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ADHOC



# LAND SITUATION IN CAMBODIA



# 2013

Printed by ADHOC  
April 2014

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## EXECUTIVE SUMMARY

In May 2012 Prime Minister Hun Sen issued Directive 001 (also known as Order 01BB) on 'Measures to strengthen and enhance the effectiveness of management of economic land concessions (ELCs)' announcing a moratorium on the granting of new ELCs, the review of existing ELCs and the implementation of the so-called "leopard-skin" (or "tiger-skin") policy, with the aim to allow communities to live side by side with the concessions. In the framework of the implementation of Directive 001, a new land registration campaign was implemented by youth volunteers to speed up the process of land registration, which had been previously carried out, often ineffectually, through sporadic or systematic registration systems.

After the issuance of Directive 001, the number of newly granted ELCs dropped dramatically. While in 2012 at least 2,657,470 hectares of land was granted to private companies<sup>1</sup>, in 2013 no new ELCs were issued. On the contrary, government sources reported that more than 330,000 hectares have been seized from ELCs in order to be redistributed to the people<sup>2</sup>. However, the terminology used in Directive 001, which "provisionally" suspends the granting of new ELCs, is concerning. This suggests the government's lack of engagement in a long-term commitment to the suspension of ELCs, allowing the granting of ELCs to be resumed at any time. Moreover, issues relating to existing ELCs have not been addressed, especially with regard to the disclosure of comprehensive information on ELCs. This is problematic when assessing the effectiveness of the implementation of Directive 001 as it is difficult to determine whether the government effectively complied with point iii) of the directive, which states that the government "shall seize ELCs where companies/concessionaires that have already been given agreement from the Royal Government of Cambodia have not complied with the existing legal procedure or contractual obligations<sup>3</sup>". Despite the reduction of newly granted ELCs, in 2013 ADHOC registered 29 land dispute cases related to ELCs<sup>4</sup>, the majority of which were concentrated in north-eastern Cambodia, where rubber and other cash crops are commonly grown.

In 2013, according to data collected by ADHOC, 485 Social Land Concessions (SLCs) were granted for a total of 626,823.26 hectares, against the 38 SLCs totalling 100,790 hectares granted in 2012. The government reclassified and donated land to the rural poor over the course of 2013 with a peak in the first six months of the year, coinciding with the run-up to the election on 28 July 2013, which cast a shadow over the government's efforts as it indicates the policy was executed for political gains. Indeed, out of 485 Sub-Decrees, 429 were issued between January and June 2013, while only 56 between July and December<sup>5</sup>. In the month prior to the National Election, a record number of 159 SLCs (averagely 5.3 per day) was reached. Moreover, there is concern that measures taken

<sup>1</sup> ADHOC, *A Turning Point? – Land, Housing and Natural Resources Rights in Cambodia in 2012*, February 2013

<sup>2</sup> This is consistent with data collected by ADHOC

<sup>3</sup> Order 01BB on the Measures Strengthening and Increasing the Effectiveness of the Management of Economic Land Concessions (ELC), 7 May 2012

<sup>4</sup> These cases are related to ELCs granted prior to 2013. However they were classified under "new cases" as the affected communities filed a complaint with ADHOC in 2013.

<sup>5</sup> 41 in January, 29 in February, 51 in March, 74 in April, 75 in May, 159 in June, 1 in September, 3 in October, 42 in November and 10 in December.



to implement the SLC policy could actually worsen the situation for vulnerable families and aggravate landlessness as corruption, mismanagement and serious abuses have been reported in relation to SLCs. Firstly, procedures and criteria set out in the Sub-Decree 19 on SLCs have often been disregarded, in particular with regard to community consultations, with the result that in several cases land transferred to SLCs was already claimed by other people or was already in the process of being registered as Indigenous People's (IPs) collective land. Secondly, given that more than 60 per cent of the arable land in Cambodia is concentrated in the hands of private companies, land available for re-distribution is limited. As a consequence, large portions of forest covered areas, including protected areas and wildlife sanctuaries – already heavily encroached by ELCs and illegal logging activities – have been re-classified as state private land in order to provide ownership to citizens<sup>6</sup>. Moreover, it is difficult to assess whether the land has effectively been redistributed to the people or if these SLCs exist only on paper. A study should be conducted in order to assess whether the land actually reached the target recipients, and impacts of SLCs on local residents should be further analysed.

The first phase of the land titling program - during which reportedly 660,000 plots were measured and 380,000 titles were issued - was completed in June 2013, one month before the national election. The government announced that during the second phase, which resumed in November 2013, the volunteers would measure 50,000 hectares of land. While generally welcoming the effort made in order to ensure tenure security, ADHOC reiterates its concerns, already raised in its 2012 report<sup>7</sup>, regarding issues such as lack of transparency, accountability and the absence of an effective dispute settlement mechanism associated with Directive 001. Disputed areas have been left outside the scheme and media, NGOs and donor partners have been prevented from sufficiently monitoring and evaluating the operations. With no external monitoring, abuses and corruption are commonplace. Moreover, the land titling campaign does not address the situation of those indigenous groups that seek to obtain Collective Land Titles (CLTs). The government should urgently address these issues and redouble its efforts to expedite that process in every way possible. Indeed, "[c]ustomary rights held by IPs have been one of the easiest targets for land-grabbers. One common form of land grabbing has been the acquisition of lands that were within the known domain of subsistence farming communities but lying fallow (and thus apparently unused)<sup>8</sup>". Directive 001 has further facilitated this process through the institution of small-scale ELCs, which have been used as a mean to regularize the arbitrary occupation of the land seized from IP's territories. ADHOC is concerned that land originally intended to be included in CLTs will be lost by the time the registration process is finalized.

According to ADHOC, more than 770,000 people (equal to almost 6% of the total populations) have been adversely affected by land grabbing from 2000 to 2013.

6 By the end of March 2014, the Royal Government of Cambodia claimed to have cut off and reclassified the total area of more than 1 million ha, nearly 330,000 ha of which is cut out of 124 ELC companies; more than 210,000 ha out of 18 forest concession companies; and more than 480,000 out of state land and forest land confiscated with provincial order, in order to provide ownership to citizens, through 91 royal decrees, 648 sub-decrees, and 681 decision of Royal Government. Ministry of Land Management, Urban Planning and Construction, available at: <http://www.mlmupc.gov.kh/?page&lg=en#sthash.aAGMuCbP.dpuf>

7 ADHOC, *A Turning Point? – Land, Housing and Natural Resources Rights in Cambodia in 2012*, February 2013

8 USAID, *Cambodia- Property Rights and Resource Governance Profile*, 2011, p. 8

In 2013, ADHOC handled a total of 135 cases of land disputes affecting a total of 36,864 hectares and 6,488 families. The conflicts were concentrated in the north and north-east of the country, with Rattanakiri, Preah Vihear and Siem Reap the most affected provinces. Out of these 135 cases, 97 cases were land grabbing cases, 29 were related to ELCs<sup>9</sup>, 2 to SLCs, 6 to forced evictions and one related to fisheries. ADHOC registered a 48 per cent increase of land conflicts compared to 2012 (when ADHOC handled 70 cases of land disputes affecting a total of 101,408 hectares and 10,689 families). This indicates that victims of land rights abuses are less afraid of speaking out and are more willing to approach NGOs to seek assistance. However the total size of disputed land was smaller than previous year. This could be due to the fact that ADHOC handled a high number of cases related to disputes between private parties or between private citizens and various public authorities; the fact that no new large-scale concession was granted could also explain the reduction of land size. In the first three months of 2014 ADHOC registered 37 new land disputes, affecting 2,617 families equal to at least 6,470 individuals for a total land size of 5,451.516 hectares.

Evictions are still all too frequent in Cambodia and affect hundreds of communities across the country. Despite having possessory titles or fulfilling the criteria for requesting definitive titles of ownership<sup>10</sup>, thousands of individuals are facing the threat of eviction or have been evicted with inadequate compensation (if any) to make place for city beautification projects, commercial and residential developments, large scale infrastructure projects, and extractive industry concessions. When relocation measures were taken, evictees have often been resettled at isolated sites akin to slums lacking basic services such as clean water, sanitation, electricity, schools and health care facilities. Victims of land grabs have few meaningful avenues of redress because of the wealth, power, political-connections, and/or the corrupt interests of those involved. Evictees who seek remedies and protest are often threatened, harassed or coerced to accept sub-standard compensation, or are prosecuted through spurious criminal charges, most typically incitement, defamation, destruction of property and disinformation.

