monitored had a nursing room or daycare centre; none paid for the cost of private daycare facilities for their female staff. Just one factory had started to set up a daycare centre but it was not operational at the time of the study.

In 1985 there were 541 kindergartens in Cambodia, providing places for 56,110 children of working mothers.²³ In 1994, following the change to the free market economy, this number was reduced to 203 to accommodate 53,080 children. By the year 2000-2001, there was a significant recovery with 952 state-run kindergartens for 57,867 children.²⁴ In addition, there were 1,039 community kindergartens for 19,368 children. There were also 29 private kindergartens for 3,106 children. UNICEF supported kindergartens in one-third of the country's provinces; many non-government organisations have set up kindergartens throughout the country. Despite the increase in the number of kindergartens which are available, many working women, particularly self-employed women in the informal sector, and rural women, cannot afford to take advantage of them.

The economic and sexual exploitation of Cambodian children is directly related to poverty within families, and in the case of sexual exploitation, families which are already isolated and vulnerable due to other factors such as domestic violence, sickness, debt, or the death or absence of a parent. Data from 1999 shows that 29% of girls aged 14-17 years in the urban areas, and 53% of those in rural areas are engaged in work.²⁵ For boys, the corresponding ratios are 17% and 39%. The gender difference in these under-age employment statistics strongly suggests that girls are being removed from school at an early age to help support their poor families.

The related problems of sexual exploitation of children, child pornography and the trafficking of children was discussed in Cambodia's supreme law-making body, the National Assembly, on 2 January 2002. Exploitation of children is considered to be a major social problem which affects the honour and reputation of the State and the future of its people. NGOs working in the Mekong sub-region estimate that hundreds of thousands of women and children are being trafficked from rural areas to cities and between neighbouring countries such as Vietnam and Thailand for the purpose of prostitution. According to one NGO that works with women in crisis, between 400 and 800 Cambodian women and children are trafficked to foreign countries for sex each month.²⁶ It is estimated that there are 80,000 – 100,000 commercial sex workers in Cambodia of whom about 30% are thought to be under 18 years of age. This puts the population of child sex workers at about 5,000 in Phnom Penh alone.²⁷

²³ Secretariat of State for Women's Affairs, 'Cambodia's Country Report, First Draft', Phnom Penh, May 1994.

²⁴ Dept. Primary and Pre-School Education, 'Report from the workshop on the output of kindergarten materials,' 17-19 December 2001.

²⁵ Ministry of Planning, 'Cambodia Human Development Report 2000: children and Employment', Phnom Penh, 2000, p. 30.

²⁶ David Kihara, 'Enforcement key to stopping child trafficking', *The Cambodia Daily*, 3 August 2001.

²⁷ Cambodia HDR 2000, p. 36.

With the notable exception of adequate legislation concerning adoption, Cambodia already has adequate laws for the protection of the social rights of women and children. These laws, however, are still poorly implemented and easily evaded. While poverty, low education, and the widening gulf between rich and poor remain concrete realities for a large proportion of the Cambodian population, the social rights guaranteed by Article 10 of the Covenant will be very difficult to attain.

People with Disability

Articles 31, 34, 35, 36, 65-68, and articles 72 and 74 of the Cambodian Constitution discuss the obligation to disabled people. There are a further twenty law, decrees, regulations, and prakas which guarantee the rights and protect the benefits of disabled people, such as the sub-decree of the government on the function of the Ministry of Social Affairs, Labour, Vocational Training, Youth and Rehabilitation in relation to policies which protect disabled people. The prakas of the ministry on the setting up of the Disability Action Council demonstrates the steps taken by the government to secure the rights of the disabled. A draft law on disability has been prepared but so far disabled people in Cambodia have not been able to firmly secure their livelihood. There are some cases where their rights as citizens have been violated. The allocation to social affairs in the national budget is only 2.55%. The Ministry of Women's and Veterans' Affairs, which shares responsibility with MOSALVY for the protection and rehabilitation of disabled veterans does not yet have clear policy on demanding equality in the society between disabled and non-disabled people.

RECOMMENDATIONS

- The wording of the Cambodian Constitution should be revised to exclude all ethnic implications surrounding citizenship and all other relevant legislation should be reviewed for consistency with the principle of non-discrimination as formulated in international human rights law.
- The government should guarantee the possession of indigenous communities to land and forest traditionally owned by them and should consult with minority and indigenous communities whose land or forest is affected by development activities prior to the planning of any activities.
- Draft legislation protecting the language, religion and culture of minority and indigenous peoples.
- Redraft the proposed Law on Associations to include specific articles protecting the promoting of the establishment of ethnic associations.
- Improve the quality and quantity of education and health services and ensure that they reach the poorest groups and the most remote areas of the country.
- Actively combat racism, xenophobia and discriminatory attitudes at all levels of society and in the government.
- Review the 1989 Law on Marriage and the Family to eliminate any vestiges of gender-based discrimination and ensure that registration of marriages which are entered into freely by both spouses takes place and that the people understand the value of registering their marriages. Official birth certificates or the family book should accompany application for the registration of a marriage.
- The protection of maternal rights should be considered a priority. The State should also make provision for free daycare centres which are close to the places of work and/or residence of poor women.
- Poverty reduction strategies should encompass more than just economic measures to increase family incomes. Low levels of literacy especially among women, poor standards of education, inadequate nutrition and basic health care, rural debt and landlessness, and ignorance

of the law are all part of the poverty trap. Severe social problems such as the trafficking of children, the sexual exploitation of children, and child labour are manifestation of this poverty trap. Families most at risk should be targeted early and given essential assistance by the government to keep them from falling below a level where no assistance can rescue them.

- Cambodian laws, especially the Criminal Code and the Labour Code should define clearly the meaning of a “child” and establish the age at which young people are permitted to enter the labour market, to marry, to engage freely in sexual intercourse, etc.
- Juvenile justice is an urgent issue.
- Children most at risk, especially orphans, the mentally and physically disabled children, street children and members of street gangs should receive particular assistance. The government should widely inform the public about the availability of its child protection services and encourage the people to make use of them.
- The government must sign the Hague Convention on Inter-Country Adoption, set up a national and international network to combat illegal adoption and criminalize those involved in exploitative practices in adoption.
- There is genuine need for an Anti-Discrimination Law and suitable mechanisms for the hearing of complaints.

Article 11: The Right to an Adequate Standard of Living

The Covenant stipulates that its signatories should recognize the right of everyone to the continuous improvement of their living conditions. For many of Cambodia's rural and urban poor, estimated to be 40% at least of the total population, progress towards this goal is threatened by dispossession of agricultural land and eviction from urban dwellings.

Security of Land Tenure

After two decades of civil war and political turmoil, in the years 1989 to 1993, the State of Cambodia provided ownership rights for residential land and possession rights for agricultural land. Possession and farming of agricultural land has traditionally been the foundation of rural livelihoods, in combination with exploitation of aquatic and forest resources. With 84% of the population still trying to make a living in rural areas, access to land remains a key element in warding off or escaping poverty in Cambodia.

One of most worrying consequences that has accompanied the transition to a market economy is the loss of access to land for many poor families and increased concentration of land in the hands of a few. Forty percent of the population own less than one hectare of land, representing in total 10% of Cambodia's cultivated land. In stark contrast to this, 70% of cultivated land is owned by 23% of the population. Effects include an increasing number of landless people, land speculation, land grabbing and land disputes. For the first time in Cambodia's history, access to land is becoming difficult, creating pressure on rural livelihoods and leading to increased expressions of social discontent. Land disputes are one of the major sources of conflict in contemporary Cambodian society.

According to court files, legal aid agencies, human rights NGO records, the media and some competent officials, during the monitoring period April 2000 to December 2001, there were 821 recorded cases of land disputes, involving 41,121 families and affecting 78,990 hectares. One in every fifty households is involved in a land dispute. A typical case involved some fifty families in a dispute with someone in a powerful position over approximately 75 hectares of rain-fed riceland that they have farmed for ten years or more.

These aggregates are somewhat distorted by the inclusion of some very large disputes resulting from concessions being granted over thousands of hectares on which hundreds of families were already living. Most reported disputes involve many families and they are not just boundary quarrels between neighbours. The cases reported tend to occur in the richest agricultural areas, reasonably reflecting population densities. They include disputes over rain-fed riceland, field cropland, residential land, and irrigated riceland.

Most frequently, the land was taken by assertion of superior title, abuse of power, fraud and use of violence. Over 80% of those accused of taking other people's land are in positions of power, such as officials, members of the armed forces, and business people. The evidence gleaned from officials' own records also reveals that the central government and its agents significantly contribute to the level of land disputes, making it difficult, if not impossible, for local authorities to resolve these cases.

A current report on landlessness and development which was conducted in 143 villages across 15 provinces showed that of the 31,793 families interviewed, 4,178 are landless.²⁸ Among these 13% of landless families, 7% had never owned land, 6% had sold their land due largely to health problems and associated costs, and 1% had had their land stolen. The report suggests that more than one in eight families have no agricultural land on which to base their livelihood and they do not have the means to purchase it.

Urban Housing and Security

The opening up of the free enterprise economy following the Paris Peace Agreement in 1991 resulted in unchecked urban land speculation. Like rural Cambodians, city-dwellers also face problems concerning land-grabbing by those with wealth and power. Rural Cambodians dispossessed of their land, or fleeing rural poverty and debt exacerbated by a recurrent cycle of drought and flood have drifted to the capital, Phnom Penh, to seek a livelihood. There are 35,165 families living in 502 urban poor settlements in Phnom Penh.²⁹ These settlements typically suffer from inadequate shelter, poor sanitation, and difficult access to electricity and piped water supply. Much of the meagre income their residents can earn goes towards purchasing water from private sellers. The government and the municipality lack the financial and human resources to provide the basic services needed by the urban poor. The priority issues, problems and needs of these communities have been identified as:

- low and unstable income
- costs of basic services
- lack of basic infrastructure
- lack of strong community organization and people's participation in development work
- lack of public support
- constant fear of eviction³⁰

Children of the families in the poor urban communities also have problems of access to education. The private cost of public education is usually too high for the families to bear and children are often needed to assist in family income generation or to care for siblings while parents are seeking work and income.

The threat of eviction corrodes efforts of these communities to organize in order to better their living conditions. Evictions take place to clear land for commercial "development" purposes or to "beautify the city". Since 1993, under pressure from development and foreign investment interests, many settlements have been evicted without proper compensation or legal arrangements. These evictions affect those who are most economically and socially disadvantaged, especially women. Many lose everything. On the new sites, they have inadequate shelter which increases their vulnerability and hardships. During 2001, for example, there were more than 10 cases of evictions and/or relocations affecting more than 4,500 families. These cases included three major squatter settlements which were burnt down. Claiming an emergency, the municipality implemented relocations without proper planning or preparation at the new site, despite requests from NGOs and community to delay relocation until a proper site had been developed.

²⁸ Robin Biddulph, *Interim Report on Findings of Landlessness and Development Information Tool research Sept 1999 to April 2000*, Oxfam GB, Phnom Penh, 15 June 2000.

²⁹ Solidarity Urban Poor Federation, *The State of Poor Settlements in Phnom Penh, Cambodia*, January 1999.

³⁰ Urban Sector Group, *Annual Plan 2002*, Phnom Penh, p. 2.

Food Security

The right to food is a fundamental human right. Article 11 of the Covenant stresses that States ratifying this Covenant have an obligation to recognise the "fundamental rights of everyone to be free from hunger".

In Cambodia, it has been reported that at least 18% of the population experience serious food shortage every year.³¹ Forty-five percent of children are stunted. Twenty percent of Cambodian women are chronically energy deficient as a result of being underweight. Clearly, the Royal Government of Cambodia is not yet fulfilling the obligation it has to its people to ensure food security for all.

Agricultural rice production in Cambodia has been stable for the last five years. Yields per hectare, however, are still among the lowest in the world. The increasing focus on production for export, and the productivity push that comes with it, demands the need to do more with less. The result is an excessively heavy reliance on agro-chemicals. Surveys suggest two-thirds of Cambodian farmers use pesticides. In 1994, 30 active pesticide compounds were available in Cambodia; by 2000, this figure had risen to 76 compounds – one-third of which are classified Class I (highly-extremely hazardous) by the World Health Organisation.³² Almost one-quarter of pesticide products available in Cambodia are banned in neighbouring countries.

Many farmers are unaware of alternatives to such widely promoted 'modern' methods of production. Research and extension services establishing and encouraging sustainable agricultural practice, based on biological processes, locally available production inputs and naturally occurring seed varieties are still too limited. This lack of knowledge and information sharing results in many farmers' exclusion from realizing the economic and health-promoting benefits of diversifying production.

Cambodia has surplus production of rice at the national level but food shortage is still experienced at the household level. In surveys conducted in 2001, 40% of families in Svay Rieng, 70% of families in one Siem Reap commune and more than half of all families in one Phnom Penh quarter faced food shortage for some part of the year.³³

Food insecurity is unacceptable. While it still exists in any magnitude, the RGC is not meeting its obligations as a signatory to the Covenant. More importantly, it is not meeting its obligations to the Cambodian people "to respect, to protect and to fulfil" their right to adequate food.

RECOMMENDATIONS

- Landlessness should be used by government as a poverty reduction indicator.
- The government should enact all complementary laws and legislation which the Land Law requires. Land management and administration should be decentralized. A land inventory should be created to identify state property for redistribution to the poor and a pilot project implemented through a broadly consultative process to create a land distribution strategy. Land disputes should be resolved through empowerment and strengthening of an administrative commission and the court system and there should be an Expropriation Law and procedures.

³¹ M.Planning, *Cambodia Poverty Assessment*, Phnom Penh, 1999, p. 73.

³² Environmental Justice Foundation, *Death in Small Doses: Cambodia's Pesticide Problems and Solutions*, London, 2002.

³³ PADEK, *Implementation Plan 2002*, Cambodia.

- Prohibit the accumulation of land for speculative purposes by enforcing land tax regulations and legislating for a land ownership ceiling. Prevent illegal land acquisition and land concentration. Cancel all rural land concession agreements where concessionaires violate the terms. Create a monitoring and evaluation team to inspect all the existing agro-industry land concessions by public participation.
- Provide direct support and alternative income generation opportunities to displaced farmers - particularly for the most vulnerable groups - to ensure their access to food is secure at all times.
- Strictly enforce the sub-decrees in place vis-a-vis agricultural material standards, particularly in regard to pesticides and conduct education programmes for safe use of chemical inputs as a stop-gap measure to conversion to organic processes.
- Establish standards to ensure that food is safe for consumption.
- Ensure grassroots farmers are consulted during formulation of, and fully understand the implications of Cambodia's PRSPs. Ensure careful, thorough and informed investigation into World Trade Organisation membership - the costs and benefits for all Cambodian people. This must include dialogue and consultation between government at all levels and Cambodia's farmers.
- Long- and short-term development strategies with clear objectives must be implemented to reduce urban poverty by providing land for housing, by investment in infrastructure and environmental management, and by access to employment, health, and education/training.
- Avoid the relocation of urban communities at all costs. If relocation cannot be avoided, prior in-depth studies should be conducted to ensure that the new area provides the people with access to basic services like health, education and work.

Article 12: The Right to Health

The average annual income of Cambodian people is only US\$258 per capita, yet household expenditure for health care is US\$29 per person³⁴, most of which comes from savings and borrowed money³⁵. Health care remains a serious factor of impoverishment in Cambodia, where 36% of the people live below the poverty line which is generally assessed as a food/shelter/clothing budget of one dollar per day.

Improving the population's health status is a necessary pre-requisite to other poverty reduction and human development objectives. The booming private sector presents itself as an alternative to the public health sector affected by its structural weaknesses and financial difficulties. However, in an environment notorious for its reluctance to accept regulation, commercial health care provision with its high prices, will not lead to improved access to the poor. Moreover, a recent study revealed that 49% of private practitioners' prescriptions are hazardous³⁶.

The OECD recently noted that "while health is widely understood to be an important outcome of development, the role of good health in promoting economic development and poverty reduction has been much less appreciated"³⁷. In Cambodia, the Ministry of Health has made consistent efforts to develop the public health sector, but structural obstacles have prevented it from reaching health-related poverty reduction goals established in the first Socio Economic Development Plan. The population health status remains very low and most health care consumers do not perceive changes from policy reforms.

