

**Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right to food; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes**

REFERENCE:  
AL KHM 11/2020

23 December 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the situation of human rights in Cambodia; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the right to food; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolutions 43/14, 44/15, 42/37, 37/8, 32/8, 41/12 and 45/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning an **urban development project involving the reclassification and in-filling of the Tompoun Cheung Ek wetlands, which are used for housing, fishing and farming by at least 1,000 families, in southern Phnom Penh, Khans Mean Chey and Dangkao, and Kandal province, near Ta Khmao city, without consultation with the affected families.** Allegedly, not only does the project threaten the livelihoods and homes of these families, but it will also cause irreparable damage to the wetlands ecosystem, place more than a million people at increased risk of flooding and pollute the Mekong and Bassac rivers with untreated sewage and harmful pollutants posing serious risks for the communities living along the rivers and relying on them as a source of income and food.

According to the information received:

#### *Background*

The wetlands in southern Phnom Penh, commonly referred to as Boeung Tompoun, Boeung Cheunk Ek, or the Tompoun Cheung Ek wetlands, and hereafter to as "the wetlands", have been continuously used by communities living in the area as a place for fishing, aquatic agriculture, and as an area to live since the late 1970s. Some communities claim they have lived and use the wetlands area for farming since before the Khmer Rouge (pre-1970).

Approximately 370,000m<sup>3</sup> per day of water is pumped from Phnom Penh into the wetlands, much of which is raw sewage. If the wetlands continue to be infilled, it is likely that nearly half of Phnom Penh, roughly 1.2 million people, will be at increased risk of flooding from sewage-contaminated flood waters. The wetlands are essential in providing storage capacity for flood waters, as well as naturally treating Phnom Penh's wastewater through the planting of aquatic agriculture on the wetlands' surface. Without the wetlands, more than one million people are at risk of flooding and exposure to contaminated water.

Allegedly, the wetlands can be considered as state public land under article 15 of the 2001 Land Law, either under the term "lakes" or as a "course of navigable or floatable water". If the wetlands are state public land, then they can only be leased to private companies following the legal procedures for reclassification and subsequent leasing to private companies in special circumstances, which are outlined below.

#### *Lease to ING Holdings*

In 2004, ING Holdings, a company owned by former Senator, Mr. Ing Bun Hoaw, began developing the wetlands area by infilling it with sand to create real estate for the ING City project. Since then, the ING City has been re-leasing plots of land to other companies such as Star Auto (Cambodia), the International School of Phnom Penh, Urban Village, R & F Group, Chip Mong Group, and Borey Peng Huoth, Lingnan Garden, Maritime Group, AEON Mall, and Versaille Square.

The leasehold of ING Holdings in order to develop the wetlands area, which constitutes at least 1,500 hectares, has not been released publicly. However, plans for ING City's development indicate that the majority of the wetlands will be destroyed. ING City project plans located on its website indicate that the city would develop in phases, and would include Government buildings as well as private developments. There appears to be no plans of resettlement in place for communities living nearby the wetlands or within the boundaries of the ING City project.

In addition, the project would involve preserving a 520-hectare area of the wetlands, out of the 1500-hectare wetlands. The 520-hectare area in question received legal protection through demarcation of the area as a lake, named Boeung Cheung Ek, in 2008, under sub-decree No. 124 on the "Establishment of Cheung Ek Lake and Canals, Located in Mean Chey and Dangkao Districts of Phnom Penh and Ta Khmao Town of Kandal Province as Public Properties".

#### *Leasing of Boeung Cheung Ek*

Since its protection through demarcation as a lake in 2008, Boeung Cheung Ek has been reduced by 80% through private leases to companies and individuals. Companies that received the rights to develop the lake include Orkide Villa, ING Holdings, and Chip Mong Group. In addition, several private persons received plots of land inside the previously protected lake area.

Under the 2001 Land Law, in order for state public property - which includes a “lake” according to article 15 - to be sold or leased, it must have lost its public interest use, as stipulated in article 16 of the Land Law. The Royal Decree on ‘Provisional Guidelines and Principles Regarding the Reclassification of the State Public Properties and of Public Entities’, No. 339 of 2006 clarifies that state public property can be reclassified as state private property only when the property is: no longer in the public interest; has lost its full functionality in the service of public interest; or is no longer used directly by the public.

