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# Rights Razed

## Forced evictions in Cambodia

### 1. Introduction

*“Now we have to pin our hope to NGOs. People are no longer capable of depending on themselves. We are short of money and rice. Before, we did some farming, and now we no longer have fields to plant rice. Before (...) I was able to feed my seven children. Now there is nothing.”*

Vireak, Mittapheap 4 village

Vireak’s home where he lived with his seven children was set ablaze as law enforcement agents and military cleared their village on 20 April 2007. Without consultations, due process of law, legal or other protection, and with no consideration of adequate alternatives, his and over 100 other families were forcibly evicted.

Like many thousands of other Cambodians who have been forcibly evicted, Sophal also lost access to natural resources which they relied on to earn a living – in his case, land used for subsistence rice farming.

The “pro-poor” policies of the Cambodian government, supported by its international donors, stand in sharp contrast to the realities experienced by Vireak, his children and others who have lost homes, belongings and means of earning a living in unlawful forced evictions.

A forced eviction is *‘the permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection’*.<sup>1</sup> Forced evictions have been recognized by the UN Commission on Human Rights as a gross violation of human rights,<sup>2</sup> and are also – as in the cases presented here – associated with other human rights violations.

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<sup>1</sup> Committee on Economic, Social and Cultural Rights General Comment 7, Sixteenth session (1997)(58): The right to adequate housing (art. 11 (1) of the Covenant): forced evictions, para. 3.

<sup>2</sup> UN Commission on Human Rights Resolution 1993/77, 10 March 1993, para. 1.

As a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), and other international human rights treaties which prohibit forced eviction and related human rights violations, Cambodia has an obligation to stop forced evictions and to protect the population from forced evictions.

This report shows how, contrary to Cambodia's obligations under international human rights law, those affected by evictions have had no opportunity for genuine participation and consultation beforehand. Information on planned evictions and on resettlement packages has been incomplete and inaccurate, undermining the rights of those affected to information, and to participate in decisions which affect the exercise of their human rights, in particular the right to adequate housing. The lack of legal protection from forced eviction, and lack of regulation of existing standards has left an accountability gap which increases the vulnerability of marginalized people, particularly those living in poverty, to human rights abuses including forced evictions.

In instances where there has been some level of consultation with affected communities, decisions on relocation appear in reality to have been taken by the authorities beforehand, frustrating the right of affected people to propose alternatives and for those to be duly considered by the authorities. The cases presented in this report show how, again contrary to international human rights law, the authorities have opted for eviction long before all other alternatives have been explored.

Endemic problems in Cambodia, including a lack of transparency and outright secrecy also contribute to delays in communicating eviction orders to affected communities. Lack of proper notice and consultation further deprives the affected of their opportunities to seek legal redress and to realize their own human rights, including the right to an adequate standard of living.

Although there have been some positive recent signs, including repeated calls by Prime Minister Hun Sen for an end to land-grabbing and sporadic action against people involved in land theft, the Cambodian government has not demonstrated political will to ensure an end to forced evictions or the factors leading to them. Instead government representatives are seen to be involved in or standing by as the law is applied arbitrarily or by-passed altogether, in ways that grant impunity to those in political or economic power for arbitrarily expropriating land from marginalized people living in poverty.

As long as this pattern is allowed to go on, hundreds of thousands of Cambodians live under threat of being forcibly evicted – in Phnom Penh, Sihanoukville and urban centres, but increasingly also in rural areas.

Amnesty International urges the Cambodian government to end all forced evictions and to introduce a moratorium for all mass evictions until legislative and policy measures are in place to ensure that any evictions as are necessary are conducted only in full compliance with international human rights laws and standards. The organisation believes that such steps would send an unambiguous signal that the Cambodian government is intent on tackling land-grabbing, the spread of landlessness and increase in land disputes, while upholding its obligation to protect the right to adequate housing as a foundation for the achievement of its pro-poor agenda as spelt out in the Rectangular Strategy and the National Poverty Reduction Strategy.

This report is based on field visits in March 2006 and June 2007, as well as additional background research of media articles, reports and communications on issues relating to land, housing, natural resources, law and legislation. The March 2006 field visits covered four areas where disputes over land and/or natural resources were ongoing. In 2007 Amnesty International also conducted interviews with evictees in Phnom Penh and Sihanoukville. Names of individual victims of human rights violations have been changed for their protection.

## **2. Historical background**

Mass forced eviction and forced displacement is not a new phenomenon in Cambodia, and the context in which mass relocation historically has taken place provides partial explanation as to why forced evictions are fast becoming one of the most widespread and systematic human rights violations affecting Cambodians.

During the protracted civil war both urban and rural populations were uprooted against their will: between 1970 and 1975, Phnom Penh's population swelled as rural dwellers took refuge in the city when their homelands turned into frontlines or came under US bombardment as the Viet Nam war spilled over the border into Cambodia.

Under Khmer Rouge rule (April 1975 - January 1979) urban populations were forced out to the countryside as cities were emptied and abandoned, giving way to radical and brutal collectivization. Up to two million Cambodians died or were killed, among them most of the skilled workforce; infrastructure and administration were destroyed, including records of land registration and maps.

Towards the end of this period and during the first years of war that ensued between the ousted Khmer Rouge and the new Viet Nam installed government under the People's Republic of Kampuchea (PRK), hundreds of thousands of Cambodians fled

to Thailand. Others sought protection inside the country away from fighting, famine and the humanitarian crisis that the Khmer Rouge left behind.<sup>3</sup>

Throughout the 1980's, Phnom Penh was slowly rehabilitated and re-populated, mostly by rural Cambodians; many of the original city dwellers had not survived the Khmer Rouge years.<sup>4</sup> Pressures on land and housing were limited, and people took over houses and land on an *ad hoc* and unregulated basis, though better, less dilapidated houses tended to be granted by the authorities to soldiers and public officials.<sup>5</sup> Although private ownership rights were not recognized, informal occupation rights gained increasing foothold and became de facto transferable, if not legally so.

In 1989 the government reinstated private property rights by decree,<sup>6</sup> granting farmers possession rights to plots of up to five hectares after five years of continuous cultivation, and households the right to obtain ownership titles to residential plots up to 2,000 square meters.<sup>7</sup> Private property rights were subsequently given constitutional protection in the April 1989 Constitution of the State of Cambodia,<sup>8</sup> Article 15 of which set out that citizens had "*full right to own and use land and have the right to inherit land granted by the state for the purpose of living on it and exploiting it.*"

This marked an ideological shift, which initiated economic and political reform, involved the withdrawal of Vietnamese troops – and paved the way for the emergence in the 1990's of competition over land and natural resources. Cambodia was edging towards peace amidst the 1991 Paris Peace Agreements, as well as towards market economy; the UN was setting up a massive operation, with over 20,000 troops and officials entering the country. Local populations remained unsettled, including returning refugees from the border camps, while population growth sped up, all of which brought change to the housing market. Land, particularly in Phnom Penh,

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<sup>3</sup> See e.g. *When the war was over*, Elizabeth Becker, 1986, *Cambodian humanitarian assistance and the United Nations*, United Nations, 1992.

<sup>4</sup> *Phnom Penh Then and Now*, Michael Igout, 1993.

<sup>5</sup> *Cambodia after the Khmer Rouge: Inside the Politics of Nation Building*, Evan Gottesman, 2004, p.76.

<sup>6</sup> Sub Decree N° 25 of April 22, 1989, see e.g. *Land tenure database development in Cambodia*, Brett Ballard, 2006.

<sup>7</sup> "*Dealing with market eviction processes in the context of developing cities*," Alain Durant-Lasserve, April 2005,

[[http://www.worldbank.org/urban/symposium2005/papers/durand\\_lasserve.pdf](http://www.worldbank.org/urban/symposium2005/papers/durand_lasserve.pdf)]

<sup>8</sup> The constitution – or as some call it, the amendment of the 1981 constitution – replaced the PRK with the State of Cambodia.

became increasingly valuable and an object of speculation;<sup>9</sup> as the cost of land in the city became prohibitive, particularly for the accelerating influx of rural migrants, informal settlements mushroomed across Phnom Penh. Over a dozen forced evictions in Phnom Penh, particularly from slum areas, are reported to have taken place at this time, but comprehensive details about them are not available.

Between 1993 and 1999, the government granted concessions for around one third of the country's most productive lands for commercial development by private companies.<sup>10</sup> These companies were involved in logging, agriculture, mining, tourism and fisheries, activities which affected the populations who resided on or earned their livelihoods from the concerned areas or resources. However, data on forced evictions resulting from these concessions is limited.

### **3. The current context**

There is growing information about both urban and rural forced evictions of more recent date. Human rights groups, donors and UN agencies have increasingly raised alarm about various factors that lead to forced evictions and displacement, including economic land concessions, land grabbing, land disputes and a lack of rule of law.

The UN Special Representative of the Secretary General for Human Rights in Cambodia has issued two reports about economic land concessions, showing the serious consequences for the local populations of activities of concessionaires, including dispossession and impoverishment.<sup>11</sup> According to the most recent report, from June 2007, “[e]ncroachment on agricultural and grazing land, and resulting loss of livelihoods, continues to be the most commonly-voiced issue of concern for communities, and arises in relation to almost all active concessions.”<sup>12</sup>

Development and so-called “beautification” projects, including slum clearance and construction of roads and other infrastructure, have also resulted in displacement, particularly in urban and peri-urban areas. According to the World Bank, between 1998 and 2003 the Phnom Penh municipality forcibly evicted 11,000 families,

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<sup>9</sup> See e.g. *Land and human development in Cambodia*, UNDP, 2007, *Phnom Penh Then and Now*, Michael Igout, 1993.

<sup>10</sup> *Land concessions for economic purposes in Cambodia - A human rights perspective*, Special Representative of the Secretary-General for Human Rights in Cambodia, November 2004, p.3.

<sup>11</sup> *Ibid.* and a follow-up report, *Economic land concessions in Cambodia – A human rights perspective*, Special Representative of the Secretary-General for Human Rights in Cambodia, June 2007.

<sup>12</sup> *Economic land concessions in Cambodia – A human rights perspective*, Special Representative of the Secretary-General for Human Rights in Cambodia, June 2007.

mostly urban poor living in informal settlements in or near the city centre.<sup>13</sup> Since then forced evictions have reportedly displaced well over 30,000 people in Phnom Penh alone.<sup>14</sup> Some 150,000 Cambodians across the country are known to live at risk of being forcibly evicted.<sup>15</sup>

Urban forced evictions are at times widely reported in the media and monitored by human rights groups, including networks of non-governmental organisations (NGOs) such as the Housing Rights Task Force and the Resettlement Action Network.

Although forced evictions in Cambodia are often depicted as an urban phenomenon, a growing share of cases take place in rural areas as competition over land, aquatic and forest products and other commonly held resources is on the increase.<sup>16</sup> In rural areas, however, the scope of forced evictions and the number of persons affected are unclear: limited infrastructure makes it hard for isolated communities to voice their grievances beyond their locality. They often have more limited knowledge of their legal rights, including knowledge of the right to participation in decisions that affect their lives, and their localities are less accessible to NGOs that may be able to investigate incidents or raise awareness. Indigenous Peoples, who mainly live on traditional land in the north-eastern provinces of Mondulkiri and Ratanakiri, are particularly marginalized and often unable to assert their rights in this regard.

Landlessness, an unaddressed cause of which is forced evictions, is increasingly widespread among rural Cambodians. The number of landless rural households grew from 12.6 percent in 1997 to nearly one in five in 2004.<sup>17</sup>

Linked to the problem of landlessness is the lack of security of tenure, particularly among people living in poverty. The likelihood of obtaining a secure land title

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<sup>13</sup> *Cambodia: Halving Poverty by 2015?*, Cambodia Poverty Assessment, World Bank, Phnom Penh, February 2006, p.48.

<sup>14</sup> Estimate made from list provided to Amnesty International by several NGOs working with communities at risk and evicted communities. (Unpublished copy on file.)

<sup>15</sup> *Ibid.*

<sup>16</sup> Cambodia remains predominantly rural; figures from the World Bank show that over 85 percent of the population live in the countryside, and around 85 percent of these depend on natural resources and subsistence farming for their livelihoods, according to e.g. *Natural Resources and Rural Livelihoods in Cambodia: A Baseline Assessment*. (Working Paper 23, Bruce McKenzie and Prom Tola, Cambodia Development Resource Institute; Phnom Penh, June 2002)

<sup>17</sup> *Cambodia: Halving Poverty by 2015?*, Cambodia Poverty Assessment, World Bank, Phnom Penh, February 2006.

increases with income: in 2004, among the poorest fifth of the population,<sup>18</sup> only 40 percent had documentation to prove ownership, whereas around 60 percent of the richest fifth held such documentation.<sup>19</sup> Although the perception of traditional possession rights remains strong and may provide a degree of tenure security despite the lack of documentation, it is specifically among the vulnerable, poorer households living on land contested by the state, that lack of legal title leads to insecure tenure.<sup>20</sup>

Oxfam Great Britain has collated nationwide data of over 1,800 large-scale land disputes in which ordinary Cambodians have turned to some dispute resolution mechanism for assistance after having lost land.<sup>21</sup> In terms of documentation to prove ownership of disputed land, the majority of complainants, two thirds of whom were farmers, had no documents or ownership titles “because they thought that the land they occupied belonged to them.”<sup>22</sup> Only four percent had applied for formal title registration and around one in five had a receipt of purchase to support ownership claim.<sup>23</sup> At the same time, 56 percent had occupied the land for five years or more at the time of the survey (2004), which would give them strong claims to ownership of the land under the 2001 Land Law (Article 31). The Oxfam study also reported that the largest groups of defendants, i.e. those accused by claimants of having grabbed land, were civil government authorities (41 percent); the military (23 percent), and business (11 percent).<sup>24</sup>

### **3.1 Institutions and structures**

The Ministry of Land Management, Urban Development and Construction (hereinafter Ministry of Land) has primary responsibility for land management and administration; it develops land policy together with the inter-ministerial Council for Land Policy and has co-drafted a housing policy, yet to be adopted. The ministry is

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<sup>18</sup> According to the World Bank, poverty is much more prevalent amongst the rural population; Cambodia’s overall rapid economic growth in recent years has been significantly less beneficial to those in rural areas, where over 90 percent of people living in poverty live.

