



## **CCHR Briefing Note – March 2014**

### **Land Reform**

#### **Executive Summary**

This Briefing Note provides an overview and analysis of how the Kingdom of Cambodia's ("Cambodia") recent history has adversely affected the development of land ownership and registration; discusses the structural, legal and societal causes behind the dispossession of land; considers how the Royal Government of Cambodia (the "RGC") has both failed to safeguard human rights and actively violated those rights; and offers recommendations aimed at addressing these issues.

The first section of this Briefing Note provides an overview of the history of land ownership in Cambodia. The second section examines the main causes of land conflicts in Cambodia: the extensive granting of land concessions; a consistently flawed land measurement and titling processes; the intimidation and violence faced by affected communities; and a lack of conflict resolution mechanisms. Finally, the third section provides a conclusion of the current land situation in Cambodia, accompanied by a series of recommendations from the Cambodian Center for Human Rights ("CCHR"), among which are the following key suggestions:

- Produce detailed and concrete propositions for land reform, developed in consultation with civil society actors and affected communities;
- Make all information on land concessions, classification of State land and protected areas available and publicly accessible;
- Respect people's ownership and possession rights and avoid further exclusions from the RGC's land titling program;
- Accelerate the registration process for indigenous communities to receive collective land titles;
- Organize meaningful, inclusive, and public consultation with affected communities when development projects are going to take place;
- Conduct social and environmental impact assessment before the granting of land concessions;
- Put in place a moratorium on evictions;
- Ensure that all relocation sites have adequate services;
- Hold accountable private actors responsible for land grabbing and illegal evictions;
- Put an end to all political and judicial harassment and violence against peaceful protesters.

This Briefing Note is written by CCHR, a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

## **Background: Cambodia's Land History**

Cambodia's turbulent political history has produced frequent changes in the land rights framework, culminating in tenuous land rights throughout the country. In particular, the devastating upheaval of the Khmer Rouge regime from 1975 to 1979, which destroyed the previous system of private land ownership and record keeping, had a disastrous impact.

It was then not until 1992<sup>1</sup> when new land laws were adopted by the RGC that people were once again permitted to privately own and transfer land. However, it is only in 2001 that the Land Law not only recognized an individual's right to own, transfer and possess land, but also provided for a much-needed land ownership registration system.<sup>2</sup> Other legal regulations followed, among which, in 2005 was Sub-decree No. 146, which allowed for the RGC's awarding of ELCs for commercial interests, and the enactment of the Cambodian Civil Code in 2011.<sup>3</sup> The implementation of these laws and regulations has received much-deserved criticism as they serve the interests of the elite, rather than those of ordinary Cambodian citizens.

As a consequence of the Khmer rouge and the misapplication of the legislation, most Cambodians lack a land title and as such are more vulnerable to rights violations, especially in a context where fast economic development is strongly promoted. CCHR estimates that some 47,616 Cambodian families have been adversely affected by land disputes throughout the country since 2007<sup>4</sup> with Khmer citizens and ethnic minorities being denied the right to housing, land, and to their livelihoods. In Phnom Penh alone it has been estimated that 10% of the population has either been forcibly evicted, or in certain cases, evicted through voluntary planned resettlement since 2001.<sup>5</sup>

In Cambodia there are various factors contributing to land conflict and dispossession. Land concessions, a flawed land registration and titling process, threats and intimidation faced by affected communities and a lack of conflict resolution mechanisms have all acted to cause and exacerbate land disputes. The following section examines this further.

## **Causes of Land Conflict and Dispossession**

Despite the protections guaranteed in the Constitution of the Kingdom of Cambodia (the "Constitution") and embodied within national and international laws, the RGC allows the seizure of land and resources without regard to due process and to the legal framework. This is in part due to pervasive corruption and a culture of impunity within the RGC.

### Land concessions

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<sup>1</sup> Land Law 1992, Kret-Chhbab/100 (10 August 1992) (trans.).

<sup>2</sup> Land Law 2001, NS/RKM/0801/14 (30 August 2001) (trans.), Article 10.

