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Economic Land Concessions in Cambodia - At the Expense of Adequate Housing?

A Minor Field Study

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Summary

The inspiration to this thesis springs from the phenomenon of “land grabbing”, which have had forced evictions of numerous persons and communities across the world as one of its devastating effects. International human rights law recognizes a right to adequate housing, and instances of forced eviction are considered a *prima facie* violation of this right.

This thesis is a case study on adequate housing in Cambodia, a country that is one of the poorest in Asia and still suffers from the legacies of decades of civil war during the second half of the 20th century. At the turn of the millennium, a system of Economic Land Concessions was introduced as a strategy to reduce rural poverty. However, since the introduction of this system concerns regarding the human rights impacts of it have been reported frequently, and so has instances of forced eviction throughout Cambodia.

Cambodia has ratified all the core human rights instruments, and against this background the purpose of this thesis is to investigate whether Cambodia can be considered to fulfill its international human rights obligations regarding the right to adequate housing. The purpose is further to examine whether the system of Economic Land Concessions affects the enjoyment of the right to housing.

The thesis describes the right to adequate housing as set forth by international human rights law, and thereafter it explores how the right to housing is protected in Cambodia through legislative and policy measures. Relevant parts of the regulation on Economic Land Concessions are then brought up, and a number of controversial issues in relation to housing and Economic Land Concessions are highlighted, namely: land disputes, landlessness, eviction and resettlement, access to justice, corruption and the Government’s lack of transparency.

The thesis concludes that Cambodia not can be considered to fulfill its international human rights obligations regarding the right to adequate housing, mainly because of the low degree of security of tenure throughout the country.

The thesis further concludes that the enjoyment of the right to adequate housing can be considered affected by the system of Economic Land Concessions, and that this system many times have made the rural poor even poorer, contrary to the original purpose of it.

Sammanfattning

Idén till denna uppsats kommer från det utbredda fenomenet “land grabbing”, vilket bland annat har lett till att ett stort antal människor över hela världen har blivit tvångsförflyttade. Inom det internationella regelverket för mänskliga rättigheter finns det en rättighet till adekvat (lämplig) bostad. Att tvångsförflytta människor anses vara ett direkt åsidosättande av denna rättighet.

Uppsatsen består av en fallstudie på rättigheten till adekvat bostad i Kambodja, som är ett av de fattigaste länderna i Asien. Kambodja präglas fortfarande på många sätt av det inbördeskrig som härjade i landet under andra halvan av 1900-talet. Som en strategi för fattigdomsbekämpning började staten vid millennieskiftet att bevilja markkoncessioner för storskaligt jordbruk. Sen detta system togs i bruk har det dock framförts stark oro kring systemets påverkan på åtnjutandet av mänskliga rättigheter, särskilt som många fall av tvångsförflyttningar har rapporterats.

Kambodja har ratificerat de mest centrala av de internationella instrumenten om mänskliga rättigheter, och med det som utgångspunkt är syftet med denna uppsats att utreda om Kambodja kan anses fullgöra sina internationella förpliktelser vad gäller rättigheten till adekvat bostad. Syftet är även att bedöma om systemet med markkoncessioner påverkar möjligheten att åtnjuta rättigheten till adekvat bostad.

Uppsatsen beskriver rättigheten till adekvat bostad utifrån det internationella regelverket om mänskliga rättigheter, och sen undersöker den hur denna rättighet är skyddad i Kambodja genom lagstiftnings- såväl som politiska åtgärder. Efter det presenteras de relevanta delarna av regleringen av markkoncessioner, och ett antal kontroversiella aspekter rörande bostadssituationen i Kambodja samt systemet av markkoncessioner granskas närmre. Dessa aspekter innefattar marktvister, fenomenet “jordlösa”, tvångsförflyttningar och vidarebosättning, tillgång till en rättvis rättegång, korruption och regeringens bristande transparens.

Två slutsatser dras i uppsatsen. Den första slutsatsen är att Kambodja inte kan anses fullgöra sina internationella förpliktelser vad gäller den mänskliga rättigheten till adekvat bostad, huvudsakligen på grund av att besittningsskyddet genomgående är allt för svagt i landet.

Den andra slutsatsen är att systemet med markkoncessioner påverkar möjligheten av att åtnjuta rättigheten till adekvat bostad. Till skillnad från det ursprungliga syftet med markkoncessionerna, att bekämpa fattigdomen, så har många av de fattiga i stället blivit ännu fattigare.

Preface

First and foremost I would like to thank my supervisor, Alejandro Fuentes, for input and fruitful discussions throughout my work with this thesis. Without his guidance it would not have turned out as good.

Special thanks to Andreas Ljungholm and all the employees at the Raoul Wallenberg Institute's office in Phnom Penh, who warmly welcomed me to Phnom Penh and their office. Thank you for introducing me to many great persons at the universities in Phnom Penh that the RWI support, and for inviting me to participate in lectures and seminars. Thank you also for helping me with practicalities, and not least for the unlimited amount of coffee! My time in Cambodia would not have been as memorable without your contributions.

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Abbreviations

AC	Administrative Committee
ADHOC	Cambodian Human Rights and Development Association
CCHR	Cambodian Center for Human Rights
CESCR	Committee on Economic, Social and Cultural Rights
CNRP	Cambodian National Rescue Party
CPP	Cambodian People's Party
ELC	Economic Land Concession
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILC	International Law Commission
LICADHO	Cambodian League for the Protection and Defense of Human Rights
LMAP	Land Management and Administration Project
MAFF	Ministry of Agriculture, Forestry and Fisheries
MLMUPC	Ministry of Land Management, Urban Planning and Construction
NALDR	National Authority for Land Conflict Resolution
NGO	Non-Governmental Organization
OHCHR	Office of the High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations

1 Introduction

1.1 Background

The phenomenon of acquiring land for commercial production is nothing new, but large-scale investments in agricultural land in developing countries, more known as “land grabbing”, has increased drastically over the last decade. The land that is sold or leased (often on a long-term basis) to the investors is however seldom empty, but many times inhabited and/or cultivated by people or communities. Consequently, land grabbing has led to forced evictions and severe violations of human rights throughout the world.¹

As part of the right to an adequate standard of living, international human rights law recognizes a right to adequate housing. Legal security of tenure has been given prominence as the most crucial element for the realization of the right to adequate housing, and instances of forced eviction have been deemed a *prima facie* violation of the right.² The Committee on Economic, Social and Cultural Rights (CESCR or the Committee) has since long been concerned over the “disturbingly large gap” between the standards of the right to adequate housing set out by international law and the actual situation of housing across the world, especially in developing countries.³

Like numerous other countries throughout the world, Cambodia has been largely affected by the land grabbing phenomenon. A widespread practice of forced evictions has been a major concern over the years, and there are no indications that this practice is on the decrease at present.⁴ It is estimated that at least 100 000 people have been evicted in the capital Phnom Penh alone since year 2000, and furthermore that some 150 000 Cambodians live under a constant threat of forced eviction throughout the country.⁵ According to Cambodian human rights organization ADHOC, more than 770 000 people have been adversely affected by land grabbing between 2000 and 2013.⁶

This thesis is a case study on the right to adequate housing in Cambodia, who became a member of the United Nations (UN) in 1955. Cambodia has

¹ Afrikagrupperna, Forum Syd and Swedish Cooperative Centre (2012), *The Race for Land:*

² CESCR (1991), ‘General Comment No. 4: The right to adequate housing (Art. 11 (1) of the Covenant)’, paras. 1, 18.

³ Ibid, para. 4.

⁴ Secretary-General (2014), ‘Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights’, para. 38; S. P. Subedi (2014), ‘Report of the Special Rapporteur on the situation of human rights in Cambodia’, para. 48.

⁵ CESCR (2009), ‘Consideration of Reports submitted by States Parties under Articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic, Social and Cultural Rights: Cambodia’, para. 30.

⁶ ADHOC (2014), ‘Land Situation in Cambodia 2013’, p. 2.

ratified all the core international human rights instruments, and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which offers the primary protection of the right to adequate housing, was ratified in 1992. Issues surrounding housing and land in the particular context of Cambodia will be discussed throughout the thesis, and it is therefore considered necessary to briefly introduce the essential parts of the country's turbulent history that might have had an impact on the topic of this thesis.

The Kingdom of Cambodia was once the centre of the powerful Angkor Empire in Southeast Asia, which saw its heydays between the 10th and 13th centuries. The post-Angkorian period was characterized by rivalry between Cambodia and its neighbouring countries, Thailand to the northwest and Vietnam in the east. During the first half of the 19th century the pressure on Cambodia increased, and in 1863 it became a French protectorate.⁷

Cambodia gained independence from France in 1953, and Prince Sihanouk⁸ ruled the country until he was voted out of office in 1970. This was a period of relative political stability in Cambodia, but that came to an end as the war in Vietnam (1955-1975) successively spilled over into Cambodia. After the coup d'état against Sihanouk, General Lon Nol led the country and struggled to maintain political power and stability. The Cambodian Communists, more known as the Khmer Rouge, grew stronger during the 1960's and early 70's, and on April 17, 1975, they marched into Phnom Penh and took power.⁹

The Khmer Rouge remained in power until January 7, 1979, when Phnom Penh was invaded by Vietnamese troops. It is estimated that almost two million people died under the regime of the Khmer Rouge. Causes of death include starvation, overworking, diseases and execution of "enemies of the revolution". The Vietnamese occupation of Cambodia lasted until 1989, a decade characterized primarily by civil war against the surviving fractions of the Khmer Rouge.¹⁰

Ceasefire was proclaimed by the 1991 Paris Peace Agreements,¹¹ through which the United Nations Transitional Authority in Cambodia was established and mandated to organize a free and fair election with the purpose to let the Cambodian people decide their political future.¹² The election was held in July 1993 and resulted in a coalition government with two prime ministers, whereof one was the current Prime Minister Hun

⁷ D. Chandler (2008), *A History of Cambodia*, pp. 35, 136, 141.

⁸ The former King Sihanouk abdicated the throne in March 1955 in order to devote himself to politics, and was from that point of time called Prince Sihanouk.

⁹ D. Chandler (2008), pp. 227-254.

¹⁰ Ibid, pp. 255-285.

¹¹ The ceasefire was however not respected by the Khmer Rouge, which continued the fighting. The last elements of the organization surrendered in 1999.

¹² Paris Conference on Cambodia (1991), 'Agreement on a Comprehensive Political Settlement of the Cambodia Conflict'.

Sen.¹³ The Paris Peace Agreements, followed by the election and the adoption of a new Constitution in 1993, which turned Cambodia into a market economy, can be seen as the starting point of modern-day Cambodia.¹⁴

Prime Minister Hun Sen is the leader of Cambodian People's Party (CPP), and he has been in power since 1985. In the latest national election, held in July 2013, CPP got 48,8% of the votes and the opposition party, the Cambodian National Rescue Party (CNRP), got 44,5%.¹⁵

Cambodia has experienced rapid economic growth the last decade, but is still one of the poorest countries in Asia. Around four million people, out of the total population of approximately 15,5 millions, live on less than 1,25\$ per day. The total territory of Cambodia amounts to 18,1 million hectares, of which circa four million hectares is considered arable. The country is divided into 24 provinces and one municipality (Phnom Penh).¹⁶

During the 1990's, after decades of civil war, the new Government launched a reform agenda to stimulate economic and social development. One of the priorities was development of the agricultural sector, and land concessions started to be granted at a high rate.¹⁷ At the turn of the millennium, rural poverty was seen as the main obstacle for further development, and a system of Economic Land Concessions (ELCs) was launched as a solution to this problem.¹⁸

However, concerns regarding the impacts of these land concessions began already in the 1990's, and since then it has been reported continuously that violations of human rights occur in connection with the granting of land concessions.¹⁹ At the same time, the reality with respect to the situation of housing throughout the world does not seem to have come closer to the standards on adequate housing set forth by international human rights law.²⁰

¹³ D. Chandler (2008), p. 288.

