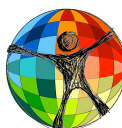


Forced Evictions & Grassroots Resistance in Phnom Penh: Lessons for advancing the rule of law in weak and captured states



INTERNATIONAL HUMAN RIGHTS INTERNSHIP WORKING PAPER SERIES



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Abstract

Forced evictions are growing alarmingly across the globe. This “global epidemic” is particularly worrisome given the wide range of socioeconomic, cultural and political consequences of evictions, including individual and social impoverishment, physical, psychological and emotional trauma, increased insecurity and social isolations, loss of livelihood and decreased access to basic services. This article is a case study of forced evictions in Cambodia’s capital, Phnom Penh. After, looking at Cambodia’s recent history to understand why forced evictions are so prevalent today, it draws four main lessons about forced evictions from the Cambodian situation. Firstly, forced evictions blatantly violate international law. Secondly, despite the international condemnation of forced evictions and the numerous protections against forced evictions found in the international human rights regime, there is an obvious disconnect between the norms of international law and implementation where human rights are grossly violated. Foreign states, acting as donors through bilateral and multilateral aid and development agencies, are reluctant to push for the meaningful implementation of international human rights law, because of competing geopolitical interests. Thirdly, in a society like Cambodia, where the institutions are deeply corrupted and captured by the elite, and where informal norms of behaviour have been destroyed by decades of conflict and political instability, the establishment of democracy cannot come from a top-down state-centered approaches focused on institutional reforms. Lastly, growing grassroots resistance to forced evictions are crucial actors in the re-creation of essential informal norms of behaviour. Peaceful resistance to forced evictions in Cambodia is illustrative of the dynamic process of legal empowerment of the poor, whereby social change is initiated from the ground-up and through the interaction of the victims of human rights violations with domestic and international civil society. As such, the communities affected by forced evictions are not solely victims of human rights abuses; they can become key players in the establishment of the rule of law in weak and capture states.

Introduction

Forced evictions are growing alarmingly across the globe. This “global epidemic” is particularly worrisome given the wide range of socioeconomic, cultural and political consequences of evictions. During my summer internship at LICADHO, a Cambodian human rights non-governmental organization, it became evident that the majority of human rights violations in Cambodia in recent years have been linked to land dispute, notably land grabbing and forced evictions. This article is a case study of forced evictions in Cambodia’s capital, Phnom Penh. Drawing from my summer experience, I explore the tension between the fact that forced evictions constitute gross human rights violations under the international regime and the evident unwillingness of the international community, notably donor agencies present in the country, to take a strong stance against these human rights violations.

First, I look at Cambodia’s recent history to understand why forced evictions are so prevalent today. Then, I turn to the international human rights regime to demonstrate how the international community has repeatedly condemned forced evictions as gross violations of human rights. I subsequently look at the heightened involvement of the international community in Cambodia and seek to understand why inaction and half-hearted efforts to pressure the government to respect human rights have been the norm. Here, I consider two main factors to explain this donor apathy: the rhetoric of development used by multilateral development banks and rearticulated by the government of Cambodia to justify forced evictions and the arduous relationship between economic growth, stability and democratization, on the one hand, and the geopolitical interests of foreign donors, on the other. Finally, in light of the implementation deficiencies of the international human rights regime, I consider the emergence of grassroots mobilization and peaceful resistance to forced evictions as a force of social change and democratization from below. More

specifically, I show how the legal empowerment of communities victim of forced evictions is contributing to the re-creation of informal norms of behaviour essential for to complement and strengthen laws and legal institution, and ultimately advance the rule of law.

This article argues that the endemic corruption and human rights abuses prevailing in Cambodia today are symptomatic of a reconstruction process that forgot a crucial step. By focusing only on building formal institutions, the United Nations Transitional Authority in Cambodia (UNTAC) sought to reconstruct the country in a customary vacuum. Informal institutions, shaped by customary norms and practices, are the strongest form of institutions, but also the most difficult to change. During periods of mass atrocities and displacement, these embedded institutions are often disseminated. As such, in order to build democratic institutions in a post-conflict country, a customary foundation needs to be laid down first. Otherwise, the formal institutions will not take roots. In Cambodia, the transition to democracy was further hindered by the fact that UNTAC was followed by an autocratic regime that was never committed to legitimizing the formal institutions. In sum, what the current situation in Cambodia exemplifies is the central role that customary norms and practices play during democratic transitions. Without a customary foundation, formal institutions cannot take roots into society, creating fertile ground for corruption to flourish. Therefore, in order to turn the tide, a more comprehensive, people-centered approach to development is essential.

Part I. Socio-historic Context and Property Rights in Cambodia

The recent history of Cambodia has fostered both confusion and conflict with regards to land use and occupation. Over the past four decades, Cambodia has gone through a series of political changes, each characterized by drastic alterations of land policies.¹

Khmer Rouge Period: Abolition of Private Ownership

The Khmer Rouge ruled over Cambodia from April 17, 1975 to January 15, 1979. In spite the relative brevity of the regime, its legacy that is still deeply felt today. An estimated 1.7 million people perished during regime. The intellectual class was systematically persecuted and eliminated.² Driven by a radical Marxist ideology, the regime actively sought to break up the existing fabric of society. It sought to abolish all institutions and legal frameworks inherited from the French Colonial administration, including the system of private ownership.³ Documents proving formal land ownership were massively destroyed. Moreover, in the days following their victory, the Khmer Rouge evacuated all the cities and a comprehensive program for the forceful resettlement of urban dwellers to the countryside was instituted.⁴ All land and houses were taken over by the government. The legal profession was also left badly bruised. Laws were abolished and compilations of legislation were destroyed. Lawyers and judges were killed or fled into exile. The entire judicial system

¹ Yash Ghai, "Access to Land and Justice: Anatomy of a State Without the Rule of Law" in Yash Ghai and Jill Cottrell, eds, *Marginalized Communities and Access To Justice* (New York: Routledge, 2010) 37 at 39 [*Anatomy of a State*].

² Ben Kiernan, "The Demography of Genocide in Southeast Asia: The Death Tolls in Cambodia, 1975-79, and East Timor, 1975-80" (2003) 35:4 *Critical Asian Studies* 686 at 586.

³ *Anatomy of a State*, *supra* note 1 at 37.

⁴ *Ibid* at 39.

was burnt down to ashes. Therefore, not only did the regime of private property disappear, but the main institution meant to deal with land disputes also vanished.

Vietnamese Invasion: Development of a *de facto* land and housing market

On January 15, 1979, the Khmer Rouge toppled, defeated by Vietnam. Supported by a number of Khmer Rouge defectors, the Vietnamese invasion set the stage for the establishment of the People's Republic of Kampuchea, a puppet pro-soviet regime backed by the Vietnamese army.⁵ Until 1989, land remained under collective ownership and was used according to the socialist ideology of the regime.⁶ Furthermore, since most urban property owners had perished or fled during the Khmer Rouge regime, most land and buildings in the urban centres were left vacant. Consequently, as people returned to the cities, vacant buildings and dwelling were being reoccupied on a "first come first served" basis.⁷ Despite the lack of formal system of private ownership, the government allowed people the right to occupy dwellings. Thus, as people started to sell and buy these properties, a *de facto* land and housing market emerged.

Transitional Period: From Socialism to a Market Economy

The departure of the Vietnamese in early 1989 marked the beginning of a transition from a centrally planned to a market economy. It then became clear that Cambodia needed a new constitution, a land reform and a new land law recognizing private property. Sub-

⁵ "By 1989, although the country's name had changed from the People's Republic of Kampuchea to the State of Cambodia, a World Bank report (Cambodia: Agenda for Rehabilitation and Reconstruction, 1992) found that its political, bureaucratic and administrative infra- and superstructures clearly reflected a Communist model with an interweaving of departments and political branches." D. Roberts, "From 'Communism' to 'democracy' in Cambodia: a decade of transition and beyond" (2003) 36 *Communist and Post-Communist Studies* 245 at 247.

⁶ *Anatomy of a State*, *supra* note 1 at 39.

⁷ Beng Hong Socheat Khemro & Geoffrey Payne, "Improving tenure security for the urban poor in Cambodia: an analytical case study" (2004) 28 *Habitat International* 181 at 182 [*Improving tenure security*].

Decree No. 25 was the first legislative act implemented to initiate the redistribution of collectively owned land to the population and to re-establish private ownership. Land rights were redistributed exclusively to Khmer citizens who had used and cultivated their land continuously for at least one year before the market oriented policies were promulgated. The land allocation process did not recognize ownership rights from the earlier regimes, because there were no legal documents left from the colonial period. The redistribution was rather based on a formula weighing household size and a series of other household characteristics. As a result, the land redistribution following the 1989 reforms was remarkably egalitarian.⁸ Nonetheless, the land use and possession registration program that was established simultaneously by the Department of Land Titles was quickly overwhelmed by 4.5 million applications for titles and became permanently backlogged.⁹ The land titling system never really took effect and corruption slowly instilled itself throughout the system. This phenomenon is a typical feature of post-conflict economies during transition. When legal infrastructures are weak, the laws may exist on paper, but may not be known or respected by the public or enforced by the state. It thus creates an environment ideal for corruption and white-collar crime.¹⁰

The Paris Peace Agreements & UNTAC: The Emergence of Informal Settlements

Meanwhile, in Phnom Penh, land accessibility decreases rapidly. Like many developing countries, Cambodia experienced intensified rural-to-urban migration, a pattern of migration characterized by the poor management of natural resources, underdevelopment and detrimental infrastructures in rural areas and the promises of opportunities and higher wages in urban areas. This haphazard migration typically outpaces infrastructural development and

⁸ *Anatomy of a state*, *supra* note 1 at 39.

