

Fact Sheet: Case Study Series: Human Rights Subordinate to Economic Development in Phnom Penh



Timeline: Early 2000s to present

Snapshot: Increased foreign investment over the last two decades has led to significant economic growth in the Kingdom of Cambodia (“Cambodia”). However, this economic expansion has come at the expense of the human rights of ordinary citizens. Despite widespread protests and numerous civil society campaigns, basic human rights of Phnom Penh residents appears to be subordinate to economic development; thus the Royal Government of Cambodia (the “RGC”) must address the imbalance, to ensure that development benefits all.

Introduction

Since the beginning of the year, the RGC has seemingly begun to intervene in some of Cambodia’s endless land conflicts. In late February, Prime Minister Hun Sen announced the end of a yearlong review of economic land concessions (“ELCs”), alleging that the RGC had reclaimed one million hectares of land from companies operating ELCs (however, initial analysis of the figures made available suggest that no more than 726,000 hectares have been reclaimed.¹) In the country’s capital, two development projects that threatened to affect hundreds of families have recently been stalled – in April, the Prime Minister announced his decision to cancel plans to build a multi-million-dollar airport expressway running from the city center of Phnom Penh to Phnom Penh International Airport.² First announced by the RGC last January, if the expressway project had gone ahead it would have resulted in hundreds of families losing their homes. Similarly, in March the Prime Minister scrapped an expansion project for Phnom Penh International Airport after nearly four years of protests, petitions and demonstrations. The project was being undertaken to ensure the airport met International Civil Aviation Organization requirements but depended upon the eviction of 165 families who legally owned the land. The Prime Minister’s timely intervention in these projects has safeguarded the homes of hundreds of families and therefore must be commended.

While the cancellation of the above developments in the capital are undoubtedly welcome, the Cambodian Center for Human Rights (“CCHR”) recalls a number of other destructive business ventures in Phnom Penh sanctioned by the RGC, which threaten to affect thousands of people and thus also require the RGC’s immediate intervention. A lack of public consultation and information has left families threatened by these projects increasingly concerned over losing their land and homes. Such concern is not unfounded, given the RGC’s history of conducting development projects in Phnom Penh that have forced thousands of families from their homes with little to no recourse. It is CCHR’s position that economic development is crucial for the country’s progress, however it must not come at the cost of human rights. This Fact Sheet intends to highlight a number of development projects underway in Phnom Penh that threaten human rights, and thus are in breach of domestic and international law.

¹ Zsombor Peter, ‘New Figures on Canceled Land Concessions Still Short on Detail’, *The Cambodia Daily* (11 April 2016) <http://bit.ly/24h72Ay>

² Pech Sotheary & Ananth Baliga, ‘PM nixes airport expressway, citing construction concerns’, *Phnom Penh Post*, (06 April 2016) <http://bit.ly/1YGs0Fk>

This Fact Sheet is written by CCHR, a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

Phnom Penh's economic boom

Since transitioning to a free-market economy in 1989, Cambodia has increasingly been considered by foreign businesses as a desirable location in which to invest and, due to its politically unstable and insular recent past, represents a relatively untapped market. Foreign-owned firms are permitted to operate without a local partner, can exploit a large pool of cheap labor and, owing to the dollarized economy, may do so without running the risk of exchange rate fluctuations. Eager to benefit from such favorable business conditions, companies from Vietnam, China, South Korea, Thailand, Malaysia, India, Singapore and France have invested heavily into Cambodia in recent years. Moreover, a weak rule of law and a culture of corruption in Cambodia serve as further incentives for investors, who are often able to circumvent restrictive regulations and burdensome impact assessment requirements required by many other countries. As Cambodia's only urban area with a population greater than 100,000, Phnom Penh has been the principal target destination for foreign investors, and is one of the fastest growing cities in East Asia.³

Cambodia's recent economic transformation has led to a significant reduction in poverty and to the development of a modest middle class with the purchasing power required to engender further economic growth. World Bank figures suggest that, in 2004, 53% of Cambodians were living below the poverty line and that in 2012 this number had dropped to 17.7% of the population.⁴ However, while poverty continues to decrease in Cambodia, the pace has declined significantly since 2012. In addition, the vast majority of families who escaped poverty were only able to do so by a small margin, and thus are at high risk of falling back into poverty.⁵ Moreover, such positive developments have been marred by numerous unsustainable business developments over the last two decades that have had a devastating socio-economic impact on the local poor and failed to adequately compensate those affected. Thousands of families have seen their homes and ways of life destroyed in the name of economic development, with the RGC derogating from its duty to uphold and protect the human rights of its citizens.

