

Centre on Housing Rights and Evictions

Title through Possession or Title through Position? Respect for Rights to Housing, Land and Property in the Wake of Cambodia's Transition

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Introduction

Fifteen years after the 1991 Peace Agreement that ended decades of conflict and displacement in Cambodia, widespread violations of rights in housing, land and property (HLP rights) represent a new threat to the country's fledgling stability. Despite fifteen years of domestic and international efforts to protect HLP rights through legislative reform and institutional capacity building, respect for these rights has deteriorated by almost any indicator.

In the countryside, home to about four of five Cambodians, landholdings are increasingly skewed, with hard-pressed subsistence farmers often forced to sell to urban speculators who hold large plots of arable land idle. Although rural land was relatively equitably distributed in the 1980s, landlessness subsequently mushroomed from 13% in the late 1990s to 20% in 2004. Meanwhile, programs meant to distribute land back to the rural poor remain in the planning stage. A prominent NGO, the Cambodian Center for Human Rights, has seen land disputes rise to the "human rights and social problem number one" for rural Cambodians participating in its regular public forums.¹

While HLP disputes often go deepest in agricultural areas, they have impinged upon almost every other sector of Cambodian life. Insecure rural tenure and landlessness have exacerbated encroachment on forest lands inhabited by Cambodia's indigenous populations, much of which has already been devastated by years of unregulated logging and resource exploitation. However, the most visible result of rural impoverishment has been migration from the countryside to Cambodia's cities, and particularly to the capital, Phnom Penh. Rural migrants have swelled the ranks of the urban poor, creating an underclass of unskilled casual workers who live in informal settlements under unremittingly poor conditions.

Although Cambodia has experienced sustained economic growth since the 1991 Peace Agreement, the benefits have accrued primarily to wealthier, urban segments of the population.² This has both increased the tendency toward flight from the relatively stagnant countryside and intensified the pressure on the urban settlements where migrants

¹ Cambodian Center for Human Rights, "Public Forum," *Quarterly Report for March 29-June 17, 2006* (2006), p. 2.

² World Bank, "Cambodia: Halving Poverty by 2015?" *Poverty Assessment 2006* (February 2006).

tend to congregate. Facing competition between the housing needs of urban residents and the development plans of large commercial interests, local authorities have consistently sided with the latter. As a result, many long-term residents of urban neighborhoods have faced relocation under legally dubious circumstances ranging from inadequately compensated expropriations to violent forced evictions. In Phnom Penh, as many as 11,000 families were evicted between 1998 and 2003, under circumstances that frequently violated their rights and impaired their standard of living.³ As a result, many of Cambodia's poor currently live under conditions perhaps most aptly described as internal displacement.

Democracy, Corruption, Human Rights and the International Community

The problems of insecure tenure and inequitable access to HLP resources in Cambodia are exacerbated by structural factors such as demographic pressure, the lingering effects of decades of conflict, emerging urbanization and persistent rural poverty. However, much of the problem is also political. One of the main barriers to equitable access to housing, land and property, as well as the exercise of many other human rights, is the persistence of unaccountable and corrupt patronage-based networks that often hold de facto power at all levels of government.

Since the destruction of Cambodia's economy and the killing of much of its skilled workforce by the Khmer Rouge regime (1975-79), successive Cambodian governments have struggled to staff and finance local administration and the provision of public services. In many cases, this was achieved through delegations of de facto power to existing local authorities, creating layers of bureaucracy that the government could not afford to pay. This led to a revival of the traditional Cambodian practices in which public servants buy their offices from more powerful patrons. In order to pay their debts – and make ends meet – officials are then tacitly expected to skim public proceeds and impose unofficial fees for services.

The prevalence of corruption in contemporary Cambodia dictates that many essential public services ranging from issuance of land title certificates to medical treatment and education tend to be contingent on the payment of bribes often unaffordable to the poor.⁴ These conditions also undermine the rule of law, resulting in the selective and arbitrary application of legal protections by courts liable to political pressure and bribery. Perhaps most significantly, economic liberalization has increased the value of housing, land and natural resources, drawing them further into competition between ordinary Cambodians, who see them as prerequisites for subsistence, and the rich and powerful, who often speculate and trade on them. As a result, genuine progress in the protection of HLP rights is likely to require a confrontation with entrenched political practices and interests.

Cambodia is currently governed by the Cambodian People's Party (CPP), headed by longstanding Prime Minister Hun Sen. The CPP is the direct successor to the communist

³ Asian Coalition of Housing Rights, "ACHR Activities during the 2004 Year" (April 2005), p. 34.

⁴ Christine J. Nissen, *Living under the Rule of Corruption: An Analysis of Everyday Forms of Corrupt Practices in Cambodia*, Center for Social Development (2005).

regime that ruled Cambodia from the fall of the Khmer Rouge in 1979 until the transition to multiparty democracy under the 1991 Peace Agreement. Although this agreement formally reconciled the CPP with opposition elements and led to UN-administered multiparty elections in 1993, some debate remains as to the completeness of the democratic transition in Cambodia. Although the CPP failed to win a majority in the first elections, it maintained de facto power through its control of local patronage networks and later resorted to intimidation and outright military attacks on its political opponents in order to regain and hold de jure power in the 1998 and 2003 elections.

The record of the international community in discouraging human rights abuses in Cambodia has been mixed. On one hand, international observers have enjoyed largely unobstructed access to the country and cooperation with a vigorous domestic NGO sector. International actors have also had a great deal of leverage, not least by virtue of the fact that international aid continues to comprise as much as half of Cambodia's GDP. Cambodia ratified many of the major multilateral human rights treaties as early as 1992, including the International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR). The UN Transitional Administration set up to administer the first Cambodian elections (UNTAC) included a Human Rights Component that was succeeded by an institutionalized Special Representative of the Secretary General (SRSG) for Human Rights in Cambodia, as well as a local office of the UN High Commissioner on Human Rights (OHCHR).

Despite these promising outset conditions, international and domestic pressure has not succeeded in stemming human rights violations in Cambodia, not least in the area of HLP rights. The international community, comprising numerous international humanitarian and development agencies, NGOs and bilateral donors, is liable to criticism for at least two tendencies that have undermined its effectiveness in addressing HLP and other violations.

First, international actors frequently appear to emphasize process over outcomes, with observation of the forms of human rights and democracy taken at face value. The most notorious example may be the 1997 coup de force, in which the CPP unleashed a military assault on a rival political party, summarily executing much of its leadership and driving it underground.⁵ Cambodia's application for membership in the Association of South-East Asian Nations (ASEAN) was suspended as a result – but only until the next year's elections gave the CPP a fresh (albeit disputed) mandate. This approach gives rise to concern that elements of the international community have tacitly accepted the CPP's heretofore illiberal approach to democracy and human rights as the price to be paid for the fundamental stability it has brought to Cambodia after decades of conflict.

