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Human Rights Now

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Cambodia

The Deprivation of Land Rights and the Related Human Rights Violations, and the Attacks to Human Rights Defenders Must be Ceased Immediately

1. **In Cambodia**, currently, many people are deprived of their invaluable land where they grew up under the name of “development.” The numbers of people who are deprived of their land the right to housing are increasing year by year. At the same time, the issues of human rights violations by the public authorities towards residents who protest against forced eviction are becoming serious.

Human Rights Now, an international human rights NGO based in Tokyo, sent a fact-finding mission to Cambodia in June 2012 in order to investigate these human rights violations and has published an investigative report today.

2. The government of Cambodia has encouraged the economic activity of private companies by leasing the vast area of state land for a long period of time as “economic land concession” as such. However, at many part of land, which is subject to concession, residents who have been living there for a long time are forced to evict.

The Civil Code of Cambodia, enforced in 2011, and the 2001 Land Law guarantee the protection of occupants, who are living at the place for a long time, as a legitimate right holder of the land. Nevertheless, residents are forcibly displaced without any compensation, and lose their house and property suddenly.

When residents fight or protest against these land policies, the Cambodian government takes forceful means, which constitute serious human rights violations, including the dispatch of troops, suppression by violence, illegal arrest and prosecution, and the attack and threat to human rights defenders.

3. On May 16, 2012, **at Broma village in Kratie province**, a 14-year-old girl, who had nothing to do with the protest, was shot and killed by the army and police aimed to oppress and arrest the residents who opposed to the forced eviction. The Human Rights Now investigation team interviewed the girl’s family and other people who witnessed the incident, and it was revealed that the army and the police had shot to the girl’s house. The incident occurred in the course of the gun attacks by the large number of armed forces and the police towards the residents, or the party involved in the land conflict.

HRN found that the army and the police targeted civilian villagers with gun.

The government of Cambodia claimed that this action was necessary for the arrest of some residents, but the actions taken by the government clearly extended beyond the scope of physical force in enforcing an arrest warrant. These incidents cannot be tolerated because the killing of the girl is an extrajudicial killing attributed by the armed forces, and the attack towards residents by firearms is an illegal action.

At the same time, in Kratie, HRN found that the large-scale of economic land concession, which exceeds the limit set by the 2001 Land Law, was granted without any environmental assessment and the consultation with residents, which are required by the 2001 Land Law.

Human Rights Now expresses its grave concern to the government of Cambodia and the provincial authority about the violent measures taken by them aiming to solve the situation regarding land conflict without taking due process.

4. The Human Rights Now investigation team also interviewed the residents in Borei Keila and those who around the Boeung Kak Lake in Phnom Penh,

In the case of **Borei Keila**, a private company which gained Social Land Concession clearly breached the contract and did not construct the buildings that were promised to be provided to the **Borei Keila** residents at the land for relocation. The residents could not move out and continued to live at the original residential area. Then, on January 3, 2012, the armed forces and the police were mobilized, and they used physical force on residents, destroyed houses, made residents evict forcibly, and detained disobedient residents in an extrajudicial way. Until now, the municipal authority does not recognize the residents' legitimate claim of their rights in spite of the alleged evidence of land ownership claimed by them. The residents have no place to go, and are forced to live in a serious environment.

In the case of **Boeung Kak Lake**, the state public property, normally prohibited to be subjected to an Economic Land Concession, was granted as a became the subject of Concession, and the lake was filled against the law which prohibits the change of the function of state public property. Consequently, people lost their house and property due to the sudden fill of the lake, where they had been living, without any consultation.

5. The common concern raised in the interviews of Kratie province and Phnom Penh was that without adequate consensus with residents nor appropriate compensation, the armed forces and the police suddenly and forcibly had made the residents evict, destroy houses and infringe their property, and conduct physical violence towards residents.

The right to housing, guaranteed by the International Covenant on Economic, Social, and Cultural Rights (ICESCR), prohibits forced eviction in principle. For forced eviction, the following are required: (1) consultation with those affected prior to the eviction and the exploration of all feasible alternatives, (2) the guarantee of reasonableness and proportionality of eviction, and the right to adequate compensation, (3) the implementation of legal procedures including warrants from the courts, (4) procedural protections of consultation and notice prior to the scheduled date of eviction,

(5) the provision of housing and alternative land, not to result in individuals being rendered homeless or vulnerable due to eviction (ICESCR, General Comment 4,7). In the present case, all of these rights are violated.

The residents are oppressed, assaulted and arrested only because they protested peacefully. For example, in the Beoung Kak case, 13 women, who conducted a peaceful protest, were surrounded by a large number of armed forces, assaulted and arrested illegally. In the course of that incident, the grave human rights violations were practiced including a 72-year-old non-resistant woman being carted off, and a pregnant woman being kicked her stomach by the army.

Oppressing citizens' expression activity by forceful means is a serious violation of freedom of expression, guaranteed by article 41 of the Constitution of Cambodia and the International Covenant on Civil and Political Rights (ICCPR). Also, there is no reason to legitimate physical force against citizens, thus, it is an unforgivable human rights violation.

6. According to the recent government regulation, Economic Land Concession is temporary halted and the policy prioritizing residents' rights rather than Economic Land Concession is adopted. However, as long as the investigation team observed around the Boeung Kak Lake, it is clear that these policies have not been implemented in the field.