⁹ *Ibid.*

¹⁰ Cheryl W. Gray, « Reforming Legal Systems in Developing and Transitional Countries » in Ann Seidman, Robert B. Seidman, Thomas W. Walde (eds), *Making Development Work: Legislative Reform for Institutional Transformation and Good Governance* (London: Kluwer Law International, 1999).

the expansion of local governance.¹¹ In Cambodia, urbanization and the fast growth of the city's population made vacant land or houses increasingly rare. High demand and decreasing supply resulted in rapid increases in property value.¹² Moreover, in 1991, Cambodia became the international community's grand nation-building project. The Paris Peace Agreements was signed in an effort to end instability in Cambodia. United Nations Transitional Authority in Cambodia (UNTAC) was put in charge of the peaceful transition process towards the 1993 democratic elections.¹³ A new Constitution awarded Cambodians human rights, personal freedoms and other protections necessary in a modern democratic state.¹⁴ But the arrival of UN officials in Cambodia further intensified the inflation of the land and housing market. Therefore, poor people who came to Phnom Penh later were not able to find any vacant or free land and could not afford to buy houses on the formal market. Informal settlements on state land started to appear.

1992 Land Law: A "get rich quick" manual to Land Grabbing

The 1992 Land Law sought to complete the process of marketization. Several avenues for ownership transfer were formalized and article 65 established property acquisition through possession.¹⁵ Unfortunately, the possibility of claiming ownership based solely on possession, coupled with the lack of formal land documentation of ownership and possession rights facilitated land grabbing as a common alternative method of land

¹¹ "Push Factor in Rural-Urban migration on the African Continent" *The Sojourner Project* (5 May 2010) online: The Sojourner Project <http://thesojournerproject.wordpress.com/2011/05/05/push-factors-for-rural-urban-migration-on-the-african-continent/>

¹² *Improving tenure security*, *supra* note 7.

¹³ Dr. Ramanujam and Siena Anstis, "Legal Empowerment, Social Movements and Fostering Equitable Economic Development in Cambodia" [Forthcoming in 2013] at 12.

¹⁴ Joel Brinkley, "Cambodia's Curse: Struggling to Shed the Khmer Rouge's Legacy" (2009) 88 *Foreign Affairs* 111 at 112 [*Cambodia's curse*].

¹⁵ *Cambodia Land Law*, 1992, Part II, art. 65 "The temporary possessor shall possess the property in public which means he possess without hiding it. Anyone who want to claim his/her rights on that property will be able to know or see it."

acquisition.¹⁶ This was particularly predominant in Phnom Penh where government officials began to act as if State property and vacant private property were theirs to sell. Similar patterns of asset grab by State officials marked the Russian transition to a market economy. The mass privatization of state-owned enterprises quickly lead to massive insider self-dealing, because the country lack the necessary infrastructure to control asset grab during the initial transition from central planning to markets.¹⁷ Similarly in Cambodia, due to inadequacies in legal infrastructures and drafting, the 1992 Land Law became a “get rich quick” manual for those who knew how to satisfy the formal requirements of the law.

2001 Land Law: Correcting the Legislative Errors of the Past

A decade later, the 2001 Land Law was enacted to rectify the problems of the 1992 legislation. Article 31 replaced temporary possession with acquisition of legal ownership through the completion of a period of 5-year of occupation of a vacant plot.¹⁸ Article 51 established social concession, a legal mechanism under which landless people could apply free of charges for a piece of land to be used for residence or subsistence farming purposes.¹⁹ Finally, the new law provided for a simpler land titling system, including a land registration system to be implemented at the village level. Thus, overall, the 2001 Land Law established the requisite formal legal framework to reduce land disputes and establish security of tenure throughout Cambodia.

¹⁶ S. Williams, *Where has all the land gone? A Review of Published and Unpublished Materials Relating to Land Rights and Access in Cambodia* (Phnom Penh: Oxfam GB, 1998).

¹⁷ Bernard Black, Reinier Kraakman and Anna Tarassova, « Russian Privatization and Corporate Governance : What Went Wrong? » (2002) 52:6 Stan L Rev 1731.

¹⁸ *Cambodia Land Law*, 2001, Title II, Chapter 4, art. 31 “Any person who had been enjoying possession before this law came into force may be authorized by the competent authority, if such person fulfils all requirements to become an owner of the property, to extend his possession until he attains the legally prescribed period of five years, after which he will obtain a definitive title of ownership. The authorization to extend for the sufficient period of time cannot be denied by the competent authority if the possession is peaceful and uncontested.”

¹⁹ *Cambodia Land Law*, 2001, Title II, Chapter 5, art. 51 “A land concession may not be gratuitously granted except for the concession responding to a social purpose given to poor families to establish residences for themselves and/or to develop subsistence cultivation.”

The main problem is that full implementation was never completed. The promulgation of sub-decrees and regulations to ensure a fair and just resolution of land disputes, to register land ownership, and to manage social land concessions planned to ensure the effective implementation of the 2001 Land Law never happened.²⁰ The Cadastral Commission, established in 2002 to resolve land disputes outside the overburdened and inefficient formal legal system, has been ineffective in shielding claimants from criminal complaints based on infringement against ownership.²¹ Consequently, despite legislative progress, the legal and institutional framework remained weak because between 1989 and 2001, new rules of land grabbing and corruption had already been institutionalized.

²⁰ *Cambodia's curse*, *supra* note 12 at 119.

²¹ *Anatomy of a state*, *supra* note 1 at 55.

Part II. Forced Evictions of the urban poor in Phnom Penh

The failure to implement fully and adequately the new legal framework has resulted in numerous abuses of power. Land distribution statistics today indicate that one quarter of the landowners in Cambodia own 70% of the land, while the poorest 40% of landowners own 10%. More shockingly, Pheapimex, a private developer, owns 7% of Cambodia's total land area.²² Furthermore, despite the legal guarantees enshrined in the 2001 Land Law and the Constitution of Cambodia, land grabbing continues. In Phnom Penh alone, approximately 30,009 families have been forcibly displaced between 1990 and 2011. This represents 9.5 percent of the population of the whole city.²³ And the tendency is exacerbating countrywide. During the first half of 2010, approximately 17,000 people in 13 of Cambodia's 24 provinces were newly affected by land grabbing.²⁴

Flagrant Violation of Constitutional and Statutory Law

In Phnom Penh, families who would be entitled to property rights under article 31 of the Land Law are forcefully removed from their homes without receiving fair and just compensation in advance as required by article 5 of the 2001 Land Law, which guarantees, "no person may be deprived of his ownership, unless it is in the public interest".²⁵ Where compensation is offered, the packages are overall grossly inadequate. For example, at the Monivong Hospital and Royal University of Fine Arts, the evictees received less than US\$ 20 per square meter for properties estimated to be worth up to US\$2,000 per square meter on

²² Caroline Hughes, "Cambodia 2008: Consolidation in the Midst of Crisis" (January/February 2009) 49:1 Asian Survey 206 at 210.

²³ Sahmakum Teang Tnaut, "Displaced Families: Phnom Penh 1990-2011" (May 2011) online: STT <<http://teangtnaut.org/PDF/F&F%20displaced%20PP%20families%202011%20update.pdf>>.

²⁴ Human Rights Watch, "Cambodia: Country Summary" (January 2011) online HRW <http://www.hrw.org/sites/default/files/related_material/cambodia_1.pdf>.

²⁵ *Land Law* 2001, Title I, Chapter 1, Article 5.

the market.²⁶ Moreover, article 44 of the Constitution protects all Khmer citizens from land confiscation, unless it is in the public interest, and provided the payment of fair and just compensation in advance. However, few evictions are conducted in the public interest. Even when the authorities claim that the land is state public land required for public purposes, private interests are never far behind.

For example, in 2003, the government announced that Dey Krahorm, a informal settlement in Phnom Penh established in the 1980s and where most of the house owners had valid claims to ownership, would become a social land concession which would ensure adequate housing for the urban poor and allow commercial development in the area. However, by 2005, it became clear that this was a forced eviction in disguise. A private company, 7NG, unlawfully signed a relocation contract with 36 community representatives who never consulted with the residents. Although the community subsequently fired the representatives and called for the contract to be annulled, the Phnom Penh Municipality continued to support 7NG. On the day of the eviction in January 2009, hundreds of riot police moved in to clear the way for bulldozers. Tear gas, rubber bullets, stones and water cannon were fired at the villagers. 400 families were forcibly removed during the evictions and transported to a relocation site 20km away from Phnom Penh without any news of the adequate housing promises. The 200 stallholders from the Dey Krahorm market were offered grossly inadequate compensation for their lost in livelihood.²⁷

The way forced evictions are conducted also violates the rights of evictees. For example, on January 3, 2012 300 families living in the Borei Keila settlement in Phnom Penh saw their homes destroyed by excavators without prior notice and before they had the

²⁶ *Anatomy of a state*, *supra* note 1 at 47.