- **Structural obstacles**

The problem of low salaries, which discourages public health workers, jeopardises the quality and availability of public health services. Senior consultants who are supporting the Ministry of Health in building the national Health Sector Strategic Plan noted that the issue was not selected during the national workshop organised to establish the health sector priorities for 2003-2007. The recently established "Position allowance" and the "Priority Mission Group" strategy adopted by the Council for Administrative Reform are two positive steps forward, but the salary increase they generate is so meagre for field health workers that they still do not address the low wage problem.

A much higher budget should be provided to the Ministry of Health to allow the latter to provide public health workers with specific significant allowances, in particular 1) to encourage health workers who are ready to work in remote areas, and 2) to motivate health workers to provide quality services. It has to be noted here that only experiences of bonus provision that have linked bonus payment to performance have been successful. As such, local independent monitoring and evaluation bodies need to be established to monitor performance and encourage public health workers to perform well.

Current cash flow procedures are another structural obstacle that prevents the public health system developing as they dramatically delay budget release and access to budget. As a result, only 3% of the

³⁴ Ministry of Health, *Joint Health Sector Review*, March 2001.

³⁵ Ministry of Planning & Ministry of Health, *Cambodia Demographic and Health Survey*, 2000.

³⁶ Chris Vickery, Greg Rose, Steve Dixon, Lo Veasna Kiry, Sharon Wilkinson, *Private Practitioners in Phnom Penh, a Mystery Client Survey*. November 2001.

³⁷ OECD Commission on Macroeconomics and Health (CMH), October 2001.

health section of the PAP (Priority Action Plan) budget (against 25% after three months in 2001) and close to 0% of the health section of Chapter 11 of the National Budget was released during the first four months of 2002. This deep structural macro-economic problem worsens year after year and paralyzes the whole public health sector. The NGO community would appreciate being briefed on plans and progress being made at that level to address this crucial issue.

Maternal and Child Health

Cambodia's maternal mortality ratio is estimated to be 437 per 100,000 live births which results in the death of more than 2,000 women each year due to childbirth-related causes. Nearly half of all women who gave birth at least once in the five-year period prior to the 1995 KAP (Knowledge, Attitude, Practice) survey did not seek antenatal care during their last pregnancy. The survey showed that most Cambodian women, 84% of them, deliver their children at their home, mostly with the assistance of traditional birth attendants. Harmful practices are carried out throughout the country.³⁸

The Demographic and Health Survey 2000 reported that 60% of women in urban areas and 56% of women in rural areas do not practice birth spacing, and 32% of births surveyed were unplanned.

The survey results further showed that nearly one in ten Cambodian babies will not live to see his or her first birthday. Twenty percent of children under five years of age showed symptoms of acute respiratory infection, the leading cause of childhood morbidity and mortality, at some time in the two weeks preceding the survey.

Approximately one-third of the children with symptoms of ARI were not taken for medical treatment.³⁹ The poor health of so many Cambodian children is directly related to chronic food shortages still suffered by millions of rural Cambodians. About half of Cambodia's children up to age five are malnourished and more than 30% of the 11.4 million people which make up the country's population do not get their minimum dietary requirement. This is one of the highest ratios among countries in Southeast Asia.⁴⁰ Poor diet results in high levels of anemia among pregnant women and also low-weight births.

Prisoner Healthcare

Health care of the prisoners in Cambodian prisons remains unclear. The Ministry of Interior (MoI), Ministry of Health (MoH) and Ministry of Justice (MoJ) are supposed to coordinate the provision of health care to prisoners. However the lack of cooperation among these ministries delays reform to establish the health care systems in Cambodian prisons.

Prisons are under control of MoI but they are unable to provide health care to sick prisoners by their own staff because they do not have medical supplies, including medicines and competent medical workers. MoI has announced a plan to hand prisons over to civil institutions for management but to date the plan for actual turnover is unclear. If the prison communities become civil institutions, MoH should consider the possibility of developing prison infirmaries as health posts or health

³⁸ Speech by Dr Chhun Long, RH Programme Manager, to First National Conference on Gender and Development, Phnom Penh, September 1999.

³⁹ *Cambodia Demographic and Health Survey 2000*, p. xxiii.

⁴⁰ Prime Minister Hun Sen in speech to World Food Programme conference on food aid, reported in *The Cambodia Daily*, 12 February 2001.

centres. For the sake of prisoner healthcare in Cambodia, the best solution is to put the healthcare of prisoners under the responsibility of MoH.

On July 12, 1999 Ministry of Health issued a letter to instruct all the municipal and provincial health departments to provide healthcare to prisoners and medicine to all prisons in Cambodia. Implementation of this instruction by the municipal and provincial health departments has been limited. The Ministry of Interior is currently preparing a joint proclamation in order to collaborate with the MoH in providing healthcare to prisoners. Progress is, however, slow.

With the support of CCJAP (Cambodian Criminal Justice Assistance Project), the Department of Prisons of MoI has developed three important documents. One is the proclamation on prison administration. This document provides guidelines on how to manage prisons, similar to the United Nations instrument "Standard Minimum Rules for the Treatment of Prisoners". The second is the prison procedure manual, and the third is the prison health operational manual, a non-clinical manual on how to manage healthcare in prisons. Again, how the prison personnel use these three important documents is unclear.

- **Health Screening of new prisoners and Medical records**

Health screening of new prisoners is very important for the prevention of health problems among inmates. MOI does not provide office supplies to prisons, such as typing paper or pens. This constraint makes it impossible for prison medical staff to maintain medical records on prisoners and thereby provide preventive care. Besides, there is no specific training for prison medical workers to keep medical records.

- **Chronic illness care**

Prison health workers do not have enough skills or experience to diagnose and provide treatment for such diseases. Beside there are no medicines for prison health workers to provide that kind of health care to sick inmates. Provincial hospitals can provide treatment for prisoners who have tuberculosis but if they have hypertension or diabetes, they must buy medicine themselves to treat their illnesses. In serious cases, prison health workers along with the prison directors evaluate and send sick prisoners to hospital.

- **Mental health care**

There is no mental health care in the prisons. This is a complicated issue. Mental health doctors are not available in the prisons. Prisons do not have a budget to refer mentally ill prisoners for mental health evaluation. The three ministries (MoI, MoJ and MoH) do not work hard enough to solve this issue. Some mentally-ill prisoners are currently detained without receiving treatment for their problems.

- **Referral to hospital**

Referring sick prisoners to hospital is not based on medical condition alone and there are no clear guidelines to be followed. Sometimes prosecutors are involved in authorizing referral. In some prisons, the prison directors can decide to refer sick prisoners to hospital. However, his first concern is the escape of the prisoners from the hospital. Prisoner escapes from hospital are commonly reported. This happens because there are not enough prison personnel on duty to guard prisoners at the hospital. Prison personnel on duty to guard sick prisoners in the hospital are not provided with a per diem.

- **Other Related Prison Health Issues**

- Most prison buildings in Cambodia are very old and too small to accommodate large numbers of prisoners. Outbreaks of skin diseases such as scabies, fungal infections and other skin infections are very common. Most prison buildings should be renovated or rebuilt to allow prisoners enough space, good ventilation and light.
- MoI provides each prisoner 1000 riels per day for food. The money has been used to buy food, firewood, and sometimes water and electricity and other things as well. Meals are served twice a day. It is commonly reported that prisoners have beriberi caused by vitamin B₁ deficiency.
- There is not enough water in Cambodia prisons especially during dry seasons. Diarrhea is commonly reported among prisoners because they do not have clean water to drink. Usually prisoners use the same water for bathing and drinking. In some prisons, water was restricted to one litre per prisoner per day for bathing.
- Soap is not adequately supplied to prisoners for bathing and washing clothes. Again insufficient water affects personal hygiene and sanitation. The number of latrines is not on balance with the number of prisoners. For example: in one prison, there are at least 80 prisoners and they use only two latrines.
- In general, time given to prisoners outside cells is very limited due to security reasons. This is because prison personnel on duty are less than expected. Low salary is the main reason why only about one third of total personnel are on duty daily.

RECOMMENDATIONS

- The government should increase the health budget and improve disbursement procedures.
- The government must strengthen the public health sector and regulate the private health providers.
- The financial burden of the exemption for the poor should not be borne completely by the health facilities and the health workers. Equity funds could be established in all Operational Districts, managed by a third party who has a good understanding of the local communities.
- Improve the nutrition status and prevention of disease, particularly for poor people, helping them cut their expenditures for curative health services. Outreach activities should be promoted and monitored.
- Increase the availability of reproductive health services. The Ministry of Health is urged to expand quality reproductive health services with good counselling throughout the country as soon as possible and to include basic emergency obstetric care.
- Priority should be given to the availability of cheap and reliable medicines and adequate equipment and staffing for all hospitals and health centres.
- Healthcare of prisoners should be placed under the responsibility of the Ministry of Health.
- The three Ministries (MoI, MoJ and MoH) should establish an independent inspection team to inspect all prisons regularly. Inspection should be done to ensure that the prisons are administered in accordance with existing laws and regulations.
- The government should set standards for a healthy prison environment (including provision of soap, water, adequate food, recreation periods, and vocational training) and ensure that these standards are maintained.
- The three ministries (MoI, MoH and MoJ) should ensure that medical and psychiatric services are provided for the psychiatric treatment of all prisoners who are in need of such treatment.

Article 13: The Right to Education

The Education system in Cambodia is still in the process of reconstruction. According to the Constitution basic education is compulsory for Grades 1 – 9. In spite of considerable rebuilding efforts by the government, donors and NGOs, however, the majority of children still fail to complete their basic schooling.

- **Availability**

There is a shortage of school facilities at all levels of education. This shortage is worse in rural and remote areas. At Primary level, in 2001 there were 1,026 villages without schools, 474 schools suffer from extreme overcrowding and 1,119 schools do not offer a complete cycle of grades 1-6. The situation is worse at secondary level with 17% of the total number of districts without a lower secondary school (grades 7-9).⁴¹ In Ratanakiri province there is only one secondary school. Higher education, provided by MoEYS institutions, is generally only available in the capital Phnom Penh.

- **Accessibility**

Education is not free at any level currently. The government is working towards progressively free basic education. In 2001 school enrollment fees were abolished at primary level. However the root cause of these payments is that teachers' salaries are extremely low. Monthly salaries of between \$15-20 are standard and fall well short of a living wage and thus the practice of teachers charging a small daily fee to children is widespread. Amounts vary but run on average at 200 riel (\$0.05) a day for a child at primary school (grades 1-6). These sums increase rapidly at secondary level, particularly in upper secondary (grades 10-12). In addition, ad hoc payments are sometimes requested for school materials. To help counteract these unregulated payments MoEYS has provided operating budgets to all primary schools from 2000-2001. Operating budgets for secondary schools will be phased in over the next five years. All teachers' salaries are planned to increase over the next five years. Textbooks should be free at primary level and distribution has improved. However at secondary level and particularly at upper secondary level the burden of school materials can be prohibitively high.

The provision of operating budgets, increased teacher salaries and provision of school materials are all welcome initiatives but prompt disbursement of funds to achieve these goals remains an issue. It is not uncommon for teachers to fall into indebtedness while waiting to receive salaries that are 2-3 months in arrears. While some improvement in disbursement has been made more needs to be done.

There is very poor accessibility to higher education, particularly for girls. In 2001 29,645 students took the grade 12 examination, only 66.6% passed.⁴² Less than 0.09% of these students went on to higher education in one of the 9 MoEYS tertiary institutions. In the last few years there has been an explosion of private institutions offering a variety of courses, some leading to degrees. They have proven to be very popular indicating that people are able and willing to pay for higher education. However the quality of education provided by many of these private schools, colleges and "universities" is questionable. The government is preparing legislation to regulate tertiary institutions.

⁴¹MoEYS, *Education Sector Development: A Strategic Analysis*, January 2001.

⁴² MoEYS, August 2001

Technical and Vocational Education and Training (TVET) provision is complex and uncoordinated. TVET is provided by MoEYS in four Phnom Penh Technical Institutes, three TVET institutes outside Phnom Penh and thirty-two provincial TVET centres. The Ministry of Social Affairs, Vocational Training, Labour and Youth Rehabilitation (MoSALVY), the Ministry of Rural Affairs, Ministry of Agriculture and Ministry of Women's and Veterans' Affairs all offer vocational training. Several NGOs also provide TVET. In 1999, enrollment in TVET was estimated at 93,000 but only 5,700 students attended public institutions.⁴³ MoEYS recognises the importance of this sector and the ESSP PAP 5 is directed at expanding and improving the quality of TVET. MoEYS is seeking assistance from NGOs to build capacity to develop a comprehensive plan for the sector and to ensure effective coordination between ministries, NGOs and business. Long-term technical support is required to enable MoEYS to be effective in this area.

Efforts to improve educational opportunities for children with disabilities are being hampered by the ban on disabled people training to become teachers. Summer remedial programmes are beginning to tackle the persistent problem of high repetition rates, particularly in grades 1 and 2. The increasing use of double shifts is improving class sizes and improved progression is also helping retention. However, these initiatives also create difficulties and need to be carefully monitored so as not to create additional problems.

- **Acceptability**

The curriculum for basic education (grades 1–9) has been revised and textbooks have been produced that are culturally appropriate and take into account issues of gender, race and disability. Access to textbooks at primary level has dramatically improved. At Upper Secondary level the curriculum is still too theoretical. Its scope is too wide for the number of teaching hours available. Resources are limited and in science practical experiments of even the most basic kind are largely impossible. The curriculum at higher education is not yet acceptable by international standards in many areas, but it is improving.

The quality of teacher training has also improved with a greater emphasis being given to child-centred learning techniques. The area of teacher training however remains a critical concern. Given the history of Cambodia, it is not difficult to understand the significant loss in human resources in all fields and more so in the field of education. The "storehouse" of learned teachers simply does not exist and therefore teacher training will be an essential need for the foreseeable future.

- **Adaptability**

Khmer is the only language of instruction in government primary schools. This issue needs to be addressed if minority indigenous children are to have access to education. Currently there are a few private schools that cater to the international community and several Chinese schools. At secondary level, with French support, there are a few schools that offer a bi-lingual programme. The Khmer language at university level is a barrier to achieving internationally acceptable standards. Some disciplines, such as medicine and technology are taught in French and programmes are provided to improve students' foreign language skills. However a foreign language is not yet a compulsory examinable subject in the Grade 12 examinations. The curriculum at university level is adaptable in management, business and in some science areas.

⁴³ *Education Sector Development: A Strategic Analysis.*

- **Fundamental Education**

A national literacy survey carried out by MoEYS in 1999 indicated that only 37.1% of adults (aged 15 years and above) were literate, with 26.6% classed as semi-literate and 36.3% as completely illiterate. Projecting these figures into the total population this indicates that some 4 million Cambodian youths and adults (15 years and above) are basically illiterate and it would appear from the survey that illiterates and those living below the poverty line are the same group. The Non Formal Education (NFE) Department of MoEYS has existed since 1980. There is an NFE office in every province and at least one NFE teacher in each commune. During 2001 there were 2,637 NFE literacy classes nationwide with 20-25 learners per class including 1500 run by the NFE Department and another 380 run by the Ministry of Women's and Veterans' Affairs. However, given the scale of the problem this is a drop in the ocean. The main objective of the NFE department according to the ESSP is to provide effective, efficient and sustainable learning opportunities to increase numbers of the most disadvantaged and underserved out of school children and functionally illiterate adults as systematically and as quickly as possible. However, with limited budget allocation forecast between now and 2005 and limited capacity this will be a seemingly impossible task.

RECOMMENDATIONS

- The funds for the implementation of the education reform programme should be distributed urgently and according to a transparent, accountable allocation and disbursement system.
- Implementation strategies must be developed to ensure fulfilment of the government's Education for All policy by 2015, especially to the target populations of the poor, girls, disabled, and ethnic minorities.
- More emphasis is needed on non-formal education in its efforts to reduce poverty. The non-formal sector should stand alone as a separate, valuable entity in the education reform process and have resources allocated to it that do not detract from the formal sector.
- Decentralization of school governance and education programming across all levels particularly down to local schools and their communities will ensure that the education system belongs to and is influenced by all stakeholders.
- Serious efforts must be made to ensure a fair and equitable salary scale is applied to the teaching profession.