A second concern involves the tendency of the international community to focus on Cambodia's HLP issues from a development perspective in a manner that can marginalize discussion of the country's relevant human rights obligations. For example, the Consultative Group, an important annual meeting between the Cambodian Government and bilateral donors, recently framed Cambodia's natural resources and land

⁵ See Human Rights Watch, "Cambodia: Aftermath of the Coup," *HRW Index No.: C908* (1 August 1997).

issues almost exclusively in terms of human development and governance.⁶ While pro-poor development is undoubtedly crucial, reference to relevant human rights obligations and standards can complement such arguments, underscoring the significance of necessary reforms or providing guidance on how they might most effectively be carried out. In the case of HLP issues, observers have pointed out both the human rights implications of the failure to respect such rights and the effect this can have on the exercise of other essential rights and freedoms.⁷

Both of these concerns are particularly salient with regard to housing rights, which have been tangentially covered, at best, in an existing legal framework primarily concerned with safeguarding property interests. Cambodia is obligated under the terms of the ICESCR to protect the right to adequate housing by all appropriate means including the adoption of legislation and the provision of judicial remedies.⁸ This right entails state obligations to affirmatively secure access to housing that is affordable, habitable, accessible, culturally adequate, and provided with adequate services and infrastructure.⁹ According to the UN Committee on Economic, Social and Cultural Rights, this obligation entails the need to take concrete measures to ensure equitable access for the poor not only to housing but also to land:¹⁰

Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement[.]¹¹

However, the most important protection guaranteed by the right to adequate housing is security of tenure, or legal protection against forced evictions.¹² Forced evictions have been defined as “permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”¹³ In order to comply with this international law, evictions and relocations should be undertaken only after consultation with affected groups, consideration of all alternatives to relocation, provision of complaints procedures, and delivery of relocation assistance. Where forced evictions occur, the victims are entitled to a legal remedy, even in cases where they did

⁶ World Bank, “Cambodia: Government and Donors Agree Opportunity to Benefit from Deeper Reforms is Now,” Press Release No. 2006/295/EAP (3 March 2006).

⁷ Human Rights Watch, “Cambodia: Donors Must Demand Progress, Not Promises,” Press Release (23 February 2006); Amnesty International, “Cambodia: The Government Must Deliver on Human Rights,” Public Statement ASA 23/007/2006 (2 March 2006).

⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), “General Comment 3” (Fifth Session, 1990), paragraphs 3 and 5.

⁹ CESCR, “General Comment 4” (Sixth Session, 1991).

¹⁰ Id., ¶ 8 (c). With regard to housing, the Committee recommends that states: “establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs.”

¹¹ Id., ¶ 8 (e).

¹² CESCR, “General Comment 7” (Sixteenth Session, 1997).

¹³ Id., paragraph 3.

not enjoy full ownership rights to their homes.¹⁴ The link between unregulated development and forced evictions has been recognized as a growing threat to the exercise of housing rights in Cambodia and beyond.¹⁵ Where such evictions affect large populations, as in Cambodia, it is necessary to inquire whether the state is contributing, through its actions or inaction, to human rights violations giving rise to an internally displaced population.

To date in Cambodia, the international community has sought to address the effects of tenure insecurity and forced evictions primarily by sponsoring legislative and institutional measures to protect property rights. Since the 1993 elections, international donors have invested significant resources and efforts in drafting processes that resulted in a new 2001 Land Law and numerous related regulations and decrees. On the basis of this legal regime, international actors have supported a highly ambitious scheme to demarcate, register and administer all of Cambodia's land. Less binding standards have also been promoted to regulate housing issues in a manner encouraging equitable access and discouraging forced evictions.

However, as most recently noted by the UN Special Rapporteur on the right to adequate housing, many gaps remain in both the substance and the practical implementation of these instruments.¹⁶ Although Cambodia's obligations to protect HLP rights are clearly set out in international law, incomplete or non-existent domestic regulation has become a de facto excuse for their non-fulfillment. To the extent that international donors have erred in favor of codification over implementation and development goals over complementary human rights standards, they risk encouraging an impression that Cambodia is not required to conform to its international obligations until they are reflected in domestic law. Meanwhile, the concrete impact of donor projects continues to be limited by the fact that the politically connected beneficiaries of illegal land transfers remain unaccountable and that both laws and standards are often simply bypassed in the process of ongoing forced evictions, expropriations, and concessions of land and natural resources to powerful business interests.

Codification processes are undoubtedly a crucial first step in securing the observation of HLP rights in Cambodia. Domestic laws can, at the very least, force irregularities into the open, and provide an important practical basis for ordinary citizens to understand and realize their rights. However, unless such legal drafting is accompanied by unified international insistence that legislative rules be applied consistently, impartially and in the spirit of Cambodia's international obligations, donor-sponsored laws run the risk of becoming Potemkin villages, adopted to placate international critics but disappointing the expectations of ordinary Cambodians. The current SRSG on Human Rights in Cambodia,

¹⁴ See U.N. Commission on Human Rights, "Resolution No. 1993/77," U.N. Doc. E/CN.4/RES/1993/77 (1993). The Commission condemned the practice of forced evictions as a "gross violation of human rights" and urged governments to provide remedies to those forcibly evicted (paragraphs 1 and 4).

¹⁵ See Miloon Kothari, "Basic principles and guidelines on development-based evictions and displacement," U.N. Doc. E/CN.4/2006/41 (2006).

¹⁶ Miloon Kothari, "Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari – Addendum: Mission to Cambodia," U.N. Doc. E/CN.4/2006/41/Add.3 (21 March 2006), Summary.

Yash Ghai, recently provoked debate by stating that international actors in Cambodia “must give far higher priority to human rights and actively advocate for their implementation[,]” noting that:

It is not sufficient to rely on technical assistance and capacity building Nor are new laws or suddenly created institutions the panacea, for the Government has disregarded laws or, through abuse, turned them to its own partisan advantage, and it has set up new institutions instead of making existing ones work.¹⁷

This Report is meant to give an overview of the current situation with regard to respect for HLP rights in Cambodia. It begins with a brief historical description of the lingering effects of collectivization, displacement and privatization during the decades prior to the 1991 peace settlement. The next section provides an overview of recent efforts by the Cambodian authorities, domestic NGOs and international actors to improve respect for HLP rights in contemporary Cambodia, as well as outstanding problems and issues. Finally, the report concludes with recommendations for international and domestic actors.

Background: HLP Rights in Cambodia in Historical Perspective

Customary law governing land rights in Cambodia provided that legitimate possession followed the occupation and use of land. In a country traditionally dependent on rice farming, peasants were entitled to hold land they had cleared and cultivated, but lost all claims to land they had stopped using. The French, who colonized Cambodia in the mid-nineteenth century, attempted to replace such use-based rights of possession with title-based rights of ownership, but were often unsuccessful outside of Cambodia’s cities. Cambodia became independent after World War II and maintained a policy of non-alignment during the early years of the Cold War. However, by the early 1970s, its government allied itself with Americans fighting in neighboring Vietnam and found itself fighting an increasingly powerful domestic communist insurgency, the Khmer Rouge.

In 1975, Phnom Penh fell to the Khmer Rouge, which introduced a radical regime of collectivization whereby Cambodia’s cities and traditional institutions were abandoned and the entire population forced to work the land. Within weeks, Cambodia’s urban areas had been entirely evacuated. Educated Cambodians were singled out for summary execution and the rest of the population put to work under dire circumstances on collective farms. All housing and land became the property of the state and property records were systematically destroyed. During the five year reign of the Khmer Rouge an estimated one to two million people – as much as a fifth of the population – were murdered or died of overwork, starvation and disease.

In 1979, Vietnam responded to a series of border clashes with the Khmer Rouge by invading Cambodia. The Khmer Rouge leadership was driven across Cambodia’s western border into Thailand and replaced by a Vietnamese-backed communist regime, the Peoples’ Republic of Cambodia (PRK). Although the PRK promised to allow those

¹⁷ SRSG for Human Rights in Cambodia, Mr. Yash Ghai, Statement to the Human Rights Council (26 September 2006).

displaced by the Khmer Rouge to return to their homes, they did not renounce the collectivization of land and blocked return to the cities, confiscating prime urban real estate for their own high officials. In response to this and other PRK policies, many educated former-urban dwellers also fled to Thailand, forming an alliance of necessity with the remnants of the regime that had sought to exterminate them. During the 1980s, Cambodia became one of the Cold War's last proxy conflicts, with the PRK (backed by Vietnam and the Soviet Union) engaged in a military stalemate with rebel elements in Thailand (backed by China and, tacitly, the US).