¹⁴ P. Leuprecht (2004), 'Land concessions for economic purposes in Cambodia: A human rights perspective', p. 12.

¹⁵ Central Intelligence Agency (2013), *The World Factbook: Cambodia*.

¹⁶ Ibid. The total area of arable land could however be discussed, see S. P. Subedi (2012), 'Report of the Special Rapporteur on the situation of human rights in Cambodia. Addendum: A human rights analysis of economic and other land concessions in Cambodia', para. 81.

¹⁷ P. Leuprecht (2004), p. 12.

¹⁸ C. Sperfeldt, F. Tek and B. Chia-Lung Tai (2012), 'An Examination of Policies Promoting Large-Scale Investments in Farmland in Cambodia', pp. 10, 13.

¹⁹ S. P. Subedi (2012), paras. 2, 6-11.

²⁰ L. Farha (2014), 'Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context', para. 19.

1.2 Purpose and Research Questions

The purpose of this thesis is twofold. Firstly, it is to explore how the right to adequate housing is protected in Cambodia, with a view to assess whether Cambodia can be considered to fulfil its international human rights obligations regarding this right. Secondly, it is to analyse whether the system of Economic Land Concessions in Cambodia affects the enjoyment of the right to adequate housing.

The objective of the thesis is thus to answer the following research questions:

1. Can Cambodia be considered to fulfil its international human rights obligations regarding the right to adequate housing?
2. Does the system of Economic Land Concessions affect the enjoyment of the right to adequate housing in Cambodia?

To be able to answer the research questions adequately, the following sub-questions has to be answered to begin with:

- What is the right to adequate housing according to international human rights law?
- How is the right to adequate housing protected in Cambodia?
- How is the system of Economic Land Concessions regulated?
- How is the regulation on Economic Land Concessions implemented?

1.3 Method and Material

This thesis is divided into two main parts, each part seeking to answer one of the two research questions posed above.

The first part of the thesis seeks to answer the first research question: *Can Cambodia be considered to fulfil its international human rights obligations regarding the right to adequate housing?* To do this, a traditional legal method (legal dogmatic method) has been used. Legal norms has been identified and examined to establish *de lege lata* regarding the right to adequate housing as set forth by international human rights law. A wide range of sources has been used here, including international and national legislation, various documents from UN human rights bodies, national policy documents and writings and reports from scholars as well as human rights organizations.

As will be shown, the right to adequate housing is guaranteed by several international human rights instruments. However, the ICESCR and its Committee has been in the forefront to establish *de lege lata* regarding this right, and their views are widely recognized as providing the base for the right to adequate housing. By this reason, the work of the CESCR plays a

central role when answering the first sub-question: *What is the right to adequate housing according to international human rights law?*

The second part of the thesis has been the subject of the field study, and seeks to answer the second research question: *Does the system of Economic Land Concessions affect the enjoyment of the right to adequate housing in Cambodia?* To answer this question a literature review as well as on-site interviews has been carried out. Sources used in the literature review includes reports from a large number of human rights organizations (mainly local non-governmental organizations (NGOs)) and different UN reports on Cambodia specifically, primarily from the Special Rapporteur(s) to Cambodia and the Office of the High Commissioner for Human Rights (OHCHR's) Country Office in Cambodia. Newspaper articles and media statements have also been used.

Interviews were conducted to obtain first hand information on issues surrounding housing and Economic Land Concessions. The interviews were semi-structured in character, i.e. different questions were asked depending on who was the interviewee. Neither did the interviews have a strict frame; the specific knowledge of each interviewee was decisive for the course of the interview.

One person that had been subjected to forced eviction personally (three times) and representatives from a number of NGOs were interviewed. Government and local (in Phnom Penh) officials were contacted for the purpose of an interview, but it turned out very hard to get these interviews in practice, and at the end they could not be carried out during the limited time in Cambodia. The topic of this thesis is highly controversial in Cambodia, and some of the interviewees therefore asked to be anonymous. They are referred to as Anonymous A, B etcetera throughout the thesis.

Transparency and access to information are issues of concern in Cambodia, and only a limited amount of the Government's data is available to the public. The sources used in this thesis have been evaluated continuously, but numbers of eg. Economic Land Concessions and persons evicted are not exact numbers, but approximate estimations. Furthermore, it needs to be emphasized that the issues discussed in this thesis (particularly in Chapter 5) are on going, and new information is published continuously. The information included in this thesis is as updated as possible.

It could also be mentioned that the term *land concession(s)* throughout the thesis refers to land concessions in general, i.e. it includes all or several of the different types of concessions that exists in Cambodia. The term is used to refer to Economic Land Concessions specifically only in situations where this is obvious.

1.4 Delimitations

Due to time and space constraints, this thesis is limited in several ways. To begin with, the thesis examines solely whether Economic Land Concessions affects the enjoyment of the right to adequate housing in Cambodia. Several other types of concessions exist in Cambodia, such as social land concessions and mining concessions, and these concessions most likely affects the right to housing as well. However, the system of ELCs was introduced explicitly as a way to reduce rural poverty, and is therefore especially interesting to examine in relation to possible impacts on human rights.

Not only the right to adequate housing might be violated by the system of ELCs (and other concessions), a range of other human rights are in many cases violated in connection with a violation of the right to housing. Violations of the right to food, the right to health and the right to education are common examples. However, as instances of forced eviction, a *prima facie* violation of the right to adequate housing, have been frequently reported from Cambodia, the right to housing has been selected as the topic of this thesis.

Another perspective that won't be covered in this thesis is how the system of ELCs affects the enjoyment of the right to adequate housing for indigenous groups in Cambodia specifically. The indigenous people are part of the rural population, and thus some of the conclusions drawn in the thesis are applicable also as regards the indigenous populations. However, the indigenous people are, in addition to the international and national regulation presented in this thesis, subject to further rights and regulations that have to be taken into account if a proper examination should be made.

Women as a group are considered particularly vulnerable in relation to housing issues and as victims of forced eviction. If the system of ELCs affects women in particular will neither be examined in this thesis.

Lastly, the thesis will focus on how selected parts of the right to adequate housing are affected by the system of ELCs, i.e. not all aspects of adequate housing will be evaluated in this sense.

1.5 Disposition

Following this introductory chapter, Chapter 2 seeks to answer the first sub-question: *What is the right to adequate housing according to international human rights law?* The chapter establish the right to adequate housing as set out in international human rights law, and the obligations imposed on States in relation to this right. Further elaboration on two aspects of the right to housing is also made here, namely on the prohibition of forced eviction and the importance of access to land and property rights.

Chapter 3 explores the protection of the right to adequate housing in the particular context of Cambodia, thus answering the second sub-question: *How is the right to adequate housing protected in Cambodia?* In this sense, legislative as well as policy measures taken by the Government to protect the right to adequate housing is brought up. However, to get an idea of the measures that would be appropriate to take in the specific case of Cambodia, the chapter begins with a description of the actual “housing situation” in the country. The chapter ends with an overview of the dispute resolution mechanisms available in relation to land disputes, as the functioning of these mechanisms has a big impact on achieving security of tenure in practice.

The system of Economic Land Concessions in Cambodia is introduced in Chapter 4, which consequently answers the third sub-question: *How is the system of Economic Land Concessions regulated?* The chapter begins with a brief overview of the development of the land concession system, followed by a description of the legal framework governing ELCs. To get an idea of the prevalence of ELCs throughout the country, the chapter ends with some selected data regarding those (and other) concessions.

Chapter 5 brings up a number of crucial issues in relation to housing and the ELC-system at current, and these are the main results of the field study. Land disputes, access to justice, eviction and resettlement, landlessness, corruption and the Government’s lack of transparency are topics that all will be touched upon in this chapter. By doing so the chapter seeks an answer to the fourth and last sub-question: *How is the regulation on Economic Land Concessions implemented?*

Chapter 6 provides the conclusions drawn and answers the research questions posed in Chapter 1.2.

2 The Human Right to Adequate Housing – The International Context

To be able to answer the first research question – *can Cambodia be considered to fulfil its international human rights obligations regarding the right to adequate housing?* – this chapter describes the scope and content of the right to adequate housing as recognized by international human rights law. It also clarifies the obligations imposed on States in relation to this right. Thus, this chapter seeks to answer the first sub-question: *What is the right to adequate housing according to international human rights law?*

As mentioned above, Cambodia is a member of the UN and has ratified the most central human rights instruments. All aspects of the right to adequate housing brought up in this chapter are applicable in the specific case of Cambodia, unless otherwise specified.

2.1 The Right to Adequate Housing in International Human Rights Law

The right to adequate housing derives from the more general right to an adequate standard of living.²¹ The right to an adequate standard of living is enshrined in several international human rights instruments and includes the rights to food, housing and health.

The right to an adequate standard of living was first recognized in the Universal Declaration of Human Rights (UDHR), which stipulates that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care [...]”.²² The right to an adequate standard of living is closely linked to the concept of dignity, established in Article 1 of the UDHR,²³ as a life in dignity simply requires a certain standard of living.²⁴

Article 11(1) of the International Covenant on Economic, Social and Cultural Rights is probably the most well-known provision in respect of the right to an adequate standard of living, and it states that “[t]he States [...] recognize the right of everyone to an adequate standard of living for himself

²¹ CESCR (1991), para. 1.

²² UDHR, Article 25(1).

²³ UDHR, Article 1 reads: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.

²⁴ A. Eide (2014), 'Adequate Standard of Living' in D. Moeckli, S. Shah and S. Sivakumaran (eds), *International Human Rights Law*, p. 196.

and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

Furthermore, the Convention on the Rights of the Child in its Article 27 provides “[...] the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”

The right to an adequate standard of living is enshrined in further international human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women (Article 14), and the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(e)).

The International Covenant on Civil and Political Rights (ICCPR) does not contain any explicit right to housing, but there is a right for everyone not to “[...] be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence [...]”, and further a “[...] right to the protection of the law against such interference [...]”.²⁵ The scope of Article 17 thus provides a protection of the enjoyment of already existing housing rights.²⁶

2.2 Interpretation of the Right to Adequate Housing in General

The Committee on Economic, Social and Cultural Rights has done extensive work regarding the interpretation of the right to adequate housing, which can be found primarily in its General Comments Nos. 4 and 7. Although not legally binding, those General Comments have had significant impact on the understanding of the content of the right to housing in general.²⁷

Even though different aspects of the right to housing can be found in various international human rights instruments, it is the view of the Committee that Article 11(1) of the ICESCR is “the most comprehensive and perhaps the most important” of the provisions addressing the right.²⁸

To begin with, the Committee has emphasized that the right to housing shall be interpreted in a broad sense. Hence, the right to housing refers to something more than simply having shelter; it comprises the ability for people to live somewhere in security, peace and dignity. The reason for this approach is twofold. Firstly, the right to housing is interrelated with several other human rights, and secondly, Article 11(1) must be understood as referring not only to housing, but to *adequate* housing.²⁹ The reference to

²⁵ ICCPR, Article 17.

²⁶ J. Hohmann (2013), *The Right to Housing: Law, Concepts, Possibilities*, p. 33.

²⁷ Ibid, p. 20.

²⁸ CESCR (1991), para. 3.