²⁷ International Federation for Human Rights, "Eviction of Dey Krahorm: Cambodia loses the battle to uphold the rule of law!" (29 January 2009) online UNHCR <<http://www.unhcr.org/refworld/docid/49b773892.html>>; See also LICADHO, Press Release, "Dey Krahorm Eviction : Adequate compensation & humanitarian action needed" (30 January 2009) online LICADHO <<http://www.licadho-cambodia.org/pressrelease.php?perm=199>>. [*Dey Krahorm*]

chance to clear out their belongings.²⁸ The eviction was overseen by over 100 mixed police forces that violently dispersed the residents, using tear gas and live ammunition.²⁹ Furthermore, community representatives and land activists have been the main targets of state-sponsored violence. Suong Sophorn, a community activist from Boeung Kak was severely beaten upon arrest in October 2010 during a protest against forced evictions.³⁰ In September 2011 Sophorn was again targeted during a forced eviction. As 100 police and district security guard supervised the destruction of homes in Boeung Kak, a mob of police violently assault the activist with bricks and batons before leaving him for dead.³¹

The notorious corruption and lack of independence of the legal system has enabled the elite to resort to the judiciary to intimidate and punish land protesters. Local authorities and private landowners to curtail activism use unsubstantiated criminal charges, such as incitement to commit a felony, defamation or damage to private property. For example, 14 community representatives from Dey Krahorm in Phnom Penh faced criminal charges in reprisal for their activisms. Among the group, three people were found guilty of battery with injury and five of wrongful damage to property despite the lack of evidence to support the charges and contradicting testimonies from eyewitnesses.³² Hence, the violence deployed by

²⁸ In 2003, the Borei Keila settlement had become a pilot for a new model of relocation of the urban poor. Under a land-sharing agreement, Phanimex was to build 10 buildings to host all of Borei Keila residents in a social concession in exchange for being allowed to commercially develop the remaining area. However, by April 2010, it became evident that Phanimex was not going to respect the agreement after constructing only eight buildings and arbitrarily excluding 300 families. LICADHO, "Borei Keila: Cambodia's Social Housing Project Five Years On" (19 December 2008) online: LICADHO <<http://www.licadho-cambodia.org/articles/20081219%2000:00:00/84/index.html>>.

²⁹ LICADHO, Press Release, "Civil Society Groups Condemn Violent Eviction of Borei Keila Residents" (3 January 2012) online: LICADHO <<http://www.licadho-cambodia.org/pressrelease.php?perm=267>>.

³⁰ LICADHO, Press Release, "Violent Crackdown of Peaceful Protesters during the Visit of UN Secretary-General" (28 October 2010), online: LICADHO <<http://www.licadho-cambodia.org/pressrelease.php?perm=229>>; See also : LICADHO, Video, "Violent Crackdown on Peaceful Protesters During the Visit of UN Secretary-General Ban Ki-moon" (3 November 2010) online: LICADHO <<http://www.licadho-cambodia.org/video.php?perm=20>>; See also: L.H., "Justice in Cambodia: The Boeung Kak 13" *The Economist* (27 June 2012) online: The Economist <<http://www.economist.com/blogs/banyan/2012/06/justice-cambodia>>. The Boeung Kak community has been fighting since 2007 to resist forced evictions to make way for a private development complex after the government leased the area they had leaved on for over a decade to Shukaku Inc, a joint venture between a Chinese corporation and a ruling party senator

³¹ LICADHO Video "Boeung Kak Lake Activist Savagely Beaten by Mob of Police Officers during Forced Eviction" (17 September 2011) online: LICADHO <<http://www.licadho-cambodia.org/video.php?perm=25>>; See also : LICADHO Press Release "Phnom Penh Municipality Must Abide by the Government's Order to Grant Land to the Remaining Boeung Kak Lake Families" (16 September 2011) online: LICADHO <<http://www.licadho-cambodia.org/pressrelease.php?perm=259>>.

³² *Anatomy of a state*, *supra* note 1 at 46-47.

the authorities during evictions constitutes blatant violation of fundamental rights such as the rights to privacy and to life, liberty and security of the person and freedoms of association, expression and peaceful assembly.

Life at the Relocation Sites: A Humanitarian Crisis

In Cambodia, arbitrary displacement almost always results in impoverishment if not outright homelessness. The evictees are typically dumped several kilometres away from the city center and are provided no building materials. In the past, entire communities have been dumped out 15 miles out of town on rice paddy fields with absolutely nothing and without informing the landowner of the field.³³ Relocation sites are far from Phnom Penh, completely unsuitable for dwelling, ill equipped for monsoon rains and deprived of any basic infrastructure.³⁴ Once displaced, families find themselves with no electricity, no clean water, no markets, no health facilities, and no schools for their children.³⁵ To avoid travel time and costs, men often decide to stay in the city in order to maintain their former employment, leaving to women the primary responsibility for the communities' children and elderly. Moreover, women, whose income generating opportunities are often centered on the house, see their right to earn a livelihood blatantly violated by displacement, which further exacerbates poverty. This breakdown of the family following forced evictions also induces physical and psychological harm to women, including proportional increases in both the risk

³³ *Cambodia's curse*, *supra* note 13 at 119-120.

³⁴ Joel Audefroy, "Evictions trends worldwide and the role of local authorities in implementing the right to housing" (1994) 6:8 *Environment and Urbanization* 8 at 21 [*Eviction trends*].

³⁵ For example, a survey conducted by LICADHO found that at least 335 families evicted from Drey Krahorm and forcefully relocated at Damnak Trayeung were camping in the open on the days following the eviction and the facilities at the relocation site were woefully inadequate. Food, water and toilets were lacking, resulting in unsanitary conditions. *Dey Krahorm*, *supra* note 24.

and incidence of violence against women and sexual trafficking.³⁶ The living conditions at these relocation sites create acute humanitarian crisis, but domestic or international relief has yet to reach these areas. In the meantime, displaced families are left destitute and highly vulnerable to human rights violations.

³⁶ Naly Pilorge, LIACHO, "Fall seven times, stand up eight : Cambodian women's fight against land grabs" *Asia Pacific Forum on Women, Law and Development Newsletter – Forum News*, 25 : 1 (August 2012) online : APWLD <<http://www.apwld.org/wp-content/uploads/Forum-News-Vol-25-No1-August-2012.pdf>>. See also: Paul D Ocheje, " 'In the Public Interest': Forced Evictions, Land Rights and Human Development in Africa" (2007) 51 J Afr L 173 at 197 [*In the public interest*]. "There is a gender dimension to forced evictions as well. During evictions, women are often at risk of being beaten raped, tortured and even killed. They are often the main victims of the excessive force applied by state agents during evictions. According to Amnesty International, "this is because evictions have usually occurred in the morning or during the day, when most men are away at work" ".

Part III. Forced Evictions under International Law

The UN Committee on Economic, Social and Cultural Rights (CESCR) defines forced evictions 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”.³⁷ The causes may be diverse, but forced evictions typically relate directly or indirectly to development.³⁸ Hence, the practice of forced evictions is often attributable to the State, either through specific decisions, legislation or policies or the failure of States to intervene to halt evictions by third parties.³⁹

The term “arbitrary displacement” is also commonly used to describe forced evictions. Like forced evictions, “arbitrary displacement may be characterized by three basic elements: (1) the removal of individuals or group from their places of habitual residence and work; (2) the use forced, in the sense of being undertaken involuntarily or through coercion, to remove the evictee; (3) the illegality of the removal by virtue of their non-conformity with domestic law and/or international law”.⁴⁰ Conceptually, the broad grouping of displacement encompasses the narrower category of evictions. Forced evictions are sub-species of the larger phenomenon of mass displacement, typically associated with conflict or persecution.⁴¹ At a practical level, arbitrary displacement are often described as the result of forced

³⁷ Committee on Economic, Social and Cultural Rights General Comment 7, *The Right to adequate housing (art 11.1 of the Covenant): forced evictions*, OHCHR, 16th Sess, UN Doc E/1998/22 at para 3 [General Comment 7].

³⁸ “Reasons for eviction include development and infrastructure projects, land acquisition or expropriation, housing or land reclamation schemes, speculation, urban redevelopment and resettlement programmes, and to control the proliferation of informal settlements.” Kefa M. Otiso, “Forced Evictions in Kenyan Cities”, (2002) 23:3 Singapore Journal of Tropical Geography 252 at 253 [Kenyan cities].

³⁹ United Nations Office of the High Commissioner for Human Rights, *Fact Sheet No. 25, Forced Evictions and Human Rights*, May 1996, No. 25 available at <<http://www.ohchr.org/Documents/Publications/FactSheet25en.pdf>> [fact sheet no. 25].

⁴⁰ Shivani Chaudhry, “Development-induced Displacement and Forced Evictions” (2010) 41 Stud Transatl Legal Pol’y 593 at 601 [Development-induced displacement].

⁴¹ *In the public interest*, supra note 33 at 174.

evictions.⁴² But what distinguishes forced evictions and arbitrary displacement from other forms of displacement is that they are always involuntary, most likely permanent and conducted via the use of coercion or force.⁴³ Consequently, “while forced evictions and arbitrary displacement are often used to refer to a cause-effect phenomenon, [they can] be used interchangeably, as synonyms for the illegal act of forcibly shifting or moving people or communities to alternative locales due to external factors not related to their safety or security”.⁴⁴ Other terms recognised under international law as encompassing the practice of forced evictions include “arbitrary forced relocation”⁴⁵ and “forcible transfer of population”⁴⁶.

Forced Evictions: A Global Epidemic

The number of forced evictions is growing at an alarming rate internationally. In 2005, the Executive Director of UN-HABITAT, described the phenomenon as a “global epidemic”.⁴⁷ It is estimated that about five million people in Asia, Africa, Europe and the Americas are affected by forced evictions.⁴⁸ As the numbers of urban slum dwellers increase

⁴² *Development-induced displacement*, *supra* note 37 at 602.

⁴³ Margaret Everett, “Evictions and human rights: land disputes in Bogota” (2001) 25 *Habitat International* 453 at 455 [*Bogota*].

⁴⁴ *Development-induced displacement*, *supra* note 37 at 603.