Beginning in the mid-1980s, the PRK undertook pragmatic reforms, including de-collectivization of land and property and the grant of concessions to exploit natural resources. The administration of these tasks was delegated to local functionaries, resulting in haphazard implementation. Rural land distribution, in particular, tended to be skewed by patronage ties but was acknowledged as resulting in a broadly equitable distribution of land from which most rural households benefited. Exploitation of timber and other resources fell under the control of local military units that enjoyed unrestricted access to wilderness areas.

In 1989, the PRK began a transition from communism that began with changing the country's name to the "State of Cambodia" (SOC) and re-dubbing the ruling communist party as the CPP. The authorities also privatized housing and land, a reform carried out with the implicit intent of cutting off claims by the 360,000 Cambodians then in exile by vesting title in whoever happened to be occupying their former homes or lands at the time. However, the introduction of a formal market in land came as a shock to a society where decades of war had inhibited the gradual transition from customary use-based land tenure to title-based ownership rights seen in other developing countries.¹⁸ As a result, privatization was often a free-for-all, with title issuance in both urban and rural contexts contingent on bribes and political influence and many smallholders dispossessed or forced into debt.

By the late 1990s, less than 15% of the estimated 4-5 million applications for registration dating from this time had been processed, in part because of widespread refusal to pay unofficial fees up to one hundred times greater than the official price of registration.¹⁹ The resulting legal ambiguity left many small farmers exposed to outright land-grabbing or subject to distress sales of their property at low prices. Meanwhile, the lack of other attractive domestic investment opportunities in Cambodia encouraged land speculation, idling large agricultural plots in the midst of increasing rural landlessness. The situation was aggravated by a nearly unregulated program of "economic concessions" of land for commercial exploitation by private enterprises. Such concessions took up over a third of

¹⁸ Cambodia Development Resource Institute (CDRI), "Social Assessment of Land in Cambodia," *Working Paper No. 20* (November 2001), p. 9-11.

¹⁹ *Id.*, p. 25.

Cambodia's most productive land at their height and continue to restrict access to a large proportion of the country's arable fields.²⁰

Meanwhile, the end of the Cold War brought about a political transition in Cambodia in the form of the 1991 Paris Peace Agreements. This treaty ended the war between the CPP and opposition factions in Thailand and set out a framework for UN-administered elections. Although the Agreement called for the repatriation of the 360,000 Cambodian refugees from camps in Thailand, no specific provision was made for the restitution of their homes, lands and properties. In fact, although repatriation was successfully carried out, attempts merely to provide returnees with available land for farming were frustrated by uncooperative local authorities and widespread mine contamination, contributing to the present problem of rural landlessness. In 1992, the SOC formalized its reallocation of property rights by passing a land law formally extinguishing all pre-1979 rights to land.

Control of HLP resources has been an important factor in the exercise of political power in post-war Cambodia. By locking in control over the ownership and allocation of land and homes before the Peace Agreement, the CPP not only denied these assets to their political opponents but also rewarded the functionaries within its own patronage network. However, the political nature of the CPP's allocation and privatization programs dictated that HLP resources were diverted away from ordinary citizens and farmers to the benefit only of the political elite. In effect, the way in which land distribution and privatization programs were implemented decreased, rather than increased, access to land, and emphasized the primacy of political connections, rather than title, in securing and defending rights to HLP resources.

The long-term results of this approach to HLP relations have been negative. Tenure insecurity has increased inequality, both as between the stagnant countryside and relatively prosperous cities, and as between subsistence farmers, whose informal landholdings are under constant threat, and urban speculators whose acquisitions are recognized and protected by the state. As a result, a recent World Bank report noted that Cambodia's post-war economic growth has been accompanied by an unusually marked rise in inequality. The report pointed out that failure to achieve more equitable growth could both hinder further economic progress and directly threaten the achievement of Cambodia's Millenium Development Goals.²¹

Attempts to Secure HLP Rights in Cambodia: The Land Law Regime

The Land Law passed in 1992 (1992 Land Law) included a prospective mechanism for acquisition of land by prescription. This provision allowed those who peacefully used land for five years to apply for title, but the extent to which it was effective in increasing

²⁰ Peter Leuprecht, SRSG for human right in Cambodia, "Land concessions for economic purposes in Cambodia: A human rights perspective" (November 2004), p. 3. Much of the land held under concession has yet to be developed or exploited by the beneficiary firms.

²¹ World Bank, "Cambodia: Halving Poverty by 2015?" p. 49-51. Cambodia's Millenium Development Goals include the halving of poverty by 2015.

access to land is unclear.²² Meanwhile, human rights observers noted that general protection of HLP rights continued to deteriorate after the 1993 elections and the departure of UNTAC. Land-grabbing, forced evictions and unregulated concessions of land and natural resources for exploitation contributed to a general perception that high-ranking political and business interests were conspiring to “eat the kingdom.”²³

In the late 1990s, international donors encouraged the drafting of new legislation to better regulate land issues. The resulting Land Law of 2001 (2001 Land Law) created a legal framework that went a long way, on paper, toward prospectively securing rights to land and housing. The 2001 Land Law recognized acquisitive possession by those who had begun their occupation prior to its passage, but stipulated that future land distribution was meant to take place through a more organized system of planned “social land concessions” rather than individual self-help. It also protected existing property rights by conditioning expropriation on public interest grounds, legal process and “fair and just compensation.”²⁴ In one of its most innovative provisions, the Law also recognized the collective ownership rights of indigenous groups to their traditional lands.²⁵ Over the long term, all of these rights are to be protected by a comprehensive titling and demarcation regime in which all of Cambodia’s land is meant to be registered and mapped.²⁶

The drafting process for the 2001 Land Law set a Cambodian precedent in terms of transparency and consultation of affected groups, but was initiated primarily by international actors with an uncertain level of commitment from the Government.²⁷ Moreover, even at the time of its promulgation, the Land Law was viewed only as “a blueprint for reform” that would require the passage of at least fifteen government regulations (‘sub-decrees’ in Cambodian legal parlance) in order to be fully operational.²⁸ Today, significant sub-decrees still have not been drafted and others remain inactive pending further studies, meaning that many of the provisions set out in the Land Law have yet to be fully applied five years after its passage.²⁹

The justification for the 2001 Land Law was framed almost exclusively in terms of the need to implement the protection of property set out in the 1993 Constitution, completing

²² East-West Management Institute, Inc. (EWMI), *Land Law of Cambodia: A Study and Research Manual* (Phnom Penh: November 2003), p. 25. Lack of awareness of an a priori application requirement limited the effectiveness of this provision.

²³ Leuprecht, “Land Concessions,” p. 36 (quoting an elderly resident of Run village, Cambodia).

²⁴ Cambodian Land Law of 2001, Article 5.

²⁵ *Id.*, Title I, Chapter 3, Part 2.

²⁶ *Id.*, Title VI.

²⁷ Indira Simbolon, “Access to Land of Highland Indigenous Minorities: the case of plural property rights in Cambodia,” *Max Planck Institute for Social Anthropology Working Paper No. 42* (2002), p. 20. The Land Law drafting process resulted in part from economic conditionality measures imposed by the Asian Development Bank (ADB).

