

Cambodia

Briefing for the UN
Committee on
Economic, Social
and Cultural Rights

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BRIEFING FOR THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN ADVANCE OF ITS CONSIDERATION OF CAMBODIA DURING THE 42ND SESSION ON 4-22 MAY 2009

INTRODUCTION

Amnesty International submits the following briefing to the UN Committee on Economic, Social and Cultural Rights (the Committee) with a view to the Committee's forthcoming consideration of Cambodia's initial report under the International Covenant on Economic, Social and Cultural Rights (the Covenant), at its 42nd session, between 4-9 May 2009. The briefing covers the organization's concerns about violations of the right to adequate housing, pursuant mainly to Article 11.1 of the Covenant, with a particular focus on forced evictions. The briefing also highlights issues around lack of implementation of policy and law, violations of indigenous peoples' land, cultural and other rights, and violations against human rights defenders working on housing and land issues.¹ Amnesty International has previously submitted to the Committee copies of reports and other documents that it has released in the last year based on its monitoring of the human rights situation in Cambodia.²

The last decade has seen a steady rise in the number of reported land disputes and land confiscations and evictions, including forced evictions, in Cambodia. Victims are almost exclusively marginalized people living in poverty, who are unable to obtain effective remedies. This rise should be seen as a consequence of the lack of the rule of law, a seriously stunted process of legal and judicial reform, and endemic corruption.

In 2008 alone, Amnesty International received reports about 27 forced evictions, affecting an estimated 23,000 people. Amnesty International recorded another 22 evictions, but scant details made it impossible to distinguish whether or not they were forced evictions. It is

¹ UN Doc. E/C.12/KHM/1, 2 December 2008.

² *Rights Razed - Forced evictions in Cambodia*, AI Index: ASA 23/002/2008, 11 February 2008; *Cambodia: A risky business – defending the right to housing*, AI Index: ASA 23/014/2008, 26 September 2008; *Cambodia: Ignoring the rights of Indigenous Peoples*, AI Index: ASA 23/008/2008, June 2008; *Cambodia: Bracing for development*, AI Index: ASA 23/009/2008, June 2008; *Cambodia: Facing the threat of eviction*, AI Index: ASA 23/005/2008, 12 March 2008; *Urgent Action 319/08 CAMBODIA 300 families from Anlong Krom village, Kampot Province*, 19 November 2008;

believed that many forced evictions in rural areas go unreported.

The World Bank has estimated that 11,000 families were forcibly evicted from Phnom Penh between 1998 and 2003.³ Since then, a further 15,000 to 30,000 families have been evicted, the majority resettled in sites on the outskirts of Phnom Penh.^{4 5} In an inventory of resettlement sites in 2007, local non-governmental organizations (NGOs) counted 41 sites in the vicinity of Phnom Penh, housing a total of 15,831 families.⁶ The number of people affected by forced evictions outside of the capital is difficult to ascertain because of a lack of information and monitoring.

The most common reasons for eviction include ownership disputes, the government's granting of leases to private interests for agro-industrial development (economic land concessions), and, in the case of Phnom Penh, "beautification" and commercial development by private actors. Forced evictions for development projects in the public interest, such as infrastructure, schools, or public utilities also take place, but are not widespread.

Since 2006, Amnesty International has monitored, researched, and reported on forced evictions and violations of other related rights in Cambodia. The organization has repeatedly expressed concern to the Cambodian government over its failure to respect, protect and fulfil the human rights enshrined in the international treaties to which it is a party. A number of international and national human rights NGOs have also raised concerns about the issue of forced evictions. However, in response to Amnesty International's report, *Rights Razed – forced evictions in Cambodia*, released on 11 February 2008, the Cambodian government denied the research findings, claiming there had been no forced evictions in the country. We would like to request the Committee to ask the government of Cambodia to indicate the number of persons and families evicted within the last five years as required under the Committee's reporting guidelines. This information has unfortunately not been included in the State Party's report.

Some of the forced evictions that Amnesty International has documented:

24 January 2009, Dey Kraham, around 400 families, Tonle Bassac commune, Phnom Penh;
17-18 November 2008, Anlong Krom, around 300 families, Ta Ken commune, Kampot;
July/August 2008, Meanchey village, 270 families, Snuol district, Kratie province;
15 November 2007, Kantuot, 317 families, Choam Khsan district, Preah Vihear;
2 November 2007, Chong Chruoy, 132 families, Chruoy Changva commune, Phnom Penh;
20 April 2007, Mittapheap 4/Spean Ches, 105 families, Mittapheap district, Kampong Som;
2-3 August 2006, Street 202, at least 72 families, Phsar Depot 1 commune, Phnom Penh;
2 July 2006, Preah Monivong Hospital, 168 families, Phnom Penh;
May-June 2006, Sambok Chab, 1,500 families, Tonle Bassac commune, Phnom Penh;
21 March 2005, Kbal Spean, 218 families, Poipet commune, O'Chrouv district, Banteay Meanchey;
October 2004 – ongoing, Kong Yu/Kong Thom, around 65 families, O'Yadao district, Ratanakiri;
August 2004, Dak Dam and Sen Monorom communes, unclear number of affected people, but over 1,000 persons, O'Reang district, Mondulakiri.

³ *Cambodia: Halving Poverty by 2015?*, Cambodia Poverty Assessment, World Bank, Phnom Penh, February 2006, p. 48.

⁴ Sahmakum Teang Tnaut, unpublished draft, note on file.