<sup>3</sup> For a complete analysis of the current international and domestic legal framework in Cambodia please see CCHR, "Land in Conflict: An Overview of the Land Conflict in Cambodia," (Report), (December 2013), <<http://bit.ly/1jNbQJA>>

<sup>4</sup> Sithi.org. 'Human Rights Map, Reported Land Conflict, Analyses of Land Cases,' (November 2013) <<http://bit.ly/1j1n9su>>

<sup>5</sup> Amnesty International, 'The State of the World's Human Rights' (Report) (2012), <<http://bit.ly/1mJyJx2>>

Large areas of land have been, and continue to be transferred by the RGC to commercial interests in the forms of ELCs, Social Land Concessions (“SLCs”), land reclassifications (“RLCs”), and Special Economic Zones (“SEZs”). Considerable tracts of land are often granted without: (1) respecting individual property and possession rights (2) adhering to the legal limitations on the size of the land awarded; (3) properly classifying the land as being legally eligible for such transfers; (4) conducting the required preliminary environmental and social impact assessments; and (5) respecting the right of people to be consulted and fairly compensated. In particular, despite the limitation that one single owner cannot be granted more than 10,000 hectares of land as an ELC,<sup>6</sup> land owners have managed to circumvent this legal requirement by registering different names for their multiple companies.

In particular, ELCs have been used by the RGC as a tool to transfer large tracts of land from the Cambodian people to commercial interests, rewarding the elite at the expense of ordinary Cambodian citizens. According to CCHR’s research, 1,087,187.10 hectares of land have been granted in ELCs since 2008.<sup>7</sup>

Land concessions often have had a devastating impact on the communities that occupy the granted land. In a recent case in Stung Treng province, villagers have been relegated to a landlocked area of land completely cut off from vital life-sustaining resources that they previously enjoyed. Entirely surrounded by two ELCs granted to Vietnamese and Chinese companies in 2010, the villagers’ access to food, water and roads has been thoroughly restricted, essentially reducing their status to that of prisoners on their own land.<sup>8</sup> This restriction of access was in direct violation of Article 58 of the Land Law 2001 whereby an ELC “*shall not violate roadways or transportation ways or sidewalks or their borders and the ground necessary for their maintenance, nor to waterways, pools, ponds, and water reserves to be used by the people in their daily lives.*”<sup>9</sup> Another example highlighting the impact of eviction is the case of Prek Chik village in Koh Kong province, where the average yearly income of victims of forced evictions has decreased from \$2,070.31 to \$315.89.<sup>10</sup> These ELCs would not have been awarded had the RGC observed the rights of the villagers and performed a social impact assessment prior to making a decision.

On 7 May 2012, the RGC issued a moratorium on ELCs known as “Directive 1”<sup>11</sup> as a measure to rectify existing problems surrounding land concessions. The Directive called for the prohibition on new ELCs, the evaluation of all existing ELCs, and the revocation of ELCs found to breach legal and contractual provisions.<sup>12</sup> However, a crucial loophole exists within the moratorium, ELCs that were under

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<sup>6</sup> Sub-decree on Economic Land Concessions, No. 146 ANK/BK (27 December 2005) (trans.).

<sup>7</sup> Sithi, “Sub-Decree on Land Concessions,” <http://bit.ly/1dpvVS7>

<sup>8</sup> Phak Seangly & Bridget Di Certo, ‘Displaced Villagers Isolated, Emaciated’ *The Phnom Penh Post*, 8 August 2012.

<<http://bit.ly/1aNAAZK>>

<sup>9</sup> Law on Forestry, ‘Chapter 9: Customary User Rights, Management of Community Forest and Private Forest’ NS/RKM/0802/016 (31 August 2002) (trans.).

<sup>10</sup> CCHR, ‘Cambodia: Land in Conflict, An Overview of the Land Situation’, (Report) (December 2013) < <http://bit.ly/1jNbQJA>>

<sup>11</sup> Order on the Strengthening Measure and Effectiveness of Economic Land Concession Management No. 01BB (May 2012) (“Directive 1”), <<http://bit.ly/1hcN4lm>>

<sup>12</sup> Ibid

consideration when the moratorium was announced are exempt from its application.<sup>13</sup> Subsequently, nine ELCs were granted in 2012 after the moratorium came into effect, encompassing 66,314 hectares of land.<sup>14</sup> Moreover, the criteria for the scrutiny of those ELCs that had already been awarded to determine their compliance with the law have not been disclosed; thus the moratorium completely lacks transparency.

