



CCHR Briefing Note – March 2013

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 and how the Royal Government of Cambodia (the "RGC") has both failed to safeguard human rights and actively violated those rights through violence and oppression; and offers recommendations aimed at addressing these issues.

The abolishment of land ownership by the Khmer Rouge government led to the destruction of a majority of land ownership records, and set the stage for a gradual introduction of laws that restored the rights of the Cambodian people to land ownership. The first section of this Briefing Note provides an overview of land ownership in Cambodia. The second section discusses the main causes of land conflicts and dispossession of land in Cambodia: the extensive granting of economic land concessions ("ELCs"); the complex legal system that governs land rights and the lack of adequate communication from the RGC with regards to peoples' rights; the flaws in the land measurement and titling processes; and the intimidation of the people by powerful and well-connected individuals. In order to address these issues, CCHR offers a series of recommendations, among which are the following three key suggestions:

1. The continuation of the existing moratorium on the awarding of any further economic land concessions to commercial interests, and a full and transparent review of those already awarded to determine their compliance with the law, and their resulting forfeiture if found not to be in compliance;
2. The immediate halt to any forced eviction of people from their land, and the immediate release from detention and the dropping of any pending charges for anyone who has been arrested for non-violently protesting government policies; and
3. The immediate issuance of preliminary land titles, with hard titles to follow, to those people who should be *deemed* to have present legal possession of their land, unless there are specific, compelling and transparent reasons to determine otherwise.

This Briefing Note is written by the Cambodian Center for Human Rights ("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

The tremendous upheaval in Cambodian society that is directly related to its relatively recent brief but disastrous government takeover by the Khmer Rouge from 1975 to 1979, inflicted not only massive suffering and deprivation on its people, but also set the stage for its peoples' loss of their land ownership, their subsequent struggles to regain it, and their current struggles to protect it from seizure by a government that fails to recognize the duties that it owes to them. When the Khmer Rouge came into power in 1975, they destroyed the coherent system of recognized private land ownership and record-keeping which had previously existed, abolishing land ownership and destroying most records of land ownership in the process, and profoundly affecting not only *who* now owns the land, but *how* the land is now owned in Cambodia.

It was then not until 1992¹ when new land laws were instituted by the RGC that people were once again allowed to privately own and transfer land. The next big change that took place was the passage of the Land Law 2001 that not only recognized an individual's right to own and transfer land, but also provided for a much-needed land ownership registration system.² Other legislation followed, among which, in 2005 was Sub-decree No. 146, which allowed for the government's awarding of ELCs to commercial interests, and the enactment of the Cambodian Civil Code in 2011.³ The application of these laws has received much-deserved criticism as to how they have served the interests of the wealthy and politically well-connected in Cambodia rather than those of the Cambodian people for whose benefit they were developed.

In 2011, it was estimated that some 150,000 Cambodians across the country lived at risk of being forcibly evicted within both rural and urban communities⁴, with Khmer citizens and ethnic minorities being denied the right to housing, to land, and to their livelihoods. Moreover, given that the majority of land disputes have occurred in areas of strong economic growth such as Battambang, Banteay Meanchey and Kampong Som provinces, as well as Phnom Penh, it is of utmost importance that the rights of Cambodians are not compromised to financial manipulation by Cambodia's powerful elite.

In addition to manipulative "land grabbing" by the wealthy and politically well-connected in Cambodian society, the Cambodian people's environment and their economic security is threatened by opportunistic foreign investors focused primarily on the exploitation of the country's land and its resources. These investors view the RGC's policies as short-lived due to the perceived instability of the RGC, and the unpredictability of its policy changes, and thus have little incentive to invest in long-term projects aimed at sustainable development.

The problems that the Cambodian people are facing is their powerlessness in terms of protecting their land from being illegally taken – and, consequently, losing their means of feeding and supporting

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

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

³ Civil Code, NS/RKM/1207/030 (8 December 2007) (trans.).