⁵ *ibid.*

⁶ *Relocation sites in Phnom Penh – an updated documentation of relocation sites in and around Phnom Penh*, Sahmakum Teang Tnaut, August 2007.

GAPS IN THE DOMESTIC LEGAL FRAMEWORK (ARTICLES 2.1 AND 11.1)

Article 31 of the Constitution of the Kingdom of Cambodia gives the force of law to the international human rights treaties to which Cambodia is a state party, as well as to the Universal Declaration of Human Rights. This was reaffirmed in a landmark ruling on 10 July 2007 by the Constitutional Council, which concluded that courts shall consider “international conventions that Cambodia has recognized” as domestic law along with the Constitution and other applicable law.⁷ Cambodian law does not include a clear prohibition on forced eviction and only provides a limited and weak degree of protection against forced evictions.

The Cambodian Constitution and the Land Law include protections for owners of land and set out that no confiscation will occur unless it is in the public interest as provided for under law and only after the payment of just and fair or equitable compensation.⁹ Article 5 of the Land Law provides that “an ownership deprivation shall be carried out in accordance with the forms and procedures provided by law and regulations and only after the payment of just and equitable compensation”. Many of the implementing regulations and sub-decrees to effectively apply the Land Law have not yet been drafted and adopted. The procedures for carrying out ‘an ownership deprivation’ have also not been identified and adopted and there is a critical gap in this regard. We request the Committee to ask the State Party to provide information on when these procedures will be adopted and what steps it is taking to ensure that the procedures that are developed incorporate the procedural protections identified by the Committee in General Comment No. 7.

The Land Law also provides that even for occupants with no or insufficient title, evictions can only be made by a court order upon the request of the person who claims the property, and that the court must verify and validate such a claim.¹⁰ The law also provides that although courts can not refuse to order an eviction in favour of a person who presents a valid title of legal ownership, the competent authorities may request a temporary suspension even where it has validated the ownership claim of the person requesting an eviction order, if the eviction “is likely to give rise to instability or to have serious social repercussions”.¹¹ There is however a systematic lack of enforcement of these provisions. As illustrated by numerous cases documented by Amnesty International and other NGOs, evictions are routinely carried out without any court order or verification of the claim of ownership of the party seeking the eviction. This is particularly the case when the claimant seeking the eviction is influential or well-connected. Amnesty International is also not aware of any instance where the Cambodian authorities have sought a temporary suspension on the grounds that it may give rise to instability or have serious social repercussions. We would therefore request the Committee to ask the State Party to provide information in the interactive dialogue on the instances when they have sought enforcement of Article 36 of the Land Law and the criteria used to assess when an eviction may fall within this provision. Below are some examples of

⁷ See Public Statement, 25 July 2007, Decision of the Constitutional Council regarding the Law on Aggravating Circumstances for Felonies and the Convention on the Rights of the Child; United Nations Office of the High Commissioner for Human Rights in Cambodia.

⁸ This was with reference to the Convention on the Rights of the Child. Amnesty International is not aware of any case in which a court has considered provisions on the right to adequate housing in international law.

⁹ Article 44, Constitution, Article 5, Land Law.

¹⁰ Article 35.

¹¹ Article 36.

these practices.

On 17-18 November 2008 around 100 soldiers, police, military police and Forestry Administration officials forcibly evicted 300 families in Anlong Krom village in Chhuk District, Kampot.¹² Around 300 houses, mostly huts built with straw and leaves, were burnt down, leaving families homeless. At no time during the two days were villagers or human rights monitors shown any documentation providing for the legal basis for the eviction.

On 2 November 2007, 300 members of the security forces forcibly evicted 132 families and demolished the village of Chong Chruoy on the outskirts of Phnom Penh, using excavators and hired labourers to demolish homes. Human rights activists and journalists were blocked from monitoring the incident.¹³

The basis for the forced eviction was a written announcement issued by the district authority on 30 August 2007 stating that the eviction was “to eliminate disorder in the society, to protect environment, sanitation and public health, and to promote the municipality's beauty.”¹⁴ It gave the villagers five days to clear the area and was not based on a court order. No new information was provided until security forces moved in on 2 November. According to the authorities the village was located on state land; however, human rights workers reported that this claim, disputed by villagers who claimed ownership to the land, was never heard by the competent authorities.

On 20 April 2007, over 100 families who were forcibly evicted from Mittapheap 4 village (commonly called Spean Ches) in Sihanoukville. They were made homeless.¹⁵ The forced eviction followed a land dispute which emerged in 2006 when an individual filed a complaint with the local commune chief. She also sent letters to the Ministry of Interior, the National Assembly and the Senate, claiming the villagers were "illegal squatters" on her property. The complaint led the district authorities, on 26 October 2006 to issue an eviction notice without due judicial review. Villagers were provided with no opportunity to challenge the decision.

A draft National Housing Policy from 2003, which has not been finalised and adopted for implementation, concluded that “a sound Housing Policy aims to increase access of the poor to land and shelter, which, in turn will contribute to secure tenure and access to essential services.” The draft policy also recommended a moratorium on evictions in Phnom Penh. For unknown reasons, the policy development appears to have been stalled and its recommendations ignored. In 2004, the Ministry of Economics and Finance (MEF) drafted a sub-decree on development-related resettlement,¹⁶ with the assistance of the Asian Development Bank. Cambodian civil society groups have voiced concerns that the draft sub-decree fails to comply with international standards on prohibiting forced evictions and protecting the population against them, focusing instead only on resettlement. They have also expressed concern over the drafting a new Law on Expropriation. The MEF is drafting the law, and it is not known whether it contains any protection against forced evictions. Amnesty International would like to request the Committee to ask the government of Cambodia what the status is on a national housing policy and what legislation is envisioned to explicitly provide for protection against forced evictions.

