



**Parallel Report submitted by the
Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)
to the Committee on Economic, Social and Cultural Rights
on the occasion of the consideration of the
Fifth Periodic Report of Australia
during the Committee's 61st Session**

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1. Introduction

1. Equitable Cambodia is a Cambodian organization working to promote equitable development and the progressive realization of human rights in Cambodia through research, evidence-based advocacy, community empowerment and support for grassroots-led social change.

2. Inclusive Development International (IDI) is a human rights organization working to make the international economic system more just and inclusive. IDI supports and builds the capacity of grassroots organizations and communities to defend their land, natural resources and human rights against threats from harmful investment, trade and development projects. Through research, casework and policy advocacy, we work to strengthen human rights regulation and accountability of corporations, financial institutions and development agencies.

3. The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international non-governmental human rights organization which seeks to advance the realization of economic, social and cultural rights throughout the world, tackling the endemic problem of global poverty through a human rights lens. The vision of the GI-ESCR is of a world where the human rights framework reflects the real world experiences of all of us, effectively furthering social and economic justice and human dignity, and catalyzing change from the local to the global, back to the local.

4. IDI and GI-ESCR are members of the Extra-Territorial Obligation Consortium (ETO Consortium) and GI-ESCR serves on the Consortium's Steering Committee.

5. The Committee has increasingly monitored compliance with and provided recommendations related to extra-territorial obligations under the International Covenant on Economic, Social and Cultural Rights. Such scrutiny should be undertaken during the periodic review of Australia, particularly since that State Party's decisions and actions, whether individually or collectively, often impact Covenant rights abroad.

2. Extra-Territorial Obligation to Protect: Business Enterprises

6. The Maastricht Principles on Extra-Territorial Obligations in the Area of Economic, Social and Cultural Rights provide guidance. The Maastricht Principles were adopted in 2011 by leading international human rights experts and provide a concise restatement of existing customary and conventional international law in the area of extra-territorial human rights obligations.¹ Principle 24 makes clear that the extra-territorial obligation to protect includes that "All States must take necessary measures to ensure that non-State actors which they are in a position to regulate, as set out in Principle 25, such as private individuals and organisations, and transnational

¹ The Maastricht Principles are a restatement of law based on existing conventional and customary international law. They were adopted by leading experts from around the world, including a former member of the Human Rights Committee and members and former members of other treaty bodies. Drawn from international law, the Maastricht Principles clarify the content of extra-territorial State obligations to realize economic, social and cultural rights but also explicitly apply to the full spectrum of civil, cultural, economic, political and social rights.

corporations and other business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights.² Principle 25 states that:

States must adopt and enforce measures to protect economic, social and cultural rights through legal and other means, including diplomatic means, in each of the following circumstances: í b) where the non-State actor has the nationality of the State concerned; and c) as regards business enterprises, where the corporation, or its parent or controlling company, has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned;í .³

7. In the event that a State Party fails to abide by Covenant rights extra-territorially, access to justice, including accountability mechanisms and effective remedies, must be provided. According the Maastricht Principle 37:

States must ensure the enjoyment of the right to a prompt, accessible and effective remedy before an independent authority, including, where necessary, recourse to a judicial authority, for violations of economic, social and cultural rights. Where the harm resulting from an alleged violation has occurred on the territory of a State other than a State in which the harmful conduct took place, any State concerned must provide remedies to the victim.

To give effect to this obligation, States should:

- a) seek cooperation and assistance from other concerned States where necessary to ensure a remedy;
- b) ensure remedies are available for groups as well as individuals;
- c) ensure the participation of victims in the determination of appropriate remedies;
- d) ensure access to remedies, both judicial and non-judicial, at the national and international levels; and
- e) accept the right of individual complaints and develop judicial remedies at the international level.⁴

8. The Committee has increasingly scrutinized ETOs, including the ETO to protect requiring regulating corporations in order to prevent human rights violations abroad and requiring access to justice, accountability and remedies in event of such violations.⁵ The State Party should be held to this important standard.

² *Id.* at Principle 24.

³ *Id.* at Principle 25.

⁴ *Id.* at Principle 37.

⁵ See Concluding Observations on the United Kingdom (2016), Canada (2016), Taiwan (2105), China (2015), Austria (2013), Belgium (2013), Norway (2013), Germany (2011).

3. Australian ANZ Bank Financing of Human Rights Violations in Cambodia

9. In 2010 and 2011, land and housing in over 20 villages in Kampong Speu province, Cambodia was seized and bulldozed by military, police and private security to establish the Phnom Penh Sugar (PPS) plantation, owned by Cambodian businessman and Senator, Ly Yong Phat. This occurred without court order or warrant. Up to 7,000 people were forced off their land. Almost 5,000 hectares of residential and farming land was illegally seized from over 1400 households. 4,800 hectares of community forest that supported rural livelihoods was also razed. The company failed to respect key provisions of the Cambodian Land Law, including those that recognise existing landholders' tenure rights.