Annex II :
The Right of Indigenous People in Cambodia

**Submitted to the United Nations Committee on Economic, Social and
Cultural Rights**

April 2009

**UN COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL
RIGHTS**

(42ND SESSION 2009)

THE RIGHTS OF INDIGENOUS PEOPLES IN CAMBODIA

Submitted by

**Indigenous Community Support Organization
NGO Forum on Cambodia
Asian Indigenous Peoples' Pact Foundation
Forest Peoples Programme**

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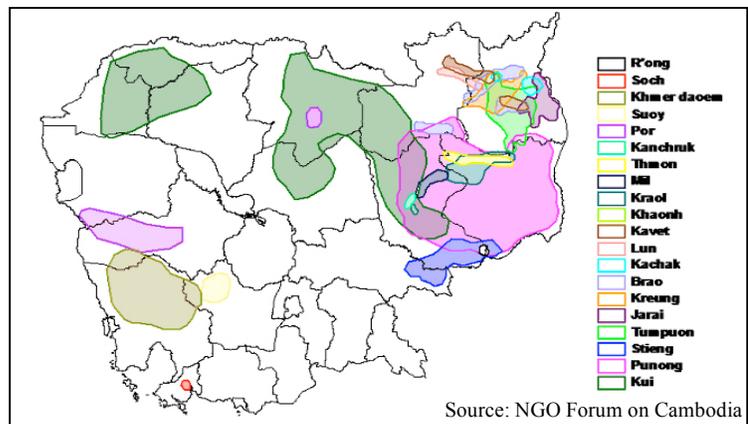
03 April 2009

I. SUMMARY

1. Two indigenous peoples and support organizations in Cambodia, together with an Asia regional indigenous peoples' Federation and an international NGO, ('the submitting organizations') (Annex A) have the honor of submitting this report to the Committee on Economic, Social and Cultural Rights ('the Committee') for consideration at its 42nd session. The report is intended to aid the Committee in its consideration of Cambodia's periodic report and focuses on the rights of indigenous peoples in Cambodia.

2. This report provides specific facts and documentation related to on-going violations of the economic, social and cultural rights of the indigenous peoples of Cambodia. The information contained herein looks in detail at a number of areas in which the rights of indigenous peoples are currently and have historically been violated by Cambodia. These areas, which relate to Articles 1, 11, 12, 13 and 15 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), are: (i) the right to self-determination; (ii) land and resource rights; (iii) forced displacement; (iv) the right to education; and (v) the right to health.

3. Indigenous peoples are estimated to be the traditional owners and managers of over 4 million hectares of Cambodia's forest lands and have been responsible for preserving stable environmental conditions for many other parts of the country (forest conservation supporting flood control, for example).¹ The 1998 Cambodian Population Census identified 17 different indigenous groups.² Population estimates for indigenous people range from 101,000 to 190,000, or 1.4 percent of Cambodia's population, and as the map indicates, their customary lands are overwhelmingly found in the north-eastern provinces.



4. Whilst indigenous peoples welcome development opportunities in their communities, there are rapid changes now occurring in an environment where

many indigenous people are functionally illiterate in the national language (Khmer), and where weak local governance and transparency are significant barriers to indigenous peoples' effective participation in decision-making processes. In this environment, it is of paramount importance that the civil, political, economic, social and cultural rights of indigenous peoples are recognized and protected by the State, including in relation to the acts of private companies and organizations. However, as discussed herein, the State has failed to comply with its obligation with respect to indigenous peoples' rights and violations thereof are common in Cambodia today.

II. SELF-DETERMINATION

5. Article 1 of the ICESCR guarantees the right of all peoples to self-determination, including indigenous peoples.³ This right has been further contextualized to indigenous peoples in the 2007

¹ Community Forestry International internal reports 2006.

² *Population Census*, National Institute of Statistics, Cambodia 1998, available at: <http://statsnis.org/CENSUSES/Census1998/index.htm>

³ See for instance Russian Federation. 12/12/2003. E/C.12/1/Add.94, at para. 39 (recalling the right to self-determination enshrined in article 1 of the Covenant, [the Committee] urges the State party to intensify its efforts to improve the situation of the indigenous peoples and to ensure that they are not deprived of their means of subsistence).

UN Declaration on the Rights of Indigenous Peoples. This Declaration was supported by Cambodia and highlights, *inter alia*, self-determination in relation to the ownership and use of traditional territories and resources, the maintenance and development of indigenous political, economic and social systems, the right to free, prior and informed consent in connection with development projects, resettlement and the adoption of legislation, and the preservation and promulgation of culture. The Committee on the Elimination of Racial Discrimination has observed that the Declaration should be used by states to interpret their obligations under the human rights treaties to which they are party.⁴ This submission will therefore address the obligations of Cambodia by reference to both the ICESCR and the UN Declaration on the Rights of Indigenous Peoples.

6. Despite the extant international guarantees for the right of self-determination the lived experience of indigenous peoples in Cambodia is of violations of the most fundamental aspects of their basic human rights and their right to self-determination. We will address below violations of the right to an adequate standard of living (Article 11); the right to traditional and customary land as their means of subsistence (Article 1(2)); the right to be free from involuntary resettlement (Articles 1(2) and 11); the right to equal access to education (Article 13); and the right to medical attention and services in the event of illness (Article 12).

III. LAND

7. The UN Declaration on the Rights of Indigenous Peoples unequivocally affirms the territorial rights of indigenous peoples.⁵ The Committee has also recognized the centrality of secure rights to traditionally owned lands, territories and resources, including the protection of traditional land tenure systems, to the maintenance of indigenous peoples' ways of life and culture.⁶ Moreover, it has related recognition and protection of these rights to the exercise and enjoyment of the full range of the rights guaranteed by the Covenant.⁷ The Committee has, for example, observed that indigenous peoples are especially vulnerable to violations of the right to food in cases where "access to their ancestral lands may be threatened."⁸ In Cambodia indigenous peoples are routinely denied access to their traditional lands, territories and resources and, in many cases, their lands have been simply taken from them. Such takings are ongoing and constitute a major threat to indigenous peoples' security and well being.

8. Cambodian law does recognize communal ownership of land. The Constitution, for instance, describes ownership of land within Cambodia as being understood as both collective and individual,⁹ although collective ownership rights for indigenous peoples are dependent on a concomitant recognition of legal personality through a process that is not adequately defined and which may be contrary to indigenous peoples' internationally guaranteed rights.¹⁰ The 2001 Land

⁴ *Concluding Observations of the Committee on the Convention for the Elimination of Racial Discrimination: United States of America*, UN Document CERD/C/USA/CO/6, May 2008: para 29.

⁵ The UN Declaration on the Rights of Indigenous Peoples, Article 32 provides that:

(1) Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

(2) States shall consult and cooperation in good faith with the indigenous peoples concerned through their won representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

(3) States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

⁶ See *inter alia* E/C.12/PRY/CO/3, 4 January 2008, para. 29 and 34; E/C.12/IND/CO/5, 10 May 2008, para. 44; E/C.12/BOL/CO/5, 08 August 2008, para. 23 and 36; and E/C.12/KEN/CO/1, 1 December 2008, para. 12 and 31.

⁷ See *inter alia* E/C.12/CO/FIN/5, 16 January 2008.

⁸ *General Comment No. 12, The Right to Adequate Food (Art. 11 of the Covenant)*, adopted at Committee's Twentieth session, 1999, at para. 13.

⁹ Constitution of the Kingdom of Cambodia, Article 44 ("All persons, individually or collectively, shall have the rights to ownership").

¹⁰ See 2001 Land Law, Arts. 8 and 23 and; the 2008 draft *Sub-Decree on Procedures of Registration of Land of Indigenous Communities*, Art. 3 (providing that "General principles that shall be applied in the registration of land

Law also recognizes communal and traditional tenure, again subject to registration as a legal person.¹¹ As discussed below, these guarantees do not adequately protect indigenous peoples in practice. This is due to a lack of political will as well as limitations within the implementing laws.

9. While the 2001 Land Law contains provisions for the titling of communal ownership of land, the required implementing decrees are still in draft form (see Annex C containing the draft *Sub-Decree on Procedures of Registration of Land of Indigenous Communities*). These provisions are thus presently unavailable in fact despite the passage of almost eight years since the Land Law was adopted in 2001. The provisions for communal land titling are also restricted to the recognition of common property held by a recognized legal entity (Article 8) not the communal property or customary tenure of an indigenous people or of any collective that has not been registered as such by the State. Requiring legal registration and legal identity prior to the recognition of land rights is tantamount to vesting in the State authorities the power to determine who is 'indigenous' in direct violation of the rights of indigenous peoples to self-determination and to juridical personality.¹²

10. However, although the 2001 Land Law is problematic in some respects, Article 23 does contain some measure of protection for the residential and cultivatable lands of indigenous peoples, titled or otherwise, at least pending a determination of their legal status.¹³ The former Special Rapporteur on Adequate Housing, Miloon Kothari, opined in his 2003 report on Cambodia that this provision, at a minimum, "should provide indigenous peoples with protection against displacement."¹⁴ However, as discussed below, this protection has not been apparent or effective for indigenous peoples in Cambodia.

11. Indigenous peoples have confirmed that the sale or transfer of land to outsiders is contrary to their traditions and customary laws. However there have been and continue to be widespread reports of indigenous communities being told that 'the land is state land. You have no rights. It will be taken from you. You can sell it now and get some money now or it will be taken anyway and you will get nothing'.¹⁵ The appropriation and alienation of the lands and resources of indigenous peoples in Cambodia has reached extraordinary proportions, despite the protections provided in the letter of the laws cited above. It is not possible to provide clear information about the extent of that alienation because of lack of transparency on many of the land and concession deals. However studies into land alienation in the northeastern provinces have estimated that the majority of land transfers in these provinces are illegal and in contravention of the protections afforded to indigenous peoples under Cambodian law.¹⁶

12. The serious nature of the issues of land and food security facing indigenous peoples in Cambodia has not escaped the attention of the international community. The Special Representative of the Secretary General to Cambodia noted in his 2007 report that the existing

of an indigenous community are as below: - Only communities established as a legal entity which have registered community by-law and legal recognition can apply for registration of collective title. ...").

¹¹ See full text of the 2001 Land Law in Annex B.

¹² See for instance Inter-American Court of Human Rights, *Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of 28 November 2007. Series C No. 172 (discussing the rights of indigenous and tribal peoples to juridical personality, including recognition as peoples, for the purposes of the recognition and exercise of their collective rights). Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf.

¹³ Article 23 provides "An indigenous community is a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use. Prior to their legal status being determined under a law on communities, the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law."

¹⁴ *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari*, 21 March 2003. E/CN.4/2006/41/Add.3. Para 21.

¹⁵ *Land Alienation in Indigenous Minority Communities - Ratanakiri Province, Cambodia*. Cambodia NGO Forum, August 2006. Available at: www.ngoforum.org.kh/Land/Docs/Indigenous/Land_Alienation_draft.pdf.

¹⁶ Ibid.

laws in Cambodia are not applied and without political will the alienation of indigenous peoples' lands would continue.¹⁷ He recommended that the sale of land and the granting of economic land concessions and other concessions in areas occupied by indigenous communities be banned pending the registration of indigenous claims over traditional lands and the collective titling process; and that mechanisms be put in place to protect indigenous land pending the registration of collective title, and that the process of registration of collective title over indigenous land be finalized.¹⁸ Notably these are existing requirements in Cambodian law, yet they remain unimplemented and ineffective. Until today, no registration of indigenous peoples' lands and resources has been completed under the 2001 Land Law. Despite this, Cambodia lauds the development of rubber plantations and oil and gas exploration on economic land concessions in their report to the Committee.¹⁹

13. In his report of 2008, the Special Representative further recommended that Cambodia protect the rights of indigenous persons and others who, due to illiteracy, customary practices or other reasons, are not familiar with the law or its procedures, the rules for making of economic transactions or the market economy.²⁰ It is clear that Cambodia has been provided with expert advice and has developed through its legislative process a law that provides, to some extent, protections for the communal lands of indigenous peoples. It is equally clear that such protection is not available in practice,²¹ in contrast, the alienation of indigenous peoples' lands continues unabated for reasons of economic development.²²

IV. FORCIBLE EVICTION AND DISPLACEMENT

14. Article 1 of the ICESCR commits Cambodia to protect the rights of indigenous peoples to “freely dispose of their natural wealth and resources” and to ensure that “in no case may a people be deprived on its own means of subsistence.” Article 11 further details the obligations of the State to protect the right of indigenous persons and collectives to an adequate standard of living, including adequate food, clothing and housing. The Committee has previously interpreted this in the context of indigenous peoples as being particularly important in contexts where forced displacement may, has or will occur.²³

15. Involuntary or forcible resettlement “is considered a practice that does grave and disastrous harm to the basic civil, political, economic, social and cultural rights of large numbers of people, both individual persons and collectivities.”²⁴ The Committee on Economic, Social and Cultural Rights frequently expresses concern about forcible relocation and has urged states to abandon the practice as incompatible with the obligations assumed under the Covenant.²⁵ In its *General Comment on the Right to Adequate Housing*, the Committee states that it “considers that instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the

¹⁷ A/HRC/4/36.

¹⁸ Ibid.

¹⁹ Cambodia State Report, para. 77 and 81

²⁰ A/HRC/7/42.

²¹ *Land Alienation in Indigenous Minority Communities*, supra.

²² *Progress Report for key Trigger Indicators of the Poverty Reduction and Growth Operation Programme, Round – 2. Briefing Paper Prepared by members of the NGO Forum on Cambodia*, November 2008.

²³ See *General Comment 7, The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions*, at para. 10 (stating that “Women, children, youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction. ... The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved”). See also E/C.12/PRY/CO/3, 4 January 2008, para. 29 and 34.

²⁴ *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. Final report submitted by Mr. Theo van Boven, Special Rapporteur*. UN Doc. E/CN.4/Sub.2/1993/8, at 10.

²⁵ *General Comment No. 4, The Right to Adequate Housing (Art. 11(1) of the Covenant)*, adopted at the Committee's Sixth session, 1991.

relevant principles of international law.”²⁶ Article 10 of the UN Declaration restates ‘the relevant principles of international law’ pertaining to indigenous peoples, explicitly stating that “Indigenous peoples shall not be forcibly removed from their lands or territories,” and that “[n]o relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”²⁷

16. Forced displacement for economic development and the ongoing denial of effective rights over traditionally owned lands, territories and resources are serious and ongoing threats to the survival and well being of indigenous peoples in Cambodia. Successive Special Representatives of the UN Secretary-General for human rights have expressed concern over the semi-official ‘economic land concessions’ and their impacts on the human rights of rural communities,²⁸ and the Cambodian Office to the High Commissioner for Human Rights has highlighted that such land alienations stem also from large-scale illegal land acquisition by both private actors and the State.²⁹ The Special Representative of the Secretary General on the human rights of internally displaced persons has emphasized that indigenous peoples in Cambodia require specific protections if they are to be adequately protected from being displaced, whether from conflict or from land alienation.³⁰

17. The Committee has recently expressed its deep concern “about the reports of displacement and forced evictions in the context of land acquisition by private and state actors for the purposes of development projects.”³¹ Further, the Committee on the Elimination of Racial Discrimination has highlighted the need to obtain informed consent prior to any decision affecting the rights and interests of indigenous peoples.³² Given the lack of transparency and misinformation which is presented to indigenous peoples’ communities under threat of relocation, the requirement for ‘informed consent’ is particularly resonant in Cambodia.

18. As stated above, some measure of legal protection for the land rights of indigenous peoples in Cambodia is provided for in the 2001 Land Law. Similar protections also exist in the 2002 Forestry Law and these rights are further acknowledged by a specific Prime Ministerial Order and a Provincial *Deika*.³³ However, studies into land acquisition in Ratanakiri Province have concluded that the *majority* of land transfers are illegal, in contravention of these national laws.³⁴

19. The impact of such illegal land transfers on the livelihoods of indigenous peoples in Cambodia can hardly be overstated. In some areas entire communities have disintegrated and there is a progressive and deepening loss of cultural and social resources.³⁵ Community members report that illegal land transfers usually begin with powerful and influential people developing relationships with individuals within communities and either coercing communities into accepting one-off cash payments or negotiating land transfers with individuals on behalf of entire communities.³⁶ The alienation of indigenous communities’ lands through the granting of

²⁶ Ibid. at para. 18. See also *General Comment No. 7, The Right to Adequate Housing (Art. 11(1) of the Covenant): Forced evictions*, at para. 1.