⁴⁵ “Arbitrary forced relocation” is a customary international norm that emerged following the atrocities of the Second World War. Arbitrary forced relocation can be defined as the use or threat of force to effectuate transfer or resettlement of people, motivated by an illegal purpose or conducted without legal process. Although arbitrary forced relocation describes a broad phenomenon, there is no doubt that forced evictions are encompassed in this definition. The general effects of disturbing communities and uprooting families and the frequent occurrence of homelessness and landlessness following dislocation as well as the social harms, psychological trauma and the wide range of problems related to displacement and the subsequent impoverishment of the evicted further reveals the interconnectedness between arbitrary forced relocation and forced evictions. Thus, forced evictions can also be said to violate international customary law. Marco Simons, “The Emergence of a Norm Against Arbitrary Forced Relocation” (2002-2003) 34 *Colum HRL Rev* 95.

⁴⁶ “Forcible transfer of population” is a crime against humanity entrenched at article 7.1(d) of the Rome Statute and defined as the “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law”. As such, when conducted as part of “a widespread and systematic attack directed against any civilian population”, forced evictions are criminal under international law. For a detail legal analysis of the applicability of crimes against humanity to forced evictions see Oxford Pro Bono Publico Group, *Are the activities conducted during the operation Murambatsvina crimes against humanity within the meaning of article 7 of the rome statute ?* (University of Oxford: November 2005).

⁴⁷ Advisory Group of Forced Evictions (AGFE), *Forced Evictions – Towards Solutions? First Report of the Advisory Group on Forced Evictions to the Executive Director of UN-HABITAT*, UN-HABITAT, 2005, UN Doc HS/751/05E at 3.

⁴⁸ *In the public interest*, *supra* note 33 at 174.

globally, occurrences of forced evictions are escalating.⁴⁹ The global trend is particularly worrisome given the wide range of socioeconomic, cultural and political consequences of evictions, including individual and social impoverishment, physical, psychological and emotional trauma, increased insecurity and social isolations, loss of livelihood and decreased access to basic services.⁵⁰ Furthermore, forced evictions are increasingly affecting large numbers of people, who receive no compensation, and undertaken under official lawlessness.⁵¹ Poor urban dwellers are frequently victimised due to high illiteracy rates, lack legal knowledge and civic education, and low levels of organization. Finally, forced evictions are typically violent, unexpected and disruptive as disproportionate amounts of force are deployed to remove the evictees and evictions are timed to minimise resistance from the affected communities.⁵²

The Applicability of the IDP Normative Framework to Forced Evictions

Over the past 20 years, the issue of internal displacement has forged a place for itself on the international agenda. A normative framework, embodied in the *Guiding Principles on Internally Displaced Persons*⁵³ has been developed, offering both a rationale and a framework for analysing patterns of internal displacement, including displacements that occurs outside the bounds of conflict, but are nonetheless associated with increased

⁴⁹ *Ibid.*

⁵⁰ *Fact sheet no. 25, supra* 36.

⁵¹ Many people resist evictions based on the claim that they have acquired legal rights from the appropriate authorities, notably through occupation and payment of tax. Nonetheless, governments ignore these rights and even where the evictees succeed in securing the sympathy of the court, obtaining an order to stop the evictions, governments ignore them. Victims of evictions too often lack due process and enjoy very limited, if any, access to justice. *In the public interest, supra* note 33 at 179-180.

⁵² *Kenyan cities, supra* note 35 at 262.

⁵³ UN Economic and Social Council (ECOSOC), *Guiding Principles on Internal Displacement*, 22 July 1998, E/CN.4/1998/53/Add.2 online: UNHCR <<http://www.unhcr.org/refworld/docid/3c3da07f.html> >.

vulnerability.⁵⁴ Although often described as “internal refugees”, the internationally recognized concept of internal displacement reaches far beyond refugee-like criteria, notably to include development-induced displacement.⁵⁵ Moreover, at paragraph 4 of the *Basic Principles and Guidelines on Development-based Evictions and Displacement*, forced evictions are described as sharing “many consequences similar to those resulting from internal displacement, population transfer, mass exodus, ethnic cleansing and other practices involving the coerced and involuntary movement of people from their homes, lands and communities”⁵⁶. Displacement, regardless of its underlying reasons, brings about a set of circumstances that exacerbates vulnerabilities, such as the lack of adequate shelter and food, poor sanitation and serious health risks, lost (or confiscation) of documentation and the need for a durable solution.⁵⁷ Therefore, it is evident that evictees, like other types of internally displaced persons, are recognized under international law as a special category of concern.

The International Human Rights Regime

Under international law, evictions, unless accompanied by fair, prompt and adequate conception and redress for the harm suffered by the victims in conformity with the International Covenants on Human Rights, are strictly prohibited.⁵⁸ Furthermore, it is widely recognized that forced evictions constitute gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water,

⁵⁴ W. Courtland Robinson, “Risks and Rights: The Causes, Consequences, and Challenges of Development-Induced Displacement” (An Occasional Paper, The Brookings Institution – Sais Project on Internal Displacement, May 2003) at 3 [*Risks and Rights*].

⁵⁵ Erin Mooney, “The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern” (UNHCR, 2005) 24:3 Refugee Survey Quarterly 9 at 13 [*The concept of internal displacement*].

⁵⁶ *Basic Principles and Guidelines on Development-Based Evictions and Displacement*, OHCHR Presented in the report of the former UN Special Rapporteur on adequate housing, UN Doc A/HRC/4/18, (2007) at para 5 [*Basic Guidelines*].

⁵⁷ The impoverishment risk and reconstruction model proposes a model of ten interrelated potential risks intrinsic to displacement that are onset by impoverish: landlessness, joblessness, homelessness, marginalization, food security, increased morbidity and mortality, loss of access to common property, social disintegration, loss of access to community services and violation of human rights. *The concept of internal displacement*, *supra* note 52 at 16-17; See also *Risks and Rights*, *supra* note 51 at 10-12.

⁵⁸ *General Comment 7*, *supra* note 34 at para 3.

health, education, work, security of the home, privacy, life and security of the person, participation, freedom from cruel, inhuman and degrading treatment, freedom of movement.⁵⁹

The Right to Adequate Housing

The right to housing has been inscribed in a number of international covenants and treaties. Article 25(1) of the UN Universal Declaration on Human Rights, the right to housing was listed for the first time as a fundamental human right⁶⁰. The obligation of states to take the necessary steps to guarantee the right to adequate housing is laid down in a number of internationally binding human rights instruments. Notably, article 11.1 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) recognizes the “right of everyone to an adequate standard of living (...), including adequate (...) housing”⁶¹. Moreover, this provision imposes on States Parties that duty to take appropriate steps to ensure the realization of this right. Numerous international law documents further reaffirm this human right, including the Declaration on Social Progress and Development, the Declaration on the Rights of the Child and the Vancouver Declaration on Human Settlements. Nonetheless, “the right to adequate housing is one of the least respected human rights”.⁶²

⁵⁹ *Basic Guidelines*, *supra* note 53 at para 6.

⁶⁰ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), art. 25(1) “Everyone 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 and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

⁶¹ *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3 art 11 [ICESCR].

⁶² “Even though the right to housing, and specifically to adequate housing, has been recognized as an international right by most countries, it is constantly violated by many governments. Millions of people in Europe and the United States, displaced and evicted populations, are left without housing, refuge or shelter. In the Third World, millions have their right to housing violated. The United Nations Commission on Human Settlements considers that over 1 billion persons throughout the world lack adequate shelter or live under unacceptable housing conditions.” *Evictions trends*, *supra* note 31 at 9.

Forced Evictions as a Gross Violation of Human Rights

In addition to the international protection of the right to adequate housing as a fundamental human right, there is a growing body of international law condemning forced evictions.⁶³ In its General Comment No. 4 on the right to adequate housing, the CESCR asserted that forced evictions are *prima facie* incompatible with the requirements of the ICESCR. As such, they “can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law”.⁶⁴ Ironically, forced evictions are typically undertaken in areas where housing is inadequate. However, international law is clear, a government’s failure to ensure the availability of adequate housing cannot be used to justify the removal of illegal settlements.⁶⁵ Thus, the right to adequate housing in the case of forced evictions imposes on the State a duty to legally enforce and protect the right to resettlement and rehabilitation of the evictees, including the right security of tenure, the right not to be deprived from property, the right to privacy and respect of the home and the right to freedom of movement.

In addition to the right to adequate housing a significant number of other human rights are violated in the wake of forced evictions. These violations include evidently social, economic and cultural rights, but also civil and political rights. Article 17 of the International Covenant on Civil and Political rights protects against arbitrary or unlawful interference with privacy, family, home or correspondence.⁶⁶ In his 1998 report to the Commission on Human Rights, the Representative of the Secretary-General on IDPs identified four different types of violations of international law arising from arbitrary displacement:

⁶³ *Bogota*, *supra* note 40 at 465.

⁶⁴ *General Comment 7*, *supra* note 34 at para 18.

⁶⁵ *Bogota*, *supra* note 40 at 465.

⁶⁶ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, art 17 [ICCPR].

"1) First, the eviction or displacement of persons is unlawful if it is based on grounds not permissible under international law. This aspect of the right not to be arbitrarily displaced implicitly derives from the rights to freedom of movement and residence, to the inviolability of the home and to housing.

2) Second, a violation might occur if minimum procedural guarantees are not complied with.

3) Third, the manner in which an eviction is carried out may violate other human rights such as personal liberty, freedom from torture, inhuman and degrading treatment or even the right to life.