¹² See e.g. *Security forces in Cambodia forcibly evict 300 families*, AI, 20 November 2008.

¹³ See *Cambodia: Forced evictions must end*, AI, 22 November 2007.

¹⁴ Unofficial translation; copy on file.

¹⁵ See *Rights Razed – forced evictions in Cambodia*, pp 34, AI, 11 February 2008.

¹⁶ Its full name is the *Sub-Decree on Land and Property Acquisition and Addressing Socio-Economic Impacts Caused by State Development Projects*.

LACK OF SECURITY OF TENURE (ARTICLES 2.1 AND 11.1)

The government of Cambodia has failed to take measures to provide a minimum degree of security of tenure to all persons, irrespective of their tenure situation, which guarantees them with legal protection against forced evictions, harassment and other threats. The government has also failed to hold any genuine consultations with persons and households currently lacking such protection. Amnesty International, together with a number of civil society groups, estimated that there were at least 150,000 Cambodians living at risk of forced evictions in early 2008.

The failure to adopt a clear prohibition on forced eviction is a major factor behind the insecurity of tenure, as is the government's failure to implement the protections that do exist in domestic law. The UN Special Rapporteur on Adequate Housing also identified that "pending legislation or unclear legal provisions concerning the differences between private and State property, transactions involving public property, land concession and collective property of indigenous lands, for example, result in a situation of uncertainty that impacts negatively on the right to adequate housing".¹⁷

Under Article 31 of the Land Law, a person who can demonstrate lawful uncontested possession for a period of five years before the law was enacted (2001) can become the owner of the land. NGOs have highlighted concerns about the failure of the government to grant title to people claiming it under this provision; the absence of a process to verify their claims; and failure to recognise their rights under this law. The situation is also complicated by the slow and opaque process of classification of state land as public or private (as Article 31 only applies to state private not public land).¹⁸ Amnesty International has also documented several cases of forced eviction of communities which had strong claims to live on the lands and homes they occupied under the Land Law. The authorities did not initiate any process to verify their claims, nor did they follow procedures for 'ownership deprivation' set out under domestic law and there were no safeguards required under international law.

An example of a community that lives without security of tenure is **Group 78 in central Phnom Penh**, a neighbourhood on the riverfront where the value of land has increased enormously in recent years. Since June 2006 the local authorities have threatened to forcibly evict nearly 150 families, mostly are street vendors, but also teachers and other government employees. Around half have since left amid harassment and threats from local authorities.

People started moving into the area in 1983, and have ample official documentation proving that they have strong ownership claims under the Land Law. The families have applied for formal title to their land several times, but both the municipal authorities and the Cadastral Commission, the government body in charge of allocating land title to people living on land whose ownership is unregistered, have rejected their applications

¹⁷ Mission to Cambodia, Report of the Special Rapporteur on Adequate Housing as a component of the Right to an Adequate Standard of Living, Miloon Kothari, E/CN.4/2006/41/Add.3, 21 March 2006, para 9, p. 5.

¹⁸ State private land refers to one category of publicly owned land. Chapter 2 of the 2001 Land Law distinguishes between State **private** land, which may be transferred and utilised for social and economic development, and State **public** land, which is inalienable. (Emphasis added.) See Joint Submission by COHRE, LICADHO, NGO Forum on Cambodia and others to the Committee on Economic, Social and Cultural Rights, November 2008, pp. 12 – 13.

without providing a reason.

Local authorities have issued five eviction notices for Group 78. The most recent notice was issued in November 2007 but did not provide details of the proposed date for the eviction. None of the eviction notices have been based on a court order, as required by law. Each written eviction notice and verbal communication from the authorities have provided different reasons for the eviction, ranging from beautification of the city to the claim that the villagers are illegal squatters.

According to representatives of the community, in early October 2008 a Chamkar Morn District official warned them that eviction was underway, and that it would be better for the villagers to dismantle their own homes rather than have someone else destroy them. There has been no attempt at a genuine consultation with the community, which has been living under the threat of a forced eviction for over two years, or to explore feasible alternatives to the proposed eviction. In April 2009, each household was offered USD 5,000 plus a small plot in a resettlement site some 20 kilometres from where they currently live. The resettlement site reportedly has no sewage, sanitation, safe drinking water or electricity.

The government of Cambodia has also set up a system of “social land concession”, whereby the authorities may distribute state private land for residential or farming purposes to poor and homeless families.¹⁹ So far however, implementation of the social land concession mechanism has been limited to a handful of informal settlements in Phnom Penh, one of which has since been forcibly evicted, and to pilot projects in rural areas.²⁰ The state’s report mentions the government’s policy to improve conditions for poor communities through onsite upgrading, including a land sharing project, through which a private company would develop part of the land where the communities lived while constructing housing for the community on the remainder of the land.²¹ Of the four examples listed in the State Party report, Dey Kraham was evicted on 24 January 2009, and according to media and human rights groups, Train station A and B received eviction notices in early 2009. In the fourth community, Borei Keila, less than one third of the families had received new accommodation on the site by 2008, five years after the inception of the project. As of April 2009, 38 families living with HIV/Aids at Borei Keila were threatened with eviction from the area to a resettlement site 20 kilometres from their homes and too far from the city to guarantee medical treatment.²² Amnesty International would like to request the Committee to seek clarifications from the Government as to how social land concessions in urban areas contribute to ensuring at the very least minimal security of tenure for people in informal settlements, and what special arrangements are made for the most vulnerable.

