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HOLDING THE ACTORS INVOLVED IN THE GLOBAL LAND GRAB TO ACCOUNT: THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS URGES ACTION FROM CAMBODIA

Worried about the potential impacts of the global land grab on the realization of human rights? So are the guardians of the International Covenant on Economic, Social and Cultural Rights (hereafter the Covenant).

During the recent review of Cambodia before the Committee on Economic, Social and Cultural Rights, several Committee members raised concerns about the potential effects a land deal with the Kuwaiti government could have on various economic, social and cultural rights in Cambodia, including the rights to food, housing and an adequate standard of living.

These concerns add the Committee's authoritative weight to efforts by human rights activists and others working to promote land-investment policies that support smallholder farmers, indigenous peoples and other marginalized land users.

3D → Trade - Human Rights - Equitable Economy is a Geneva-based NGO that aims to raise awareness about the impacts of trade and investment agreements on human rights. Using the Kuwait-Cambodia deal as an example, the following introduces a human rights approach to the global land grab and provides an example of how UN human rights bodies could be used to raise awareness about the issue, ultimately helping to hold States parties to account.

Background

Media reports claim that the Cambodian government is offering the Kuwaiti government a 70 to 90 year lease over a large land concession in Kampong Thom province.¹ In return, Cambodia will receive US\$546 million in soft loans for various infrastructure projects.² The size of the land concession has been estimated at somewhere between 50,000 and 130,000 hectares³ and will allegedly be used to produce rice for export back to Kuwait. Although the details of this deal are yet to be officially confirmed, it is emblematic of a rapidly accelerating and worrying trend through which numerous governments, including Kuwait, are acquiring large tracts of land in other countries to secure their future food supplies.⁴

This offer of land for Kuwaiti use may seem surprising, given that Cambodia is wracked by food insecurity, with over 35 percent of the population living below the poverty line and chronically

¹ Nick Paton Walsh, 'Cambodia Farm Land Sold to Wealthy Nations,' *Channel 4 News*, 29 January 2009 (television broadcast),

http://www.channel4.com/news/articles/politics/international_politics/cambodia+farm+land+sold+to+wealthy+nations/2914582

² This includes a dam on the Stung Sen (river) and a road in Battambang province on the Thai border. 'Petrodollars v Smallholders,' *The Economist*, 23 April 2009,

http://www.economist.com/world/asia/displayStory.cfm?story_id=13527987&source=hptextfeature&mode=comment&intent=postTop

³ Estimates taken from *The Economist*, *op. cit.*, and Nick Paton Walsh, *op. cit.*, respectively

⁴ The most comprehensive publication on this issue to date is Lorenzo Cotula et al., *Land grab or development opportunity? Agricultural investment and international land deals in Africa*, IIED-FAO-IFAD, 2009, <http://www.iied.org/pubs/display.php?> There are also a variety of other resources listed on 3D → THREE's website <http://www.3dthree.org/en/page.php?IDpage=51&IDcat=19>.

food insecure.⁵ Over one million people depend on the World Food Programme to meet their subsistence needs⁶ and, last year, the Cambodian government received US\$35 million in emergency food aid from the Asian Development Bank.⁷

The realization of the right to food for all Cambodians will clearly take time. However, according to the concept of progressive realization enshrined in the Covenant, the government must move as expeditiously as possible towards the realization of the right.⁸ Cambodia is also obliged to abide by the principle of non-retrogression and refrain from taking any steps that impede the progressive realization of the right to food.⁹

Specifically, as a State party to the Covenant, the Cambodian government is legally bound to respect, protect and fulfil the right to food of its citizens.

- The obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access.
- The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.
- The obligation to *fulfil (facilitate)* means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security.¹⁰

The following outlines how the Kuwaiti deal may affect these obligations and ultimately impede the progressive realization of the right to food in Cambodia.

Opaque negotiations

Cambodia's obligation to progressively realize the rights outlined in the Covenant require the government to consult all people potentially affected by this land deal and allow them to participate in the negotiating process.¹¹ This is not only a legal obligation under the Covenant, but is also part of Cambodia's domestic law, which states that public consultation must be carried out before the granting of land concessions.¹² Despite these commitments, negotiations with the Kuwaiti government have – thus far – been extremely opaque. The two governments have been discussing this deal for over eight months¹³ – yet journalists who visited Kampong Thom province, where the future leasehold may be located, report that the people living there have not received any information about it.¹⁴ This and similar cases led the Committee, in its Concluding Observations, to urge the State party to engage in consultations with relevant stakeholders and communities prior to

