



UN VIEWPOINT CAMBODIA

Resettlement and evictions

The present note has been developed and agreed by the United Nations Country Team in Cambodia. It reaffirms the following general principles and guidelines which define the responsibilities and obligations of the Royal Government of Cambodia with regard to urban and rural resettlement and evictions, and aims to guide United Nations support in this regard. This commonly agreed position is based on Cambodian law and international standards relating to land ownership, housing rights and forced evictions.

Cambodian Constitution and laws:

The Constitution of the Kingdom of Cambodia recognizes and protects the right of all citizens to own land. Article 44 provides that a person may only be deprived of his or her ownership of land where it is in the public interest, in accordance with the law, and where fair and just compensation has been provided in advance. This provision is reflected in Articles 4 and 5 of the Land Law 2001.

Article 30 of the Land Law 2001 states that a person has the right to request a definitive title of ownership if he or she enjoyed peaceful, uncontested occupation of land that can be privately possessed for 5 years prior to the promulgation of the law on 31 August 2001.

Article 31 of the Constitution incorporates into domestic law the human rights guarantees contained in the Universal Declaration of Human Rights and key human rights treaties. The Universal Declaration and the International Covenant on Economic, Social and Cultural Rights, to which Cambodia is a state party, both guarantee the right to an adequate standard of living, which includes housing and food.

International standards:

The Committee on Economic, Social and Cultural Rights has issued two General Comments guiding the interpretation of the right to adequate housing, particularly in relation to the issue of forced evictions. The United Nations Special Rapporteur on the right to adequate housing has also issued a set of basic principles and guidelines on development-linked evictions and related displacement.

The following guiding principles are based on these two sources:

1. Evictions should be carried out only in exceptional circumstances, as a last resort, in accordance with the law and solely for the purpose of promoting the general welfare in a democratic society;
2. Nobody should be made homeless as a result of development based evictions;
3. All possible alternatives to evictions should be explored, including proposals made by affected groups, their representatives and other relevant actors, through genuine consultations, before a decision to evict is made;
4. The legal basis for an eviction must be established prior to any decision to evict. This includes the determination of the legal owners and possessors of the land, based on an objective application of the law, and the demonstration of the public interest if private land is required for public purposes;

5. When an eviction is inevitable the following minimum safeguards should be followed:
 - a) Transparent meaningful participatory processes to assess the situation and explore solutions with affected communities and their representatives;
 - b) Affected persons, groups and communities' right to full and prior informed consent regarding relocation or compensation must be observed;
 - c) Agreements reached freely by the concerned parties should be respected by all parties;
 - d) Fair and just compensation for any economically assessable damage and loss, should be provided at market prices;
 - e) Relocation sites must provide for security of tenure, minimum services and infrastructure, such as potable drinking water, sanitation and washing facilities, site drainage and habitable housing. They must ensure access to employment options, health care services and schools;
 - f) Relocation land should be commensurate in quality and size, or better;
 - g) The entire resettlement process should be carried out in full consultation and participation with the affected persons, groups and communities;
 - h) Relocation and/or compensation should be provided immediately upon eviction;
 - i) Special attention should be given to the health needs of women and children, as well as vulnerable groups and individuals; ensuring that ongoing medical treatment is not disrupted as a result of eviction or relocation, particularly for chronic or serious diseases such as HIV and TB;
 - j) Any action in relation to informal settlements should be in line with the Strategy of Land Policy Framework,¹ which states that urban development must lead to the provision of safe and healthy shelter for all;
 - k) Relocation guidelines, based on the Declaration of Principles for Best Practice², should be adopted and implemented by all municipalities and provinces
6. Military personnel should not be deployed in evictions. Strict controls should be placed on the use of force during evictions, and the use of firearms should be prohibited.

1 Interim paper, approved by the Council of Ministers on 6 September 2002.

2 The "Declaration of principles for best practices in housing and pro-poor development" was submitted to the Municipality of Phnom Penh on 4 October 2004, and endorsed by the Municipal Governor.