Natural resources in Cambodia are disappearing at an alarming rate. Since 1973, Cambodian forestry cover has dramatically reduced from 72 per cent to 46 per cent, with the percentage of dense forests cover having dropped from 42 per cent in 1973 to 11 per cent in 2013<sup>11</sup>. According to a recent report, Cambodia has the fifth-fastest deforestation rate in the world<sup>12</sup>. Information gathered by ADHOC shows that in 2013, the government issued 86 decrees reclassifying protected areas to state private land for 'provision of right of ownership to citizens', for a total of 93,143.093 hectares of land. Phnom Oral Wildlife Sanctuary was the most encroached area with 26,893.90 hectares seized. Protected areas and community forests are further under threat from illegal loggers. The Cambodian government should urgently take measures to preserve Cambodia's unique natural resources and make serious efforts to curb deforestation in

9 These cases are related to ELCs granted prior to 2013. However they were classified under "new cases" as the affected communities filed a complaint with ADHOC in 2013.

10 A survey by the Housing Rights Task Forces (HRTF) interviewing communities facing forced eviction in Phnom Penh showed that 85.3% of the households in threatened communities had bought their house from other person and had been living there more than 11 years. HRTF, *Socio Economic Impact of Forced Eviction*, 2011, p. 5

11 Open Development Cambodia, <http://www.opendevdevelopmentcambodia.net/maps/>

12 Study published by the journal *Science* and conducted by researchers at the University of Maryland, news reported by The Cambodia Daily, Zsombor P., *Loss of Forest in Cambodia Among Worst in the World*, 19 November 2013

order to halt what has become an outright plunder of Cambodia's natural resources for the benefit of tycoons and politically connected individuals.

2013 has seen little progress with regard to access to justice for victims of land rights violations. Land conflicts have been marked by court processes biased towards the interests of the wealthiest party, the destruction of villagers' property and fields, continuous intimidation and unlawful convictions of community representatives and human rights activists. In cases involving significant imbalances of power between the land grabbers and their victims, the latter's attempts to seek justice have been systematically obstructed by the courts, which in many instances have rejected or refused to process villagers' complaints on the grounds of procedural reasons and the inability of complainants to pay official and non-official fees to initiate proceedings, which in some cases amounted to tens of thousands of dollars. Crackdowns on peaceful protesters have been frequent throughout the year. Especially towards the end of 2013, there has been a "worrying change from a tolerant to a repressive response of the government to public protests"<sup>13</sup>.

Land activists are constantly threatened and judicially harassed, most typically on charges of destruction of private property, intentional violence, defamation, disinformation and incitement. In 2013 ADHOC registered a decrease in the number of people arrested and detained in connection to land disputes<sup>14</sup>: 109 persons were charged, 43 arrested and 19 imprisoned. In 2012, 232 people had been arrested. This may indicate an attempt of the government to increase its popularity during the electoral campaign. In the first three months of 2014, at least 50 people were charged and arrested and 12 were jailed.

<sup>13</sup> Statement by the United Nations Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, 16 January 2014, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14175&LangID=E>

<sup>14</sup> In 2012 ADHOC registered 232 cases of people arrested in connection to land disputes.

## THE LEGAL FRAMEWORK

### a. CAMBODIAN LAW

Under the Constitution of the Kingdom of Cambodia, all persons, individually or collectively, have the right to private ownership and to ownership of land<sup>15</sup>.

The regulatory framework for the land system in Cambodia is set out by the Land Law. First promulgated in 1992 and amended in 2001, it determines the regime of ownership for immovable properties and establishes a framework for land titling. It distinguishes five main categories of land: i) private land; (ii) state public land (which serves a public interest); (iii) state private land; (iv) communal land; and (v) land of indigenous communities<sup>16</sup>. Under the Land Law 2001, any person who enjoyed peaceful, uncontested possession of land – excluding state public land – for no less than five years prior to the law's promulgation has the right to request a definitive title of ownership<sup>17</sup>. According to Article 38, the possession must be unambiguous, non-violent, known to the public, continuous and in good faith. No further encroachment of land can take place within the private property of the State and public legal entities from the date of entry into force of the Law<sup>18</sup>: new occupants without title are considered as illegal occupants<sup>19</sup>. However, vacant lands of the private domain of the State may be distributed to the poor demonstrating need for land for residential and/or family farming purposes.

In May 2012 Prime Minister Hun Sen issued Directive 001 (also known as Order 01BB) on "Measures to strengthen and enhance the effectiveness of management of economic land concessions (ELCs)" announcing a new land registration campaign to be implemented by youth volunteers, recruited among university students and Cambodian People's Party (CPP) youth, with the aim to speed up the land title registration process, previously carried out through systematic and sporadic registration systems. The campaign was entirely planned, organised and financed by Prime Minister Hun Sen, with no external donor involved in its implementation.

Directive 001 also announced a moratorium on the granting of new ELCs, the review of existing ones and the implementation of the so-called "leopard-skin" (or "tiger-skin") policy, aiming to allow communities to live side by side with the concessions.

ELCs are "a mechanism to grant private state land through a specific ELC contract to a concessionaire to use for agricultural and industrial-agricultural exploitation<sup>20</sup>". Procedures and conditions for the granting of ELCs are provided in the 2001 Land Law and further implemented in specific sub-decrees, notably Sub-Decree no. 146 on Economic Land Concessions (2005). ELCs can be awarded for agro-industrial purposes for maximum lease duration of 99 years. They cannot exceed the legal limit of 10,000 hectares<sup>21</sup> and can be revoked or cancelled by the government when legal

<sup>15</sup> Article 44, Constitution of The Kingdom of Cambodia, 21 September 1993

<sup>16</sup> Articles 4-28, Land Law, 2001

<sup>17</sup> Article 30, Ibid.

<sup>18</sup> Article 17, Ibid.

<sup>19</sup> Article 34, Ibid.

<sup>20</sup> Article 2, Sub-Decree no. 146 on Economic Land Concessions

<sup>21</sup> Article 59 states that concessions which exceed such limit shall be reduced. However, a concessionaire may obtain an exemption if such reduction would result in compromising the exploitation in progress. Reductions and exemptions are determined by sub-decree.

and contractual requirements are not complied with<sup>22</sup>. Article 59 expressly prohibits the granting of land concessions jointly exceeding 10,000 hectares in different locations to the same person or legal entity. Conditions for granting an ELC include the adoption of a land use plan, the completion of a Social and Environmental Impact Assessment (SEIA), and the provision of resettlement solutions and public consultations with authorities and communities affected by the concessions. Only state private land can be leased, however state public land can be granted for ELCs after reclassification, which can only be authorised by sub-decree and only if the land has lost its public interest. According to the Sub-Decree no. 146 on ELCs, the authority to grant ELCs only lies with the Ministry of Agriculture, Fisheries and Forestry (MAFF). However, ELCs have often been awarded by other bodies, including the Ministry of Environment (MOE), responsible for the administration of Cambodia's protected areas<sup>23</sup>. The prioritized method for granting land concessions is through competitive solicited proposal. However unsolicited proposals by investors may be considered in exceptional circumstances such as the introduction of new technology; the exceptional linkages between SLCs and ELCs; or the exceptional access to processing or export markets<sup>24</sup>. As mentioned above, the moratorium instituted by Directive 001 temporarily halted the grants of ELCs. Ministries, institutions and authorities were ordered to review all existing concessions in order to verify their compliance with relevant laws and regulations and eventually cancel those ELCs failing to comply with their contractual obligations. However, ELCs that had "received permits in principle from the Royal Government of Cambodia prior to the issuance of the regulation<sup>25</sup>" were excluded from its application.

The 2001 Land Law and Sub-Decree no. 19 on Social Land Concessions (2003) establish legal mechanisms aimed to allocate private state land for social purposes<sup>26</sup>, in particular for residential and/or agricultural use, to land-poor and landless families or community groups. Purposes for which SLCs can be granted include resettlement, provision of land to victims of natural disasters, and families of demobilized, disabled or deceased soldiers. They can also be awarded to facilitate economic development and ELCs by providing land to workers of large plantations for agricultural and residential purposes.