The Land Management and Administration Project (LMAP) – a government project, supported by donors including the World Bank and the German development cooperation entity (GTZ) –

¹⁹ State private land refers to one category of publicly owned land. Chapter 2 of the 2001 Land Law distinguishes between State **private** land, which may be transferred and utilised for social and economic development, and State **public** land, which is inalienable. (Emphasis added.)

²⁰ The last remaining permanent residents in Dey Kraham in central Phnom Penh, 152 families, and around 250 other families of renters, staying temporarily on the site, were forcibly evicted on 24 January 2009.

²¹ Cambodia State Party Report, E/C.12/KHM/1, para 537.

²² Information provided by local NGOs, April 2009.

includes land registration and land titling, to end land occupancy without title, while establishing dispute resolution mechanisms “to improve land tenure security and promote the development of efficient land markets”²³. The systematic titling efforts of the project have not targeted areas where disputes are likely, nor informal settlements, unless there is agreement by the government to provide the land to informal settlers.²⁴ Indeed, research quoted by the World Bank itself shows that “tenure insecurity [in Cambodia] is concentrated among vulnerable groups, particularly poorer households who occupy lands outside of core residential or farming zones, such as those which are or were forests, flood plains, seasonal lakes, marshes and informal urban settlements—that is, land contested by the state.”²⁵ There is growing concern among civil society that LMAP’s titling efforts are biased against those most vulnerable and with least tenure security.

Alongside the systematic titling, LMAP conducts so-called sporadic titling, i.e. ad hoc titling after an application from a household. With regards to sporadic titling, poor urban communities have had such applications ignored without a reason provided, as demonstrated in the case of Group 78 (previous page).

The government’s central economic policy document, Rectangular Strategy for growth, employment, equity and efficiency in Cambodia, 2004 – 2008 identifies the urgent need to continue land reform and pledges to tackle land tenure security. It also however identifies the “eradication of illegal settlements” as a goal. Amnesty International is concerned that this should not provide an impetus to carry out forced evictions of people living in informal settlements. Instead the policy should identify options to increase tenure security for people living in informal settlements, in line with Cambodia’s immediate obligation to guarantee a minimum degree of security of tenure for all. Amnesty International would request the Committee to enquire as to what measures the State Party has or is planning to take to guarantee protection against forced evictions, harassment and other threats to groups lacking protection, in particular those living in informal settlements and others who may not qualify under Article 31 of the Land Law.

It is crucial to note that most victims of forced eviction who have been relocated have not been guaranteed security of tenure even at the resettlement sites. As pressure on land increases, there are indications that some resettlement site residents are at risk of being evicted yet again.

In October 2006, at least 72 families were forcibly evicted from **Street 202 in Phsar Depot 1 commune, Tuol Kork district in Phnom Penh** to a resettlement site by the name of Chambok Thom, some 20 kilometres outside the city. As with many others affected by forced eviction, they lost access to their livelihoods because of the vastly increased distance to their work places. As a result of their deepened poverty, some families were unable to build proper housing at Chambok Thom and consequently live in rudimentary and partial structures. In early 2008, local authorities told them they had not utilized the replacement land properly and that they were therefore going to be evicted from the resettlement site.

²³ *Land Titles Give People a Stake in their Country*, World Bank, 4 August 2007.

²⁴ *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*, World Bank, January 29, 2002, p. 24 and 20 respectively.

²⁵ *Sharing Growth: Equity and Development in Cambodia*, World Bank, Phnom Penh, June 2007, p. 64.

LACK OF PROCEDURAL PROTECTIONS, DUE PROCESS AND OTHER SAFEGUARDS (ARTICLE 11.1)

Forced evictions in Cambodia are characterised by a failure to enforce the limited protections that exist in domestic law and the absence of procedural protections, due process and other safeguards identified by the Committee in General Comment No. 7.

ABSENCE OF OPPORTUNITIES FOR GENUINE CONSULTATION AND LACK OF APPROPRIATE INFORMATION

A wide range of cases documented by Amnesty International and other civil society groups show that contrary to Cambodia's obligations under the Covenant, the Cambodian authorities do not provide any opportunity for genuine consultation to those affected. Moreover the authorities do not explore all feasible alternatives to evictions and apply the principle that evictions should only be carried out as a last resort. The Sub-Decree on Economic Land Concessions sets out requirements for public consultation and participation.²⁶ However, these are not complied with in many cases of evictions linked to the granting of economic land concessions. Communities are provided with no or incomplete and inaccurate information on the proposed evictions; and plans for resettlement, alternative housing and/or compensation. As highlighted earlier, though Cambodian law requires the authorities to obtain a court order for an eviction, many evictions are undertaken in the absence of court orders and without sufficient prior and adequate notice.

Over 1,500 families were forcibly evicted in May and June 2006 from Sambok Chab, an informal settlement dating back to the early 1990s on the Bassac river bank, Phnom Penh. Authorities did not show an eviction order to the communities or any legal means that would enable them to challenge an eviction order. There was no genuine consultation with the community, nor were they provided with details of the resettlement plan despite their repeated requests to the municipality. The municipality publicly rejected any responsibility over the situation of the thousands of tenants. Instead, tenants were left to their own devices for weeks. Responding to a question from ABC Radio Australia about where the tenants were to go following eviction, Phnom Penh's governor Kep Chuktema explained: "We don't know, because they rent."²⁷

Similarly 218 families who were forcibly evicted from Kbal Spean in Banteay Meanchey province in March 2005 received no formal notice of the eviction, and there were no consultations or attempts to explore feasible alternatives to the eviction. The eviction was based on a land claim by the former village chief. He claimed to own the land where the village was located and the Banteay Meanchey Court ruled in his favour in a proceeding that failed to hear any witnesses on behalf of the community or allow legal representation for the villagers.²⁸

Around 4,200 families (up to 20,000 people) are currently under the threat of a forced

²⁶ The Cambodian government retains a policy of granting companies leases – economic land concessions - for up to 99 years for commercial developments, including plantations and agro-industry. By the end of 2006, 14.5 percent of Cambodia's arable land was leased out to concessionaires, according to an assessment by the Special Representative of the Secretary General for Human Rights in Cambodia.