²⁹ Ibid, para. 7.

adequacy includes “adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities [...]”.³⁰

Drawing on the work of the Committee, the first Special Rapporteur on adequate housing defined the right to adequate housing as “the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity”.³¹ Furthermore, the Special Rapporteur has expressed the importance of General Comment No. 4 by noticing that it “reflects both the holistic conception of the right and the value it gains from the aspect of adequacy”.³²

The concept of adequacy in relation to housing is dependent of the overall context in each situation, and relevant factors such as social, economic and cultural ones has to be taken into account to a certain extent. Nevertheless, the CESCR has identified the following seven core elements of the right to adequate housing that has to be taken into account irrespective of the context:³³

- 1) *Legal security of tenure.* Tenure exists in a wide range of forms,³⁴ but regardless of the kind of tenure, “all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats”.
- 2) *Availability of services, materials, facilities and infrastructure.* Facilities essential for health, security, comfort and nutrition, such as safe drinking water and energy for cooking, heating and lighting, has to be accessible for everyone who has the right to adequate housing. Furthermore, “sustainable access to natural and common resources” also has to be ensured.
- 3) *Affordability.* The cost for housing should be proportionate with income levels, and at such a level as not to jeopardize other basic needs. Housing subsidies should be available for those not able to finance adequate housing by themselves and there should be protection for all tenants against unreasonable rent levels or rent increases.
- 4) *Habitability.* There must be adequate space and protection against different weather conditions in order for housing to be habitable and thus adequate.

³⁰ Stated by the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000.

³¹ M. Kothari (2001), 'Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living', para. 8.

³² Ibid, para. 24.

³³ CESCR (1991), para. 8.

³⁴ Forms of tenure includes, among others, rental accommodation, lease, owner-occupation and informal settlements.

- 5) *Accessibility*. Adequate housing must be accessible for all beneficiaries, and in this respect the special needs for disadvantaged groups must be taken into account. Furthermore, “[...] increasing access to land by landless or impoverished segments of the society should constitute a central policy goal.”
- 6) *Location*. Employment options, health-care services, schools, childcare centres and so on must be within a reasonable distance from the settlement. This is so in large cities as well as in rural areas.
- 7) *Cultural adequacy*. Cultural identity should be taken into account, both when constructing new housing and when modernizing already existing housing.

2.3 The Prohibition of Forced Eviction

Legal security of tenure, with its prohibition against forced eviction, is the one of the seven elements that by far has gained most attention by the Committee. It can thus be seen as “the cornerstone of the right to housing”.³⁵ Already in its General Comment No. 4, the Committee concluded that forced evictions are *prima facie* incompatible with the Covenant, and therefore could be justified only under the most exceptional circumstances and “in accordance with the relevant principles of international law”.³⁶ Moreover, the Commission on Human Rights has acknowledged that “the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing”.³⁷

Forced evictions has been defined by the Committee as “the 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”.³⁸ Examples of situations where eviction might be justified are when the tenant omits to pay the rent, or has caused damage to the rented property by being careless.³⁹ A justified eviction has to be carried out in accordance with law and “in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality”. The fact that a justified eviction is

³⁵ J. Hohmann (2013), p. 21.

³⁶ CESCR (1991), para. 18. It could be noted that the CESCR in its General Comment No. 4 explicitly states that forced evictions could be justified under certain circumstances.

However, in subsequent work by the Committee (as well as others) on forced evictions it seems like a forced eviction never could be justified, as a justified eviction *per se* is not a forced eviction. By this reason, the discussion on forced evictions in this chapter might seem slightly illogical.

³⁷ Commission on Human Rights (1993), ‘Resolution 1993/77: Forced evictions’, para. 1.

³⁸ CESCR (1997), ‘General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions’, para. 3.

³⁹ *Ibid*, para. 11.

carried out by force does not make it subject to application of the prohibition on forced evictions.⁴⁰

With the aim to assist States with a practical tool to ensure that development-based evictions are in compliance with the pertinent provisions of international law, and thus not constitute forced evictions, the Special Rapporteur on adequate housing has been in the forefront in the work to develop the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement (hereafter the Eviction Guidelines or the Guidelines).⁴¹

The Eviction Guidelines focus solely on development-based evictions,⁴² and the definition of forced eviction for this purpose is similar to the one above.⁴³ States must ensure that evictions only take place as a last resort, and they are obliged to adopt legislative and policy measures to prevent unlawful evictions. States are further obliged to adopt measures that aim at eliminating the underlying causes of forced eviction.⁴⁴ The Guidelines set out quite detailed standards to be applied before, during and after evictions, with the purpose for States to follow in order to make sure that an eviction do not qualify as a forced eviction and hence constitutes a violation of the right to adequate housing.

There are several measures that have to be taken by the State before an eviction is carried out. In the first place, the State is obliged to fully explore all alternatives to eviction. Before taking a decision of eviction, the authorities must prove that the eviction is necessary and in compliance with relevant provisions of international law.⁴⁵

When eviction is considered by the State, everyone that might be affected by it should have the chance to be involved in the process. The authorities have to share information of different kinds about the plans and there should

⁴⁰ Ibid, paras. 1, 14.

⁴¹ M. Kothari (2007), 'Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living', para. 22; UN Basic Principles and Guidelines on Development-Based Evictions and Displacement (2007), Annex 1 of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, para. 10.

⁴² Development-based evictions are evictions carried out and claimed to be justified by serving "the public good". Those kinds of evictions could be linked to infrastructure projects, urban renewal, slum upgrades, city beautification, land-use for agricultural purposes and so on. *See* UN Basic Principles and Guidelines on Development-Based Evictions and Displacement (2007), para. 8.

⁴³ UN Basic Principles and Guidelines on Development-Based Evictions and Displacement (2007), para. 4. Forced eviction is defined in the Eviction Guidelines as "acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection".

⁴⁴ UN Basic Principles and Guidelines on Development-Based Evictions and Displacement (2007), paras. 21-22, 30.

⁴⁵ Ibid, para. 38.

also be a possibility for the people to raise their opinions for example at a public hearing. If the parties could not agree upon the conditions for an eviction or a suggested alternative to eviction, there must be access to an independent body with constitutional authority for the purpose of mediation, arbitration or adjudication. Throughout the planning process, all persons likely to be affected by an eviction has the right to be involved, including women, indigenous groups and other vulnerable or marginalized groups. Consequently, special measures sometimes have to be taken to ensure the possibility of involvement of these groups. Homelessness or exposure to violation of other human rights should not be the result of an eviction for any individual.⁴⁶

During an eviction either government officials or their representatives should be present. These persons have to be able to identify themselves and present formal authorization for the eviction taking place. For the purpose of safeguarding transparency and compliance with relevant international human rights principles during the eviction, neutral observers should have the right to access the eviction site upon request.⁴⁷ Regarding the use of force during evictions, it has to be legal and respect the principles of necessity and proportionality. The state is obliged to take steps to ensure that “no one is subject to direct or indiscriminate attacks or other acts of violence”, or that women are subjected to gender-based violence and discrimination during evictions.⁴⁸

After an eviction, the government is responsible for immediately providing basic necessities such as food, water and basic shelter, and “relocation sites must fulfil the criteria for adequate housing according to international human rights law”. Furthermore, everyone that has been forcibly evicted (or is threatened with forced eviction) should have “access to timely remedy”.⁴⁹

It could be noted that instances of forced eviction not only violates the right to adequate housing, but many times a wide range of human rights. Due to the interrelationship and interdependency of human rights, the rights to food, water, health, education, security of person and so on are frequently violated as a result of forced eviction.⁵⁰

⁴⁶ UN Basic Principles and Guidelines on Development-Based Evictions and Displacement (2007), paras. 37-44.

⁴⁷ Ibid, paras. 45-46.

⁴⁸ Ibid, paras. 47-48, 50.

⁴⁹ Ibid, paras. 52, 55, 59.

⁵⁰ CESCR (1997), para. 4; UN Basic Principles and Guidelines on Development-Based Evictions and Displacement (2007), para. 6.

2.4 The Importance of Access to Land and Rights to Property for the Realization of the Right to Adequate Housing

The right to adequate housing is not equivalent with a right to property or a right to land, and at present there is no recognition of a right to land by international human rights law.⁵¹ Nevertheless, access to land and rights to property are often critical elements of the right to housing, which have been emphasized time and again over the years. Early on in the existence of the right to adequate housing it has been stated that “[l]and is the key to tackling the housing crisis facing Third World cities”.⁵²

The central role of land in relation to issues of housing was recognized already in 1976 at the Vancouver Conference. The result of the Conference, the Vancouver Declaration, proclaims that “[l]and is a scarce resource whose management should be subject to public surveillance or control in the interest of the nation”, and that “[p]ast patterns of ownership rights should be transformed to match the changing needs of society and be collectively beneficial”.⁵³

Scott Leckie puts forward the view that the land matter in relation to housing issues can be approached from two different angles; either from a right to land or from a right to property, but concludes that both perspectives are underdeveloped in the context of housing rights. He identifies possible causes for this underdevelopment and finds that one is the lack of recognition of “illegal settlements” as a form of legal tenure. Another interrelated cause is the strong protection of private property rights in most of the world’s legal systems. From this point of departure, Leckie elaborates on the idea that the right to property,⁵⁴ interpreted in conjunction with the right to housing, possibly could impose upon States an obligation to provide or allocate property. Moreover, the right to land or property should be seen as an element of the right to adequate housing, rather than the other way around. Anyhow, according to Leckie, “it is obvious that land policies and concepts of property ownership will have to be reformulated if housing rights are ever to be universally realized”.⁵⁵

Furthermore, the Special Rapporteur on the right to adequate housing has repeatedly stressed the importance of access to land for the realization of the right to housing, as denied access to land or common property and patterns

⁵¹ UN-HABITAT (2009), ‘The Right to Adequate Housing’, pp. 7-8.

⁵² S. Leckie (1992), *From Housing Needs to Housing Rights: An Analysis of the Right to Adequate Housing Under International Human Rights Law*, p. 46.

⁵³ United Nations Conference on Human Settlements (1976), ‘The Vancouver Declaration on Human Settlements’; S. Leckie (1992), p. 46.

⁵⁴ The right to property is established, among other, in Article 17 of the UDHR, which states that “[e]veryone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property”.

⁵⁵ S. Leckie (1992), pp. 46-48.

of inequitable ownership of land often result in inadequate housing and interrelated problems such as lack of livelihood options. Access to land is particularly important for indigenous people and other vulnerable groups. Furthermore, the Special Rapporteur is of the view that that the right to adequate housing many times cannot be effectively realized without a legal recognition of a right to land, and “[l]and as an entitlement is often an essential element necessary to understand the degree of violation and the extent of realization of the right to adequate housing”.⁵⁶

As already shown, the CESCR has in its work focused primarily on forced eviction as the main obstacle to security of tenure, but Jessie Hohmann highlights that forced eviction rather should be seen as a symptom of insecurity of tenure, and by its approach the Committee fails to address the underlying causes and sources of insecurity of tenure, of which one is the link between access to land and security of tenure.⁵⁷

2.5 States Obligations Regarding the Right to Adequate Housing

According to Article 2(1) of the ICESCR “[e]ach State Party [...] undertakes to take steps, individually and through international assistance and cooperation [...] to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” The obligation to undertake steps to achieve the realization of rights is restated regarding the right to an adequate standard of living, where the importance of international cooperation is also emphasized.⁵⁸

To interpret the scope and content of Article 2(1) is rather complex, as it is composed of a set of obligations that involves “actions and responsibilities of more than one state, over an indefinite span of time”.⁵⁹

Since the Covenant entered into force in 1976, two different approaches have been predominant for the Committee as well as scholars in their work to interpret the various elements of Article 2(1). In 1977, the International Law Commission (ILC) put forward the view that the obligations under Article 2(1) are “obligations of result”, to be compared with “obligations of conduct”. The former impose the achievement of a certain result, but leaves to the State to decide the course of conduct. An obligation of conduct, on the other hand, requires the State to undertake a certain course of conduct,

⁵⁶ M. Kothari (2007), 'Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living', paras. 25-29.