²⁸ EWMI, “Southeast Asia: Cambodian Land Reform Project,” *EWMI Briefing*, vol. 1, issue 2 (2001), p. 1.

²⁹ World Bank, “Cambodia: Assessment of Potential Impacts of ‘Social Land Concessions’,” *Final Report* (December 2004), p. 3-4. For instance, although the Government approved a sub-decree on social land concessions in March 2003, implementation will begin after the completion of ministerial instructions to be based on a set of ongoing pilot projects.

the transition from collective socialist tenure forms to market-compatible ownership rights.³⁰ However, the Law also has serious implications in terms of the Cambodian authorities' general constitutional obligation to respect their subjects' human rights "as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, and the covenants and conventions related to human rights...."³¹ Nevertheless, where the Land Law will facilitate an increased degree of respect for property rights if fully implemented, it is not clear that its provisions on their own would be sufficient to ensure respect for broader HLP rights, and particularly the right to adequate housing.

A further challenge to full implementation of the Land Law – and broader protection of HLP rights – is the ongoing lack of capacity and resources at the central level. As a result, de facto or even de jure control over complicated HLP issues is often delegated to local authorities without sufficient guidance or oversight, reinforcing their tendency to exercise power in unaccountable and corrupt ways. While the Cambodian Government routinely condemns official corruption and malfeasance, it takes few concrete steps to actually prevent or remedy such practices. As a result, although domestic NGOs have brought abuses to light, and international donors have supported legal drafting processes to address them, the Cambodian authorities' have largely failed to take the one step that is their sovereign responsibility – enforcement of the law in light of their human rights obligations. This failure is manifested in a number of interrelated problems:

Lack of accountability for past and ongoing violations of HLP rights

Many of Cambodia's most powerful civilian and military officials have been credibly accused of abusing their authority in order to acquire land and natural resources for their personal enrichment. Accusations of land-grabbing and irregular allocations run throughout the political spectrum and extend from the central authorities in Phnom Penh down to local political bosses. Some holders of dubiously acquired land have allegedly granted it in the form of economic concessions to domestic enterprises or foreign investors, while others exploit it themselves or simply engage in speculation, indefinitely excluding poor subsistence farmers from large swathes of Cambodia's increasingly scarce productive land.

The prevalence of such practices undermines the rule of law and aggravates rural poverty and landlessness. Without the return of much or all of the land lawlessly appropriated since the early 1990s, the government's plans for land distribution to the poor and vulnerable are likely to fail. Local authorities responsible for identifying currently available land for distribution in the form of social land concessions have tended to point out unproductive and inaccessible plots rather than risk exposing more productive tracts lying fallow due to their own or others' illegal claims.³²

³⁰ EWMI, "Land Law," p. 33. The Cambodian Constitution guarantees the right of ownership to all Cambodian citizens (Article 44) and formally adopts a market-based economic system (Article 56).

³¹ Constitution of the Kingdom of Cambodia (adopted 21 September 1993), Article 31.

³² World Bank, "Social Land Concessions," p. 29.

The Land Law framework includes a number of mechanisms for freeing up arable land for social concessions. The most obvious source of land for distribution is degraded forest, but sole reliance on this category would create additional pressure on Cambodia's remaining healthy forest areas, many of which are already threatened by logging and agro-industry concerns. Another potential source of land is a mechanism in the Land Law for reviewing pre-2001 economic concessions that would allow territory granted in excess of a set maximum size to be taken back or revoke concessions entirely where – as in many cases – no development had taken place within set time limits.³³ However, there has been little progress so far in the process, as strict enforcement would involve challenging powerful interests, often close to the government, that allocated and received the concessions.

The third available mechanism for recouping land for distribution involves a review process for land disputes that would allow the identification and redemption of illegal confiscations and transfers. As with review of economic concessions, this process represents an acid test of the political establishment's commitment to the rule of law, given that it has benefited at virtually all levels from irregular transactions in land. So far, the signs are mixed. On one hand, the formal review mechanism under the Land Law is widely viewed as having failed. A system of Cadastral Commissions set up in support of the broader titling process under the 2001 Land Law has made some headway in resolving local boundary disputes but proven unable to resolve more than a fraction of the hundreds of its pending complaints involving land-grabbing by powerful people.

In light of this limited progress, both the international community and domestic NGOs were taken by surprise by a February 2006 Royal Decree on the formation of a new National Authority on Land Dispute Resolution.³⁴ A subsequent decree appointed a membership for the new body that was simultaneously a compendium of CPP power-brokers, and, in the words of one observer, a virtual “who's-who of the regime's biggest land-grabbers.”³⁵ Although it appears that the new National Authority may have the political clout to tackle many of the most controversial cases, concerns remain that its membership may abuse their position to protect their own past transgressions from scrutiny and that the process could be politicized, with land-grabbing by opposition politicians prioritized over those involving CPP loyalists. However, given that the Authority was announced just days prior to the 2006 Consultative Group meeting and has failed to take any significant steps since being constituted, other observers speculate that the initiative may have simply been meant to deflect international criticism of the failure of the Cadastral Commissions to resolve high profile disputes.

Failure to act in accordance with law

³³ Chapter 5 of the 2001 Land Law sets out conditions for economic land concessions, including a maximum size of 10,000 hectares and a requirement that the concession be exploited in the manner agreed within 12 months of its issuance. Failure to comply with these conditions can render a concession null and void under Article 18, requiring the concessionaire to vacate the property under Article 19.

³⁴ Royal Decree on the National Authority for Land Dispute Resolution, No. NS/RKT/0206/697 (26 February 2006).

³⁵ Sub-Decree on the Composition of the National Authority for Land Dispute Resolution, Ref. No. 168 (15 March 2006).

The Cambodian authorities often proceed without reference to the Land Law and other relevant regulations in carrying out important actions affecting HLP Rights, both positively and negatively. While this may be based in part on unfamiliarity with a new legal regime, many observers infer that the authorities simply wish to be able to continue to act as they see fit without having their hands tied by rules. Even assuming the best of intentions on the part of the Cambodian authorities, such an approach risks undermining at one stroke the public confidence in the new land law regime built up through painstaking efforts to consult affected parties and proceed transparently.

Some of the most drastic examples of the failure of Cambodian authorities to act within the law have been provided in the context of urban evictions. For instance, in a recent case in Phnom Penh, the municipal authorities sought the eviction of residents of Koh Pich island who claimed to have acquired valid legal interests to their lands through possession, in accordance with the 2001 Land Law. Despite the fact that the Cadastral Commissions have exclusive jurisdiction for cases involving such unregistered property rights, the authorities sought – and won – a judicial eviction order, bypassing the 2001 Land Law entirely.³⁶

The Cambodian authorities have also flouted the Land Law regime through the device of selling prime urban land occupied by public institutions to private investors through land exchanges or “swaps.” Although such public institutions are, by definition, located on inalienable state public land, they have been sold to private investors in exchange for a promise to rebuild them elsewhere. Technically, public properties that have lost their public interest use can be converted to state private property by special legislation and sold.³⁷ However, recent cases involved working police stations, hospitals and university campuses where, in some cases, hundreds of employees and their families had lived for decades.³⁸ Alienation of such manifestly public interest institutions is not only illegal under the Land Law but has led to numerous forced evictions in violation of Cambodia’s international obligations.