Article 44 of the Constitution and Article 5 of the Land Law 2001 provide legislative protections against the arbitrary deprivation of property, which can be exercised only in the public interest – the definition of which remains unclear – with prior provision of fair and just compensation<sup>27</sup>. To a limited extent, the Land Law also provides legal protection

22 Article 55, Land Law, 2001

23 For example 9 ELCs granted by the MoE inside the Snuol Wildlife Sanctuary or Socfin-KCD's Sethikula concession, located inside the Nam Lyr Wildlife Sanctuary in Monduliri. For more details, see NGO Forum on Cambodia, *Economic Land Concessions and Local Communities*, February 2012

24 Article 18, Sub-Decree no. 146 on Economic Land Concessions

25 Order 01BB on the Measures Strengthening and Increasing the Effectiveness of the Management of Economic Land Concessions (ELC), 7 May 2012

26 Article 3. Sub-Decree no. 19 on Social Land Concessions, 2003: "Social land concessions may be granted for one or more of the following social purposes: (i) Provide land for residential purposes to poor homeless families; (ii) Provide land to poor families for family farming. The Khmer version is the official version of this document; (iii) Provide land to resettle families who have been displaced resulting from public infrastructure development; (iv) Provide land to the families suffering from natural disaster; (v) Provide land to repatriated families; (vi) Provide land to demobilized soldiers and families of soldiers who were disabled or died in the line of duty; (vii) Facilitate economic development; (viii) Facilitate economic land concessions by providing land to workers of large plantations (chamkar) for residential purposes or family farming; (ix) Develop areas that have not been appropriately developed.

27 Article 44, Constitution of the Kingdom of Cambodia: "The right to confiscate properties from any person shall be exercised only in the public interest as provided for under the law and shall require fair and just compensation in advance". Article 5,

to peaceful possessors of immovable property in areas not yet covered by the cadastral index map, meaning that no interference of possession should be undertaken while the possessor is waiting for the legal determination of their rights. Any act that hinders such possession is punishable as a criminal offence<sup>28</sup>. A Law on Expropriation was adopted in 2010, however it was not further implemented and its applicability is limited to owners of immovable property and/or rightful owners<sup>29</sup>. Despite repeated requests from civil society and the international community, no National Housing Policy or Eviction Act has been adopted by the Cambodian government. A draft of an Eviction Act was submitted to the Council of Ministers in November 2012, but no further steps have been taken.

With regard to the regulation of natural resources, the legal framework for the management, harvesting, use, development and conservation of forests is set out by the 2002 Forests Law. The management, conservation and development of protected areas is regulated by the 2008 Protected Areas Law, which outlines several categories of protected areas: national parks, wildlife sanctuaries, protected landscapes, multiple use areas, Ramsar (wetlands) sites, biosphere reserves, natural heritage sites and marine parks. Protected areas are further divided into four management zoning systems: "core zones<sup>30</sup>", "conservation zones<sup>31</sup>", "sustainable zones<sup>32</sup>" and "community zones<sup>33</sup>". The establishment or modification of any protected area must be determined by sub-decree or royal-decree and must follow procedures set out by law.

## b. INTERNATIONAL LAW

Article 31 of the Constitution incorporates international human rights norms into the domestic legal order<sup>34</sup>. Having ratified all main international human rights covenants, the Royal Kingdom of Cambodia has the obligation to recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights and conventions related to human rights and women's and children's rights amongst others. Although a right to land is not explicitly codified in international human rights

Land Law, 2001: "No person may be deprived of his ownership, unless it is in the public interest. An ownership deprivation shall be carried out in accordance with the forms and procedures provided by law and regulations and after the payment of fair and just compensation in advance"

28 Article 248, Land Law, 2001

29 Article 4, Law on Expropriation, 2009

30 Management area(s) of high conservation values containing threatened and critically endangered species, and fragile ecosystems. Access to the zone is prohibited except the Nature Conservation and Protection Administration's officials and researchers who, with prior permission from the Ministry of Environment, conduct nature and scientific studies for the purpose of preservation and protection of biological resources and natural environment with the exception of national security and defense sectors.

31 Management area(s) of high conservation values containing natural resources, ecosystems, watershed areas, and natural landscape located adjacent to the core zone. Access to the zone is allowed only with prior consent of the Nature Conservation and Protection Administration at the area with the exception of national security and defense sectors. Small-scale community uses of non-timber forest products (NTFPs) to support local ethnic minorities' livelihood may be allowed under strict control, provided that they do not present serious adverse impacts on biodiversity within the zone.

32 Management area(s) of high economic values for national economic development and management, and conservation of the protected area(s) itself thus contributing to the local community, and indigenous ethnic minorities' livelihood improvement. After consulting with relevant ministries and institutions, local authorities, and local communities in accordance with relevant laws and procedures, the Royal Government of Cambodia may permit development and investment activities in this zone in accordance with the request from the Ministry of Environment.

33 Management area(s) for socio-economic development of the local communities and indigenous ethnic minorities and may contain existing residential lands, paddy field and field garden or swidden (Chamkar).

34 Their direct applicability in Cambodian courts was confirmed by the Constitutional Council in a landmark decision (no. 092/003/2007 of 10 July 2007).

law, except for certain groups such as indigenous people<sup>35</sup> and, in a more limited extent, women<sup>36</sup>, land access and security of tenure<sup>37</sup> are intimately connected to a broad range of fundamental rights encoded in core human rights treaties, and are often a necessary precondition to their realization. This is especially true with respect to the enjoyment of the right to an adequate standard of living protected under Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This includes the right to adequate food, clothing and housing, and to the continuous improvement of living conditions.

The right to adequate housing is of central importance for the enjoyment of all economic, social and cultural rights<sup>38</sup>. As specified by the Committee on Economic, Social and Cultural Rights (CESCR), security of tenure, availability of services, materials and infrastructures, habitability and location and cultural adequacy are necessary elements for the determination of the right to adequate housing. In addition, for the right to adequate housing to be realized and maintained by all groups in society “the full enjoyment of other rights - such as the right to freedom of expression, the right to freedom of association (such as for tenants and other community-based groups), the right to freedom of residence and the right to participate in public decision-making - is indispensable<sup>39</sup>”. Cambodia is therefore obligated to uphold these rights and to adopt measures to suppress conditions that perpetuate discrimination in the sphere of housing.

Cambodia is obligated to “confer legal security of tenure upon those persons and households currently lacking such protection<sup>40</sup>”, taking into account that tenure security does not necessarily require ownership, but “takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal resettlement, including occupation of land and property<sup>41</sup>”. This means that Cambodia should take all necessary steps to “notwithstanding the type of tenure, [ensure that] all persons possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats<sup>42</sup> [...] in genuine consultation with affected persons and groups<sup>43</sup>”. The Food and Agriculture Organization (FAO)’s Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, which are not legally binding but offer guidelines in international law, notes that “States should ensure that policy, legal and organizational

35 International Labour Organisation, Convention 169, Indigenous and Tribal Conventions, opened for signature Jun 27, 1989, available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169)

36 Women’s right to land is explicitly referred to in the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) - Articles 14.2 (h) and 16.1(h) Art. 14.2 (h) “States parties shall undertake all appropriate measures to eliminate discrimination against women in rural areas...and, in particular, shall ensure to such women the right...to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.” Art. 16.1(h) “States parties shall undertake all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular ensure, on a basis of equality of men and women...the same rights for both spouses in respect of the ownership, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.”

37 Security of tenure is “the certainty that a person’s rights to land will be recognized by others and protected in cases of specific challenges, Food and Agriculture Organization of the United Nations, *FAO Land Tenure Studies 3, Land Tenure and Rural Development*, 3.31, 2002

38 UNCESCR, General Comment no.4: the right to adequate housing (Art.11(1), 13 December 1991, para 1

39 Ibid, para 9

40 Ibid, para 8(a)

41 Ibid, para 8(a)

42 Ibid.

43 Ibid.

frameworks for tenure governance recognize and respect, in accordance with national laws, legitimate tenure rights including legitimate customary tenure rights that are not currently protected by law<sup>44</sup> and that “inadequate and insecure tenure rights increase vulnerability, hunger and poverty, and can lead to conflict and environmental degradation when competing users fight for control of these resources<sup>45</sup>”.

Security of tenure and access to natural resources are furthermore crucial for the full realisation of the right to adequate food and the enjoyment of sustainable rural livelihoods<sup>46</sup>. Cambodia is primarily responsible for respecting, protecting and fulfilling the right to food. This means that the government should refrain from taking any measures - including destroying farmland or carrying out forced evictions - which could prevent access to adequate food. The Cambodian government shall take positive steps to strengthen food security and protect individual’s enjoyment of the right to food against violations by individuals or enterprises<sup>47</sup>. It also should prevent third parties from destroying sources of food by, for instance, contaminating natural resources or destroying the ancestral land of indigenous peoples.