²⁷ UN Declaration on the Rights of Indigenous Peoples, Article 10.

²⁸ *Economic land concessions in Cambodia - A human rights perspective*. Cambodia Office of the High Commissioner for Human Rights, June 2007.

²⁹ Ibid.

³⁰ *Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, submitted pursuant to Commission on Human Rights resolution 2004/55*. UN Doc. E/CN.4/2005/84. Para 43.

³¹ See E/C.12/IND/CO/5, 10 May 2008.

³² Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII on Indigenous Peoples*, August 1997, para. 4(d) and 5.

³³ The Prime Minister’s order No. 01 on the prevention, suppression and elimination of forest clearance, burning, earth working and encroaching of forest lands to claim ownership, dated June 2004. A Ratanakiri provincial *deika* in support for order No.001 dated, March 2005 and a further provincial *deika* in Ratanakiri in January 2006.

³⁴ Land Alienation in Indigenous Minority Communities - Ratanakiri Province, Cambodia. August 2006, *supra*.

³⁵ Ibid

³⁶ Ibid

economic land concessions also directly violates the rights of indigenous peoples to assert and gain recognition of their collective ownership of their traditional lands, as allowed for under the 2001 Land Law.

20. Indigenous peoples report a rising level of misinformation with regard to their rights. During 2007 and 2008 NGOs and community groups have noted an ongoing and increasing level of disempowering and in-correct information provided to communities by government officers. Indigenous community representatives have reported in land forums and conferences that they are repeatedly told by Government officials that “communities have no rights to the land. It is state land. Communities can sell it now – or communities can not sell it now and the land will be taken anyway”.³⁷ Communities have also reported that they are told by local officials that indigenous peoples must make way for rapid economic development.³⁸

Extract from “Land Alienated from Indigenous Minority Communities in Ratanakiri”, NGO Forum on Cambodia, 2006

A comparison of the situations in November 2004 and January 2006 lead to the following conclusions:

▣ In accordance with the 2001 Land Law, participants of the “Workshop to Seek Strategies to Prevent Indigenous Land Alienation” in March 2005 publicly acknowledged that both selling and buying of Indigenous Peoples’ land is illegal. Participants included provincial governors, representatives from the Ministry of Land Management Urban Planning, and commune councils. The illegality of the vast majority of land sales in Ratanakiri has also been confirmed by national and international legal experts.

▣ Communities report that, if this situation is allowed to continue, it will lead to a severe disruption of community processes and destroy the solidarity and cohesion within communities. This transforms communities into groups of people or individuals who are selling land and forest and the situation becomes very difficult to control.

21. Of greater concern is the increased threats and intimidation against indigenous community members trying to protect indigenous peoples’ land and natural resources. Indigenous peoples and NGOs report an increasing level of court cases and other threats against indigenous community leaders involved in resisting land concessions and land acquisitions³⁹. Examples include:⁴⁰

- a) In March 2007 an economic land concession was given to the Sopheak Nika Investment Company which overlapped with indigenous community land. On 3rd March 2007, armed soldiers were deployed to break-up a protest by affected communities and allegedly used verbal and physical threats;
- b) in July 2007 in the Kong Yu case, the Provincial Criminal Prosecutor allowed 41 statements made by villagers stating that they willingly sold the disputed land to be filed in the criminal investigation in July 2007. At the time of the statements, the villagers were not formally summonsed for questioning but driven to court in a truck belonging to the business woman’s association. The Jarai speaking villagers were then asked to thumb print written Khmer statements they did not understand and were threatened by the association

³⁷ Workshop Reports from: a) Ratanakiri Land Forum (19-20 March, 2008), available from Indigenous Community Support Organisation; and b) National Indigenous Peoples Forum (27-28 October 2008) available from NGO Forum on Cambodia.

³⁸ *Progress Report for key Trigger Indicators of the Poverty Reduction and Growth Operation Programme, Round – 2. Briefing Paper prepared by members of the NGO Forum on Cambodia*, November 2008.

³⁹ Ibid.

⁴⁰ Ibid.

representatives if they refused. Eleven of the 41 statements were made by villagers who were from outside the village and not involved in the land dispute and who made statements in return for money. The General Prosecutor at the Court of Appeal however, has subsequently ordered the Provincial Criminal Prosecutor to act in accordance with the law;

- c) in November 2007, in Kompong Cham, military soldiers acting on behalf of a private company grabbed 4,000 ha of land used by an indigenous community. The soldiers were armed and fired shots in the air to threaten any community members who attempted to reclaim their rice-fields;
- d) in March 2008, two indigenous Community Forestry leaders in Kratie Province were victims of serious verbal threats and attempted killings after confiscating logging equipment during forest patrols in communal areas. One of their 'field houses' was also set on fire & burned down⁴¹. To this day, local authorities have failed to investigate or arrest perpetrators;
- e) in February 2008, an indigenous community in Preah Vihear was intimidated by the provincial court as they attempted to protect their forest from illegal gold mining, which they allege was causing environmental pollution and killing their livestock; and
- f) on 27 May 2008, an economic land concession was given in Snoul District, Kratie Province to CIV Development Agro Industry Company. This overlapped with indigenous land. This concession was granted without any public consultation and was therefore not in line with the sub decree on economic land concession. On 5th September community members staged a protest to halt the clearing of their lands. A week later 4 community representatives involved in the protest were summoned to court by the prosecutor after the company filed criminal complaints the representatives for infringements against private ownership, destruction of private property and robbery after community people surrounded an excavator as part of the protest. An NGO team monitoring the event found that nothing was destroyed and/or stolen. The company relies on the (illegal) economic land concession contract documents, statements of its supervisor and workers to and photographs of the peaceful demonstration to support these charges. However, in the view of the NGO lawyers, there is insufficient evidence to support these serious charges and the company and prosecutor are using judicial mechanisms to intimidate the villagers.

22. Additionally, NGO human rights defenders who are trying to protect indigenous communal land are also increasingly under threat.⁴² An Amnesty International report released in September 2008 confirms this, stating that

Human rights workers also find themselves at risk for their defense of land and housing rights. Security forces are known to have cut off access for lawyers to the villages of their clients, and in Ratanakiri and Mondulakiri, provincial authorities have required written application for permission to pay visits to communities at risk of forced eviction or to monitor peaceful protests.⁴³

V. EDUCATION

22. Article 13 of the ICESCR commits Cambodia to providing primary education free of charge to all Cambodians without discrimination. Article 13 further commits the State Party to make secondary education generally available and accessible to all, including through the progressive introduction of free education, and working towards the provision of equal access to tertiary education, including through the provision of free high school education. Article 14 of the ICESCR commits the State Party to establishing a concrete plan towards the realization of the right to education.

⁴¹ Indigenous people often have two houses, one in the village and one near their agricultural fields, where they stay during the planting and harvesting seasons.

⁴² Ibid.

⁴³ Amnesty International, *A Risky Business – Defending the Right to Housing*, 2008, p. 13.

23. The Committee has previously explained that under Article 13(2) of the Covenant, States must take “positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples...”⁴⁴ The UN Declaration on the Rights of Indigenous Peoples also clarifies that this right extends to the provision of culturally appropriate and bilingual education systems and curricula.

24. There have been some positive steps towards the expansion of bilingual education in the formal education system with the Ministry of Education, Youth and Sport (MEYS) supporting such initiatives. In Stung Treng, Mondulakiri and Ratanakiri, the Ministry has set up bilingual community schools and, in Ratanakiri, a number of state schools have adopted bilingual education in the Kreung, Tampuan, Bunong and Kavet languages. The Royal Academy and the MEYS have approved over 80 readers in different languages to be used in formal education. The new Education Law allows a '*prakas*' to be developed for the use of non Khmer languages as the language of instruction in indigenous areas.⁴⁵ The MEYS has also indicated that a bilingual education policy can be developed under the Child Friendly Schools policy which came into effect March 2008.⁴⁶

25. However, the situation for indigenous peoples in Cambodia with regards to effective access to appropriate education remains dire. The proportions of indigenous people who can not access school or leave school functionally illiterate continues to remain far higher than the national average. Despite the efforts described above, which are welcomed and supported by indigenous peoples in Cambodia, the lack of educational services in indigenous peoples' areas is a serious issue that needs to be addressed.

VI. HEALTH

26. Article 12 of the ICESCR commits Cambodia to take steps to realize the right to the enjoyment of physical and mental health, while Article 2 confirms that this right must be recognized without discrimination. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of mental and physical health, Paul Hunt, has also provided guidance that provision of health services must be culturally appropriate and specifically designed to meet the health needs of indigenous peoples.⁴⁷ However, the health status of indigenous peoples in Cambodia remains below the national average. For instance, under-five mortality rates in Mondulakiri and Ratanakiri provinces, both having majority indigenous populations, are at 165 deaths per 1,000 live births compared with the national average of 83 deaths per 1,000 live births.⁴⁸

27. The right to health and well-being, according to the World Health Organisation (WHO), not only means being free from disease but also having access to preventive health education and counseling.⁴⁹ In Cambodia, language barriers and cultural differences between indigenous people and the public health service providers form major obstacles. Money, transportation, language, discrimination, low levels of education and traditional beliefs/obligations have all been cited as major barriers to accessing health services and information.⁵⁰

⁴⁴ General comment No. 13: The right to education (art. 13), at para. 50.

⁴⁵ *Prakas* refers to a government orders or proclamations issued to support the implementation of a law. The Education Law was promulgated 8 December 2007 and is available at the MEYS.

⁴⁶ The Child Friendly Schools policy was promulgated by the MEYS in December 2008.

⁴⁷ *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health Report of the Special Rapporteur, Paul Hunt*. Un Doc. E/CN.4/2004/49, at para. 41.

⁴⁸ Cambodia Demographic and Health Survey 2005.

⁴⁹ Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June, 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100) and entered into force on 7 April 1948.

⁵⁰ Personal communication with Health Unlimited staff, Ratanakiri Provincial office.

28. There is still a significant imbalance in the distribution of public health service staff, with most staff in these provinces coming from the majority population. An obvious impact of this imbalance is the continued restrictions on access to health services and information. Observations in Ratanakiri also indicate that some of the previous indigenous staff in health centers have been replaced by majority Khmer staff.⁵¹ In Mondulhiri Province, where the Phnong make up a majority of the population, only 27 of 121 health service staff are Phnong, and most of these are employed as ‘floating staff’ (those not necessarily in full-time employment), at the health facility.⁵²

29. In early 2007, the United Nations Population Fund (UNFPA) funded extensive research in Ratanakiri into priority issues as identified by indigenous peoples. These priority issues included social issues such as domestic violence and inter-generational conflict (as younger people no longer or rarely use traditional medicines), as well as issues more strictly associated with health such as maternal health and malaria. Insufficient action is being taken by national and provincial health authorities to meet the needs of Cambodia's indigenous peoples and to ensure that they have equal access to government provided services.

30. Last but not least, the Committee has recognized that indigenous peoples’ health is threatened by activities including displacement that affect their traditional territories. In a statement that is very relevant to the situation in Cambodia today, the Committee explains that

in indigenous communities, the health of the individual is often linked to the health of the society as a whole and has a collective dimension. In this respect, the Committee considers that development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health.⁵³

VII. CONCLUSION AND REQUEST

31. In the light of the information and background provided herein, we respectfully request that the Committee recommends that Cambodia:

- a) takes immediate steps to ensure that the lands of indigenous peoples are protected in the interim period prior to the completion of the titling of indigenous peoples' lands required under the 2001 Land Law;
- b) ensures that the draft *Sub-Decree on Procedures of Registration of Land of Indigenous Communities* is consistent with indigenous peoples’ rights as defined by international law. In particular, that registration requirements are not prejudicial to indigenous peoples’ rights to self-identification, self-determination and juridical capacity, and that lands in addition to those used for residential or agricultural purposes are included in the titling programme;
- c) takes immediate steps to ensure the proper and just resolution of cases of alienation and loss of customary lands in indigenous peoples’ areas, including through restitution of lands taken without indigenous peoples’ free, prior and informed consent, and the effective prosecution of offenders, including people of power and influence in Cambodian society and the authorities involved in promoting, endorsing, supporting, or benefiting from land transactions in areas of indigenous peoples' communities;

⁵¹ Ibid.

⁵² Personal communication with Healthnet International staff, Mondulhiri Provincial office.

⁵³ General Comment 14, *The right to the highest attainable standard of health: 11/08/2000*. UN Doc. E/C.12/2000/4, 11 August 2000, at para. 27.

- d) establishes a mechanism whereby indigenous peoples who have lost their lands due to the creation of economic land concessions, the sale of lands to or by politicians, or any other means, can attain full restitution of their lands and rehabilitation of lands negatively impacted by subsequent development;
- e) suspends all land, tourism, mining and other concessions and other large-scale development projects (such as large hydro-electric dams and highways) in indigenous peoples' areas until such a time as registration of lands under the 2001 Land Law has been completed and ensures that respect of the right of free prior and informed consent is applied to any activities to be undertaken on indigenous peoples' lands and territories;
- f) takes concerted action to ensure that the titling of indigenous peoples' lands under the 2001 Land Law takes place quickly and effectively, with the full and effective involvement of the traditional authorities of the concerned indigenous peoples and in accordance with the relevant norms of applicable international law;
- g) continues to develop and expand bi-lingual and inter-cultural education for indigenous peoples;
- h) provides immediate political and financial resources to establish an effective health outreach programme in rural and remote areas in Cambodia, including the provision of culturally appropriate services in the languages of the indigenous peoples of Cambodia; and
- i) takes immediate steps to recognize, empower and build the capacity of traditional and customary authorities to participate effectively in national decision-making processes relevant to indigenous peoples, including the drafting of laws and regulations on issues impacting on indigenous peoples' communities.

Annex A

Submitting Organizations

1. **Indigenous Community Support Organization.** Address: House 244 AEO, Street 376, Sangkat Boeung Keng Kang III, Khan Chamkar Morn, Phnom Penh, Cambodia Telephone: (855) 23 997 657. Email: Vansey@icso.org.kh Website: www.icso.org.kh.
2. **NGO Forum on Cambodia.** Address: #9-11 Street 476, Toul Tompong, P.O. Box 2295, Phnom Penh 3, Cambodia. Tel: (855)23-214 429/(855)23-213 482 Fax: (855)23- 994 063. Email: ngoforum@ngoforum.org.kh. Website: <http://www.ngoforum.org.kh/>
3. **Asian Indigenous Peoples' Pact Foundation.** Address: 108, Moo 5, Soi 6, Tambone Sanpranate, Amphur Sansai, Chiang Mai - 50210, Thailand Telephone: +66 (0)53 380 168. Email: joan@aippnet.org Website: www.aippnet.org
4. **Forest Peoples Programme.** Address: 1c Fosseway Business Park, Moreton-in-Marsh, GL56 9NQ, UK. Telephone: +44(0)1608 652893. Email: fergus@forestpeoples.org Website: www.forestpeoples.org.

Annex III :

Housing and Land Rights Issues in Cambodia

Concerning Article 11 of the Covenant

Submitted to the United Nations Committee on Economic, Social and
Cultural Rights

April 2009

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INTRODUCTION

This document is prepared as an Annex to the Parallel Report and focuses on land and housing rights issues. Violations of housing and land rights are widely viewed as the major human rights concern in Cambodia. This document is intended to assist the United Nations Committee on Economic, Social and Cultural Rights (CESCR) in its review of Cambodia during its 42nd Session, 4 to 22 May 2009. The document was prepared for the purpose of providing recommendations to the State party and other actors as well as facilitating civil society input into this procedure.

A number of organisations were involved in the preparation of this Annex, including Borderlands, Bridges Across Borders Southeast Asia (BABSEA), Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Centre on Housing Rights and Evictions (COHRE), Community Legal Education Center (CLEC), Housing Rights Task Force (HRTF), Sahmakum Teang Tnaut (STT) and the NGO Forum on Cambodia. In addition, the recommendations in this report were developed following consultations with broader civil society groups including networks of community activists.

