



Submission to the UN's Universal Periodic Review, Cambodia

Introduction and Executive Summary

1. Sahmakum Teang Tnaut (STT) is a Cambodian NGO founded in 2005 and registered in 2006. STT researches and monitors the impacts of urbanisation on the poor in Phnom Penh, and works with communities to advocate for an end to forced evictions. In 2011, the government arbitrarily suspended STT without any legal basis by for a period of five months following advocacy for the rights of forcibly displaced families from along the nation's railways.
2. This submission focuses on recommendations set forth in the previous Universal Period Review (UPR) pertaining to land and housing rights (recommendations 61-68 in particular), with a specific focus on the situation in Phnom Penh. The submission is based on STT's extensive research into the impacts of urbanisation, government policymaking, and monitoring of the situation of the urban poor since 2009.
3. The trend of increasing land and housing right abuses established over the 2000s has continued over the past 4 years in Phnom Penh. At least around 20,000 people have been evicted in the period¹, in the clear majority of cases without adequate compensation to allow the evictees to re-establish their lives and livelihoods. Urbanisation and urban land management is driven by the interest of the collusion of political and business interests, leading to unsustainable development of the capital. The government continues to view the urban poor with hostility, manifested in the use of violence against non-violent demonstrators and fundamental lack of political will to recognise the land rights of the poor. At the policy level, Circular 03 raises serious concerns of potential denial of land rights for legal possessors, while the lack of a comprehensive rights-based framework to address the issue of urban poverty combined with non-transparent systematic land titling mean the majority of the capital's poor continue to live with insecure tenure and thus under threat of eviction.

Forced Evictions:

4. Over the period 2009-2011 at least 17,000 people have been displaced in Phnom Penh.² This number includes the hundreds of families forcibly evicted from the capital's Tonle Bassac neighbourhood ahead of land registration and titling in the area. The Boeung Kak lake eviction – begun around 2008 – represents the largest forced eviction in Phnom Penh's history since the Khmer Rouge era; around 18,000 people have been evicted to date. These households remain un-restituted.
5. In the Boeung Kak area, despite the granting of 12.44ha to the people in August 2011, some 50 households remain under threat of eviction. These households have worked with STT to develop a plan for their inclusion in the concession.
6. Despite the approval of Circular 03 in May 2010 (see below section on Circular 03), at least 30 communities have since received eviction notices; households from a dozen of these have already been evicted. This number includes communities in locations identified for Circular 03 implementation. Around 50 communities in Phnom Penh are currently under threat of eviction. On-going evictions or threats thereof indicate a fundamental lack of political will on the part of the authorities to appropriately assess the rights of the urban poor.³

¹ Sahmakum Teang Tnaut (2011) *Facts & Figures 19: Displaced Families: Phnom Penh 1990-2011*

² Sahmakum Teang Tnaut (2011) *Facts & Figures 19: Displaced Families: Phnom Penh 1990-2011*

³ Sahmakum Teang Tnaut (2013) *Policy for the Poor? Phnom Penh, Tenure Security and Circular 03*

7. Analysis by STT of 43 eviction notices issued to residents in Phnom Penh between February 2004-September 2012 show that compensation is not provided in the clear majority of cases. The notices also contain veiled threats against residents to the effect that ‘administrative measures’ – a euphemism for demolition of houses – will be taken unless home owners dismantle their own homes within a set time period, usually between seven and fourteen days starting from receipt of the eviction notice.

Recommendations to the RGC:

- a. Implement a moratorium on evictions pending formal land registration in accordance with the existing legal framework and commit to evictions as a last resort to be conducted in accordance with Cambodia’s legal framework and international human rights obligations
- b. Commit to an end to forced evictions and provide fair and adequate compensation to already evicted households in accordance with Cambodian law and international obligations
- c. Commit to resolving the ongoing land dispute at Boeung Kak through the inclusion of the households excluded from the 12.44ha (or provision of fair and adequate compensation to the households should they prefer); provide restitution in the form of access to additional compensation for households already evicted from the area

Relocation:

