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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; the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

REFERENCE: AL Housing (2000-9) G/SO 216/1 Assembly & Association (2010-1) Health (2002-7) G/SO 214 (67-17)
KHM 2/2012

20 April 2012

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; Special Rapporteur on the situation of human rights in Cambodia; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 15/8, 18/25, 15/21, 16/4 and 15/22.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the **alleged forced eviction of families from the Borei Keila community in Phnom Penh.**

The allegation of forced evictions of families from the Borei Keila community in Phnom Penh were subject of a previous communication sent by 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, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the situation of human rights in Cambodia to your Excellency's Government on 23 September 2011. The Special Rapporteurs regret that to date your Excellency's Government has not transmitted responses to the aforementioned communication.

According to the information received:

On 3 January 2012, at least one hundred police and state security forces, allegedly with the help of workers of Phan Imex company, violently and forcibly evicted around 300 families living in Borei Keila, using tear gas, rubber bullets and rocks, and reportedly destroyed their homes.

On 11 January 2012, law enforcement officials and Daun Penh district security guards allegedly arbitrarily detained a number of women and children (reportedly twenty-two women and six children) as well as other residents at Prey Speu Social Affairs Center in Phnom Penh, Cambodia who were peacefully protesting their forced eviction from the Borei Keila community. Other residents, who continued to protest, allegedly face intimidation. It is reported that representatives of Phan Imex, the company reputedly involved in the violent forced eviction of Borei Keila, tried to intimidate the evictees and told them they would only be released if they accepted land at Tuol Sambo or Srah Po resettlement sites, on the outskirts of Phnom Penh and in Kandal province respectively.

According to the information received, a number of residents had only been released after having accepted land in Srah Po, and the evicted families were relocated to resettlement sites (total 1.83 hectares), thereby being deprived of basic services and infrastructure, lacking potable water and sanitation services. These sites are reported not to conform to international standards on adequate housing. As of 18 January 2012, between 102 and 166 families (or about 600 persons) were reportedly present at the site, some of whom received 5 x 12 meter plots of bare land and began to construct homes; others were reportedly told they would not receive land or housing and would have to relocate to the other site or elsewhere, and are meanwhile living under tarpaulin sheets. Among the 600 persons at the relocation site, the majority are reportedly women and children. There are reportedly 9 families living with HIV/AIDS who also suffer from tuberculosis.

It is alleged that there is no adequate access to medical care at the relocation sites, and cases of diarrhoea, respiratory concerns, fever, and skin irritation have been reported. It is further alleged that the remote location and the current setting of this resettlement site impact food security, thereby further exacerbating already limited livelihood options. Regarding the site at Tuol Smabo, the situation remains uncertain and it is reported that 27 families were transported to this site following their eviction, in spite of absent housing.

Based on the information received, it is furthermore estimated that around 125 families had remained in Phnom Penh despite their homes having been destroyed.

Some of them are said to continue to protest over the forced eviction and lack of any housing.

Moreover, it is stated that on 2 February 2012, police violently dispersed around 150 women protesting against these forced evictions in both, Borei Keila and another site in Phnom Penh, Boeung Kak Lake. According to information received, six women were arrested and detained overnight, including four Borei Keila women who had been held previously at Prey Speu Social Affairs Center.

Because of the particular status of Borei Keila (recognized as a “social land concession” in 2003) an agreement was stipulated in 2003 between the company Phan Imex, the Municipality of Phnom Penh and the residents of Borei Keila. It was reportedly decided that 2,6 hectares of this land had to be given to the private developer Phan Imex for commercial purposes, while providing housing to residents on the remaining land. The Phan Imex Company was obligated to build ten apartment buildings for 1,776 residents on two hectares of land, in return for obtaining ownership of an additional 2.6 hectares for commercial development. Despite this agreement, after having constructed eight buildings only, the company Phan Imex reportedly reneged on the agreement in April 2010 with the approval of the government, thereby leaving about 384 Borei Keila families excluded from the original plan, consequently living informally and under threat of eviction on the site, while seeking intervention and assistance from government agencies to no avail.