The document focuses in particular on the right to adequate housing in Cambodia, as well as related human rights concerns. Matters addressed include (i) forced evictions; (ii) gaps in the legislative and policy framework on evictions, and a lack of implementation of existing laws and regulations; (iii) the absence of legal security of tenure for many households and obstacles to accessing title; (iv) concerns regarding the donor funded titling system: LMAP and LASSP; (v) land disputes and concerns regarding the efficacy, independence and transparency of dispute resolution bodies; (vi) displacement and other adverse impacts resulting from economic land concessions and mining; (vii) concerns regarding land rights of indigenous peoples; and (viii) the persecution of housing rights defenders.

ISSUES OF CONCERN

I. Forced Evictions

Forced evictions are a growing problem in Cambodia, with at least 150,000 Cambodians currently living under threat of forced eviction, including approximately 70,000 in Phnom Penh¹. Forced and violent evictions are occurring in the context of rapid but unplanned economic growth, spiraling land prices, endemic corruption and an absence of secure land tenure for urban and rural low-income households. Land-grabbing and forced evictions are contributing to growing landlessness and inequality in landholdings, as well as to the transformation of Phnom Penh and other urban areas into exclusive cities for the rich, with poor households being displaced to peri-urban areas.

¹ Amnesty International, *Rights Razed: Forced Evictions in Cambodia*, AI Index: ASA 23/002/2008, February 2008, page 7.

The rate and scale of land-grabbing and forced evictions has increased in recent years. According to local NGO, Sahnakum Teang Tnaut, in Phnom Penh, between 1990 and 1996, 3,100 families were displaced, between 1997 and 2003, 9,200 families were displaced, and between 2004 and 2008, 14,300 families were displaced. In total, at least 26,600 Phnom Penh families, approximately 133,000 residents or eleven percent of the city's population of 1.2 million, have been evicted since 1990.²

While precise nationwide figures are difficult to ascertain, the rate of forced evictions appear to have increased in conjunction with, inter alia, the granting of concessions over vast tracts of land to private investors. Rural landlessness, often also caused by forced evictions, rose from 13 percent in 1997 to between 20 and 25 percent in 2007.³ This also has a compounding effect on right to food and increase food insecurity particularly for small-scale farmers and indigenous people evicted from agricultural lands.

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.

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). A 2008 study reported that claimants to dispute resolution bodies accused the following main groups of having grabbed residential, farm and paddy land: government authorities (23.4 percent); the military (20.6 percent), and business (29.9 percent).⁴ Authorities are not only failing in their obligations to protect against forced evictions but are often actively involved in or fail to act when private actors engage in illegal land-grabbing. Laws are applied selectively or by-passed altogether. Such collusion between authorities and powerful individuals who are laying claims to land, opens the door for the issuing of dubious land titles and eviction orders, and the misuse of the court system to prevent victims from acting to defend their rights.⁵

Cambodia is consistently failing to meet the international human rights law requirements as set out by the Committee in its 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 (see Case 3: Boeung Kak lake). In many instances where there has been the appearance of consultation with affected communities, decisions on eviction and relocation appear in reality to have been taken by the authorities

² Sahnakum Teang Tnaut, Research prepared for the UNOHCHR (unpublished), 2008.

³ *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.

⁴ NGO Forum, *Statistical Analysis on Land Dispute Occurring in 2008 Cambodia* (unpublished)

⁵ Amnesty International, *Rights Razed: Forced Evictions in Cambodia*, AI Index: ASA 23/002/2008, February 2008, page 44.

prior to these consultations, frustrating the right of affected people to propose alternatives and for those to be duly considered.⁶

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 (2001) that a court order be issued prior to an eviction in such cases.⁷

Evictions are often carried out violently by police, military police and with the use of private armed forces, despite prohibitions under the Land Law.⁸ (See Case 1: Sambok Chap; Case 2: Mittapheap 4; and Case 4: Dey Krahorn). 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 (see Case 2: Mittapheap 4), or are offered inadequate cash payments and/or inadequate resettlement on the outskirts of the city (see Case 1: Sambok Chap; Case 3: Boeung Kak Lake; and Case 4: Dey Krahorn).

More than forty relocation sites exist in and around Phnom Penh.⁹ As of August 2007, 15,831 families (or approximately 80,000 people) had been moved to these sites. The conditions at relocation sites vary, with at least two positive examples in the late 1990s and 2000, including the establishment of the Akphitwat Meanchey site (also called Veng Sreng), following consultations and agreement of the community. These examples indicate that in cases in which the Government is willing, it can carry out resettlement in a participatory and positive manner.

Since that time, however, resettlement practices have consistently violated human rights. The vast majority of relocated families face further hardships and deeper impoverishment as a result of the forced resettlement. Many relocation sites, such as the notorious Andong relocation site, are barren fields in peri-urban areas, without proper housing, potable water or sanitation. Access to basic facilities such as schools and hospitals is hampered by the distance of these sites from inner-Phnom Penh. Perhaps most troubling is the diminished access to employment opportunities by the remoteness of the sites – the cost of traveling to jobs in the city often exceeds daily average earnings. As a result, many are forced to return to the city centre and rent or squat in order to continue their livelihoods. Often titles are not

⁶ Amnesty International, *Rights Razed: Forced Evictions in Cambodia*, AI Index: ASA 23/002/2008, February 2008, page 3.

⁷ Land Law 2001, Article 35.

⁸ Land Law 2001, Articles 253 and 254.

⁹ Sahnakum Teang Tnaut, *Relocation Sites in Phnom Penh*, August 2007.

issued to households at the relocation sites, creating renewed situations of tenure insecurity and the possibility of further forced evictions as Phnom Penh continues to sprawl.

Existing evidence directly conflicts with the Government's claims in its 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;¹⁰ and that those evicted are provided with financial support or re-housed in development areas with full access to necessary public services and amenities.¹¹

The case studies below are examples of recent forced evictions. In all the examples below, many evicted families had possession rights to their land under the 2001 Land Law (see section III). Those affected by the forced evictions were not afforded legal recourse to demonstrate their legal claims to the land and challenge the unlawful eviction process.

Cambodian law provides for the criminal prosecution of various offenses relating to evictions and damage to homes and property. The intentional or attempted damage to property;¹² the infringement of ownership and other rights relating to immovable property;¹³ the use of violence against a possessor in good faith;¹⁴ the use of private force in order to protect title to property or to enforce a court order for eviction;¹⁵ the use of pressure or physical measures of eviction to seize possession from a peaceful occupant;¹⁶ and the permitting (or ignoring) by an authority of wrongful acts by private individuals against the rights of owners, possessors, or peaceful occupants¹⁷ are all offenses punishable with a fine and/or imprisonment. The prohibitions apply not only to private individuals but also to authorities and those who give orders that the actions in question be carried out.

However, in none of the cases below have authorities or perpetrators been investigated or prosecuted for the abuses they committed during the forced evictions. Instead, instigators, collaborators and perpetrators of forced evictions act with impunity. Nor have investigations taken place into possible violations of law arising from the issuance of fraudulent titles to powerful private parties and wrongful eviction orders.

Case 1: Sambok Chap community, Tonle Bassac, Phnom Penh

More than 1,500 families were forcibly evicted from the Sambok Chap, Tonle Bassac settlement in central Phnom Penh during May and June 2006. Private company, Sour Srun claimed to own the Sambok Chap land, despite its failure to produce any evidence of ownership to the families who began to settle on the site in the early 1990s. The eviction took place without a court order, and without any prior meaningful consultations or efforts to negotiate or avoid the eviction. Security forces armed with guns and electric batons carried out the eviction, injuring several people.

¹⁰ Cambodia State Party Report, 10 November 2008, paragraphs 513, 516, 518, 528, 529.

¹¹ Cambodia State Party Report, 10 November 2008, paragraph 534.

¹² Provisions Relating to Judiciary & Criminal Law and Procedural Applicable in Cambodia during the Transitional Period, Article 52. (Punishable with a term of imprisonment up to three years.)

¹³ Land Law 2001, Article 247. (Applies irrespective of whether formal title has been obtained to the property. An official or authority convicted of this offense is liable for an administrative penalty as well as a criminal penalty and civil damages.)

¹⁴ Land Law 2001, Article 253. (Punishable with a fine of up to 25 million Riel and imprisonment up to two years. The person giving the order for the use of violence is subject to the same penalties.)

¹⁵ Land Law 2001, Article 254. (Punishable with a fine of up to 25 million Riel and imprisonment up to two years.)

¹⁶ Land Law 2001, Article 261. (An official or authority convicted of this offense shall be subject to a fine of up to 25 million Riel and additional administrative sanctions, with imprisonment up to two years if violence involved.)

¹⁷ Land Law 2001, Article 263. (Punishable with a fine of up to 10 million Riel and administrative sanctions.)

Many families were relocated to a rice field in Andong relocation site, 22 kilometres from their previous homes. Families were not allocated plots or provided with even basic shelters. NGOs provided emergency tarpaulins and supplies.

As a result of the lack of access to basic facilities, residents are forced to use dirty water from ponds and wells and defecate in the perimeter of the site and in plastic bags. Poor drainage means that the site is regularly flooded, contributing to severe health risks for the residents. Diarrhoea, dengue fever, malnutrition and skin disease are prevalent, especially amongst children.

In one dengue fever outbreak in 2007, more than 30 children died in Andong relocation site alone.¹⁸ The evictees have no security of tenure at the relocation site, and rising land prices in the area have raised concerns that they will be evicted again.

As at April 2009, the Sambok Chap, Bassac land remains empty.

Case 2: Mittapheap 4 village, Sihanoukville

More than 100 families were forcibly evicted from Mittapheap 4 village, known as “Spean Ches”, in Sihanoukville Municipality in 2007. Many of the families had been living in the village since the 1980s and 1990s. The basis of the eviction was an unsubstantiated claim of ownership of the land by Peng Ravy, the wife of a senior advisor to a high-ranking Government official. At her request, eviction notices were issued by district authorities and by Say Hak, Governor of Sihanoukville Municipality. On 19 January 2007, the villagers were ordered to vacate the area within one week.

The Senate Commission on Human Rights conducted an investigation into the case, after receiving a complaint from the villagers, and concluded that the land dispute was a civil matter and therefore to be settled by the courts. In spite of the Commission's findings, the Governor appointed a Joint Task Force to carry out the eviction.

The eviction, carried out on 20 April, was particularly violent and involved 50 members of the RCAF, 50 members of the Royal Gendarmerie and 50 policemen armed with AK-47s, electric batons, wooden sticks and shields. The Government forces arrived with three police trucks, an excavator and two water trucks filled with a mixture of water and gasoline. They fired their guns at the ground and above the heads of the villagers. People trying to salvage their property were beaten with sticks and electric batons. Five women were injured and 13 men were badly hurt, many of them knocked unconscious. A 77 year old man was hospitalised after receiving an electric baton shock to his head.

The police and military personnel confiscated valuables from the villagers, including 16 motorbikes. They then proceeded to burn down their homes, along with their clothes and those belongings not looted by the authorities.

The 13 wounded men were arrested and taken into custody. Eight of the men were subsequently tried and convicted for varying offences, including battery with injury and damaging property. Because of lengthy court delays and appeal processes, the eight convicted men served almost a year in prison, despite seven of them being sentenced to only 75 days, and one being sentenced to only eight months.

The Mittapheap 4 community continues to live under tattered tarpaulins supplied by NGOs, on the side of the road in front of where their homes once stood. They lack access to livelihoods, schools, and health care.

As of April 2009, the Mittapheap 4 land remains unused and fenced in.

¹⁸ ABC Radio, Warning of Dengue Outbreak, <http://www.abc.net.au/am/content/2007/s1995707.html> 3 August, 2007

Case 3: Boeung Kak Lake, Phnom Penh

Boeung Kak is a large lake in north-central Phnom Penh. People began settling around the lake in the 1980s and by 2007, it was home to more than 4000 families. The lake is of crucial importance as it is used by many families to grow aquatic vegetables and to harvest snails and because it acts as a rainwater catchment for the city.

In February 2007, the Municipality signed an agreement to lease Boeung Kak Lake and the surrounding land for 99 years to a private company for USD 79 million. This lease contract blatantly violates the Land Law which stipulates that State public property, including lakes which have inherent public value, cannot be leased for more than 15 years and cannot be destroyed by the beneficiary of the lease.¹⁹ In direct contravention of this provision, the company began filling in the lake on 26 August 2008 and apparently plans to develop a new “satellite city” with private villas, stores and office buildings in the area. No precise development plan has ever been released, and no public meetings have been convened with the affected communities to discuss this major development project in the heart of Phnom Penh.

The Boeung Kak case is a clear example of the improper way the Government manages State land. Despite enjoying formal recognition by local and municipal authorities for more than 10 years, residents of the area are now told that they have no right to stay on the land because they are living on State public property. While this may be true for people who were living directly on the lake in boats or floating houses, it is false for the majority of residents living on land surrounding the lake, which should be properly classified as State private (or privately held) land.²⁰ On August 7, 2008, in an attempt to provide legal cover for the illicit lease agreement, a sub-decree was passed which transferred 133 hectares, including the lake and surrounding area, from State public to State private property. The re-classification of state land by executive decree has become a common abuse of the land management legal framework to suit the government’s plans to sell or lease land that should be used for the public benefit.

The Boeung Kak development is likely to lead to the forced eviction of more than 20,000 people. Affected families are presented with two options – a cash payment of USD 8,500, or a house in a distant relocation site and USD 500. These options are far below market value and will not provide affected families with adequate alternative housing or tenure security.

Since early 2008 residents of the lake area have become increasingly subject to threats and intimidation from police and company representatives. Houses in at least two of the nine villages surrounding the lake have been dismantled after families accepted compensation offers under duress. A number of houses on the lake recently collapsed because of the pressure of the sand build up. Residents are prevented from carrying out repairs on their homes. Parts of the lake close to the pumping station have effectively been made a closed zone, with company workers, gendarmerie and government authorities frequently preventing human rights workers and journalists from accessing these areas and speaking to residents.

Case 4: Dey Krahorm, Tone Bassac, Phnom Penh

In January 2009, more than 400 families of the Dey Krahorm community were forcibly evicted from their inner-city homes. The Dey Krahorm community was mentioned by Cambodia in its November 2008 State Report to the Committee, as a positive example of the Government’s commitment to upgrading urban poor settlements and ensuring their tenure security (see section II).

¹⁹ Land Law 2001, Articles 15, 16 and 17; Sub-Decree on Rules and Procedures on Reclassification of State Public Properties and Public, Entities, No. 129 ANKr.BK . 27/11/06, Articles 16 and 18. Centre on Housing Rights and Evictions, Legal Analysis of the Boeung Kak Lake case, November 2008.

²⁰ Centre on Housing Rights and Evictions, Legal Analysis of the Boeung Kak Lake case, November 2008.

In 2003, the Government announced that Dey Krahom was one of four Phnom Penh urban poor communities to be granted a social land concession over their land and receive assistance for onsite upgrading of their houses. However, in 2005, a few community residents, acting without authority of the rest of the community, signed a contract with a private company, 7NG, agreeing to swap the Dey Krahom land in return for apartments at a relocation site 20km away. As soon as they were made aware of the contract with 7NG, the approximately 800 families of Dey Krahom filed a complaint for the contract to be annulled. The contract was invalid under Cambodian law because third parties cannot sell someone else's land without legal authorization.²¹

While the complaint stalled in the courts, 7NG, backed by the Phnom Penh Municipality, mounted a campaign of violence and intimidation against residents in an effort to persuade them to leave their homes. Tactics included raising unsubstantiated criminal charges against a number of the new community representatives (see section VIII and Case 11).

Compensation offers made were inadequate: an apartment at a distant relocation site or a cash payment of less than the market value of their homes.

In January 2009, prior to the forced eviction, approximately 150 families with possession rights continued to refuse to give up their land without fair compensation. These families attempted to engage in negotiations with the company and municipality for an improved compensation offer.

However, on 24 January, the Municipality unilaterally broke off negotiations and forcibly evicted the community, including 335 renter and market vendor families who lived at the site²². In the early hours of the morning, approximately 300 armed police and military police, equipped with tear gas, rubber bullets, and a water cannon, moved into the community. An estimated 400 to 600 civilian 'breakers' hired by the company tore down residents' homes without allowing residents time to gather their belongings. At least 18 people, both residents and NGO workers, were injured in attacks by workers and police. Heavy machinery including bulldozers quickly demolished houses and property without regard for the safety of those present.