⁵⁷ J. Hohmann (2013), p. 23.

⁵⁸ ICESCR, Article 11(1).

⁵⁹ J. Hohmann (2013), p. 18.

which in itself constitutes the goal.⁶⁰ The Committee responded to ILC's classification of the nature of States obligations under the Covenant by emphasizing that while the full realization of the rights under the Covenant may be achieved progressively, there are however some obligations that are of immediate effect. Hence, the obligations of States Parties include both "obligations of conduct" and "obligations of result".⁶¹

The other approach widely used as a tool to establish States obligations under the Covenant is the so-called tripartite typology, introduced by Professor Asbjørn Eide while serving as the Special Rapporteur on the right to food. The typology consists of three levels of State obligations, namely the obligations to respect, protect and fulfil. Eide's ideas were adopted by the Committee and used for the first time in General Comment No. 12, but have been restated in all subsequent general comments.⁶² The obligation to respect already existing access to the enjoyment of a certain right imposes on the State not to take any measures that prevents that access. The obligation to protect requires the State to ensure that third parties do not deprive rights holders of the access to enjoyment of the right. The obligation to fulfil demand of the State to take action to facilitate people's access to enjoyment of a certain right, and in some cases the State even have to provide people with access to the right. The Committee went on by stating that "[s]ome measures at these different levels [...] are of a more immediate nature, while other measures are more of a long-term character [...]".⁶³ This scheme is however not flawless, and could potentially give rise to uncertainty in different ways regarding the obligations of States. Malcolm Langford and Jeff A. King has underlined that the typology tends to oversimplify "the interconnected nature of certain problems", which could lead to any State action potentially constitute a breach of one of the three obligations.⁶⁴

One of the obligations under the Covenant that are of immediate effect is the undertaking "to take steps". Steps towards the full realization of the rights "must be taken within a reasonably short time after the Covenant's entry into force" in the State concerned, and should also be "deliberate, concrete and targeted as clearly as possible".⁶⁵ Any deliberate regressive steps must be carefully considered and fully justified from an overall perspective in order not to entail a violation under the Covenant.⁶⁶ Furthermore, adoption

⁶⁰ M. Craven (1998), *The International Covenant on Economic, Social and Cultural Rights: A Perspective on its Development*, p. 107; M. Langford and J. A. King (2008), 'Committee on Economic, Social and Cultural Rights: Past, Present and Future' in M. Langford (ed), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, p. 483.

⁶¹ CESCR (1990), 'General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)', para. 1.

⁶² M. Langford and J. A. King (2008), p. 484.

⁶³ CESCR (1999), 'General Comment No. 12: The right to adequate food (art. 11)', paras. 15-16.

⁶⁴ M. Langford and J. A. King (2008), p. 485.

⁶⁵ CESCR (1990), para. 2.

⁶⁶ *Ibid*, para. 9.

of legislation should also be seen as an obligation subject to immediate effect.⁶⁷

Moreover, some substantive obligations are of immediate effect. In the view of the Committee, States parties have a “minimum core obligation” to ensure “minimum essential levels of each of the rights”. Failure to provide these minimum essential levels for “any significant number of individuals” is a *prima facie* violation of the Covenant. Even the fulfilment of this minimum core obligation is dependent of the resources available, but it should be prioritized.⁶⁸

The Committee has been utterly clear about the fact that the Covenant is subject to progressive realization does not deprive the obligations under it of a meaningful content. Rather, “[t]he concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time”. It is a “necessary flexibility device, reflecting the realities of the real world”, but the intention with it is not to deprive the Covenant of its *raison d’être*.⁶⁹

Another matter of concern regarding the interpretation of the right to housing as well as States obligations is the long-standing lack of an individual complaints mechanism through which a body of ‘jurisprudence’ could evolve.⁷⁰ However, such a mechanism is now in place as the UN General Assembly in 2008 adopted an Optional Protocol to the ICESCR, which entered into force in 2013.⁷¹ The adoption of the Optional Protocol is widely seen as an important step to prove that economic, social and cultural rights are justiciable and equal to civil and political rights.⁷² In the Optional Protocol a new “reasonableness standard” is set out in order to assess whether a State can be considered to have fulfilled their obligations under the Covenant. Article 8(4) of the Protocol states that “[t]he Committee shall consider the *reasonableness* of the steps taken [...]”. The provision also underlines that steps can be taken through policy measures in order to achieve the realization of the rights, i.e. not only legislative measures should be taken into account. The concept of reasonableness in relation to economic, social and cultural rights (and the right to housing in particular) originates from the *Grootboom* case, in which the High Court of South Africa declared the government’s long-term housing plan unreasonable.⁷³

As described above, the right to adequate housing is subject to progressive realization. Thus, it is not an absolute right and the enjoyment of it can be limited under certain circumstances. As already discussed, States Parties are

⁶⁷ M. Langford and J. A. King (2008), p. 487.

⁶⁸ CESCR (1990), para. 10.

⁶⁹ *Ibid*, para. 9.

⁷⁰ J. Hohmann (2013), p. 19.

⁷¹ Cambodia has however not ratified the Optional Protocol.

⁷² J. Hohmann (2013), p. 29.

⁷³ *See Grootboom and Others v. Oostenberg Municipality and Others*, High Court of South Africa (Cape of Good Hope Provincial Division), Case No. 6826/99.

obliged to take steps which progressively aims at the full realization of the rights in the Covenant, but not further than “to the maximum of its available resources”.⁷⁴ It can thus be justified to limit the enjoyment of a right due to the resources available in a given context. However, the rights set forth in the Covenant can also be limited by other reasons, but only if the limitation is determined by law, compatible with the nature of the right and has the purpose of promoting the general welfare in a democratic society.⁷⁵ Limitations of the Covenant rights in accordance with Article 4 have been relatively little elaborated upon, a result of the rights set forth in the Covenant being subject to progressive realization.⁷⁶ However, Philip Alston and Gerard Quinn have carried out thorough research on the travaux préparatoires in relation to the provision. To start with, the purpose of Article 4 was to deal with those limitations to the Covenant rights that not could be justified by resource constraints in accordance with Article 2(1). Regarding the requirement that the limitation must be compatible with the nature of the right, Alston and Quinn suggests that some rights by their very nature can not be subjected to further limitations than those stipulated in Article 2(1) (i.e. resource constraints).⁷⁷ Further guidance on the limitation clause can be found in General Comment No. 14, where the Committee found that limitations in relation to the right to health must be proportional, which means that in a situation where several types of limitations are possible, the least restrictive should be adopted.⁷⁸

The right to adequate housing is, as all other rights in the ICESCR, subject to non-discrimination. Discrimination of any kind is prohibited, and the equal right of men and women to enjoy the rights set forth in the Covenant is emphasized.⁷⁹ Even though Article 11(1) refers to “himself and his family” as having the right to an adequate standard of living, the Committee has clarified that *everyone* has the right to adequate housing. The wording of the provision “reflects assumptions as to gender roles and economic activity patterns” typical for the time of the adoption of the Covenant (1966), and should not be read as implying limitations of any kind regarding the enjoyment of the right.⁸⁰

Cambodia’s international human rights obligations is incorporated into domestic law and policy through the Constitution, which states that “[...] Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the

⁷⁴ ICESCR, Article 2(1).

⁷⁵ Ibid, Article 4.

⁷⁶ M. Langford and J. A. King (2008), p. 497.

⁷⁷ P. Alston and G. Quinn (1987), ‘The Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights’, *Human Rights Quarterly*, Vol. 9 No. 1, pp. 192-205.

⁷⁸ CESCR (2000), ‘General Comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)’, para. 29.

⁷⁹ ICESCR, Articles 2(2) and 3.

⁸⁰ CESCR (1991), para. 6.

covenants and conventions related to human rights, women's and children's rights.”⁸¹

⁸¹ Constitution of the Kingdom of Cambodia, 1993, Article 31.

3 The Human Right to Adequate Housing – The Cambodian Context

With the aim to answer the first research question, this chapter explores how the right to adequate housing is protected in Cambodia. The core of the chapter describes the “steps taken” through legislative and policy measures. However, to be able to assess whether the measures taken by Cambodia is sufficient to fulfil their international obligations outlined in Chapter 2, it is necessary to start with mapping out the actual situation regarding housing in Cambodia (Chapter 3.1). As we will see, access to land and rights to property is to a large extent crucial for realizing the right to adequate housing in the Cambodian context. Due to the high numbers of land disputes in the country a well-functioning land dispute resolution mechanism is of great importance for providing security of tenure. Available mechanisms for land dispute resolution will therefore be presented in Chapter 3.4.

3.1 Tenure in Cambodia – An Overview

3.1.1 Ownership Rights to Land throughout Cambodia’s History

As a result of the large number of drastic political changes throughout Cambodia’s history, the right to own land has also varied greatly over time. Before the period of French protectorate (1863-1953), land was acquired “by the plough”. Cultivation of land was seen as a form of ownership, even though the land symbolically belonged to the sovereign. Access to land was not a problem at this point of time, and the value of land lay in the use of it and not in the land itself (for example, taxes were imposed on the harvest solely).⁸²

The French first introduced the concept of private ownership to land. However, the attempts to register land and institute ownership rights were to a large extent unsuccessful as the Cambodian farmers resisted to it, primarily to avoid paying higher taxes, but also for cultural reasons. Land began to be registered only in the urban areas, whereas in rural Cambodia people continued to acquire land “by the plough”.⁸³

After independence from France in 1953, the French system of private property rights remained in place without changes until 1975. During this

⁸² P. Leuprecht (2004), p. 10.

⁸³ Ibid.

period, further plots of land were registered and land titles became more common.⁸⁴

During the Khmer Rouge regime all ownership rights were abolished. All land belonged to the State and the regime systematically destroyed most land titling and cadastral records. The land continued to belong to the State alone even after the Vietnamese invasion in 1979, and no private property rights were recognized until 1989.⁸⁵

When the Vietnamese left Cambodia in 1989, the concept of private property rights was reintroduced through constitutional amendments. All ownership rights recognized before 1975 were however invalidated. Since then, private property rights have been strengthened through the 1992 Land Law and later on the 2001 Land Law.⁸⁶

Even though attempts were made, from the beginning of the colonial period until 1989, to systematically register land and provide land titles, this never really succeeded. Land continued to be acquired in a traditional way, and even if the farmers did not have a formal land title, their right to land were usually recognized locally.⁸⁷

3.1.2 Forms of Tenure Prevalent in Present-Day Cambodia

Not much information can be found regarding the prevalence of different types of tenure in Cambodia today. However, it is still feasible (and necessary) to define the predominant forms of tenure and outline their main features. When assessing any perspective of the right to housing in Cambodia specifically, it could be appropriate to divide the analysis into three parts which examines separately urban, rural and indigenous⁸⁸ communities. This division is suitable by the reason that the way of living of these three groups differs greatly, and consequently the issues that arises in connection with the right to housing also varies a lot.