<sup>19</sup> *Sharing Growth: Equity and Development in Cambodia*, World Bank, Phnom Penh, June 2007, p. 64.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Oxfam GB - NGO Forum Land Dispute Database 1<sup>st</sup> report*, Oxfam GB, Phnom Penh, May 2005. (Unpublished draft.)

<sup>22</sup> *Ibid.*

<sup>23</sup> NGO Forum on Cambodia now hosts the database and provided Amnesty International with the unpublished note *NGO Forum, Land Dispute Database Analysis*, 27 Aug 2007.

<sup>24</sup> *NGO Forum, Land Dispute Database Analysis*, 2007. (Unpublished, on file.)

also in charge of registration, distribution and titling of land and for management of state-owned land.<sup>25</sup>

Several other government entities have roles related to various aspects of land and housing policy. The Ministry of Agriculture, Forestry and Fisheries is responsible for agriculture and economic land concessions, although monitoring economic land concessions also falls within the remit of the Ministry of the Interior. Other entities involved include the Ministry of Defence, which is responsible for Military development zones, the creation of which has been associated with forced evictions; the Ministry of Rural Development, as well as sectoral Technical Working Groups, which include representatives of donors and from the government. Courts, the Cadastral Commission and the National Authority for the Resolution of Land Disputes are all involved in resolution of land disputes. Most entities also have a multi-tier administration: at the national, provincial, district and commune levels, mandated to implement certain parts of plans and policies, at times overlapping, often lacking clarity.

### **Land dispute resolution**

The Cadastral Commission, under the Ministry of Land, was established in 2002 under the Land Law. One of its central duties is to investigate and resolve land disputes over unregistered land.<sup>26</sup> Resolution of disputes over registered land is the domain of courts.

However, in view of the massive increase in land disputes in the past five years and apparent inability of the Cadastral Commission and courts to solve them, the government launched by royal decree the National Authority for the Resolution of Land Disputes (NARLD) in February 2006. It is mandated to take up cases or complaints that are “beyond the jurisdiction of the National Cadastral Commission”,<sup>27</sup> but given the division of jurisdiction between the Cadastral Commission and court, NARLD’s mandate appears to overlap with existing structures. The process of establishment and its membership also represents a further concentration of executive authority in Cambodia.

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<sup>25</sup> Central in the implementation of land reform is also Land Management and Administration Project (LMAP). The multi-donor project, managed by the Ministry of Land, is operational with land titling in around half of Cambodia’s 24 provinces, while also supporting the land registration system.

<sup>26</sup> Disputes may be transferred to court if the disputing parties are not satisfied with the result of the Cadastral Commission. (Article 47)

<sup>27</sup> *Royal Decree, NorSar/RoKorTor/0206/097*, Phnom Penh, 26 February 2006, unofficial translation.

### 3.2 Government policy – key documents

Launched by Hun Sen in July 2004, the “Rectangular Strategy for growth, employment, equity and efficiency in Cambodia” (2004-2008) is the government's central economic policy document, and it is described as a tool to implement its policy agenda, including the more elaborate National Poverty Reduction Strategy (NPRS). The NPRS (2006-2010), in turn, is Cambodia's poverty-reduction strategy which is a requirement of the International Monetary Fund and the World Bank, in order to qualify for debt relief.<sup>28</sup>

At the heart of the Rectangular Strategy is “good governance”, which according to the document, requires wide participation, enhanced sharing of information, accountability, transparency, equality, inclusiveness and the rule of law. Broadly speaking, the government undertakes to “*promote sustainable and equitable development, and strengthen Cambodia's social fabric to ensure that the Cambodian people are well-educated, culturally advanced, engaged in dignified livelihood and living in harmony in family and society.*”<sup>29</sup>

The strategy document does not establish roles and responsibilities to eradicate forced evictions, and includes ambiguous and concerning pledges to achieve the “*eradication of illegal settlements*”. It does however identify the urgent need to continue land reform and pledges to tackle “*land tenure security and ...land grabbing, and control of land ownership concentration for speculative purposes.*”<sup>30</sup> Amnesty International is concerned that these goals should be pursued only as consistent with international human rights law. In this respect the “*eradication of illegal settlements*” should be understood as a commitment to take steps, together with those living in informal settlements and with their active participation, to realise their human rights, including their right to adequate housing. It should under no circumstances be understood as a license to undertake forced evictions.

A Land Policy was adopted in 2001 and updated through the Interim Paper on Strategy of Land Policy Framework (2002) by inter-ministerial Council for Land Policy. The policy papers do not expressly commit to eradicating forced eviction, but the Interim Paper appears to set a direction: “*The policy consensus which is emerging is that forced evictions should be avoided as much as possible, and that if*

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<sup>28</sup> *Poverty Reduction Strategy Papers (PRSPs): A Rough Guide*, The Bretton Woods Project, April 2003.

<sup>29</sup> *The Rectangular Strategy for Growth, Employment, Equity and Efficiency in Cambodia*, Royal Government of Cambodia, 2004.

<sup>30</sup> It is unclear precisely what such “eradication” would entail, but the government states that it will review “*State land illegally occupied by private entities in contravention with the regulations and procedures.*”

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*compulsory relocation is required, then both adequate preparation time, and adequate relocation sites must be provided.” It also says that the guidelines in the so-called Habitat Agenda will form “a basis for consolidating policy in this area”.<sup>31</sup> A report of the Ministry of Land from 2004 took stock of the “involuntary resettlement” policy of Phnom Penh between the late 1990s and 2002, and concluded that “new sites were on the peripheral lands and not adequately equipped with basic infrastructure and services and lacks economic opportunities. The policies further impoverished the poor. Having seen such an impact (...) the Government in turn attempts to include the poor in its land development programs so as to achieve the goals of poverty reduction and equitable economic development and identifying areas for low-income people, while tends to provide them with land tenure to protect them from severe land markets.”<sup>32</sup>*

This discussion paper followed the announcement in May 2003 by Hun Sen of an urban housing policy that would entail upgrading annually 100 inner-city poor communities for five years.<sup>33</sup> Since then, the Ministry of Land with the assistance of the UN agencies, has prepared a draft housing policy, explicitly described as part of its poverty reduction efforts.<sup>34</sup> The draft presented a range of initiatives, including the provision of short-term tenure security in Phnom Penh for all informal settlements. This would also entail determining suitability of upgrading, a process that was estimated to take nine months, during which there would be a moratorium on evictions and relocation.<sup>35</sup>

Surveys were scheduled to determine which settlements on state land are suitable for medium to long-term tenure security and upgrading. For areas deemed unsuitable for upgrading initiatives, “relocation should be avoided if at all possible.” An independent complaints mechanism was proposed for affected communities, and any relocation should be “to a site as close as possible and with reasonable access to livelihood

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<sup>31</sup> The Habitat Agenda, the main political document that came out of the 1996 Habitat II conference in Istanbul, was adopted by 171 countries, including Cambodia, and contains commitments and recommendations on human settlements issues. Article 40 (n) states that states commit to “[p]rotecting all people from and providing legal protection and redress for forced evictions that are contrary to the law, taking human rights into consideration; when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided.”

<sup>32</sup> *Between poverty reduction strategy and national housing policy*, Discussion Paper, Meng Bunnarith, Council of Land Policy, MLMUPC, Phnom Penh, 2004.

<sup>33</sup> *Big Breakthrough*, 25 May 2003, Asian Coalition for Housing Rights.

<sup>34</sup> See *Final Draft National Housing Policy*, National Housing Policy Task Force (The Royal Government of Cambodia, Council for Land Policy), Phnom Penh, 24 July 2006.

<sup>35</sup> The Municipality of Phnom Penh has, according to the draft, the intention not to remove any existing settlements in the short-term.

*opportunities and services. Adequate compensation and preparation time will also need to be provided*” as well as some security of tenure. Amnesty International is concerned that neither the Interim Paper nor the draft housing policy clarify the roles of the affected populations in determining whether or not an informal settlement is suitable for upgrading. The documents also lack assurances of participation of and consultation with affected communities that are slated for resettlement. The housing policy has not been formally adopted.

Finally, the Cambodian government retains a policy of granting companies leases for up to 99 years for commercial developments in exchange for a fee and investments. The 2001 Land Law defines them as “land concessions for economic purposes”, including plantations and agro-industry,<sup>36</sup> with an aim to increase investment, job opportunities and rural livelihoods and to generate state revenue.<sup>37</sup> By the end of 2006, 14.5 percent of Cambodia’s arable land was leased out to concessionaires.<sup>38</sup>

#### **4. International human rights law and standards, domestic legislation**

As a State Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) the Cambodian government is legally obligated to respect, protect and fulfil the right to adequate housing as provided by Article 11(1):

*“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”*

The right to adequate housing is also recognized under other international binding treaties to which Cambodia is a state party, including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)<sup>39</sup>, the Convention on

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<sup>36</sup> According to article 2 of the Sub-Decree on Economic Land Concession (December 2005) economic land concessions are a mechanism to grant state private land through a specific economic land concession contract to a concessionaire to use for agricultural and industrial-agricultural exploitation.

<sup>37</sup> Cf e.g. Ministry of Agriculture’s public information on economic land concessions: <http://www.maff.gov.kh/elc/objectives.html>. [Last visited on 25 August 2007]

<sup>38</sup> *Economic land concessions in Cambodia – A human rights perspective*, Special Representative of the Secretary-General for Human Rights in Cambodia, June 2007, p.6.

<sup>39</sup> Article 5 (e) (iii).

the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>40</sup> and Convention on the Rights of the Child (CRC)<sup>41</sup>.

The Universal Declaration on Human Rights as well as international human rights treaties that Cambodia has ratified have been given the force of law within Cambodia through article 31 of the Constitution of the Kingdom of Cambodia:<sup>42</sup>

*“The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights.”*<sup>43</sup>

This chapter summarizes international law and standards relevant to forced evictions in Cambodia, with references to domestic legislation.

#### **4.1 Prohibition on forced eviction**

State parties to the ICESCR and several other international treaties have a duty not to subject their population to forced eviction under the right to adequate housing, with very limited exceptions. The Committee on Economic, Social and Cultural Rights (CESCR), the UN body of experts charged with monitoring the implementation of this Covenant, has stated in a General Comment<sup>44</sup> 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 relevant principles of international law.”<sup>45</sup> While many duties on states under the ICESCR require progressive fulfilment, the duty to halt forced evictions is immediate, as is the duty to not interfere with individuals who enjoy the right to housing.

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<sup>40</sup> Article 14 (2)(h).

<sup>41</sup> Article 27 (1) and (3).

<sup>42</sup> Promulgated in 1993.

<sup>43</sup> These covenants and conventions include those to which Cambodia is a state party, *inter alia*, the [International Covenant on Civil and Political Rights](#) (ICCPR), the [ICESCR](#), the [Convention on the Rights of the Child](#) (CRC), [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW) and the [International Convention on the Elimination of All Forms of Racial Discrimination](#) (ICERD).

<sup>44</sup> A General Comment is an authoritative interpretation of particular provisions of or aspects of an international human rights treaty by the body charged with monitoring its implementation. General Comments have been used as the basis for decisions taken by national courts in various countries.

<sup>45</sup> Committee on Economic, Social and Cultural Rights, General Comment 4: The right to adequate housing (art. 11 (1) of the Covenant), Sixth session, 13 December 1991, para. 18.

The Human Rights Committee<sup>46</sup> has expressed concern that forced evictions constitute violations of the ICCPR, in particular of Article 17, which provides, among other things, that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence” and that “[e]veryone has the right to the protection of the law against such interference or attacks.”<sup>47</sup>

The prohibition on forced evictions does not apply to evictions carried out in accordance with the law and in conformity with international human rights law.<sup>48</sup>

Cambodian law does not specifically prohibit forced evictions, but Article 44 of the Constitution, which protects the right of all Cambodian citizens, individually or collectively, to own land, contains a broad limitation to the effect that “*the right to confiscate possessions from any person shall be exercised only in the public interest as provided for under law and shall require fair and just compensation in advance.*”

## **4.2 Protection against forced evictions**

As a State party to a wide range of human rights conventions Cambodia also has an obligation to refrain from and protect against forced evictions.<sup>49</sup> One of the principal aspects of this obligation is the duty not to allow forced evictions. Another is the duty to protect everyone within its jurisdiction from forced evictions carried out by third parties. Central to such protection is the adoption and implementation of legislation which complies with human rights standards to prevent forced eviction.

In its General Comment on forced evictions (General Comment 7), the CESCR has clarified that evictions can only be carried out when certain procedural protections are applied, including:

- *“an opportunity for genuine consultation with those affected;*
- *adequate and reasonable notice for affected persons prior to the eviction;*

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<sup>46</sup> The Human Rights Committee is the expert body mandated to oversee the implementation of the International Covenant on Civil and Political Rights (ICCPR).

<sup>47</sup> See Concluding Observations on Kenya, Report of the Human Rights Committee, UN Doc. A/60/40 (Vol. I) (2004-5), para. 86 (22).

<sup>48</sup> <sup>48</sup> Committee on Economic, Social and Cultural Rights, General Comment 7: The right to adequate housing (art. 11 (1) of the Covenant): forced evictions; Sixteenth session, 20 May 1997, para. 3.

<sup>49</sup> E.g the ICESCR, Art. 11 (1); CEDAW Art 14 (2) (h); the CRC, Art. 27 (3); and ICERD Art 5 (e)(iii).

