

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
KHM 1/2015:

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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 Human Rights Council resolutions 25/17 and 24/29.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the situation of approximately 211 families, approximately 1000 people including children, residing in Chork Cha village, Sre Chouk commune, Keo Seima district, Mondulkiri province, who belong to the Bunong indigenous community. Community members have reportedly been subject to appropriation of their land, and denied access to justice and their right to titling of communal land provided under the 2001 Land Law.

According to information received:

Bunong indigenous families claim to have occupied the land in Chork Cha village, SreChouk commune, since the 1940s. During the Khmer Rouge period, many residents apparently fled the area but returned in the late 1990s as Cambodia's civil war drew to a close. There are now approximately 211 families residing in the village, the majority of who are of Bunong indigenous decent. On 24 May 2010, the community has formally been recognized as indigenous by the Ministry of Rural Development. On 13 November 2013, the community successfully applied for recognition as a legal entity with the Ministry of Interior. In December 2014, the community applied to the Ministry of Land Management, Urban Planning and Construction for title of their communal land.

On 24 October 2011, Binh Phouc Rubber Company 1 was issued a 70 year lease to cultivate rubber on an economic land concession covering 8,926 hectares of land including in Chork Cha village and other areas of Keo Seima District.

In early December 2014, representatives of Binh Phouc Rubber Company 1 bulldozed property used for agricultural activities and for seasonal residence and cleared forest and farmland claimed by indigenous families living in Chork Cha village. On 31 March 2015, representatives of Binh Phouc Rubber Company 1, accompanied by approximately 90 armed police and gendarmerie officers and a fire truck, bulldozed forest land, community farm land and approximately 170 temporary residential structures used by families and individuals on seasonal basis when planting crops and cultivating land. Families may spend months at a time living in these residences, have personal property inside them, but they typically return to their village during the rainy season. Local NGO representatives located nearby at the time of the eviction were warned by the Mondulhiri Provincial Governor that they would be arrested and charged with incitement if they attempted to enter the area to monitor. A prosecutor from the provincial court also accompanied the armed guards and was reportedly instructed to arrest any community members who protested against the eviction.

On 01 March 2011, Binh Phouc Rubber Company 2 obtained a lease to cultivate rubber on a 10,000 hectare economic land concession in Kratie Province, on adjacent land. There is evidence to suggest that concessionaires may have been allowed to circumvent the 10,000 hectare per person limit on concessions established in article 59 of the Land Law (2001) by obtaining separate but contiguous concessions and using them for the same purpose.

During negotiations between Binh Phouc Rubber Company 1 and the community prior to the evictions, community members were allegedly offered 375 hectares of land by Binh Phouc Rubber Company 1. The community rejected the offer due to the land being rocky, infertile and of too small an area to provide sustainable livelihoods for all 211 families.

Community members claim that, in contravention of the relevant provisions of the Land Law (2001), the Sub Decree on the Environmental Impact Assessment Process (1999) and the Sub-Decree on Economic Land Concessions (2005), they were not consulted prior to the issuing of the economic land concession. Thus far, they appear to have been excluded from land titling programmes and evicted off contested land with no additional recourse to protect their land that would allow them to receive fair and transparent determination of their claims to the contested land.

Article 23 of the Land Law (2001) states that prior to the legal status of indigenous land being determined, indigenous groups residing on land ‘shall continue to manage their community and immovable property according to their traditional customs’. Article 25 provides that ‘the lands of indigenous communities are those lands where the said communities have established their residences and where they carry out traditional agriculture. The lands of indigenous communities include not only lands actually cultivated but also includes [land] reserved necessary for the shifting of cultivation which is required

by the agricultural methods they currently practice and which are recognized by the administrative authorities'. Furthermore, in line with the Inter-Ministerial Circular on interim protective measures protecting lands of indigenous peoples in Cambodia, when an application requesting registration of communal land is submitted by an indigenous community, the head of the Provincial State Land Management Committee, where the indigenous community concerned is situated, shall issue a Deika providing interim protection of the communities' land until the boundaries can be verified. Interim protection measures have not yet been issued for the community in Chork Cha village and no title has been provided for any portion of the land claimed by the community.