Even ostensibly protective actions such as the provision of alternative land to persons evicted from informal settlements take place without reference to law. As recently as June 2006, some 1,200 families were forcibly relocated from settlements near the Bassac River in central Phnom Penh to undeveloped land in villages twenty kilometers away without receiving even minimal information about their new status. Even now, those displaced still do not know who owns the land they occupy, whether or how the authorities acquired it, how long they are entitled to remain, whether public services and utilities will be provided, and whether they will eventually be eligible to receive title.³⁹

³⁶ Kothari, “Mission to Cambodia,” p. 14.

³⁷ Cambodian Land Law of 2001, Article 16, paragraph 4.

³⁸ Kothari, “Mission to Cambodia,” p. 9-12.

³⁹ Cambodian Center for Human Rights (CCHR), “CCHR demands from Phnom Penh City Hall to guarantee the rights of the deported Sambok Chab villagers to health and adequate housing,” Press Release (9 June 2006).

Lack of demarcation

One of the fundamental challenges to protecting property interests of all kinds in Cambodia is the lack of demarcation of land. Under the Land Law regime, virtually all rights and obligations adhering to land and property depend on its classification among four broad categories. These comprise individually-owned property, collectively-owned indigenous land, state-owned property available for sale or concession (“state private land”) and inalienable state-owned property (“state public land”). State private land is meant to be available for both economic land concessions to business interests and social land concessions for the poor and vulnerable.

Although previous registration programs were initiated under the French and the SOC, they were never fully implemented. Currently, an internationally-sponsored Land Management and Administration Project (LMAP) is working together with the domestic authorities on an ambitious agenda of legal drafting, capacity-building, dispute-resolution, land management, and, crucially, land titling and registration. The titling program has begun with the main agricultural areas in Cambodia, where the bulk of the population lives. Using trained teams of Cambodian surveyors, it has proceeded on the basis of on-site work in communes, issuing nearly 400,000 titles. However, the process is expected to take ten to fifteen years, with as between five and seven million properties yet to be registered.

The current focus of the land registration program on privately-owned agricultural property means that a number of key, contested categories, such as inalienable state public land and protected indigenous areas are likely to remain without dispositive boundaries for years. This issue is of particular significance for households occupying land in the expectation that this will result in title, in accordance with the system for land acquisition carried over from the 1992 Land Law. According to some estimates, as many as one-third of such families may ultimately find themselves occupying state public land.⁴⁰ This is likely to lead to situations in which some households are recognized as title-holders while their neighbors, who held their land under identical circumstances, may face eviction without compensation, and even legal sanctions.⁴¹

Others likely to suffer as a result of the delay include indigenous minorities and other groups that practice shifting agriculture. Studies have shown that one of the most common forms of land-grabbing has been the acquisition of lands that were within the known domain of subsistence farming communities but lying fallow and thus apparently unused at the time.⁴² Because of their political marginalization and limited understanding of the law or their rights, indigenous groups have been one of the easiest targets for land-

⁴⁰ World Bank, “Poverty Assessment 2006,” p. 74.

⁴¹ Such severe potential consequences of unlucky squatting derive from the fact that such squatters effectively fall under the provisions of the Land Law meant to allow for land grabbers and illegal concessionaires to be held to account. Under Article 18 of the 2001 Land Law, “any entering into possession of public properties of the State” are null and void “irrespective of the date of the creation of possession....” Article 19 of the Land Law provides for uncompensated eviction in such cases, as well as penalties for “intentional and fraudulent” acquisition of state public property.

⁴² CDRI, “Social Assessment of Land in Cambodia,” p. 17.

grabbers, giving rise to concerns that “there will be little land left to title” by the time that registration programs arrive to Cambodia’s highlands and forests.⁴³

Lack of demarcation of alienable state private land also undercuts the reliability of past and current transactions involving state land. A series of government orders and sub-decrees in 2005 sought to address these problems by setting up a system of provisional classification of state land by local working groups as a basis for allowing such transactions pending final registration.⁴⁴ However, demarcation under these regulations is explicitly preliminary, and significant legal uncertainty is likely to attend all public and private investment in Cambodia’s large expanses of unmapped land for years to come.

Urban forced evictions and irregular expropriations:

Urban land in Cambodia has come under enormous pressure, particularly in the capital, Phnom Penh. Increasingly insecure tenure and landlessness has led many rural families to migrate to urban areas, where they congregate in centrally-located informal settlements in order to access wage labor markets. While some of the earlier urban migrants may have claims under the Land Law to urban plots they have occupied since before 2001, the more recent arrivals are typically only able to find space as tenants.

Faced with these mounting residential needs, the municipal authorities of cities such as Phnom Penh are also presiding over a real estate boom, in which large investors are eager to develop high-end housing, hotels and retail space. In Cambodia, as in other developing cities, “the main political and economic actors are also the main land and [real] estate speculators.”⁴⁵ It is therefore unsurprising that the Government has regularly supported development over low-income housing, singling out the poorest and most vulnerable urban residents for eviction.

As mentioned above, evictions of urban residents with legal claims to title over properties they have occupied for years often involve apparent and even blatant violations of the 2001 Land Law. For instance, the recent clearance of the Koh Pich island in Phnom Penh involved many long-term residents presumptively entitled under the Law to register ownership of the plots they had lawfully possessed for years. However, rather than formally expropriating these rights or even challenging their existence through appropriate legal channels, the Government insisted that residents had to leave, harassed them, and, when pressed, offered ad hoc compensation worth one tenth of the land’s estimated market value.⁴⁶

It is worth noting that significant legal questions regarding expropriation remain unresolved. First, pending demarcation, claims of squatters’ rights depend on a disputable assertion that the land involved is state private land, which can be alienated, rather than

⁴³ Leuprecht, “Land Concessions,” p. 24.

⁴⁴ Sub-Decree on State Land Management, No. 118 ANK/BK (7 October 2005).

⁴⁵ Kothari, “Mission to Cambodia,” p. 15.

⁴⁶ Community Legal Education Center Public Interest Legal Advocacy Project (CLEC-PILAP), “Koh Pich Case Description” (28 February 2005).

one of the categories of state public land, which cannot.⁴⁷ Second, the provisions of the 2001 Land Law regulating expropriation are vague and formally require the passage of enabling legislation or regulations.⁴⁸ However, pending the completion of an expropriation and resettlement policy currently being drafted (see below), Cambodia remains bound by its broader international law obligations to ensure that its citizens are neither arbitrarily deprived of their property and possessions, nor subjected to forced eviction and associated violations of the right to adequate housing.⁴⁹

The problem of the Cambodian authorities' failure to respect international obligations in the absence of clear domestic law is even more pointed where no domestic law exists. This is currently the case with regard to urban communities that do not have arguable claims to title over the land they occupy. Under international law, even tenants in informal settlements enjoy the right to adequate housing, entailing the right to consultation, process and appeal against removal from their homes, remedies against forced evictions, and an expectation that the Government will take steps to regularize their tenure and provide adequate infrastructure, services and utilities in their neighborhoods. However, although the Cambodian authorities have adopted policies reflecting these obligations, they clearly do not view themselves as bound by them in practice.