4) Finally, the effects of evictions and displacement may have a negative impact on the enjoyment of other human rights, in which case the State is required to take measures to respond to the concerns that arise." ⁶⁷

Rights to Development, Participation & Remedy

In General Comment 7, the CESCR states that regardless of the cause "evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights".⁶⁸ "The human costs of forced evictions are at once enormous, ramified and interconnected".⁶⁹ Development-induced displacement also leads to violations of the rights to development and self-determination, the right to participate and the right to remedy.⁷⁰

⁶⁷ Francis M. Deng, Representative of the UN Secretary-General, "Internally Displaced Persons, Compilation and Analysis of Legal Norms: Legal Aspects Relating to the Protection Against Arbitrary Displacement," Report submitted pursuant to Commission on Human Rights Resolution 1997/39, (E/CN.4/1998/53/Add. 1), 11 February 1998.

⁶⁸ *General Comment 7*, *supra* note 34 at para 17.

⁶⁹ *In the public interest*, *supra* note 33 at 197.

⁷⁰ *Risks and Rights*, *supra* note 51 at 14-15.

Forcibly removing individuals and communities from their homes in the name of development denies them the right to participate in, contribute to and enjoy economic, social, cultural and political development, as guaranteed by the Declaration on the Right to Development.⁷¹ The right to participation is also guaranteed in various articles of the International Bill of Human Rights.⁷² The right to remedy is asserted in the Universal Declaration on Human Rights at article 8 and in the ICCPR at article 2. In the case of forced evictions, the right to remedy is crucial to halt on-going violations of fundamental rights and prevent future ones. This includes, but is not limited to fair and just compensation and adequate relocation options.

Development-induced displacement highlights the tension that exists between the collective and individual benefits of large-scale projects that are framed as necessary for the public interest. While the collective benefits of these development projects are typically evident, the collateral damages at the individual level are often ignored or characterized as a necessary sacrifice to make the country go forward. What is troubling is that these development projects typically have adverse effects on the individuals that are already the most vulnerable. What is supposedly for the benefits of the public results in the further disenfranchisement of certain segment of the population. Moreover, regardless of the short-term economic growth that these development projects might foster, growth without inclusive institutions is unlikely to be sustainable.⁷³ Therefore, the collective ultimately benefits more from a comprehensive, people-centered approach to development, than from a model that focuses on economic growth and is ready to sacrifice those most vulnerable. But more importantly, forcibly removing individuals from their homes in the name of development constitutes a blatant violation of fundamental human rights, including the right to development and participation, of those most vulnerable.

⁷¹ *Declaration on the Right to Development*, 4 December 1986, A/RES/41/128, 97th plenary meeting.

⁷² The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

⁷³ Daron Acemoglu and James Robinson, *Why nations fail : The origines of Power, Prosperity and Poverty* (New York : Crown Publishers, 2012)

Part IV. The Ineffectiveness of International Law

Article 31 of the Constitution of Cambodia incorporates the international human rights regime into domestic law, which include as described above legal guarantees for the right to adequate housing and legal protections against arbitrary dispossession.⁷⁴ Nonetheless, the government of Cambodia blatantly disregards its international obligations and actively participates in the forceful evictions of the urban poor in Phnom Penh. The state of forced evictions in Cambodia reveals an evident disjuncture between the protections enshrined in the international human rights regime and the gross violations of fundamental rights experienced by evictees. In a country like Cambodia where a substantial portion of the economy is dependent upon foreign aid, ("from 2002 to 2010, the government received net aid of 94.3 percent of its spending (i.e. budget)"⁷⁵), one wonders why donors act apathetically to the pledge of forcefully evicted community. Thus, the situation of forced evictions of the urban poor in Cambodia is instructive with regards to the main limitation of the international human rights regime, namely implementation.

The Heightened Presence of the International Community in Cambodia

Since the 1991 Paris Peace Agreement, the international community has played an active role in Cambodia, supporting, through financial and technical assistance and resources, efforts to overcome the legacy of the Khmer Rouge. There are currently over 2,000 NGOs and donor groups registered to work in Cambodia, possibly more per capita than any other country in the world.⁷⁶ Foreign donors contribute about half of Cambodia's

⁷⁴ *Constitution of Cambodia*, 1993, Chapter III, art. 31.1 "The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of human Rights, the covenants and conventions related to human rights, women's and children's rights."

⁷⁵ Sophal Ear, *Aid Dependence in Cambodia: How Foreign Assistance Undermines Democracy*, (New York: Columbia University Press, 2013) at 28.

⁷⁶ *Cambodia's curse*, *supra* note 12 at 120.

annual budget and basic services have been sustained by international aid for the past 15 years.⁷⁷ And foreign aid is steadily increasing. Between 2003 and 2010, grants to Cambodia from International Development Assistance (IDA) have increased by about 94 percent.⁷⁸ Therefore, the enhanced involvement of the international community in Cambodia creates strong linkage between the government and major bilateral and multilateral actors.

Donors' Apathy to the Plea of Civil Society

Foreign donors have repeatedly ignored requests from civil society to make funding conditional upon respect for human rights. Year after year, when donors and aid agencies meet to discuss priorities for the coming year, government-sponsored land seizures and forced evictions are raised, but money is not held back until compliance with the international human rights regime is demonstrated. Prime Minister Hun Sen and other senior officials publically espouse the donors' goals, but soon return to business as usual once the funds are delivered.⁷⁹ By way of example, in 2010, international donors pledged a record US\$1.1 billion in development assistance for Cambodia over an 18-months period. The announcement was made amid the repeated calls from civil society to pressure the government to meet good governance reform benchmarks. In a series of 20 NGO position papers released one-week prior outlining the situation of land rights and resource-revenue transparency, 15 local NGOs asked donors to "take responsibility and speak out against the deterioration of rights and democracy in Cambodia". The inaction of donors was described as "tantamount to complicity" and characterized as a "mass exercise in intellectual dishonesty".⁸⁰ Nonetheless, donors failed to seize the opportunity.

⁷⁷ Global Witness, "Cambodia" online: Global Witness <<http://www.globalwitness.org/campaigns/corruption/oil-gas-and-mining/cambodia>>.

⁷⁸ World Bank, "Cambodia: World Development Indicators" online: World Bank <http://data.worldbank.org/country/cambodia#cp_wdi>.

⁷⁹ *Cambodia's curse*, *supra* note 12 at 121.

⁸⁰ Sebastian Strangio, "\$1.1 billion pledged in donor aid" *Asia Times* (06 June 2011), online: <<http://www.sebastianstrangio.com/2010/06/06/1-1-billion-pledged-in-donor-aid/>>.

When the World Bank withheld funds because the government allegedly siphoned \$12.2 million, it started a few months later a new program called Demand for Good Governance, including a \$20 million grant to help NGOs, grassroots groups, independent media and trade unions, to support transparency and accountability programs in Cambodia, but distributed the funds for the new program to the government. Such incoherence has taught the government not to take donors' threats and sanctions seriously.⁸¹ Furthermore, donors are well aware that aid money will be stolen and that human rights are frequently violated in Cambodia. Forced evictions occur in the city center and are widely reported in the *Phnom Penh Post* and the *Cambodia Daily*, the two local English language newspapers. Moreover, two studies published in 2004 and 2005 funded by the US embassy showed in detail that Cambodian government officials steal between \$300 million and \$500 million per year from an annual budget of about \$1 billion.⁸² Nevertheless, donors rationalize that even though some of the funds will be stolen and misused along the way, some of it will reach the poor and so continue to answer to the Cambodian government's request for funds.⁸³

In 2011, the World Bank froze approximately US\$128 millions in loans to Cambodia until an agreement was reached to deal with thousands the residents of Boeung Kak lake who were under threat of eviction because of a huge development project.⁸⁴ A week later, Prime Minister Hun Sen signed a sub-decree setting aside 12.44 hectares of land for on-site relocation of the residents of Boeung Kak.⁸⁵ The agreement became after years of protests by the 1,000 affected families for fair compensation or on-site housing. This victory was nonetheless bittersweet, since 85% of the community, about 3,500 households, had already

⁸¹ *Cambodia's curse*, *supra* note 12 at 121.

⁸² *Ibid* at 118.

⁸³ *Ibid* at 121.

⁸⁴ Robert Carmichael, "World Bank Freezes Loans to Cambodia" *VOA News* (8 August 2011), online: Voice of America <<http://www.voanews.com/content/world-bank-freezes-loans-to-cambodia--127299183/167848.html>>.

⁸⁵ Khouth Sophakchakrya, "Lakeside Deal Brokered" *The Phnom Penh Post* (16 August 2011), online: ki-media blog post <<http://ki-media.blogspot.ca/2011/08/lakeside-deal-brokered-de-chor.html>>.

been displaced. Moreover, some households were arbitrarily excluded from the agreement although civil society mapping efforts indicate that there is enough land available to include all the remaining families in the concession.⁸⁶ Finally, more than a year after the issuance of the sub-decree, the 12.44 hectares area has not been demarcated and the authorities have ignored the demarcation requests of the lakeside families.⁸⁷ It is also noteworthy to mention that the World Bank sponsored land titling program, the Land Management and Administration Project (LMAP) previously refused to issue land titles to the 4,000 Boeung Kak families. In 2011, the World Bank Inspection Panel found that the LMAP had been improperly administered and has failed to protect these families from forced evictions.⁸⁸ Thus, while donor pressure can yield concrete results, piece meal sanctions cannot effectively solve the issue of forced evictions. Unless donors take a rigid stance against forced evictions generally, the government will continue to make empty promises without any real efforts to respect its international obligations.