The vast majority of the population, around 80 per cent, still live in rural areas, and the picture has changed very little over the last decade. The capital Phnom Penh is home to approximately 50 per cent of the three millions of Cambodian's living in urban areas.⁸⁹ Even if the level of

⁸⁴ CCHR (2013), 'Cambodia: Land in Conflict – An Overview of the Land Situation', p. 1.

⁸⁵ P. Leuprecht (2004), p. 11.

⁸⁶ Ibid, pp. 12, 14.

⁸⁷ Ibid, p. 12.

⁸⁸ Although the situation of indigenous people specifically not will be analysed in this thesis.

⁸⁹ World Bank (2014), 'Where Have All The Poor Gone? – Cambodia Poverty Assessment 2013', p. 36.

urbanization in Cambodia still is low, the rate of urbanization has been among the highest in the world since the 1991 Paris Peace Agreements.⁹⁰

As described in Chapter 3.1.1, land has traditionally been acquired by a system of occupation. In the rural setting there is no widespread practice of renting accommodation, and when it comes to housing issues the focus lies almost only on ownership rights to land.⁹¹

In the urban context (i.e. Phnom Penh), however, the situation is different. A rental market clearly exists, and it seems to be growing. The number of renters is especially likely to increase amongst the urban poor, by several reasons. Firstly, land has become harder and harder to find in Phnom Penh, which gives people less of a choice when it comes to find somewhere to live. Secondly, there is a steady flow of people migrating from the rural areas to the city. The main cause for the rural-urban migration is that the ability to find jobs and generate an income is higher in the city. Lastly, many people victims of forced eviction tend to leave their relocation sites and try to find rental housing in the city instead.⁹² No figures exist on the extent of the rental market, but in 2011, the City Hall estimated that somewhere between 20 000 and 40 000 “houses” were being rented in Phnom Penh.⁹³

3.2 Legal Protection of the Right to Adequate Housing

Legal protection of housing is in practice offered almost exclusively by the regulation on possession and ownership rights to land.

The Constitution safeguards the right to ownership, individually or collectively, for everyone. Only Khmer legal entities and citizens of Khmer nationality have the right to own land. Law shall protect legal private ownership and expropriation of property is allowed only when it is in the public interest, in accordance with law and subject to fair and just compensation.⁹⁴

Situations in which expropriation could be justified, as well as the procedures to be applied in cases of expropriation, is set out in detail in the Expropriation Law.⁹⁵

⁹⁰ World Bank (2004), 'Urbanization Dynamics and Policy Frameworks in Developing East Asia', East Asia Infrastructure Department: Urban Development Working Papers, pp. 2-4.

⁹¹ Interview: Anonymous A, 2015.

⁹² Sahmakum Teang Tnaut (2014), 'The Phnom Penh Rental Survey – A Study on Poor Rental Housing in Phnom Penh', p. 3.

⁹³ M. Kunthear (2011), 'City Hall proposes new regulations for rental properties', *Phnom Penh Post*.

⁹⁴ Constitution of the Kingdom of Cambodia (1993), Article 44.

⁹⁵ See Law on Expropriation (2010).

The Land Law of 2001 determines the regime of ownership for immovable property in Cambodia,⁹⁶ and divides the land into the following five categories:

- 1) *Private land*. Ownership of land by a natural or legal person.⁹⁷
- 2) *State public land*. This includes, among others, properties of natural origin (e.g. forests and lakes), properties specially developed for general use (e.g. harbours and airports), properties made available for public use (e.g. roads and parks) and properties created for public services (e.g. public schools and public hospitals).⁹⁸
- 3) *State private land*. Land that does not fall into any of the other four categories is state private land. State public land that has lost its interest for public use can be reclassified as state private land. State private land can be sold or leased out.⁹⁹
- 4) *Monastery land*. Land within Buddhist monasteries belongs to the followers of Buddhism collectively.¹⁰⁰
- 5) *Land of indigenous communities*. Collective ownership to land granted by the State.¹⁰¹

The Land Law recognizes ownership rights as well as possession rights. The principles set forth in the Constitution regarding the right to ownership is restated in the Land Law, which also provides that only legal possession can lead to ownership.¹⁰²

Due to the legacies of the Khmer Rouge regime there is a right for persons who has enjoyed peaceful, uncontested possession of their land for at least five years prior to the promulgation of the Land Law to request a definite title of ownership.¹⁰³ The possession must be “unambiguous, non-violent, notorious to the public, continuous and in good faith”.¹⁰⁴ Possession that begun before the law entered into force, but less than five years before, could be extended and transformed into ownership after five years of possession, if all other requirements for ownership is fulfilled.¹⁰⁵ Any occupation of land that has begun after the law entered into force is

⁹⁶ Land Law (2001), Article 1.

⁹⁷ Ibid, Article 10.

⁹⁸ Ibid, Article 15.

⁹⁹ Ibid, Articles 12, 16-17.

¹⁰⁰ Ibid, Article 20.

¹⁰¹ Ibid, Articles 25-26.

¹⁰² Ibid, Articles 5-6.

¹⁰³ Ibid, Articles 29-30. Note that a right to *request* a title of ownership is provided, not a right to *receive* such a title.

¹⁰⁴ Ibid, Article 38.

¹⁰⁵ Ibid, Article 31.

considered illegal.¹⁰⁶ Legal possession constitutes a *right in rem* over the immovable property while awaiting a definite title of ownership.¹⁰⁷

The Cadastral Administration, under the Ministry of Land Management, Urban Planning and Construction (MLMUPC), is responsible for registration of land and the issuance of ownership and possession titles.¹⁰⁸

The purpose of the adoption of the 2001 Land Law was to improve security of tenure for Cambodians, and to facilitate Cambodia's participation in the global economy through the system of land concessions.¹⁰⁹

There is no law that specifically regulates rental housing and the rights and obligations of tenants and landlords. The Cambodian Civil Code contains a general chapter on lease, with provisions on termination of lease etcetera.¹¹⁰

3.3 Policy Measures Taken to Protect the Right to Adequate Housing

3.3.1 Land Management and Administration Project

Together with a number of donors, with the World Bank in the forefront, the Government developed the Land Management and Administration Project (LMAP), which started in 2002.¹¹¹ The overarching goals of the project were “to reduce poverty, promote social stability, and stimulate economic development”, and one of the specific objectives was to improve security of tenure to land. Measures to be taken in order to attain these goals included development of a modern land registration system, systematic and sporadic land titling programs, and strengthening of the land dispute resolution mechanisms.¹¹²

The systematic land titling program aimed at register large areas of land at once, and the program initially covered ten provinces plus the municipality of Phnom Penh. The goal was to issue one million land titles in both rural and urban areas.¹¹³ Only selected areas of land would however be reached by the land titling programs in practice, as the LMAP was designed

¹⁰⁶ Ibid, Articles 29, 34.

¹⁰⁷ Ibid, Article 39.

¹⁰⁸ Ibid, Articles 226, 229, 241.

¹⁰⁹ CCHR (2013), p. 10.

¹¹⁰ See Civil Code of Cambodia (2007), Book Five, Chapter Five.

¹¹¹ World Bank (2001), 'Cambodia – Land Management and Administration Project'.

¹¹² World Bank (2002), 'Cambodia – Land Management and Administration Project', pp. 2, 8.

¹¹³ World Bank (2002), p. 35.

explicitly to “not title lands in areas where disputes are likely until agreements are reached on the status of the land”.¹¹⁴

Before the LMAP began all land titling was sporadic. The individual seeking a title initiates sporadic land titling, and it gives those households not targeted by the systematic land titling program, or by some reason not able to receive a title under the systematic program, a chance to security of tenure to their land.¹¹⁵ The Government has declared awareness of the importance of both land titling programs, as “systematic registration is limited to predetermined locations, sporadic registration is a necessary parallel process so that registration can be carried out anywhere in the country at any time”.¹¹⁶

Access to a well-functioning dispute resolution mechanism for land disputes was recognized as an important element to achieve security of tenure. The number of land disputes was expected to rise in the beginning of the land titling due to uncertainty of ownership rights and overlapping claims to land. Land disputes were however expected to decrease in the long run as more and more land would be registered.¹¹⁷

The LMAP ended in 2009, but systematic land registration continued in Phnom Penh and 15 provinces under its successor program, the Land Administration Sub Sector Program (LASSP).¹¹⁸ In November 2013 it was reported that approximately 2,2 million land titles had been provided by the systematic land registration program, in addition to around 600 000 titles under the sporadic program.¹¹⁹

Systematic land titling under LASSP ended in 2012, when it was replaced by the *Heroic Samdech Techo Volunteer registration campaign*, the name making reference to the Prime Minister’s honorific title.¹²⁰

3.3.2 Directive 01 and the New Land Titling Scheme

In May 2012 the Prime Minister issued Directive 01, which called for a temporary suspension of the granting of new ELCs. The suspension did not include those concessions that already had received a “permit in principle”

¹¹⁴ Ibid, p. 24.

¹¹⁵ Bridges Across Borders Southeast Asia, COHRE and Jesuit Refugee Service (2009), 'Untitled: Tenure Insecurity and Inequality in the Cambodian Land Sector', p. 35.

¹¹⁶ Council for Land Policy (2002), 'Interim Strategy of Land Policy Framework', p. 17 as cited in Bridges Across Borders Southeast Asia, COHRE and Jesuit Refugee Service (2009), p. 35.

¹¹⁷ World Bank (2002), p. 37.

¹¹⁸ C. Sperfeldt, F. Tek and B. Chia-Lung Tai (2012), p. 19; NGO Forum on Cambodia (2012), 'Access to Land Title in Cambodia: A Study of Systematic Land Registration in Three Cambodian Provinces and the Capital', p. 2.

¹¹⁹ HRC (2013a), para. 25.

¹²⁰ CCHR (2013), pp. 18-19.

by the Government prior to the issuance of the Directive. The directive further urged all competent authorities to review existing ELCs and especially implement the so-called “leopard-skin” policy¹²¹ to ensure that communal land and the livelihood of citizens is not affected. It also announced that the Government would withdraw existing ELCs in cases where the concessionaire fails to comply with its obligations regarding the concession.¹²²

At the time of writing, the moratorium on Economic Land Concessions is still in place,¹²³ and the Prime Minister has implied that it will remain in place until he retires from politics.¹²⁴

Shortly after the issuance of Directive 01, in June 2012, the Prime Minister proclaimed that he intended to implement the “leopard-skin” policy through a new land titling scheme that would have people living within areas of ELCs as its target group.¹²⁵ The new land titling scheme, announced as “new actions based on existing policies”, aimed at demarcate 1,2 million hectares of land and issue land titles to at least 300 000 families.¹²⁶

The new land titling scheme was financed by the Prime Minister himself, and to implement it around 2000 youth volunteers were recruited. However, the implementation of the initiative began before the official documents regarding the implementation were published.¹²⁷

As of April 2014, it is reported that more than 500 000 land titles have been issued under the new land titling scheme.¹²⁸ The Government will continue to register land and its goal is to have 70% of the “total plots across the country” registered in 2018.¹²⁹

¹²¹ The “leopard-skin” policy means that a concessionaire not should develop the parts of a land concession on which communities are located, but only the land around the communities, the communities symbolizing the spots on the leopards skin.

¹²² RGC (2014), Directive No. 01 BorBor on the Measures to Strengthen and Foster Effectiveness for the Management of ELCs.

¹²³ See Secretary-General (2014), para. 37. During the work with this thesis I have not got any indications that the moratorium will be revoked.

¹²⁴ M. Titthara (2012), 'Land concessions halt extended: PM', *Phnom Penh Post*.

¹²⁵ Prime Minister (2012), 'Keynote Speech at the Launching of the 2011 Mid-term Review Report on the Implementation of the National Strategic Development Plan Update 2009-2013', Phnom Penh.