Cambodia's notional commitment to housing rights began in 2001 with the formulation of a National Housing Policy which was recently adopted, and includes provisions on financing and construction of low income housing.⁵⁰ However, the extent to which this Policy will prospectively shape urban planning in Cambodia is unclear. For instance, although the Policy provides that housing programs should be included as an element of urban master plans, a master plan for Phnom Penh has been developed in a contemporaneous process that has suffered from a near complete lack of transparency or consultation with affected groups.⁵¹

In a move more immediately relevant to jeopardized urban settlements, Prime Minister Hun Sen announced a policy of upgrading 100 poor communities every year for five years on the eve of the July 2003 national elections. This policy has been implemented in a few isolated cases, with slum communities provided assistance in improving their residential situations.⁵² However, it is generally deemed a failure, with implementation falling far short of the "systematic, large-scale programme to tackle slum upgrading" that would signify a real commitment to meeting Cambodia's adequate housing obligations.⁵³ Meanwhile evictions of squatter communities have continued unabated, particularly in Phnom Penh. In a particularly sad irony, the Phnom Penh authorities recently evicted 168

⁴⁷ A list of categories of state public land is given in Article 15 of the 2001 Land Law.

⁴⁸ Cambodian Land Law of 2001, Article 5: "An ownership deprivation shall be carried out in accordance with the forms and procedures provided by law and regulations...."

⁴⁹ Universal Declaration of Human Rights (UDHR), Articles 17 and 25; ICESCR, Article 11.

⁵⁰ Kothari, "Mission to Cambodia," p. 6.

⁵¹ Id, p. 16. Although the municipality has agreed to engage in a dialogue with affected parties, the Plan will not formally become a public document until after it has already been approved by the Government.

⁵² Id, p. 18.

⁵³ Id, p. 15.

families who received UN Habitat support in upgrading their own community in 1991, but went on to see their homes on the grounds of the Monivong Hospital traded away in a dubious land swap.⁵⁴

The focus on forced evictions in Phnom Penh has sharpened recently as the clearance of a community of squatters near the Bassac River waterfront has drawn international scrutiny.⁵⁵ Although this community was in place since the 1990s, the land they occupied belonged to a private owner who recently decided to develop it. Immediately prior to the eviction date, a Phnom Penh city official stated that an organized relocation was meant to take place, with title to plots of land and subsidized water to be provided to Bassac residents at peri-urban locations they had agreed to after site inspections.⁵⁶

A representative of the Bassac community interviewed the same day voiced concerns, noting that those who rented space instead of owning shacks – up to 80% of the population – were categorically excluded from any relocation benefits.⁵⁷ The land plots themselves were believed to be completely bereft of services and utilities and so far outside the center that commuting costs would amount to twice the average daily income of local residents. The community leader feared violence in the short term, noting that with only five days to go most of the community remained unaware of the impending evictions. Over the long-term, she predicted that those relocated would sell their land plots to speculators and drift back to other urban slums, while the rest would be rendered at least temporarily homeless.

In the event, some 1,200 families comprising 6,000 people were forcibly relocated to a site more than twenty kilometers from central Phnom Penh by early June 2006. Although the eviction itself had involved intimidation and force, serious concerns were raised by the conditions at the resettlement site, which both domestic and international observers referred to as giving rise to a humanitarian emergency:⁵⁸

One household occupies less than five by five meters. Most families take shelter under plastic sheets or other makeshift materials, not sufficient to provide privacy and dignity. Only a few families have received tarpaulins. Muddy water standing in pools created by heavy rainfalls is used for washing and cleaning. The municipality provides only two or three trucks of drinkable water a day. There are not enough provisional toilets. Public health service is not available on a regular basis. Medicine is distributed by some NGOs only. Located more than 20 kilometers from their former homes, most people have lost their meager income making opportunities and many are already starving. There is no administration of this site and security is not guaranteed: People do not leave their small huts for fear that others will take their few belongings. The most vulnerable groups,

⁵⁴ COHRE, “Human Rights Violations Imminent in Phnom Penh due to Cambodian Government’s Development Initiatives,” COHRE Media Release (3 July 2006).

⁵⁵ Guy De Launey, “Poor Cambodians Face Relocation,” BBC News (3 May 2006).

⁵⁶ Interview with H.E. Mann Chhoeurn, Vice Governor of Phnom Penh Municipality, 27 April 2006.

⁵⁷ Interview with a Community Leader, Tonle Bassac Community, 27 April 2006.

⁵⁸ Miloon Kothari and Hina Jilani, “UN Experts Condemn Lack of Respect for Human Rights Shown in Eviction of Bassac Residents in Cambodian Capital,” Press Release (29 June 2006).

including women, infants and children, older people, disabled people and people living with HIV/AIDS are already affected by this precarious situation and their condition is at high risk of worsening.⁵⁹

Forced evictions such as those inflicted on the Bassac community constitute unambiguous breaches of Cambodia's international obligations. Although Cambodia should pass any laws necessary in order to prevent such violations in future, it is under a current obligation to provide a remedy to those it has already harmed. Numerous observers have also recommended an immediate moratorium on urban evictions and relocations as the only way to ensure that Cambodia abides by its obligations pending the drafting of binding rules.

In the meantime, the situation of the Bassac evictees has worsened, with many children suffering from malnutrition and preventable diseases. In a move described by an expert as "rubbing salt in the wound," adults have not been allowed to register locally, preventing them from exercising many other rights. Still formally citizens of Cambodia, yet vulnerable and disenfranchised as a result of their displacement, the former Bassac residents appear to fit the definition of internally displaced persons (IDPs), underscoring the obligation of the authorities to provide them with assistance and protect their legal rights.⁶⁰ In the words of one observer:

Not only have the adults and children at [the resettlement site] lost access to basic healthcare and education services to which they are entitled, they have effectively been disenfranchised ... they can't register to vote, even children can't register at schools as they have no fixed address ... They have effectively become non-citizens, non-people.⁶¹

The Cambodian authorities are not alone to blame for the problem, however. Although international lending institutions such as the World Bank and the Asian Development Bank (ADB) have insisted on the application of protective resettlement guidelines in development projects in Cambodia, many bilateral donors are less scrupulous.⁶² According to experts, large-scale investors such as China and Vietnam have never imposed any resettlement conditions, while the Japan International Cooperation Agency (JICA), one of the biggest donors in Cambodia, only recently adopted standards requiring some degree of compensation to those displaced by resettlement. Whatever the moral responsibility of donors, however, only the Cambodian Government is in a position to codify resettlement standards, rendering them obligatory on both domestic and international actors.

⁵⁹ CCHR, "Relocation of Sambok Chab villagers threatens a humanitarian crisis – Phnom Penh City Hall must now guarantee the basic human rights," Press Release (22 June 2006).

⁶⁰ The Guiding Principles on Internal Displacement, Commission on Human Rights, UN Doc. E/CN.4/1998/53/Add.2 (1998), Introduction, paragraph 2.

⁶¹ Cat Barton, "Life in Limbo for Phnom Penh's evicted poor people," *Phnom Penh Post* (17-30 November 2006).

⁶² See ADB, "Involuntary Resettlement: Policies and Strategies" (August 1995), http://www.adb.org/documents/Policies/Involuntary_Resettlement/default.asp.