Due to endemic corruption among the powerful elite in Cambodia, the interests of powerful companies are often prioritized over the land rights of vulnerable communities. As such, many of the private companies behind these development projects are able to operate with impunity in relation to the violation of basic human rights. For example, both of the private companies responsible for the notorious evictions and human rights abuses at Boeung Kak Lake and Borei Keila in Phnom Penh count ruling party Senator Lao Meng Khin among their senior management.

Illegal practice

Many of the corporate actors implementing development projects in the capital are violating both domestic and international law. As outlined in the 2004 Sub-Decree No. 146 on Economic Land Concessions ("Sub-Decree No. 146"), the RGC may lease 'state private land' to private companies

³ Morton, E. 'Capital's rapid urban migration' in *The Phnom Penh Post* (January 2015) <http://bit.ly/1r3HpVu>

⁴ World Bank, 'Poverty has fallen...' (2014) <http://bit.ly/1hdZ0R5> and World Bank Data Set <http://bit.ly/232cBAv>

⁵ *Ibid*

that intend to use the land to develop the country's industrial agriculture for up to 99 years,⁶ although the RGC last year announced its intention to reduce all ELC contracts to 50 years.⁷ Article 4 of the Sub-Decree No. 146 stipulates that, in order for the RGC to legally grant ELCs, the following criteria must be met: the land must be registered as state private land; a land use plan must have been adopted by the Provincial-Municipal State Land Management Committee; environmental and social impact assessments must have been completed; there must be no involuntary resettlement by lawful land holders and access to private land must be respected; and public consultations with territorial authorities and residents of the locality must have taken place.⁸ However, in practice, these criteria are rarely met and, thus, many of the projects being undertaken in Phnom Penh are in breach of domestic law.

For example, in 2007, an ELC was granted to ruling party Senator Lao Meng Khin's Shukaku Inc. to develop Phnom Penh's largest lake, Boeung Kak, and its surrounding area "*into [a] futuristic cityscape of high-end residential and commercial buildings*".⁹ No public consultations with relevant local stakeholders took place and the RGC failed to publish environmental and social impact assessments until after the work had begun; the concession, therefore, failed to meet the requirements outlined in Sub Decree No. 146.¹⁰ Furthermore, at the time the concession was granted, the land was legally defined as 'state public land' and so did not qualify for the ELC scheme.¹¹

Phanimex's actions in relation to the development of Borei Keila reflect a similar disregard for the law. The agreement reached between the RGC and Phanimex in 2003 was initially heralded as a progressive "land-sharing arrangement", insofar as the granting of development rights over 2.6 hectares of land via a Social Land Concession ("SLC") was dependent on the company building ten buildings on two hectares of land to house the residents of Borei Keila. However, Phanimex did not fulfill their end of the agreement and, in April 2010, after having only constructed eight out of the ten buildings, the company announced that lack of financial capital would prevent them from providing housing for all affected residents, leaving 300 families homeless. The majority of these families relocated to resettlement sites but many later returned to Borei Keila to live in makeshift huts, as living conditions at the resettlement sites were so poor. After waiting nearly four years for a resolution, in November 2015 it was finally determined that only 35 families would be entitled to on-site housing at Borei Keila. Eighty-five families were informed they could either be relocated to Andong village on the outskirts of Phnom Penh – a site which CCHR has previously denounced as inadequate¹² – or receive \$5,000 in compensation. A further 34 families who did not have sufficient evidence to prove former residency at Borei Keila were offered just \$3,000. Overall, residents met the determination with disappointment.¹³ No further compensation packages have been tabled

⁶ Sub-Decree #146 on Economic Land Concessions <http://bit.ly/1sXh06e>

⁷ Statement No. 683, dated 28 July 2015, released by the Ministry of Environment announced that the RGC in principle had decided to reduce all ELC contracts to 50 years.