With regard to forced evictions<sup>48</sup>, these are considered as gross violations of human rights and are *prima facie* incompatible with the requirements of the Covenant on Economic, Social and Cultural Rights (CESR)<sup>49</sup>, which prohibits forced evictions as a component of the right to an adequate standard of living. This prohibition, however, does not apply to evictions carried out by force in conformity with international law<sup>50</sup>. Evictions must take place in accordance with general principles of reasonableness and proportionality. Appropriate procedure should be applied, including genuine consultations for feasible alternatives and resettlement solutions, adequate notice and compensation and the provision of legal recourses and remedies<sup>51</sup>. In any case, evictions should not result in rendering individuals homeless or vulnerable to the violation of other human rights<sup>52</sup>. Adequate housing, resettlement or access to productive land should be provided to those affected, to the “maximum of [State’s] available resources<sup>53</sup>”. Violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions may also result from the practice of forced evictions. Cambodia, as a party to the international human rights covenants and treaties should protect, respect and fulfil the abovementioned rights and adopt legislation and policy measures aimed at preventing illegal eviction - specifying in detail the precise circumstances in which such interferences may be permitted<sup>54</sup> - and further provide a minimum degree of security of tenure to those lacking such protection.

44 FAO’s Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests, para.5.3, p. 8

45 Ibid., p. v

46 Food and Agriculture Organization of the United Nations (FAO), *Land Tenure Studies 3, Land Tenure and Rural Development*, para. 3.31, 2002

47 UNCESCR, *General Comment 12: the right to adequate food (Art. 11)*, Twentieth Session, 1999, para. 15

48 As defined in UNCESCR, *General Comment no. 7: the right to adequate housing (Art. 11.1) - forced evictions*, Sixteenth session, 1997, para. 3: “The permanent or temporary removal against their will of individuals, families and/or communities from the homes and/ or land which they occupy, without the provision of, and access to, appropriate forms of legal and other protection”.

49 UNCESCR, *General Comment no.7: Forced evictions, and the right to adequate housing (Art.11.1) - forced evictions*, Sixteenth session, 1997, para 1

50 Ibid. Para 3

51 Ibid., para 13-16

52 Ibid., para 17

53 Ibid., para 8

54 Ibid., para. 15

# THE IMPLEMENTATION OF DIRECTIVE 001

## **Order 01BB on the Measures Strengthening and Increasing the Effectiveness of the Management of Economic Land Concessions (ELC) dated 7 May 2012**

*On the basis of the policy on strengthening of the land management, distribution and use stipulated in the Rectangular Strategy, the 2nd Phase of the RGC and also on the basis of the plenary session of the Council of Ministers dated 27 April 2012, especially seeing the need and urgency ahead in order to equity, strengthen and increase the effectiveness of ELCs Management, the RGC issues the order for ministries, institutions and competent authorities concerned to implement as follows:*

*i) Provisionally suspend the granting of ELCs;*

*ii) Ministries, institutions and concerned competent authorities shall very effectively implement the policy and all the conditions of the RGC decision on the granting of ELC and pay attention to the implementation of the ELC contracts, and in particular implement the policy of the “leopard skin formula”, without affecting land of indigenous minorities and local people’s livelihood, with the aim to have these ELC provide real and sustainable benefits to the country and its citizens;*

*iii) RGC shall seize ELC where companies/concessionaires that have already been given agreement from the RGC have not complied with the existing legal procedure or with the contract, in particular by having cut trees for sale but not having done the concession developments, having encroached on additional land, having let part of the land unexploited for sale, having undertaken business deals that violates the conditions of the contract, having taken land from local people or indigenous community. The reverting concessions shall be under the direct management of the State;*

*iv) in case an ELC has received agreement in principle from the RGC before the date of this order, the additional legal principles and existing procedures shall be implemented.*

## **a. ECONOMIC LAND CONCESSIONS**

Over the past years, more than 20 per cent of Cambodia’s land resources have been concentrated into the hands of only 1 per cent of the population<sup>55</sup>. More than 60 per cent of Cambodia’s arable land has been granted to private companies under the Economic Land Concessions (ELCs) scheme.

Meant to bring benefits for the state, the rural economy and the local population by generating state revenue, developing the land and increasing employment, ELCs have instead worsened the situation of vulnerable families, aggravated landlessness and

<sup>55</sup> UN Capital Development Fund (UNCDF), *Local Development Outlook Cambodia*, 2010

fuelled land conflicts. As of late December 2012, the government had reserved or granted to private companies at least 2,657,470 hectares of land<sup>56</sup>. Together with mining concessions, which according to the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), as of April 2013 covered 2,027,979 hectares, ELCs occupy more than 25 per cent of Cambodia’s total surface area<sup>57</sup>.

Following the issuance of Directive 001, however, the number of newly granted ELCs has dropped dramatically. According to the Royal Gazette, only 15 new ELCs were awarded<sup>58</sup> from May to December 2012, and none since December 2012<sup>59</sup>. Information gathered by ADHOC shows that at least 33 ELCs were granted after the announcement of Directive 001, and numbers are even higher according to other sources such as Open Development Cambodia (ODC) which has published data relating to 38 newly awarded concessions, including 2 granted in 2013<sup>60</sup>. Media also reported a recent “unofficial” concession in Ratanakiri’s Lumphat Wildlife Sanctuary<sup>61</sup>. Is it impossible to assess if these ELCs were already under consideration – and consequently excluded from the application of the moratorium – at the time of the issuance of Directive 001, as no exhaustive information on such concessions was made public. Whatever the case, these figures show a change in government’s land policy and suggest a real engagement of the government to halt the granting of new ELCs. ADHOC praises these efforts. However, ADHOC is concerned at the terminology used by Directive 001, which “provisionally” suspends the granting of new ELCs. This may indicate the government’s lack of engagement in a long-term commitment, potentially allowing the granting of ELCs to be resumed at any time.

ADHOC has repeatedly denounced the government’s lack of transparency and failure to disclose comprehensive information on concessions activity. It is extremely difficult to assess the exact number of ELCs granted, reduced in size or cancelled due to inactivity. This is problematic when it comes to determining the effectiveness of the implementation of Directive 001 as it is difficult to determine if the government effectively complied with point iii) of Directive 001. The lack of transparency is moreover of “considerable concern<sup>62</sup>” to the affected populations as in many instances, communities only realise that ELCs infringe on their land when companies start clearing their fields. Authorities have often failed to provide people living in the concession zone basic information, such as intended use of the land, boundaries, duration or companies involved contrary to Article 8 of Sub- Decree no. 146 on ELCs<sup>63</sup>. So far no significant steps have been taken

<sup>56</sup> ADHOC, *A Turning Point? – Land, Housing and Natural Resources Rights in Cambodia in 2012*, February 2013

<sup>57</sup> These figures do not take into account other types of concessions such as Special Economic Zones.

<sup>58</sup> Ten of these were granted from May to August, 4 from September to November 2012, none in December 2012 and January 2013

<sup>59</sup> Muller, Franz Volker and Zulsdorf, Gunther: *Old Policies – New Action: A Surprising Political Initiative to Recognize Human Rights in the Cambodian Land Reform*, 2013, p. 6

<sup>60</sup> Open Development Cambodia, <http://www.opendevdevelopmentcambodia.net/company-profiles/economic-land-concessions/>

<sup>61</sup> The Cambodia Daily, Pheap, A. And Wood, B.: *Firm Logging in Wildlife Sanctuary Granted ‘Unofficial’ Concession*, November 19, 2013

<sup>62</sup> Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, para. 83

<sup>63</sup> Article 8 states that: “Initial project documents proposing an economic land concession project shall include the following: 1. Description of the proposed land, such as location, size, type, reference to the parcel number in the Land Register, and general information about the area in which the land is located; 2. General land use and development plan for the concession project; 3. Any necessary actions required to be completed by the concessionaire prior to undertaking the economic land concession activities; 4. Any necessary actions required to be completed by the Contracting Authority or any ministry or institution prior to undertaking the proposed economic land concession activities; 5. State obligation or state guarantee required for the economic land concession project”.

by the government in order to improve access to information. Data provided by the Ministry of Agriculture, Forestry and Fisheries (MAFF) on its website is out-of-date and incomplete. As of March 2014, the latest information published regarding total hectares granted for ELCs was dated 08 June 2012<sup>64</sup>. Official figures are substantially lower than civil society's findings. For instance, in May 2013, governmental sources reported that from 1996 until May 2013, only 1.5 million hectares had been granted to 117 private companies under the ELCs scheme<sup>65</sup>.