Although the RGC complied with the moratorium in 2013, the number of SLCs granted was more than five times the number granted in 2012; in 2012 only 83 SLCs were granted totaling 260,762 hectares - as opposed to the 420 granted in 2013, which totaled 502,404.49 hectares.<sup>15</sup> Of great concern are documented cases of forced land evictions in order to make way for SLCs, which further raises concerns that despite the moratorium on ELCs, land grabbing and conflict will continue.

#### Flawed land registration and titling processes

There are two regimes of private property rights under the Land Law: ownership rights and possession rights. In the absence of a hard land title, an individual has possession rights over their land if certain criteria are met: the possession must predate August 2001, and it must have been unambiguous, non-violent, known to the public, continuous and in good faith.<sup>16</sup> Such land possession is registered at a local level of government, and not at the national level. An individual can claim full ownership rights to their land if it has been registered at a national level and the Cadastral Commission has issued a valid land title.<sup>17</sup> Although private land is protected against eviction, commercial interests seeking the land are more equipped to challenge residents who do not possess valid land titles.

Cambodia lacks the administrative capacity to register and issue land titles for the entire country. In addition, most prospective owners do not possess any of the documents required to obtain hard land titles and even with the necessary documentation, many simply cannot afford the additional transaction costs involved in obtaining one.<sup>18</sup> Exacerbating these issues is the RGC's unwillingness to help its own people in the registering and preserving of their land, evidenced by its failure to provide titling process information and assistance to them, and in also actively interfering with others' efforts to do so. The obstacles to obtaining a hard title means that most privately owned land in Cambodia is held under possession rights, not ownership rights.

The RGC lacks the administrative ability to both record and to make land ownership records available to the public. When the RGC first allowed for the distribution and titling of land in 1992, 4.5 million first

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<sup>13</sup> ADHOC, 'A Turning Point? Land, Housing and Natural Resources Rights in Cambodia in 2012' (February 2013), <<http://bit.ly/1eFH8wu>>

<sup>14</sup> CCHR, 'CCHR's Monitoring of Land Concessions in Cambodia in 2012' (Mini-Report) (14 February 2013) <<http://bit.ly/1hNH0lv>>

<sup>15</sup> Sithi, "Sub-Decree on Land Concessions," <http://bit.ly/1dpvVS7>

<sup>16</sup> Land Law, Article 38

<sup>17</sup> Land Law, Glossary, ('Ownership').

<sup>18</sup> Inter Ministerial Prakas on Determination of the revenues from the Cadastral Service Fee, No. 377 SHV (28 May 2002) (trans.).

registration claims<sup>19</sup> were received by the land register. With few skills, resources, or a workable system for such a massive undertaking, the registration office immediately became backlogged and effectively non-functional.

Between, 2002 and 2009 the World Bank, in partnership with some countries, worked with the RGC to develop a modern land registration system (“LMAP”).<sup>20</sup> However, it was not able to successfully implement the registration and record-keeping goals that it set for itself at the outset.<sup>21</sup> Residents of disputed land were largely excluded from LMAP, including those inhabiting the area around Boeng Kak Lake. In 2011, the RGC prematurely terminated LMAP after the World Bank suspended its funding following a complaint filed by families from Boeng Kak Lake. The complaint demonstrated that the families were now facing eviction because they had been excluded from the LMAP registration process, and as such the program failed to comply with the Bank’s safeguard policies.

In late June 2012 over 1,000 student volunteers were dispatched across selected provinces in Cambodia and began implementing the RGC’s new land titling campaign. According to the RGC, as of 20 June 2013, 380,000 land titles had been delivered. However the way in which the campaign has so far been implemented raises serious concerns. With a mere two days of training coupled with a lack of authority and experience, student volunteers are unable to adequately complete their assignments. Many families have reported facing significant problems such as not receiving land title documents; authorities withholding land titles, whilst others have lost land during the measuring process. Moreover, the campaign has excluded disputed areas and indigenous collective land, essentially ostracizing the most vulnerable populations.