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- *information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;*
  - *...government officials or their representatives to be present during an eviction;*
  - *all persons carrying out the eviction to be properly identified;*
  - *evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;*
  - *provision of legal remedies; and*
  - *provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.”<sup>50</sup>*

Furthermore, according to General Comment 7, evictions may be carried out only as a last resort, once all other feasible alternatives to eviction have been explored. They must be planned and implemented in consultation with affected persons or groups, in an effort to avoid or minimise use of force.<sup>51</sup>

States parties to the ICESCR must ensure that adequate alternative housing and compensation for all losses is made available to those affected prior to eviction, regardless of whether they rent, own, occupy or lease the land or housing in question. Further, evictions must not “render individuals homeless or vulnerable to the violation of other human rights.”<sup>52</sup>

As a party to the ICESCR Cambodia has an immediate obligation to adopt effective measures aimed at ensuring, at the very least, a degree of security of tenure sufficient to protect the entire population from forced eviction, harassment and other threats. As the CESCR has clarified:

*“Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups;”<sup>53</sup>*

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<sup>50</sup> CESCR General Comment 7, para 15, 1997.

<sup>51</sup> *Ibid*, para 13.

<sup>52</sup> *Ibid*. para 16.

<sup>53</sup> CESCR General Comment 4,, para. 8(a).

To provide guidance to governments on measures and procedures to be adopted in order to ensure that development-based evictions are not undertaken in contravention of existing international human rights standards and do not thus constitute "forced evictions", the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (hereinafter the Special Rapporteur on Adequate Housing) has developed Basic Principles and Guidelines on Development-Based Evictions and Displacement (referred to as the Basic Principles).<sup>54</sup> These guidelines, which reflect and develop existing standards and jurisprudence on this issue, were considered by the Human Rights Council in 2007 and are appended to this report. They include detailed provisions on steps which states should take prior to, during and following evictions in order to ensure compliance with relevant principles of international human rights law.

Amnesty International believes that the Basic Principles represent an excellent guide for the development of national eviction guidelines.

Legal protection against forced evictions is generally weak in Cambodian law. The Land Law, drafted with a view to secure implementation of the property rights guaranteed under the Constitution, consists of general principles that require sub-decrees<sup>55</sup> and implementing regulations to be effectively applied. Since enactment in 2001 the legal framework has developed incrementally, but remains incomplete.

Article 35 sets out procedures for the eviction of occupants with no or insufficient title. Such evictions can only be made by a court order upon the request of the person who claims the property, and it falls on the courts to verify and validate such claims. The law also provides that although courts cannot refuse to order an eviction in favour of a person who presents a valid and complete cadastral title, that is, legal ownership, a temporary suspension may be requested by the competent authorities if the eviction "is likely to give rise to instability or to have serious social repercussions" (article 36).

In terms of security of tenure, the Land Law transformed earlier possession rights into ownership rights and limited the principle from previous legislation that possession leads to ownership to land occupied prior to 2001. According to article 31 (Chapter

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<sup>54</sup> Basic Principles And Guidelines On Development-Based Evictions And Displacement, Annex 1 of the report A/HRC/4/18 of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living. [http://www2.ohchr.org/english/issues/housing/docs/guidelines\\_en.pdf](http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf); (See Attachment 1 for text.)

<sup>55</sup> A sub-decree is a legislative document in the form of administrative order to implement and clarify specific provisions within Laws. Sub-Decrees tend to be drafted within the ministries; they are examined and adopted by the Council of Ministers and signed by the Prime Minister.

4) 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. Previously, five years of uncontested possession without any cut-off date could lead to legal ownership.

“Social land concessions” is a systematic land distribution mechanism established under the law, whereby state private land<sup>56</sup> may be distributed for residential or farming purposes to the poor and homeless families.<sup>57</sup> Combined, these provisions protect security of tenure and are seen as a replacement of the old principle of ownership through possession.

Security of tenure is also extended to Indigenous Peoples’ lands, providing for collective ownership of those communities. These provisions protect Indigenous Peoples against displacement.<sup>58</sup>

The Sub-Decree on Economic Land Concessions, signed on 27 December 2005, sets out general conditions that must be met for a concession to be granted, which provide communities with protection against eviction. Chapter 2, Article 4 provides that “the Contracting Authority shall ensure that there will not be involuntary resettlement by lawful land holders and that access to private land shall be respected.”

### **4.3 Rights to participation and consultation**

The right of everyone to participate in decisions which affect the exercise of their human rights is strongly grounded in international human rights law and standards.

Both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights guarantee the right to take part in government or in the conduct of public affairs. According to the Human Rights Committee, interpreting Article 25 of the ICCPR, this includes a right to participate in the formulation and implementation of policy from local to the national and international levels.

*“The conduct of public affairs, referred to in paragraph (a), is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public*

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<sup>56</sup> 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.)

<sup>57</sup> *Sub-Decree On Social Land Concessions*, 19 March, 2003, The Royal Government of Cambodia.

<sup>58</sup> Chapter 3, Part 2: Immovable Property of Indigenous Communities, especially Articles 26 and 28.

*administration, and the formulation and implementation of policy at international, national, regional and local levels.”<sup>59</sup>*

Specifically in respect of the prohibition of forced evictions, CESCR General Comment 7 states:

*“[s]tates parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force.”<sup>60</sup>*

Essential procedural protections to avoid forced evictions include *“an opportunity for genuine consultation with those affected; ... information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; ... provision of legal remedies; and provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.”<sup>61</sup>*

In the Basic Principles developed by the Special Rapporteur on Adequate Housing, the principles to be applied are further developed, based on existing human rights law and standards. They include:

*“All potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have **the right to relevant information, full consultation and participation** throughout the entire process, and to propose alternatives that authorities should duly consider. In the event that agreement cannot be reached on a proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate.” (para. 38)*

*“During planning processes, opportunities for dialogue and consultation must be extended effectively to **the full spectrum of affected persons**, including women and vulnerable and marginalized groups, and, when necessary, through the adoption of special measures or procedures.” (para. 39)<sup>62</sup>*

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<sup>59</sup> CCPR, General Comment No. 25, “*The right to participate in public affairs*” UN Doc. CCPR/C/21/Rev.1/Add.7 (1996), para 5.

<sup>60</sup> General Comment 7 Forced evictions, and the right to adequate housing (art. 11, para. 1) [1997], para 13.

<sup>61</sup> CESCR, General Comment 7, para 15.

<sup>62</sup> Basic Principles and Guidelines on Development-Based Evictions and Displacement, A/HRC/4/18; emphasis added.

Article 35 of the Constitution protects the right of the population to participate actively in political, economic, social and cultural life, while article 41 provides in broad terms for freedom of expression, press, publication and assembly. With the exception of the Press Law, legislation to make these constitutional rights applicable in practice is not in place, including laws regulating access to information. The Ministry for National Assembly Senate Relations and Inspections is in the process of outlining a policy paper to form the basis for such a law.<sup>63</sup>

In the specific context of Economic Land Concessions, the Sub-Decree on Economic Land Concessions sets out requirements for public consultation and participation.

#### **4.4 The right to an effective remedy**

States parties to the ICCPR and the ICESCR<sup>64</sup> have an obligation to ensure that effective remedy is provided to any person whose rights have been violated. When it is granted, such a remedy must be enforced by a competent authority.<sup>65</sup> The Human Rights Committee has stated, in General Comment No. 31, that the ICCPR,

*... requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy... is not discharged... The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.*<sup>66</sup>

In the specific case of the duty to prohibit and prevent forced evictions, the CESCR has identified a number of areas, including “(a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; ...”<sup>67</sup> The CESCR also clarifies that the competent authorities must

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<sup>63</sup> See e.g. *Assisting Cambodia to Develop an Access to Information Policy Paper*, USAID 21 June 2007, [http://phnompenh.usembassy.gov/usaid\\_monasri\\_mou.html](http://phnompenh.usembassy.gov/usaid_monasri_mou.html).

<sup>64</sup> See General Comment 9,

<sup>65</sup> ICCPR Article 2.3.

<sup>66</sup> Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 16.

<sup>67</sup> General Comment 4, paragraph 17.

ensure that concerned individuals have a right to adequate compensation for any property that is affected, both personal possessions and immovable property.<sup>68</sup> As the Committee has stated, States parties must “*see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected.*”<sup>69</sup>

The Basic Principles assert that the right to an effective remedy for forced eviction should include access to justice, compensation, restitution and return, resettlement and rehabilitation. The principles to be applied in each case are developed in some detail (see Attachment 1).

The Special Representative of the Secretary-General has pointed out failings in the system of judicial remedies in Cambodia,

*“The lack of independence and integrity of the judiciary, the prosecutorial authorities, and the legal profession pose a fundamental threat to human rights... innocent people become, at the instigation of the Government, the victims of the legal system. Thus, far from protecting human rights, the legal system becomes a principal agency of oppression.”*<sup>70</sup>

According to Article 39 of the Constitution: “*Khmer citizens shall have the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs committed during the course of their duties. The settlement of complaints and claims shall be the competence of the courts.*”

Both the Cambodian Constitution and the Land Law have provisions for fair and just compensation in the context of confiscation or deprivation of ownership.<sup>71</sup> Such compensation must be awarded in advance of expropriation. 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.*” The “*law and regulations*” providing for procedures have yet to be adopted.

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<sup>68</sup> CESCR, General Comment 7, para 13.

<sup>69</sup> General Comment 7 in para 13.

<sup>70</sup> *Report of the Special Representative of the Secretary-General for human rights in Cambodia to the Human Rights Council*, UN Doc. A/HRC/4/36, 30 January 2007, para. 40.

<sup>71</sup> Constitution of the Kingdom of Cambodia, Article 44; 2001 Land Law, Article 5.

#### 4.5 Prohibition of unnecessary and excessive use of force

The provisions for the right to life and to security of person in the ICCPR,<sup>72</sup> oblige the Cambodian authorities to use force only when unavoidable and absolutely necessary, and then only minimally and with utmost caution. Under international standards law enforcement officials are required to:

- *“as far as possible, apply non-violent means before resorting to the use of force and firearms. Officials may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”*<sup>73</sup>
- use firearms only *“when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender.”*<sup>74</sup>

If the use of force and firearms is unavoidable, Principle 5 of the UN Basic Principles states, among other things, that law enforcement officials must:

- “(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;*
- (b) Minimize damage and injury, and respect and preserve human life;*
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.”*

#### The Human Rights of Indigenous Peoples

The rights of Indigenous Peoples to lands, territories and resources are recognised and protected in international human rights laws and standards.

The UN Declaration on the Rights of Indigenous Peoples affirms a range of human rights in respect to *“the lands, territories and resources which [Indigenous Peoples] have traditionally owned, occupied or otherwise used or acquired.”* The Declaration states that they shall not be forcibly removed from these lands or territories,<sup>75</sup> nor shall any relocation take place without their free, prior and informed consent. The Declaration also specifies that relocation should only take place after agreement on just and fair compensation and, where possible, with the option of return.<sup>76</sup> The

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<sup>72</sup> See Articles 6(1) and 9(1), respectively.

<sup>73</sup> Principle 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>74</sup> UN Code of Conduct for Law Enforcement Officials, adopted by UN General Assembly resolution 34/169 of 17 December 1979, Article 3, Commentary.

<sup>75</sup> Article 10.

<sup>76</sup> *Ibid.*

Declaration provides that Indigenous Peoples have the right to participate in decision-making in matters which affect their rights, through representatives chosen by them, according to their own procedures, as well as the right to maintain and develop their own decision-making institutions.<sup>77</sup> States should consult and cooperate in good faith with Indigenous Peoples through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing measures.<sup>78</sup> The Declaration further outlines States duties to recognise and protect Indigenous Peoples' rights to lands, territories and resources, and outlines the rights to effective remedies where these rights are abused.<sup>79</sup>

Cambodia is also a party to the International Convention on the Elimination of Racial Discrimination (ICERD).<sup>80</sup> The Committee on the Elimination of Racial Discrimination (CERD) has clarified that discrimination against Indigenous Peoples falls under the scope of the ICERD, and that all appropriate means must be taken to combat and eliminate such discrimination,<sup>81</sup> including protection of the right to free prior informed consent in respect of decisions which affect the exercise of the human rights of Indigenous Peoples. As CERD has stated,

*"The Committee specially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, when they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories."<sup>82</sup>*

In domestic law, 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.<sup>83</sup> Article 28 of the law establishes

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<sup>77</sup> Article 18.

<sup>78</sup> See Article 19.

<sup>79</sup> Articles 26(3), 27 and 28.

<sup>80</sup> Cambodia ratified ICERD in November 1983.

<sup>81</sup> General Recommendation No. 23 (General Comments): Indigenous Peoples, 1997.

<sup>82</sup> CERD. Fifty-first session, 1997: "General Recommendation XXIII. Indigenous Peoples", para 5.

<sup>83</sup> 2001 Land Law, Chapter 3 – Collective Ownership, Part 2: Immovable Property of Indigenous Communities.

that ‘No authority external to the community may require any rights related to any immovable properties belonging to an Indigenous community.’

Some of these provisions are not enforceable pending the issuance of a Sub-decree on the registration of Indigenous collective land, which has been under drafting for several years. The process 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.<sup>84</sup> 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; it is illegal for an individual member of the community to sell Indigenous Peoples' land. Also due is legislation regulating the process through which Indigenous communities may become legal entities, a step that forms part of the collective titling process and which has also become very protracted.

The 2002 Forestry Law and the Sub-decree on Community Forestry Management (2003) provide some security in terms of management and use of forest areas by Indigenous Peoples, which are central to their livelihoods. However, there is a lack of clarity as to the inclusion of forest areas of cultural and religious utility, such as spirit forests and burial forests, in respect to land encompassed by Indigenous communities' collective titles.

