



INTERNATIONAL
COMMISSION
OF JURISTS

ICJ's Comments on the Initial Report of Cambodia on the implementation of the International Covenant on Economic, Social and Cultural Rights

April 2009

The International Commission of Jurists (ICJ) wishes to provide its views to the Committee on Economic, Social and Cultural Rights for its consideration of the Initial Report (the Report) of Cambodia on the implementation of the International Covenant on Economic, Social and Cultural Rights (the Covenant). In this submission, the ICJ highlights several issues which it considers should be of particular concern to the Committee when it considers the Report of Cambodia.

In particular, the ICJ is concerned with the Government's participation in - and failure to protect its people from - forced evictions. The ICJ is also deeply concerned at the harassment and absence of protection for human rights defenders who focus on economic, social and cultural rights, particularly those working on housing and land rights. Finally, while welcoming the Cambodian Government's efforts to pass legislation and adopt policies to fulfil its obligations under the Covenant, the ICJ is concerned at its failure to implement these laws and policies and provide remedies to victims of human rights violations. This implementation gap is facilitated by the absence of an independent and impartial judiciary and a lack of access to justice.

Forced Evictions

There are frequent and consistent reports concerning the practice of forced evictions in Cambodia, in violation of article 7(1) of the Covenant. The practice of forced evictions in some instances has been directed against entire communities. One example, highlighted by the Office of the High Commissioner for Human Rights in Cambodia, is the forced eviction of the Dey Krohom community on the night of 23 January 2009.¹ Many members of this community had been living peacefully in their homes since the 1980's and should qualify under Cambodia's Land Law as having possession and a right to ownership.² Even in absence of a title of possession Articles 40 and 42 of the Land Law protect the rights of individuals, if they qualified for such a title, to ownership under the law and in cases of disputes to have the claim investigated to determine the lawful possessor.³ The Dey Krohom community was not afforded either of these protections. Law enforcement personnel evicted families in the middle of the night, after an immediate halt to negotiations with the private company that sought to develop the area and residents who resisted the eviction were violently beaten.⁴ In General Comment No. 7 the Committee noted that some "...instances of forced eviction occur in the name of development. Evictions may be carried out...in connection with...land acquisition measures associated with urban renewal, housing

¹ Office of the High Commissioner for Human Rights in Cambodia, Statement, Phnom Penh, 28 January 2009; UN Special Rapporteur on Adequate Housing, Raquel Rolnik, Statement, "Forced Evictions in Cambodia make thousands of peoples homeless: UN expert", 30 January 2009.

² Office of the High Commissioner for Human Rights in Cambodia, Statement, Phnom Penh, 28 January 2009.

³ Land Law of Cambodia, Title II- Acquisition of Ownership, Chapter 4 – Reconstitution of ownership over immovable property ownership by extraordinary acquisitive possession, Articles 40 and 42, Adopted 13 August 2001.

⁴ Office of the High Commissioner for Human Rights in Cambodia, Statement, Phnom Penh, 28 January 2009; UN Special Rapporteur of Adequate Housing, Raquel Rolnik, Statement, "Forced Evictions in Cambodia make thousands of peoples homeless: UN expert", 30 January 2009; Radio Free Asia, News Article: *Homes demolished in Cambodia land grab*, 3 February 2009.

renovation, [and] city beautification programmes....”⁵ As such, the evictions of Dey Krohom and similar evictions not only violate Cambodia’s Land Law but also Cambodia’s obligations under the Covenant.

In its General Comment No. 7 the Committee reaffirmed its views, previously stated in General Comment No. 4 that, in regards to the right to an adequate standard of living, including a right to adequate housing, “...forced evictions are prima facie incompatible with the requirements of the Covenant.”⁶ The Committee confirmed that “...article 2.1 [of the Covenant] obliges States to use ‘all appropriate means’ to promote the right to adequate housing. The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions....”⁷ In order to fulfil its obligations under the Covenant, the Government of Cambodia must protect its people from forced evictions.

