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REPORT SUMMARY:

# Business and Human Rights in Cambodia: Constructing the Three Pillars



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**CAMBODIAN CENTER FOR HUMAN RIGHTS**



## **BUSINESS AND HUMAN RIGHTS IN CAMBODIA: CONSTRUCTING THE THREE PILLARS**

This is a Report Summary of the Cambodian Center for Human Rights' (CCHR) 'Business and Human Rights in Cambodia: Constructing the Three Pillars' (the 'Full Report') which is published as an introduction to this topic. All the information is presented here in concise summary form representing conclusions drawn from the detailed review and full exploration of the issues in the Full Report. All references contained in this Report Summary direct readers to the relevant pages of the Full Report. The Full Report containing comprehensive referencing is available in English at: <http://sithi.org/business>.

**Phnom Penh, November 2010**

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Front cover: Construction continues on Golden Tower 42 and the De Castle Royal Tower in Phnom Penh.

All photographs in this Report Summary were taken by CCHR unless otherwise stated.

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## BACKGROUND

In August 2009, the Cambodian Center for Human Rights ('CCHR') launched the Cambodian Business and Human Rights Project to advance understanding of human rights within the Cambodian business community, and to encourage Cambodian businesses to commit to respecting human rights.



Since United Nations sponsored elections in 1993, Cambodia has embarked on an ambitious program of economic development, in which the private sector plays a prominent role. Cambodia remains one of the poorest countries in Asia and often Cambodians have been negatively affected by economic development projects. The economy rests primarily on four sectors: garments, tourism, construction and agriculture. In addition, there is an emergent extractive industry.

*Left: Children collect rubbish in Koh Kong.*

Globally, privatization, deregulation and liberalization of trade and capital movements have led governments to concede much of their influence over the lives of citizens to private sector actors. A 'governance gap' has emerged, where governments are unwilling or unable to protect citizens from human rights violations perpetrated by businesses.<sup>1</sup> In countries like Cambodia, with developing

economies and institutionalized corruption, the human rights governance gap is particularly acute. Close financial ties between individual government figures and businesses responsible for rights violations exacerbate the problem, and in some circumstances can make it difficult in practice to differentiate between government and businesses.

One response to this is an emerging consensus that businesses should focus more directly on respecting human rights. Such a focus is broader than merely ensuring compliance with local law and more fundamental than broad brush corporate social responsibility policies, which can often amount to ad-hoc philanthropy programs that are never integrated into day to day business operations. This approach is gaining traction: specific human rights provisions are steadily becoming more prevalent in businesses' policy statements and operating practices.

John Ruggie, the United Nations Special Representative to the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, has generated significant interest in human rights within the business community and among governments. In 2008, Ruggie produced the three pillars framework – protect, respect, remedy – which has become the authoritative focal point for the contemporary debate surrounding business and human rights.

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The Full Report analyzes business and human rights in Cambodia through Ruggie's framework. This involves a review and assessment of the Cambodian state's duty to protect (pillar one); Cambodian businesses responsibility to respect (pillar two); and the available remedies (pillar three). Each chapter concludes with recommendations from CCHR. The analysis focuses in particular on land rights, labor

rights, and the freedoms of expression, assembly and association. These are the most critical rights issues relevant to businesses in the Cambodian context. They affect a large part of the Cambodian population; they are unequivocally areas of pressing concern; and, they are areas where there can be a legitimate expectation for swift and comprehensive improvements. The following are summary sections reflecting the analysis and recommendations contained in the Full Report.

## **PILLAR ONE: STATE DUTY TO PROTECT HUMAN RIGHTS<sup>2</sup>**

The fundamental premise of international human rights law is that states have a duty to prevent human rights violations affecting individuals within their jurisdiction.

Economically motivated land rights violations are endemic in Cambodia.<sup>3</sup> Victims of evictions are rarely given an opportunity for participation or consultation beforehand and any information which is provided to residents is often incomplete and inaccurate. When consultations with communities facing the threat of eviction do occur, they are often manipulative or coercive. Evictions are regularly conducted by armed Cambodian troops and police. The legal framework governing evictions is incomplete or unenforced, and remedial mechanisms are underdeveloped and corrupt, as addressed in more detail below in relation to pillar three. While the political and economic elite benefit from forced evictions, the victims are generally the most vulnerable members of Cambodian society.