#### **4.6 Adapting the Basic Principles and Guidelines on Development-Based Evictions and Displacement to the Cambodian context**

Prior to the consideration by the Human Rights Council of the Basic Principles, a network of Cambodian and international non-governmental organizations, the Office of the High Commissioner for Human Rights in Cambodia and the Phnom Penh municipality agreed to the need for a similar document of principles and outlined the “*Declaration of principles for best practices in housing and pro-poor development in Cambodia: Promoting a rights-based approach to urban development*”. The Declaration was launched on World Habitat Day (4 October) in 2004 and submitted for approval to the Ministry of the Interior.<sup>85</sup> By signing the declaration, the Municipality of Phnom Penh in effect pledged to use involuntary eviction as a last resort to cease land disputes and to pay fair and just compensation. Amnesty International is not aware that the Ministry of Interior has approved these or that the principles are in any way informing policies and practice within the land and housing sectors of the Municipality of Phnom Penh or at the national level.

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<sup>84</sup> MRG, *State of the World's Minorities 2006*, p 127.

<sup>85</sup> E/CN.4/2005/111, para 50.

At the time of writing this report, a sub-decree on “*involuntary resettlement in the context of development projects*”<sup>86</sup> is being drafted, with the support of the Asian Development Bank (ADB), with protective policies generally reflecting those of the ADB. These would go some way to improving the legal protection against evictions taking place as a consequence of development projects, protection which is now virtually absent. However, there are widespread concerns among Cambodian civil society that the current draft in effect legalizes forced evictions under certain circumstances, while handing virtual unchecked power to the executive to decide what proposed development projects should be considered of public interest. Local NGOs have also raised other issues in the draft with Amnesty International, including the absence of any complaints mechanism for affected persons until after eviction. It does not appear that the UN Special Rapporteur’s Basic Principles were used as a basis for drafting the sub-decree.

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<sup>86</sup> A draft version from May 2007 entitles it “Sub-decree on Addressing Socio-Economic Impacts caused by Development Projects”.

## 5. Cases of forced eviction

### 5.1 Sambok Chab: “They dumped us right here”

In May and June 2006, over 1,500 poor families were forcibly evicted from Sambok Chap, an informal settlement that had been in place since the early 1990s on the Bassac river bank. During the course of the eviction, hundreds of poor people were made homeless,<sup>87</sup> in particular those who rented housing in the settlement.

Prior to the eviction, residents in Sambok Chap had not been informed about the details of the resettlement plan, and repeated requests from NGOs to the municipality for consultation and discussion about the eviction and relocation had been denied, as had efforts by NGOs to assess the true numbers of those who would be affected.<sup>88</sup>



The resettlement site at Andong lacked all basic amenities.

Human rights organisations monitoring the lead-up to the eviction told Amnesty International that no evidence of competing title nor any eviction order was

<sup>87</sup> *UN Experts appeal to respect human rights of Bassac residents in Phnom Penh, Cambodia*, The Secretary-General's Special Representative on human rights defenders, Hina Jilani, and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, 30 May 2006.

[<http://cambodia.ohchr.org/Documents/Statements%20and%20Speeches/English/300.pdf>]

<sup>88</sup> *Tonle Bassac Community: A Case Study on Poverty Reduction and the Rectangular Strategy in Phnom Penh*, Cambodia Development Watch, Year 2, Issue 2, NGO forum, Phnom Penh, August 2006.

communicated to the residents, many of whom had lived on the land for years, and they were not informed of any basis for challenging any eviction order.<sup>89</sup>

The resettlement of Sambok Chap, also called Village 14, was to make way for a private real estate company, which was reportedly granted legal title to the land in the 1990s. Since allegedly acquiring title to the land, the company had not utilised it and had permitted the informal settlement to gradually expand. The company's land redevelopment plans were not disclosed publicly or to community representatives prior to the eviction, but the municipal governor of Phnom Penh, Kep Chuktema, indicated that the shelters of the community "*pollute our city's beauty*".<sup>90</sup> The development plans remain unknown.

Initial consultations about resettlement between the municipality, authorities and some residents were patchy and withered after a number of representatives of the community requested basic services to be in place before relocation, while others rejected the proposed site which they felt was too far from the city to ensure the sustenance of their livelihoods. There were no meaningful renewed efforts to resume consultations with representatives of all residents.

However, the company, the Municipality of Phnom Penh and some groups of house owners reached an agreement on replacement land, provided by the company, for a number of the house owners in Trapeang Krasang, some 20 kilometres from Phnom Penh. The authorities had failed to ensure basic infrastructure and services such as drinking water, sanitation and electricity on the resettlement site.

The municipality openly rejected any responsibility over the situation of the thousands of tenants, with whom there had been no consultation at all. 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."*<sup>91</sup>

The first stage of evictions started on 3 May 2006 when police, demolition workers, local officials and house owners began dismantling houses, the latter following threats and intimidation. Some residents refused to move on account of the new replacement

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<sup>89</sup> *CLEC and LAC Represent Group 78 in the Tonle Bassac Land Dispute*, Press release by Community Legal Education Centre (CLEC), 16 June 2006. LAC stands for Legal Aid of Cambodia. Available at <http://www.clec.org.kh/hotnews.asp?qNID=1>. [Last visited 28 January 2008.]

<sup>90</sup> *Tonle Bassac Villagers to be evicted next week*, The Cambodia Daily, 5 June 2006.

<sup>91</sup> *Cambodia: Poor families evicted from shanty town*; 4 May 2006.

land lacking electricity and water. Tenants, who were to be made homeless, also resisted dismantling their homes.

A number of evictees told Amnesty International that the security forces gradually became forceful during the course of the month-long eviction; intimidation and harassment were widespread, while personal possessions were also demolished.

The homeless former tenants stayed under tarpaulins and temporary shelters on the site throughout the month-long eviction process which took place at the onset of the annual rainy season. NGOs faced barriers to providing humanitarian assistance to those affected as their living conditions deteriorated. Authorities regulated access to

the area which had been fenced in and was kept under guard. On 31 May riots erupted following the alleged injuring of a child and a pregnant woman by security guards. Enraged villagers reportedly tore down the fence, set ablaze the house of the deputy village chief and destroyed the village office.<sup>92</sup> Within days of the riot, police had arrested nine people.

Three of those initially arrested were charged with wrongful damage to property,<sup>93</sup> among them local newspaper journalist Hem Choun, 47, and two villagers— Chhen Sovann,

45, and Chan Ra, 48. On 30 November 2006, they were convicted for damage to property, based on the testimony from one witness who was not present in court, according to their defence lawyer.<sup>94</sup> The men were sentenced to two years imprisonment, which they are serving at Phnom Penh's Prey Sar prison.



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For a month, tenants stayed in temporary shelters amidst the rubble.

<sup>92</sup> *Ibid.*

<sup>93</sup> Article 52 the UNTAC Law.

<sup>94</sup> *3 Convicted of Inciting Tonle Bassac Riot*, The Cambodia Daily, 1 December 2007.

\*Srey Mom and her three children were among thousands of people who were displaced in the forced eviction on 6 June. In a pre-dawn operation, 600-700 heavily armed riot police and military police sealed off the area, removed UN human rights staff, NGOs and journalists who had been monitoring the situation, deleted memories from cameras and prevented any audio recordings. As Srey Mom told Amnesty International:

*“On the day of eviction, I lost belongings, including clothes, plates and mats. The police and military police arrived in flocks. I saw them, took my children by the hand and tried to stay away. They came in and shouted “dismantle, dismantle, and leave!” I pleaded to them not to beat me. I agreed to pull down my house. Then they dumped us right here.”*

The villagers put up no resistance as security forces gave them one hour to leave on trucks readied for the resettlement; no one knew where they were to be taken. Any remaining houses and the temporary shelters were demolished.

Srey Mom and her three children were resettled on a flood plane in Dangkor district, over 20 kilometers from the centre of the city, from where they had been relocated. After some time they were given a plot measuring four by six metres at Andong village, the designated resettlement site for the Village 14 tenants. She believed that the family had been promised land titles to the plot they were given after they had resided there for five years. A year after the forced eviction, Srey Mom and her children continue to live there under a leaky tarpaulin decked shed.

*“[When we were moved] they said ‘as soon as you arrive, the land will be measured and given to you straight away’. Now, that was not true. We have not been given any land. We are living under the rain and thunderstorms.”*

She not only lost her home and belongings, but also her income.

*“In Phnom Penh, my son and I were scavenging recyclables”,* Srey Mom told Amnesty International. *“We would earn from 3,000 to 5,000 Riel each day”* [approx 0.75 to 1.25 USD].

In Andong, she faced even greater obstacles to earning a living sufficient to secure a life with dignity. *“Without rice and water, how are we to survive?”*

Pen Sary, 28, a single mother of an eight month old infant who was also affected by the forced eviction on 6 June, had been told by security forces that she would be given land at the new site and that she did not need to bring anything with her.

*“The situation at that time was out of control so I just followed what they told me to do. They told me they would find job for me and give me land. They*

*would build factories, hospitals, schools and more. But, when I arrived, everything was empty. The land was flooded, and I felt hopeless.*

*I had insisted on bringing a small bed, though. As we arrived, the land was muddy and flooded. Luckily, I had the bed.”*

A year after resettlement, much of the village stands in stale flood water. Evictees told Amnesty International that there is only one toilet in the village, but it is locked and for reasons unknown accessible to a few families only. Srey Mom’s oldest son, who prior to the eviction attended grade four, has not been able to continue his education since the eviction as she did not have his birth certificate, which was a requirement to enroll in the near-by public school.

Ill-health is wide-spread, especially among children. According to Ratanak, a local medical doctor interviewed by Amnesty International, skin disease, dengue fever and malnutrition are commonplace and at least three children have died of dengue, one of malnutrition.

Similarly, the lack in Andong of clean water and health clinics appears to have had an impact on the health of the evicted persons, particularly the children, as there is reportedly an increased prevalence of diarrhea, skin infections, malnutrition and respiratory infections.



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After a year at the resettlement site, lack of basic services prevailed.

## 5.2 Kbal Spean: Dispute turned to deadly violence

Kbal Spean is a village near the north-western town of Poipet. The majority of the village's population worked as porters, carrying or carting goods across the nearby Cambodia-Thai border, others as subsistence farmers. On the morning of 21 March 2005, over 120 security forces – police, military police and reportedly a third unidentified uniformed group arrived at the village. They were followed by around 50 demolition workers.<sup>95</sup>

The forces divided into sections and encircled the village. Reports given to Amnesty International from local human rights workers detailed how police fired their guns into the air as they entered the village.

As community members put up resistance and threw stones more shots were fired, whilst houses were set ablaze and bulldozed. In the commotion most villagers were not even allowed or able to salvage personal belongings.

By the end of the eviction five men had been shot dead, at least 40 were injured, including 14 seriously, and 30 people had been arrested. According to an in-depth study by the Cambodian Human Rights Action Committee, a network of local

non-governmental organizations working in the field of human rights, 218 houses had been burnt down or demolished and the former population of Kbal Spean lost their homes and most of their possessions.<sup>96</sup>



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Houses were set ablaze and bulldozed.

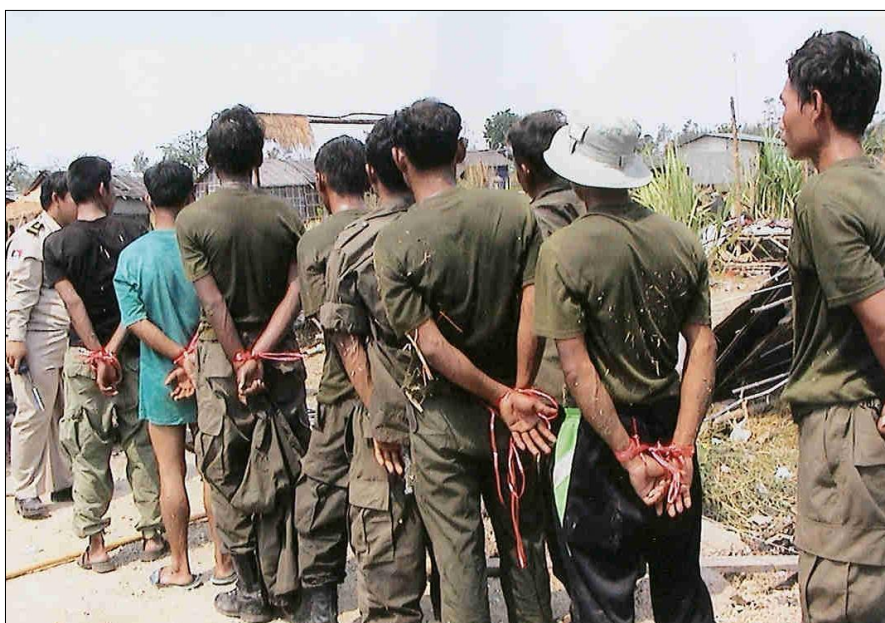
<sup>95</sup> *High Price of Land: The Deadly Eviction of Kbal Spean*, CHRAC – Cambodian Human Rights Action Committee, August 2005.

<sup>96</sup> *Ibid.*

**Pich Bunthoeun, 40:** died at the scene having sustained injuries during the forced evictions;  
**Sean Sok, 44:** died at the scene having sustained injuries during the forced evictions;  
**Kim Samban, 39:** died at the scene having sustained injuries during the forced evictions;  
**Thaom Bunthin, 38:** died at the scene having sustained injuries during the forced evictions;  
**Korn Koeun, 39:** a disabled man, died in hospital after being shot in the abdomen and the right leg.

Around eight years earlier, in 1997, before the end of the civil war between the Khmer Rouge and government forces, district authorities asked a number of families to move to Kbal Spean, a heavily mined, forested and uninhabited area. At that time the area was unsafe due to the proximity to Khmer Rouge held territory and the front-line, and because of the prevalence of landmines.

The villagers, some returnees from refugee camps in nearby Thailand and others demobilised soldiers, cleared the land of mines themselves, at times triggering explosions which caused both death and injury. Subsequently, local authorities arranged distribution of land and issued a range of documents to the community, including specific housing numbers on their land plots.



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With the opening of an official border crossing to Thailand in 1998, as the war was coming to an end, Poipet transformed into a bustling border town. A casino boom ensued, and in the area immediately adjacent to Kbal Spean village casinos, golf courses and hotels catering for visitors from Thailand have mushroomed, inflating land prices.

