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FOR THE RIGHT TO FOOD

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Germany's Human Rights Obligations in Development Cooperation

**Access to Land and Natural Resources and Germany's support of the
Land Sector in Cambodia**³

1. Land sector and Human Rights

Land issues are highly relevant for the fulfillment of human rights, especially the human right to food. The German Federal Ministry for Economic Cooperation and Development (BMZ) acknowledges this relevance in many of its policy and reference documents.¹ In its recent strategy paper on rural development and food security², the BMZ gives precedence to human rights within development cooperation and reconfirms its support for the implementation of the FAO Voluntary Guidelines for the Progressive Realization of the Right to Food (VGL), which highlight the role of access to land as an important element for the fulfillment of the right to food. Indeed, we see that the VGL, which have been endorsed by the Germany and many of its partners like Cambodia, would be an effective tool to include human rights in the land sector. Nevertheless, human rights instruments and principles have not yet been integrated to a substantial degree at project level.³

The BMZ is currently elaborating its new strategy on human rights. This process offers a unique opportunity to introduce instruments and mechanisms to implement Germany's human rights obligations, and ensure that Germany's support in the land sector through development cooperation supports the realization of human rights, especially the human right to food.

With this input, we would like to contribute to an enhanced practical implementation of Germany's human rights obligations in the context of their support of the land sector in Cambodia and other partner countries.

2. The case of Cambodia

Cambodia is a country where German development cooperation has been strongly involved in the land sector. Since 1995, German development cooperation has actively supported the

¹ Among others Bonn Statement Access to Land (2001); EU Land Policy Guidelines (2004); BMZ (2001) Poverty Reduction – a Global Responsibility

² BMZ (2011) Entwicklung Ländlicher Räume und ihr Beitrag zu Ernährungssicherung

³ For a survey of the mayor activities of BMZ in the land sector see Herre (2010) Germanys Official Development Assistance in Land

Cambodian land sector through its technical cooperation branch GIZ (former GTZ). It recently recommitted its support to the sub-sector programs on Land Administration, Land Management and Land Distribution (together known as the Land Sector Program) for 2011 and 2012 with up to 4,000,000 Euro.

In its 2009 Concluding Observations on Cambodia (E/C.12/KHM/CO/1), the Committee on Economic, Social and Cultural Rights (CESCR) highlighted the profound problems related to access to land and evictions in Cambodia: *“The Committee is [...] concerned about the reports that the rapid increase in economic land concessions in the last several years even within the protected zones, is the major factor for the degradation of natural resources, adversely affecting the ecology and biodiversity, resulting in the displacement of indigenous peoples from their lands without just compensation and resettlement, and in the loss of livelihood for rural communities who depend on land and forest resources for their survival. (art. 1) (...) The Committee is gravely concerned over reports that since the year 2000, over 100,000 people were evicted in Phnom Penh alone; that at least 150,000 Cambodians continue to live under threat of forced eviction; and that authorities of the State party are actively involved in land-grabbing. The Committee notes with deep concern that the rate of large-scale forced evictions has increased over the last 10 years due to increased public works, city beautification projects, private urban development, land speculation, and the granting of concessions over vast tracks of land to private companies. It is also concerned about the lack of effective consultation with, and legal redress for, persons affected by forced evictions, as well as the inadequate measures to provide sufficient compensation or adequate relocation sites to families who have been forcibly removed from their properties. It is also concerned over reports of violence during the evictions, in some cases carried out by the police. [...] (art. 11)”*

2.1 Support of Land Titling

One key issue of concern with regards to Germany's human rights obligations is related to Germany's ongoing support of the land titling system. On the one hand, the land titling system under the donor-funded Land Management and Administration Project (LMAP) has reached an impressive number of households.⁴ On the other hand, there is no qualitative evaluation of the impact of titling. There is also mounting evidence that this system has denied due process rights to vulnerable households and communities, and further weakened their tenure status.

Overall, the approach to enhance security of land tenure through titling schemes can lead to increased loss of land by the poorest groups by exposing existing access to land to reappraisal, speculation or commercial pressure.⁵ In addition, the process of titling itself is often biased against poor groups by not effectively addressing their existing land use rights, or by registration system obstacles specific to the poor (e.g. costs, travel, illiteracy...), and instead reaffirming or even strengthening access rights of powerful actors. Such possible negative effects on the human right to food and the human right to adequate housing on vulnerable groups should be included in human rights based project assessments.

These overall concerns are fortified by on-the-ground-reports of international and Cambodian civil society organizations (CSOs), which state that the process of land registration (basis for obtaining a title) in Cambodia “is in no way transparent, equitable or accountable”. The titling

⁴ Overall more than one Million titles were issued and “1000 titles are being produced daily” (EU Working Group on Land (2011) Background paper for the 3rd European Forum on Rural Development)

⁵ See e.g. European Union (2004) EU Land Policy Guidelines or Report of the Special Rapporteur on the Right to Food United Nations at the General Assembly of the United Nations, October 2010

system excludes areas that are “likely to be disputed”.⁶ This exclusion effectively denies vulnerable groups access to the only system which would protect their land and property rights and secure their land tenure. Most affected are poor and vulnerable households and communities that reside on or depend on sought-after land for their livelihoods, and who are targets of eviction or likely to be cut off from these lands. In further cases, communities have been subsequently excluded from the titling because “the areas are deemed to be too complicated for the systematic titling process”.⁷ In this case, poor communities are living in at least three of these seven areas excluded.