One means that government of Cambodia presently has to address the problem of forced evictions and denial of the right to adequate housing is implementation of certain provisions of the Land Law. The Land Law clearly identifies terms on which a person may become the legal owner of immovable property through possession. The law provides that “[a]ny person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership.”⁸ Further, Article 5 of the Land Law protects citizens from being deprived of their ownership of property except in accordance with law, where it is in the public interest, in which case they are to be compensated.⁹ The law requires that fair and just compensation be paid before the deprivation of property takes place, so that any deprivation that takes place before or without such compensation, or which is not for the public interest, is illegal.¹⁰ Further, Article 35 of the Land Law states “[i]ndividuals or authorities not acting on behalf of the State or public legal entities are not competent to remove forcibly a peaceful occupant holding valid title. Removal can only be made by court’s order upon the claim of the person who claims the property.”¹¹ The protection this law offers could help meet Cambodia’s obligation under Article 11 of the Covenant. However, because it is rarely implemented, the law in practice does not protect individuals from forced evictions.

The ICJ requests the Committee on Economic Social and Cultural Rights:

- **To recommend to the Government to ensure observance of the right to adequate housing, including guarantees against forced evictions. In particular, the authorities must ensure that any eviction is undertaken in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality; that no person is rendered homeless by an eviction; and that procedural guarantees, including access to courts, are provided in line with the Committees prescriptions in General Comment 7 (para.16) ;**

⁵ Committee on Economic, Social and Cultural Rights, *General Comment No. 7, The right to adequate housing (art. 11.1 of the Covenant): forced evictions*, UN Doc. E/1998/22, annex IV, 20 May 1997, para. 7.

⁶ Committee on Economic, Social and Cultural Rights, *General Comment No. 7, The right to adequate housing (art. 11.1 of the Covenant): forced evictions*, UN Doc. E/1998/22, annex IV, 20 May 1997, para. 1. Emphasis in original.

⁷ *Id.* para. 8.

⁸ Land Law of Cambodia, Title II - Acquisition of Ownership, Chapter 4 – Reconstitution of ownership over immovable property ownership by extraordinary acquisitive possession, Article 30, Adopted 13 August 2001. However, Article 8 stipulates that only natural persons or legal entities of the Khmer nationality have the right to ownership of land in the Kingdom of Cambodia.

⁹ Committee on Economic, Social and Cultural Rights, *Initial Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Cambodia*, UN Doc. E/C.12/KHM/1, 2 December 2008, para. 513.

¹⁰ Land Law of Cambodia, Title I- Private and Public Ownership, Chapter 1- Principles of ownership, Article 5, Adopted 13 August 2001.

¹¹ Land Law of Cambodia, Title II- Acquisition of Ownership, Chapter 4 – Reconstitution of ownership over immovable property ownership by extraordinary acquisitive possession, Article 35, Adopted 13 August 2001.

- To urge the Government to implement and enforce its domestic law, including the Land Law of Cambodia, in accordance with its Covenant obligations. To this end, the relevant authorities should respect the provisions of the Land Law that guarantee that no one shall be deprived of ownership except in accordance with law, where it is in the public interest, and following due compensation.
- To advise the Government of its obligation to protect the most vulnerable groups, like the victims in the Dey Krohom community, from forced evictions, in particular by refraining from the adoption of “[p]olicies and legislation...designed to benefit already advantaged social groups at the expense of others.”¹²

Attacks on Human Rights Defenders

Attacks on human rights defenders, especially those working in the area of housing and land rights, create further obstacles to the realization of the right to adequate housing in Cambodia. As the work of human rights defenders is necessary for the realization of all the rights, including the right to adequate housing, their rights must also be protected. As the Committee noted in its General Comment No. 4 “...the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants...the full enjoyment of other rights - such as the right to freedom of expression, the right to freedom of association...the right to freedom of residence and the right to participate in public decision-making - is indispensable if the right to adequate housing is to be realized and maintained by all groups in society.”¹³ Yet, in Cambodia the rights of human rights defenders are not protected, and they face serious risks.¹⁴

In contrast to providing protection for human rights defenders, state authorities have used the judicial system to target those who speak out against forced evictions and conduct advocacy in respect of land rights.¹⁵ Human rights defenders face arbitrary interference with their ability to conduct their work, including use of the criminal law to intimidate those who speak out for communities threatened with forced and illegal evictions or sale of their property.¹⁶ Charges such as defamation and wrongful damage to property are applied to community leaders who resist evictions or draw attention to the individuals and companies who are driving such evictions.¹⁷ The use of the criminal law to silence human rights defenders, apart from amounting to a separate violation of human rights, has a two immediate consequences: first, charging human rights defenders with crimes for their actions takes a resource from the communities they were assisting; and second, it deters potential human rights defenders from assisting others who need help to realize the right to adequate housing through protection against forced evictions.