²⁷ *Cambodia: Poor families evicted from shanty town*; 4 May 2006. Further details on the case are available in AI, *Rights Razed – Forced Evictions in Cambodia*, pp. 25 – 29.

²⁸ *Land issues in the Poipet area*, The NGO Forum on Cambodia, 2005. Further details on the case are available in AI, *Rights Razed – Forced Evictions in Cambodia*, pp. 30 - 33.

eviction because of the filling of almost 90 per cent of Boeung Kak Lake in Phnom Penh and its development as a commercial and tourism area. There had been no consultation with the community who learnt about the agreement between the company and the municipality through the television news. They continue to receive conflicting information about resettlement options and offers of compensation.

LACK OF PROCEDURAL SAFEGUARDS AND HUMAN RIGHTS VIOLATIONS DURING EVICTIONS

Instead of protecting the population against forced eviction, government officials, including law enforcement officers, have been directly involved in both ordering and carrying out forced evictions. Many evictions have been carried out using unnecessary or excessive force, arbitrary arrests and detention. Affected persons have not been afforded adequate and reasonable prior notice, or in some cases any notice at all. In many instances they have not had the opportunity to salvage building materials and possessions from their homes and the authorities have used bulldozers and excavators, and in some instances arson, to carry out forced evictions.

On 20 April 2007, 105 families of fisherfolk and beach vendors were forcibly evicted from **Mittapheap 4 village** on the outskirts of the coastal town of Sihanoukville. Some 150 members of the security forces, including military, fired shots in the air and on the ground, demolished and burnt down houses and beat people. The inhabitants of the village were not provided with any alternative housing and were left homeless. Many had no opportunity to remove their personal possessions and salvage building materials.

The eviction was ordered not by the court as required by domestic law, but by the Municipal Governor following a complaint by an individual who claimed to own the land.

In a subsequent trial against a number of villagers accused of "battery with injury" and "wrongful damage to property", the court failed to examine the legality of the eviction and there was no attempt to establish responsibility for the violence and destruction.

After the forced eviction, the land was fenced in and put up for sale.

As of April 2009, around 80 of the families remained living under tarpaulins on the roadside, without access to basic services.

During the forced eviction in **Spean Ches** 18 villagers (13 men and five women) and two policemen were injured in the violence. Afterwards, the 13 injured men were arrested, beaten and detained. In a trial on 3-4 July 2007, nine were convicted as charged, despite a failure by the prosecution to produce evidence linking them to the crimes they were accused of. No witnesses could identify any defendant as having caused alleged injuries or damage to property.

Following a prosecutorial appeal, the men remained in prison pending an Appeal Court hearing. Even though they had served their term, they were not released until 10 April 2008, after the Court of Appeal denied the prosecution's call for heavier sentences at a hearing on 3 April. At this point they had been arbitrarily detained for almost a year.

"Wrongful damage to property" is among the grounds most commonly used to arrest

community representatives and is among the most common charges levelled against them. Prosecutors routinely ignore the issue of whether the legal ownership of the land in question has been clarified before pressing such charges. Instead they charge community representatives for incidents such as removing signposts or fences from the land they claim to be theirs; for planning peaceful protests; or for raising protest banners on the disputed land. Community members, human rights monitors and other observers describe these charges spurious and groundless.

In another example, in Chhuk District, Kampot Province, around 100 soldiers, police, military police and Forestry Administration officials forcibly evicted around 300 families in Anlong Krom village, **Ta Ken Commune** on 17 and 18 November 2008. The mixed force carried firearms and also burned down the dwellings. The families were not provided with any alternative housing and were left homeless.

Members of the security forces also beat and kicked many of the villagers; three people had to be taken to hospital for treatment for their injuries.

As in many other instances of forced eviction, the local authorities have claimed the village was an illegal settlement. However, at no time were villagers or human rights monitors shown any documentation providing a legal basis for the eviction. The affected people, mostly poor landless farmers, had settled in Anlong Krom over the past six years. Since the forced eviction, security forces have returned to the village and destroyed temporary shelters that the homeless people erected on the ashes of their former homes.

FAILURE TO PROVIDE ADEQUATE ALTERNATIVE HOUSING, COMPENSATION FOR LOSSES, AND TO PREVENT HOMELESSNESS

In most of the cases of forced eviction documented by Amnesty International, the Cambodian authorities have failed to provide adequate alternative housing or compensation for losses. In the cases described above the families have been left homeless and vulnerable to further human rights violations. When relocation sites are identified by the authorities, there is no consultation with the communities on whether they meet the needs of the community. This often results in disruption of the communities' ability to access work places and schools. The sites and the housing provided (when it is provided - many resettlement sites are just empty pieces of land) would in most instances also not comply with the criteria for adequacy of housing identified by the Committee in General Comment no. 4, in particular in relation to affordability, habitability, location and/or availability of facilities and infrastructure (especially access to safe drinking water, sanitation and sewage).