⁴ Housing Rights Task Force, 'Socio Economic Impact of Force Eviction at the household level in Phnom Penh' (Report) (2011) 8 <www.hrtfcambodia.org/files/SEI_of_Force_Eviction_Report_ENG.pdf>.

themselves and their families, their access to natural resources such as food and water and to social resources such as roads, schools, hospitals and marketplaces, and as a result, their very livelihoods. The Cambodian people further suffer as a result of the RGC's commercialization and misuse of the land's natural resources, including its forests, lakes and rivers that directly result in profoundly damaging the Cambodian peoples' living environment and their health.

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, despite being charged with safeguarding its peoples' welfare, 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.

ELCs

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"), and Special Economic Zones ("SEZs") without: (1) adhering to the legal limitations on the size of the land awarded; (2) first properly classifying the land as being legally eligible for such transfers; (3) conducting the required preliminary environmental and social impact assessments; and (4) respecting the right of people to be consulted and fairly compensated. In particular, despite the limitation on the awarding of ELCs comprising more than 10,000 hectares of land to any one single owner,⁵ companies with the same owners have been awarded far in excess of the 10,000 hectare limit by simply not complying with – and not being held to – these requirements, or by registering different names for their multiple companies.

ELCs have been used by the RGC as a tool to transfer large tracts of land from the Cambodian people to commercial interests and, in doing so, to reward those that are politically well-connected – at the expense of the Cambodian people. Despite Prime Minister Hun Sen's promise to place a moratorium on the awarding of ELCs, effective 7 May 2012, unless such ELCs were already in process, a significant number of ELCs have continued to be awarded without any explanation as to why they qualify for such exceptional treatment. Moreover, the criteria that the Prime Minister promised would be used in the scrutiny of those ELCs that had already been awarded to determine their compliance with the law have not been disclosed; thus these policies completely lack transparency. As a result, the Cambodian people are continually deprived of their land without promised investigation or recourse.

In a recent case in Stung Treng province, villagers have been relegated to a land-locked island completely cut off from vital life-sustaining resources which they previously enjoyed. Completely surrounded by two ELCs granted to Vietnamese and Chinese companies – restricting the villagers' access to food, water and roads – their lives have been reduced to the status of prisoners on their own land.⁶ This access restriction was in direct violation of Article 58 of the Land Law 2001 that an ELC "*shall not violate roadways or transportation ways or sidewalks or their borders and the ground necessary for their*

⁵ Sub-decree on Economic Land Concessions, No. 146 ANK/BK (27 December 2005) (trans.).

⁶ Phak Seangly & Bridget Di Certo, 'Displaced Villagers Isolated, Emaciated', *The Phnom Penh Post*, 8 August 2012.

maintenance, nor to waterways, pools, ponds, and water reserves to be used by the people in their daily lives.”⁷ These ELCs would not have been awarded had the RGC observed the rights of these villagers to first have had a social impact assessment performed.

Overly Complex Laws and a Lack of Communication

In a country that was reported by the World Bank to have a rural population of 80%⁸ in 2011 and a rural adult literacy rate of 77.6%⁹ as reported in 2008, its legal system and its laws are – relatively – far too difficult to understand and navigate by many of those who are most likely to be the victims of improper land seizures. Compounding the problem of the legal complexities in its legal system and laws, the RGC does little or nothing to communicate important policies concerning land rights to its people, and also actively interferes with third parties attempting to do so.

For instance, the Land Law 2001 provides for a process for the registration of communal lands of indigenous communities,¹⁰ which was meant to safeguard these communities’ land in the form of communal land titles. However, no such titles have yet been granted, and indigenous peoples such as those in Monduliri province 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 was evidenced on a grand scale with the granting by the RGC of nearly 200,000 hectares of land to a Chinese company¹¹, Wuzhishan (LS Group), to develop a pine tree plantation in the traditional lands of indigenous communities in Monduliri province, which was clearly against the Land Law 2001, which provides that boundaries for indigenous peoples’ lands be established and recognized.