⁸ Sub-Decree #146 on Economic Land Concessions Article 4 <http://bit.ly/1sXh06e>

⁹ CCHR, 'Case Study Series: Boeung Kak', <http://bit.ly/1yL1he9>

¹⁰ Suyheang Kry 'The Boeung Kak Development Project: For Whom and For What? Poor Land Development Practices as a Challenge for Building Sustainable Peace in Cambodia', *The Cambodia Law and Policy Journal*, Vol. 3 (December 2014) <http://bit.ly/1TLQZYy>

¹¹ Ibid.

¹² CCHR, 'Cambodia: Land in Conflict, An Overview of the Land Situation' (December 2013) <<http://bit.ly/1KtPNVv>>

¹³ CCHR, 'Borei Keila – The Saga Continues', (Fact Sheet) (December 2015) <http://bit.ly/1N5m6qK>

since, leading a number of the remaining affected families to submit petitions to the Phnom Penh office of the UN's Office of the High Commissioner for Human Rights on 23 March 2016, requesting the UN's intervention in their struggle.¹⁴

Moreover, the companies involved in development projects often violate Cambodia's Land Law of 2001 (the "Land Law"), which in theory largely protects land rights. Ownership rights are enshrined in Article 5 of the 2001 Land Law, which declares, "[n]o person may be deprived of his ownership, unless it is in the public interest". It further stipulates that "[a]n ownership deprivation shall be carried out in accordance with the forms and procedures provided by law and regulations and after the payment of fair and just compensation in advance".¹⁵ Yet, often the companies involved in development projects have engaged in systematic intimidation and violence in an attempt to expedite the relocation of the local residents and, by extension, the overall construction process. In so doing, they have violated residents' rights to adequate housing, to security of tenure and to be not subject to forced evictions.

Not only do such violations contravene domestic law, but they also breach international human rights law, which is directly applicable in Cambodia by way of Article 31 of the Constitution of the Kingdom of Cambodia, which enshrines international human rights obligations into Cambodian domestic law,¹⁶ a decision reaffirmed by the Constitutional Council in 2007.¹⁷

While economic development has the potential to be extremely beneficial to society and CCHR accepts that such development may depend upon evictions, in order for evictions to be legal they must only be carried out at as a last resort, in exceptional circumstances and in accordance with the law. According to the United Nations ("UN") Committee on Economic, Social and Cultural Rights ("CESCR"), before any eviction there should be an opportunity for consultation with the proposed evictees; adequate notice for the evictees; and adequate compensation.¹⁸ During the eviction, the authorities must be present, and the persons carrying out the eviction must be properly identified.¹⁹ In addition, evictions must not render individuals homeless, and legal remedies should be provided to the affected communities.²⁰ A number of other guidelines on evictions, including the UN Basic Principles and Guidelines on Development-Based Eviction and Displacement²¹ and the UN's Fact Sheet No. 25 on Forced Evictions²² echo such restrictions. Forced evictions – evictions carried out against the will of the occupants without the provision of, and access to, appropriate forms of legal or other protection²³ - constitute a gross violation of human rights, violating the right to adequate

¹⁴ Sek, Odom 'After City Hall Snub, Borei Keila Evictees Ask UN for Help', *The Cambodia Daily* (24 March 2016) <http://bit.ly/1OdL1t4>

¹⁵ Cambodian Law on Land (2001), Article 5 <http://bit.ly/1T0OoaO>

¹⁶ The Constitution of the Kingdom of Cambodia, Article 31

¹⁷ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, (10 July 2007)

¹⁸ CESR, General Comment No 7: The right to adequate housing (Art.11.1): forced evictions, E/1998/22, (20 May 1997), 7, 13, 14, and 15 <http://bit.ly/HbQDIV>

¹⁹ Ibid, 15

²⁰ Ibid, 16

²¹ UN, 'Basic Principles and Guidelines on Development-Based Evictions and Displacement' Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18 <http://bit.ly/1SPR8VH>

²² UN, 'Forced Evictions' Fact Sheet No. 25, Rev. 1 (2014) <http://bit.ly/1NKzQKM>

²³ CESR, General Comment No 7: The right to adequate housing (Art.11.1): forced evictions, E/1998/22, (20 May 1997) <http://bit.ly/HbQDIV>

housing, the right to security of land tenure, the right to security of the person, freedom from cruel, inhuman and degrading treatment, and a whole host of internationally recognized human rights standards.²⁴

Economic development at the expense of human rights?

