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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, and the Special Rapporteur on the situation of human rights in Cambodia

REFERENCE: AL Housing (2000-9) G/SO 216/1
KHM 4/2011

17 June 2011

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, and Special Rapporteur on the situation of human rights in Cambodia pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/8 and 15/20.

We would like to bring your Excellency's Government's attention to information received concerning alleged **forced evictions and housing demolitions** in Phnom Penh.

According to the information received:

Three families were forcibly evicted on 27 May 2011 from their homes in Sangkath Phnom Penh, Thmey village, Khan Sen Sok. A total of 20 people, including nine adults (one disabled) and eleven minors were allegedly forcibly removed from their homes just after dawn by hundreds of military and gendarme officials, some of which were armed. The families were reportedly not injured, but the families' money and belongings were looted. Four adults were immediately taken to the district office and held for several hours. The housing and vendor structures were demolished and reduced to their foundations.

According to reports, this eviction follows a notice received on 31 March 2011 for the families to vacate the 32 x 60 meters plot (1920 square meters total) of land following an order from the National Land Dispute Resolution Authority, despite their having appealed earlier attempts at eviction. The disabled person was reportedly offered an apartment on the day of the eviction, and another family has also reportedly been offered an apartment but that is not yet available --both 15-20 kilometers from their homes in Dang Kor; a third family has reportedly not received an offer of compensation.

This case has been reportedly pending since 1992, when the families bought the land from a military officer (they have the purchase document, but attempts to secure a land title from the municipality have been unsuccessful). Beginning in September 2003 there have reportedly been multiple attempts to seize the land and evict the families, with little or no compensation, which the families protested. The case was first taken up by the municipal court of Phnom Penh, with no resolution, and a number of interim injunctions were allegedly ordered by the municipal court without calling the families for a hearing (and even though the court has no authority to handle cases where there is no title, per a 2003 inter-ministerial declaration by the Ministry of Justice/Ministry of Land Management). In January 2004 the case was sent to the municipal cadastral commission and in 2007 the families received information that the eviction order had been withdrawn.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer to Article 44 of the Constitution of the Kingdom of Cambodia and Article 5 of the 2001 Land Law, which guarantee the right to ownership and “the payment of fair and just compensation in advance,” as well as Article 30 which guarantees possession rights. Article 44 of the Constitution specifically stipulates 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.” We also refer to Article 37 of the Land Law, which guards against unlawful occupation or acquisition of land. Moreover, Article 36 of the Land Law, advises temporary suspension of evictions to mitigate social repercussions on the evictees (in this case the potential impact on a disabled woman and several children), and Article 48 of the Constitution affirms that “the State shall protect children from acts that are injurious to their education opportunities, health and welfare.” In addition, we would like to refer to the 2010 Expropriation Law, which sets out the principles, mechanisms, and procedures of expropriation, and defines fair and just compensation.

Further, we would like to refer to Article 11.1 of the International Covenant on Economic, Social and Cultural Rights, which holds that “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 Committee on Economic, Social and Cultural rights in its General Comment No.4 on adequate housing, stated that (paragraph 6) (...) “Enjoyment of this right must, in accordance with article 2 (2) of the Covenant, not be subject to any form of discrimination”.

The Committee further stated that (paragraph 8):

“Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus,

such disadvantaged groups as (...) the physically disabled, (...) persons with persistent medical problems, should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups". (...)."

As stated repeatedly by human rights bodies, including in resolution 1993/77 and 2004/28 of the Commission on Human Rights, forced evictions constitute *prima facie* violations of a range of internationally recognized human rights.

In General Comment No. 7 on forced evictions, adopted by the Committee on Economic, Social and Cultural Rights in 1997, the Committee stated that (paragraph 15):

"Appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both the International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) 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; (...) (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts". The Committee also underlined that "(...) Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available."

We also would like to draw your Excellency's attention on the fact that in its concluding observations on Cambodia on 22 May 2009 (E/C.12/KHM/CO/1), the Committee on Economic, Social and Cultural Rights urged (paragraph 30):

(...) The State party to implement a moratorium on all evictions until the proper legal framework is in place and the process of land titling is completed. The Committee recommends the State party to undertake urgent consultations with all stakeholders (...) and develop clear guidelines for the possible evictions. ... The Committee strongly recommends that the State party, as a matter of priority undertake open, participatory and meaningful consultations with affected residents and communities prior to implementing development and urban renewal projects and to ensure that persons forcibly evicted from their properties be provided with adequate compensation and/or offered relocation that complies with the guidelines adopted by the Committee in its General Comment No. 7 (1997) on forced evictions and guarantee that relocation sites are provided with basic services including drinking water, electricity, washing and sanitation, as well as adequate facilities including schools, health care centres and transportation at the time the resettlement takes place.

We urge your Excellency's Government to take all necessary measures to ensure the protection and full enjoyment of the right to the right of adequate housing in accordance with international standards.

It is our responsibility under the mandates provided by the Human Rights Council and reinforced by the appropriate resolution of the General Assembly, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Could you please indicate the reason for the eviction?
3. Could you please explain why the affected families have reportedly not been able to secure a land title from the municipality? Could you also please explain why both the municipal court and the municipal cadastral commission have been allegedly unable to resolve this case?
4. What measures were taken to ensure that the evictions were in accordance with Cambodia's obligations under international human rights law? In particular, please provide information on:
 - a) Any consultation undertaken with those affected;
 - b) Measures foreseen by the authorities to ensure that the forced eviction does not result in homelessness of the affected persons. In this framework, please provide information on what was foreseen in terms of alternatives for those affected and if relocation sites have been designated, please provide details on the exact location, including on access to public services and livelihood;
5. Could you please provide information on the current situation of the families affected by the alleged evictions?

We would welcome a response within sixty days and undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports that will be submitted to the Human Rights Council for its consideration.

Accept, Excellency, the assurance of our highest consideration.

Raquel Rolnik

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Surya Prasad Subedi

Special Rapporteur on the situation of human rights in Cambodia