Highlighting the ineffectiveness of the land titling campaign is an example, reported in the media, from a village in Battambang, where villagers possessed a letter issued by the RGC and signed by Prime Minister Hun Sen granting 558 hectares of land to 415 families. Despite this, student volunteers assigned to measure the land took conflicting orders from local authorities. As a result they were instructed to ignore the award letter, and measured a lesser 500 hectares, leaving the balance of the land to a group of corporations.<sup>22</sup>

The land titling campaign has also been largely ineffective due to the complexities of the registration process, particularly for indigenous peoples. The 2001 Land Law specifically provides that indigenous peoples’ right to collective ownership of land be established and recognized.<sup>23</sup> However, the distribution of collective titles has been almost chimerical, with only five communities, out of 114<sup>24</sup> who

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<sup>19</sup> Food and Agriculture Organization of the United Nations, ‘Land Administration in Post Conflict Cambodia’ (2004) FIG <<http://bit.ly/1gD1Krv>>

<sup>20</sup> World Bank, Land Management and Administration Project <<http://bit.ly/KP4qpV>>

<sup>21</sup> World Bank, ‘Statement from the World Bank on Termination by Royal Government of Cambodia of the Land Management and Administration Project’ (6 September 2009) <<http://bit.ly/1bm0pQk>>

<sup>22</sup> May Titthara, ‘Land dispute back in court’ *The Phnom Penh Post*, 20 November 2012 <<http://bit.ly/1hqntlv>>

<sup>23</sup> Land Law 2001, Articles 23-28.

<sup>24</sup> Franz-Volker Müller & Günther Zülsdorf, ‘Old Policies – New Action: A Surprising Political Initiative to Recognize Human Rights in the Cambodian Land Reform,’ Annual World Bank Conference on Land and Poverty 2013, 11-8 April, 2013

have applied, having completed the full process.<sup>25</sup> The process for registration of collective land title is lengthy and extremely complex. In practice, there are 11 steps required for a community to first register itself and then be able to apply for land title, and the process involves three government ministries. As a consequence, indigenous peoples have been subjected to land grabbing, encroachment on their sacred grounds, and are threatened with the loss of their traditions and culture. This abuse of their land rights is evidenced in Mondulkiri, where the RGC has granted around 10,000 hectares in ELCs to *Socfin-KCD* for rubber plantations, starting in 2008. 850 families, which belong to the indigenous Bunong community, have been affected by the concessions. Residents have reported having suffered physical as well as psychological effects as a consequence of damages inflicted upon their spiritual forests and burial grounds.<sup>26</sup> This devastating impact has occurred despite being in violation of the Land Law.

#### Threats and intimidation by the RGC and companies' staff

The RGC often employs intimidation and physical violence to coerce affected people rather than affording them an efficient and transparent process whereby their grievances can be fairly addressed. Ahead of evictions, companies regularly deploy security personnel or State security forces to protect their concession, often leading to intimidation and harassment of the local communities. Likewise, it is commonplace for the evictions themselves to be marred by extreme violence.

A notorious case of the use of excessive violence to evict a community is that of Borei Keila. Previously home to 1,776 families, Borei Keila encompasses 14.12 hectares of land and is located in central Phnom Penh. In 2003, the RGC granted a SLC worth over 4.6 hectares in Borei Keila to the *Phanimex Company* ("Phanimex"). Under this agreement, *Phanimex* was contracted to build ten buildings on two hectares of the land to house the residents of Borei Keila, and in exchange, received development rights for the remaining 2.6 hectares. After only building eight of the ten residential buildings, *Phanimex* requested the land earmarked for the two other buildings from the RGC, claiming a lack of funds and leaving between 300 to 400 families without permanent housing.<sup>27</sup> On 3 January 2012, 300 families remaining living in Borei Keila, were violently evicted from their homes. Construction workers destroyed their houses, while accompanying security forces used rubber bullets and tear gas against the residents. More than 64 people were reportedly injured and eight were arrested during the eviction.<sup>28</sup>