While strict guidelines on evictions exist within international human rights law, unfortunately many development projects undertaken in Phnom Penh in recent years have neglected these principles. Numerous forced evictions have taken place across the city to make way for developments, and thousands have been left homeless as a result. This section will highlight just a few of the many land conflicts in Phnom Penh whereby human rights have been subordinate to economic development.

Borei Keila

None demonstrate the severity of the impact of forced evictions more so than the case of Borei Keila. On 03 and 04 January 2012, the remaining families at Borei Keila were violently evicted from their homes by a contingent of Phanimex security personnel and Cambodian police equipped with bulldozers, electric batons and tear gas. During the eviction over 200 homes were destroyed and many community members were injured or arrested and detained. The involvement of regular and military police in violent crackdowns on Borei Keila protesters proved that such illegal activity is often endorsed by the RGC.²⁵

In addition, relocation sites offered to evictees are often remote, and moreover uninhabitable, leading to a whole host of further human rights violations. The majority of the families living at Borei Keila were relocated to two remote settlement sites: Tuol Sambour, 25 kilometers outside Phnom Penh, in Prey Veang commune, and Srah Po (also known as Phnom Bat), 45 kilometers outside Phnom Penh in Kandal province. At the resettlement sites, evictees have since had to live in makeshift tents and faced a myriad of problems including a lack of access to electricity, sanitation facilities, clean drinking water, schools and employment opportunities. The mounting waste and polluted environment has had a severe effect on the health of the evictees. These relocation sites fall well below the required international standards for development-based evictions, contravene a number of domestic and international human rights laws and fail to meet the stringent criteria for such projects as outlined in the Land Law.

Boeung Kak

When victims of such flagrant land rights violations have attempted to seek redress, they have further been subject to abuse. Following the involuntary displacement of thousands of families living around Boeung Kak - which Amnesty International has described as the largest forced eviction the country had witnessed since the Khmer Rouge evacuation of Phnom Penh in 1975²⁶ – the families have repeatedly attempted to demand their rights. For example, on 21 April 2011, several local residents, including two children, travelled to the Phnom Penh Hall to exercise their rights to expression and assembly and engage in meaningful dialogue with local authorities, in the hope of putting an end to the aggressive pumping of sand into the Boeung Kak lake and to find a resolution to the conflict. Instead, they were beaten, electrocuted and detained by Phnom Penh security

²⁴ *Ibid*

²⁵ CCHR, 'Borei Keila – The Sage Continues' (Fact Sheet) (December 2015) <http://bit.ly/1N5m6qk>

²⁶ Amnesty International, 'Eviction and Resistance in Cambodia: Five women tell their stories' (2011) <http://bit.ly/1TiHRWl>

forces; one 71-year old woman suffered a serious head injury and another woman had her thumb broken. Nine women were arrested, illegally detained and forced to sign confessions admitting responsibility for the violence.²⁷ In fact, on several occasions, Boeung Kak activists have been arrested and imprisoned for their peaceful protests, violating their rights to freedom of assembly and expression. One Boeung Kak female activist was sentenced to three years imprisonment for her opposition to the lake's development in December 2012, and despite widespread international condemnation of her conviction, was not released until November 2013. From November 2014 to April 2015, seven Boeung Kak activists were imprisoned for their involvement in entirely legitimate and peaceful protests against the devastation of their community. If the RGC were to ensure a better balance between economic interest and the protection of human rights, such flagrant abuses of human rights would not continue to take place.

While it is beyond the scope of this Fact Sheet to interrogate the claim that such development projects benefit the wider public, it is abundantly clear that the compensation offered to local residents more often than not falls well short of the standard required under both domestic and international law. Boeung Kak residents were offered three compensation options: USD \$8,500; housing at Damnak Troyeung relocation site (more than 20km outside the city); or the promise of on-site housing and relocation to Trapeang Anchanh (again 20km outside the city) for the four years it would take to construct the replacement housing. The \$8,500 offered to residents was well below market valuations of the land at the time and was not paid out in advance, as required under the Land Law.