While we do not wish to prejudge the accuracy of these allegations, we would like to remind your Excellency’s Government of article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which the Kingdom of Cambodia is a party, which states that “the States Parties to present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including housing, and to the continuous improvement of living conditions”. The Committee on Economic, Social and Cultural Rights commented the right to adequate housing in its General Comment No. 4, stressing that the right to 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. With “due priority to those social groups living in unfavorable conditions,” the right to housing includes guaranteeing: (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. The Committee also added that “the right to housing should be ensured to all persons irrespective of income or access to economic resources”.

As repeatedly stated, including in resolutions 1993/77 and 2004/28 of the Commission on Human Rights, forced evictions constitute prima facie violations of a wide range of internationally recognized human rights and large-scale evictions may only

be carried out under exceptional circumstances and in full accordance with international human rights law. According to the General Comment No. 7:

“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; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (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.

“16. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. 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 Government attention to 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, in order to ensure the protection of human rights of all Cambodians, including indigenous peoples. The Committee recommends the State party to undertake urgent consultations with all stakeholders in order to reach a definition of "public interest" to complement the 2001 Land Law and develop clear guidelines for the possible evictions. The Committee also urges the State party clearly to identify the demarcation of State Public Land and State Private Land. 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 centers and transportation at the time the resettlement takes place. The Committee also draws the attention of the State party to the guidelines on Development-based Evictions and Displacement (UN Document: A/HRC/4/18), prepared by the UN Special Rapporteur on the right to adequate housing.

In view of this, we wish to recall that these Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18) aim at assisting States in developing policies and legislations to prevent forced evictions at the domestic level. Your Excellency's Government may find useful in the current circumstances the sections of the guidelines that focus on State obligations prior to, during and after evictions.

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

With regard to the alleged violent dispersal of aforementioned peaceful protests, we would like to appeal to your Excellency's Government to take all necessary steps to ensure the right of peaceful assembly as recognized in article 21 of the ICCPR, which provides that "[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

We would also like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that "Calls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

With regard to the alleged inadequate access to medical care, we would appreciate information from your Government on the steps taken by the competent authorities with a view to ensuring the enjoyment of the right to the highest attainable standard of health of the evicted persons. This right is enshrined, inter alia, in article 12 of the ICESCR, which Cambodia acceded to on 26 May 1992 and which specifically provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This includes an obligation on the part of all States to ensure that health facilities,

goods, and services are accessible to everyone without discrimination, especially the most vulnerable or marginalized sections of the population, including those living with HIV/AIDS. We also wish to refer your Excellency's Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which holds that health facilities, goods and services have to be accessible to everyone without discrimination, further elaborating that accessibility has four overlapping dimensions, such as non-discrimination, physical accessibility, economic accessibility and information accessibility (para. 12(b)). General Comment No. 14 further holds that the right to health also extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment (para. 4). States have an obligation to ensure equal access for all to the underlying determinants of health (para. 36).

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and that accountability of any person guilty of the alleged violations is ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

As it is our responsibility, according to the mandates entrusted to us by the Human Rights Council, to clarify all allegations brought to our attention. We would therefore greatly appreciate detailed information from your Excellency's Government concerning the above situation and about the measures taken by the competent authorities. We would in particular appreciate to receive information on the following points:

1. Are the facts alleged in the above summary of the case accurate?
2. Did appropriate consultations take place with the affected community? If yes, please provide details, date and outcome of these consultations.
3. To what extent have measures of compensation been put in place for all concerned person, with a due assessment of the loss of their housing? If so, on what basis has compensation been calculated?
4. What measure have been foreseen to ensure that the evicted persons will not become homeless?
5. What specific measures are being taken to guarantee adequate housing to the families relocated to Tuol Sambo and Srah Po resettlement sites?
6. What else has been foreseen in terms of relocation? If locations have been designated for the relocation, please provide details on the exact location,

including details on the area and quality of land, access to public services and livelihood sources.

7. Please indicate the legal basis of the dispersal of the aforementioned peaceful assemblies, and the subsequent arrest and detention of peaceful demonstrators. Please indicate how these measures are compatible with international human rights norms and standards.
8. Please provide details of any measures taken to ensure the enjoyment of the right to the highest attainable standard of health of the evicted persons.

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

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

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