Donor Complicity to Forced Evictions

Not only have donors not effectively pressured the government to halt forced evictions, but they have also been complicit of human rights violations. The most notable example is that of the railway rehabilitation project, a project financed by development assistance from the Asian Development Bank (ADB) and the Government of Australia aimed at restoring 650 kilometres of railway infrastructure. Of 4164 families living along the dilapidated railways tracks at least 1200 families were relocated to make way for the project.

⁸⁶ LICADHO, Press Release, "End the land dispute: Viable Solution for Excluded Boeung Kak Households" (2 July 2012), online: LICADHO <<http://www.licadho-cambodia.org/pressrelease.php?perm=284>>.

⁸⁷ LICADHO, "Attacks & Threats Against Human Rights Defenders in Cambodia 2010-2012" (9 December 2012) at 8 online: LICADHO <<http://www.licadho-cambodia.org/reports/files/172LICADHOReportAttacksHRDs2010-2012-Eng.pdf>>.

⁸⁸ Irwin Loy, "Cambodia: Botched World Bank Project Leads to Thousands of Evictions", *Inter Press Service News Agency* (17 May 2011) online: IPS News <<http://www.ipsnews.net/2011/03/cambodia-botched-world-bank-project-leads-to-thousands-of-evictions/>>.

⁸⁹ A study on the resettlement process and impacts found that the resettlement process was nowhere near the ADB's *Involuntary Resettlement Safeguard Policy* requirements and Cambodia's basic human rights obligations.⁹⁰ The consultation with the affected households on resettlements options and information disclosure on compensation entitlements were led in an atmosphere of intimidation and coercion. As a result, many families accepted very low compensation packages and are now impoverished and living in deteriorated living conditions.⁹¹ Moreover, none of the five project-sponsored resettlements sites were adequately equipped with basic services and facilities when resettlement was initiated. There has been recurring lack of access to safe, sufficient and affordable water and the distance between the relocation sites and the families' habitual sources of revenue has caused significant reduction in household income and joblessness, especially given that income restoration programs have not been implemented as promised. Faced with increases expenses and reduced incomes, many of the affected families are now caught into unmanageable debt to private moneylenders.⁹²

The Development Rhetoric

The devastating social impact of poorly planned population relocation is not a new phenomenon. By 2000, the World Bank had supported over 300 development projects involving involuntary resettlement, corresponding to 20 percent of the World Bank's activities, and adversely affecting 2.6 million people worldwide as a result of land acquisition. Criticism led to the publication in 2001 of the World Bank's *Operational Policy on Involuntary*

⁸⁹ Natalie Bugalski, "The ADB involuntary resettlement policy: Fifteen years on, the poorest still bear the brunt of development" (23 February 2012), online: TerraNullius <<http://terraNullius.wordpress.com/2012/02/23/the-asian-development-bank-involuntary-resettlement-policy-fifteen-years-on-the-poorest-still-bear-the-brunt-of-development/>>.

⁹⁰ Natalie Bugalski & J. Medolla, "DERAILED: A Study on the Resettlement Process and Impacts of the Rehabilitation of the Cambodian Railway" (2012), online: Bridge Across Borders Cambodia <<http://www.babcambodia.org/derailed/derailed.pdf>> at 67 [DERAILED].

⁹¹ *Derailed*, *supra* note 13 at 19.

⁹² *Derailed*, *supra* note 13 at 36.

Resettlement, a revision of the 20-year old policy on involuntary resettlement.⁹³ But the new operational policies merely clarified previous ambiguities and updated practices without altering basic objective and principles. The underlying presumption of this policy is that involuntary resettlement is an unavoidable social cost of urban development projects.⁹⁴ Development based justification for evictions by which governments argue that the benefits of the development project for the larger population outweigh the costs for the victims of displacement directly conflicts with social justice and distract planners from seeking alternative approaches and solutions.⁹⁵

This development rhetoric is particularly troublesome in the context of Cambodia given that the evictions are profit-driven and only benefit wealthy investors and the ruling elite.⁹⁶ With the exception of the railway rehabilitation project, none of the forced evictions in Phnom Penh serve in anyway “the public interest”. Moreover, in profoundly unequal societies, the benefits of growth are typically captured by the elites, i.e. the elite skims development resources intended for legitimate development ends and define policies in a way that protects their own interests.⁹⁷ Global Witness in a report called *Cambodia’s Family Trees* published in 2007 described Cambodia ruling elite as nothing less than “kleptocratic”, i.e. generating its wealth by seizing public assets, particularly natural resources and land.⁹⁸ Consequently, in a country like Cambodia where corruption is endemic and notorious, development cannot be divorced from human rights.

⁹³ *Risks and Rights*, *supra* note 51 at 28.

⁹⁴ Kris Olds, Tim Bunnell and Scott Leckie, “Forced Evictions in Tropical Cities: An Introduction” 23:3 *Singapore Journal of Tropical Geograpy* 247 at 247 [Tropical Cities].

⁹⁵ *Bogota*, *supra* note 40 at 365.

⁹⁶ *Cambodia 2008*, *supra* note 19 at 210.

⁹⁷ Mac Darrow & Tomas Amparo, “Power, capture and conflict: A Call for Human Rights Accountability in Development Cooperation” (May 2005) 27:2 *Hum Rts Q* 471 at 475 [*Power, capture and conflict*].

⁹⁸ Global Witness, “Cambodia’s Family Trees: Illegal Logging and the Stripping of Public Assets by Cambodia’s Elite” (June 2007) online: Global Witness <http://www.globalwitness.org/sites/default/files/pdfs/cambodias_family_trees_low_res.pdf>.

When the rights of individuals to be protected against arbitrary or unlawful interference with their homes is blatantly violated in the name of development, or when families are impoverished or rendered homeless, development undermines human rights. What is needed is a more comprehensive conception of development, a people-centered perspective focusing on human development and capabilities. Despite the predictions of economists that extreme poverty could be reduced from 16% to 3% by 2030 through intensified capitalism and free trade, equality is also crucial to poverty reduction.⁹⁹ The forced evictions in Cambodia clearly illustrate this short-sightedness and the legacy of social polarization created by development focusing solely on economic growth, if not plainly industrialization.¹⁰⁰ Without building capabilities and the legal empowerment of the poor, economic development will not translate into improvements in the quality of life of the majority of the population.¹⁰¹ Where development projects could potentially have the effect of displacing involuntarily individuals and communities, a human rights-based approach is crucial to ensure that the two frameworks converge and mutually reinforce each other.¹⁰² Therefore, relocation for development purposes cannot be carried out in the absence of a comprehensive human rights-based approach to development that prioritizes alternatives to displacement and where necessary guarantees that resettlement and rehabilitation policies are developed through intensive consultation and collaboration with stakeholders, and that implementation is tightly monitored.

⁹⁹ "The World's next great leap forward: Towards the end of poverty", *The Economist* (1 June 2013) online: <http://www.economist.com/news/leaders/21578665-nearly-1-billion-people-have-been-taken-out-extreme-poverty-20-years-world-should-aim>

¹⁰⁰ Wolfgang Sachs, "Development: The Rise and Decline of an Ideal" (August 2000) Nr. 108 Wuppertal Papers.

¹⁰¹ Martha Nussbaum, "Creating Capabilities" *Harvard University Press* (2011) online: Youtube <http://www.youtube.com/watch?v=AoD-cjduM40>

¹⁰² *Power, capture and conflict*, *supra* note 92 at 482.

Foreign States Interests: Stability and Economic Growth or Democratization?

Since 2003, Cambodia has evolved from an unstructured competitive authoritarian state towards hegemonic party authoritarianism. The intensification of judicial repression is one symptom of this transformation away from democracy.¹⁰³ Nonetheless, the regime legitimacy has been on the rise, thanks to sustained economic growth and political stability. An interesting parallel can be drawn here with Rwanda, where the international community has also bought into the idea of stability and economic growth, at the expense of true democratization. The establishment of a peaceful, orderly and increasingly prosperous society after a period of deep social turmoil attracts admiration from the international community, while the tight control exercise by the government over political opposition and human rights activism passes under the radar so long as the promises of stability and economic growth are delivered.¹⁰⁴ "The international community, though rhetorically claiming to promote the quality of democracy, has in reality settled on granting the Cambodian government its international legitimacy based on economic performance and political stability".¹⁰⁵ Yet, those who celebrate the miraculous economic growth achieved by these post-conflict states, while ignoring the absence of the rule of law and inclusive political institutions, should be cautious of the risk of seeing these countries descending back into violence.¹⁰⁶

The subordination of democracy to sustained stability and economic development is further reinforced by the fact that the geo-strategic interests of international actors are best

¹⁰³ Kheang Un, "Cambodia: Moving away from democracy?" (2011) 32 *International Political Science Review* 546 at 547 [*Democracy*].

¹⁰⁴ Sarah Boseley, "Rwanda at pains with democracy", *Mail & Guardian* (4 June 2010) online: *Mail & Guardian* <<http://mg.co.za/article/2010-06-04-rwanda-at-pains-with-democracy>>.

¹⁰⁵ *Democracy*, *supra* note 23 at 547.