Most evicted families now live at or next to the Damnak Trayoung relocation site approximately 20km from their former homes. Approximately 115 households which could show proof of legal possession of their Dey Krahom homes were given single room apartments at the site. Access to water, sanitation and facilities such as schools is woefully inadequate at Damnak Trayoung. Many of the children have been forced to stop attending school altogether because of a lack of local schooling facilities and the remote location of the site from their former schools. The distance from former jobs and small businesses in central Phnom Penh has hampered livelihood opportunities of most, if not all, relocated families. Titles have not been issued to households at the relocation site. Approximately 350 other families have been made homeless, with most living in a makeshift camp beside the relocation site – without proper shelter, food, water, or basic sanitation.

II. Legislative and Policy Framework on Evictions

Despite the Government's claims in the State Party Report, no comprehensive legal framework on evictions, compensation and resettlement exists to protect people in Cambodia from forced eviction.²³ The Cambodian Constitution and the 2001 Land Law both require fair and just compensation to be paid in advance for land expropriation which

²¹ Land Law 2001, Article 66.

²² According to a humanitarian needs assessment conducted jointly by Caritas, Samaritans Purse, and LICADHO at the relocation site on 25 January 2009.

²³ Cambodia State Party Report, 10 November 2008, paragraph 513.

can only occur in the public interest.²⁴ The Land Law also requires the issuance of a court order prior to an eviction in the case of a private land dispute.²⁵ However, laws and regulations setting out the rules and procedures to govern land expropriation, the definition of 'public interest,' the valuation and payment of compensation and conditions of resettlement are absent. Cambodia urgently needs such a legal framework, which is compliant with the obligations to which it is legally bound under the Covenant.

In December 2004, the Asia Development Bank (ADB) entered into an agreement with the Ministry of Economics and Finance (MEF) to provide technical assistance for the drafting of the Sub-Decree on Land and Property Acquisition and Addressing Socio-Economic Impacts Caused by State Development Projects.²⁶ The aim was to create a regulatory framework for resettlement caused by State development projects that met international standards.²⁷ The first two drafts of the sub decree were released in May and November 2007, respectively. Both of these drafts fall far short of international human rights standards, as well as the standards of the ADB's own Resettlement Policy.

Despite a commitment to proper consultation processes in the technical assistance agreement between the ADB and MEF, there have been significant obstacles to carrying out thorough consultations with civil society, in particular inadequate time periods for submissions to be made.

As of March 2009, the MEF had not yet released the third draft of the sub decree and has stated its intention not do so until it is sent to the Council of Ministers. It thus appears that further consultations on the sub decree have been ruled out by the MEF. The ADB has closed the project, despite the fact that the sub decree is not yet promulgated.

The MEF is also currently preparing a draft Law on Expropriation. It is unclear if any non-government stakeholders will be given the opportunity to provide comments on the law prior to adoption. In the event of any inconsistencies between the law and the sub decree, the law would override provisions of the sub decree.

Legal protections that do currently exist, such as those in the Land Law, are frequently ignored by authorities and courts alike. Therefore, in addition to the enactment of a comprehensive legal and regulatory framework on evictions, transparent monitoring mechanisms must be established or fortified to ensure implementation and accountability under the law.

A number of INGOs, including Amnesty International, COHRE, and FIDH, have called for a moratorium on evictions in Cambodia until the necessary legal and institutional mechanisms are in place to ensure that evictions are carried out in accordance with international human rights standards.

²⁴ The Constitution of the Kingdom of Cambodia 1993 (as amended on 8 March, 199), Article 44; Land Law 2001, Article 5.

²⁵ Land Law 2001, Article 35.

²⁶ ADB, *Technical Assistance to the Kingdom of Cambodia for Enhancing the Resettlement Legal Framework and Institutional Capacity*, TAR; CAM 4490, December 2004.

²⁷ ADB, *Technical Assistance to the Kingdom of Cambodia for Enhancing the Resettlement Legal Framework and Institutional Capacity*, TAR; CAM 4490, December 2004, page 7.

A moratorium on relocation and evictions was also recommended in the final draft National Housing Policy, which was developed through a consultative process by the Ministry of Land Management, Urban Planning and Construction in 2003. The draft policy recommended various options for ensuring medium and long-term tenure security and improving housing conditions for urban poor residents living in different categories of informal settlements. The moratorium on evictions was recommended to provide short-term security of tenure to the residents of all informal settlements, so that each could be classified according to the law and its suitability for upgrading, land-sharing and long-term tenure security options. At the time, the draft policy noted that the Municipality of Phnom Penh had indicated it had no plans to remove any existing settlements.

However, the draft National Housing Policy has not been further acted upon, purportedly awaiting the completion of three pilot projects which have only just begun. The many positive recommendations and policy tools for protecting and fulfilling the right to adequate housing in Cambodia have not been adopted, and the result has been a severe deterioration in the tenure security situation of the urban poor and the forced eviction of tens of thousands of city-dwellers.

The Ministry of Land Management, Urban Planning and Construction has pledged to draft a new Housing Policy as one of the joint monitoring indicators (JMIs) agreed upon with development partners. However, Ministry staff have expressed an intention to ‘expand’ the 2003 draft so that the new policy would address issues faced by the middle and upper income households. Ministry staff also stated that they envisaged the new policy as focusing on microcredit and improving housing conditions for the poor rather than legal security of tenure.²⁸

The Government’s 2003 commitment to upgrading urban poor settlements and ensuring their tenure security, referred to in the State Party Report²⁹ 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 through land-sharing projects, the Government failed to mention in its 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 residents forcibly evicted and/or resettled to peri-urban areas (see, for example, Case 4: Dey Krahorm). As of April 2009, remaining residents of the Train Station A and B communities have received “final eviction notices.” As in the case of Dey Krahorm, three community leaders have been convicted on spurious criminal charges because they have advocated for 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

²⁸ Comments by Ministry staff at the Technical Working Group on Land meeting, NGO Forum, 23 February 2009.

²⁹ Cambodia State Party Report, 10 November 2008, paragraph 537.

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.

III. Absence of Legal Security of Tenure: Obstacles to Accessing Title for Households with Possession Rights

Possession rights are a key element of the 2001 Land Law and, in the absence of widespread titling, are the legal basis for land tenure security for the majority of households in Cambodia. According to the law, possession rights can be converted to full ownership rights as they entitle households to submit an application for registration and title. However, the government has repeatedly refused to grant title to households and/or communities with valid possession rights, and has failed to provide any clear means by which to determine the validity of possession rights, thus effectively rendering these rights meaningless for many vulnerable households.

During the period of the Democratic Kampuchea (Khmer Rouge) regime (1975-1979), all private ownership of land was abolished and documentation was destroyed. From 1979, the Vietnamese-backed regime maintained collectivised land until the mid 1980s. In 1989, formal private ownership of land was introduced.³⁰

Following the 1991 Paris Peace Agreements and the UN administered national elections, a free-market economy was introduced. The 1992 Land Law first introduced the concept of legal possession.³¹ Legal recognition of possession rights was updated by the 2001 Land Law.³² According to this law, anyone who settled on, or began using their land at any time before the 2001 Land Law was passed, is a legal possessor as long as they meet the five conditions set out in the Land Law. These five conditions are that the possession must be continuous, peaceful, in good faith, unambiguous and known to the public. In addition, at the time that the possession commenced, the land could not have been State public property, privately owned by someone else, indigenous land or monastery land.

Legal possessors have the right to request a title of ownership.³³ If these conditions are met, the possession constitutes a right *in rem* which means that while the possessor is waiting for the possession to be converted to ownership he/she has the right to live on and use the land, exclude others from the land, and transfer it to others.³⁴

The procedure for issuing title to legitimate possessors is in theory straight forward. It can be done through systematic registration, initiated and conducted by the Government, or through sporadic registration initiated on the application of the land-holder (see section IV).

³⁰ Rhodri Williams, *Title through Possession or Title through Position? Respect for Rights to Housing, Land and Property in the Wake of Cambodia’s Transition*, Centre on Housing Rights and Evictions, 2006.

³¹ Land Law 1992, Article 74.

³² Land Law 2001, Chapter 4.

³³ Land Law 2001, Article 31.

³⁴ Land Law 2001, Article 39.

Upon proving that they meet the conditions of legal possession, all legal possessors should be issued with titles.

However, there is repeated evidence of the Government denying land titles to those with valid possession rights. In many instances, households that have strong possession rights claims are unable to engage Government in any dialogue as to the legitimacy of those claims. Instead, households seeking to advance their possession rights claims and obtain title are simply told they have no rights, with no underlying explanation, no process of examining evidence or presenting a justification for the denial of title, or any other mechanism that might allow for a standardized and transparent process.

Possession rights were formalized by the Land Law in recognition of the fact that many millions of Cambodians do not have legal title to their land and as such should provide a means of tenure security to these households until formal titling is conducted in their area. The arbitrary and non-transparent manner in which possession rights are recognized or denied renders this legislative attempt to provide security meaningless.

IV. The Titling System: LMAP and LASSP

The multi-donor supported Land Management and Administration Project (LMAP) commenced in June 2002, and is due to end in December 2009 when the majority of the LMAP components will become part of the Land Administration Sub-Sector Program (LASSP). The project was established in order to support the Ministry of Land Management, Urban Planning and Construction (MLMUPC) implement provisions of the 2001 Land Law to convert possession rights into full ownership through registration and the issuance of titles. LMAP's stated goals are to "*reduce poverty, promote social stability, and stimulate economic development.*"³⁵ LMAP has had a number of successes, amongst them: increasing capacity of the MLMUPC, developing a legal framework for land administration, management and dispute resolution, and adjudicating 1.379 million titles³⁶.

Despite the fact that this program committed to providing over USD 30 million to increasing tenure security, many observers suggest that the land crisis has actually worsened over the period of its implementation.³⁷

It has become apparent to groups working with threatened communities, that LMAP is not providing tenure security to the most vulnerable members of Cambodian society.

LMAP was designed so that areas "likely to be disputed" would not be titled and "informal settlements" would not be titled without the approval of the Government. Communities living in these areas face the greatest risk of being evicted and becoming landless. This is particularly true for urban poor communities (see Cases 1 to 5).

³⁵ World Bank, Project Appraisal Document on a Proposed Credit in the Amount of SDR 19.3 million (US\$24.3 million equivalent) to the Kingdom of Cambodia for a Land Management and Administration Project, 29 January 2002, page 2.

³⁶ Royal Government of Cambodia (2008) Mid-Term Review 2008 on National Strategic Development Plan 2006-2010. 14th November 2008.

³⁷ See for example, UNDP Cambodia, *Land and Human Development in Cambodia*, 2007, page 11: "*Land conflict is common, and there are signs that the number of land disputes is actually increasing; both the formal court system and the non-governmental organizations (NGOs) monitoring the land sector report an increase in land disputes since the late 1990s*".

Despite the fact that systematic titling is supposed to be implemented across all project provinces, titling of households in urban areas has been extremely slow, especially in Phnom Penh. For example, LMAP originally aimed to adjudicate 198,000 titles in Phnom Penh by the end of 2007. Figures obtained to the end of 2009 show that 83,655 titles were adjudicated, and less than half of these were actually issued to owners. In light of the fact that possession rights are not being consistently recognized by the Government, many urban communities face imminent forced eviction. It is foreseeable that the problem will be exacerbated in the near future, as the city continues to develop and expand.

For the most part, the beneficiaries of systematic titling have been those living in undisputed rural areas that generally have little appeal to those wishing to acquire the land for development.

Parallel to the systematic registration is a process called sporadic registration, which aimed to fill the gaps left by systematic registration, allowing households with possession rights to apply for title on an ad hoc basis.³⁸ However, corruption within the sporadic registration system is rampant, and once official fees are accounted for, there have been reports of titles costing more than 25 percent of the value of the land.³⁹ In addition to the fact that this makes the system financially inaccessible to most Cambodians, several communities threatened with eviction have been turned away or ignored when applying for sporadic registration of their land (see Case 5: Group 78).

With few real incentives for the Government to title at-risk households, the donor-funded titling process is largely impotent in the face of illegal land-grabbing and the forced evictions throughout the country. Furthermore, the very existence of the titling system could be working against the most vulnerable households, who through no fault of their own are denied access to the titling system, while those wealthy enough can easily buy title to that land (see Case 1: Sambok Chap, Case 2: Mittapheap 4 and Case 4: Dey Krahorm). Forced evictions are frequently justified by statements that the communities in question “do not have title”, are “illegal” or are “squatters.”⁴⁰ In this *dual system* of access, an absence of title is equated with illegal occupation, contrary to the provisions of the Land Law and the spirit of the titling system.

LMAP/LASSP is currently supported, either with funding or technical assistance, by the World Bank, GTZ, CIDA, Finland, Danida and DFID. If donors to this project cannot obtain solid commitments from the government that the issues highlighted will be acted upon and remedied, they should seriously reconsider their support to a project which is implemented in a corrupt manner that excludes the most vulnerable, making its original aims unsuccessful.

In Cases 1 to 4 above, many of the households that were forcibly evicted or are threatened with forced eviction had possession rights to their land and should have been able to access the LMAP titling system to gain title and secure their land tenure. Many households of the Dey Krahorm community, for example, had submitted their application for title, shortly

³⁸ See, the Royal Government of Cambodia in its Interim Strategy of Land Policy Framework (2002), page 16.

³⁹ Anecdotal evidence from communities as reported to NGOs.

⁴⁰ See for example, Bethany Lindsay et al, ‘Experts Dispute Boeng Kak Impact Report,’ The Cambodia Daily, 26 March, 2009, page 1.

before the eviction took place. Case 5 below presents another example of LMAP's titling system failing to provide security of tenure.

Case 5: Group 78, Tonle Bassac, Phnom Penh

Group 78 is a community which in 2006 consisted of 146 families located in the Tonle Bassac commune of Phnom Penh. The community began living in the area in 1983, and has since been recognised by the Phnom Penh Municipality through the issuing of house statistic receipts, property transfer documents, family record books, identity cards, and the witnessing of land sale contracts. Based on this strong case for possession rights, the community applied for land title in 2004, but local officials refused to even sign their applications and took no further action. Subsequently, the community filed a complaint to the Municipality of Phnom Penh which then issued a letter to the Municipal Department of Land Management, Urban Planning and Construction to investigate the situation. However, to date no investigation has occurred.

In June 2006, the community received the first of a series of five eviction notices, and has since been the target of intimidation, threats, and secret dealings designed to internally divide the community. In separate eviction notices, district and municipal authorities have made various claims that the community must be evicted because it is on State public property, it is located along the river, and that it is close to government industries. It further claims it needs the land for a bridge and a road, and for "beautification" of the city. It is now alleged that the land is owned by Sour Srun, a private Cambodian company. Evidence to support this claim has not been provided.

The community has been unable to engage any Government ministry or agency in a substantive discussion of its land rights. The community has offered proposals to the municipal authorities for settlement of the dispute and land sharing, but each of these has been dismissed without discussion.

At present, some 88 families have resisted the pressure and continue their struggle to assert their land rights. Municipal authorities remain determined to evict the community and relocate it to a resettlement site outside the city.

V. Land Disputes and Dispute Resolution Mechanisms

In 2005, it was estimated that one in fifteen Cambodian households was involved in a land dispute.⁴¹ In light of this high incidence of land disputes and the lack of tenure security set out above, the prompt and just resolution of land disputes is a central part of the realization of land and housing rights in Cambodia. Instead, the resolution of land disputes is marred by corruption, abuse of power and intimidation. There is, furthermore, a lack of clarity about the roles and jurisdiction of the three institutions dealing with land disputes – the courts, the Cadastral Commission, and the National Authority for Land Dispute Resolution (NALDR).

The 2007 Annual Progress Report of the Government states that the Cadastral Commission has resolved 1,246 land dispute cases, involving 6,641 households, relating to a land area of 2,394 hectares (ha).⁴² The 2008 Mid-Term Review on the National Strategic Development Plan states that the Cadastral Commission has so far finalised 1,400 cases involving more than 7,500 households, relating to a land area of 2,500 ha.⁴³ There is no data available about the proportion of the total cases referred to the Cadastral Commission, which these cases represent. Nor is there any information publicly available about the number of land dispute

⁴¹ Oxfam GB, 2005.

⁴² *National Strategic Development Plan 2006-2011: Annual Progress Report for 2006*, Royal Government of Cambodia, 2007.