In Phnom Penh, the Municipality appears to have adopted a practice in recent years whereby evictees are relocated to resettlement sites where no facilities – not even basic shelters – are in place at the time of eviction. Examples include Sambok Chab, Street 202, Chong Chrouy and the Dey Kraham residents who resisted resettlement, all mentioned above. In their justification for evicting informal or slum-like settlements in the city, the authorities have referred to their need for development. In effect, however, they have put in place a practice which has simply recreated even more deprived and marginalized neighbourhoods far from the city, including in terms of access to basic services and job opportunities.

New Andong village was little more than a name when security forces finalized the forced eviction of Sambok Cham in the city centre in June 2006. Authorities and the

land claimant, a real estate company, provided trucks to take hundreds of families the 20 kilometres to Andong, which was a levelled field with no shelters, access to sanitation, water, toilets, schools, clinics, or roads. The entire eviction, between early May and 6 June displaced 1,500 families.

Almost three years on, Andong remains a seriously deprived area. NGOs monitoring the site have reported high incidences of disease, including dengue fever and respiratory problems, and significant social problems. In late 2008 Amnesty International interviewed evictees were forced to leave Andong for want of food and work, and instead lived in squalor in the streets of Phnom Penh, where they faced being driven away.

In another example, 132 families of mostly fisherfolk, were forcibly evicted from **Chong Chruoy village in Chruoy Changvar in Phnom Penh** in November 2007. Without consultation, they were resettled on a cleared land area 20 km from the city, which also lacked shelters, sanitation and water, and which had limited road infrastructure. Security forces allowed them to salvage debris to build new homes, which were miles from the Mekong River where they had previously made their living from fishing.

For other urban poor communities in Phnom Penh that face eviction, such as Boeung Kak, Group 78 and Rik Rikreay,²⁹ the alternative housing arrangements that the authorities have presented to them are inadequate. The compensation offered is also insufficient for families to obtain comparable alternative housing. The infrastructure at the relocation site is poor; basic amenities, including clean water, are lacking; and access to work opportunities is very limited given the distance from the city. Moreover, the authorities have not guaranteed any security of tenure for those agreeing to move.

As illustrated above, the lack of a clear prohibition on forced evictions and necessary procedural protections in domestic law as well as poor implementation of the existing limited safeguards results in widespread human rights violations. This is particularly the case in contexts where people living in poverty are evicted from the homes and lands that they occupy. There is an urgent need for the government of Cambodia to adopt a clear prohibition on forced evictions and national eviction guidelines, consistent with international human rights law. Amnesty International considers the Basic Principles and Guidelines on Development Based Evictions and Displacement, developed by the UN Special Rapporteur on the Right to Adequate Housing to be a good model in this regard for the government of Cambodia to consider.

INDIGENOUS PEOPLES (ARTICLES 2.2, 2.3 AND 11.1)

The 2001 Land Law provides wide-reaching legal protection for Indigenous Peoples' land rights. Indigenous communities are entitled to gain collective ownership over residential land, agricultural land or land kept fallow as part of a traditional rotational agricultural system, mirroring the communal way in which many Indigenous groups in Cambodia manage land.³⁰

²⁹ For further information on Boeung Kak, see e.g. *Open Letter [...] Regarding the Forced Eviction of Residents of Boeung Kak Lake in the Phnom Penh Municipality*, 4 December 2008, *Cambodia: Bracing for development*, Index Number: ASA 23/009/2008, 1 June 2008, and on Group 78: *Cambodia: Facing the threat of eviction*, AI Index: ASA 23/005/2008, March 2008.

³⁰ 2001 Land Law, Chapter 3 – Collective Ownership, Part 2: Immovable Property of Indigenous Communities.

Article 28 of the law establishes that “No authority external to the community may require any rights related to any immovable properties belonging to an Indigenous community.”

However, some key provisions are not enforceable pending the issuance of a sub-decree on the registration of Indigenous collective land, which has been in the drafting process for several years, and other implementing regulations. The process of finalising the legal framework is very slow and there is mounting concern that there will be little Indigenous land left to title by the time the decree has been adopted and the titling process begins.³¹ Until it is adopted, articles 18 and 23 of the Land Law provide for temporary land tenure security and prevent transfer of Indigenous communities' traditional lands, making it illegal for an individual member of the community to sell Indigenous Peoples' land.

However, interim protection for Indigenous Peoples' has proven weak. An increasing number of forced evictions of Indigenous Peoples from their traditional lands is reported in the northeast of Cambodia. Loss of land impacts strongly on Indigenous Peoples in Cambodia whose beliefs, religious practices, livelihoods, cultural rights, and traditional environment, including forest land, are intimately interrelated. Due to their marginalization in Cambodian society as well as linguistic barriers, Indigenous Peoples facing forced eviction appear to be disproportionately affected by the lack of information provided by authorities. Pressure on the resource-rich land in areas where Indigenous Peoples live is significant and increasing, including by extractive industries.

In August 2004, the Cambodian government granted an economic land concession, “in principle”, to a company for a pine tree plantation in the eastern highland province of Monduliri. The traditional lands of Indigenous Phnong People lie within the perimeter of the concession but there were no consultations with the Phnong prior to the agreement. The company started moving in and clearing land which had not been demarcated and mapped before they were granted a formal contract. By 2005, the emerging plantation had already had a significant impact on the lands, territories and resources of the Phnong. It had enveloped and partly destroyed farmlands, forests and crops, grazing land, ancestral forests and traditional burial sites around the villages. The loss of access to forest land meant loss of products that provide nutrition, medicine, fuel, and non-forest timber products that boost income. The encroachment also impacted on the cultural rights of the Phnong, whose beliefs, religious practices and traditional environment are closely linked. Despite a notification from the Council of Ministers in 2005 ordering a suspension of the company's activities, the company continued planting in the Indigenous Peoples traditional lands. To date, no system of reparations, including restitution, compensation and guarantees of non-repetition has been established.