10. Today, many of the victims of the forced evictions face extreme poverty as a result of losing their land. Families are deeply indebted, children are taken out of school and people can no longer access medical care. Those who speak out have faced threats, intimidation and arrest.

11. In 2010, Australian Bank, ANZ, through its controlled entity ANZ Royal, began exploring a USD\$40 million corporate loan to PPS and issued the loan in early 2011. PPS's sole business is the sugarcane plantation and adjacent refinery in Kampong Speu province.

12. The forced evictions and illegal land seizures were widely reported in the English-language Cambodian press available online (The Cambodia Daily and Phnom Penh Post) prior to ANZ's loan being made. Thus, a basic level of due diligence would have identified these serious human rights abuses and the foreseeability of additional violations. Nonetheless, ANZ approved the loan and did not place any requirements on PPS to address human rights violations in the loan agreement. In doing so, ANZ failed to abide by its own public commitments to human rights and other social and environmental standards.

13. In addition, during the loan period, PPS was complicit in a host of human rights abuses including on-going forced evictions, arbitrary detention, child labour and unsafe work practices that led to worker deaths. Amongst many other media reports in Australia and Cambodia, Australia's ABC reported on PPS's violent land seizures in Kampong Speu in January 2012. The journalist noted: "We tried to ask the PPS company about their operations in Kampong Speu, but were stopped at the gate by military police with AK47s."⁶ Despite the serious human rights violations being perpetrated by its client and repeatedly reported in mainstream media, ANZ did nothing to use its leverage to address these abuses.

14. Once ANZ's financing of PPS was revealed through a leaked document in January 2014, impacted communities called for ANZ to work to ensure their harms were remediated. The communities called on ANZ to use its leverage with PPS to provide redress, and to contribute to the provision of remedies itself, commensurate to its contribution to the human rights violations. Under pressure from NGOs and

⁶ "The Battle for Cambodian farm land," *ABC Radio Australia*, 18 January 2012, available at: <http://www.radioaustralia.net.au/international/radio/onairhighlights/the-battle-for-cambodian-farm-land>

negative publicity, ANZ organized one meeting in February 2014 between representatives of the affected communities and PPS. In June 2014, ANZ and PPS ended their relationship without notifying affected communities, and ANZ thereafter denied any responsibility for the human rights violations or their remediation. To this day, victims have not received remedies for the human rights violations they suffered.

4. Denial of Access to Justice in Australia

15. In October 2014, NGOs Inclusive Development International and Equitable Cambodia, on behalf of 681 families forcibly evicted by PPS, submitted a complaint against ANZ Bank to the Australian National Contact Point for the OECD Guidelines for Multinational Enterprises (ANCP). The complaint was submitted to the ANCP in the absence of any other viable avenues to access justice in either Cambodia or Australia.

16. The NGOs on instruction from the affected families agreed to attempt to remedy the human rights violations through a mediation process facilitated by the ANCP. However, because of very onerous confidentiality terms imposed by ANZ, which affected families could not have feasibly agreed to without putting themselves at risk of legal action being taken against them, substantive mediations involving representatives of affected families were impossible.

17. The complaint was therefore subject to examination by the ANCP. In May 2016, some 20 months after the complaint was submitted, the ANCP sent the NGOs a draft final decision. The draft statement contained several important factual inaccuracies and plainly erroneous findings of fact; omitted critical parts of the complaint, including parts relating to child labour and worker deaths and an entire group of complainants; and erroneous interpretations of the Guidelines for Multinational Enterprises, inconsistent with the United Nations Guiding Principles on Business and Human Rights. Moreover, the process followed by the ANCP and the draft final decision demonstrated a lack of impartiality and a deep bias towards ANZ, including ongoing discussions with the bank but no discussions whatsoever with the NGOs or victims, and unquestioned acceptance of assertions made by ANZ but disregard for information provided by the NGOs throughout the process. On 25 May 2017, the NGOs provided extensive comments to the ANCP on its draft statement detailing all of these substantive and procedural problems.

18. As of April 2017, the ANCP has not responded to these comments and has not released a final statement.

19. As such, the victims have been denied access to justice through the ANCP or any other accountability mechanism in Australia.

5. Australia's Failure to Meet its Extra-Territorial Obligation to Protect

20. Australia has failed to take necessary measures to ensure Australian Bank ANZ does not contribute to the violation of economic social and cultural rights overseas and has failed to ensure access to justice and effective remedies for the victims. The State has established the ANCP, but failed to ensure that it functions in a

legitimate and rights-compatible manner and in accordance with other effectiveness criteria for non-judicial grievance mechanisms set out in the UN Guiding Principles on Business and Human Rights.

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