According to the information received, the wetlands are in the public interest to protect Phnom Penh and Ta Khmao from flooding, and in treating the waste water of Phnom Penh. They continue to perform both of these public interest functions and are vital in doing so, as no other lakes exist to assist in flood protection and no wastewater treatment plant currently exists in Phnom Penh. The wetlands are continuously being used by the public, both as a flood protector and natural wastewater treatment plant, as well as by local farmers and fishing families.

*In-filling of wetlands with sand and wetlands environmental destruction*

In order to infill the wetlands, 77,660,000m<sup>3</sup> of sand will be required. Infilling of the wetlands with sand began in or around 2004 and has continued until today. According to the latest information received, over 30%, or more than 500 hectares, of the wetlands area has now been destroyed by sand-infilling. The information we have received points to three key human rights concerns over the practice of sand in-filling.

Firstly, the destruction of the wetlands by sand infilling is an irreversible process that will render the utilities of the wetlands void. These utilities are flood protection, wastewater treatment, and land for economic activities, especially fishing and farming. The information received suggests that only 107 hectares of the 1,500-hectare wetlands will survive the ING City and other developments. The 107 hectares are not considered to be enough to mitigate against flooding, nor enough to provide for adequate wastewater treatment.

Secondly, the wetlands may be a critical area for migratory fish, some of which have been identified by your Excellency’s Government as endangered. 52 species of fish, 20 species of reptiles and amphibians, 43 species of birds, and two mammals have been identified as living in the area. Of particular concern are the Isok Barb fish (*Probarbus jullien*) and the Giant barb fish (*Catlocarpio siamensis*) which are considered as endangered under sub-decree No 123 of 2009. If these fish are found to breed in the wetlands area, then its destruction may place them at greater risk of extinction, and food security for villagers depending on these fish may suffer.

Thirdly, it is alleged that the sand used to infill the wetlands is being taken from the Mekong and the Bassac rivers, presenting considerable environmental risk to the rivers themselves and a human rights risk to the communities living along and using the rivers as a source of income and for food. The sand dredging companies providing sand to the ING City project are Hero King and Global

Green (Cambodia) Energy Development. Both of these companies are owned by prominent businessmen in Cambodia, Mr. Ly Yong Phat, and Mr. Try Pheap, or their family members.

Sand dredging practices have been linked with river embankment collapse; increased flood risk; fish death; groundwater table retention reduction; changes in flow velocity; loss of land; and animal habitat loss. The extraction of the amount of sand required to infill the wetlands' area presents risks for communities living near, and reliant upon, the rivers where the sand is being extracted from. Safeguards currently do not exist or are not adequate to protect against the risks outlined here.

#### *Land and housing issues*

There are more than 1,000 estimated families who are living in or near the wetlands area, and/or are dependent on the wetlands area for income generation activities. Some communities living in the area have been doing so for many years, including the following communities: Prek Takong Mouy (1986), Prek Takong 60meters (1990), Prek Takong Bei (1990), Prek Tanou Muoy (1981), Prek Tanou (1999), and Cheung Ek (1999). These communities are not the only communities who have longstanding land-use and ownership claims to the area.

Only the families in Prek Takong Mouy have received land titles for their houses, but according to the information provided, their circumstances are unique. Other communities living in the area have not received land titles and are vulnerable to eviction. Some communities have been threatened with eviction and have heard rumours about their impending eviction. In some cases, communities are living in the ING City boundaries but have not been informed by ING Holdings, other companies, or the Government, of any plans for their resettlement or how ING Holdings intends to develop the area.

#### *Loss of land and work*

Of the 1,000 households living in the area, more than half are reliant on the wetlands as a primary or secondary source of income. Fishing and aquatic agriculture are the most common forms of work performed on the wetlands. The direct risk of income loss because of the infilling of the wetlands area is a serious concern and the information received has suggested that no communities have received compensation or been consulted on the wetlands infilling. Many of the families living in the area are also indebted and use the wetlands area as a way to generate income to repay their debts.

#### *Increased flooding of Phnom Penh and Ta Khmao*

More than one and a half million residents of Phnom Penh and Ta Khmao are being placed at an increased risk of flooding due to the destruction of the wetlands. The wetlands area takes 370,000m<sup>3</sup> of water per day from Phnom Penh's drainage canals. Without the wetlands, there is a serious risk that this water cannot be managed safely and will inundate thousands of homes, both in Phnom Penh and Ta Khmao, placing people at risk of diseases that the flood

waters can cause. There are also huge economic costs expected for persons affected by floods, who will likely lose or have their property damaged. Flooding will have greater negative effects upon the poorer residents of Phnom Penh and Ta Khmao, who are not able to use cars or other adequate forms of transport to avoid flood waters.