¹²⁶ Prime Minister (2012), 'Selected Impromptu Statements and Comments during the Meeting with Youth Volunteers for Land Measuring Missions for the People', Koh Pij.

¹²⁷ S. P. Subedi (2012), paras. 62-63.

¹²⁸ Secretary-General (2014), para. 35.

¹²⁹ HRC (2013a), 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Cambodia', para. 25.

3.3.3 National Housing Policy

After pressure from the Special Rapporteur as well as a number of NGOs,¹³⁰ the Government finally adopted a National Housing Policy (NHP) in May 2014. The national housing policy acknowledges the importance of housing and emphasizes Cambodia's international obligations regarding the right to adequate housing. It makes references both to the UDHR and the ICESCR as well as the stipulation in the Convention to respect and recognize human rights.¹³¹

The national housing policy focuses primarily on vulnerable groups and the low- and middle-income groups, and is “envisioned to ensure that the population nationwide has a proper housing for a living with comfort, safety and dignity”. Three purposes with the national housing policy are outlined:¹³²

- 1) To ensure the right to proper housing by providing everyone with access to proper housing or renovation of already existing housing.
- 2) To assist people who temporarily live in “disorganized localities” with access to safe, healthy and proper housing for living and working.
- 3) To continue the cooperation with development partners, civil society, charity and the private sector in order to develop national and sub-national housing in the short-, medium- and long-term.

A number of objectives are also listed that specifies what should be done in order to fulfil the purposes mentioned above. To implement the strategies of the national housing policy the Ministry of Land Management, Urban Planning and Construction (MLMUPC) shall establish a General Department of Housing, which shall be a permanent mechanism governing housing actions. Furthermore, a Housing Office shall be established on municipal/provincial level and a Housing Unit shall be established on city/district/khan level. The General Department of Housing shall organize a housing forum at least once a year at which all relevant stakeholders shall participate in the development of housing strategies and programs as well as guiding principles on the implementation of these programs.¹³³

The importance of strengthening the implementation of already existing laws as well as adopting additional laws and regulations, or making amendments to existing laws, is also stressed as a crucial point for achieving the vision of the national housing policy. Moreover, it is underlined that legal frameworks must be created that provides alternatives for the targeted

¹³⁰ See S. P. Subedi (2014), para. 47; Bridges Across Borders Southeast Asia, COHRE and Jesuit Refugee Service (2009), p. 32; CESCR (2009), para. 29.

¹³¹ RGC (2014), National Housing Policy.

¹³² Ibid.

¹³³ Ibid.

groups to acquire proper housing. These alternatives are for example low cost housing, housing for rent etc.¹³⁴

The work of the General Department of Housing officially began on January 1, 2015, and not much activity has been seen from it yet. However, they are still in the very beginning of their work and the staff is in place at the Department, which also has the ambition to employ staff in every province to cooperate with the local governments.¹³⁵

3.3.4 New Law on Rent Control

On February 10th, 2015, the Prime Minister announced that he and the leader of the opposition party, Sam Rainsy, had agreed upon the need to draft a law aiming at protecting the workers in the garment sector against the longstanding problem with housing price hikes. In November 2014 the minimum monthly wage in the garment's sector was raised to 128\$, and since then the housing prices (for the garment workers) has increased drastically. The new rent control law will regulate rental prices and to some extent the responsibilities of the landlords, who no longer shall be able to raise the rent freely. The aim is that this new law also should cover impoverished students.¹³⁶

On February 28th, 2015, the ruling and the opposition parties announced the creation of a working group aimed at discussing a bipartisan plan for a rent control law. The working group consists of eight members, whereof four are from the ruling party and four are from the opposition party, and the first meeting of the group was scheduled to March 3. A member of the working group declared that the law would cover all tenants throughout the country, and not only garment workers and poor students as implied earlier. Furthermore, clauses on rent limits and rent increases as well as on sanitation standards and rental contracts can be expected to be covered in the rent control law.¹³⁷

3.4 Available Mechanisms for Land Dispute Resolution

In Cambodia, the following five formal dispute resolution mechanisms, including both judicial, non-judicial and quasi-judicial bodies, can be used to resolve conflicts over land: the Commune Councils, the Administrative Committees (ACs), the Cadastral Commission, the National Authority for Land Conflict Resolution (NALDR), and the regular court system.

¹³⁴ Ibid.

¹³⁵ Interview: Anonymous C, 2015.

¹³⁶ V. Sokheng and S. Taguam (2015), 'Rent control plan afoot', *Phnom Penh Post*.

¹³⁷ S. Taguam and P. Sotheary (2015), 'Group to mull rent controls', *Phnom Penh Post*.

Most cases goes to the Commune Councils before they reach any of the other institutions, even though this is not a requirement.¹³⁸ The Commune Council do not have the mandate to make decisions, it can only “reconcile differences of opinion” among the citizens in the communes.¹³⁹ Neither the ACs has the power to make decisions and can only, just like the Commune Councils, assist conflicting parties in the resolution of their conflict. The ACs is the first instance of dispute resolution in cases where land disputes has arised during the land registration process, and there are ACs established in all areas that are undergoing systematic land registration.¹⁴⁰

Disputes which the ACs are unable to resolve shall according to the Land Law be forwarded to the Cadastral Commission.¹⁴¹ The Cadastral Commission consists of several sub-commissions of different levels and with distinct mandates, but the overall function of it is to resolve disputes over unregistered land. A decision made by the Cadastral Commission can be appealed to the Court within 30 days.¹⁴² Land disputes over registered land falls within the jurisdiction of the Courts.¹⁴³

The last of the five dispute resolution mechanisms mentioned above is the NALDR, which was set up by a Royal Decree in February 2006. Which role this body has or is meant to have in relation to the other four bodies of land dispute resolution is not clear and its mandate is vaguely described.¹⁴⁴

¹³⁸ S. P. Subedi (2012), para. 55.

¹³⁹ Sub-Decree No. 22 ANK/BK on Decentralization of Powers, Roles and Duties to Commune/Sangkat Councils (2002), Article 61.

¹⁴⁰ Sub-Decree No. 46 ANK/BK on the Procedures to Establish Cadastral Index Map and Land Register (2002).

¹⁴¹ Land Law, 2001, Article 47.

¹⁴² Sub-Decree No. 47 ANK/BK on the Organization and Functioning of the Cadastral Commission (2002), Article 3.

¹⁴³ Ministry of Justice and MLMUPC (2003), Joint Prakas No. 3 on Determination of Competence of the Court and Cadastral Commission Regarding Land Disputes, Article 1.

¹⁴⁴ S. P. Subedi (2012), para. 59.

4 Economic Land Concessions in Cambodia

This chapter introduces the system of Economic Land Concessions in Cambodia. After a brief description of the development of the land concession system (Chapter 4.1), the most important parts of the current legal framework governing ELCs are presented (Chapter 4.2). Chapter 4.3 gives an idea of the prevalence of ELCs throughout Cambodia today. Hence, this chapter answers the third sub-question: *How is the system of Economic Land Concessions regulated?*

4.1 Development of the Land Concession System

The development of the system of land concessions in Cambodia is closely connected to the shifts of ownership rights to land throughout the country's history.

At the end of the 19th century, when the French introduced the concept of private property rights, ownership rights to land could be acquired in two ways: through declaring cultivation of land or through a system of land concessions. Concessions were granted temporary upon request, and could lead to ownership after five years of proven use. The purpose of the concession system was to define property rights and facilitate the registration of land.¹⁴⁵

In the 1920s, due to competition mainly from Chinese businessmen, a prohibition for others than French nationals or subjects of French protectorates in Indochina was adopted regarding the possibility to acquire ownership rights to land through the concession system. French settlers mainly used land concessions to establish small plantations, and by 1930 most of these concessions were less than five hectares. However, the French encouraged the development of the agricultural sector and began granting land concessions to large companies for the purpose of industrial rubber plantations. Large areas of forest were cleared in the highlands and displacement of local populations followed.¹⁴⁶

After independence from France (in 1953), it became prohibited for all foreigners (i.e. also the French) to acquire ownership to land through the concession system. At this point of time, examinations of the impact of large-scale concessions, on the environment as well as on the local

¹⁴⁵ P. Leuprecht (2004), p. 10.

¹⁴⁶ Ibid, pp. 10-11.

populations, began. However, access to land was in general still not a problem during the 1960s.¹⁴⁷

As described in Chapter 3.1.1, no private property rights were recognized between 1975 and 1989, and hence all the land belonged to the State. During the Vietnamese occupation the rubber plantations were under the direct control of the State and extensive logging took place as a way to finance continuing war.¹⁴⁸

When private property rights were reintroduced in 1989, and with the development of the agricultural sector as a priority, land concessions began to be granted anew.¹⁴⁹ The 1992 Land Law did however not contain any regulation on land concessions, and has been described as “a get rich quick manual”.¹⁵⁰ Throughout the 1990’s, the granting of land concessions took place with almost no regulation.¹⁵¹ This came to an end (at least in theory) with the adoption of the 2001 Land Law and its subsequent regulations.

4.2 The Legal Framework Governing Economic Land Concessions

According to the 2001 Land Law, a land concession is “a legal right established by a legal document” that can be granted for a social or an economic purpose.¹⁵² Only state private land can be granted as land concessions, and the area of one concession is not allowed to exceed 10 000 hectares. Nor is one person or several legal entities controlled by the same person allowed to hold several concessions covering a total area larger than 10 000 hectares.¹⁵³ A land concession is a long-term lease that can be granted for a maximum duration of 99 years, and concessions for economic purposes can not lead to ownership of the land.¹⁵⁴ Concessionaires of ELCs are allowed to clear the land in order to evolve agro-industrial cultivation of it. The exploitation of the land has to start within twelve months after the concession was granted.¹⁵⁵

The management surrounding land concessions granted for economic purposes is regulated in more detail in Sub-Decree No. 146 on Economic Land Concessions. Land granted as an ELC must be used for “agricultural

¹⁴⁷ Ibid, p. 11.

¹⁴⁸ Ibid, pp. 11-12.

¹⁴⁹ Ibid, p. 12.

¹⁵⁰ S. Williams as cited in P. Leuprecht (2004), p. 12.

¹⁵¹ P. Leuprecht (2004), p. 12.

¹⁵² Land Law (2001), Articles 48-49. Several other kinds of concessions exist in Cambodia, but these do not fall within the scope of the Land Law. *See* Land Law (2001), Article 50.

¹⁵³ Ibid, Articles 58-59.

¹⁵⁴ Ibid, Articles 52, 61. Land concessions for social purposes can on the contrary lead to ownership.

¹⁵⁵ Ibid, Articles 49, 62.

and industrial-agricultural exploitation”,¹⁵⁶ and the following five criteria have to be met before a plot of land can be granted as an ELC.¹⁵⁷

- 1) The land has to be classified and registered as state private land.
- 2) A land use plan for the plot of land in question must have been adopted, and the actual use of the land must be compatible with the plan.
- 3) Environmental as well as social impact assessments regarding the use of the land and the development plan for the ELC project must have been carried out.
- 4) Solutions for resettlement issues must be in place, and there shall be no involuntary resettlement of “lawful land holders”. Further, “access to private land shall be respected”.
- 5) Public consultations with relevant stakeholders (e.g. the local residents) should have taken place.