The ICJ welcomes assurances by the Government of Cambodia, in response to the list of issues formulated by the Committee, that local authorities are not permitted to apply adverse pressure on human rights defenders. Nevertheless, many authorities do not seem to

¹² Committee on Economic, Social and Cultural Rights, *General Comment No. 4, The right to adequate housing (art. 11.1 of the Covenant)*, UN Doc. E/1992/23, 13 December 1991, para. 11.

¹³ Committee on Economic, Social and Cultural Rights, *General Comment No. 4, The right to adequate housing (art. 11.1 of the Covenant)*, UN Doc. E/1992/23, 13 December 1991, para. 9.

¹⁴ Hina Jilani, Special Representative of the Secretary-General, *Report Submitted by the Special Representative of the Secretary-General on the Situation of Human Rights Defenders, Addendum, Summary of cases transmitted to governments and replies received*, UN Doc. A/HRC/7/28/Add.1, 5 March 2008, para. 182-187.

¹⁵ Raquel Rolnik, Special Rapporteur on adequate housing, *Report 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, Addendum, Summary of Communications sent and replies received from governments and other actors*, UN Doc. A/HRC/10/7/Add.1, 17 February 2009, para. 31.

¹⁶ *Id. and see also Id.*; Yash Ghai, Special Representative of the Secretary-General for human rights in Cambodia, *Report of the Special Representative of the Secretary-General for human rights in Cambodia*, UN Doc. A/HRC/7/42, 29 February 2008, [hereinafter: *Report of the Special Representative of the Secretary-General*] para. 69.

¹⁷ *Id.*; Report of the Secretary-General, *Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights*, UN Doc. A/HRC/7/56, February 11, 2008 para. 43.

respect this prohibition on the ground. The Government's declaration that "No one shall be physically abused or shall be kept in the[sic] prison as a result of land dispute"¹⁸ is encouraging, but not sufficient. Steps must be taken to ensure that this Government message is carried out at all levels and that human rights defenders, specifically those working to protect land rights, can carry out their work without inappropriate Government interference. In addition, the Government must ensure accountability for any officials that fail to respect this injunction.

The ICJ requests the Committee on Economic Social and Cultural Rights:

- **To express concern at the failure of the Government of Cambodia to adequately address the allegations of repression of human rights defenders, and to request specific information on how the Government's stated policy, that human rights defenders be protected, is implemented at the local level.**
- **To urge the Government to ensure that national and local authorities cease exposing human rights defenders, including those who speak out against forced evictions and land rights issues, to serious risks; to refrain from abusing the criminal justice system against human rights defenders through trumped-up charges for defamation and wrongful damage to property; and to offer legal and other necessary protection to those who suffered such harassment;**
- **In line with its General Comment No. 4, to reaffirm the necessity for the Government to protect all human rights, including those of human rights defenders working to promote the right to adequate housing, as they are a significant resource for communities where the right to adequate housing is threatened and are necessary for the realization of this right by these groups.**

Judicial Independence and Access to Justice

The ICJ wishes to underline the necessity of legal remedies for violations of the Covenant, as reflected in Article 8 of the Universal Declaration of Human Rights and according to which "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law". The ICJ supports the interpretation by the Committee, according to which State parties must provide domestic legal remedies for violations of economic, social and cultural rights unless they show either that such remedies are not "appropriate means" within the terms of Article 2, paragraph 1, of the Covenant or that, in view of the other means used, they are unnecessary.¹⁹ Furthermore, the ICJ shares the Committee's view, expressed in its General Comment No. 9, that "...the other means used could be rendered ineffective if they are not reinforced or complemented by judicial remedies."²⁰

An independent and impartial judiciary is essential to ensuring the availability of such judicial remedies. Unfortunately in Cambodia, while the Constitution guarantees the independence of the judiciary and separation of powers in government, both are substantially lacking in practice. The Government regularly interferes with the justice system by instructing both prosecutors and judges on the conduct of cases, sometimes directly instructing judges as to the disposition of a case, ignoring the weight of the evidence.²¹ Moreover, in contradiction to Cambodian law the executive has effective control of the Supreme Council of Magistracy, the advisory body that evaluates the independence and organization of the judiciary. This control creates a high risk of bias in evaluations and

¹⁸ Committee on Economic, Social and Cultural Rights, *Replies by the Government of Cambodia to the list of issues (E/C.12/KHM/Q/1) to be taken up in connection with the consideration of the fourth and fifth periodic reports of Cambodia (E/C.12/KHM/1): Cambodia*, UN Doc. E/C.12/KHM/Q/1/Add.1, 18 March 2009, para. 116.