The lack of communication by the RGC with regards to the laws on land rights is exacerbated by the fact that the people who are more likely to be at risk of losing their land are also those with the fewest tools to challenge violations, often lacking education, finances and the political connections necessary to mount effective defenses to the violation of their rights.

Illustrating the powerlessness that rural villagers experience when confronted with challenges to their land is the case of 38 families from four villages in Battambang province, who have been engaged in a 12-year court battle against three influential businessmen over land that they have proven that they have farmed beginning in around 1990-1992¹² – well in excess of the five-year requirement under the Land Law 2001 qualifying them for preliminary land titles.¹³ Lacking bus fares, residents joined farmers from nearby villages to walk to Phnom Penh in 2008 to seek assistance from Prime Minister Hun Sen to resolve their dispute. Police assaulted many and told them to go home, but they continued their journey

⁷ Law on Forestry, ‘Chapter 9: Customary User Rights, Management of Community Forest and Private Forest’ NS/RKM/0802/016 (31 August 2002) (trans.).

⁸ World Bank, World DataBank (figures accurate as of 4 December 2012) <<http://databank.worldbank.org>>.

⁹ World Bank, World DataBank (figures accurate as of 4 December 2012) <<http://databank.worldbank.org>>.

¹⁰ Land Law 2001, Articles 23-28.

¹¹ ‘China presence in Cambodia grows’ (*Asia Times Online*, 30 September 2005) <www.atimes.com/atimes/China_Business/JE30Cb01.html>

¹² Cambodian Human Rights Action Committee, ‘Losing Ground: Forced Evictions and Intimidation in Cambodia’ (Report) (September 2009) <www.chrac.org/eng/CHRA%20Statement%20in%202009/Losing%20Ground%20FINAL.compressed.pdf>.

¹³ Land Law 2001, Article 30.

and arrived at the gates of the Prime Minister's residence. After being promised intervention by the RGC in their dispute if they would return home, they did so, but no governmental help was forthcoming.

Deficient Land Registration and Titling Processes

Under current laws, private ownership of land can take many forms, but as a general rule, the strength of a land title is relative to the government level that issues it. Soft titles, also known as "possessory Titles", which confer "possession" rights only and not "ownership status", are registered with the local level of government, and are not recorded with the RGC, *i.e.*, at a national level. Soft titles are easily challenged by commercial interests seeking the land at issue. A hard title, on the other hand, is an ownership certificate which is issued by the Cadastral Office, an agency of the RGC, and establishes full ownership rights to the land.

Cambodia not only lacks the administrative capacity to register all of the hard titles for which an owner can provide the necessary documentation, but most prospective owners do not possess any of the documents that they need to obtain these hard titles, and many cannot otherwise afford to pay the additional transaction costs involved in obtaining a hard title.¹⁴ Adding to 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.

These obstacles in obtaining hard titles result in the far greater likelihood that should a Cambodian citizen have any title to his or her land at all, it will far more likely be a soft title, and the result is the Cambodian authorities' willingness to grant ELCs to more influential claimants than the land's current possessors.

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, 4.5 million first registration claims¹⁵ 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. In addition to this administrative inability of the RGC to properly process the registration of land titles as needed, the minority of land registrations that do exist are not made publicly available. This is particularly a concern because soft titles that denote possessory interest are not recorded at the national level – in contrast to hard titles that denote full ownership. While the World Bank, in partnership with select countries, worked with the RGC from 2002 to 2009 to develop a

¹⁴ Inter Ministerial Prakas on Determination of the revenues from the Cadastral Service Fee, No. 377 SHV (28 May 2002) (trans.).

¹⁵ Mika-Petteri Torhonen, 'Developing Land Administration in Cambodia' (2001) 25.4 Computers, Environment and Urban Systems 407, 410.

modern land registration system (“LMAP”)¹⁶, it was not able to successfully implement the registration and record-keeping goals that it set for itself at the outset.¹⁷

In 2010, only 22% of land disputes in Cambodia which went through a resolution process were partly or fully resolved.¹⁸ This is partly due to the RGC’s poor administration of land measurement programs. Government officials at all levels have not only a limited mandate to fairly resolve land disputes, but are additionally burdened by bureaucratic obstacles, and all too often have their own personal agendas to pursue.