Even though the granting of new ELCs has been suspended, issues related to existing ELCs have not been addressed and have so far been left unsolved. Many concessions have been granted in breach of the law, often exceeding the legal size limit of 10,000 hectares allowed under the law. In breach of Article 59 of the Land Law, multiple concessions have been registered under different persons or companies directly or indirectly linked to the same physical person. This is the case, for example, of two adjacent ELCs in Kampong Speu, Phnom Penh Sugar Co. Ltd and Kampong Speu Sugar Co. Ltd, owned respectively by CPP senator and Prime Minister Hun Sen's advisor Ly Yong Phat<sup>66</sup>, and his wife Kim Heang. Ly Yong Phat also sits in the board of the Cambodian Red Cross, whose president is Hun Sen's wife. The concessions occupy a total surface area of more than 23,000 hectares, including 4,700 hectares located in the Oral Wildlife Sanctuary, reclassified from protected area to state private land by the government in 2011<sup>67</sup>. Phnom Penh Sugar, which is linked to extensive land grabbing, human and labour rights violations<sup>68</sup>, is partially financed by ANZ Royal Bank<sup>69</sup>. The latter is a joint venture between Australia and New Zealand Banking Group Limited (ANZ) and the Royal Group of Companies (RGC), owned by powerful businessman Kith Meng, also president of the Chamber of Commerce, advisor to Prime Minister Hun Sen and member of the board of the Cambodian Red Cross<sup>70</sup>. ANZ is signatory to the Equator Principles – a set of principles adopted by financial institutions to ensure that projects they finance are “developed in a manner that is socially responsible and reflects sound environmental management practices”<sup>71</sup>. As such, it should be committed to “not provide Project Finance or Project-Related Corporate Loans to projects where the client will not, or is unable to, comply with the Equator Principles”<sup>72</sup>.

The case of ANZ is not an isolated one. Credit Suisse – a financial services company headquartered in Switzerland and also a signatory member of the Equator Principles – has been accused of funding Hoang Anh Gia Lai (HAGL)<sup>73</sup>, a Vietnamese rubber company responsible of gross environmental and human rights abuses. Also implicated

64 “Until 08 June, totally the Royal Government of Cambodia has granted ELCs to 118 Companies of the total land area of 1,204,750 hectares”, MAFF website, <http://www.elc.maff.gov.kh/>, last visited on the 10<sup>th</sup> of March 2014.

65 Speech of Chan Sarun, Minister of Agriculture Forestry and Fisheries, available at: [http://www.cen.com.kh/localnews/show\\_detail/19?token=YjMxZTQ4ZT](http://www.cen.com.kh/localnews/show_detail/19?token=YjMxZTQ4ZT)

66 Cambodian Information Center, *Cambodia's Top Ten Tycoons – Wikileaks Cable Viewer*, 31 July 2011, available at: <http://editorials.cambodia.org/2011/07/cambodias-top-ten-tycoons-wikileaks.html>

67 Equitable Cambodia, *Bittersweet Harvest: a Human Rights Impact Assessment of the European Union's Everything But Arms Initiative in Cambodia*, 2013, p. 27

68 Ibid.

69 The Phnom Penh Post, Quinlan, D., McKenzie, N. *ANZ Royal financing 'blood sugar' plantation*, 23 January 2014

70 Cambodian Information Center, *Cambodia's Top Ten Tycoons – Wikileaks Cable Viewer*, 31 July 2011, available at: <http://editorials.cambodia.org/2011/07/cambodias-top-ten-tycoons-wikileaks.html>

71 The Equator Principles, June 2013, Preamble, p. 2

72 Ibid.

73 Global Witness, *Rubber Barons*, May 2013, p.33

in the funding of HAGL are the Deutsche Bank and the International Finance Corporation (IFC)<sup>74</sup>. The latter is the private sector lending arm of the World Bank, which is also financing the Phnom Penh airport expansion project (please see case study below). Subsequently due to pressure exerted by civil society organizations<sup>75</sup>, Deutsche Bank recently divested from the company. However withdrawing capital could prove not to be the best solution: international investors should instead use their share to pressure companies into adopting business best practices, respect environmental and human rights international standards and ensure fair compensation for adversely affected families. The European Union (EU), which through its “Everything But Arms” initiative gives “full duty free and quota-free access to the EU for all [least development countries (LDC's)] export with the exception of arms and armaments”<sup>76</sup>, should also put pressure on agro-industrial companies benefitting from the initiative by suspending all advantages “until the human rights violations that have occurred are fully remediated”<sup>77</sup>.

Criteria set out in Article 4 of the Sub-Decree no. 146 on ELCs (2005), which are prerequisite to the granting of ELCs, have been disregarded: Social and Environmental Impact Assessments (SEIAs) have rarely been undertaken before granting contracts to private companies, few land use plans have been adopted and the government has failed to conduct or require consultations with affected communities, which have been offered compensation as well as alternative resettlement solutions in only a few cases. In addition, in breach of dispositions set forth by the Sub-Decree no. 146 on ELCs, many concessions have not been exploited for agro-industrial activities within the 12 months period after their issuances. Instead, they have been used by “influential individuals (often operating through legal entities) and groups to acquire large land-holdings for speculative or unproductive purposes”<sup>78</sup>, to harvest existing forest resources or provide plausible cover for activities such as the illegal logging of luxury wood (please see section on Natural Resources).

ELCs that do not comply with criteria set out by the law or the contract, “in particular by having cut trees for sale but not having done the concession developments, having encroached on additional land, having let part of the land unexploited for sale, having undertaken business deals that violates the conditions of the contract, having taken land from local people or indigenous community”<sup>79</sup> should be revoked. However, as already mentioned, it is difficult to assess how many concessions have been cancelled as no comprehensive information has been disclosed by the government to this regard. Official sources report that in 2013 more than 330,000 hectares of land have been cut from ELCs in order to be redistributed to poor families<sup>80</sup>. However, it is difficult to assess if this land has reached the intended recipients. In March 2013, Prime Minister Hun Sen reiterated the government's intention to revoke ELCs not complying with the law

74 See Global Witness, *Rubber Barons*, May 2013

75 Global Witness, *Deutsche Bank disinvests from Vietnamese land grabber HAGL following Global Witness' expose*, 3 December 2013, <http://www.globalwitness.org/library/deutsche-bank-divests-vietnamese-land-grabber-hagl-following-global-witness%E2%80%99-expose>

76 European Commission, *Everything But Arms (EBA) – Who benefits?*, April 2013

77 Equitable Cambodia, *Inclusive Development International, Bittersweet Harvest*, 2013, p. 1

78 USAID, *Cambodia – Property Rights and Resource Governance Profile*, 2011, p. 8

79 Order 01BB on the Measures Strengthening and Increasing the Effectiveness of the Management of Economic Land Concessions (ELC) dated 7 May 2012

80 This is consistent with data gathered by ADHOC

or contractual terms in order to turn it over to the people as SLCs<sup>81</sup>. However observers are sceptical as this has been said many times in the past and it comes too late since concessions have already seriously affected natural resources and people's livelihoods.

The unavailability of information about demarcation between state public land and state private land continues to raise concerns. Since a land classification registry is not publicly consultable, re-classification of land is more likely to be undertaken in violation of legal criteria and procedures. No clear demarcation exists between the internal zones of protected areas either. This abets the encroachment upon "core" or "conservation" zones that can be reclassified as "sustainable use" zones at the same time as the granting of the ELC. Indeed, almost all ELCs awarded in the past few years encroached on protected areas<sup>82</sup> and/or heavily affected IP's land. Many IPs traditionally practice shifting agriculture and rely on the gathering of timber and non-timber products, therefore the loss of access to their forests have deprived them of their main means of subsistence. Their religious and cultural identity has also been heavily compromised as ELCs often encroach upon land of cultural and spiritual significance, including burial sites and sacred forests.

One of the main purposes of ELCs was to improve living standards by providing stable employment opportunities. However, this has not been the case in practice. Left without land or with not enough land to survive, many people are obliged to migrate, legally or illegally, internally or to neighbouring countries - especially to Malaysia, Thailand and Singapore - to find income to feed their families, becoming vulnerable groups for human trafficking, sex exploitation or forced labor. Secondly, where employment was effectively generated, ADHOC noticed that local residents were reluctant to work for the companies and did so as a consequence of a lack of real alternatives. Furthermore, local residents had to deal with the arrival of migrant workers from the lowlands. As emerged from investigations conducted by ADHOC, this had an adverse impact on local populations, especially on indigenous groups: fighting occurred, security worsened and thefts of property increased. While in few cases ELCs positively affected communities living in or around the concessions, it can be asserted that in most instances the living conditions of local populations consistently worsened.