Moreover, land rights activists who attempt to challenge forced evictions and defend their rights are often harassed and imprisoned without legal basis. A recent report asserted that in terms of the use of lethal force against activists, 2012 was the most violent year ever documented.<sup>29</sup> Relating to the Borei Keila case, in October 2013 police used batons and punched protestors, who were calling Phnom Penh Governor Pa Socheatvong to honor his promise to resolve their land dispute. The disproportionate use

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<sup>25</sup> OHCHR, '3 indigenous communities to receive communal land titles', (14 December 2001), <http://bit.ly/Hxp24M>

<sup>26</sup> Fidh, 'The impact of rubber plantations by Socfin-KCD on indigenous communities in Bousra, Mondulkiri' (Report) (October 2011) <<http://bit.ly/1isf98h>>

<sup>27</sup> CCHR, 'Cambodia: Land in Conflict, An Overview of the Land Situation', (Report) (December 2013) <<http://bit.ly/1jNbQJA>>

<sup>28</sup> Amnesty International Report 2013, 'The State of the World's Human Rights', Index: POL 10/001/2013, <<http://bit.ly/1j1p4x8>>

<sup>29</sup> LICADHO, 'Human Rights 2012: The Year in Review', (February 2013) <<http://bit.ly/1j3iWV6>>

of violence by authorities left at least three women unconscious.<sup>30</sup> The repression of land rights activists is also evidenced by the case of Yorm Bopha, a prominent Boeng Kak activist who spent 444 days in prison for a crime she did not commit. The lack of legal basis for Bopha's conviction has led to the widespread belief that the case against her was fabricated in order to silence her.<sup>31</sup> Bopha was eventually released on bail on 22 November 2013.

#### Impunity and no conflict resolution mechanisms

There are five conflict resolution mechanisms that operate in Cambodia: the Commune Councils, the Administrative Committees, the Cadastral Commission, the National Authority for Land Conflict Resolution, and the judiciary. However, as noted by Special Rapporteur Surya Subedi, *"the time consuming administrative and procedural burden, financial costs associated with submitting a complaint... and a lack of faith in the system amounts to these mechanisms being used inconsistently."*<sup>32</sup> The lack of an effective and independent dispute resolution mechanism and access to remedy is exacerbated by rampant impunity and the judiciary's lack of independence. Incidences of violence, extortion and the violation of peoples' land rights by the authorities are rarely investigated.

Rural villagers are particularly vulnerable when confronted with challenges to their land by actors who operate with complete impunity. The case of Hoy Mai from Bos village, Oddar Meanchey province, is demonstrative of this. In October 2009, Hoy Mai and her family, along with 118 other households in the village, were forcibly evicted as part of an ELC granted to *Angkor Sugar Company*. The villagers' homes were burnt down and their possessions and farmland destroyed. Despite promises that she would receive another plot of land, Hoy Mai received neither land nor compensation, leaving her and her children homeless and impoverished. When Hoy Mai, who was at the time five months pregnant, attempted to appeal to the authorities in Phnom Penh, she was charged with violation of the Forestry Law and imprisoned. She was forced to give birth in jail. Instead of receiving a fair trial, after eight months in detention the court told Mai that she would be released only after she signed an agreement to withdraw all claims to her land in Bos village and accepted replacement land.<sup>33</sup>

#### **Conclusion and Recommendations**

The grave land situation in Cambodia has transpired as a result of various factors, including the country's complex history. Ultimately however, the responsibility for the intensification of land disputes throughout the country lies with the RGC. The RGC operates in a manner that lacks transparency, violates the law and uses violence against its population with total impunity, which has had the greatest impact on the poorest and most vulnerable in Cambodia.