Significant progress has been made in Cambodian labor rights through initiatives created by the US-Cambodian Bilateral Trade Agreement.<sup>4</sup> Annual monitoring of factories has revealed a steady improvement in working conditions and the Arbitration Council remains Cambodia's leading remedial mechanism in terms of transparency, independence, neutrality and lack of corruption. However, there remain areas of concern. These initiatives apply only to garment factories; they will not function without the continuing involvement of the International Labor Organization; and, there is concern that they will only endure as long as they are deemed financially astute by the Royal Government of Cambodia ('RGC'). Despite an improvement in overall labor conditions, the Labor Law 1997 remains insufficiently enforced at state-level, a problem exacerbated by the corruption and inefficiency of the judicial remedial mechanisms that govern labor rights violations.



**Above Right:** *Forced eviction of Burnt Bridge Village in Preah Sihanouk in April 2007. Photo by the Cambodian Human Rights Action Committee ('CHRAC').*

Despite a robust legal framework, arbitrary, and often violent, incursions on the freedoms of expression, assembly and association are commonplace in contemporary Cambodia.<sup>5</sup> Cambodian activists regularly face the threat of physical violence and criminal charges when attempting to voice their opposition to developments which affect their land and labor rights.

### **CCHR Recommends:**

- **that the RGC end all illegal forced evictions, and take reasonable steps to ensure that Cambodians affected by Economic Land Concessions, Social Land Concessions and**

redevelopment contracts are accorded the legal protections to which they are entitled under Cambodian law and international human rights law. These include: adequate notice, consultation, adequate remuneration and alternative land or housing of a similar standard to that which they have lost;

- that the RGC ensure the transparent management of Cambodia's natural resources, including its forests, extractive resources and sand;
- that the RGC fully implement the Labor Law 1997 and ensure that its benefits are felt outside the garment sector. Priority should be given to pressing issues, including the lack of a national minimum wage;
- that the RGC protect and respect the Cambodian Constitution and international human rights standards by permitting peaceful demonstrations, prosecuting individuals responsible for the murder of trade unionists and ceasing the violent deployment of the police and the Royal Cambodian Armed Forces in the suppression of the freedoms of expression, assembly and association in relation to land and labor rights; and
- that the RGC take active steps to encourage and facilitate a corporate culture of respect for human rights in Cambodia, by supporting and participating in initiatives such as the CCHR Business and Human Rights Project.

## **PILLAR TWO: BUSINESSES' RESPONSIBILITY TO RESPECT HUMAN RIGHTS<sup>6</sup>**

Businesses must comply with the laws of the host-state in order to maintain a legal licence to operate, including domestic legislation that prohibits human rights violations.<sup>7</sup> Even where such legislation is weak or unenforced, businesses must still comply with prevailing social norms to ensure their social licence to operate. One social norm which is almost universally acknowledged by stakeholders is compliance with the principles of relevant international human rights instruments, even where national law is absent. There is emerging evidence that a failure to respect human rights can have significant reputational and financial consequences for businesses, even in the absence of an enforced national legal regime.

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Businesses regularly violate the land rights of Cambodians.<sup>8</sup> Although mandatory evictions are necessary to the economic and infrastructural development of any state, in Cambodia these evictions are frequently carried out in breach of international standards and with little reference to the domestic legal regime. Residents are rarely consulted on planned evictions, and when consulted they are often offered substantially below the market-value of their land. Evictions are often violently administered by a combination of mercenaries hired by the businesses which are generally comprised of armed police and the Royal Cambodian Armed Forces.

*Below: A Phnom Penh garment factory.*

While international trade agreements have led to tangible improvements in the labor rights of workers in the garment industry, the Cambodian labor force in general is regularly exposed to deleterious working conditions.<sup>9</sup> Even despite the improvements in the garment sector, gender discrimination, forced overtime and the use of short-term contracts to circumnavigate labor regulations still occurs; and evidence suggests that the minimum wage is insufficient for workers to maintain a



decent standard of living. In other sectors, wages are often lower than those of garment workers, gender discrimination is endemic and child labor is widespread. While some multi-national corporations have sought to fulfill their responsibility to respect human rights, more businesses must be encouraged to improve adherence to labor rights.

Cambodians who are the victims of land and labor violations often rely on free expression, assembly and association to advocate their cause and seek redress. Yet public and private forces collude to deny them these rights.<sup>10</sup>

A range of businesses currently undertake corporate social responsibility activities in Cambodia, some of which have laudable philanthropic goals that have had a positive effect on human rights.<sup>11</sup> However, there are a limited number of examples of Cambodian businesses that have fully committed to respecting the human rights of all those affected by their operations in a targeted and systemic way.