Land tenure insecurity and the systematic failure to consult affected communities and conduct SEIAs have resulted in the multiplication of land disputes related to ELCs over the past years. In 2012, ADHOC registered 55 conflicts related to ELCs. In 2013, despite the drastic reduction of newly granted ELCs, the number of land disputes related to ELCs handled by ADHOC remained high (29 cases<sup>83</sup>). The majority of these were concentrated in the north-eastern Cambodia - 30% only in Rattanakiri - affecting provinces where rubber is commonly grown. Despite the moratorium on ELCs and the high number of disputes that have affected communities living on and around plantations, the

81 The Phnom Penh Post, Titthara, M., Pye, D., *Tough talk on ELCs*, 31 March 2014

82 Out of 381,121 newly affected hectares, at least 272,597 hectares (or 71,5%) were granted or re-classified in protected areas, including Kirirom National Park, Lumphat Wildlife Sanctuary, Kulen prom Tep Wildlife Sanctuary and Phnom Prench Wildlife Sanctuary. From 2008-2010 the government reclassified 18.951 hectares of land as state private property on 28 islands off the coast of Cambodia (including Koh Kong, Koh Rong, Loh Rong Samloem, koh Ta Kiev, Koh Tang, Koh Thmey and Koh Tunsay) and granted them to concessionaires for up to 99 years. Projects include tourism resorts and casinos. Relevant sub-decrees were only disclosed in 2012.

83 These cases are related to ELCs granted prior to 2013, however they are classified under "new cases" as the affected communities filed a complaint with ADHOC in 2013.

government - in the framework of the Cambodia Natural Rubber Development Strategy 2011-2020 - looks set to double the area covered by large scale rubber plantations by 2020<sup>84</sup>.

#### **CASE STUDY: CIV CO. LTD CONCESSION IN SNUOL DISTRICT, KRATIE**

*In 2007, a 769 hectare ELC was granted to CIV Co. Ltd Development Agro Industry, a Cambodian rubber company. The concession affected Meanchy village and Kbal Trac village in Srae Char Commune, and Kbal Lam Poa village in Pi Tnou commune, all within the Snuol district of Kratie province. The concession directly affected 48 families living on 143 hectares of land. On 19 January 2008, CIV Co. Ltd submitted a request to the provincial authorities to install an irrigation system in the concession.*

*The community members were not given the opportunity to raise complaints about the project as the irrigation system project plans were not publicly displayed. In 2010, the irrigation system was installed by CIV Co. Ltd. The 48 affected families lodged a complaint with ADHOC, but while the investigation was ongoing, the company started to bulldoze the land of the families, forcing community members to relocate along National Road no. 7 for the duration of the dispute. The community members began protesting by blocking the road with rocks, resulting in the arrest of three people. When complaints to the provincial governor fell on deaf ears, they took their complaints to Phnom Penh, demonstrating outside the Ministry of Land Management Urban Planning and Construction (MLMUPC) and the Ministry of Agriculture, Forestry and Fishery (MAFF). They sought the assistance of ADHOC, which provided a lawyer to the three arrested. They were eventually released.*

*An investigation committee, led by ADHOC, was created, with the collaboration of provincial authorities in order to investigate the dispute. In October 2012 the committee including members of ADHOC and other NGOs visited the disputed land and used GPS technology to measure land boundaries. The investigative team found that the number of affected families was greater than originally estimated (66 instead of 48). The investigative team also concluded that the ELC had been awarded illegally in the first place as the communities met the criteria to be granted definitive ownership of the land under the 2001 Land Law. Pressure was exerted on the provincial authorities, who were urged to take immediate action in order to give the land back to the people. By December 2012, the communities had officially registered their interest in the land and had received land titles.*

84 According to official data, in 2012 the area under rubber plantation was 280,355 ha, of which 118,448 ha (42,25%) under ELC companies (new investment). By the end of 2018, the government foresees that an area of 223,449 ha will be covered by large scale rubber plantations.

**CASE STUDY: PRAEH VIHEAR**

More than 220,000 hectares in Tbeng Meanchey district, Preah Vihear province have been cleared by five Chinese companies - Rui Feng Cambodia International Ltd., Lan Feng Cambodia International Ltd, Hengroy Cambodia International Corporation Ltd. and Heng Nong Cambodia International Corporation Ltd. - which have been granted ELCs in the area. The five companies are part of the same group and are registered under the same address. The concessions overlap with the land of the Kuoy, an indigenous group which mainly relies on rice cultivation and non-timber forest products for its subsistence. Since January 2014, 493 Kuoy families are sleeping in the forest to protect the forest and to push the company to stop clearing the land, destroying property, polluting the river, and cutting down trees. The clearing of the forest has ceased, however the villagers fear that it will start again as soon as they return to their homes. Moreover, illegal loggers - allegedly connected to tycoon Try Pheap - are operating in the area, targeting luxury and resin trees<sup>85</sup>.

ADHOC is investigating the case, and held a press conference on 22 January 2014. ADHOC assisted the communities in the filing of a complaint at the national level where the community called for the cancellation of the concessions overlapping with 7000 hectares of their land. The deputy provincial governor invited some families to his office to privately discuss the case. The families, however, insisted on a public discussion that would integrate all families and force the local authorities to talk about the issue openly. To date, no such meeting or public discussion has taken place. On 04 March, a forum was organized by civil society, including a number of NGOs, to discuss about possible strategies to support the Kouy community, which claim that no public consultation has ever taken place and that they have never been provided with information regarding the clearing of the land. As of now, no agreement between the villagers and the concessionaires has been reached. In March, the villagers had to block the road which gives access to their fields to prevent the companies from leveling their farmland.

85 The Phnom Penh Post, Titthara, M., *Kuoy villagers say patrols put logging on pause*, 26 March 2014, <http://www.phnompenhpost.com/national/kuoy-villagers-say-patrols-put-logging-pause>

**Recommendations:**

- **Immediately disclose comprehensive information about all existing ELCs, including their exact location, size, boundaries, duration, ownership, intended use, SEIAs, consultation processes and compensation schemes;**
- **Publicly disclose how many ELCs were "under consideration" before the 7th of May 2012;**
- **Complete a comprehensive review of existing ELCs and disclose information on cancelled concessions, follow-up on cancellations, and state revenues derived from ELCs;**
- **Punish companies that do not comply with their legal and contractual requirements by revoking their concessions and initiating legal proceedings against them;**
- **Provide adequate compensation to the people affected by ELCs and other development projects;**
- **Provide adequate compensation to indigenous people whose ancestral burial sites were destroyed.**

**b. SOCIAL LAND CONCESSIONS**

The Social Land Concession (SLC) scheme's main objective is to improve economic development and to alleviate poverty by transferring state private property for social purposes to the poor lacking residential land or/and family agricultural land<sup>86</sup>. Unlike the other concessions included in the 2001 Land Law, SLCs are granted for free and may be converted to full private ownership after 5 years of use<sup>87</sup>. SLCs are the sole mechanism that can be employed to regularize the status of illegal encroachers on state land.

In its 2012 report on the situation of land and housing rights, ADHOC noticed a considerable increase in the total land area granted as SLCs, which represented more than twice the area granted under the SLC scheme in 2011<sup>88</sup>, suggesting a change in the government's land allocation policies. Figures in 2013 confirm this trend; while only few ELCs issued, 485 SLCs were granted for a total of 626,823.26 hectares, against the 38 SLCs totalling 100,790 hectares granted in 2012. Out of 485, 287 SLCs, covering a total of 206,027.05 hectares were on forestry land; 13, totalling 7,339.82 hectares, were cut out from already existing SLCs. The most affected provinces were Kampong Speu. In spite of the significant number of new SLCs granted in 2013, ADHOC registered a decrease in the number of conflicts related to them: two in 2013 compared with 13 disputes in 38 SLCs in 2012.

It is the government's intention, as announced in the new five-year political platform issued in September 2013, to further increase the number of SLCs granted annually. This step is welcome. The government appears to be making efforts to comply with its obligation to provide the minimum degree of tenure security. However, the rush with

86 The size for residential land cannot exceed 3,600 square meters and the size for agricultural land cannot exceed 5 hectares.

87 Artt. 18 and 248, Land Law, 2001

88 In 2012 the government granted 38 SLCs covering 100,790 hectares of land (26% of the area granted under the ELC scheme in 2012) in 16 provinces, including seven in Kampong Cham, seven in Kampong Speu and five in Siem Reap. In its 2011 report on land and housing rights, ADHOC noted that SLC figures were negligible compared to the amount of land allocated to private companies under other concession schemes.

which the government reclassified and donated land to the rural poor in 2013 – with a peak in the first six months of the year, in the run-up to the election – casts a shadow on the government’s efforts and suggest they may have been more a populist measure to win votes than a serious move to improve land tenure security. Indeed, out of 485 Sub-Decrees, 429 were issued between January and June 2013, while only 56 between July and December<sup>89</sup>. In the month prior to the National Election, the record number of 159 SLCs (averagely 5.3 per day) was reached. Moreover, ADHOC is concerned that measures taken to implement the SLC policy could actually worsen the situation of vulnerable families and aggravate landlessness, as corruption, mismanagement and serious abuses have been reported in relation to SLCs.