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<sup>30</sup> Khouth Sophak Chakrya, 'Police beat Borei Keila activists blocking road', *The Phnom Penh Post*, 18 October 2013

<<http://bit.ly/1cnp38p>>

<sup>31</sup> CCHR, 'Legal Analysis of the Charging and Sentencing of Cambodian Land Rights Activist Yorm Bopha (Criminal Case Number 1560)', (Legal Analysis) (2 June 2013), <<http://bit.ly/OYKKma>>

<sup>32</sup> Surya P. Subedi, 'Report of the Special Rapporteur on the situation of human rights in Cambodia, Add: A human rights analysis of economic and other land concessions in Cambodia', A/HRC/21/63/Add.1/Rev.1, (10 October 2012),

<<http://bit.ly/17FL8bq>>

<sup>33</sup> Amnesty International, 'Eviction and resistance in Cambodia: Five women tell their stories' (November 2011),

<<http://bit.ly/1foO8xF>>

The RGC should ensure that existing laws are properly implemented, including by state authorities and the private sector. It is only through urgent and comprehensive action by the RGC that desperately needed land reform can take place so that it can meet its human rights obligations to its people under domestic and international law. As such, CCHR makes the following recommendations to the RGC:

**Concerning transparency:** The RGC and relevant ministries, should:

- Make all information on existing and cancelled land concessions available and publicly accessible;
- Make publicly available information on mapping, classification and registration of State public and private land as well as information regarding reclassification;
- Make publicly available an updated list of protected areas;
- Ensure that reclassification of State public land and sustainable use zones is transparent and open;
- Ensure the land concession bidding process is competitive and transparent;
- Extend the land moratorium on the granting of new ELCs and publicly disclose how many ELCs were in process on 7 May 2012 and make the review of the concession system public; and
- Adopt a Law on Access to Information to enhance transparency and public participation

**Concerning security of tenure** - the RGC and relevant ministries, should:

- Address all land disputes as priority; and avoid further exclusions from the titling program;
- Stop using student volunteers and replace them with experienced and properly trained surveyors;
- Respect peoples' ownership and possession rights according to the Land Law;
- Accelerate the registration process of indigenous communities as legal entities and the registration of their collective land title; and stop granting land concessions on indigenous land before the process of collective land registration is completed;
- Ensure the implementation of Directive 01 does not put at risk the right of indigenous communities to receive a collective land title;
- Ensure that concessions take all measures to avoid environmental destructions; and
- Prevent activities on areas of cultural and spiritual significance.

**Concerning consultations** the RGC and relevant ministries, should:

- Organize meaningful, inclusive, and public consultation with relevant stakeholders and affected communities when land concessions and development projects are going to take place. Consultations must start at the earliest stage and take place throughout the decision making process; and
- Assess the social and environmental impact of large-scale development projects according to international standards before the granting of land concessions and in consultation with the affected communities.

**Concerning forced evictions** the RGC and relevant ministries, should:

- Ensure evictions are only used as a last resort;
- Put in place a moratorium on evictions up until the process of land titling has been completed;
- Ensure that all relocation sites have basic services including access to electricity, water, sanitation, public education, health and security services;
- Ensure that appropriate financial assistance, adequate housing and adequate compensation is offered and perceived by affected communities;
- Ensure that evictees at relocation sites are given land titles to protect them against the threat of a new eviction; and
- Ensure that concession companies do not employ State armed forces.

**Concerning access to effective remedy** - the RGC and relevant ministries, should:

- Strengthen the existing dispute resolution mechanisms;
- Investigate and if necessary prosecute private actors responsible for land grabbing, illegal evictions, and non-implementation of the law;
- Hold accountable State armed forces responsible for excessive use of force against the population; and
- Work towards ensuring the independence of the judiciary to limit political influence.

**Concerning the right to freedom of expression, assembly and association** - the RGC and relevant ministries, should:

- Facilitate the work of civil society organizations to investigate land grabbing and eviction cases;
- Put an end to all political and judicial harassment and violence against peaceful protestors; and
- Immediately release all community representatives and land rights advocates currently detained or imprisoned for exercising their freedoms of expression and assembly.

For more information, please contact CCHR Land Reform Project Coordinator via telephone at +855 12-94-12-06 or e-mail at [vann.sophath@cchrcambodia.org](mailto:vann.sophath@cchrcambodia.org) or CCHR Consultant Elise Tillet via telephone at +855 (0) 7770 9723 or e-mail at [elise.tillet@cchrcambodia.org](mailto:elise.tillet@cchrcambodia.org).