Only when bulldozers arrived and started clearing land in July and August 2008, villagers of **Indigenous Peoples of the Stieng ethnicity in Snuol district, Kratie province**, became aware that an economic land concession had been granted on their ancestral land. Part of the land they have traditionally tended had been leased for 70 years for a rubber tree concession, signed on 27 May 2008 by the provincial Governor and a Cambodian company reportedly belonging to an investment group.

³¹ MRG, *State of the World's Minorities 2006*, p 127.

The forced eviction deprived the villagers of an important part of the natural resources on which their livelihood depends. Lawyers working to defend the community say that the deal breaches the sub-decree on economic land concessions of December 2005,³² which requires consultation with affected people as well as social impact assessments; and the 2001 Land Law, which provides protection for Indigenous Peoples' land.

The 270 affected families are protesting the land seizure, but have been met with threats and harassment from the authorities. Four village representatives are facing criminal charges following a protest.

Amnesty International welcomes the statement by the Council of Ministers review in early March 2009 concluding that land registration and land use must ensure Indigenous Peoples access to natural resources on their land and that forested areas must be protected from being "taken from outsiders."³³ If implemented, such a policy review may go some way to ensure protection of Indigenous Peoples' rights and way of life. We request the Committee to ask the government to provide additional information on how they aim to prevent land-grabbing, the granting of concessions involving Indigenous Peoples traditional lands without their free, prior and informed consent and other activities which interfere with the rights of Indigenous Peoples in relation to their lands, territories and resources. Amnesty International has called on the government to finalise the sub-decree on the registration of Indigenous collective land in consultation with Indigenous Peoples themselves. We would also request the Committee to ask for information on when this sub-decree will be finalised and to urge the State Party to adopt this as a matter of urgency and to complete the process of registration and demarcation of indigenous land rights.

REPRESSION OF AND LACK OF PROTECTION FOR HUMAN RIGHTS DEFENDERS WORKING ON HOUSING ISSUES

Amnesty International is aware of numerous cases in which economically and politically powerful land claimants have attempted to stop the peaceful activities of individuals and groups acting in defence of human rights, including land and housing rights. As pressure on land continues to increase amid land speculation and a general lack of the rule of law in Cambodia, the space for the work of human rights defenders is shrinking.

Since 2006, local human rights group Adhoc has tallied the number of land activists who have been arrested: 78 in 2006, 149 in 2007 and over 150 in 2008. This rise mirrors an increasing number of reports alleging that police have arbitrarily arrested land activists; that prosecutors have brought spurious criminal charges against such activists; and that officials have threatened people defending human rights with imprisonment.

This appears to indicate a trend whereby economically or politically powerful individuals or companies are increasingly using their leverage to silence activists through the criminal justice system. Arrests, detentions, and charges are used to intimidate and punish those defending or representing the weaker party in land disputes, or those opposing development projects that involve forced evictions.

Around 400 poor urban families were forcibly evicted from Dey Kraham, central Phnom Penh on 24 January 2009, the vast majority of whom were made homeless. An

³² See p. 11, para 2.

³³ *Ministers review ethnic minority land rights, development*, Phnom Penh Post, 9 March 2009.

estimated 250 security forces and demolition workers forcibly evicted 152 families permanently residing in Dey Kraham and around 250 families residing temporarily on the site.

The Phnom Penh municipality initially provided less than 30 families with shelter at a designated resettlement site at Cham Chao commune in Dangkor district, some 16 kilometres from the city centre. Most of the other structures at the site were still under construction and lacked roofs. There is no clean water, no electricity, sewage or basic services. Earlier, most of the affected community rejected being resettled there because it was too far from Phnom Penh, where they work, mostly as street vendors.

At least 13 community representatives from Dey Kraham have been charged with criminal offences because of their peaceful defence of their right to housing. Charges include “battery with injury”, “wrongful damage to property”, defamation and forgery. Two people have been imprisoned so far, and another three have been convicted despite the lack of evidence presented against them. They were given suspended prison terms. Further legal proceedings are ongoing.

This pattern of arresting land activists is sending an unequivocal message to others who might attempt to defend their land and housing rights. As one human rights defender, whose husband spent 16 months in prison for his activism, told Amnesty International: “Arresting one man is to threaten hundreds of thousands of people, scaring them from struggling and advocating again. [...] I see this as an injustice for the Cambodian people.”

Besides the threat of imprisonment, community activists and human rights workers may also encounter harassment, intimidation and violence, and face violations of their right to freedom of expression and assembly. Authorities routinely block human rights monitors from accessing eviction sites. In December 2008, the armed forces blocked entry for human rights workers to Anlong Krom village in Kampot. In January 2009, when security forces prepared for the final eviction of the Dey Kraham they sealed off the area. This had also occurred during forced evictions from Sambok Chap and the Preah Monivong Hospital area in Phnom Penh in 2006, and when Chong Chruoy village was leveled in Russei Keo District in November 2007. The same month, troops stopped human rights workers from entering a torched and dismantled community housing area in Kantuot commune, Preah Vihear province, where soldiers had shot dead two villagers.