At least 40 were injured during the eviction, including 14 seriously, and 30 villagers were arrested.

In 1998, a man previously unknown to the villagers reportedly took over as the formal village chief. Within a year he lodged a complaint, based on an allegedly invalid title, to the Banteay Meanchey Provincial Court claiming he owned over 51,000 square

metres of land where the village was located and that the villagers were “illegal squatters”. On 18 November 1999 the Court decided in favour of the “village chief” after a hearing in which the Court failed to hear any witnesses on behalf of the community, or to allow legal representation for the villagers.<sup>97</sup> In effect the Court granted him the land title. Despite complaints of the numerous irregularities at the Provincial court level, the decision was upheld by the Appeals Court in February 2001.<sup>98</sup>

Although no consultations about resettlement had taken place with the villagers, three attempted evictions reportedly took place between the Appeals Court decision and the eventual forced eviction in March 2005.<sup>99</sup> The Kbal Spean community maintain that they had been given no formal notice that they were to be evicted.

After eviction, the families set up temporary shelter near their ruined village, rejecting an offer by local authorities to relocate to an area several kilometres from the village. The location, they argued, was too far from the border crossing: they would lose their livelihoods. Despite the risk of another eviction, the evictees moved back to the village after about one month, rebuilding their demolished homes.<sup>100</sup>

Following the deadly violence the Deputy Governor of Banteay Meanchey province, An Sum, said that “*We are conducting more investigations to find out what exactly happened*”<sup>101</sup> and within days the authorities set up an inter-ministerial commission of inquiry to investigate the violent course of events. The commission identified the officers in charge of the eviction, and established the number of security forces present as 124. Subsequently two district police were temporarily detained.<sup>102</sup>

Honorary President of the ruling Cambodian People’s Party Heng Samrin also pledged clarity. He told reporters in Phnom Penh:

*“As one of the leaders of the National Assembly, as well as the Cambodian People’s Party, I would like to ask the government to control the situation and bring all the perpetrators to the court for prosecution.”*<sup>103</sup>

Simultaneously, the Ministry of Justice transferred the criminal complaints lodged against the security forces from Banteay Meanchey Provincial Court where it had been

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<sup>97</sup> *Ibid.*

<sup>98</sup> Report of the Special Rapporteur on Adequate Housing, Miloon Kothari, *Mission to Cambodia*, E/CN.4/2006/41/Add.3, 21 March 2006.

<sup>99</sup> *Land issues in the Poipet area*, The NGO Forum on Cambodia, 2005.

<sup>100</sup> *High Price of Land*, CHRAC, August 2005.

<sup>101</sup> *Police Shoot 5 Poipet Protestors*, The Cambodia Daily, 22 March 2005.

<sup>102</sup> *High Price of Land*, CHRAC, August 2005.

<sup>103</sup> *CPP Honorary President Condemns Poipet Killings*, The Cambodia Daily, 24 March 2005.

lodged to neighbouring Battambang. According to a human rights lawyer who followed the case, this happened due to the involvement of Banteay Meanchey court staff in the land dispute and eviction. After an investigation as many as 66 members of the security forces and 52 villagers, including four of the dead, were charged with offences ranging from murder to battery with injury. Five of the security forces were remanded in custody.<sup>104</sup>

By August the court dropped charges against the suspects.<sup>105</sup> Investigating judge Nil Nonn told the press that there was not enough evidence to prosecute. The reports of the commission of inquiry were never forwarded to the Battambang Court, and the families appealed against the decision.<sup>106</sup> A human rights worker in Battambang told Amnesty International that the human rights workers and villagers alike were upset by the decision.

*“If [the Court] had wanted, they would have been able to find those who fired the shots.”*

The case is pending at the Court of Appeal.

By mid-May 2006 the provincial authorities, reportedly acting on the instructions of Prime Minister Hun Sen, mediated an out-of-court settlement between the evicted families and the village chief. The families were granted ownership of four out of five hectares of the land, retaining 8 x 20 meter plots of the 10 x 20 meters that they originally had had. No further problems have been reported since.

Following the forced eviction and killings, gifts were given to the families of the dead: Chuong Prasoeuth, acting chief of cabinet in Banteay Meanchey, told the Phnom Penh Post that the provincial authorities provided 100 kilos of rice and 300,000 Cambodian riels (approx 75 USD) to each of the five families. Furthermore, district and commune officials handed over 200,000 riels (50 USD) to the families.<sup>107</sup> However, no effective remedy has been provided to the victims and families following the killings and injuries, nor have villagers received compensation for property lost in the fire or demolition during the forced eviction. So far no one has been held responsible for the excessive use of force, including the killings of five men.

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<sup>104</sup> *High Price of Land*, CHRAC, August 2005.

<sup>105</sup> Report of the Special Rapporteur on Adequate Housing, Miloon Kothari, *Addendum: Mission to Cambodia*, E/CN.4/2006/41/Add.3, 21 March 2006.

<sup>106</sup> *High Price of Land: The Deadly Eviction of Kbal Spean*, CHRAC – Cambodian Human Rights Action Committee, August 2005.

<sup>107</sup> *Villagers protesting eviction gunned down*, Phnom Penh Post, Issue 14/06, 8 - 23 Apr 2005.

### 5.3 Mittapheap 4: Making poor people homeless

*“I lost my house, rice and belongings like clothes and utensils. All houses were burned down and destroyed by the excavator and the bulldozer. They kept good-condition corrugated steel and planks of woods for themselves. They even took water jars and looted our chickens and ducks. They never came to evict us like this before.”*

On 20 April 2007, Sopheap, 43, and her family of six, were among over 100 families who were forcibly evicted from Mittapheap 4 village,<sup>108</sup> on the outskirts of the coastal town of Sihanoukville. They were all made homeless.

In the mid-1980s, 17 families moved into the area; they have remained on the land, including parcels of farming land, till this day. As their extended families have moved to the area and as their children have established their own families, the land has been subdivided to smaller plots.

The forced eviction followed a land dispute which emerged in 2006 when an individual, reportedly the wife of a high-ranking official, filed a complaint with the Mittapheap 4 commune chief, and sent letters to the Ministry of Interior, the National Assembly and the Senate, claiming the villagers were "illegal squatters" living on her property. The complainant has reportedly never presented any title deed or other documentation such as transfer contracts supporting the complaint.

Yet the complaint led the district authorities, on 26 October 2006 to issue an eviction notice without due judicial review and for the law enforcement agencies and the military to implement. The villagers were provided with no opportunity to challenge the decision. The eviction notice claimed that the village enveloped state public land, state private land, and private land<sup>109</sup> belonging to the complainant. With no element of consultation, local authorities offered the original 17 families who had settled in the area in the 1980s US\$ 500 each or resettlement to an area too far from the sea for them to continue making a living from fishing. The villagers turned down both offers.

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<sup>108</sup> The village is also called Spean Ches, which translates to Burning Bridge.

<sup>109</sup> Within the domain of publicly owned land, Chapter 2 of the 2001 Land Law distinguishes between State private property, which may be transferred and utilised for social and economic development, and State public property, which is inalienable. Within the domain of private ownership, the Law recognises e.g. individual ownership (Chapter 1) and collective ownership of Indigenous communities (Chapter 3, part 2).

Two weeks later 53 families lodged a complaint with the Senate Committee on Human Rights, stating they had been threatened with forced eviction from land that was rightfully theirs. In an unusual step, the Committee informed the Sihanoukville Governor about the complaint and that it was launching an investigation. The investigation concluded that the case was a civil matter that should be settled by the courts.

On 19 January 2007, the community received a second eviction notice, this time signed by the Municipal Governor Say Hak, who gave the villagers only one week notice to vacate their homes. As with the earlier eviction notice, it was issued without a court decision.<sup>110</sup>

Early morning on the day of the eviction, a number of police armed with AK47s and in riot gear arrived at the village, ordering villagers to vacate their homes. Some women attempted to negotiate to delay the eviction, but police refused. Clashes broke out; police fired live ammunition into the air and ground, villagers threw stones and bottles and defended themselves with a barbed wire barrier. Police retreated, then returned with a contingent of roughly around 150 security forces, including soldiers and military police.

Villagers and human rights monitors reported that the forces were accompanied by an excavator and two water trucks filled with a mixture of water and gasoline. Security forces again shot into the air and onto the ground, while also beating people with electric batons. Eighteen villagers, 13 men and five women, were injured, many of them knocked unconscious. Two police officers were also injured.

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<sup>110</sup> See also *Illegal forced eviction of 105 families in Sihanoukville Fact Sheet*, Licadho, July 2007.

Security forces continued the demolition in the village and also reportedly removed valuables from the villagers, including 16 motorbikes. They then proceeded to burn down up to 80 homes, including clothes and whatever belongings had not been taken by the government forces. A further 26 houses were demolished.



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Thirteen of the villagers were arrested after the eviction.

Following the violence, the 13 injured men were arrested, beaten and taken to prison, where they were reportedly interrogated. The detainees were charged with "battery with injury" (Article 41 of the so-called UNTAC Law, which remains in force<sup>111</sup>) and "wrongful damage to property" (Article 52).

The men were represented by lawyers from Licadho, a leading Cambodian human rights NGO. They were tried on 3-4 July 2007 in the Sihanoukville Municipal Court for their

role in the violence that took place during the eviction, which had destroyed their houses and most of their belongings.<sup>112</sup>

The legality of the eviction and the way it was carried out was in no way examined during the hearing and there was no attempt to establish responsibility for the violence and destruction.

<sup>111</sup> "Provisions Relating To The Judiciary And Criminal Law And Procedure Applicable In Cambodia During The Transitional Period" The Supreme National Council, Decision of September 10, 1992.

<sup>112</sup> *Nine Convicted, Five Acquitted in Trial of Sihanoukville Villagers*, The Cambodia Daily, 5 July 2007.

Nine villagers were found guilty, despite the fact that prosecution failed to produce evidence linking the individuals to the crimes they were accused of. No witnesses could identify any defendant with alleged injuries or damage to property. Three were convicted for “battery with injury” and “wrongful damage to property.” Four were found guilty of complicity, for having “gathered stones” to assist those who threw stones at the intervention force or for attempting to destroy public property by throwing stones at a fire truck. The attempt had failed: no damage was caused, the court concluded, according to the judgment.

Two men were sentenced, one in absentia, to eight months, four of which were to be suspended. Seven others were sentenced to 75 days each, completed on 4 July 2007. Five men were acquitted, including one minor who according to trial monitors claimed in court that he had been forced to confess to involvement.

The prosecutor appealed against the nine sentences, which he perceived as too light,<sup>113</sup> so those convicted have not been released, even though they have now served their term, pending the hearing at the Court of Appeal, which has not been scheduled but may take up to several years. This clearly constitutes arbitrary detention. Amnesty International calls for their immediate release.

As a result of the eviction, the families, mostly small-scale fishermen and beach vendors, lost most personal possessions, including their fishing nets and other equipment, as well as the shelter of a home. At the time of writing this report over 90 of the families have established basic shelters in very cramped conditions on the side of a road near their former village; they lack basic shelter, food, drinking water and basic sanitation as well as the means of earning a living. Many of the children are unwell with cold, fever or diarrhea.



Up to 80 homes were set ablaze during the eviction.

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<sup>113</sup> *Sentences of Sihanoukville Villagers Are Appealed*, The Cambodia Daily, 11 July 2007.

*“They burnt my house. Now I am staying under a tarpaulin on the roadside. An NGO gave us these tarpaulin sheets.”*

The villagers have not received support from the government, but have benefited from some humanitarian assistance from a network of NGOs, including human rights NGO Licadho, which has helped the injured, sick and traumatised, including many malnourished children, while also providing legal aid.

As one villager told Amnesty International:

*“My son was arrested and beaten up while he was collecting belongings from the house. I saw them walking away with him, beating him. Then he was tied up and put on the truck.”*

*“Before, he went fishing and farming. Now who can I rely on? Since he was arrested, I have not managed to earn anything. My house was completely burnt down.”*

## 6. Protection for Human rights defenders

*“Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms.”*

Article 1 of the Declaration on human rights defenders<sup>114</sup>, adopted by the UN General Assembly in 1998.

In the context of forced evictions, land and natural resources, human rights defenders have come under increasing pressure from authorities, and their adversaries have increasingly come to use courts as a means to stop their activities and silence their voices.

Journalists covering topics such as land grabbing and illegal logging which deprives forest communities of their livelihood have received death threats. NGO staff, including lawyers, have been threatened with legal action involving criminal charges for their work with local communities entangled in land disputes and facing eviction. Charges have been brought against numerous local activists seeking to protect what they perceive is their land. Indigenous leaders have been barred by provincial authorities from leaving their province to take part in meetings and seminars on the topic of Indigenous Peoples’ rights.

Numerous human rights defenders seeking to protect land, the environment or forests told Amnesty International of fear of attack, arrest and coercion.

### 6.1 Arrests and attacks

*“We are all feeling very uneasy to talk. Once before when people came and interviewed us [about the situation] we told them everything. A few days later we were summoned to Court”,* Ravy, a 49 year-old soup-kitchen proprietor and informal representative of a village in Siem Reap, told Amnesty International.

She was taken directly from the Siem Reap courthouse to prison, where she remained detained, accused of “incitement to commit a crime”. After 12 days Ravy was released following Prime Minister Hun Sen call in March 2005 to release all detainees held in relation to land disputes.

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<sup>114</sup> Its full name reads: Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”.

She had been protesting against the authorities' bulldozing a fence in her village, the legal status of which is an ongoing dispute between villagers and the Apsara Authority, the government body mandated to manage the Angkor temples and surrounding areas.