Large development projects in both urban and rural settings often involve the resettlement of resident populations, requiring both the formal expropriation of property from private owners and the resettlement of tenants, squatters and other informal possessors of housing and land. As a result, an ADB-sponsored project to more closely regulate expropriation under the Land Law has been framed broadly as a National Resettlement Policy for Cambodia.⁶³ The Resettlement Policy remains in draft form, but has been prepared in conjunction with the Cambodian authorities and is ultimately meant to be adopted as domestic law “applicable to all resettlement actions regardless of the funding source.”⁶⁴ The ADB’s own policy and practices related to resettlement provide much of the inspiration for the Cambodian draft Policy, resulting in protective approaches such as:

- project design meant to avoid displacement where possible, or at least minimize the adverse effects of displacement where it cannot be avoided, including incorporation of the full costs of resettlement and compensation in the project costs;
- protection of the lives and welfare of affected persons, particularly where they belong to inherently vulnerable groups;
- measures to redress losses of economic potential and provide a standard of living equal to or better than that which affected people enjoyed previously;
- transparency and consultation regarding the entire resettlement process; and
- design of compensation program so that absence of formal title to land is not a bar.⁶⁵

These policies, if implemented, would represent a revolutionary improvement over the current status quo. However, a potential weakness of the draft Resettlement Policy stems from the fact that it frames the issue of development-induced displacement solely in the context of domestic law and policy. Steps to avoid forced evictions are not only good policy but also number among Cambodia’s binding international commitments. Likewise, failures to meet such standards should properly be viewed as human rights violations giving rise to internal displacement.⁶⁶

Failure to secure access to rural land and urban housing

Cambodia has received a great deal of criticism for violations of HLP rights through the failure to respect existing tenure, whether through rural land-grabbing or urban forced evictions. However, the Government’s failings also include a persistent inability to prospectively make adequate land and housing accessible to Cambodia’s most impoverished and vulnerable groups. So far, efforts to secure such affirmative rights to housing and land have focused almost exclusively on the countryside. The primary means envisioned for delivering land to the poor under the 2001 Land Law is the granting of social land concessions.

⁶³ Dirksen Flipse Doran and Le (Cambodia), “Country Report: Cambodia,” Asian Development Bank Regional Technical Assistance 5935 (February 2002).

⁶⁴ *Id.*, p. 9.

⁶⁵ *Id.*

⁶⁶ Guiding Principles on Internal Displacement, Principles 6 and 7.

The purpose of social land concessions is defined vaguely in the Land Law itself as to “allow beneficiaries to build residential constructions and/or to cultivate lands belonging to the State for their subsistence.”⁶⁷ However, a March 2003 sub-decree provided a good deal more detail, setting out a number of goals including the provision of “land for residential purposes to poor homeless families” and agricultural land “to poor families for family farming.”⁶⁸ The sub-decree also provided for considerable decentralization of the selection and administration processes for such concessions. Concerns about the capacity of local officials to distribute land effectively have motivated a World Bank project to analyze the potential impact of land reform and identify ways to increase the effectiveness of social concessions.⁶⁹

This evaluation process has delayed the actual granting of social concessions, but is meant to ensure that once implementation begins, it will significantly benefit the rural poor and landless. However, it remains somewhat unclear why the anticipated impact of social concessions is likely to remain limited to the countryside. The World Bank has justified the exclusively rural focus of social concession implementation with reference to the crucial nature of land as a safety net for Cambodia’s still overwhelmingly rural population:

In the long term, ... only improved non-farm income can meet the country’s employment demand. Those opportunities are not yet available in sufficient quantity, which means that land access still matters, particularly for the most vulnerable. Demography will put increasing pressure on cities to plan growth. The development of the housing policy and pilot projects in planning and settlement upgrading point the way to improved urban land management.⁷⁰

As discussed above, the effect so far of Cambodia’s paper policies on access to urban housing have largely been negligible. To the extent that the country can be said to have a housing policy for the poor, precedent suggests that it consists of removing them from central urban land of interest to developers and leaving them to their own devices on unimproved plots so distant from their former work that they will eventually find their way back to other urban slums. Aside from the human rights violations inherent in the evictions underlying this process, such peremptory, unplanned relocations impose economic and political costs on the Cambodian authorities without providing any basis for those relocated to sustainably house themselves.

As the World Bank has noted elsewhere, the populations of urban informal settlements are probably already undercounted and the problem is likely to be exacerbated as the country continues to urbanize, justifying “specific policies and programs for the urban poor, to a significant degree distinct from those designed for the rural poor.”⁷¹ While there are grounds for prioritizing the needs of the rural landless in the overall planning of

⁶⁷ Cambodian Land Law of 2001, Article 49.

⁶⁸ Sub-decree on Social Land Concessions, No. 19 ANK/BK (19 March 2003), Article 3.

⁶⁹ World Bank, “Social Land Concessions,” p. 4 and 34.

⁷⁰ *Id.*, p. 2.

⁷¹ World Bank, “Cambodia: Halving Poverty by 2015?” p. 48.

social land concessions, this should not entail excluding the urban poor entirely. If social land concessions are not an appropriate device for meeting prospective urban housing needs, this should be clearly established and alternative policies with a meaningful chance of having an impact should be identified.

The HLP rights of vulnerable groups

Two specific groups within Cambodian society are particularly vulnerable to violations of their HLP rights. The first is female-headed households. In a broad sense, women are seen as having relatively equal rights to men in Cambodian society.⁷² For instance, although the mass-murder under the Khmer Rouge regime created a high proportion of potentially vulnerable female-headed households in the 1970s, women appear to have been allocated land on an equal basis during the 1980s PRK reforms, which they have by and large retained to date. In fact, early results from the LMAP titling program give some credence to the idea that the property of married couples is more likely to be formally owned by women than men.⁷³

On the other hand, there is evidence that female heads of households own smaller plots of land than men, have fewer opportunities to increase the amount of land they hold, and are at greater risk of becoming landless.⁷⁴ Women have a lower likelihood of receiving a basic education and are under-represented in many vocational areas. As a result, although poor women often do take on significant income-generating activities outside the home, they tend to receive less pay than men and are still expected to take responsibility for most domestic tasks.⁷⁵ These factors seem to translate into a general lack of bargaining power for women, vis-à-vis men, in negotiating crucial HLP issues such as land purchases, loans, access to basic services and the terms of relocation.⁷⁶

A second inherently vulnerable group in Cambodia is comprised of indigenous people, a small minority that primarily inhabit the country's forested northeastern highlands. As described above, the 2001 Land Law provided explicit recognition to indigenous groups' collective rights to the lands they traditionally occupied. However, these provisions cut very much against the grain of Cambodia's historical approach to its indigenous communities, which faced repression, forcible relocation and predatory resource exploitation on their lands virtually since independence.⁷⁷ Likewise, although the Law specifically protects indigenous rights to shifting (or 'swidden') agricultural practices, the

⁷² Id, p. 42.

⁷³ Ministry of Land Management, Urban Planning and Construction, "Land Management and Administration Project (LMAP) Land Registration Data Analysis" (April 2005), p. 3. According to this report, 70% of the nearly 300,000 properties registered at the time were jointly owned by married couples, while a further 18% were registered in the wife's name and only 6% in the husband's name.

⁷⁴ CDRI, "Social Assessment of Land in Cambodia," p. 20.

⁷⁵ World Bank, "Cambodia: Halving Poverty by 2015?" p. 42.

⁷⁶ Kothari, "Mission to Cambodia," p. 20.