¹⁹ Committee on Economic, Social and Cultural Rights, *General Comment No. 9, The domestic application of the Covenant*, UN Doc. E/1989/22, 3 December 1998, para. 3.

²⁰ *Id.*

²¹ *Report of the Special Representative of the Secretary-General*, para. 54.

removes even the appearance of independence of the judiciary.²² This political interference also threatens the duty of the Government to guarantee the rights of the Covenant “without discrimination of any kind”.²³ The practices of Cambodia contravene the UN Basic Principles on the Independence of the Judiciary which provide in article 2 that “[t]he judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.”

The lack of an independent judiciary in Cambodia has harsh consequences on the availability of remedies and redress for violations of economic, social and cultural rights. These consequences can be seen, for example, in the systematic failure to ensure remedies for victims of forced evictions, due to the Governments’ involvement in such evictions, which occur in violation of the Land Law.²⁴ A failure to implement this law constitutes a violation of Cambodia’s obligations under the Covenant because, as confirmed by the Committee, even in cases where an eviction is legitimate, “...it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.”²⁵ The Government must ensure that people are protected from such evictions and threats, and provide for effective remedies, including reparations such as adequate compensation, when such evictions occur.

Access to justice for violations of economic, social and cultural rights is further impeded by the lack of legal aid and impartial prosecutors. NGOs that provide legal aid face great difficulty in bringing legal support to the poor, those who are most often victims of violations of the Covenant. The Cambodian Bar Association (BAKC) seems to be heavily influenced by political powers and it has tried to obstruct the ability of NGOs to provide legal aid.²⁶ Moreover, there have been some cases where lawyers who try to defend the rights of the poor have been charged with crimes themselves, because of political influence on prosecutors.²⁷ In General Comment No. 9 the Committee noted that “...appropriate means of ensuring governmental accountability must be put in place...”²⁸ in order for a State party to fulfil its obligation to implement the Covenant. The lack of an independent judiciary and access to justice in Cambodia prevent government accountability for the violations and failure to meet its obligations under the Covenant and as such the government is failing to effectively implement the Covenant.

The Committee on Economic Social and Cultural Rights should urge the Government:

- **To fulfil its obligations under the Covenant, including by providing legal remedies for violations of economic, social and cultural rights and by ensuring that the judiciary operates independently and impartially in accordance with international standards, separate from the influence or interference of the executive branches of the government such as instructions to prosecutors and judges on how to handle cases, evaluate the evidence or determine a case.**
- **To uphold its duty to ensure the rights of the Covenant are guaranteed without discrimination, as required under Article 2 of the Covenant, and to ensure government accountability for meeting its obligations under the Covenant, through improving access to justice and guaranteeing effective remedies free from**

²² Leandro Despouy, Special Rapporteur on the independence of judges and lawyers, *Report of the Special Rapporteur on the independence of judges and lawyers, Addendum, Situations in Specific Countries or Territories*, UN Doc. A/HRC/8/4/Add.1, 28 May 2008, para. 60.

²³ Article 2 of the International Covenant on Economic, Social and Cultural Rights.

²⁴ *Report of the Special Representative of the Secretary-General*, para. 62-64.

²⁵ Committee on Economic, Social and Cultural Rights, *General Comment No. 7, The right to adequate housing (art. 11.1 of the Covenant): forced evictions*, UN Doc. E/1998/22, annex IV, 20 May 1997, para. 11.

²⁶ *Report of the Special Representative of the Secretary-General*, paras. 48, 49, 51.

²⁷ Amnesty International, “Cambodia: A Risky Business—Defending the Right to Housing,” September 26, 2008.

²⁸ Committee on Economic, Social and Cultural Rights, *General Comment No. 9, The domestic application of the Covenant*, UN Doc. E/C.12/1998/24, 3 December 1998, para. 2.

discrimination, which are enforced by an independent and impartial judiciary, as noted in General Comments 3 and 9.²⁹

- To address other impediments to access to justice, such as the lack of legal assistance, harassment of lawyers and influencing the prosecutors.

²⁹ Committee on Economic, Social and Cultural Rights, *General Comment No. 3, The nature of States parties obligations*, UN Doc. E/1991/23, 14 December 1990, para. 5; Committee on Economic, Social and Cultural Rights, *General Comment No. 9, The domestic application of the Covenant*, UN Doc. E/C.12/1998/24, 3 December 1998, para. 9.