Following two separate armed attacks and attempted murder of two community forest activists in 2005, another activist told Amnesty International:

*"We don't dare to act resolutely any longer. It is difficult since no perpetrator has been found. If we are seen to go against someone strongly, we don't know what could happen."*

After the attacks the two men went underground and relocated to another province in July 2005. Several people witnessed one of the attacks, both of which were reported to authorities by human rights organizations. A high-ranking official with close insight into the case but who wished to remain anonymous told Amnesty International that "everyone knew who fired the shots", but although National Chief of Police Hok Lundy reportedly had ordered the provincial police chief to investigate, so far there has been no police investigation. In July 2007, one of the two men survived a grenade attack on his new home. The same month community activist Seng Sarorn, a long-time associate to human rights organization ADHOC, was shot dead in Stung Treng province reportedly after having actively encouraged people in his community to protest about alienation of natural resources and land-grabbing.<sup>115</sup>

## 6.2 Coercion of Indigenous Peoples

Representatives of Indigenous Phnong People<sup>116</sup> affected by a pine tree concession in the eastern province of Mondulakiri, have also come up against obstacles when seeking to protect their land. The authorities had carried out no consultations with the Phnong prior to the conclusion of the concession agreement between the government and the company in August 2004. Instead, once the agreement had been reached, local commune leaders told Amnesty International that they had been intimidated by provincial authorities into thumb-printing and sealing their approval on a map, which constituted an agreement. One of them told Amnesty International how he was intercepted by the authorities as he travelled by moped on an isolated road and

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<sup>115</sup> See e.g. *Assassination of human rights defender Mr. Seng Sarorn*, The Observatory for the Protection of Human Rights Defenders, 9 July, 2007.

<sup>116</sup> With a population of around 24,500 the Indigenous Phnong who live in the Cambodian eastern highlands constitute 54 percent of the population in Mondulakiri province. Cambodia's 17 Indigenous groups account for 0.9 percent of the total population, according to the 1998 population census, although this is believed to be an underestimation. NGO Forum on Cambodia, for example, assesses the true number to be 1.4 percent. (See e.g. *Indigenous Peoples in Cambodia*, NGO Forum on Cambodia, April 2006.)

coerced to thumbprint the map; another reportedly had to sign it at the house of a high-ranking official in the provincial capital, in the presence of military police and representatives of the company.<sup>117</sup>

By 2005, the emerging pine tree 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.<sup>118</sup> In addition this encroachment impacted on the culture of the Phnong, whose beliefs, religious practices and traditional environment are intimately associated. The forest in particular is central to the spiritual life of the Phnong who worship sacred areas of spirit forest.<sup>119</sup>

In July 2005, the UN Special Representative of the Secretary General for Human Rights in Cambodia called on the government to cancel the concession:<sup>120</sup>

*“The Government and the company have disregarded the wellbeing, culture and livelihoods of the Phnong Indigenous people who make up more than half the population of the province, and many breaches of the law and of human rights have been committed.”*

Like other highland populations, the Phnong are disadvantaged by the lack of representation within the national power structures and because of the language barrier. The Phnong language is an oral one without a script, and most Phnong speak limited or no Khmer.

*“We are worried about expressing our concerns. We are minority people, and we don't seem to get our words across”,* community representative Blong explained to Amnesty International.<sup>121</sup>

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<sup>117</sup> *Land concessions for economic purposes in Cambodia - A human rights perspective*, Special Representative of the Secretary-General for Human Rights in Cambodia, Nov 2004 (Annex: *Wuzhishan L.S. Group - A Pine Tree Plantation in Mondulhiri Province*, June 2005).

<sup>118</sup> The area affected is mostly within O'Reang district, in particular Dak Dam and Sen Monorom communes.

<sup>119</sup> See e.g. *Rethinking Poverty Reduction to Protect and Promote the Rights of Indigenous Minorities in Cambodia - A Human Rights Approach to Land and Natural Resources Management*, NGO Forum on Cambodia, April 2005.

<sup>120</sup> *Special Representative, Peter Leuprecht, calls for the cancellation of the land concession to Wuzhishan L.S Group in the province of Mondulhiri*. Cambodia Office of the High Commissioner for Human Rights, 5 July 2005; [[http://cambodia.ohchr.org/download.aspx?ep\\_id=224](http://cambodia.ohchr.org/download.aspx?ep_id=224)].

<sup>121</sup> At the time of writing this report, there has been no negotiated settlement in the case. Such geographic and political lack of clarity leaves the community at risk of further violations

### 6.3 Threats and Intimidation

The release in June 2007 of a report from Global Witness,<sup>122</sup> a UK based NGO campaigning against exploitation of natural resources, further highlighted the precarious climate in which human rights defenders find themselves. The report was banned in Cambodia and senior public figures, including Hun Neng, brother of the Prime Minister and a provincial governor, publicly threatened to “hit [Global Witness staff] until their heads are broken,” according to a media report.<sup>123</sup>

“*The threat against our staff is entirely unacceptable,*” Global Witness Director, Simon Taylor said in a press statement.<sup>124</sup> “*Such crude intimidation by a senior public official says little for the government’s commitment to upholding human rights and freedom of expression.*”

Journalists covering the story received threats and were harassed, some lost their jobs. Other individuals, perceived by the authorities as being part of the production of the report, were subject to harassment and intimidation, ranging from surveillance to death threats.

**All those who are peacefully struggling for the realization of the fundamental rights proclaimed in the Universal Declaration of Human Rights are human rights defenders. Some work in human rights organizations, student and youth groups, religious groups, trade unions, women’s or development associations; others are lawyers, journalists, teachers, farmers or unemployed.**

**The majority of human rights defenders work at the local or national level, supporting respect for human rights within their own communities and countries. In such situations, their main counterparts are local authorities charged with ensuring respect for human rights within a province or the country as a whole.**

*Human Rights Defenders: Protecting the Right to Defend Human Rights, Fact Sheet No. 29, Office of the High Commissioner for Human Rights, April 2004, p. 3.*

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of their land rights. Indeed some reports suggest that two further 100,000 hectare land concessions are being discussed or may have already been agreed in the north-eastern parts.

<sup>122</sup> The report, *Cambodia’s Family Trees*, portrays the involvement of high-ranking government officials, an elite military unit and other members of the armed forces in the structures of illegal logging operations,

[http://www.globalwitness.org/media\\_library\\_detail.php/546/km/cambodias\\_family\\_trees](http://www.globalwitness.org/media_library_detail.php/546/km/cambodias_family_trees).

<sup>123</sup> *Global Witness Decries Report Ban: Probe Ordered*, The Cambodia Daily, 5 June 2007.

<sup>124</sup> *Cambodian officials respond to Global Witness report with ban and threat of violence*, Global Witness, 6 June 2007.

ADHOC, another local human rights group, reported that during 2005, 53 poor persons involved in land disputes were arrested and detained,<sup>125</sup> and 78 in 2006.<sup>126</sup> The number in 2007 was at least 121.<sup>127</sup> In the majority of cases, people had been charged with criminal offences, the arrests preventing them from acting to defend the land under dispute, or protest against perceived violations of their rights.<sup>128</sup>

Amnesty International is increasingly concerned over the integrity of courts and the narrowing space in which individuals and groups can act in defense of human rights, including in the particular context of forced evictions.

## 7. Conclusions

The management of Cambodia's land and natural resources is often described as being in a state of crisis. After a visit to Cambodia in 2005, the UN Special Rapporteur on Adequate Housing as a component of the right to an adequate standard of living, Miloon Kothari, described what he encountered as "*a frenzy [...] across the country by the rich and powerful in Cambodia to acquire land.*"<sup>129</sup> Forced evictions are an intrinsic part of this crisis.

The Cambodian authorities are not only failing to protect - in law and practice - its population against forced evictions, but are also actively involved in such acts, which contravene international law. Participation and consultation have been lacking; information on evictions and resettlement has been incomplete and, clearly, forced evictions have not been seen as a last resort. Instead, and in breach of international human rights law and standards, the authorities have opted for eviction long before all other alternatives have been explored.

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<sup>125</sup> Human Rights Situation Report 2005, ADHOC Fifth Annual human Rights Report, March 2006.

<sup>126</sup> Human Rights Situation Report 2006, ADHOC Sixth Annual human Rights Report, March 2007.

<sup>127</sup> *Concerns over the arrests and detentions due to the land disputes*, Cambodian Human Rights Action committee and The NGO Forum on Cambodia, Public statement, 7 November 2007, states that 121 land activists were arrested between January and October 2007.

<sup>128</sup> Human Rights Situation Report 2005, ADHOC Fifth Annual human Rights Report, March 2006; *Human rights in Cambodia: The Charade of Justice*, Licadho, December 2007.

<sup>129</sup> *Cambodia "suffering land crisis"*, BBC, 2 September 2005, available at [http://news.bbc.co.uk/1/hi/newsid\\_4207000/4207138.stm](http://news.bbc.co.uk/1/hi/newsid_4207000/4207138.stm). [Last visited 28 January 2008.]

The lack of transparency and outright secrecy surrounding the cases also deprive affected communities of the possibilities to seek legal redress and to realize their own human rights, including the right to an adequate standard of living.

As at least 150,000 Cambodians across the country are known to live at risk of being evicted in the wake of development projects, land disputes and land grabbing, there is an urgent need to complete the legal framework to protect the population from forced evictions and further to protect the right to adequate housing and land rights of Indigenous Peoples. **Amendments to the law should include: a clear prohibition of forced evictions; steps to recognise and protect the rights to lands, territories and resources of Indigenous Peoples; a review to ensure that any limitations to housing and land rights are consistent with international human rights law, including that they are necessary, pursue a legitimate aim and are proportionate to achieving that aim.**

Legislative change alone will, however, not be enough. Although both the legal framework and the policies have serious shortcomings in terms of compliance with the international human rights treaties by which Cambodia is bound, it is clear that the forced evictions seen across the country do not emanate from these short-comings alone. Forced evictions take place in the vacuum created by a systematic lack of enforcement of the legal framework and the failure to act on the words in policy documents.

It is evident from the cases presented in this report that there were no “exceptional circumstances” to justify the evictions. Nor had “all feasible alternatives” been explored or the procedural protections been followed, including requirements for information, consultation and participation for those affected and for provisions of adequate alternative housing or land. Without access to information and cut off from participatory consultation they were also deprived of any conceivable opportunities to make long-term choices about strategies for the future. In all three cases, people were made homeless and two cases also highlighted the trend of forcibly evicting people before a final settlement of land disputes have been reached by courts. **This shows the clear need to develop national eviction guidelines, which should be based on the Basic Principles appended to this report and should be consistent with international human rights law.**

Land titles may offer some security of tenure. However, given the selective and arbitrary law enforcement they do not provide guarantees against loss of ownership and/or forced eviction. As seen, the prevalent element of collusion between influential or well-connected claimants to land and local authorities opens the door for dubious land titles, unlawful authorisations leading to land title transfers, the issuing of eviction orders at whim, lack of procedural protections for victims and the apparent use by authorities of the court system to prevent victims from acting to defend their

rights. **Concrete and effective measures are needed to ensure to the entire population a degree of security of tenure sufficient, at least, to protect them from forced evictions, and other threats or harassment.**

The opaque system by which economic land concessions are granted follows the same pattern: Negotiations between companies and authorities are not disclosed; agreements and detailed information on the companies – including ownership – are kept away from public scrutiny; public consultations and environmental and social impact assessments are non-existent. **There is also a need for clearer legal and policy standards on freedom of information, consultation and participation, in line with the requirements of international human rights law.**

The problem of selective and arbitrary 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, which in turn deprives ordinary Cambodians of their human rights.

Equality before the courts is a key human right<sup>130</sup> and the court system is a crucial element in ensuring redress to human rights violations. For the poor and marginalized Cambodians, including Indigenous Peoples, who do not have powerful contacts, this is far from reality.

The patterns of patronage networks and lack of accountability hold sway and set the conditions within which laws are arbitrarily applied, if at all, and human rights are left unprotected. So long as the political will to break these patterns is weak or indeed missing, the powerful will be able to arbitrarily expropriate, with impunity, land and resources from the poor and marginalized whose support systems do not provide strong enough leverage. By complying with its human rights obligations and ensuring an end to forced evictions, the Cambodian government would show such political will and extend protection of human rights of the population.

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<sup>130</sup> See, for instance, Article 14(1) of the ICCPR.

## 8. Recommendations

### To the Cambodian authorities:

#### Immediately stop and prevent forced evictions:

- Immediately cease all forced evictions.
- Legislate and enforce a clear prohibition on forced evictions.
- Develop and adopt guidelines for evictions which should be based on the Basic Principles and Guidelines on Development-Based Evictions and Displacement and must comply with international human rights law.
- Until such steps have been taken, introduce a moratorium on mass evictions.

#### Ensure the right to an effective remedy for all those who have been victims of forced evictions and other human rights violations:

- Ensure that all victims of forced evictions have access to, at the very least, minimum essential levels of shelter, clean water, sanitation, health services and education, including through the provision of humanitarian assistance where necessary.
- 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;
- Set up an independent commission of inquiry into the manner in which the evictions described in this report, and others, have been carried out and to make recommendations for effective remedies for victims of forced evictions and for the prevention of further forced evictions.
- The inquiry should include an investigation into the role of the police and other law enforcement agencies in assisting evictions, including the proportionality, legality and necessity of use of force and firearms, as well as illegal arrests and intimidation of residents and human rights defenders during the evictions, with a view to bringing to justice those responsible for human rights violations. The report of such a commission of inquiry must be made public.

#### Adopt effective measures to protect housing and land rights and other human rights associated with evictions:

- Develop and adopt concrete and effective measures to ensure to the entire population a degree of security of tenure sufficient, at least, to protect them from forced evictions, and other threats or harassment.
- Develop and adopt effective legal and policy standards on freedom of information, consultation and participation, in line with the requirements of international human rights law in order to respect, protect and fulfil the rights

- to participation of the population in all decisions related to evictions and relocation.
- Amend existing law so as to reflect the right to adequate housing and the right not to be forcibly evicted, including
    - o ensuring the so-called Sub-decree on Involuntary Resettlement in the Context of Development Projects complies with international law and standards;
    - o ensuring that the sub-decrees to make enforceable provisions of the Land Law as regards collective ownership of land for Indigenous communities is adopted so that Indigenous Peoples' rights to adequate housing are guaranteed.
  - Ensure that law enforcement officers involved in evictions comply with the UN Code of Conduct and the UN Basic Principles.
  - Ensure that the rights of human rights defenders, including local activists, to voice their grievances and exercise their rights to freedom of association, expression and movement are respected. Ensure that the dispute resolution mechanisms, including the courts and the Cadastral Commission strictly respect the rule of law and due process, and are guided by the results of impartial investigations into ownership disputes.
  - Ensure that corporations and other business enterprises operational in Cambodia are made aware of their obligations to respect the human right to adequate housing, including the prohibition on forced evictions within their respective spheres of activity and influence.
  - Submit as a matter of urgency Cambodia's initial report to the CESCR on its compliance with the ICESCR, overdue since 30 June 1994.
  - Consider in earnest the recommendations by the Special Rapporteur on Adequate Housing and the UN Special Representative of the Secretary-General for Human Rights in Cambodia.