#### *Wastewater pollution*

The wetlands are currently semi-effective at treating wastewater. This is done by the crops being planted on the water's surface by local farmers. As the wetlands are destroyed, the capacity of the wetlands to act as a natural wastewater treatment plant is reduced, exposing the communities living on and near the wetlands to more pollutants.

It was reported by fishing families that the water quality has already led to fishing being less viable in the northern parts of the wetlands, where the sand-infilling is most prominent. In addition, fishing families reported smaller fish, less fish, and therefore, less income generation from fishing activities in those areas since the development of ING City began.

It is unclear how the treatment of the wastewater will be ensured, after the wetlands are filled in. Plans about the construction of a plant in Cheung Ek to treat the wastewaters from Phnom Penh are reported although the treatment capacity of this plant is unclear and is allegedly inferior to the capacity of the wetland system. Concerns have been raised that the construction of this plant, which has reportedly not been properly consulted with locals, will be used as a pretext to destroy the wetlands.

#### *Freedom of expression and assembly*

Several communities have attempted to organize themselves and express their concerns to the Government, company representatives, and the general public. In 2018, during a peaceful ceremony to celebrate World Habitat Day, a community member from Prek Takong 60 meters community was arrested by police, taken to the Commune Chief's office and made to sign a document prohibiting the community member from organizing events of that nature in the future.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our serious concerns about the alleged grave impacts of the project on at least 1,000 families who rely on the Tompoun Cheung Ek wetlands for their housing, food security and livelihood; on the communities living near Mekong and the Bassac rivers, whose food security depends on the resources of the rivers and is likely to be jeopardized by the sand dredging; and on the more than one and a half million residents of Phnom Penh and Ta Khmao who will be exposed to an increased risk of flooding due to the destruction of the wetlands, in violation of international human rights obligations, including those related to the right to an adequate standard of living, including adequate food, clothing, housing, water and sanitation, the right to work and the enjoyment of a safe, clean, healthy and sustainable environment. We are also deeply concerned that the project has not been consulted with the affected people and are

particularly alarmed about the allegations of harassment against those who have tried to voice their concern about the project and the violation of their rights to freedom of expression and of peaceful assembly. We recall that freedoms of expression, peaceful assembly and association are necessary conditions for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights.<sup>1</sup> We are furthermore alarmed that the project may entail an irreparable damage to the ecosystem of the wetlands and could result in the extinction of a number of species.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate if human rights, environmental and social impact assessments were undertaken prior to the approval and implementation of the urban development project (ING city) and the associated development projects on Boeung Cheung Ek area and provide information on their results and the measures adopted to prevent, avoid and mitigate any adverse impacts, including considering any alternatives to possible evictions of the people affected. Please also provide a copy of these impact assessments. If impact assessments were not undertaken, please indicate the reason why they were not undertaken.
3. Please indicate if human rights, environmental and social impact assessments were undertaken prior to the approval and implementation of the sand extraction project on the Mekong and Bassac rivers and provide information on their results and the measures adopted to prevent, avoid and mitigate any adverse impacts. Please also provide a copy of these impact assessments.
4. Please highlight the steps that your Excellency's Government has taken, or is considering to take, including policies, legislation, and regulations, to uphold its obligations to protect against human rights abuse by business enterprises under its jurisdiction, and ensuring that business enterprises within its territory conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operation, as set forth by the UN Guiding Principles on Business and Human Rights.
5. Please provide information on the participation of the affected people in the design and implementation of the development projects and the

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<sup>1</sup> HRC, General Comment no. 34, para. 4.

related human rights, environmental impact assessment as per article 6 of the 1996 Law on Environmental Protection and Natural Resources Management of Cambodia, as well as social impact assessments. Please also indicate what special measures, if any, have been adopted to ensure the meaningful participation of women and groups, including persons with disabilities, who may be experiencing discrimination and marginalization.

