

Mandate of the Special Rapporteur on the situation of human rights in Cambodia

REFERENCE:
AL KHM 8/2018

21 December 2018

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the situation of human rights in Cambodia, pursuant to Human Rights Council resolution 36/32.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received through petitions during my last visit concerning alleged land rights violations in land dispute cases involving private companies, respectively in Koh Kong, Kratie and Phnom Penh provinces.

In the Koh Kong province, 77 families from Kiri Sakor District- Somrung Takeo Village and Yeay Sen Village, Prek Khsach Commune; Pji Meas Village, Tani Village and Kean Kro Lanh Village, Pji Meas Commune and Botom Sakor District, Jom Lomg Kor Village in Thmor Sor Commune; Tanoun Village, Bak Ronois Village, Prek Kjong Village and Toul Poh Village in Tanoun Commune, claim the land that sizes 1,129,16 hectares which was conceded to the Union Development Group in 2008, belongs to the families of the victims who have held land occupation titles and have been using the land for many years. Despite having official documents proving their ownership of farmlands inside UDGs concessions, the victims claimed to have been left out of the compensation process established by the Government with the reason that their residential land is outside UDGs concession. I understand that the decision dated 16 October 2018, No. 69 Sar.Sar.Ro, of the Royal Government of Cambodia has led to the creations of a Mixed Working Group for the Reception and Resolution of complaints/petitions from villagers impacted by the UDG concession and headed by the Minister of Environment.

Further, it has been brought to my attention that the land 171 families living in Koh Sdach commune and Pnhi Meas commune, Prek Ksach commune, Kikisakor district, lost to the company Koh Kong SEZ CO.LTD of Oknha Ly Yong Phat (granted an ELC in 2009) continue their fight to get a fair compensation or to get their land back. The same 171 families called for the release of Heng Sok, male, 48 years old, living in Samrong Takeo, Prek Ksach commune, Kikisakor district, Koh Kong province, who has been detained since 23 February 2018 on charges of encroaching the land of the company while he was planting land-markers on his farmland (now within the boundaries of the ELC). He was tried on 2 August 2018 by the Koh Kong Provincial Court of First Instance, and the verdict was announced on 21 August. He was further found guilty of "use of violence against a possessor in good faith of immovable property" (article 253 of the Land Law) and sentenced to 1 year and 6 months in prison along with a fine of 2,000,000 riels.

In Kratie, on 8 March 2018, approximately 1400 families from Jeung Kler Village, Pi Thnou Commune, Snoul District, were forcefully evicted from their farming land which they claim to have occupied since 2012 for some and 2014 for others, by the Memot Rubber Plantation Company, with support from the local authorities. While some community members claimed that they have bought land in the area in 2012, 2013 or over the last few years, some community members who have been living in the area for a longer time 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), were not consulted prior to the issuing of the economic land concession. On the information I have received, they appear to have been evicted from contested land with no additional recourse to protect it that would allow them to receive fair and transparent determination of their claims to the contested land.

I understand that, following protests and petitions from the affected villagers, a Working Group was assigned by H.E Chea Sophara on 25 October 2018, to measure the land lost by villagers and identify compensatory land of same nature in the vicinity. However, according to recent information received from the community, it appears that the affected villagers, at the local level, were asked to complete Social Land Concession application forms. As per my understanding, I believe that Social Land Concessions are for poor and landless people and not for people whose land was conceded to a private company or who should have been compensated for their loss, independent from the fact that they have – or not – other land. I would therefore encourage the Working Group to consider this fact and to provide adequate compensatory land to the affected families. Regarding Borei Keila, according to the petitioners, in September 2017, the District Governor of Khan 7 Makara offered to a group of 15 affected families a house at the Andoung resettlement site and 5000 USD per family. Three families refused the house but accepted a financial compensation of USD 16,000. The other 7 families refused the offered compensation and would like to have access to an onsite upgrading. 32 families are still waiting for their applications for compensation to be evaluated by the Municipality.

Regarding Boeung Kak, I received information that 29 families were compensated and received compensatory land with land titles (12 families received 4m x 16m plots per family; 4 families received 4m x 10m plots per family and 13 families received 4m x 18m plots per family, depending on the original size of their land). However, based on the information I have received, six families are still demanding fair compensation: 1) a group of 4 families living in village 6, who refused the land title that was offered to them by the Phnom Penh Municipality in 2015 because the size of the land indicated on the land title was half the size of their actual land, and they continue to ask for a land plot equivalent in size to the one they have lost; 2) Two families, the family of Mr. Khin Chantha and the family of Ms Phan Chhun Reth face special situations. Mr Khin's house is surrounded by the company's land and his access to his house has reportedly become extremely complicated as well as his living conditions have been severely impacted. He has been asking the Municipality for two plots of land as compensation but reportedly did not obtain any response. As to Ms Phan's house, it is partly overlapping the company's

land. The Phnom Penh Municipality has reportedly ordered her to remove the part of her house overlapping with the company's land. She refuses and asks for a new land equal in size to her actual land (233.6 m2).

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

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide information on the progress and conclusions of the working group regarding the 77 families from various districts mentioned above and whether the working group is examining at the situation of these families.
2. Please provide more information on the situation of compensation for the above-mentioned 171 families as well as an update on the case of Heng Sok.
3. Please provide information regarding the recent progress made in the finalization of the compensation process for Boeng Kak and Borei Keila evicted families.
4. If more information could be provided in relation to negotiations ongoing or planned with these families regarding the Borei Keila case

I would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I 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.

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

Rhona Smith
Special Rapporteur on the situation of human rights in Cambodia

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to take this opportunity to draw your attention to applicable international human rights norms and standards, as well as authoritative guidance on their interpretation.

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.