Firstly, procedures and criteria set out in the Sub-Decree 19 on SLCs have often been disregarded, in particular with regard to community consultations. Land use and allocation plans and land suitability analysis, as well as SEIA studies, have rarely been conducted. As a consequence, in several cases land transferred to SLC recipients was already claimed by other people or already in the process of being registered as IP collective land. It has also been reported that evictions of local residents have been carried out in order to make way for new settlers. Moreover, in spite of Article 38 of the Land Law, 2001, which states that “the value of the immovable property donated must be limited in relation with the purpose sought and not allow scope for speculation, or disproportionate enrichment taking into account the social level of the beneficiary<sup>90</sup>”, in some cases SLCs have been used as a way to circumvent the law to transfer land to wealthy and powerful individuals – including high-ranking military officials – at the expense of the poor and vulnerable. The Sub-Decree on ELCs lists “any linkage and mutual support between social and economic land concessions<sup>91</sup>” as one of the criteria for the evaluation of ELCs proposals. Land should be reserved to be provided to small holders and potential labourers near and within the investor’s land for family farming purposes, however the government’s strategy aiming at setting up a partnership between small land holders and large-scale agricultural farms or corporations, and between economic and social land concessionaires, still remains to be implemented.

Secondly, given that more than 60 per cent of the arable land in Cambodia is concentrated in the hand of private concessionaires – and in spite of a “large increase in the land cleared of mines<sup>92</sup>” – the reality is that land available for re-distribution is limited. As a consequence, large portions of forest covered areas, including protected areas and wildlife sanctuaries – already heavily encroached by ELCs and illegal logging activities – have been re-classified as state private land in order to provide ownership to citizens. As of March 2014, the government reported to have excised or reclassified the total area of more than 1 million hectares, nearly 210,000 hectares out of 18 forest concession companies and more than 480,000 hectares out of state land and forest land confiscated with provincial order, with the aim of “returning” land to rural poor<sup>93</sup>. As for ELCs, the granting of SLCs and the reclassification of land is often formalized

89 41 in January, 29 in February, 51 in March, 74 in April, 75 in May, 159 in June, 1 in September, 3 in October, 42 in November and 10 in December.

90 Article 38, Land Law, 2001

91 Article 5, Sub-Decree no. 146 on Economic Land Concessions, December 27, 2005

92 Draft National Strategic Development Plan (NSDP) 2014-2018

93 MLMUPC, Results Achieved On Delivering Land Titles To People By March 2014, <http://www.mlmpc.gov.kh/?page&lg=en#sthash.h05LodJc.dpuf>

at the same time through the same sub-decree or royal decree, depending on the status of the land. The government also reported that 330,000 hectares<sup>94</sup> were cut out of 124 ELC companies<sup>95</sup> (according to a human rights group, however, much of the concessions from which the land was excised “were suspended more than a decade ago<sup>96</sup>”). These are impressive figures, however it is difficult to assess whether the land has effectively been redistributed to the people or if these SLCs exist only on paper, and further investigations should be done to this regard by civil society organisations and the government. Moreover, other factors, such as the quality or size of the land reserved for SLCs should be taken into account when reading these figures. In some cases, the size of the land for each family was not sufficient to ensure enough food for each household and/or could not be cultivated as the soil was not fertile or rocky.

#### **CASE STUDY: SLC ON BUNONG’S LAND IN BOUSRA, MONDULKIRI**

*Over the past years, five ELCs and one SLC have been granted on or around the land of seven Bunong villages in Bousra commune, Mondulkiri province. The Bousra Commune is home to the indigenous Bunong (or Phnong) people who have lived and farmed those lands for generations. For the Bunong, the land is not just a place to live; it is their main source of subsistence and linked to their religious beliefs. The turning of the seasons affects their ceremonies and their social responsibilities, and the land is the strongest connection they have with their ancestors.*

*In 2009 all seven villages began the Collective Land Title (CLT) registration process. In January 2012 a SLC was granted over 2600 hectares overlapping the land of four villages. By April of that year, new settlers had moved in and had begun clearing the land, including several sacred burial grounds. Despite the repeated requests for intervention by the local authorities, no action was taken to stop the clearing of the land. The villagers had to organise self-funded patrol squads in order to protect their sacred land. In carrying out these patrols, they confiscated chainsaws and other equipment used for land clearing, as well as detained 10 loggers who were caught in the act. The authorities however demanded the return of the confiscated materials, and immediately released the people detained. More than 150 new families have moved into the SLC, taking land and clearing the forest. Throughout 2013, more than 100 hectares were cleared in Bousra.*

#### **CASE STUDY: CHAMKA CHEK VILLAGE, KRA PEUR PY COMMUNE, VEAL VENG DISTRICT, PURSAT**

*In February 2013, 160 families living in Chamka Chek village, Kra Peur Py commune, Veal Veng district, Pursat province, were violently evicted from their homes. The families had settled in the area, which authorities claimed to be state forest land, in 2007. In 2012 the community was granted a SLC. However, the resettlement site was 10 km away from the original village and each family was awarded less than one hectare each. Moreover, the rocky soil was difficult to cultivate. Therefore, in 2013, the people moved back to their original*

94 This is consistent with figures gathered by ADHOC

95 Results achieved for the implementation of New Action on Existing Policies for Land Sector, in accordance with RGC’s Order 01, particularly on surveying land and issuing land titles by March 31 January 13, 2014 - available at: <http://www.mlmpc.gov.kh/?page&lg=en#sthash.aAGMuCbP.dpuf>

96 The Phnom Penh Post, Seiff, A., Titthara, M., and Worrell S., *Land rights in Cambodia a hot issue, says report*, 15 February 2013

village, where they were allowed to live, cutting trees and building homes, until after the general election. However, on the morning of 12 February 2014, at least 200 armed forces including police, military police and the Royal Cambodian Armed Forces (RCAF) violently evicted the villagers, accusing them of occupying state land illegally. During the eviction, more than 60 homes were burned, and properties were destroyed; NGOs and journalists monitoring the eviction were forced to delete photos from their cameras. A woman was arrested and detained and has not yet been released.

### Recommendations:

- **Conduct in-depth assessment of environmental and social impacts prior to the granting of any SLCs; carry out genuine consultations with local residents;**
- **Limit forced evictions to extreme cases in line with international standards;**
- **Do not interfere with indigenous group's right to collectively register land by awarding SLCs within indigenous people's land;**
- **Investigate allegations of abuse, corruption and mismanagement in relation to SLCs.**

### c. THE NEW LAND TITLING SCHEME

Initially a key component of the World Bank-funded Land Management and Administration Project (LMAP), the land-titling program has been implemented since June 2012 by volunteer students deployed by the government as a part of a new land-titling campaign launched by Prime Minister Hun Sen through Directive 001. The campaign falls under the so-called "Old Policy-New Action" policy "giving priority to land titling in dispute-free areas<sup>97</sup>" in order to resolve and legalize unclear land occupation, ensure tenure security and resolve land conflicts through SLCs, small-scale ELCs and the donation of ownership rights. Ownership can be donated to people who "actually occupy land not exceeding 5 hectares<sup>98</sup>". However, "for people occupying more than 5 hectares [...] the part of the land that has truly been cultivated shall be donated as ownership. Parts of the land claimed that has not been developed shall be registered as State private land and the claimant shall be given the right of small economic concession<sup>99</sup>". These small-scale ELCs cannot exceed 200 hectares, and can be granted for a maximum of 99 years.