⁷⁷ Simbolon, "Access to Land of Highland Indigenous Minorities," p. 11.

tendency throughout the region has previously been to outlaw such practices on the pretext that they lead to environmental damage.⁷⁸

During the 1990s, the Cambodian military presided over such extensive and uncontrolled logging of the country's forests that concerns arose about complete deforestation and environmental devastation. As a result, moratoria on logging in forest concessions and transportation of logs were imposed in 2002. However, allegations of illegal logging continue. Because timber clearing is still allowed on economic land concessions, the grant of profoundly oversized concessions in the country's northeast appears to represent another attempt to bypass Cambodia's forest management controls, impinging further on indigenous land.⁷⁹ Indigenous groups are also liable to being pressured into selling or giving away title to land in response to fraud and intimidation. Despite the fact that individual sales of collectively held land are presumptively illegal under the Land Law, courts in northeastern Cambodia have upheld ostensible sales of such land based on outright deception and bribery.⁸⁰

Perhaps most threatening, rural poverty in other parts of Cambodia has led an increasing number of landless farmers to settle in the Northeast, seeking jobs in concession areas and clearing forest for farming. The presence of such settlers is tacitly approved by the Cambodian Government, which despite its rhetoric about indigenous rights, appears to view development and colonization of the Northeast as important goals. Misunderstanding of swidden farming systems also creates the risk of local authorities classifying indigenous lands as 'degraded forest' suitable for distribution through social land concessions, encouraging more migration and creating greater pressure on the few remaining indigenous areas. Local unwillingness to enforce the Land Law are exacerbated by ongoing delays in the preliminary demarcation of indigenous land as well as the failure to promulgate an implementing sub-decree on indigenous land.⁸¹

Most observers agree that social land concessions, which assume distribution to individual farmers, would not be an appropriate response to the loss of collectively held land by indigenous people. However, unless the Cambodian authorities are prepared to begin rigorously enforcing the provisions of the Land Law barring illegal acquisition of land and invalidating individual sales of indigenous land outside the community, indigenous people face increasing dispossession and displacement and may ultimately be forced off their lands completely, swelling the ranks of indigent migrants to Cambodia's provincial cities. As most indigenous people cannot speak the language of the Khmer majority in Cambodia, they are likely to suffer from extreme marginalization and associated social problems. As simply put by the Cambodian NGO Forum, "[i]f not

⁷⁸ Id, p. 24. Swidden agriculture was outlawed in neighboring Laos and Vietnam after being blamed for erosion that is more likely occurred as a result of logging and agricultural settlement.

⁷⁹ Leuprecht, "Economic Land Concessions," p. 21-2.

⁸⁰ Human Rights Watch, "Cambodia: Verdict a Setback for Indigenous Land Rights," Press Release (30 March 2001). The particular case described here involved the purchase of 1,200 hectares of indigenous land by a general who bribed district officials to effectively steal the property from villagers, pressuring them to thumbprint title documents they had not read and offering gifts such as bags of salt in exchange.

⁸¹ Kothari, "Mission to Cambodia," p. 19. The sub-decree is delayed pending the adoption of legislation defining indigenous peoples in Cambodia.

addressed as a matter of priority, the land alienation problem is likely to result in the destruction of indigenous culture.”⁸²

Conclusions and recommendations

Many of Cambodia’s HLP rights abuses are related to its relatively recent transition to peace, democratic government and a market economy. The sudden exposure of Cambodia’s largely rural population to globalized markets in land and natural resources after two decades of conflict and international isolation have radically destabilized popular notions of how HLP resources are to be valued and legitimately held.⁸³ Although considerable progress has been made, the polarizing effects of insecure tenure remain a threat to Cambodia’s political stability and to its people’s welfare and livelihoods.

The Government of Cambodia has cooperated with the international community in developing policies, legislation and institutions meant to safeguard HLP rights and ensure equitable access to HLP resources. However, it has responded to domestic and international criticism of its failure to give effect to this new framework with a blend of conciliatory public gestures and occasional intimidation, but precious little action.⁸⁴ Although an impressive process of titling and registration of property interests is underway, it is unlikely to be completed in time to benefit Cambodia’s embattled indigenous minorities and has failed so far to redress land grabs by the rich and powerful.

In sum, domestic and international insistence has resulted in the creation of a framework, focused on the 2001 Land Law, for redressing the worst HLP violations of the fifteen years since Cambodia’s transition and working toward protection and respect for the rights of the country’s poorest and most vulnerable citizens. Although further study, drafting and capacity-building is clearly necessary in some areas, both domestic and international actors should now insist equally forcefully on implementation of this framework in the spirit of Cambodia’s human rights obligations. Giving effect to these standards will require the Government to confront powerful vested interests and ubiquitous patronage practices head on, but failing to do so will further undermine the broader effort to establish the rule of law in Cambodia.

Recommendations to the authorities of Cambodia:

- The first priority of the government of Cambodia should be to arrest the most socially destructive HLP practices that are occurring now, in the understanding that failing to do so implicates Cambodia’s international law obligations. Moratoria should be imposed and enforced, in particular, in the following areas:

⁸² NGO Forum on Cambodia, “Land Alienation from Indigenous Minority Communities in Ratanakiri” (November 2004).

⁸³ CDRI, “Social Assessment of Land in Cambodia,” p. 16.

⁸⁴ Licadho, “Sparrows Released during Vigil at Prey Sar Prison near Phnom Penh” Press Release (10 July 2006). The press release describes the arrest and ongoing detention of two protestors and a journalist during the relocation of the Bassac informal community in Phnom Penh, noting that 116 apparently intimidatory arrests have taken place in relation to land disputes this year.

- First, transfers of land traditionally occupied or used by indigenous peoples should be prospectively banned and retrospectively voided until all regulatory and institutional preconditions have been met for the administration of indigenous land in accordance with the letter of the 2001 Land Law and the spirit of Cambodia's international obligations.
- Second, all evictions from and clearances of informal settlements, whether by official or private actors, should be suspended until such time as the regulatory and institutional preconditions have been met for relocation processes to be decided upon and implemented in a manner that will avoid forced evictions and arbitrary displacement.
- In all cases where forced evictions and other human rights violations have resulted in the involuntary displacement of Cambodians from their homes or places of habitual residence, those affected should be treated as internally displaced persons (IDPs) in the sense of the 1998 Guiding Principles on Internal Displacement. Specifically, such persons should not be discriminated against in the exercise of any of their rights and freedoms as a result of their displacement, and they should receive protection and humanitarian assistance from the authorities of Cambodia in order to both mitigate their specific vulnerabilities during displacement and to bring about an end to their displacement through return, resettlement and reintegration.
- In cases in which land or property has been illegally appropriated, held in concession, or diverted from its lawful possessors or users, in particular in the manners set out in Article 18 of the Cambodian Land Law of 2001, the primary concern of the Cambodian authorities should be to bring about the immediate disgorgement of such land or property in order to return it to its lawful possessors or users or make it available to socially vulnerable groups in the form of social land concessions. The work of existing institutions mandated to resolve disputes must be supported in order to ensure uniform application of the law in all cases. While those responsible for illegal appropriations and diversions of land should be held legally accountable, this process should not be politicized and should under no circumstances be allowed to delay the return of land determined to have been illegally acquired or held.
- Steps must be taken to ensure equitable prospective access to HLP resources for the poor, landless and socially vulnerable. The social land concession provisions of the 2001 Land Law should be activated as soon as procedures have been put in place to ensure their effective and transparent implementation. Prospective measures should not be limited to rural areas. Cambodia is obliged to take concrete measures to provide the urban poor with adequate housing, whether through social concessions, upgrading or other means.

Recommendations to international agencies and donors in Cambodia:

- International actors in Cambodia should do more to support implementation as well as codification of HLP rights in Cambodia. Efforts to improve the legislative and

regulatory frameworks for safeguarding HLP rights and to support the development of domestic land management and dispute resolution institutions have made significant progress over the last decade. However, the credibility of the laws and institutions that the international community has invested in will be undermined unless they are seen to function consistently, transparently and in the spirit of Cambodia's human rights obligations.

- Greater complementarity can and should be achieved between support for the achievement of Cambodia's pro-poor development goals and insistence on the observation of its human rights commitments. For example, advocacy for binding rules on resettlement is merited both based on the need to minimize the adverse consequences of development on the poor but also on Cambodia's commitments to avoid forced evictions and arbitrary displacement.