8. Cambodia lacks a Relocation Policy; relocation is conducted by a variety of actors (municipalities, companies, the Inter-Ministerial Resettlement Committee). Procedures, compensation (if any), and outcomes hence vary on a case by case basis. Relocation in Phnom Penh has resulted in the establishment of 54 relocation sites at the city’s outskirts mainly over the past 15 years; over time sites have been located further away from the city centre and residents’ previous locations. Five of the sites established since 2009 are located approximately 50km from Phnom Penh, by Oudong mountain.⁴
9. Residents at relocation sites report a number of problems affecting their livelihoods and living standards. Poor infrastructure is the most commonly reported problem, with 72% of all sites highlighting it as a key challenge. Lack of access to utilities is the second most pervasive problem – reported by 43% of sites - while 22% note unemployment as a difficulty. Other notable problems include poor sanitation and waste management, lack of social services, financial limitations, and threats of eviction.⁵
10. Residents at the more remote sites tend to face not only poorer living standards than those at sites closer to the city centre, but also higher costs. Sites further away have less access to utilities such as state electricity supply and piped water from the Phnom Penh Water Supply Authority and hence have to rely on private suppliers. These can charge over 400% and 1600% more for electricity and water supply respectively.⁶
11. Lack of tenure security in the form of land titles remains an issue at the majority of the sites. Although it is generally acknowledged – loosely following sub-decree #19 on Social Land Concessions – that relocated households should receive land titles after five years of occupancy at the new site, only 13 out of 46 sites established before 2007 have undergone systematic land registration and/or titling. Put another way, 33 sites established more than five years ago have to date not undergone the systematic land registration process. A large minority (15) of these are over ten years old.⁷

Recommendations to the RGC:

- b. Given the socio-economic costs associated with relocation, relocation should be considered a last resort, and conducted only following formal adjudication of the land rights of affected households and in accordance with the Cambodian legal framework and international standards;
- c. Alternatives to re-location, including on-site upgrading, re-adjustment, or re-blocking of affected households should be explored as viable options to relocation together with affected households prior to final decision-making;

⁴ Sahmakum Teang Tnaut (2012) *Facts & Figures 21: Resettling Phnom Penh – 54 and Counting?*

⁵ *ibid.*

⁶ *ibid.*

⁷ *ibid.*

- d. The Royal Government of Cambodia (RGC) should develop a relocation policy following international best practices, including the UN Basic Principles and Guidelines on Development-Induced Displacement and Evictions, which outlines participatory measures to be taken before, during, and after relocation and resettlement. This policy should emphasise participation of affected households in all planning and decision-making regarding the move. Renters should be included in the process;
- e. When relocation is considered unavoidable, participation by households affected should be sought at all stages of the relocation. In particular, adequate time should be allocated to community organizing and participatory planning prior to relocation, including the choice of relocation site location and lay-out. Adequate funds should also be made available;
- f. Prior to relocation, all sites should have access to basic infrastructure and services, including (but not limited to) access roads, utilities, health care, and schools. Sites should be located near appropriate income-generating opportunities and transportation links;
- g. Existing relocation sites dating over five years should undergo systematic land registration and titling as a priority. Residents at sites that have previously been denied plots, such as renters, should be formalized to become part of the settlement;
- h. State electricity provision and access to piped water through the Phnom Penh Water Supply Authority should be extended to all sites as a priority, at subsidized rates.

Land registration

12. Systematic land registration (SLR) and titling remains non-transparent; citizens do not have access to detailed information about where and when SLR will take place or has taken place. Significantly, citizens do not have access to information regarding which areas have been excluded from SLR. Urban residents in particular appear to have been excluded from SLR, with some subsequently evicted on the (unproved) basis that they are living on state public land (e.g. Boeung Kak, also communities in the Tonle Bassac area). Since the start of Directive 01 implementation SLR has been lagging and its future is unclear; additionally, Directive 01 does not cover urban areas.
13. State land identification and mapping has either not been conducted or has been conducted in a non-transparent fashion. Lack of a publicly accessible state land register allows the government to make claims regarding the status of land which are next to impossible to verify. Eviction notices have been issued and forced evictions have occurred based on unsubstantiated claims that land belongs to the state; the government currently claims at least 165 households living along the southern fence of Phnom Penh International Airport are illegal occupants and issued an eviction order to them on Jul. 25, 2012. The households however purchased their lands openly and possess a number of documents relevant to establishing legal possession right of their land under the Land Law of 2001 while the government has failed to adjudicate the area in accordance with the existing legal framework.

Recommendations to the RGC:

- i. Make details about SLR publicly accessible, including community-level information on where registration has been conducted, which areas registration will be conducted in, and which areas have been excluded.
- j. Commit to transparent state land identification and mapping and a moratorium on evictions from land that has not undergone registration according to the existing legal framework
- k. Publicly disclose any legal assessment made of the legal status of the land by Phnom Penh International Airport, and should eviction be unavoidable, provide fair and adequate compensation to the affected households

Circular 03 on the Resolution of Temporary Settlements on State Land illegally occupied in the Capital, Municipal and Urban Areas:

14. There are significant concerns about the Circular being used as a tool to cement the image of the urban poor as illegal. While correct implementation of the Circular can potentially allow for the formalisation of illegal occupants of state land, there are significant concerns that the Circular will not be implemented in accordance with the existing legal framework, and that households with legal possession rights will be subject to Circular implementation and thus denied their land rights. Fundamentally, a rights-based holistic approach to addressing urban land and housing issues is lacking,

as is political will to recognise the rights of the poor as demonstrated by the Circular as well as ongoing evictions and exclusion from systematic land registration.⁸

Recommendations to the RGC:

- l. Commit to ensuring that all identification of state land is done in accordance with existing mechanisms and definitions as already set out in existing law, i.e. the 2001 Land Law, Sub-decree N^o118 and Prakas N^o42, and that no households with legal possession rights are subjected to C03 implementation.
- m. Commit to an open and transparent multi-stakeholder process throughout the implementation of the Circular, including making information gathered publicly accessible and open to public comment
- n. Commit to registration of all private lands identified during C03 implementation through extension of land registration and titling into these areas.
- o. Clarification that settlements will not be identified as illegal if they lie in the path of development projects, even if these are already approved in existing land-use maps. The basis for identifying a settlement, or individual household within a settlement, as legal or illegal must be based on the existing legal process and definitions of state land.
- p. Clarification that onsite upgrading is the preferred option, given the costs associated with relocation and monetary compensation (both for the households affected and society at large). If on-site upgrading is not possible, commitment to developing relocation plans and sites in accordance with international standards.
- q. A moratorium on evictions from state land pending implementation of the Circular.
- r. Development of initiatives to ensure tenure security and improve livelihoods of legal possessors not targeted by the Circular within a holistic, rights-based framework aimed at addressing urban land and housing issues.
- s. Implement the Circular in all instances where households are located on state public land, prioritizing on-site upgrading as a resolution with provide adequate resettlement conditions, in line with the Circular and international human rights obligations.

Urbanisation and urban land management:

15. Although no official figures on urbanisation exist, Phnom Penh is project to grow by at least 40,000 residents per year.⁹ Interests of private developers currently take precedence over the rights of citizens, partly as a result of extensive collusion between the political and business elite. Deals regarding land ownership and ‘development’ are decided upon behind closed doors and conducted in a top-down fashion that does not allow for consultation, participation, and citizen oversight. A fundamental lack of transparency and rule of law leaves citizens without means to challenge projects and developments around them; in the few cases where communities have taken non-violent action against projects they have been met with disproportionate state violence and increasingly also the use of the (compromised) legal system against them.¹⁰
16. In May 2012, 14 female activists from Boeung Kak were detained whilst demonstrating non-violently and sentenced to 2.5 years imprisonment on the spurious charges of illegal occupation of property and obstructing public officials. The Appeal Court subsequently upheld their sentences but suspended them, thus allowing the women to leave prison after a month and three days in jail. In September 2012, Yorm Bopha, a Boeung Kak activist and leader of the campaign to free the 14 women, was arrested on spurious and politically-motivated charges of “intentional violence”. She was sentenced to three years’ imprisonment despite the fact that not a single witness – including those of the government – testified that Bopha physically harmed anyone. Bopha remains imprisoned.

Recommendations to the RGC:

- t. Develop a rights-based spatial planning policy (incl. local master plans and land use plans) in a transparent, participatory fashion, giving precedence to citizens’ rights and needs

⁸ Sahmakum Teang Tnaut (2013) *Policy for the Poor? Phnom Penh, Tenure Security and Circular 03*

⁹ Municipality of Phnom Penh (2010) *Facts: Phnom Penh City*

¹⁰ Sahmakum Teang Tnaut (2012) *A Tale of Two Cities: Review of the development paradigm in Phnom Penh*

- u. Ensure that changes in land ownership (incl. long-term leases on land/concessions) follow the existing legal framework and are conducted in a transparent, participatory and consultative fashion that respects the rights of existing land owners and/or legal possessors in the area
- v. End the use of violence and the judicial harassment and imprisonment against peaceful protestors and strengthen conflict resolution mechanisms;
- w. Release and vacate the spurious convictions against Yorm Bopha

National Housing Policy:

17. A National Housing Policy is sorely needed to address the growing need for affordable housing in the capital and elsewhere. While the existing (second) draft of the National Housing Policy developed in 2010 has many positive aspects it unfortunately appears the Policy has been shelved.¹¹

Recommendation to the RGC:

- x. Develop an inclusive National Housing Policy to address the housing needs especially of low income citizens, including renters. The policy should be developed in consultation with civil society.



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¹¹ Sahmakum Teang Tnaut (2012) *A Tale of Two Cities: Review of the development paradigm in Phnom Penh*