The Sub Decree on the Environmental Impact Assessment Process (1999) stipulates which types of projects require an environmental impact assessment (EIA) to have been carried out. This includes 'concession forest', 'agriculture and agro-industrial land' and 'land covered by forest', as well as basic structures used as seasonal residences. The Law on Environmental Protection and Natural Resources Management also states that all development projects, whether they are implemented by the state or a private entity, require an environmental impact assessment (EIA) to be conducted. No EIA report has been published detailing the potential impact of the Binh Phouc Rubber Company 1 economic land concession.

Furthermore, the Sub-Decree on Economic Land Concessions (2005) stipulates that economic land concessions should only be granted when all the following criteria have been met: the land has been registered and classified as state private land; a land use plan has been adopted by the provincial or municipal state land management committee, and the proposed land use is consistent with the plan; environmental and social impact assessments have been completed with respect to the land use and development plan; there are solutions for resettlement issues, in accordance with the existing legal framework and procedures; there shall be no involuntary resettlement by lawful land holders and access to private land shall be respected; and public consultations have been conducted with territorial authorities and local residents relating to the concession proposal.

Without expressing at this stage an opinion about the merits of the case and the validity of the community members' claims to the land, we would like to appeal to Your Excellency's Government to take all necessary measures to guarantee that all those contesting ownership of disputed land receive a fair assessment of such claims at an appropriate court or dispute resolution mechanism and to declare that, until such an assessment is concluded, all further action in clearing or developing the contested land is suspended.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide details as to whether the claim for indigenous land title has been assessed, whether an environmental and social impact assessment was completed before the company took possession of the land, and whether the community was consulted as part of that process. If so, please provide the results of such procedures.
3. Please provide information on the specific ways in which existing international standards on the right to adequate housing has been implemented in this context by the local, subnational and central governments, in relation to concessions of land for companies.
4. If it is true that armed police were present during the eviction that allegedly occurred, please explain why the presence of armed police was deemed necessary and what role they played in the eviction.
5. Please confirm whether a court order was issued authorizing the eviction, whether the community was provided a copy of such order in advance, and whether they were provided with the opportunity to appeal such decision before a court.
6. Please outline what steps will be taken to provide any landless poor families affected by the concession of land to the Companies with alternative temporary housing, agricultural land, necessary income or livelihood support to ensure their wellbeing.
7. Please explain how the 2001 Land Law was applied in this particular case.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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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

Annex

Reference to international human rights law

In connection with the above concerns, we would like to remind your Excellency's Government of its obligations under various international human rights instruments, in particular the International Covenant on Economic, Social and Cultural Rights to which Cambodia is a party since 26 May 1992, and more specifically article 11.1 recognizing the right of everyone to an adequate standard of living for himself and his family, including food and housing, and to the continuous improvement of living conditions. This article must be read in conjunction with article 2.2 of the Covenant which provides for the exercise of any right under the Covenant without discrimination of any kind.

The Committee on Economic, Social and Cultural Rights in its General Comment No. 4 has stressed that the right to adequate housing should not be interpreted in a narrow or restrictive sense such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. This General Comment outlines the following aspects of the right to housing: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy.

Furthermore, according to the Committee's General Comment No. 7 on forced evictions, paragraphs 15 and 16, procedural protections are essential in relation to forced evictions, including, among others, genuine consultation, adequate and reasonable notice, alternative accommodation made available in a reasonable time, and provision of legal remedies and legal aid. In paragraph 17, the Committee further emphasizes 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 wish to call your attention to the Basic Principles and Guidelines on Development-based Evictions and Displacement, prepared by a former Special Rapporteur on adequate housing, which provides guidance on the States' obligations before, during and after development-based evictions.

Article 31 of the Cambodian Constitution states that Cambodia recognizes and respects human rights that are enshrined in the UN Charter, the Universal Declaration of Human Rights and the Conventions and Covenants related to human, women and children's rights.

The Royal Government of Cambodia also voted in favor of the UN Declaration on the Rights of Indigenous Peoples at the UN General Assembly in 2007. The Declaration provides that indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and,

where possible, with the option of return. The Declaration also provides that indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

In its General recommendation XXIII on the rights of indigenous peoples, the Committee on the Elimination of Racial Discrimination further reinforced the rights of indigenous peoples during its 51st session in 1997, HRI/GEN/1/Rev.7. The Committee called upon States to “recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where 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.”