In spite of this, a number of signs do augur well for the future. The reception by businesses to the CCHR Business and Human Rights Project has been overwhelmingly positive.<sup>12</sup> Only a few months after it was developed, nearly 30 Cambodian businesses had pledged their intention to take a more targeted approach to respecting rights by signing the Statement of Principles. Many more have participated in the dialogue process and heard leading businesses advocate the benefits of respecting rights and share their experience of doing so in practice. If a critical mass of businesses do commit to taking concrete steps to respect rights, Cambodian businesses' human rights record should improve. Responsible businesses, NGOs, the RGC and the general public can assist this process by giving commercial priority (e.g. when selecting suppliers, business partners and goods and services) to those businesses who have already made a public commitment to respect human rights.

**Below:** Leading Cambodian businessmen including Oknha Dr Mengly of MJQ Group and Mr In Channy of Aleda Bank at a CCHR Business and Human Rights conference.



**CCHR Recommends:**

- that businesses operating in Cambodia desist from the violation of land and labor rights, and the freedoms of expression, assembly and association in relation to those rights, with immediate effect;
- that businesses go beyond mere corporate social responsibility initiatives and adopt clear human rights policies, including the full integration of those policies throughout their operations to give the commitments meaning;
- that businesses recognize that the realization of human rights protections for all individuals affected by their operations – including host communities – requires them to comply with their obligations under Cambodian law, and, furthermore, to respect these rights even when Cambodian law is silent or unenforced;
- that businesses acknowledge their capacity to commit, or to be complicit in, human rights abuses throughout their sphere of influence, and develop internal systems to mitigate this risk, including human rights impact assessments for all current and future activities;
- that Cambodian businesses address their lack of understanding of human rights by participating in dialogue, cooperating with other stakeholders and joining multi-stakeholder initiatives, such as the CCHR Statement of Principles on Business and Human Rights in Cambodia; and
- that the RGC, civil society actors and responsible multi-national and local businesses support and promote those businesses which make a commitment to human rights and deliver on that commitment in practice by giving preference to them commercially.

### **PILLAR THREE: ACCESS TO EFFECTIVE REMEDIES<sup>13</sup>**

Providing access to remedial mechanisms is a fundamental element of both the state duty to protect and businesses' responsibility to respect human rights. Such mechanisms can be state or non-state based and may be judicial or may incorporate alternative dispute resolution techniques,<sup>14</sup> as set out below:

Judicial mechanisms:<sup>15</sup> Despite repeated public pledges by the RGC of its commitment to judicial and legal reform, and much investment in reform programs, there has been no progress in the most important issue affecting the courts: their lack of independence from political and financial influence. Judicial mechanisms in Cambodia are in practice utilized by the political, economic and social elite to ensure impunity.

State-based non-judicial mechanisms:<sup>16</sup> Corruption, a lack of transparency and professionalism, and over-arching political control beset the Cadastral Commission and the National Authority for the Resolution of Land Disputes, two non-judicial bodies with mandates to deal with land grievances. Political control also renders the other state-based non-judicial mechanisms ineffectual, and despite some progress, the independent National Human Right Institution which was first promised in 2006, is yet to materialize. State-based non-judicial mechanisms operate to reinforce the hegemony of the elite; and other initiatives cited by the RGC merely obscure the inherent injustice in the system by allowing the RGC to claim to be dedicated to the human rights of Cambodian citizens.

***The Arbitration Council is the leading example of a rights-compliant mechanism in Cambodia – it is widely considered to be legitimate, accessible, predictable, equitable and transparent.***

Non-state non-judicial mechanisms:<sup>17</sup> The Arbitration Council is the leading example of a rights-compliant mechanism in Cambodia – it is widely considered to be legitimate, accessible, predictable, equitable and transparent. With the exception of the Arbitration Council, CCHR's Community Hearings Program, the Beer Selling Industry of Cambodia's industry-based grievance mechanism (which has yet to be fully implemented) and a limited number of business-based internal grievance mechanisms which form part of corporate social responsibility strategies, non-state non-judicial mechanisms are underdeveloped in Cambodia. Nonetheless, given the chronic condition of the state-based administration of justice, such mechanisms may represent the best opportunity for the development of rights-compliant remedial mechanisms in Cambodia.