In 2012, despite having a letter that had been issued by the RGC and signed by Prime Minister Hun Sen giving 558 hectares of land to 415 families in their village in Battambang province, student volunteers assigned to measure the land nonetheless took conflicting orders from local authorities that directed them to ignore the award letter, and to measure land consisting of a lesser 500 hectares, and to leave the balance of the land to a group of corporations.¹⁹ These student volunteers, who are a part of a large government program to measure such land boundaries are provided a mere two days of training beforehand, lack the authority and the experience to effectively complete their assignments, and are merely tools for whatever a government representative tells them to do.

Threats and Intimidation by the RGC and the Well-Connected

The RGC often uses intimidation and physical violence on its people to evict them rather than affording them an efficient and transparent process whereby their grievances can be fairly addressed. For example, in April 2007, approximately 150 heavily-armed military, municipal and civil police ordered residents of Mittaheap district in Sihanoukville to immediately leave their homes and land. After the villagers refused to comply, the police, with the use of guns, truncheons, electric batons, tear gas and water cannons, forcibly evicted the villagers. The villagers were beaten and their homes set on fire while they were displaced from the land that had originally been settled and farmed by their community since the mid-1980s – well before the five-year Land Law 2001 residency requirement was applicable. They were no match for the land “rights” by the claimed owner, who was described by the local cadastral office as the wife of an advisor to a deputy prime minister.²⁰

Given the lack of government safeguards for protecting the peoples’ land rights, those who are in a position to seize land by exercising their influence seize land while the opportunity still exists. In February 2007, the RGC, engaged in a display of transparent self-dealing, agreed to award a 99-year

¹⁶ World Bank, Land Management and Administration Project <www.worldbank.org/projects/P070875/land-management-administration-project?lang=en>.

¹⁷ 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://go.worldbank.org/TFCTB1QZK0>>.

¹⁸ NGO Forum, ‘Statistical Analysis on Land Disputes in Cambodia, 2010’ (June 2011) <www.ngoforum.org.kh/docs/publications/LIP_Final_Land%20dispute%20report%202010_English.pdf>.

¹⁹ May Titthara, ‘Land dispute back in court’ *The Phnom Penh Post*, 20 November 2012 <www.phnompenhpost.com/index.php/2012112059821/National-news/land-dispute-back-in-court.html>.

²⁰ LICADHO, ‘Illegal Forced Eviction of 105 Families in Sihanoukville’ (Factsheet) (9 July 2007) <www.licadho-cambodia.org/reports/files/108LICADHOFactSheetIllegalEvictionSihanoukville07.pdf>; Centre on Housing Rights & Evictions, ‘Cambodia: Feature Story on Evictions in Sihanoukville’ (18 May 2008) <www.cohre.org/news/press-releases/cambodia-feature-story-on-evictions-in-sihanoukville>.

lease consisting of 133 hectares of land to Shukaku, Inc.,²¹ a company owned by an influential Cambodian senator who, with financial backing from a Chinese investment company, agreed to pay a grossly undervalued amount of approximately US\$79 million for the land in order to construct a high-end development project. Slated to build commercial and residential properties on what used to be the largest lake in Phnom Penh, Boeung Kak lake, home to over 4,000 families and a vital part of its cityscape and drainage system, is now mere landfill. Many years previously, in 2004, the owner of Phea Pimex Ltd., the wife of this same senator, was awarded 315,028 acres of land (or 7.4% of the total arable land in Cambodia²²) from the RGC in the form of ELCs in two provinces.

Conclusion and Recommendations

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.