Boeung Tompoun and Boeung Cheung Ek

Despite the numerous violations that have occurred in Phnom Penh as a result of development projects, and the majority of victims not having yet obtained adequate redress, the RGC continues to sanction further projects that threaten residents' rights. The satellite city development currently underway at Boeung Tompoun and Boueng Cheung Ek, which depends upon the reclaiming of land from the wetlands, serves as one such example. Work on the development commenced in 2009 and, in addition to destroying the livelihoods of affected families and threatening involuntary resettlement for those who remain, has already had a significant environmental impact as filling in the lake with sand prevents it from fulfilling its vital function as a natural wastewater treatment and flood-management system for Phnom Penh. Since development began, flooding in the city has intensified and local residents have suffered from growing levels of stagnant, dirty water.²⁸ Lack of public consultation and information has left families in fear of losing their homes, and reports suggest that the construction company has warned families that should they reject the compensation offered to them, they will be forcibly evicted and receive no compensation at all.²⁹

Boeung Trabek Lake

Due to Phnom Penh City Hall's decision to restore Boeung Trabek Lake, inhabitants of the surrounding area are now faced with challenges similar to those confronting Boeung Tompoun residents. On 31 January 2015, without engaging in any form of prior consultation with residents, local authorities spray-painted red numbers on makeshift shacks in Chamkarmon's Psar Doeung

²⁷ CCHR, Boeung Kak Factsheet (October 2011) <http://bit.ly/1yL1he9>

²⁸ Sahnakum Teang Tnaut (STT), 'Boeung Tompoun Lake: Future Unknown?' (Feb 2015) <http://bit.ly/23HDYp4>

²⁹ *Ibid*

Thkov village as a means of identifying homes slated for demolition. Unlike other evictions that have been undertaken to allow for the construction of high-end residential apartments, these evictions are motivated by the desire to restore Boeung Trabek Lake so as to reduce flooding in the area. Flooding is indeed a very pertinent issue within this area of Phnom Penh and represents a potentially fatal health hazard given the lake's proximity to the open sewer that is Trabek Canal. During rainy season, "*rubbish gets clogged under the bridges*" causing the water to rise rapidly "*until the black, faecal-matter-filled sludge engulfs homes*".³⁰ It follows that the restoration of Boueng Trabek Lake may be interpreted as a project that promotes the "*general welfare*" of Phnom Penh residents and, therefore, as a legitimate development-based eviction in accordance with UN guidelines.³¹ However, notwithstanding the credible reasons for undertaking these evictions, City Hall is still bound by both domestic and international legal frameworks to adhere to the principles of fair and just consultation, compensation and rehabilitation. Thus far, this has not been the case, with little consultation having taken place and City Hall offering Boeung Trabek residents compensation well below the market value.³²

Chroy Changvar

The planned construction of a road 100 meters west of National Road 6A represents yet another example of City Hall's complicity in controversial development-based evictions and is reflective of the RGC's wider commitment to promoting development in the city at the expense of human rights. In January 2016, Khlaing Huout, governor of Chroy Changvar – the district to be negatively impacted by the road's construction – declared the project a public sector venture and maintained that City Hall was "*not working for the benefit of any person or company*".³³ However, on 21 April 2016, bulldozers owned by Overseas Cambodia Investment Corporation ("OCIC") were used to clear land to make way for the road's construction, proving that the affected families were right in assuming the project was being undertaken to serve OCIC's 387-hectare Chroy Changvar satellite city project, a development that had already led to the displacement of hundreds of families, rather than to ease traffic congestion.³⁴ A resident of the affected area has commented that the communities living on the site are "*not against building the road*" but the company and local authorities should compensate the families in advance and not "*just come and clear out land like this*".³⁵ To date, the company has offered villagers, who claim they have lived on the land since before 1993, a derisory \$15 per square metre of land. Given that some estimate the market value to be closer to \$2,000 per square meter, many refused to accept the compensation offered and remained on the land.³⁶ Despite many not receiving compensation for their land, City Hall sanctioned the OCIC to go ahead with the project: on the subject of the bulldozing of villagers' land on 21 April 2016, district official Sen Narin said "*we have to do it even though they have not received compensation, because we have*