An ELC project can be initiated either by a solicited proposal, where the State suggest a project and then await proposals on this suggested project by investors, or by unsolicited proposal, where an investor put forward a project without previous suggestion from the State.¹⁵⁸ Only the State, through the MAFF, holds the power to grant ELCs.¹⁵⁹

4.3 Available Data on Economic Land Concessions

The Government provides no comprehensive information on ELCs available to the public.¹⁶⁰ Diverse information covering different aspects of ELCs (as well as other kinds of concessions) is however available from a wide range of sources, mainly NGOs. All data and other information relating to ELCs, both from official and non-official sources, should nevertheless be assessed with caution, as it rarely is complete and not much is known about what criteria and methods it is based on.¹⁶¹ Although no exact figures exist (or are available, if they exist), the information below gives an idea of the extent to which Economic Land Concessions exist in Cambodia.

¹⁵⁶ Sub-Decree No. 146 ANK/BK on Economic Land Concessions (2005), Article 2.

¹⁵⁷ Ibid, Article 4.

¹⁵⁸ Ibid, Article 6.

¹⁵⁹ Ibid, Article 29. According to Sub-Decree No. 146, Article 29, provincial and municipal authorities hold the power to grant ELCs of less than 1000 hectares (and below a certain investment value), but this power was withdrawn in 2008. *See* Sub-Decree No. 131 ANK/BK, on Modification of the Sub-Decree on Economic Land Concessions, (2008).

¹⁶⁰ HRC (2013b), para. 52.

¹⁶¹ C. Sperfeltdt, F. Tek and B. Chia-Lung Tai (2012), p. 22.

The most recent data available from the Government regarding ELCs was published on the MAFF website in June 2012. According to that information, the Government has granted ELCs to 118 companies on a total area of 1 204 750 hectares from 1996 until June 8, 2012.¹⁶² It has been pointed out that the list on the MAFF website “does not include a considerable number of agricultural concessions that are known to exist, in some cases for several years”.¹⁶³ Furthermore, estimations made by a number of local NGOs over the last years all points to that the number of ELCs granted as well as the size of them are significantly higher than suggested by MAFF.¹⁶⁴

On March 30, 2015, the NGO the Cambodian League for the Protection and Defense of Human Rights (LICADHO) published a set of data on land concessions, which is the result of five years work. At present, this data set contains the most recent and probably the most comprehensive information regarding ELCs. According to LICADHO’s figures, a total area of 2 141 146 hectares is covered by ELCs¹⁶⁵ throughout the country.¹⁶⁶ To get an idea of the prevalence of ELCs throughout Cambodia, see *Supplement: Map over Land Concessions in Cambodia*.

LICADHO is of the view that the information revealed by the Government concerning land concessions is oversimplified and incomplete, and it urges the Government to fully disclose information about all land concessions granted in Cambodia. On the same token, LICADHO emphasizes that the data set published is no substitute for the Governments own data, and that it remains incomplete and might contain inaccuracies due to the Government’s lack of transparency.¹⁶⁷

¹⁶² <http://www.elc.maff.gov.kh/index.php/overview>

¹⁶³ S. P. Subedi (2012), para. 83.

¹⁶⁴ See C. Sperfeldt, F. Tek and B. Chia-Lung Tai (2012), pp. 24-25.

¹⁶⁵ This estimation includes ELCs, two large Special Economic Zones (SEZs), as well as divested rubber plantations and Union Development Group.

¹⁶⁶ LICADHO (2015), 'Media Statement: LICADHO Opens up its Land Concession Data, Urges Full Transparency from the Government'.

¹⁶⁷ Ibid.

5 Current Challenges Surrounding Housing and Economic Land Concessions

As elucidated in the very first Chapter (1.1), Economic Land Concessions were introduced as a way to reduce rural poverty and thus increase development in Cambodia, and the plan was launched as a win-win-win solution; for the State, the economy, and the poor.¹⁶⁸ Notwithstanding the triple win scenario, a number of critical events seem to take place in relation to housing as well as Economic Land Concessions. Regarding the latter, the Special Rapporteur has observed that “[g]iven the relatively well-developed legal and policy framework [...] it is difficult to reconcile the current practice”.¹⁶⁹

This chapter highlights some of the most serious issues in relation to housing and Economic Land Concessions and thus seeks to answer the last sub-question: *How is the regulation on Economic Land Concessions implemented?*

5.1 Land Disputes and Access to Justice

The number of ELCs granted on disputed and/or inhabited land has continuously grown, and as a result of that the number of conflicts related to land has increased drastically over the past decade.¹⁷⁰ Land disputes have to a large extent been characterized by lack of transparency and accountability, as well as absence of an effective dispute resolution mechanism. There are strong indications that the Cadastral Commissions and the National Authority for Land Conflict Resolution are characterized by “lack of effectiveness, impartiality and credibility”.¹⁷¹

According to human rights organization LICADHO, the number of new land disputes was considerably higher in 2014 compared to the years before. During 2014, LICADHO registered 10 625 families newly affected by land disputes, which is three times more than in 2013 and twice as much as in 2012. LICADHO do not estimate a decrease in the number of new disputes during 2015.¹⁷²

¹⁶⁸ C. Sperfeldt, F. Tek and B. Chia-Lung Tai (2012), p. 4.

¹⁶⁹ S. P. Subedi (2012), para. 96.

¹⁷⁰ P. Vrieze and K. Naren (2012), ‘Carving Up Cambodia: One concession at a time’, *The Cambodia Daily Weekend*.

¹⁷¹ S. P. Subedi (2014), paras. 48-49.

¹⁷² LICADHO (2015), ‘Media Statement: Renewed surge in land disputes must be addressed not denied’. It should be noted that these figures from LICADHO is based mostly on land disputes registered in the 13 provinces (out of 24) where LICADHO has field

Despite continuous reports highlighting the negative impacts of the ELC-system, the Government has maintained the original idea that the granting of ELCs is a “sound economic model to develop the country and reduce poverty”.¹⁷³ Regarding the number of land disputes, the Government claims that it in fact has decreased, contrary to LICADHO’s estimation. For comparison, the Government points to that the NALDR handled 1766 “complaints” during the first eight months of 2014. However, in reality there are often multiple families involved in a single “complaint” or land dispute case.¹⁷⁴ Moreover, only 0,4% of the land registered under the systematic land registration program has been the subject of dispute, and regarding the new land titling initiative (Directive 01) that goes for 0,8% of the land.¹⁷⁵

Furthermore, the Government is of the opinion that “adequate mechanisms” are in place to address land disputes, and that these mechanisms generally do not suffer from any shortages.¹⁷⁶ However, the Government admits that land disputes still take long to address, the main reason for this is that materials and human resources to conduct land titling are limited.¹⁷⁷

Regardless of the number of land disputes, a crucial problem is that a large number of existing land disputes not are being resolved. An example of this is the long-standing conflict over land in the high-profile case of Boeung Kak in Phnom Penh. The disputed land was granted as a concession in 2007, but the case remains unresolved. Boeung Kak is also an example of the practice of the Government to turn the victims into perpetrators by arbitrarily arrest land activists and ordinary people that are trying to protect their land and homes.¹⁷⁸

The majority of land dealings in Cambodia are made on the local level and takes place outside the formal system; they are thus not registered in the land register. People that claim rights to land with any value has very limited chances to receive a title.¹⁷⁹ As mentioned in Chapter 3.3.2, the systematic land titling program was designed explicitly to avoid contested areas of land, as it did not have the resources necessary to solve land disputes. The consequence of this is however that all in the areas where tenure security is needed the most, the people are left out of the process.¹⁸⁰

offices. Thus, they do not claim to give a comprehensive picture of the number of land disputes in the whole country over the last years.

¹⁷³ P. Vrieze and K. Naren (2012).

¹⁷⁴ A. Pheap (2015), 'Cadastral Body Rejects Land Dispute Figures', *The Cambodia Daily*.

¹⁷⁵ HRC (2014), 'Comments received from the Government of Cambodia on the Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi', para. 18.

¹⁷⁶ Ibid.

¹⁷⁷ HRC (2013a), paras. 96, 106.

¹⁷⁸ Interview: Anonymous A, 2015; See also S.P. Subedi (2012), para. 140.

¹⁷⁹ Interview: Anonymous D, 2015.

¹⁸⁰ Interview: Anonymous C, 2015.

Although the 2012 land titling initiative (Directive 01) has led to some positive development in the land sector,¹⁸¹ it also gives rise to a number of concerns. Like in the systematic land titling program, disputed areas of land was not targeted by Directive 01.¹⁸² This has led to that farmers that have occupied their land for five years in accordance with the Land Law many times are treated as “newcomers” or “illegal squatters”. The Land Law provides a right to *request* an ownership title, not to receive one. This loophole in the law has turned out devastating in many individual cases as described above.¹⁸³ Furthermore, the implementation of Directive 01 seems to be inconsistent throughout the targeted areas. In general, members of the CPP and those able to pay the local officials a bribe are more likely to get their land measured and assigned.¹⁸⁴ Directive 01 neither address abuses in relation to land disputes, such as forced eviction.¹⁸⁵

Another problem is that the most vulnerable do not always have the right to legal title. It is not uncommon that those people live on state land or land belonging to someone else, or that they have begun occupation of that land after the land law was passed.¹⁸⁶ However, rejection of these people’s land claims on the ground that they are “illegal squatters” fails to address the problem that many of them have been forcibly evicted in the first place. They simply have no other choice than occupying land to which they do not have any legal right.¹⁸⁷ These people are not targeted by the LMAP and the problems with access to land and housing these people face can not be solved by the LMAP.¹⁸⁸ An interconnected problem is that there is large inequality in land ownership in Cambodia, with few owners to large areas of land. The effect of this is increased landlessness amongst primarily the rural poor.¹⁸⁹

5.2 Eviction and Resettlement

At the end of 2013, the Government held that “[t]he eviction of people from their place of residence is not a policy of the Government”, and that forced eviction only should take place in accordance with the relevant UN instruments and documents regarding housing rights and eviction. By this reason, the Government claims that it also “temporarily recognizes the people’s rights to illegal land occupation until they find a legal place of residence”.¹⁹⁰

¹⁸¹ S. P. Subedi (2014), para. 46.

¹⁸² HRC (2013b), para. 54.

¹⁸³ Ibid, para. 55.

¹⁸⁴ HRW land titling campaign open to abuse

¹⁸⁵ HRC (2013b), para. 53.

¹⁸⁶ Bridges Across Borders Southeast Asia, COHRE and Jesuit Refugee Service (2009), p. 25.

¹⁸⁷ S. P. Subedi (2014), para. 50.

¹⁸⁸ Bridges Across Borders Southeast Asia, COHRE and Jesuit Refugee Service (2009), p. 25.

¹⁸⁹ C. Sperfeltdt, F. Tek and B. Chia-Lung Tai (2012), pp. 11-12.

¹⁹⁰ HRC (2013a), para. 23.