In some instances, the security forces have cut off access for human rights monitors and lawyers visiting communities at risk of eviction, including in Ratanakiri and Phnom Penh. In Ratanakiri and Mondulakiri, provincial authorities have required NGO workers to submit written applications for permission to pay visits to communities or to monitor peaceful protests.

Local officials also habitually deny requests by local communities to hold protests or public gatherings, and by civil society to hold meetings or events, either without providing any justifications or on grounds of public order. However, in a positive development in November 2008, the Minister of Interior successfully intervened to ensure that people in Ratanakiri were allowed to stage a public protest. Local authorities had twice denied permission for such a protest against the ongoing loss of natural resources and environmental degradation.

LACK OF EFFECTIVE REMEDIES (ARTICLE 11.1)

The UN Special Rapporteur on Adequate Housing has highlighted serious concerns about the role played by the judiciary in housing disputes. *“According to testimonies received, the investigative procedures adopted by courts to ensure the legitimacy and legality of ownership titles are perceived as insufficient. Consequently, court decisions allegedly tend to favour those who have acquired titles illicitly, to the detriment of families who could possibly benefit from the 2001 Property Law provisions concerning ownership rights resulting from extended land possession and occupation. Organizations litigating on housing cases identify another trend in ownership disputes: when civil cases are dismissed by the courts and sent to the Cadastral Commission criminal complaints are filed against the same claimants, based on article 247 of the Property Law - infringement against ownership - even though ownership is still being contested before the Cadastral authorities.”*³⁴ The Special Representative of the Secretary-General for human rights in Cambodia has also pointed out serious shortcomings in relation to the rule of law in Cambodia and has stated that *“offences under the [land] law for infringement of rights to land have not been used to protect communities whose rights have been violated by influential individuals, companies or government entities. Action has not been taken against those who have illegally sold or bought land occupied by others, or infringed their rights to land and forest resources. Conversely, when legal proceedings are instituted against a well-placed person or company (or when communities resist evictions or the appropriation of their land), it is not unusual for the plaintiff (or community representatives) to be accused of some offence, for example “destruction of property” or “infringement of property”.*³⁵

Arbitrary or selective law enforcement, a systemic bias of the judiciary in favour of those with connections to the powerful, endemic corruption and impunity are key elements blocking rule of law and accountability and which deprive ordinary Cambodians of their right to effective remedies for violations of their housing rights.

In most cases of forced evictions, the people affected are not provided with the information or the opportunity to seek legal redress from the courts. The failure of the authorities to seek court orders before evictions, or provide formal eviction notices in many cases; and the general lack of information act as significant barriers for people to challenge these evictions in court. As highlighted by the Special Rapporteur, the situation is also complicated by the failure of the courts to examine claims of land titles and enforce protective provisions contained in the Land Law.

The Jarai Indigenous Peoples in the villages of Kong Yu and Kong Thom in Ratanakiri Province, filed complaints in 2007 relating to the expropriation of collectively owned land. The civil suit challenged the validity of a sales contract, while the criminal complaint accused the claimant of having unlawfully appropriated the land. Shortly thereafter, the claimant, well-connected to the highest echelons of the government, filed a complaint accusing the villagers and their lawyers of defamation and fraud. Village representatives feared arrest and several lawyers chose to stop working on the case. Two years on, the case has not been resolved.

³⁴ Mission to Cambodia, Report of the Special Rapporteur on Adequate Housing as a component of the Right to an Adequate Standard of Living, Miloon Kothari, E/CN.4/2006/41/Add.3, 21 March 2006, paras 45 and 46, p. 12.

³⁵ Report of the Special Representative of the Secretary-General for human rights in Cambodia, Yash Ghai, A/HRC/7/42, 29 February 2008, paras 34 and 35, p. 9.

Similarly, in 2006 **168 families living near Monivong Hospital in Phnom Penh** faced eviction after a land deal between the authorities and a local company. Representatives of the community filed a complaint with the Phnom Penh Court about the eviction. The Court refused to adjudicate.

In the case of **Spean Ches**, the public prosecutor did not charge anyone involved in ordering or carrying out the forced eviction. Instead he charged 13 of the victims with battery with injury and wrongful damage to property. In a subsequent trial against the villagers, the court failed to examine the legality of the eviction and there was no attempt to establish responsibility for the violence and destruction.

Similarly, victims of forced eviction are unable to seek and obtain judicial remedies, including restitution of the land and compensation for the losses incurred in or in consequence of eviction. Amnesty International is not aware of any instance in which victims of forced eviction have been able to acquire restitution through litigation. We would therefore request the Committee to ask the State Party to provide information on the remedies that currently exist under domestic law for forced evictions and details of cases where victims have been able to obtain such remedies. We would urge the Committee to call upon the Government of Cambodia to respect the rights of all victims of forced evictions to an effective remedy, including access to justice and the right to reparations, including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.

As far as Amnesty International is aware, there are no instances in which people who allegedly carried out a forced eviction, even when this is done in violation of Cambodia's own laws, have been prosecuted, or even disciplined. Those who order and implement forced evictions do so with impunity. The only known investigations in this context were the criminal investigations by the Banteay Meanchey and Battambang Provincial Courts of the violence, including the killings of five villagers, during a forced eviction in Kbal Spean in March 2005. By August 2005, the Court had dropped the charges claiming lack of evidence against the suspects. We request the Committee to ask the State Party to provide information on any investigations and prosecutions into allegations of the involvement of officials in forced evictions and other human rights violations related to the forced evictions.