³⁰ Hruby, Denise, 'At Boeung Trabek, 400 families set for eviction' in *The Phnom Penh Post* (31 January 2015)

<http://bit.ly/1OhAcZ4>

³¹ UN, 'Basic Principles and Guidelines on Development-Based Evictions and Displacement' <http://bit.ly/1SPR8VH>

³² David, Sen 'Boeung Trabek residents resist offers' in *The Phnom Penh Post* (5 June 2015) Boeung Trabek residents resist offers' <http://bit.ly/1VAOKdq>

³³ Ben Sokhean, 'Residents Protest Road Planned Near OCIC Development Site', *The Cambodia Daily* (25 January 2016) <http://bit.ly/1rmgHr4>

³⁴ Pech Sotheary and Ananth Baliga, 'OCIC bulldozing in Chroy Changvar rolls on in spite of dispute', *The Phnom Penh Post* (22 April 2016) <http://bit.ly/24pUHgS>

³⁵ Khouth Sophak Chakrya, 'Residents protest land clearing on Chroy Changvar peninsula', *The Phnom Penh Post* (26 January 2016) <http://bit.ly/1TIs4G9>

³⁶ Pech Sotheary and Ananth Baliga, 'OCIC bulldozing in Chroy Changvar rolls on in spite of dispute', *The Phnom Penh Post* (22 April 2016) <http://bit.ly/24pUHgS>

invited them [to negotiate] many times already".³⁷ Sen Narin's remarks fail to justify City Hall's and OCIC's failure to comply with the CESCR's general comment on development-based evictions.

OCIC, run by tycoon Pung Khieu Se, was granted a 99-year ELC on 387 hectares of land on Chroy Changva peninsula for an unknown fee in 2011, having promised to develop the peninsula, which juts out of the mainland and into the confluence of the two rivers in Phnom Penh, into a "*city of the future*".³⁸ In early 2014, the company began filling in the river with sand in preparation for development, causing numerous mudslides and the subsequent destruction of houses located on the riverbed.³⁹ As a result, they became embroiled in a protracted land dispute, during which families of the affected community slowly and reluctantly accepted compensation from OCIC and moved off the land; the last to leave saw their shacks razed to the ground on 15 September 2014 and were compensated \$500 for their loss. Having begun work on the land without first consulting the evictees or providing advance compensation, the company has breached both domestic and international human rights law.

Conclusion

While the RGC has taken some positive steps in protecting human rights over economic development in Phnom Penh in its recent interventions of development projects, this Fact Sheet demonstrates the incredibly destructive nature and, in some cases, outright defiance of the law of a number of further development projects in Phnom Penh which require similar intervention. Such projects serve to demonstrate the State's failure to fulfill its duty to protect the rights of its citizens in the face of repeated human rights violations within the private sector. As outlined in the UN Guiding Principles on Business and Human Rights,⁴⁰ responsibility for ensuring human rights are protected and respected in Cambodia lies with both the State and businesses. Stable living and working conditions, in which the rights of all citizens are protected, are conducive to economic growth and it is, therefore, in the interests of both the State and the private sector to ensure they are taking all appropriate measures to protect and respect the human rights of Cambodians.

CCHR calls upon the RGC to halt further detrimental development projects until full and proper environmental and social impact assessments have been conducted, sufficient consultation with affected residents has taken place, and to ensure that compensation offered to affected families is based on the market price. Further, the RGC must ensure that development-based evictions are carried out as a last resort, and in compliance with international human rights law.

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³⁷ *Ibid.*

³⁸ Sek, Odom, 'City Hall Partitions Land Claimed by Villagers and OCIC, *The Cambodia Daily* (10 February 2015) <http://bit.ly/1ZbybS1>

³⁹ Matt Blomberg and Sek Odom, 'Shifting Sand and Lost Land in Chroy Changva', *The Cambodia Daily* (11 April 2014) <http://bit.ly/1TL3odc>

⁴⁰ United Nations, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' <http://bit.ly/18WbEUy>