¹⁰⁶ Portia Karegeya, "Is Economic Growth Sustainable Without Regard for the Rule of Law? A Case study of Rwanda" (2013) [Unpublished, prepared for LAWG 536-001 *Rule of Law and Development* at McGill University Faculty of Law].

served by political stability and economic growth than democratization.¹⁰⁷ But intense marketization and privatization promoted by global policies have raised additional barriers to the consolidation of democracy in Cambodia. "As the Cambodian state is increasingly both liberalized and undergoing internationalization in its developmental agenda, planning agencies, decision-making powers, and economic orientation as each becomes increasingly integrated into transnational circuits of capital and expertise."¹⁰⁸ Place-marketing projects such as beautification, and regulatory undercutting to attract investments and jobs overlook the long-term benefits that democratization may foster. Accordingly, stability efforts are limited to ensuring market discipline and dominance through a variety of regulatory, surveillance and policing mechanism. "Such a disciplinary regime entails an obvious erosion of democratic control and accountability, as through a variety of legal and constitutionally devices, and violence from above, the economic model is insulated from popular scrutiny and demands."¹⁰⁹

Neoliberal priorities have produced conditions of globalized urban entrepreneurialism in Phnom Penh, such as enterprise zones, waterfront development and privatized forms of local governance. The urban poor are the primary victims of this process of "beautification". Globally conscious elites see slums as infected places.¹¹⁰ For example, former ruling party municipal governor, Chea Sophara, describes squatter areas as "a barrier preventing fresh air from blowing into the city, instead of foul stink" and considers them to "badly damage the beauty and well-managed social order of the capital".¹¹¹ In an effort to attract international investment to the city, the government actively seeks to "rescue" city center building for commercial activities, with the collateral effect of pushing poor inhabitants to the outskirts of

¹⁰⁷ *Democracy*, *supra* note 23 at 559.

¹⁰⁸ Simon Springer, "Violence, Democracy and the Neoliberal "Order": The Contestation of Public Space in Post-transitional Cambodia" 99:1 *Annals of the Association of American Geographers* 138 at 144 [*Neoliberal Order*].

¹⁰⁹ *Ibid*

¹¹⁰ *Tropical cities*, *supra* note 89 at 249; see also: *Kenyan cities*, *supra* note 35 at 254.

¹¹¹ *Neoliberal order*, *supra* note 27 at 151.

the city.¹¹² These beautification efforts are not limited to clearing desirable lands for luxury development projects, but also include efforts to free the wealthy from daily contact with the urban underclass.¹¹³ Squatter settlements are regarded as detrimental to social order, as slums are associated both with disorder and criminality. Urban development projects therefore seek to replace slums with artificial parks and public places to symbolize a new era of peace and social morality, free from the violence that created insecurity and turmoil in Cambodia. In sum, the beautification of Phnom Penh is a top-down process undertaken in the name of aesthetics and profit and at the detriment of the urban poor, often entitled to land ownership. What is sought instead is to further the marketization and privatization of city to attract investors.¹¹⁴ Donors, who are biased in favour of rewarding pro-market and trade-oriented policies on the part of aid-receiving countries, perceive this transformation as positive.¹¹⁵ As a result, foreign actors too often ignore the parallel shrinking of public space and the intensified regulation and repression of democratic freedoms. Therefore, when the time comes to guarantee the effective implementation of the international human rights regimes, the international community suddenly gets cold feet.

¹¹² *Eviction trends*, *supra* note 31 at 14.

¹¹³ *Bogota*, *supra* note 40 at 455.

¹¹⁴ *Neoliberal order*, *supra* note 27 at 151.

¹¹⁵ *Ibid* at 146.

Part V. Democratization through Grassroots Activism

State Capacity & Human Rights Protection

The primary responsibility for human rights conditions lies with States. Normatively, States are responsible for ensuring that the rights of citizens are respected. This involved simultaneous duties to abstain from abuse and to prevent private parties from committing abuses. The international human rights regime is built on this tension between States and rights arising from their dual role as guarantor and violator of human rights.¹¹⁶ At an empirical level however, States may not be unable to discharge its normative responsibility, especially when it is weak and corrupt. Weak states are characterized by relatively little distinction between personal interests and the official duties of decision-makers in the executive, legislature and bureaucracy. Policies are constantly thwarted by particular demands. Moreover, while strong states, having appropriate capacity, can gain legitimacy without having to recourse to explicit violence, “in contrast, a weak state with a policy orientation that lacks interest in meeting the needs of the populace, (...) takes an authoritarian stance, resorting to violence to regain its footing when citizens begin to make their demands known in the spaces of the public”.¹¹⁷ Consequently, shaming States for bad human rights record can only work if the State has the capacity to remedy human rights abuses, but lacks political will. Where the State is weak, perfect conditions for human rights abuses are in place, because the State cannot restrain powerful citizens and rogue government officials. Therefore, the better the state apparatus, the safer citizens will be from depredations. For the State to become a guarantor of human rights, rather than a violator,

¹¹⁶ Neil A. Englehart, “State capacity, State Failure, and Human Rights” 46 *Journal of Peace Research* 163 at 163 [*State capacity*].

¹¹⁷ *Neoliberal order*, *supra* note 99 at 148.

domestic enforcement capabilities need to be enhanced, the rule of law and transparency promoted and state capacity generally strengthened.¹¹⁸

Addressing human rights violations in Cambodia, such as forced evictions, cannot be achieved without strengthening state capacity. The government currently rules through economic and political systems based on subverting the essential principles of democracy and due process, with the result of depriving people of their economic resources and means of livelihood. The ruling party has consolidated its power by manipulating the democratic process, undermining legitimate political opposition and using the state for the accumulation of private wealth. "In short, (...) the deliberate rejection of the concept of a state governed by the rule of law has been central to the ruling party's hold on power".¹¹⁹ Thus, the ineffectiveness of state institutions is not a matter of technical incapacity, but rather one of political calculation.¹²⁰ In such context, establishing the rule of law requires looking beyond formal institutions. The Cambodian Constitution comprises all the necessary protection and structures for the establishment of the rule of law. Nonetheless, despite an excellent constitution, the rule of law record of Cambodia is abysmal, mainly because the government pervasively disregards the law and subverts legal institutions.¹²¹ Given that the Cambodian political system has not allowed the logic, institutions and procedures of the rule of law to operate autonomously, formal institutions have been completely subordinated to the will and whims of the executive. Institutional reforms in Cambodia cannot be conducted without engaging in issues of power, corruption and elite capture.¹²² The subordination of the prosecutorial and judicial functions to the executive dominated by an hegemonic party, the subsequent victimization of political opponents and human rights defenders and the overall

¹¹⁸ *State capacity*, *supra* note 107 at 177.

¹¹⁹ *Anatomy of a state*, *supra* note 1 at 1.

¹²⁰ *Democracy*, *supra* note 95 at 550.

¹²¹ *Anatomy of a state*, *supra* note 1 at 8-9.

¹²² *Ibid.*

lost of legitimacy of the legal system are all symptoms of Cambodia's captured state.¹²³ Thus, for forced evictions to stop and property rights and security of tenure to be reinforced for social and economic development, the pressure needs to come from elsewhere then within formal institutions.

The Limits of the Rule of Law Orthodoxy

The externally imposed nature of Cambodia's democratization process has undermined the quality of democracy at later stages because of the existing social and political conditions prevailing at the time of democratic transition.¹²⁴ The depth of the social disruption that occurred during the Khmer Rouge regime and the years of political instability experienced in Cambodia have caused the dissemination of informal institutions, norms and practices. Democracy functions as a system through which formal and informal institutions interact within mechanisms that translate social preferences into public policies.¹²⁵ "Institutions are the rules of the game in society or, more formally, are the humanly devised constraints that shape human interaction."¹²⁶ But these institutions are not merely the formal institutions found in constitutional and statutory law. They also rely on informal norms of behaviours that inform and complement laws and legal institutions. As such, democracy cannot flourish where informal institutions are lacking and where informal norms of behaviour are inexistent; they ought to be created.¹²⁷ A clear legal definition of property rights and an equitable system of acquisition and transfer of such rights need to be consistent with

¹²³ *Ibid.*

¹²⁴ *Democracy*, *supra* note 95 at 547.

¹²⁵ United Nations Office for Drug Control and Crime Prevention, "Investigating the Links Between Access to Justice and Governance Factors: An Objective Indicators' Approach" (Vienna, May 2001) CICIP-13 at 2.

¹²⁶ Douglass North, *Institutions, Institutional Change and Economic Performance*. (Cambridge : Cambridge University Press, 1990) at 3.

¹²⁷ Douglass North "Interview with Douglass North on Formal and Informal Institutions" *Free to Choose Network*, online: Youtube <<http://www.youtube.com/watch?v=7vpG6w5mAOU>>.

traditions and practices. In other words, formal norms need to stem from informal institutions, norms and practices.

The rule of law orthodoxy assumes that state capacity can be built by funding government institutions and working with top officials to implement formal reforms of laws and legal institutions.¹²⁸ This “top-down” state-centered approach is deeply flawed in places like Cambodia where corruption is endemic and the government is notorious for steeling donor funds. The central challenge here is not achieving formalistic institutional or legal reforms, but impelling the actual implementation of existing laws in a pro-poor manner. This can only be done by working at the grassroots and supporting civil society to serve the disadvantaged and build their legal capacities.¹²⁹ The UN Office of the High Commissioner for Human Rights issues annually a report on the situation of human rights in Cambodia. Since 2009, the new Special Rapporteur for human rights in Cambodia, Prof. Surya Subedi, has published every year a report on the establishment of the rule of law and the reconstruction of State institutions.¹³⁰ Year after year, the government indicates that the Special Rapporteur’s recommendations are being considered, but neglects to give a “more specific response or to commit itself to a time frame or a plan of action to implement his key recommendations”¹³¹ The lack of political will is evident. If the international community persists on waiting on the government of Cambodia to implement these recommendations and truly undertake institutional reform, the rule of law will never be established. Moreover, as demonstrated above, the geo-political interests of foreign donors do not necessary align with democratization.

¹²⁸ Stephen Golub, “A House Without a Foundation”, in Carothers (ed.), *Promoting the Rule of Law Abroad: In Search of Knowledge* (Carnegie Endowment for International Peace, 2006) 105 at 105 [Foundation].