⁴³ Royal Government of Cambodia (2008) Mid-Term Review 2008 on National Strategic Development Plan 2006-2010. 14th November 2008.

cases currently filed with the court system, or those which have been referred to the NALDR.

Estimates from civil society organisations indicate that the number of disputes is in reality significantly higher. Poor households in the dispute are primarily subsistence farmers, dependent on agricultural production. Therefore, as land under dispute is frequently left idle, long-standing land disputes result in social and financial crises for the households involved.⁴⁴

Data gathered by civil society groups across Cambodia shows that, of land disputes involving five households or more, reported during the first six months of 2008:

- 47% were disputes between grantees of economic land concessions and affected peoples, and 30% of disputes involved State land or large-scale development projects.
- 35% involved irrigated agricultural fields, 22% involved farmlands (non-irrigated) and 25% involved residential land.
- 68% of land disputes involved local authorities, and in 76% of cases the defendant used a combination of corruption, power or deceit to acquire the land under dispute.
- Complainants in 65% of cases reported that the defendants had used threats, violence and intimidation towards them during the case's duration.⁴⁵

In principle, the Cadastral Commission has jurisdiction over disputes over land that is not yet titled, whilst the courts have jurisdiction over titled land (as well as powers to invalidate illegal development contracts).⁴⁶ The NALDR purportedly has jurisdiction over cases which are “beyond the jurisdiction” of the Cadastral Commissions.⁴⁷ However, according to Cambodian law, there are no cases beyond the jurisdiction of the Cadastral Commissions or courts.⁴⁸ The practical result of the creation of the NALDR has been to strip the Cadastral Commissions of its proper jurisdiction, and to refer high profile or controversial cases to the NALDR, which is composed of and controlled by very senior officials. The NALDR operates as a blatantly political entity, and has no established rules or procedures. Meanwhile, courts will often refuse to act in cases relating to illegal developments and land concessions, on the basis that they do not have jurisdiction.

Moreover, there are serious problems with the efficacy and integrity of the courts and Cadastral Commissions. One study found that disputants avoided them because they were seen as “costly, time consuming and biased toward the rich.”⁴⁹ Parties to court proceedings

⁴⁴ *Impact of High Food Prices in Cambodia*, Cambodian Development Resource Institute Survey Report sponsored by World Food Programme, NGO Forum on Cambodia, Oxfam America, UNDP, World Bank and FAO, 2008.

⁴⁵ *Basic Information on the Situation of Land Disputes in Cambodia January to June 2008*, NGO Forum on Cambodia Land Information Centre, July 2008.

⁴⁶ Sub-decree 47, August 21, 2002, and *Prakas on the Guidelines and Procedures of the Cadastral Commission*, #112 DNS/BrK, Article 3.

⁴⁷ Royal Decree NS/RTK/0206/697, Article 3.

⁴⁸ Sub-decree 47, August 21, 2002, and *Prakas on the Guidelines and Procedures of the Cadastral Commission*, #112 DNS/BrK, Article 3.

⁴⁹ *Justice for the Poor? An Exploratory Study of Collective Grievances over Land Local Governance in Cambodia*, Centre for Advanced Study, World Bank Phnom Penh, October 2006.

are reported to make ‘informal payments’ in 68 to 100% of cases, and parties to cadastral commission proceedings make such payments in 22% of cases.⁵⁰ The Cadastral Commissions are reported to have low capacity to resolve cases in a timely manner, and difficulty resolving land cases involving powerful people.⁵¹

VI. Displacement and other Adverse Impacts Resulting from Economic Land Concessions and Mining

In recent years Cambodia has experienced an increase in forced evictions, involuntary resettlement and alienation from land and forest resources, as a result of the increased granting of land concessions to private companies. While a lack of transparency makes credible data difficult to ascertain (see below), even official figures, show an upward trend in concessions granted in recent years, with economic land concessions (ELCs) granted over 6,100 ha in 2004, 76,960 ha in 2005 and 217,503 ha in 2006.⁵² The increase in ELCs has occurred with inadequate implementation of existing regulations, particularly the sub decrees on State Land Management and Economic Land Concessions, both by Government and the concessionaires. Even in cases in which the Government and concessionaires/licensees have complied with the legal and regulatory framework, the framework itself has proven inadequate to address the social and environmental consequences, including the displacement of local communities from homes and farming land and the destruction of other local sources of food.

Cambodian law enables the Government to grant up to 10,000 ha of land to private individuals and companies through ELCs for agricultural and industrial-agricultural exploitation.⁵³ These concessions have been granted for a range of purposes including cultivation of crops, raising animals and construction of factory or processing plant for the processing of these materials. Mining licenses are not restricted to 10,000 ha but mining concessions may be.⁵⁴ Mining licences have been issued primarily for bauxite, iron, gold, and chromium extraction. Article 59 of the Land Law, restricts the granting of concession to 10,000ha and under for a single company, many concessions are however, reported to be significantly larger than 10,000 ha and in some cases two adjacent 10,000 ha ELCs are granted to the same individual or company.

⁵⁰ *Towards Institutional Justice? A Review of the Work of Cambodia's Cadastral Commission in Relation to Land Dispute Resolution*, World Bank, October 2006.

⁵¹ *Towards Institutional Justice? A Review of the Work of Cambodia's Cadastral Commission in Relation to Land Dispute Resolution*, World Bank, October 2006.

⁵² Ministry of Agriculture, Forestry and Fisheries 31 December 2006, quoted in UNOHCHR, *Economic Land Concessions in Cambodia: a human rights perspective*. United Nations Cambodia Office of the High Commissioner for Human Rights, 2007.

⁵³ Land Law 2002, Article 59, and Sub-decree on Economic Land Concessions 2005, Article 2

⁵⁴ The Law on the Management and Exploitation of Mineral Resources 2001 governs mining licences. It is not clear what law governs mining concessions, or even if they are different to mining licences. The Council for the Development of Cambodia suggests they are two different things, stating that ‘Use, Development and Exploitation concessions’ include mining concessions to a maximum size of 10,000 ha. See Council for the Development of Cambodia, Cambodian Investment Board, http://www.cambodiainvestment.gov.kh/?q=ii_land, February 26th, 2009. On the other hand, Mr Yos Mony Rath, Director of Mineral Resources Department of the Ministry of Industry, Mine and Energy (MIME) is reported to have said they were the same in 2006 “A mining concession is just issuing the licenses to the large areas for conducting the exploration”, see <http://www.twgfe.org/Docs/Minutes/Minutes%20of%20the%209th%20TWG-F&E%20Meeting.pdf> viewed on 13 March 2009.

Land concessions can only be granted over land classified as State private property.⁵⁵ However, the absence of a functioning system of State land management, including the transparent demarcation of State land, is allowing for the ad hoc granting of concessions affecting land that should be properly classified as State public property, privately-owned property or indigenous communal property. State land management is a key component of LMAP, but has seen very little progress (see Section IV). As long as this lack of implementation and transparency in State land management continues, this land is effectively unprotected from concession grants, as are its natural resources and the people living on the land.

There is also a lack of transparency in relation to the granting of concessions. The Ministry of Agriculture, Forestry and Fisheries (MAFF) has responsibility for monitoring compliance with the 2005 sub decree on ELCs. The MAFF public log-book states that 65 ELC companies have been allocated concessions totalling 895,176 ha (15% of Cambodia's arable land).⁵⁶ Provincial NGOs report the number of operational ELCs (those with and without contract documentation) to be in reality much higher. In Mondulhiri province, for example, documents released by local government agencies state that 24 ELCs are pending or operational in a total of 126,700 ha, despite only two ELCs being listed on the MAFF public log-book – one of which has been cancelled.⁵⁷

The Ministry of Industry, Mining and Energy (MIME) is responsible for regulating mining operations. Of key concern is the requirement in the Law on Management and Exploitation of Mineral Resources 2001 that all applications, reports, plans and notices concerning exploration and exploitation remain confidential.⁵⁸ As a result, almost no information relating to the number, size and status of mining licenses is publicly available. NGOs estimate the number of concessionaires with current mining licenses to range from 67 to 114, of which 21 were allocated in 2008 alone.⁵⁹

Evidence of disregard for the legal and regulatory framework for ELCs and mining licenses/concessions by both responsible government agencies and the concessionaires includes the following:

- Concessions are issued before the land has been registered and classified as State private property therefore concessions frequently displace lawful possessors;⁶⁰
- At least 9 ELCs are over the 10,000 ha legal limit; MAFF reported in October 2008 that three companies Pheaphimex (315,028 ha in Pursat and Kampong Chhnang Provinces),

⁵⁵ Sub-decree on Economic Land Concessions 2005, Article 4.

⁵⁶ <http://www.elc.maff.gov.kh/overview.html> 26 February, 2009.

⁵⁷ <http://www.elc.maff.gov.kh/overview.html> 26 February, 2009. <http://www.elc.maff.gov.kh/overview.html> 26 February, 2009. 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

⁵⁸ Law on Management and Exploitation of Mineral Resources 2001, Article 20.

⁵⁹ 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; Global Witness *Country for Sale: How Cambodia's elite has captured the country's extractive industries*. London: Global Witness, 2009. http://www.globalwitness.org/media_library_detail.php/713/en/country_for_sale

⁶⁰ Sub-decree on Economic Land Concessions 2005, Article 4.

Greensea (100,852 ha in Stung Treng Province) and Cambodia Haining (23,000 ha in Kampong Speu Province) are refusing to negotiate a reduction in size.⁶¹

- Despite legal requirements, for the majority of ELCs, local communities are not consulted before the proposed ELC is granted, no Environmental and Social Impact Assessments are undertaken, nor have any solutions been agreed upon for compensation and resettlement issues.⁶²
- The legal framework for the granting, use and administration of mining concessions is not clear, nor is the relationship between concessions and the parallel issuance of mining licenses. Mining concessions so far have been granted during or before the exploration stage, before extraction agreements have been signed and a significant number are larger than 10,000 ha.⁶³
- Despite adoption of the Protected Area Law in January 2008, the Government recently stated that Protected Areas are not inviolable.⁶⁴ NGOs estimate that half of Cambodia's areas of special environmental protection⁶⁵ have had mining licenses granted within their boundaries and evidence suggests that the Ministry of Environment was not consulted prior to the granting of licenses in two Protected Areas.⁶⁶

The social, economic and ecological impacts of ELCs and mining concessions have not been systematically researched country-wide. However, ad-hoc studies of ELCs and mining concessions and verbal reports from affected communities indicate extremely serious negative impacts on villages and eco-systems in and around the concession areas. In addition to displacement of communities from land subject to ELCs, verbal reports from directly affected communities point to an alarming erosion of the enjoyment of the right to food as a result of forced evictions, reduced access to food sources and destruction of conditions/factors needed to ensure food security. A Food Security Atlas launched in February 2008 by the World Food Programme shows high levels of hunger and malnutrition in the country, especially in areas plagued by land-grabbing, economic land concessions and extractive industry.⁶⁷

In many areas, communities have been evicted to make way for plantations and companies have bulldozed the areas of natural resources on which communities depend for their livelihoods. Even where communities are permitted to remain in their villages, they have been forcibly deprived of access to agricultural and grazing lands, and forests that they have used for several years (if not generations) for collecting food and non-timber forest products. Communities adjacent to many concession areas also report that companies have

⁶¹ Technical Working Group on Forest and Environment *Joint Monitoring Indicator Reporting (2007-2008): summary of progress and remaining actions*. Phnom Penh: MAFF, October 2008.

⁶² Sub-Decree on Economic Land Concessions 2005, Articles 4,13 and 35.

⁶³ 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.

⁶⁴ Douglas Gillison, "Conservation Areas not Inviolable, says Minister", *The Cambodia Daily*, 14 September 2007, p1-2.

⁶⁵ Both Protected Areas as defined by the Protected Area Law 2008 and Protected Forests as defined by the Forestry Law 2002.

⁶⁶ 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; Global Witness *Country for Sale: How Cambodia's elite has captured the country's extractive industries*. London: Global Witness, 2009.

⁶⁷ <http://www.methodfinder.com/wfpAtlas/index.php?page=01&lang=en>, 16 March, 2009.

expanded the areas claimed in their contracts and encroached on village lands and commons, further threatening their livelihood and food security.⁶⁸

Case 6 below summarises studies carried out on the social and economic impacts of a 4,359 ha concession granted in 2001 in Kampong Thom province.⁶⁹

Case 6: Tumring Commune, Kampong Thom Province – Impact of a Concession

In 2001, the Chup Rubber Company was granted a concession of 6,100 ha in Tumring Commune in Kampong Thom Province. 4,359 ha was for a rubber plantation, and 1,841 ha was for villagers to grow smallholder rubber. At the time of the concession, it was estimated that there were 2000 people living in the affected commune.⁷⁰

Prior to the grant of the concession, villagers grew rice, tapped resin trees and collected other forest products. They practised shifting cultivation, moving their rice fields every three to seven years to allow land fertility to regenerate. As a result of the land concession, they were no longer able to practice shifting cultivation and their access to the forest was reduced.

In compensation for their land, villagers were supposed to receive a grant of 3 ha per household and monetary compensation. However, of 663 original families still registered in the commune in 2005,⁷¹ around 20 to 30 families reported receiving no compensation⁷² and around 56 families reported receiving no land.⁷³ Those who received land were not given land titles. Around 40% of families were reported to have sold their land because of declining land fertility, poverty, or pressure from the rubber company.⁷⁴

Prior to the creation of the rubber plantation, villagers reported being able to grow enough rice for the whole year. By 2005, NGO Forum found that they were suffering significant annual rice-gaps. Additionally, villagers had sold their livestock because of the risk of a high fine from the company if the livestock strayed onto the rubber company's land.

In follow-up research in 2007, CDRI⁷⁵ found that people's main source of household income changed significantly as a result of the concession. As the main source of income, rice production dropped from 31% to 19%, and forest products dropped from 28% to 3%. Instead reliance on wage labour went from 8% to 26%.⁷⁶ 77% of surveyed people stated they had insufficient income after the creation of the concession.⁷⁷ People were generally unable to generate income from smallholder rubber as planned because most people needed to grow food for consumption and could not wait six to seven years for the rubber trees to start producing an income source.

Some families moved into the commune to seek employment at the rubber plantation, and some families moved out in search of new land or livelihoods.

⁶⁸ Personal interviews by Shalmali Guttal with village residents in Stung Treng and Kratie provinces, November, 2005.

⁶⁹ NGO Forum 2005, *A Study of the Impacts of Rubber Plantation Development in Tum Ring, Cambodia*, 2005; Cambodian Development Research Institute, forthcoming Annual Development Review article on Rubber Plantations 2009.

⁷⁰ NGO Forum, *A Study of the Impacts of Rubber Plantation Development in Tum Ring, Cambodia*, 2005, Section 1.1.

⁷¹ The NGO Forum reports that there were 722 families registered in the Tumring Commune in 2005, but 59 were outsiders who had migrated to work on the rubber plantation. NGO Forum, *A Study of the Impacts of Rubber Plantation Development in Tum Ring, Cambodia*, 2005.

⁷² NGO Forum, *A Study of the Impacts of Rubber Plantation Development in Tum Ring, Cambodia*, 2005, Section 3.2.1

⁷³ NGO Forum, *A Study of the Impacts of Rubber Plantation Development in Tum Ring, Cambodia*, 2005, Section 3.2.2.

⁷⁴ NGO Forum, *A Study of the Impacts of Rubber Plantation Development in Tum Ring, Cambodia*, 2005, Section 3.2.3.

⁷⁵ Cambodian Development Research Institute, forthcoming Annual Development Review article on Rubber Plantations 2009.

⁷⁶ Cambodian Development Research Institute, forthcoming Annual Development Review article on Rubber Plantations 2009.

⁷⁷ Cambodian Development Research Institute, forthcoming Annual Development Review article on Rubber Plantations 2009.

The NGO Forum report concluded that the concession affected food security, undermined people's traditional livelihoods, and increased displacement of people.⁷⁸

VII. Land rights of Indigenous Peoples

Please refer to the separate annex on The Rights of the Indigenous Peoples in Cambodia for more details.