⁵ World Food Programme, *Integrated Food Security and Humanitarian Phase Classification (IPC) Pilot in Cambodia*, 2007, [http://www.foodsecurity.gov.kh/otherdocs/Integrated-Food-Security-and-Humanitarian-Phase-Classification-\(IPC\)-Eng.pdf](http://www.foodsecurity.gov.kh/otherdocs/Integrated-Food-Security-and-Humanitarian-Phase-Classification-(IPC)-Eng.pdf)

⁶ World Food Programme, *Cambodia*, 2009, <http://www.wfp.org/node/3418>

⁷ 'ADB Offers US\$35 Million in Food Aid for Cambodia,' *ASEAN Affairs*, 9 October 2008, http://www.aseanaffairs.com/adb_offers_35_million_in_food_aid_for_cambodia

⁸ Committee on Economic, Social and Cultural Rights, *General Comment 3: The nature of States parties obligations (Art.2, par.1)*, 1990, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument)

⁹ *Ibid.*

¹⁰ Committee on Economic, Social and Cultural Rights, *General Comment No. 11: The right to adequate food (Art. 11)*, 1999,

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?Opendocument)

¹¹ *International Covenant on Economic, Social and Cultural Rights*, Art.2, 16 December 1966 (date of adoption), 3 January 1976 (entry into force), <http://www2.ohchr.org/english/law/cescr.htm>

¹² Special Representative of the Secretary-General for human rights in Cambodia, *op. cit.*

¹³ This investment agreement is reported to have first been discussed in August 2008, when the Kuwaiti Prime Minister visited Cambodia. Brendan Brady and Nguon Sovan, 'Foreign Countries Scramble for Agricultural Land in Quest for Food,' *Phnom Penh Post*, 27 November 2008,

http://www.phnompenhpost.com/index.php/component/option.com_jcs/Itemid.53/crestrictid.22895/task.add/

¹⁴ Nick Paton Walsh, *op. cit.*

any development projects, with due regard to their right to participate in informed decisions that affect their lives.¹⁵

Threatening access to land and the right to food

The vast majority of Cambodians depend on land and natural resources to sustain their livelihoods and fulfil their right to food.¹⁶ In other words, land and other natural resources are an essential source of food, both through direct consumption and through providing the basis for income-generating activities that enable people to purchase food.¹⁷ If the Kuwaiti deal limits access to land and natural resources for smallholder farmers, indigenous peoples and others, this may have serious implications on the availability and accessibility of their food supplies.¹⁸

The Committee asked Cambodia to describe the measures in place to provide affected populations with alternative livelihood strategies, which would enable them to fulfil their right to adequate food, in cases of loss of access to land and other resources as a result of such deals. State delegates argued that this type of investment would help Cambodia become a leading rice exporter, creating jobs and generating wealth for the country as a whole. As emphasized by the UN Special Rapporteur on the right to food, this strategy may in fact lead to increased food insecurity because of the volatility of prices on international markets.¹⁹

Human rights law does not provide policy prescriptions regarding a government's chosen method of economic development. It does, however, require that measures are applied to ensure that all people, particularly the poorest and most marginalized, are able to benefit. Even if an export-oriented agricultural policy leads to some improvement of living standards in Cambodia, the government will be acting contrary to the right to food if it does not take specific steps to provide alternative means of cultivating or procuring food to anybody whose access to land and other resources are reduced by the deal. Furthermore, given that a significant percentage of the Cambodian population lack access to sufficient quantities of food, it is also imperative that the government clearly outline the strategies and policy measures that will enable this export-oriented agricultural project to improve access to sufficient quantities of culturally acceptable food for the poorest and most vulnerable members of its population.

New investment provisions: limiting the ability to fulfil human rights obligations?

On 1 April 2009, the Cambodian Parliament adopted three bills concerning the protection of investments between Kuwait and Cambodia.²⁰ These bills will apply, *inter alia*, to investments made by Kuwait under the land deal and may drastically limit the Cambodian government's policy space and ability to adopt measures to fulfil its commitments under the Covenant.