On the other hand, the government is drafting the **Draft Law on the Management and use of Agricultural Land**. The Draft Law does not contain some regulations set in the Land Law 2001 regarding Economic Land Concession, such as the limit of concession area, environmental assessment, and prior consultation. Consequently, the far easier land lease will be possible. Even if Economic Land Concession is regulated, if the legal basis of depriving farmers' land is provided by new laws like this Draft Law, the issues will not be solved, but rather, the situation can be worsened.

7. In the every case that was investigated this time, human rights organizations and social defenders, working for protecting those residents who stood up to defend their land and participated peaceful protests, become the target of violence by authority, and are arrested, detained and prosecuted.

The 13 Beoung Kak women case were convicted in an unfair and closed summary trial without any provision of the rights of criminal defendant or protection of due process recognized both by domestic law and international human rights law. The residents in Borei Keila arrested and detained in a extrajudicial way as they merely conducted a protest in front of the city hall. They did not receive any judicial review afterward, thus, this is clearly arbitrary detention.

Also, in Kratie, a farmer who contested against a company to defend his land was unlawfully arrested, tortured (including by electronic shock) at least for three times, and at the end, convicted by the summary trial. This is a grave violation of international human rights law (ICCPR articles 7, 9, and 14) which prohibits torture and arbitrary detention and guarantees the right to a fair trial.

In addition, on July 15, after the investigation by the investigation team, **Mr. Mam Sonando**, who is the representative of the NGO called Democratic Association, and who allegedly worked for protecting residents' land rights in Kratie, was arrested and prosecuted.

Moreover, in August, **Mr. Chan Soveth**, senior investigator of the Cambodian Human Rights and Development Association (**ADHOC**) was summoned to the Phnom Penh Municipal Court on suspicion of “providing assistance to the perpetrator.” ADHOC is a human rights organization that has been working on human rights issues non-violently for a long period of time, therefore, it is obvious that the incident is an unjustifiable accusation.

These unfair prosecutions target to human rights and social activists, who are working at the frontline to protect civilians’ rights to land, are the worst form of threat and attack. Human Rights Now strongly protests against these ongoing unjust oppression and intimidation towards human rights defenders.

8. Based on the result from the investigation, Human Rights Now urges as follow.

(To the government of Cambodia, the provincial government and the local authority)

- 1) The government of Cambodia, the provincial government and the local authority must not conduct any forced eviction.
- 2) Prohibit the dispatch of troops and the police, as well as the use of physical force on eviction; and when any illegal actions are conducted by the armed forces or the police, investigate thoroughly, punish them, and compensate to the victims of the violence.
- 3) When eviction is practiced: strictly follow the judicial proceedings such as final decisions and administrative orders of courts; prohibit self-enforcement by private persons, and avoid the army and the policy taking part of it.
- 4) Provide appropriate compensation to those who were deprived of their land, were destroyed their house, and lost property. Also, to those who were deprived of residence, provide alternative land that is compatible with an international standard.
- 5) Cease immediately unjust oppression and arrest in relation to the freedom of expression, assembly and association including the residents’ peaceful protests regarding their right to land.
- 6) Regarding the all arrest cases of land rights, investigate possible violation cases of international human rights law such as torture and arbitrary detention, and compensate to victims.
- 7) Based on the Land Law in 2001, register the ownership of those who with a long-term possession of the land in an open, non-violent, unambiguous, continuous, and in good faith way in a timely manner, and respect citizens’ legitimate rights to land. Also, drastically improve the delay of registration of the ownership, and guarantee the rights of possession.
- 8) Refrain from implementing any law, such as the rental law of farm land, which could infringe the residents’ right to land, whereas leaving the current situation where the rights to land are not properly protected.
- 9) Promptly guarantee the right to housing of people around the Beoung Kak Lake and Borei Keira.
- 10) Cease every unjust arrest and prosecution towards human rights defenders and social activists who are acting for the land rights.

(To the judicial authorities of Cambodia)

- 1) Respect international human rights law regarding accused and defendant including the principle of

presumption of innocence, open court, the guarantee of the right to appoint a counsel, the right to examination of a witness, the access to judicial record, and the guarantee of preparatory period; and respect the right to a fair criminal trial.

2) Ensure the independence of the judiciary, and actively play the role to control illegal action by the government.

(To the business sector in Cambodia, and to the international business community)

1) Since the people's rights to land are violated due to the land development in Cambodia, when a project including the use of land is started, conduct a prior assessment and investigate the usage situation of the land; and refrain from conducting development project where the residents are living or cultivating.

2) Respect the Guiding Principles on Business and Human Rights: implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31, 21 March 2011), pay adequate due diligence not to practice human rights violations.

(To international society, especially donor countries)

1) By using the influence as international society and the donor countries, encourage the government of Cambodia to take measures to protect citizens' rights to housing and land rights. While unjust development is taking place, take appropriate measures including the halt of related financial support.

2) Promptly protest against the dispatch of troops, forced eviction, the use of physical force and illegal arrest, conducted by the government of Cambodia in relation to the land rights, and take every measure to protect human rights defenders from oppression.

(To the UN special rapporteur)

In the report at the UN Human Rights Council, held in this September, highlight the land conflict issues and the related human rights violations, including the infringement of the freedom of expression, the use of physical force towards civilians, arbitrary arrest and illegal prosecution, and the threat to the human rights defenders. Based on its authority, make an appropriate recommendation to the government of Cambodia to solve the issues.

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Human Rights Now ~Protecting Human Rights for All~

Human Rights Now is a Tokyo based international human rights NGO comprising a body of experienced legal professionals dedicated to protecting and promoting human rights around the world, with a special focus on Asia. The activity includes monitoring/ fact-finding of human rights, human rights education and advocacy work.