Other stakeholders give a somewhat different picture regarding the reality of eviction and resettlement in Cambodia. As mentioned in Chapter 1.1, it is estimated that a large number of people have been evicted throughout the country over the last decades, and that many live under a constant threat of eviction. The Government justifies most cases of eviction by claiming that the evicted people live on either state public land, land that is needed for purposes of the public interest, or private land that belongs to someone else (usually a private investor that wants to develop the land).¹⁹¹

Over the last decade, the Government has become very good at using the law to achieve what they want. In their view, every eviction is a lawful eviction, as they have classified the land etcetera. However, it is a very selective enforcement of the law, the Government interprets the law the way it want to and use it in a very “black letter way”. The law is in place but no one really know what it means. The Courts does not often publish their decisions, and there is a lack of jurisprudence, commentary, travaux préparatoires and so on, so there is basically just the letters of the law. In Cambodia, the law is quite secondary, and regarding for example different levels of unlawfulness of an eviction, the khmer (cambodian) language does not have the same distinction (as English), in their view there is only lawful eviction or unlawful eviction. Regarding eviction, there is only the letter of the law and the facts, and no information from the Government of what actually has happened prior to eviction, the Government’s standpoint is “you don’t need to know”.¹⁹²

The sharing of information before an eviction is carried out is in most cases insufficient. Sometimes there is no notification of the eviction at all, or a court order to justify the eviction; an eviction can basically be carried out without any information beforehand and it is sometimes unclear who is responsible for the eviction. If eviction notes are issued (they are normally put up on the houses), people usually have 7-10 days to “voluntarily move”. When an eviction takes place the authorities often enclose the whole area of eviction and no one will be allowed to get inside. Observers (eg. from NGOs) have to spend the night before eviction inside the community if they want to be present during the eviction.¹⁹³

A matter of significance in situations of eviction is the documents called “family book” and “living book”. Local authorities have the responsibility to register these “books”, which works as a “soft” land title in cases of absence of a “hard” or legal title. The family- and living books can prove that someone has lived in a place for a long time. It should be free to register in the books, but in practice it can cost quite a lot due to corruption. Consequently, many people can not afford to register or update their books, or they choose not to by other reasons. When eviction is about to take place,

¹⁹¹ OHCHR Cambodia Country Office (2012), ‘Eviction and Resettlement in Cambodia: Human Costs, Impacts and Solutions’, pp. 26-27.

¹⁹² Interview: Anonymous A, 2015.

¹⁹³ Interview: Sia Phearum, Housing Rights Task Force, 2015.

people without adequate books are considered illegal squatters with no rights to the land. If people have the right documents they have a better chance to good negotiations regarding compensation etcetera.¹⁹⁴

There is no policy for relocation in place and relocation is inconsistent and conducted by various actors.¹⁹⁵ Relocation sites often lack access to clean water, sanitation facilities, job opportunities and more. The relocation sites are supposed to fulfil the requirements of adequate housing upon relocation, but in many cases they lack a range of basic facilities even several years after relocation.¹⁹⁶ Even at the relocation sites it is not always easy to obtain a formal land title to the land that has been assigned, which leads to continued insecurity of tenure and hesitation as to “start a new life” at the relocation site.¹⁹⁷ Instead of reduction of poverty, dispossession of poor communities has led to increased poverty among the most vulnerable.¹⁹⁸

5.3 Corruption and Lack of transparency

Drawing on the fact that the quite well-developed legal framework in place regarding the governance of Economic Land Concessions doesn't seem to be implemented adequately, the Special Rapporteur has concluded that “[t]he promotion of private sector investment appears to have taken precedent over compliance with the requirements of the law [...]”.¹⁹⁹

There is a clear connection between the political elite, the military and wealthy businessmen. The majority of concessionaires are Cambodian, and many of them are high-ranking CPP-officials or related to those, or financiers of the CPP and its 2013 election campaign.²⁰⁰ The Government and the judiciary are often unwilling or unable to regulate the conduct of private companies with business in the agro-industrial sector.²⁰¹ Official fees as well as bribes are often required to be able to file a complaint with the court,²⁰² and many cases submitted to the courts remain unheard several years after they were originally filed. Regarding the system of ELCs and its purpose, it is indicated that it foremost serves the interests of an elite that primarily wants to enrich themselves even further by selling out Cambodian resources.²⁰³ This quotation sums up the issues elucidated in this chapter: “The continued nexus between powerful business elites, political figures and the military, combined with the absence of an independent judicial system and ineffective dispute resolution mechanisms, continues to deny

¹⁹⁴ Interview: Sia Phearum, Housing Rights Task Force, 2015.

¹⁹⁵ HRC (2013b), para. 55.

¹⁹⁶ S. P. Subedi (2014), para. 51.

¹⁹⁷ Interview: Leng Sarorn, NGO Forum on Cambodia, 2015.

¹⁹⁸ HRC (2013b), para. 55.

¹⁹⁹ S. P. Subedi (2012), para. 96.

²⁰⁰ HRC (2013b), para. 51.

²⁰¹ S. P. Subedi (2014), para. 49.

²⁰² HRC (2013b), para. 56.

²⁰³ Interview: Anonymous A, 2015; Interview: Anonymous D, 2015.

many ordinary Cambodians redress for violations of their fundamental rights or judicious settlement of disputes.”²⁰⁴

²⁰⁴ S. P. Subedi (2014), para. 49.

6 Conclusion

This thesis has analysed a number of aspects in relation to housing and the system of Economic Land Concessions in Cambodia with the aim to answer the following research questions:

1. Can Cambodia be considered to fulfil its international human rights obligations regarding the right to adequate housing?
2. Does the system of Economic Land Concessions affect the enjoyment of the right to adequate housing in Cambodia?

Before answering the first research question, it has to be pointed out that the legacies of the Khmer Rouge regime can not be underestimated, and that the assessment to a certain extent has to be made with this contextual factor in mind.

As made clear in Chapter 2, various obligations are imposed on States in relation to the right to adequate housing. Of immediate effect are the obligation to “take steps” towards the full realization of the right, including the adoption of legislation, and the obligation to ensure “minimum essential levels” of the right, i.e. to fulfil the “minimum core obligation”. All rights holders should be guaranteed a degree of security of tenure that provides legal protection against forced eviction, which are considered a *prima facie* violation of the right. The Committee has further stated that a central policy goal should be to increase access to land for landless and poor people.

In theory, Cambodia has taken steps through both legislative and policy measures with the aim to improve, above all, security of tenure. As shown throughout the thesis, the degree of tenure security in Cambodia is in practice overall low. Uncertainty surrounding ownership as well as possession rights to land, mainly owing to the failure of providing land titles to disputed areas of land and the lack of a well-functioning dispute resolution mechanism to solve the land disputes, is widespread in both the rural and the urban settings. Regarding rental housing there is no legal security of tenure in place at present, even though recent policy measures points in a positive direction. Another group that suffers from insecurity of tenure are those that can not claim any right to land and are forced to find shelter in informal settlements. The National Housing Policy adopted last year seems to aim at providing social housing with low and middle wage earners as the target groups. How this plan will turn out in practice can however not be foreseen at this point in time.

The lack of legal security of tenure creates a situation advantageous for a practice of forced evictions. Notwithstanding the Government’s claim that such a practice not is a policy of the Government, there is clear evidence that evictions are carried out in Cambodia. It might be that some evictions

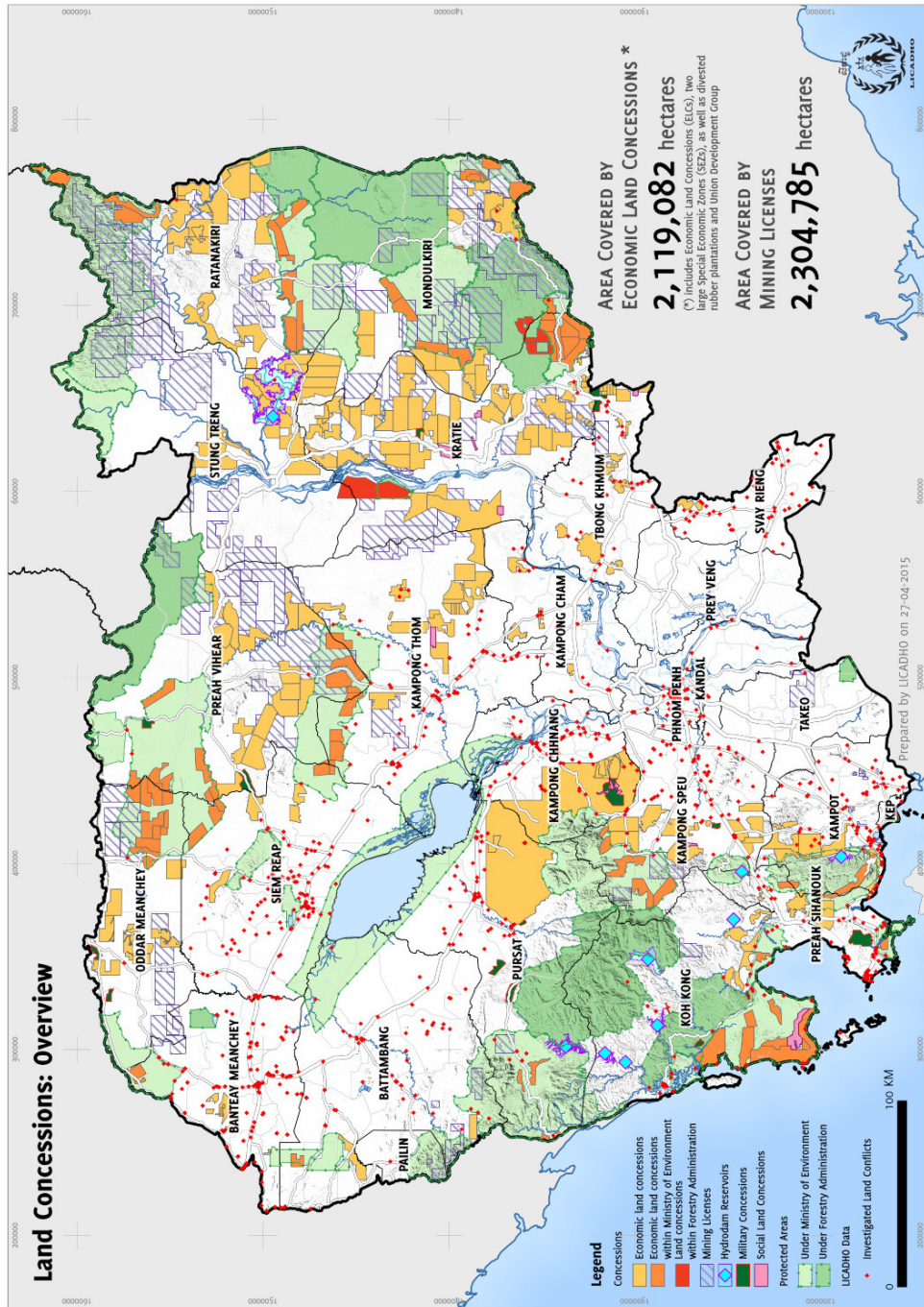
actually could be justified in relation to the international standards, but the large majority of them seem to be carried out in a manner highly inconsistent with those standards.

In consideration of the above, the answer to the first research question must be answered in a negative way: Cambodia can not be considered to fulfil its international human rights obligations regarding the right to adequate housing.

Turning to the second research question, it is not obvious at a first glance in what ways and to what extent the system of Economic Land Concessions actually affects the enjoyment of the right to adequate housing. As the land granted as concessions primarily is farmland, the actual houses or homes are in many cases not touched. However, it has been established that the right to adequate housing comprise more than basically having shelter.

Several consequences of the granting of ELCs, that in turn affects the possibilities to enjoy the right to adequate housing, can be identified. The most common scenario in this sense appears to be that people are deprived of their farmland (which in itself could constitute a forced eviction and thus a violation of the right to adequate housing, cf. the definition of forced eviction by the CESCR), and no longer are able to make a living somewhere close to where they live. This is a “push factor” for the migration from rural to urban areas; people have little of a choice but to move to the cities to try to find a way to earn their living. Many of these people belong to the vulnerable or marginalized groups of society, and tend to end up in illegal settlements without access to clean water, sanitation etcetera. Having these and other facts brought up in Chapter 5 in mind, it can probably not be denied that the system of Economic Land Concessions many times affect the enjoyment of the right to adequate housing in a mainly negative way.

Supplement: Map over Land Concessions in Cambodia



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