For example, let us assume that, once production starts, the Kuwaiti land concession is found to use large quantities of water for agricultural production. In this situation, the Cambodian government could decide to introduce measures to limit its water supply for the benefit of local farm and household use.²¹ This would be compatible with the Cambodian Land Law, which states that land

¹⁵ Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Cambodia*, 42nd Session, 4 to 22 May 2009, <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>

¹⁶ Special Representative of the Secretary-General for human rights in Cambodia, *Economic Land Concessions in Cambodia: A Human Rights Perspective*, Office of the High Commissioner for Human Rights (OHCHR), 2007,

<http://cambodia.ohchr.org/Documents/Reports/Thematic%20reports%20by%20SRSG/English/327.pdf>

¹⁷ Lorenzo Cotula, Moussa Djiré and Ringo W. Tenga, *The Right to Food and Access to Natural Resources*, FAO, 2008, http://www.fao.org/righttofood/publi09/natural_resources_en.pdf

¹⁸ *Ibid.*

¹⁹ Olivier De Schutter, Special Rapporteur on the right to food, *Large-scale land acquisitions and leases: A set of core principles and measures to address the human rights challenge*, 2009, <http://www.srfood.org/images/stories/pdf/otherdocuments/22-srftlarge-scalelandacquisitions-hrprinciples-9.6.09-2.pdf>

²⁰ Ros Dina, 'MPs adopt a law to protect Cambodia-Kuwait investments,' *Ka-Set*, 3 April 2009, <http://cambodia.ka-set.info/hot-news/news-kuwait-investment-law-deputy-sam-rainsy-economy-090402.html>

²¹ This section draws on Carin Smaller and Howard Mann, *A Thirst for Distant Lands: Foreign Investment in Agricultural Land and Water*, International Institute for Sustainable Development (IISD), 2009,

concessions may not diminish water reserves used by people in their daily lives.²² This would also be in line with Cambodia's obligation to fulfil the human right to water, which the Committee has clarified is a fundamental component of the right to food and other related rights.²³

However, such a measure could constitute an indirect expropriation under international investment law, even if undertaken in the public interest. If the Kuwaiti side loses out financially, the Cambodian government may be forced to pay compensation. Whether such policy changes are grounds for compensation depends on the provisions in the bills governing investment between the two countries.²⁴

During the session, Committee members sought explanations regarding Cambodia's investment code – in particular regarding the kind of guarantees provided to investors and whether the deal with Kuwait has a clause allowing the Cambodian government to retain food that may be required to feed its people. The Cambodian delegates stated that the national policy was to provide equal treatment to both foreign and domestic investors, but did not elaborate further. Cambodia's designation as a "country for sale" by a number of civil society organizations²⁵ prompts speculation that the requirements of foreign investors may be more than catered for – to the detriment of clauses that could promote the needs of the population and the realization of economic, social and cultural rights.

When asked whether impact assessments are carried out prior to such investment deals, the delegates explained that all economic land concessions were subject to feasibility studies, which allegedly take into account the potential effects on, *inter alia*, housing and living conditions. This assertion is strongly refuted by NGOs working in Cambodia²⁶. The Committee also seemed unconvinced, emphasizing the need for the government to carry out social and environmental impact assessments in its Concluding Observations.²⁷

What next?

The questions and comments raised by the Committee during its dialogue with the Cambodian government demonstrate members' concern about the threats the land deal with Kuwait poses to the realization of economic, social and cultural rights in Cambodia. Of course, the UN body's recommendations may be ignored by a government whose disregard for the rights of its citizens is notorious. Nevertheless, the Concluding Observations offer useful advocacy tools for groups seeking to hold the Cambodian State to account, strengthening demands for full consultation with potentially affected communities and a human rights-oriented impact assessment of the Kuwaiti land deal.

Zoë Goodman
Programme Officer
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http://www.iisd.org/pdf/2009/thirst_for_distant_lands.pdf. See also Lorenzo Cotula, *Legal Tools for Citizen Empowerment: Getting a Better Deal from Natural Resource Investment*, International Institute for Environment and Development (IIED), 2009, <http://www.landcoalition.org/cpl-blog/wp-content/uploads/legal-tools-for-citizens-empowerment-africa.pdf>

²² Special Representative of the Secretary-General for human rights in Cambodia, *op. cit.*

²³ Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/G03/402/29/PDF/G0340229.pdf?OpenElement>

²⁴ Carin Smaller and Howard Mann, *op. cit.*

²⁵ See, for example, Global Witness, *Country for Sale: How Cambodia's elite has captured the country's extractive industries*, 2009, http://www.globalwitness.org/media_library_detail.php/713/en/country_for_sale

²⁶ Land and Housing Working Group, *Land and Housing Rights in Cambodia Parallel Report 2009*, Submission to the 42nd Session of the Committee on Economic, Social and Cultural Rights, April 2009, [http://www.cohre.org/store/attachments/Land%20and%20Housing%20Rights%20in%20Cambodia%20\(final\).pdf](http://www.cohre.org/store/attachments/Land%20and%20Housing%20Rights%20in%20Cambodia%20(final).pdf)

²⁷ Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Cambodia*, 42nd Session, 4 to 22 May 2009, <http://www2.ohchr.org/english/bodies/cescr/cescrs42.htm>