6. Please provide information on the legal basis of the leasing concerning the TompounCheung Ek wetlands and the justification for the conversion of the Boeung Cheung Ek area from state public property to state private property as per article 16 of the 2001 Land Law.
7. Please indicate whether the monitoring of water quality in the affected areas has been carried out prior to and during the construction of ING City and whether an impact assessment has been conducted related to water quality.
8. Please indicate whether the monitoring of the environmental, social and human rights impacts of sand dredging along the Mekong river and the Bassac river for the purposes of infilling the wetlands and Boeung Cheung Ek is being conducted. Please provide information on its findings and any measures adopted in response.
9. Please provide information on the measures taken to conferring legal security of tenure upon those persons, households and communities affected by the project and currently lacking such protection, including all those who do not have formal titles to home and land. Please clarify the reasons why only one community, Prek Takong Mouy in the wetlands area, has so far received land titles.
10. Please provide information on the steps taken in consultation with the people affected to explore all alternatives to evictions.
11. Please indicate the steps taken or envisaged in line with the UN Guiding Principles on Business and Human Rights, including to (i) set out clearly the expectations that all businesses business enterprises operating or present in Cambodia's territory and/or jurisdiction respect human rights throughout their operations and conduct human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights (ii) take appropriate steps to ensure the effectiveness of domestic judicial and non-judicial mechanisms with respect to business-related human rights abuses, and (iii) provide effective guidance to the business enterprises on how to respect human rights throughout their operations.
12. Please indicate what measures have been taken to ensure that persons who have lost their land, housing, possessions or livelihoods, or suffered any other economic or cultural impacts as a result of the ING City project, have access to effective remedy and reparation.

We also would like to kindly request that a copy of this letter be shared with His Excellency Mr. Chea Sophara, Deputy Prime Minister and the Minister of Land Management, Urban Planning and Construction and His Excellency Mr. Say Sam Al, Minister of Environment.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please note that a letter expressing similar concerns was sent to the company ING Holdings.

Please accept, Excellency, the assurances of our highest consideration.

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Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Anita Ramasastry  
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Rhona Smith  
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David R. Boyd  
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Michael Fakhri  
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Marcos A. Orellana  
Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your Excellency's Government's attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation.

We would like to draw the attention of your Excellency's Government to its obligations under article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Cambodia 1992, which recognizes the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and stipulates that States shall take appropriate steps to ensure the realization of this right. This article must be read in conjunction with article 2.2 of the Covenant, which provides for the exercise of any right under the Covenant without discrimination of any kind. We also would like to draw the attention of your Excellency's Government's to its obligations under articles 6 and 17 of the International Covenant on Civil and Political Rights (ICCPR), ratified in 1992, on the rights to life and to non-interference with privacy, family, home or correspondence.

In its General Comment No. 4 on the right to adequate housing, the Committee on Economic, Social and Cultural Rights has clarified that the right to housing should not be interpreted in a narrow or restrictive sense, such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. It includes, among others, the availability of services, materials, facilities and infrastructure essential for health, security, comfort and nutrition, including sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services. The Committee has indicated that States must allocate sufficient resources to the realization of the right to adequate housing and prioritize the needs of disadvantaged and marginalized individuals or groups. The Committee has further clarified that the obligation to progressively realize the right to housing will almost invariably require the adoption of a national housing strategy which should be developed in consultation with affected groups, include clearly defined goals, identify the resources to be allocated and clarify responsibilities and a time frame for implementation. Moreover, steps should be taken to ensure coordination between ministries and regional and local authorities in order to reconcile related policies with the obligations under article 11 of the Covenant. The Committee has also indicated that monitoring of the situation with respect to housing is an obligation of immediate effect.

We wish to recall that, as clarified by the Committee on Economic, Social and Cultural Rights, in its General Comment No. 7, forced evictions are a gross violation of the right to adequate housing and may also result in violations of other human rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions. Paragraph 15 of the same General Comment provides that if an eviction is to take place, procedural protections are essential, including, among others, genuine consultation, adequate and reasonable notice, alternative accommodation made available in a

reasonable time, and provision of legal remedies and legal aid. Under no circumstances, evictions should result in homelessness, and the State party must take all appropriate measures to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available to affected individuals, where they are unable to provide for themselves. We wish to underscore that, notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons.

In addition, we would like to refer your Excellency's Government to the Principles on security of tenure for the urban poor (A/HRC/25/54), and Guidelines for the Implementation of the Right to Adequate Housing (A/HRC/43/43) - notably guidelines no. 6 on forced evictions and no. 12 on ensuring the regulation of businesses in a manner consistent with State's obligations and address the financialization of housing - as well as the "COVID-19 Guidance Note: Prohibition of evictions" elaborated by the former Special Rapporteur on the right to adequate housing. With regard to the regulation of business, we wish to underscore in particular that States may need to ensure, for example, not only that developers do not displace residents from affordable housing, but also that they produce needed affordable housing, that housing is not left vacant and that some of the profits from housing or other economic activities are redirected to ensure the availability of adequate housing for low-income households (A/HRC/43/43, paragraph 68).