According to the 1998 census, indigenous peoples are estimated to constitute 0.9% of the Cambodian population or 102 000 people,⁷⁹ and to constitute many diverse groups, including the Jarai, Brao, Kreung, Phnong and Poar peoples. Approximately half of the indigenous population is estimated to reside in the north-eastern provinces of Mondulkiri and Ratanakiri. As in the rest of Cambodia, the Government has promoted industrial models of development and extensive natural resource extraction in these areas, rather than the preservation of indigenous communities' way of life and use of their lands. Within this context, coupled with the lack of a comprehensive legal framework to protect indigenous land rights, and a lack of implementation of protections that do exist, indigenous communities are facing severe tenure insecurity and displacement from their homes and land.

The Land Law 2001 recognises collective ownership rights of indigenous communities over their land, including all of the rights and protections of ownership enjoyed by private owners.⁸⁰ The Land Law also envisages the development of a comprehensive legal framework to govern relevant processes, rights and protections. However, the following points exemplify the lack of implementation of existing protections and the absence of necessary laws and regulations:

- Article 23 of the Land Law refers to a law on communities to determine communities' 'legal status', but such a law is yet to be enacted.
- The legal and policy framework for the registration of collective titles for indigenous communities is yet to be finalised. Moreover, the draft Sub-Decree on Procedures of Registration of Land of Indigenous Communities is inadequate. For example, rather than the community deciding whether an individual can excise a piece of individual land from the collective holding, the draft sub decree in article 11 gives the individual the right to excise a portion of land, potentially allowing for the rapid disintegration of collective holdings of land.
- Article 23 and Title VI of the Land Law state that the boundaries of indigenous land will be determined over time through a process of systematic land mapping and land

⁷⁸ NGO Forum, *A Study of the Impacts of Rubber Plantation Development in Tum Ring, Cambodia*, 2005, Section 3.1.2

⁷⁹ Cambodian Population Census 1998, quoted in NGO Forum, *Indigenous Peoples in Cambodia*, 2006, [http://www.ngoforum.org.kh/Land/Docs/Indigenous/INDIGENOUS%20PEOPLES%20IN%20CAMBODIA_final\(3\).pdf](http://www.ngoforum.org.kh/Land/Docs/Indigenous/INDIGENOUS%20PEOPLES%20IN%20CAMBODIA_final(3).pdf), accessed on 6/3/09.

⁸⁰ Land Law 2001, Article 26

registration.⁸¹ NGOs could only find evidence of this process occurring in three indigenous villages so far.⁸²

- Article 23 of the Land Law states that indigenous communities shall continue to manage their land. As such, indigenous land should not be expropriated prior to cadastral titling and mapping.⁸³ However, there have been multiple examples of indigenous land being granted to other parties as economic land concessions, mining concessions or otherwise expropriated.
- The Government has failed to provide adequate interim protection for indigenous land prior to the creation of a comprehensive legal framework.⁸⁴ Expropriation of indigenous land has continued despite ad hoc steps such as a letter issued by Mondulakiri Provincial Governor on 7th March 2008 and a deikas issued by the Ratanakiri Governor in March 2005 and January 2006, stating that village, commune and district officials must not endorse land sales in indigenous community areas.⁸⁵

It is estimated that 21% (282,700 ha) of six areas under environmental protection in Mondulakiri and Ratanakiri has been allocated to mining concessions and since 2007, a further 7% (98,239 ha) has been allocated as ELCs.⁸⁶ In addition to the land alienation and displacement these have caused, concessions have been reported to have desecrated and destroyed burial grounds and spirit forests of indigenous peoples.⁸⁷ Numerous indigenous people who have attempted to protect their rights have been harassed and intimidated. A number of people have also been arrested, in some instances accused of trespassing their own lands, illegally acquired by companies and powerful individuals.

Case 7: Economic Land Concession in Snoul District, Kratie Province

On 27 May 2008, an ELC was given in Snoul District, Kratie Province over indigenous peoples' land. This ELC was granted without meaningful public consultation and is therefore in breach of the sub decree on ELCs. On 5th September community members staged a protest to halt the clearing of their lands. A week later community representatives involved in the protest were summoned to court by the prosecutor after the company filed dubious criminal complaints against the representatives for infringements against private ownership, destruction of private property and robbery.

The Land Law 2001 provides for the disciplining of government officials if they are involved in improper land seizures, or if an infringement against the land rights of an indigenous

⁸¹ Land Law 2001, Article 25 and Title VI

⁸² *Progress Report for key Trigger Indicators of the Poverty Reduction and Growth Operation Programme, Round – 2*, NGO Forum on Cambodia, November 2008

⁸³ Land Law 2001, Article 23 states that prior to being registered as indigenous communities, groups shall continue to manage their property according to their traditional customs. This is interpreted to mean that indigenous land cannot be expropriated prior to registration, NGO Forum, *The Progress Report for key Trigger Indicators of the Poverty Reduction and Growth Operation Programme, Round – 2*, November 2008.

⁸⁴ NGO Forum, *Progress Report for key Trigger Indicators of the Poverty Reduction and Growth Operation Programme, Round – 2*, November 2008.

⁸⁵ NGO Forum, *Progress Report for key Trigger Indicators of the Poverty Reduction and Growth Operation Programme, Round – 2*, November 2008.

⁸⁶ 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, 2008.

⁸⁷ UNOHCHR, *Economic Land Concessions in Cambodia: a human rights perspective*. United Nations Cambodia Office of the High Commissioner for Human Rights, 2007.

community occurs in the government officials' area of operation.⁸⁸ Moreover the Organic Law 2008 provides that a government official or elected counselor can be disciplined when they illegally confiscate private assets or natural resources or fail to prevent others from doing so.⁸⁹ These provisions have not been activated to protect indigenous communities' lands.

In cases in which negotiations over land are carried out with indigenous communities, they are not carried out in an atmosphere of 'trust and honesty' as required by Contract Law.⁹⁰ Communities are frequently uninformed or misinformed and then intimidated and pressured into selling their land because they fear that if they do not sell, they will be forcibly evicted. Land deals are often done with individuals within communities, violating the communal nature of the land ownership.

Case 8: Kong Yu and Kong Thom in Ratanakiri Province

Since 2004 businesswoman Keat Kolney (sister of Minister of Finance and Economics, Keat Chhon and wife of Ministry of Land Management Secretary of State, Chhan Saphan) has been involved in a dispute over purported land sale contracts for 450 ha of land with Jarai villagers in Kong Yu and Kong Thom. Lawyers for Community Legal Education Centre (CLEC) and Legal Aid Cambodia (LAC) argue that the villagers had been tricked and pressured into signing land sale contracts, and in any case the disputed land is indigenous community land under the Land Law and thus cannot be sold before it is registered as such.

A complaint by the villagers' was lodged in the Ratanakiri Provincial Court on 23 January 2007. However, since the dispute began no government or judicial authority has recognized that Kong Yu villagers are an "indigenous community."⁹¹ This refusal of recognition is a common method used by authorities to avoid the legal protections provided to indigenous communities.

According to a Provincial Order, the disputed land contains shifting agricultural land, multi-usage forest, guardian forest and protected forest, evidencing that this is indigenous community land.⁹² However no governmental or judicial authority has since recognized or tried to enforce this Provincial Order. Indigenous communities are entitled to manage their community land before its registration in accordance with traditional custom under Article 23 of the Land Law and this includes State public land such as forests. However, there has been no State land classification in the disputed area.

On 23 October 2008, Keat Kolney's employees began clearing villagers' farms and a burial forest located on the disputed land, in breach of her promise to the Court not to clear further land until the dispute had been resolved by the Court. On 28 October the Provincial Judge issued an injunction halting the clearing. Keat Kolney ignored the order and continued to clear the land.

Many indigenous communities traditionally own and use forest areas. Although the Land Law declares that all forests are State public property,⁹³ it protects the rights of indigenous

⁸⁸ Land Law 2001, Articles 261-266

⁸⁹ Organic Law on Administrative Management of Capital, Provinces, Municipalities, Districts and Khans 2008, Articles 47-49

⁹⁰ Decree 38D Referring to Contract and Other Liabilities 1988, Article 2.

⁹¹ The Kong Yu and Kong Thom villagers are an indigenous community according to the independent report Dr. Meas Nee, *Cultural Expert Opinion Report On Kong Yu and Kong Thom Villages, Pate Commune, O Ya Dav District, Ratanakiri Province*, filed in Court by CLEC and LAC lawyers on 15 January 2008.

⁹² The Pate Commune Natural Resources Management map was produced by the Provincial Department of Environment and is contained in the Provincial Order on Community Based Natural Resources Management, Pate Commune, O'Yadav District, Ratanakiri dated 13 December 2004.

⁹³ Land Law 2001, Article 15

communities to those parts that were used for traditional agriculture, including cultivated and fallow fields within shifting cultivation systems.⁹⁴ Moreover, the Law on Forestry 2002 provides that a grant of a forestry concession or the creation of a protected forest should not interfere with customary user rights.⁹⁵ However, in practice indigenous people have found their access blocked to forests that they traditionally use as sources for food and other basic needs.

VIII. Land and Housing Rights Defenders

In its State Report, the Government claims that it has supported all NGOs and Associations in respecting the ‘rights and freedom of the people’ and ‘there is no reason for the Royal Government to compress and constrain the citizens’ rights and freedom’.⁹⁶

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.

The attacks documented range from verbal threats and intimidation, to unlawful imprisonment and physical assault. One of the most serious recent examples is detailed in Case Study 10: Kratie Province.

Case 9: Kratie Province - Intimidation of community forestry leaders

Two indigenous community forestry leaders in Kratie Province were victims of death threats and attempted murder in March 2008 after confiscating logging equipment being used illegally on communal land. One was struck with a bamboo pole as he rode a motorcycle after meeting with NGOs in the provincial town. He was knocked unconscious and sustained injuries that are still affecting him a year later. The other leader was the subject of three separate attacks: he was assaulted with a knife as he walked to the bathroom in the middle of the night, a sword was thrust up through the floor of his family home as they slept, and the working house he maintained in the field was burnt down. Both men had previously received verbal threats from known individuals not to continue their land rights activism. To this day, however, police have failed to conduct serious investigations in these cases, or to identify suspects or make arrests.⁹⁷

Representatives of communities that have fallen victim to land-grabbing in rural Cambodia are increasingly travelling to Phnom Penh in an attempt to raise their concerns with the national government – yet instead find themselves confronted by violence and intimidation. For example:

- In March 2007 a group of villagers from Koh Kong Province walked to the capital to publicise the loss of their land to a wealthy businessman, only to be encircled by trucks

⁹⁴ Land Law 2001, Articles 25 and 26.

⁹⁵ Law on Forestry 2002, Articles 15 and 40; Sub-Decree on Community Forestry Management 2003, Article 11.

⁹⁶ Cambodia State Party Report, 10 November 2008, paragraph 187.

⁹⁷ LICADHO monitoring report (Unpublished).

and threatened over loudspeakers by municipal authorities that their security “could not be guaranteed.”⁹⁸

- Later in 2007, a group from Svay Rieng Province travelled to Phnom Penh to protest the grabbing of their land by a state-owned rubber company, only to be surrounded by police and gendarmerie officers, violently forced onto buses and sent back to their province. Several activists were beaten, and two taken unconscious to hospital.⁹⁹

One of the most worrying emerging trends involves the abuse of the Cambodian court system to press unwarranted criminal charges against land and housing rights defenders.

Case 10: Dey Krahom, Phnom Penh

As described in Case 4, the Dey Krahom community fought to protect its land from threats of eviction by the Municipality of Phnom Penh and private company 7NG, from early 2005, until the forced eviction was carried out in January 2009.

In an apparent attempt to put pressure on community activists, 7NG – in concert with local authorities – filed a series of unwarranted criminal complaints against representatives and other members of the community between 2005 and the eviction.

Despite a lack of evidence to support these complaints, and numerous breaches of Cambodian criminal procedure, 21 individuals from Dey Krahom – including ten community representatives – were charged by the Phnom Penh municipal court with various crimes. Two community leaders have been imprisoned.

In the most recent development, three activists who were amongst the last to hold out against 7NG were sentenced at the Phnom Penh court in February 2009 to 18 months in prison, suspended, on unsubstantiated charges of assault and destruction of the company’s property. They were released on a five year probation and ordered to pay collectively a total of two million riel (around USD 500). The convictions relied on statements from three witnesses linked to 7NG which were exposed under cross-examination as having been fabricated, and disregarded consistent and credible evidence from seven witnesses who appeared for the defense.

Similar tactics are commonly used to attack land rights defenders throughout Cambodia. The numerous recent examples include:

- In May 2007, four representatives of 30 families were arrested and charged with violation of private property in Kep municipality, during a violent eviction that had taken place in 2004.
- The same month, two representatives of 50 families in a Prey Veng province land dispute were arrested on unwarranted charges of rice robbery.¹⁰⁰
- Also in May 2007, a representative of 3,170 families engaged in a land dispute in Battambang province was sentenced to nine months imprisonment for property destruction. Despite having already served the term in pre-trial detention, he remained in prison pending another trial in August that year, where he was sentenced to a further

⁹⁸ LICADHO, *Attacks & Threats Against Human Rights Defenders in Cambodia 2007*, Briefing Paper, August 2008.

⁹⁹ LICADHO, *Unlawful Abuse Of Land Protesters In Phnom Penh, Attacks & Threats Against Human Rights Defenders in Cambodia 2007*, Media Statement, October 17, 2007 Briefing Paper, August 2008.

¹⁰⁰ LICADHO, *Unlawful Abuse Of Land Protesters In Phnom Penh, Attacks & Threats Against Human Rights Defenders in Cambodia 2007*, Media Statement, October 17, 2007 Briefing Paper, August 2008..

three months imprisonment on similar charges. Despite already having served this new sentence, he was kept in prison after the prosecutor appealed the verdict.¹⁰¹

- Between March and May 2008, four representatives of a community in Kampot province involved in a land dispute with the Cambodian Khaou Chuly group were arrested and detained in the provincial prison, charged with assault and property offences. Three of their family members were also arrested, and other activists fled the area in fear.¹⁰²
- In October 2008, two representatives of a community in Svay Rieng province involved in a land dispute with the son of a commune chief were arrested after willingly presenting themselves at the provincial court for questioning. The two were charged with damaging private property and placed in pre-trial detention.¹⁰³
- Also in October 2008, four representatives of a community in Siem Reap province involved in a land dispute with the deputy provincial military commander were arrested, again after presenting themselves for questioning at court. All four were charged with damaging private property and placed in pre-trial detention, despite an absence of evidence against them or any proof that the disputed land belongs to the deputy provincial military commander.¹⁰⁴

Such attacks and threats have not been limited to community representatives, but extended to the lawyers representing them, as discussed in Case 12: Kong Yu and Kong Thom.

Case 11: Kong Yu and Kong Thom, Ratanakiri Province

As described in Case 8, the indigenous Kong Yu and Kong Thom communities have been engaged in a land dispute with businesswoman Keat Kolney, since 2004.

Ten legal aid lawyers who were acting for the indigenous communities facing eviction were threatened with disbarment and possible criminal charges.

In June 2007, Keat Kolney made a formal complaint to the Cambodian Bar Association naming each of the lawyers and accusing them of inciting the villagers to file wrongful complaints and defame her. The Bar opened an investigation into the conduct of the lawyers, requiring each of them to respond to the accusations.

Two days later, Keat Kolney filed a criminal complaint against the Kong Yu villagers, which also accused their lawyers of incitement - stopping short of directly naming them as suspects in the case, but allowing for the provincial prosecutor to take action as he saw fit. Some of the lawyers were reportedly also the target of personal intimidation, including veiled death threats. By the end of the year, all but two of the lawyers had resigned from their organizations and stopped working on the case.¹⁰⁵

In recent years, civil society organisations have documented numerous cases where a land or housing rights defender was attacked for their activism. In none of these cases have persecutors been prosecuted, impunity remains the norm for the perpetrators of such violations.

¹⁰¹ LICADHO, *Unlawful Abuse Of Land Protesters In Phnom Penh, Attacks & Threats Against Human Rights Defenders in Cambodia 2007*, Media Statement, October 17, 2007 Briefing Paper, August 2008..

¹⁰² Unpublished LICADHO monitoring report

¹⁰³ LICADHO, *Courts used as weapon against community representatives*, Media Statement, 29 October 2008

¹⁰⁴ LICADHO, *Courts used as weapon against community representatives*, Media Statement, 29 October 2008

¹⁰⁵ LICADHO, *Attacks & Threats Against Human Rights Defenders in Cambodia 2007*, Briefing Paper, August 2008.