¹²⁹ *Foundation*, *supra* note 129 at 108.

¹³⁰ In 2010, the report included a series of recommendations on how to strengthen the independence and capacity of legal institutions. The 2011 report focused on reforming the legislature and the 2012 report provided a human rights assessment of State institutions relevant to the electoral process in Cambodia. Reports of the Special Rapporteur on the situation of human rights in Cambodia available online: OHCHR <<http://cambodia.ohchr.org/EN/PagesFiles/Reports/SR-SRSG-Reports.htm>>.

¹³¹ Surya P. Subedi “Report of the Special Rapporteur on the situation of human rights in Cambodia” (16 July 2012) A/HRC/21/63 at 6.

Re-Building Informal Norms: Social Change through Grassroots Resistance

The challenge of establishing the rule of law is heightened by the fact that informal norms need to be re-created. Not only must formal institutions be built on informal norms, but in the absence of such norms, they ought to be created via legal empowerment, “a process of systemic change through which the poor and excluded become able to use the law, the legal system, and legal services to protect and advance their rights and interests as citizens and economic actors”¹³² This alternative paradigm to the establishment of the rule of law “puts community-driven and rights-based development into effect by offering concrete mechanisms involving, but not limited to, legal services.”¹³³ The law needs to be used to support broader socioeconomic development initiatives driven by agents of social change at the grassroots. By fortifying impoverished populations’ legal capacities and power and building up civil society, space will be created for informal norms to flourish and thus advance the rule of law. Where the poor have more power, they are better able to make government officials implement the law and influential private parties abide by it, simultaneously building good governance and alleviating poverty from the bottom-up.¹³⁴

Enhanced aid support for legal services and capacity building for the poor via civil society is crucial and must replace the narrow top-down focus on legal institutions.¹³⁵ But the engagement must go deeper and engage directly with affected communities as agents of social change. Grassroots movements, i.e. informal associations of individuals working together to advance a common objective, are burgeoning in Cambodia, especially in the

¹³² Dan Banik, “Legal Empowerment as a Conceptual and Operational Tool in Poverty Eradication” (2009) 1 *Hague Journal on the Rule of Law* 117 at 120 [Banik].

¹³³ Stephen Golub, “The Legal Empowerment Alternative”, in Carothers (ed.), *Promoting the Rule of Law Abroad: In Search of Knowledge*, (Carnegie Endowment for International Peace, 2006) 161 at 162.

¹³⁴ *Ibid* at 163.

¹³⁵ *Ibid* at 184.

context of land disputes. In Phnom Penh, forced evictions have awakened grassroots mobilization aimed at securing justice for the victims of human rights violation. Women in particular have been at the forefront of this grassroots resistance movement, because as the homemaker, they are the primary victims of the disruption caused to the household by forced evictions.¹³⁶ Through a variety of peaceful strategies, communities victim of forced evictions are resisting dispossession and arbitrary displacement, and demanding the proper implementation of laws and human rights guarantees to which they are entitled. The significance of such grassroots activism cannot be overstated. Inherently part of a larger process of legal empowerment, peaceful resistance to land injustices is actively contributing to the re-creation of informal norms of behaviour essential to complement and strengthen laws and legal institutions. In other words, through grassroots mobilization, the urban poor are advancing the rule of law from the bottom-up.

Reclaiming City Space

Through grassroots resistance to forced evictions, the urban poor are reclaiming their right to city space and challenging the elite narrative of informal settlements as constraining urban productivity and fostering chaos and insecurity. In demanding justice, these communities are requesting recognition as valuable actors of city life. They are reclaiming their 'Right to the City', i.e. reminding the authorities that all inhabitants in the city contribute to the production of urban space and have a right to appropriate its uses.¹³⁷ Underlying this struggle to reshape city space is a claim for the need for stronger democratic processes and widespread participation. The 'Right to the City' concept emerged as a counter-narrative to neo-liberal reforms that led to the shirking of public space in urban centers and the

¹³⁶ Naly Pilorge, LIACHO, « Fall seven times, stand up eight: Cambodian women's fight against land grabs » *Asia Pacific Forum on Women, Law and Development Newsletter – Forum News*, 25 : 1 (August 2012) online : APWLD <<http://www.apwld.org/wp-content/uploads/Forum-News-Vol-25-No1-August-2012.pdf>>.

¹³⁷ UN Educational, Scientific and Cultural Organization, "Urban Policies and the Right to the City in India: Rights, Responsibilities and Citizenship" (UNESCO House: New Delhi, 2011) at 2.

disentitlement of the urban poor to city space.¹³⁸ Resisting against forced eviction is not solely driven by the injustices resulting from unlawful dispossession, but also from the governmental policy of displacing the urban poor to the city outskirts to “rescue” the city center and free the wealthy from daily contact with the urban underclass. In rejecting the dominant narrative, grassroots mobilization actively contributes to reclaiming space for the poor in the city, notably by using public space as sites where the voiceless can make their demands seen and heard.¹³⁹ As such, grassroots resistance reshapes city norms by restoring the democratic functions of urban space.

Fostering Solidarity and Cooperation

Grassroots activism is fostering networks of solidarity and cooperation. The threat of eviction has strengthened community ties as peaceful resistance organize. Moreover, this solidarity and cooperation has expanded beyond intra-community cohesion. Communities faced with similar threats of eviction or land grabbing are joining efforts in their common battle against unlawful dispossession and elite impunity. For example, when families living around the Phnom Penh airport were told they would be evicted to make way for a new road to accommodate President Obama’s convey during the ASEAN summit in November 2012, some of the affected families responded by painting large S.O.S. on their rooftops next to large photos of President Obama. The authorities subsequently detained these families until they agreed to remove their signs.¹⁴⁰ In the days following their unlawful detention, the Borei Keila and Boeung Kak communities joined the airport families in S.O.S. solidarity actions. As forced eviction increase in Phnom Penh, so is solidarity between communities, farmers, unions and environmentalists, who together use creative and visible forms of peaceful

¹³⁸ *Ibid.*

¹³⁹ *Neoliberal order*, *supra* note 99 at 4.

¹⁴⁰ LICADHO, Press Release, “Free Detained Community Members from Thmor Kol Village and Stop Police Crackdown ahead of ASEAN Summits” (15 November 2012) online: LICADHO <<http://www.licadho-cambodia.org/pressrelease.php?perm=295>>.

demonstration to get their common message heard.¹⁴¹ And these networks of solidarity are increasingly national. In May 25, 2011, when hundreds of demonstrators came to Phnom Penh to protest the destruction of the Prey Land forest, a rich ecosystem overlapping four provinces, they were joined in Freedom Park by communities facing land evictions in Phnom Penh.¹⁴² Hence, through solidarity networks across threatened and evicted communities, ideas cross-fertilize, further reinforcing the construction of informal norms of behaviours essential for the establishment of the rule of law.

Channelling Local and International Support

Grassroots resistance has also been effective at channelling local and international NGO support. During the detention of fifteen Boeung Kak community representations in the summer of 2012, the villagers led an intensive campaign called “Free the 15! Stop the violence”. The lotus flower became the symbol of a series of non-violent direct actions over 33 days. The community organized the events, and local and international NGOs joined, providing assistance, support and visibility. On the day of the appeal, over 500 community members and supporters gathered outside the courthouse. The community representatives were finally released after one month and three days in detention. A contingent of community members, NGO workers and journalists waited for hours at the prison gates to celebrate their release. Followed a party in Boeung Kak, organized by the community, to celebrate the victory of the campaign and the freedom of the fifteen detained community members. The other victory was that the campaign was entirely led by the community who defined its priorities and strategies throughout, while NGOs acted as supporters, providing technical, logistical and financial assistance. This campaign is a prime example of how grassroots mobilization contributes to re-building informal norms from the grassroots, a

¹⁴¹ Licadho-Canada, Newsletter, “Cambodia Sending Out an S.O.S.” (November/December 2012).

¹⁴² LICADHO, Photo Album, “Prey Land Protest in Phnom Penh” (25 May 2011) online: LICADHO <http://www.licadho-cambodia.org/album/view_photo.php?cat=47>.

process facilitated by the catalytic role played by social medias in this mobilization. Civil society became a partner to the affected communities who are recognized as agents of social change, not merely vulnerable people needing to be legally empowered by civil society actors.

The lessons drawn from forced evictions in Cambodia are four-folded. Firstly, forced evictions blatantly violate domestic and international law. Secondly, despite the international condemnation of forced evictions and the numerous protections against forced evictions found in the international human rights regime, there is an obvious disconnect between the norms of international law and implementation where human rights are grossly violated. Foreign states, acting as donors through bilateral and multilateral aid and development agencies, are reluctant to push for the meaningful implementation of international human rights law, because of competing geopolitical interests. Thirdly, in a society like Cambodia, where the institutions are deeply corrupted and captured by the elite, and where informal norms of behaviour have been destroyed by decades of conflict and political instability, the democratization process cannot come from a top-down state-centered approaches focused on institutional reforms. It needs to come from the legal empowerment of the poor. Lastly, growing grassroots resistance to forced evictions is actively contributing to the re-creation of essential informal norms of behaviour. Through mobilization, the communities affected by forced evictions are challenging the current human rights situation in Cambodia and demanding enhanced accountability and transparency on the part of formal institutions and government officials. Therefore, peaceful resistance to forced evictions in Cambodia is illustrative of the dynamic process of legal empowerment of the poor, whereby social change is initiated from the ground-up and through the interaction of the victims of human rights violations with domestic and international civil society. As such, evictees are not solely victims of human rights abuses, they become key players in the establishment of the rule of law in a weak and capture state.

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