A Parallel Report to the CESCR states: *“In effect, possession rights are not being recognised for those households most vulnerable to forced evictions because they live on land that is sought after by powerful individuals and companies. Authorities have also refused to issue titles to such households despite evidence of valid possession rights. The land registration and titling system under the donor-funded Land Management and Administration Project (LMAP), which commenced in 2002, has thus far failed to provide secure tenure to many of the most vulnerable households”*⁸. The report further addresses the significant and problematic role of the international donors in the land sector, especially under the LMAP: *“Donors should ensure that accountability for these projects is significantly improved, including through the implementation of rigorous monitoring systems and by making representations to the Government on the illegality of serious violations of the Covenant when they occur”*⁹.

These findings have been underpinned by a recent report of the World Bank Inspection Panel: *“...the Project [LMAP] converged more and more towards a single instrument approach measuring success in terms of numbers of titles issued. The effects of this approach in terms of poverty reduction, the second objective, were never seriously investigated.”*¹⁰ The report further refers to a review of 2006 that states that *“at least a fifth of households (19.6%) in 13 of the adjudication areas visited are being adversely affected by the systematic titling process, usually through the refusal to register land in household possession or use.”*¹¹ The report concludes that *“design flaws in Project led to arbitrary exclusion of land from titling process and that this denied residents, especially poor and vulnerable, opportunity to claim and formalize their pre-existing rights through adjudication process under LMAP.”*¹²

Based on these substantive concerns, it should be a high priority of German development cooperation to conduct an inclusive and comprehensive evaluation¹³ of the human rights impact of their support of the Cambodian land sector. It should be noted that to our knowledge there has been no such evaluation of the impacts of this program on those who have received title and those who have not. On the basis of the results of such an evaluation, a human rights monitoring should be conducted to implement Germany’s extraterritorial human rights obligations under the International Covenant on Economic, Social and Cultural Rights.

⁶ World Bank (2002) LMAP Project Appraisal Document, p.22

⁷ Seven areas in Tonle Basac commune have been excluded by this justification in October 2009. The German Government has been informed about these cases by FIAN in June 2010.

⁸ Land and Housing Working Group Cambodia (2009) Land and Housing Rights in Cambodia. Parallel Report 2009, p.5

⁹ Ibid., p.10

¹⁰ Inspection Panel (2011) Investigation Report. Cambodia: Land Management and Administration Project, p.75

¹¹ Ibid., p. 49

¹² Ibid., p. 82

¹³ The term “inclusive” refers to a process of evaluation that actively includes civil society and directly involved groups in all phases of the evaluation: the planning phase/ the elaboration of terms of reference, conduction of the evaluation and aggregation the findings.

2.2 Support of the Circular on Resolution of Temporary Settlements on Illegally Occupied Land in the Capital, Municipal and Urban Areas (Circular 03)

In response to mounting pressure from civil society, the German and Cambodian governments agreed to five “milestones” that should be achieved by June 2010 in order for Germany to continue its assistance to the land sector. In August 2010 the German Ministry for Economic Cooperation and Development decided to renew its support of the Cambodian land sector. In December 2010 the new cooperation agreement was signed. This was done despite the fact that most, if not all, of the milestones had not been achieved.

A second issue of concern relates to Germany’s renewed support, as it will – among other – focus on the implementation of the Circular on Resolution of Temporary Settlements on Illegally Occupied Land in the Capital, Municipal and Urban Areas. On the one hand, the implementation of Circular 03 might have positive effects, especially on poor and vulnerable groups. On the other hand, concerns have been raised that Circular 03 might also strip vulnerable households and communities of their rights to due process in securing their land tenure. Potential problems related to the Circular have been highlighted by CSOs, which are *“concerned that the Circular will be used as a mechanism to evict urban-poor residents, regardless of whether or not they satisfy the legal conditions of legal possession.”*¹⁴

It must be highlighted that since the milestones process started, civil society groups have experienced a more open dialogue with the German development cooperation, which has helped address their concerns within the land sector. In addition, according to a press release by the German Embassy in Cambodia, the support of the land sector as a whole and the implementation of Circular 03 is “contingent upon further strengthening implementation of human rights in the land sector.”¹⁵ This focus on human rights has also been demanded by Cambodian CSOs. What remains unclear, however, is what this will mean in practice, on the project level.

Concerns of possible negative effects should be taken seriously by the German government. A human rights impact assessment before committing to support Circular 03 should be conducted in order to assess possible negative effects and help design the support in line with human rights standards. This could contribute to increased positive effects of the Circular 03, especially for vulnerable households and communities.

3. Recommendations

3.1 The German government should conduct an inclusive and qualitative evaluation of their support of the land sector in Cambodia (especially related to land titling) in order to assess its immediate and long-term impact on tenure security, access to land and natural resources, with special regards to the most vulnerable groups.

¹⁴ Bridges Across Borders Cambodia: Comments on BMZ Milestones for Continued Cooperation in the Cambodia Land Sector, 2010

¹⁵ Press Release of the embassy of the Federal Republic of Germany, Phnom Penh, 26th August 2010. Further information has not yet been made available despite requests.

3.2 The German government should establish clear human rights standards for their support of the land sector through development cooperation. These should be based on existing human rights guidelines (especially the *Voluntary Guidelines for the Progressive Realization of the Right to Adequate Food* and the *Basic Principles and Guidelines on Development-based Evictions and Displacement*). In addition, it should establish monitoring mechanisms with special emphasis on a transparent process and pro-active participation of the groups affected by their support.

3.3 In its development policy, Germany recognises target groups of development cooperation as rights holders. To increase its own human rights accountability towards these rights holders we strongly recommend that the German government install a complaint procedure to enable these rights holders to address negative effects to an independent body and to ensure their access to an effective remedy.