**Respect and protect the right of human rights defenders, including those working on economic, social and cultural rights, to conduct their work without hindrance, intimidation or harassment, in line with the UN Declaration on Human Rights Defenders.**

**Uphold the rights of Indigenous Peoples under national and international laws and standards, including the UN Declaration on the Rights of Indigenous Peoples, including through:**

- In collaboration with Indigenous Peoples, ensure that all laws and policies are consistent with and fully uphold Indigenous Peoples' right to participate in decisions affecting their rights and to say no to activities impacting on their human rights in respect to lands, territories and resources unless they have granted their free, prior and informed consent.

- In collaboration with Indigenous Peoples, finalise the sub-decree on the registration of Indigenous land rights so that existing protections under the Land Law can be effectively implemented.
- In the meantime, ensure that interim protections for Indigenous land tenure under the Land Law are fully implemented.
- Ensure that Indigenous Peoples have access to fair and effective mechanisms for the resolution of land disputes and the provision of redress, including wherever possible return of land taken from them, with free, prior and informed consent.
- Provide training and other resources necessary for Indigenous Peoples to access their rights in respect to lands and resources vital to their well-being and cultural identities.
- Ensure that complaints of harassment or destruction of property carried out against Indigenous Peoples are fully investigated and those responsible brought to justice.

#### **To Cambodia's international donors:**

- Urge the government of Cambodia to adopt the measures recommended in this report, including calling for an end to forced evictions, in order to address the practice of forced evictions as a serious and unlawful obstruction to poverty reduction, in particular in reducing the vulnerability of poor rural people whose livelihoods are dependent on natural resources.
- Ensure that international assistance does not support human rights violations including forced evictions.
- Support the development of national eviction guidelines, based on the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement. Such guidelines must be consistent with international human rights law.
- Offer international assistance and cooperation, including financial and technical, where necessary, to support Cambodia as it seeks to comply with its human rights obligation to prohibit and prevent forced evictions and to ensure a sufficient degree of security of tenure to the whole population.
- Consider complementing efforts aiming at improving land management and security of tenure with initiatives that aim to end forced evictions and protect the right to adequate housing of the population of Cambodia.
- Where the government of Cambodia is either unwilling or unable to do so, consider adequately supporting efforts of civil society to provide humanitarian assistance to victims of forced eviction and address the needs of communities at risk of eviction, including awareness-raising of their right to an adequate standard of living and the right to protection against forced eviction.

## **Attachment 1**

### ***Text of Basic Principles and Guidelines on Development-Based Evictions and Displacement***

#### **BASIC PRINCIPLES AND GUIDELINES ON DEVELOPMENT-BASED EVICTIONS AND DISPLACEMENT** **Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living** **A/HRC/4/18**

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### **I. SCOPE AND NATURE**

1. The obligation of States to refrain from, and protect against, forced evictions from home(s) and land arises from several international legal instruments that protect the human right to adequate housing and other related human rights. These include the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (art. 11, para. 1), the Convention on the Rights of the Child (art. 27, para. 3), the non-discrimination provisions found in article 14, paragraph 2 (h), of the Convention on the Elimination of All Forms of Discrimination against Women, and article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination.

2. In addition, and consistent with the indivisibility of a human rights approach, article 17 of the International Covenant on Civil and Political Rights states that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence”, and further that “[e]veryone has the right to the protection of the law against such interference or attacks”. Article 16, paragraph 1, of the Convention on the Rights of the Child contains a similar provision. Other references in international law include article 21 of the 1951 Convention relating to the Status of Refugees; article 16 of International Labour Organization (ILO) Convention No. 169 concerning indigenous and tribal peoples in independent countries (1989); and article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention).

3. The present guidelines address the human rights implications of development-linked evictions and related displacement in urban and/or rural areas. These guidelines represent a further development of the Comprehensive human rights guidelines on development-based displacement (E/CN.4/Sub.2/1997/7, annex). They are based on international human rights law, and are consistent with general comment No. 4 (1991) and general comment No. 7 (1997) of the Committee on Economic, Social and Cultural Rights, the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly in its resolution 60/147, and the Principles on housing and property restitution for refugees and displaced persons (see E/CN.4/Sub.2/2005/17 and Add.1).

4. Having due regard for all relevant definitions of the practice of “forced evictions” in the context of international human rights standards, the present guidelines apply to acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual,

group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection.<sup>a</sup> [FN a *The prohibition of forced evictions does not apply to evictions carried out both in accordance with the law and in conformity with the provisions of international human rights treaties.*]

5. Forced evictions constitute a distinct phenomenon under international law, and are often linked to the absence of legally secure tenure, which constitutes an essential element of the right to adequate housing. Forced evictions share many consequences similar to those resulting from arbitrary displacement,<sup>b</sup> [FN b *Consistent with Principle 6 of the Guiding Principles on Internal Displacement.*] including population transfer, mass expulsions, mass exodus, ethnic cleansing and other practices involving the coerced and involuntary displacement of people from their homes, lands and communities.

6. Forced evictions constitute gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement. Evictions must be carried out lawfully, only in exceptional circumstances, and in full accordance with relevant provisions of international human rights and humanitarian law.

7. Forced evictions intensify inequality, social conflict, segregation and “ghettoization”, and invariably affect the poorest, most socially and economically vulnerable and marginalized sectors of society, especially women, children, minorities and indigenous peoples.

8. In the context of the present guidelines, development-based evictions include evictions often planned or conducted under the pretext of serving the “public good”, such as those linked to development and infrastructure projects (including large dams, large-scale industrial or energy projects, or mining and other extractive industries); land-acquisition measures associated with urban renewal, slum upgrades, housing renovation, city beautification, or other land-use programmes (including for agricultural purposes); property, real estate and land disputes; unbridled land speculation; major international business or sporting events; and, ostensibly, environmental purposes. Such activities also include those supported by international development assistance.

9. Displacement resulting from environmental destruction or degradation, evictions or evacuations resulting from public disturbances, natural or human-induced disasters, tension or unrest, internal, international or mixed conflict (having domestic and international dimensions) and public emergencies, domestic violence, and certain cultural and traditional practices often take place without regard for existing human rights and humanitarian standards, including the right to adequate housing. Such situations may,

however, involve an additional set of considerations that the present guidelines do not explicitly address, though they can also provide useful guidance in those contexts. Attention is drawn to the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the Guiding Principles on Internal Displacement, and the Principles on housing and property restitution for refugees and displaced persons.

10. While recognizing the wide range of contexts in which forced evictions take place, the present guidelines focus on providing guidance to States on measures and procedures to be adopted in order to ensure that development-based evictions are not undertaken in contravention of existing international human rights standards and do not thus constitute “forced evictions”. These guidelines aim at providing a practical tool to assist States and agencies in developing policies, legislation, procedures and preventive measures to ensure that forced evictions do not take place, and to provide effective remedies to those whose human rights have been violated, should prevention fail.

## **II. GENERAL OBLIGATIONS**

### **A. Duty bearers and nature of obligations**

11. While a variety of distinct actors may carry out, sanction, demand, propose, initiate, condone or acquiesce to forced evictions, States bear the principal obligation for applying human rights and humanitarian norms, in order to ensure respect for the rights enshrined in binding treaties and general principles of international public law, as reflected in the present guidelines. This does not, however, absolve other parties, including project managers and personnel, international financial and other institutions or organizations, transnational and other corporations, and individual parties, including private landlords and landowners, of all responsibility.

12. Under international law, the obligations of States include the respect, protection and fulfilment of all human rights and fundamental freedoms. This means that States shall: refrain from violating human rights domestically and extraterritorially; ensure that other parties within the State’s jurisdiction and effective control do not violate the human rights of others; and take preventive and remedial steps to uphold human rights and provide assistance to those whose rights have been violated. These obligations are continuous and simultaneous, and are not suggestive of a hierarchy of measures.

### **B. Basic human rights principles**

13. According to international human rights law, everyone has the right to adequate housing as a component of the right to an adequate standard of living. The right to adequate housing includes, *inter alia*, the right to protection against arbitrary or unlawful interference with privacy, family, home, and to legal security of tenure.

14. According to international law, States must ensure that protection against forced evictions, and the human right to adequate housing and secure tenure, are guaranteed without discrimination of any kind on the basis of race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth or other status.

15. States must ensure the equal right of women and men to protection from forced evictions and the equal enjoyment of the human right to adequate housing and security of tenure, as reflected in the present guidelines.

16. All persons, groups and communities have the right to resettlement, which includes the right to alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education.<sup>c</sup>[*Fn c See general comment No. 4 on the right to adequate housing, adopted by the Committee on Economic, Social and Cultural Rights in 1991.*]

17. States must ensure that adequate and effective legal or other appropriate remedies are available to any person claiming that his/her right to protection against forced evictions has been violated or is under threat of violation.

18. States must refrain from introducing any deliberately retrogressive measures with respect to de jure or de facto protection against forced evictions.

19. States must recognize that the prohibition of forced evictions includes arbitrary displacement that results in altering the ethnic, religious or racial composition of the affected population.

20. States must formulate and conduct their international policies and activities in compliance with their human rights obligations, including through both the pursuit and provision of international development assistance.

### **C. Implementation of State obligations**

21. States shall ensure that evictions only occur in exceptional circumstances. Evictions require full justification given their adverse impact on a wide range of internationally recognized human rights. Any eviction must be (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare;<sup>a</sup>[*FN a In the present guidelines, the promotion of the general welfare refers to steps taken by States consistent with their international human rights obligations, in particular the need to ensure the human rights of the most vulnerable.*] (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the present

guidelines. The protection provided by these procedural requirements applies to all vulnerable persons and affected groups, irrespective of whether they hold title to home and property under domestic law.

22. States must adopt legislative and policy measures prohibiting the execution of evictions that are not in conformity with their international human rights obligations. States should refrain, to the maximum extent possible, from claiming or confiscating housing or land, and in particular when such action does not contribute to the enjoyment of human rights. For instance, an eviction may be considered justified if measures of land reform or redistribution, especially for the benefit of vulnerable or deprived persons, groups or communities are involved. States should apply appropriate civil or criminal penalties against any public or private person or entity within its jurisdiction that carries out evictions in a manner not fully consistent with applicable law and international human rights standards. States must ensure that adequate and effective legal or other appropriate remedies are available to all those who undergo, remain vulnerable to, or defend against forced evictions.

23. States shall take steps, to the maximum of their available resources, to ensure the equal enjoyment of the right to adequate housing by all. The obligation of States to adopt appropriate legislative and policy measures to ensure the protection of individuals, groups and communities from evictions that are not in conformity with existing international human rights standards is immediate.<sup>e</sup> [FN e See general comment No. 3 on the nature of States parties' obligations, adopted in 1990 by the Committee on Economic, Social and Cultural Rights.]

24. In order to ensure that no form of discrimination, statutory or otherwise, adversely affects the enjoyment of the human right to adequate housing, States should carry out comprehensive reviews of relevant national legislation and policy with a view to ensuring their conformity with international human rights provisions. Such comprehensive review should also ensure that existing legislation, regulation and policy address the privatization of public services, inheritance and cultural practices, so as not to lead to, or facilitate forced evictions.<sup>f</sup> [FN f See the guidelines on housing and discrimination contained in the 2002 report of the Commission on Human Rights Special Rapporteur on adequate housing as a component of the right to an adequate standard of living (E/CN.4/2002/59).]

25. In order to secure a maximum degree of effective legal protection against the practice of forced evictions for all persons under their jurisdiction, States should take immediate measures aimed at conferring legal security of tenure upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land.

26. States must ensure the equal enjoyment of the right to adequate housing by women and men. This requires States to adopt and implement special measures to protect women

from forced evictions. Such measures should ensure that titles to housing and land are conferred on all women.

27. States should ensure that binding human rights standards are integrated in their international relations, including through trade and investment, development assistance and participation in multilateral forums and organizations. States should implement their human rights obligations with regard to international cooperation,<sup>g</sup> [FN g As set forth in article 22, *Universal Declaration of Human Rights*; Articles 55 and 56 of the *Charter of the United Nations*; articles 2, paragraph 1, 11, 15, 22 and 23, *International Covenant on Economic, Social and Cultural Rights*; articles 23, paragraph 4, and 28, paragraph 3, *Convention on the Rights of the Child*.] whether as donors or as beneficiaries. States should ensure that international organizations in which they are represented refrain from sponsoring or implementing any project, programme or policy that may involve forced evictions, that is, evictions not in full conformity with international law, and as specified in the present guidelines.

#### **D. Preventive strategies, policies and programmes**

28. States should adopt, to the maximum of their available resources, appropriate strategies, policies and programmes to ensure effective protection of individuals, groups and communities against forced eviction and its consequences.

29. States should carry out comprehensive reviews of relevant strategies, policies and programmes, with a view to ensuring their compatibility with international human rights norms. In this regard, such reviews must strive to remove provisions that contribute to sustaining or exacerbating existing inequalities that adversely affect women and marginalized and vulnerable groups. Governments must take special measures to ensure that policies and programmes are not formulated or implemented in a discriminatory manner, and do not further marginalize those living in poverty, whether in urban or rural areas.