We furthermore wish to recall the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18, Annex 1) which specify that evictions can only take place in 'exceptional circumstances'; that they must be authorized by law, and ensure full and fair compensation and rehabilitation. The Guidelines indicates that States should take immediate measures aimed at conferring legal security of tenure upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land; and should take specific preventive measures to avoid and/or eliminate underlying causes of forced evictions, such as speculation in land and real estate. The Guidelines also state that any settlement agreement must satisfy the criteria of adequacy, accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education. Urban or rural planning and development processes should involve all those likely to be affected and should include the following elements: (a) appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives; (b) effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups; (c) a reasonable time period for public review of, comment on, and/or objection to the proposed plan; (d) opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options; and (e) holding of public hearing(s) that provide(s) affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities. The Guidelines further states that States should explore fully all possible alternatives to

evictions. All potentially affected groups and persons, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider. In the event that agreement cannot be reached on a proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate. Moreover, the Guidelines states that States must give priority to exploring strategies that minimize displacement. Comprehensive and holistic impact assessments should be carried out prior to the initiation of any project that could result in development-based eviction and displacement, with a view to securing fully the human rights of all potentially affected persons, groups and communities, including their protection against forced evictions. “Eviction-impact” assessment should also include exploration of alternatives and strategies for minimizing harm.

Furthermore, the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement specify that, at a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions. Alternative housing should be situated as close as possible to the original place of residence and source of livelihood of those evicted. Special efforts should be made to ensure equal participation of women in all planning processes and in the distribution of basic services and supplies. We also recall article 2 of the International Covenant on Civil and Political Rights recognizing the right to an effective remedy.

We recall that the Special Rapporteur on adequate housing has called for a moratorium on evictions during the COVID-19 pandemic. We refer your Excellency’s Government to the Special Rapporteur’s report to the UN General Assembly in which he has emphasised that in the context of the COVID-19 pandemic having no home, lacking space for physical distancing in overcrowded living areas or having inadequate access to water and sanitation has become a “death sentence”, handed out predominantly against poor and marginalized communities who face a heightened risk of infection, community spread of the virus and mortality. The Special Rapporteur has proposed a set of short-term, medium-term and long-term recommendations, including enforcing a moratorium on evictions and foreclosures and on eviction proceedings against everyone (A/75/148, paragraph 69).

We also would like to recall the United National Declaration on the on the Rights of Peasants and Other People Working in Rural Areas which recognizes at article 24 the right of these people to adequate housing and “to sustain a secure home and community in which to live in peace and dignity, and the right to non-discrimination in this context”. We also recall article 17 of the aforementioned Declaration which recognizes that peasants and other people working in rural areas have the right to land, individually and/or collectively, in including the right to have access to, sustainably use and manage land and the water bodies, coastal seas, fisheries, pastures and forests therein, to achieve

an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures.

In this connection, we would also like to draw your Excellency Government's attention to its obligation under the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), ratified by Cambodia in 1999, to ensure equality of opportunity and treatment in employment and occupation without discrimination, including on the ground of social origin. Promoting and ensuring access to material goods and services required to carry out an occupation, such as access to land and resources, should be part of the objectives of a national policy on equality under article 2 of the Convention.<sup>2</sup>

We also wish to draw the attention of your Excellency's Government to its obligations under article 19 of the International Covenant on Civil and Political Rights which recognizes the right to freedom of expression and lays down that this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. We also wish to recall article 21, which recognizes the right of peaceful assembly and stipulates that no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. As clarified by the Human Rights Committee, freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights. Freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association.<sup>3</sup>

Furthermore, we wish to recall the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework which is grounded in three pillars: (a) the obligation of States to protect against human rights abuses committed by companies; (b) the responsibility of business enterprises to respect human rights, and thus avoid causing or contributing to adverse human rights impacts; and (c) the obligation of States to provide victims with access to effective remedies when rights are breached.

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises.

The obligation to protect, respect, and fulfill human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, General Comment no. 31 para. 8).

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<sup>2</sup> ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR), 2012 General Survey on the fundamental conventions, para. 756.

<sup>3</sup> HRC, General Comment No. 34, para. 4.

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). This requires States to “state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities” (Guiding Principle 2). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

Moreover, Principle 26 stipulates that “States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.”

States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.