ELCs: An increasing number of human rights violations are occurring in the context of ELCs, which are given with complete disregard for the legal framework that governs them. As such, CCHR recommends the following:

- **The moratorium that was announced by the RGC on 17 May 2012 in the awarding of ELCs should be strictly observed unless and until the RGC demonstrates the transparency of the exception to this moratorium, which can be done by publishing the names of the beneficiaries and the size and location of these ELCs for which they had made preliminary commitments before the effective date of the moratorium**
- **The criteria that the RGC uses in the scrutiny that it promised be would provided in respect of those ELCs already awarded before the moratorium should be made publicly available**
- **Adherence to the limitation of 10,000 hectares of land to be awarded to any one owner of any commercial interest should be strictly enforced**
- **Adherence to the requirement that social and environmental impact assessments be made in the evaluation and awarding of any ELCs should be strictly enforced**
- **All ELCs that were awarded after the enactment of the Land Law 2001 should be scrutinized to determine if they were made in violation of the 10,000 hectare size limitation to one owner of a commercial interest, and a review conducted of the social and environmental impact assessments that were performed prior to such ELCs being awarded – any ELCs awarded in violation of these safeguards should be forfeited, and damages assessed against the offending commercial interest**

Addressing Forced Evictions: Forced evictions hinder economic development and stability as people who have been evicted are often deprived of livelihoods and relocated in ways that fail to adhere to international standards. As such, CCHR recommends the following:

²¹ CCHR, 'Case Study: Boeung Kak', (Factsheet) (2011)

<www.cchrcambodia.org/index_old.php?url=media/media.php&p=factsheet_detail.php&fsid=17&id=5>.

²² Global Witness 'Country for Sale' (Report) (2009) <www.globalwitness.org/library/country-sale>.

- The implementation of an immediate moratorium on any forced evictions
- The immediate release from detention and the dropping of charges against all those who have non-violently protested in favor of their land rights
- The establishment of a system of checks and balances in which only specified individuals who are accountable for their actions have the authority to order the destruction of property and forced evictions

Land Measuring, Registration and Titling: If the RGC's land measuring and titling program is to be fairly implemented, its process must involve people who are adequately trained to do the job, and who are given the authority to make decisions with the input of all parties with an interest in the land. As such, CCHR recommends the following:

- The use of student volunteers must be immediately discontinued and replaced by experienced and properly-trained surveyors
- If there are no definitive documents issued by a competent governmental authority as to the land boundaries to be measured, the land should not be measured unless such a document can be obtained
- If a person assigned to measure land boundaries has no documents from a competent government authority establishing what is to be measured, a determination of the accurate boundaries may be performed with input from all the parties involved, but should anyone disagree with this boundary assessment, a transparent appeal process should be in place and available for the aggrieved party to pursue
- Those people who have either already – or are newly identified as presently – residing on land that was neither previously designated as state land nor is in dispute, shall be *deemed* to have legal possession of the land and be issued preliminary titles, which shall *automatically* become permanent hard titles two years after their interest in the land is publicly published, and an opportunity has been provided to others to lodge disputes and to transparently adjudicate them – once a hard title is issued, it shall be recorded at both the local and the national level, and a record depository should be established with a third party record custodian that will electronically make such records available to the general public
- To limit land speculation, an immediate moratorium on the granting of titles for land to any commercial interest should be installed, with this ban also applying to any individual making a claim on any land for which they have not established residential possession – additionally, no more granting of titles should be allowed for any multiple parcels of land to any one individual
- The moratorium should stay in place until a process is established whereby those individuals making land title claims on commercial properties and multiple residential properties are required to pay the independent legal costs for those whose land they seek to seize – if claimants are government officials or their relatives, they are to be subjected to a system of heightened scrutiny that is transparent in its application, and can result in criminal and civil liability if made in bad faith

- Residential land claims should be *deemed* to be superior to those of any commercial interest if there is a dispute as to land rights – no land on which residents presently reside and/or on which they have previously established farming practices shall be awarded to a commercial interest, without strictly observing judicial safeguards

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