30. States should take specific preventive measures to avoid and/or eliminate underlying causes of forced evictions, such as speculation in land and real estate. States should review the operation and regulation of the housing and tenancy markets and, when necessary, intervene to ensure that market forces do not increase the vulnerability of low-income and other marginalized groups to forced eviction. In the event of an increase in housing or land prices, States should also ensure sufficient protection against physical or economic pressures on residents to leave or be deprived of adequate housing or land.

31. Priority in housing and land allocation should be ensured to disadvantaged groups such as the elderly, children and persons with disabilities.

32. States must give priority to exploring strategies that minimize displacement. Comprehensive and holistic impact assessments should be carried out prior to the

initiation of any project that could result in development-based eviction and displacement, with a view to securing fully the human rights of all potentially affected persons, groups and communities, including their protection against forced evictions. “Eviction-impact” assessment should also include exploration of alternatives and strategies for minimizing harm.

33. Impact assessments must take into account the differential impacts of forced evictions on women, children, the elderly, and marginalized sectors of society. All such assessments should be based on the collection of disaggregated data, such that all differential impacts can be appropriately identified and addressed.

34. Adequate training in applying international human rights norms should be required and provided for relevant professionals, including lawyers, law enforcement officials, urban and regional planners and other personnel involved in the design, management and implementation of development projects. This must include training on women’s rights, with an emphasis on women’s particular concerns and requirements pertaining to housing and land.

35. States should ensure the dissemination of adequate information on human rights and laws and policies relating to protection against forced evictions. Specific attention should be given to the dissemination of timely and appropriate information to groups particularly vulnerable to evictions, through culturally appropriate channels and methods.

36. States must ensure that individuals, groups and communities are protected from eviction during the period that their particular case is being examined before a national, regional or international legal body.

### **III. PRIOR TO EVICTIONS**

37. Urban or rural planning and development processes should involve all those likely to be affected and should include the following elements: (a) appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives; (b) effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups; (c) a reasonable time period for public review of, comment on, and/or objection to the proposed plan; (d) opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options; and (e) holding of public hearing(s) that provide(s) affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities.

38. States should explore fully all possible alternatives to evictions. All potentially affected groups and persons, including women, indigenous peoples and persons with

disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider. In the event that agreement cannot be reached on a proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate.

39. During planning processes, opportunities for dialogue and consultation must be extended effectively to the full spectrum of affected persons, including women and vulnerable and marginalized groups, and, when necessary, through the adoption of special measures or procedures.

40. Prior to any decision to initiate an eviction, authorities must demonstrate that the eviction is unavoidable and consistent with international human rights commitments protective of the general welfare.

41. Any decision relating to evictions should be announced in writing in the local language to all individuals concerned, sufficiently in advance. The eviction notice should contain a detailed justification for the decision, including on: (a) absence of reasonable alternatives; (b) the full details of the proposed alternative; and (c) where no alternatives exist, all measures taken and foreseen to minimize the adverse effects of evictions. All final decisions should be subject to administrative and judicial review. Affected parties must also be guaranteed timely access to legal counsel, without payment if necessary.

42. Due eviction notice should allow and enable those subject to eviction to take an inventory in order to assess the values of their properties, investments and other material goods that may be damaged. Those subject to eviction should also be given the opportunity to assess and document non-monetary losses to be compensated.

43. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. The State must make provision for the adoption of all appropriate measures, to the maximum of its available resources, especially for those who are unable to provide for themselves, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available and provided. Alternative housing should be situated as close as possible to the original place of residence and source of livelihood of those evicted.

44. All resettlement measures, such as construction of homes, provision of water, electricity, sanitation, schools, access roads and allocation of land and sites, must be consistent with the present guidelines and internationally recognized human rights principles, and completed before those who are to be evicted are moved from their original areas of dwelling.<sup>h</sup> [FN<sup>h</sup> See section V of the present guidelines.]

#### **IV. DURING EVICTIONS**

45. The procedural requirements for ensuring respect for human rights standards include the mandatory presence of governmental officials or their representatives on site during evictions. The governmental officials, their representatives and persons implementing the eviction must identify themselves to the persons being evicted and present formal authorization for the eviction action.

46. Neutral observers, including regional and international observers, should be allowed access upon request, to ensure transparency and compliance with international human rights principles during the carrying out of any eviction.

47. Evictions shall not be carried out in a manner that violates the dignity and human rights to life and security of those affected. States must also take steps to ensure that women are not subject to gender-based violence and discrimination in the course of evictions, and that the human rights of children are protected.

48. Any legal use of force must respect the principles of necessity and proportionality, as well as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and any national or local code of conduct consistent with international law enforcement and human rights standards.

49. Evictions must not take place in inclement weather, at night, during festivals or religious holidays, prior to elections, or during or just prior to school examinations.

50. States and their agents must take steps to ensure that no one is subject to direct or indiscriminate attacks or other acts of violence, especially against women and children, or arbitrarily deprived of property or possessions as a result of demolition, arson and other forms of deliberate destruction, negligence or any form of collective punishment. Property and possessions left behind involuntarily should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

51. Authorities and their agents should never require or force those evicted to demolish their own dwellings or other structures. The option to do so must be provided to affected persons, however, as this would facilitate salvaging of possessions and building material.

#### **V. AFTER AN EVICTION: IMMEDIATE RELIEF AND RELOCATION**

52. The Government and any other parties responsible for providing just compensation and sufficient alternative accommodation, or restitution when feasible, must do so immediately upon the eviction, except in cases of force majeure. At a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for

themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions.

53. Special efforts should be made to ensure equal participation of women in all planning processes and in the distribution of basic services and supplies.

54. In order to ensure the protection of the human right to the highest attainable standard of physical and mental health, all evicted persons who are wounded and sick, as well as those with disabilities, should receive the medical care and attention they require to the fullest extent practicable and with the least possible delay, without distinction on any non-medically relevant grounds. When necessary, evicted persons should have access to psychological and social services. Special attention should be paid to: (a) the health needs of women and children, including access to female health-care providers where necessary, and to services such as reproductive health care and appropriate counselling for victims of sexual and other abuses; (b) ensuring that ongoing medical treatment is not disrupted as a result of eviction or relocation; and (c) the prevention of contagious and infectious diseases, including HIV/AIDS, at relocation sites.

55. Identified relocation sites must fulfil the criteria for adequate housing according to international human rights law. These include:<sup>i</sup> [FN: See general comment No. 4 on adequate housing adopted by the Committee on Economic, Social and Cultural Rights in 1991.] (a) security of tenure; (b) services, materials, facilities and infrastructure such as potable water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services, and to natural and common resources, where appropriate; (c) affordable housing; (d) habitable housing providing inhabitants with adequate space, protection from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease vectors, and ensuring the physical safety of occupants; (e) accessibility for disadvantaged groups; (f) access to employment options, health-care services, schools, childcare centres and other social facilities, whether in urban or rural areas; and (g) culturally appropriate housing. In order to ensure security of the home, adequate housing should also include the following essential elements: privacy and security; participation in decision-making; freedom from violence; and access to remedies for any violations suffered.

56. In determining the compatibility of resettlement with the present guidelines, States should ensure that in the context of any case of resettlement the following criteria are adhered to:

- (a) No resettlement shall take place until such time as a comprehensive resettlement policy consistent with the present guidelines and internationally recognized human rights principles is in place;
- (b) Resettlement must ensure that the human rights of women, children, indigenous peoples and other vulnerable groups are equally protected, including their right to property ownership and access to resources;
- (c) The actor proposing and/or carrying out the resettlement shall be required by law to pay for any associated costs, including all resettlement costs;
- (d) No affected persons, groups or communities shall suffer detriment as far as their human rights are concerned, nor shall their right to the continuous improvement of living conditions be subject to infringement. This applies equally to host communities at resettlement sites, and affected persons, groups and communities subjected to forced eviction;
- (e) The right of affected persons, groups and communities to full and prior informed consent regarding relocation must be guaranteed. The State shall provide all necessary amenities, services and economic opportunities at the proposed site;
- (f) The time and financial cost required for travel to and from the place of work or to access essential services should not place excessive demands upon the budgets of low-income households;
- (g) Relocation sites must not be situated on polluted land or in immediate proximity to pollution sources that threaten the right to the highest attainable standards of mental and physical health of the inhabitants;
- (h) Sufficient information shall be provided to the affected persons, groups and communities on all State projects and planning and implementation processes relating to the concerned resettlement, including information on the purported use of the eviction dwelling or site and its proposed beneficiaries. Particular attention must be paid to ensuring that indigenous peoples, minorities, the landless, women and children are represented and included in this process;

- (i) The entire resettlement process should be carried out with full participation by and with affected persons, groups and communities. States should, in particular, take into account all alternative plans proposed by the affected persons, groups and communities;
- (j) If, after a full and fair public hearing, it is found that there still exists a need to proceed with the resettlement, then the affected persons, groups and communities shall be given at least 90 days' notice prior to the date of the resettlement; and
- (k) Local government officials and neutral observers, properly identified, shall be present during the resettlement so as to ensure that no force, violence or intimidation is involved.

57. Rehabilitation policies must include programmes designed for women and marginalized and vulnerable groups to ensure their equal enjoyment of the human rights to housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman or degrading treatment, and freedom of movement.

58. Persons, groups or communities affected by an eviction should not suffer detriment to their human rights, including their right to the progressive realization of the right to adequate housing. This applies equally to host communities at relocation sites.

## **VI. REMEDIES FOR FORCED EVICTIONS**

59. All persons threatened with or subject to forced evictions have the right of access to timely remedy. Appropriate remedies include a fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation, and should comply, as applicable, with the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

### **A. Compensation**

60. When eviction is unavoidable, and necessary for the promotion of the general welfare, the State must provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interests in property. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, such as: loss of life or limb; physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; and costs required for legal or expert assistance, medicine and medical services, and psychological and social services. Cash compensation should under no circumstances replace real compensation in the form of land and common property resources. Where land has been taken, the evicted should be compensated with land commensurate in quality, size and value, or better.

61. All those evicted, irrespective of whether they hold title to their property, should be entitled to compensation for the loss, salvage and transport of their properties affected, including the original dwelling and land lost or damaged in the process. Consideration of the circumstances of each case shall allow for the provision of compensation for losses related to informal property, such as slum dwellings.

62. Women and men must be co-beneficiaries of all compensation packages. Single women and widows should be entitled to their own compensation.

63. To the extent not covered by assistance for relocation, the assessment of economic damage should take into consideration losses and costs, for example, of land plots and house structures; contents; infrastructure; mortgage or other debt penalties; interim housing; bureaucratic and legal fees; alternative housing; lost wages and incomes; lost educational opportunities; health and medical care; resettlement and transportation costs (especially in the case of relocation far from the source of livelihood). Where the home and land also provide a source of livelihood for the evicted inhabitants, impact and loss assessment must account for the value of business losses, equipment/inventory, livestock, land, trees/crops, and lost/decreased wages/income.

#### **B. Restitution and return**

64. The circumstances of forced evictions linked to development and infrastructure projects (including those mentioned in paragraph 8 above) seldom allow for restitution and return. Nevertheless, when circumstances allow, States should prioritize these rights of all persons, groups and communities subjected to forced evictions. Persons, groups and communities shall not, however, be forced against their will to return to their homes, lands or places of origin.

65. When return is possible or adequate resettlement in conformity with these guidelines is not provided, the competent authorities should establish conditions and provide the means, including financial, for voluntary return in safety and security, and with dignity, to homes or places of habitual residence. Responsible authorities should facilitate the reintegration of returned persons and exert efforts to ensure the full participation of affected persons, groups and communities in the planning and management of return processes. Special measures may be required to ensure women's equal and effective participation in return or restitution processes in order to overcome existing household, community, institutional, administrative, legal or other gender biases that contribute to marginalization or exclusion of women.

66. Competent authorities have the duty and responsibility to assist returning persons, groups or communities to recover, to the maximum extent possible, the property and possessions that they left behind or were dispossessed of upon their eviction.

67. When return to one's place of residence and recovery of property and possessions is not possible, competent authorities must provide victims of forced evictions, or assist them in obtaining, appropriate compensation or other forms of just reparation.

### **C. Resettlement and rehabilitation**

68. While all parties must give priority to the right of return, certain circumstances (including for the promotion of general welfare, or where the safety, health or enjoyment of human rights so demands) may necessitate the resettlement of particular persons, groups and communities due to development-based evictions. Such resettlement must occur in a just and equitable manner and in full accordance with international human rights law as elaborated in section V of these guidelines.

## **VII. MONITORING, EVALUATION AND FOLLOW-UP**

69. States should actively monitor and carry out quantitative and qualitative evaluations to determine the number, type and long-term consequences of evictions, including forced evictions, that occur within their jurisdiction and territory of effective control. Monitoring reports and findings should be made available to the public and concerned international parties in order to promote the development of best practices and problem-solving experiences based on lessons learned.

70. States should entrust an independent national body, such as a national human rights institution, to monitor and investigate forced evictions and State compliance with these guidelines and international human rights law.

## **VIII. ROLE OF THE INTERNATIONAL COMMUNITY, INCLUDING INTERNATIONAL ORGANIZATIONS**

71. The international community bears an obligation to promote, protect and fulfil the human right to housing, land and property. International financial, trade, development and other related institutions and agencies, including member or donor States that have voting rights within such bodies, should take fully into account the prohibition on forced evictions under international human rights law and related standards.

72. International organizations should establish or accede to complaint mechanisms for cases of forced evictions that result from their own practices and policies. Legal remedies should be provided to victims in accordance with those stipulated in these guidelines.

73. Transnational corporations and other business enterprises must respect the human right to adequate housing, including the prohibition on forced evictions, within their respective spheres of activity and influence.

### **IX. INTERPRETATION**

74. These guidelines on development-based evictions and displacement shall not be interpreted as limiting, altering or otherwise prejudicing the rights recognized under international human rights, refugee, criminal or humanitarian law and related standards, or rights consistent with these laws and standards as recognized under any national law.