#### **CCHR Recommends:**

- **that the RGC engage in a thorough legislative overhaul of the judicial system, ending endemic politicization and corruption and ensuring adherence to international fair trials standards, by passing the new laws and following the recommendations of UN Special Rapporteur Surya Subedi in his recent report on the Cambodian judiciary;**
- **that the RGC immediately end the use of criminal charges in the suppression of the freedoms of expression, assembly and association;**
- **that the RGC ensure that all past victims of illegal forced evictions have access to an effective remedy and reform the Cadastral Commission and the National Authority for the Resolution**

of Land Disputes to clearly define their respective responsibilities and provide them with the independence, transparency and resources necessary to tackle high profile disputes and the backlog of cases;

- that the RGC adopt the draft legislation and establish the Cambodian National Human Rights Institution without delay, and that the RGC give this institution a mandate to monitor judicial activity in the country with full autonomy and independence; and
- that businesses recognize that disputes will arise (and that time and money will be saved if these disputes are resolved early) and undertake to implement grievance mechanisms capable of providing adequate remedies to victims.

## CONCLUSION

The picture of business and human rights in Cambodia sketched by this report reveals significant gaps and failures under all three of Ruggie's pillars. The RGC has repeatedly failed to discharge its duty to protect citizens from human rights abuses by businesses, a number of Cambodian businesses have shown a blatant lack of respect for human rights and most remedial mechanisms are underdeveloped, ineffective and/or corrupt. However, a detailed analysis of the situation also shows that substantive positive change is possible, and offers tantalizing prospects for improvement.

Particularly for businesses' responsibility to respect, where the case to take substantive action is becoming more commercially persuasive and businesses themselves seem more ready to listen. There is now a clearly emerging 'business case', 'legal case' and 'moral case' for businesses in Cambodia to take substantive measures to comply with their responsibility to respect human rights. As the rapid development of the garment industry has demonstrated, the widespread adoption of responsible business practices can also encourage increased foreign investment and economic growth.

*Right: De Castle Royal Tower under construction in Phnom Penh.*



There are benefits for businesses with a reputation for being socially responsible. Equally, there can be significant commercial costs to being associated with rights violations; costs which extend well beyond the effect on consumer demand as a result of a targeted campaign. Implementing and applying a human rights policy now will allow businesses to take advantage of these benefits, mitigate the risks and provide an invaluable early-mover advantage.

The Cambodian Constitution incorporates international human rights standards directly into Cambodian law as a group of rights and freedoms to which the Cambodian people are entitled. While there continue to be serious weaknesses in the implementation of an enforced legal

framework to support these rights, businesses retain a responsibility to comply. Liability and reputational damage for rights violations may also arise through the broadening net of extra-territorial measures or detailed reporting requirements imposed by other states.

Even in the absence of a quantified business case or the threat of specific legal sanctions being applied, morality should motivate Cambodian business to act. Human rights are universal; they are to be guaranteed to all human beings and businesses are capable of violating – and in the past have violated – these rights in Cambodia. All societal actors, including private enterprises, are obliged to respect human rights.

***Implementing and applying a human rights policy now will allow businesses to take advantage of these benefits, mitigate the risks and provide an invaluable early-mover advantage.***

*This is a report summary on Business and Human Rights in Cambodia. All the information is presented here in concise summary form representing conclusions drawn from the Full Report “Business and Human Rights in Cambodia: Constructing the Three Pillars” which is available in soft copy at: <http://sithi.org/business>.*

## ENDNOTES

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<sup>1</sup> See Full Report p. 11 for a more detailed treatment of this point, which is ultimately derived from Ruggie, J. 'Business and Human Rights: Further steps toward the operationalization of the "protect, respect and remedy" framework', Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, A/HRC/14/27, (June 2010) p. 3.

<sup>2</sup> See Full Report pp. 23-39.

<sup>3</sup> For references and additional information see Full Report pp. 24-31.

<sup>4</sup> For references and additional information see Full Report pp. 31-35.

<sup>5</sup> For references and additional information see Full Report pp. 35-38.

<sup>6</sup> See Full Report pp. 40-56.

<sup>7</sup> For references and additional information see Full Report pp. 17-18.

<sup>8</sup> For references and additional information see Full Report pp. 40-45.

<sup>9</sup> For references and additional information see Full Report pp. 46-49.

<sup>10</sup> For references and additional information see Full Report pp. 49-51.

<sup>11</sup> For references and additional information see Full Report pp. 51-54.

<sup>12</sup> For references and additional information, including a full list of those businesses who have signed the Statement of Principles, see Full Report pp. 54-55.

<sup>13</sup> See Full Report pp. 57-68.

<sup>14</sup> For references and additional information on Ruggie's conception of pillar three see Full Report pp. 20-22.

<sup>15</sup> For references and additional information see Full Report pp. 57-60.

<sup>16</sup> For references and additional information see Full Report pp. 60-64.

<sup>17</sup> For references and additional information see Full Report pp. 64-67.