The first phase of the land titling program, during which reportedly 660,000 plots have been measured and 380,000 titles have been issued, was completed in June 2013 - only one month before the National Election<sup>100</sup>. The second phase was resumed in November 2013. As of March 2014, official sources reported that more than 500,000 land titles had been granted, in addition to the 2,6 million land titles delivered through systematic land registration and the 600,000 land titles distributed through sporadic land titling scheme<sup>101</sup>. While generally welcoming the progress made to ensure tenure security, AD-

97 Draft National Strategic Development Plan (NSDP) 2014-2018, Chapter IV: Policy Priorities and Actions, p. 24  
 98 Letter 666 SCN dated 26 June 2012 from Deputy PM Minister in charge of Council of Ministers to The Senior Minister of LMUPC, p. 2, available at: [http://www.mlmpc.gov.kh/mlm/imgs/20130213%20Manual%20for%20Implementing%20Govt%20Order%2001\\_ENG.pdf](http://www.mlmpc.gov.kh/mlm/imgs/20130213%20Manual%20for%20Implementing%20Govt%20Order%2001_ENG.pdf)  
 99 Ibid., p. 2, p. 2  
 100 Ministry of Land Management, Urban Planning and Construction (MLMUPC), <http://www.mlmpc.gov.kh/?page=&lg=en>  
 101 MLMUPC, Results achieved for the implementation of New Action on Existing Policies for Land Sector, in accordance with

HOC reiterates its concerns, already raised in its 2012 report<sup>102</sup>, regarding issues such as lack of transparency, accountability and the absence of an effective dispute settlement mechanism associated with Directive 001.

Firstly, disputes areas have been left outside the scheme, meaning that those most in need of tenure security - because under threat of eviction - cannot obtain a definitive title. Disputes have to be solved first through existing mechanisms, but these can last many years and results are unpredictable, especially when imbalances of power between the parties exist.

Secondly, media, NGOs and donor partners have been excluded from taking part in the implementation of the scheme and prevented from monitoring and evaluating the operations. With no external oversight, abuses and corruption have flourished. It has been reported that in some cases opposition supporters have been denied the possibility to register their land, or pressured to change sides. In some cases, land titles could only be obtained through the payment of money or gifts, or were traded for votes. In a public speech delivered in January 2013, Prime Minister Hun Sen addressed "those whose lands have not been measured and those who have not been given land titles" warning that if they wanted "the youths to come back, there [was] only one choice [...]: to vote for the CPP<sup>103</sup>". Furthermore, there were reports of a "connection reportedly drawn by authorities in a coercive fashion between the provision of land titles and the outcome of the elections<sup>104</sup>". Land that youth volunteers refused to measure for the people, claiming it was state land, was then measured for the benefit of wealthy and powerful individuals<sup>105</sup>. Furthermore, at least in the first phase of the campaign, confusion regarding the role and identity of youth volunteers was widespread among the people, as "they conduct their work dressed in military uniforms sometimes bearing government armed forces insignia and are transported in government military vehicles<sup>106</sup>".

Thirdly, the land titling campaign does not address the situation of those indigenous groups that seek to obtain a collective land title (CLT). Under the 2001 Land Law, indigenous people can exercise collective rights over lands "where they have established their residence and where they carry out traditional agriculture<sup>107</sup>", meaning that the lands of indigenous communities are not only comprised of the lands that are actually cultivated but also of the land reserved for traditional shifting agriculture practices. Sacred forests and ancestral burial sites are included in communal lands as well. However, the registration process, which is detailed in the 2009 Sub-Decree on Procedures of Registration of Land of Indigenous Communities, is long and too complicated.

As for now, only eight indigenous communities have successfully been granted collective ownership. This is partly due to the fact that communities receive little or no support from local authorities in the registration process. In some instances indigenous groups

RGC's Order 01, particularly on surveying land and issuing land titles by 31 March 2014 - available at: <http://www.mlmpc.gov.kh/?page=&lg=en#sthash.PESaUIWW.dpuf>  
 102 Ibid.  
 103 Radio Free Asia (RFA), *Hun Sen Warns of 'War' if He Loses Election*, 19 April 2013, <http://www.rfa.org/english/news/cambodia/hun-sen-04192013173854.html>  
 104 Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, 5 August 2013, para., 56, p.16  
 105 Human Rights Watch (HRW), *Cambodia: Land Titling Campaign Open to Abuse*, 12 June 2013, available at: <http://www.hrw.org/news/2013/06/12/cambodia-land-titling-campaign-open-abuse>  
 106 Ibid.  
 107 Article 25, Land Law, 2001

have been refused the right to be recognized as legal entities that may register land for collective ownership. The problem is exacerbated by a widespread lack of understanding of and disregard for indigenous peoples' traditions and religious practices by local authorities, who often operate in collusion with land grabbers and favour the progressive encroachment on indigenous people's land by delaying the registration process. Indeed, "[c]ustomary rights held by indigenous people have been one of the easiest targets for land-grabbers. One common form of land grabbing has been the acquisition of lands that were within the known domain of subsistence farming communities but lying fallow (and thus apparently unused). Because of their political marginalization and limited understanding of the law or their rights, indigenous groups are often unable to effectively defend against land-grabs, particularly in cases where they do not have local government support<sup>108</sup>". Directive 001 has further exacerbated this problem through the institution of small-scale ELCs, used as a mean to regularize the arbitrary occupation of the land seized from indigenous people's territories. Moreover, the complexity and length of the collective land registration process<sup>109</sup> means that often people opt for individual land titles instead. Once isolated from the rest of the community, it is easier for concessionaires and land grabbers to convince individuals or families to sell their land. The concern is that a great part of the land originally intended to be included in the CLT will be lost by the time the collective land registration process is underway.

The government should urgently address these issues and redouble its efforts to expedite that process in every way possible. As noted by the UN Special Rapporteur on the situation of human rights in Cambodia, Surya Subedi, "[a]t least in the short-term, it seemed that the indigenous land titling programmes were being deprioritized, and resources diverted from the Ministry of Land Management, Urban Planning and Construction. There have been reports of intimidation, harassment and coercion of indigenous people in some cases, and in other cases confusion among some indigenous individuals who opted for private land title without fully understanding their rights to communal land title<sup>110</sup>". Indeed, according to Instruction 15 (4 July 2012)<sup>111</sup>, the demarcation of the boundaries of collective lands was initially meant to be carried out by the student volunteers. The youth volunteers were instructed to demarcate communal land according to existing regulations for those indigenous groups in the process of obtaining or that already obtained the status of legal entities from the Ministry of Interior (MoI). Indigenous groups who did not wish to be part of the 'community' were given the possibility to apply for private land titles provided by Directive 001. However, immediately after, the boundary demarcation process for communal land was postponed to a later date due

108 USAID, *Cambodia- Property Rights and Resource Governance Profile*, 2011, p. 8

109 IP's collective land title registration is a three step process:

1. **Identification** of indigenous peoples and communities: the community needs to identify itself as indigenous community and make a formal request to the Ministry of Rural Development (MRD). The Department of Ethnic Minorities Development (DEMD) is competent for assessing whether the community meets the criteria for being considered "indigenous".

2. **Registration of the community as a legal entity with the Ministry of Interior (MoI)**: this stage involves the drafting and approval of the statute of the community, and the registration with the MoI. Once officially established as legal entity, the community can apply for a collective land title.

3. **Registration of the collective land title with the Ministry of Land Management, Urban Planning and Construction (MLMUPC)**: this step includes the boundary surveying and demarcation, titling procedure and the adoption of internal rules, which stipulate the management and collective land use as well as conditions such as collective land type and reconciliation at community level in case of conflict over traditional land use.

110 Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, 5 August 2013, para. 57, p.16

111 CLP instruction 015 SNN/MLMUPC/CLP dated 4 July 2012 on the implementation of RGC Order 01 on the Measures Reinforcing and Increasing the Effectiveness of the Management of Economic Land Concessions (ELC) dated 7 May 2012 in relation with the indigenous communities' areas, jungle, semi-jungle, Prey Long forest areas, rivers, beaches and public services sites. Available at: [www.mlmupc.gov.kh](http://www.mlmupc.gov.kh)

to time and budget constraints<sup>112</sup>. Fearing being left without any land and frustrated by the length of the communal titling process, many families ended up opting for individual land titles. In some instances, this choice was dictated by a widespread propaganda against communal land titling conducted by local authorities or outsiders linked to concessionaires or authorities. The pressure put on indigenous people to give up their collective rights is easily explainable by the fact that the land reserved for shifting agriculture, ancestral burial sites and sacred forests, which would be included in the communal land title, is not included in individual titles delivered through the land titling scheme. This means that a considerable part of the land is lost, to the benefit of the state or the concessionaires.

#### **CASE STUDY: PEAM POA VILLAGE, KHSEM COMMUNE, SNUOL DISTRICT, KRATIE**



*ADHOC investigator meeting with the community*

*104 families in Peam Poa village, Khsem Commune, Snuol district, Kratie province are embroiled in a land dispute with Binh Phuock Rubber 2 Company, a Vietnamese company connected to a high ranking individual close to the Prime Minister.*

*The company was awarded an ELC in 2011 for planting rubber. The company started to clear the land, destroying some of the properties of the villagers, including 23 houses. The affected families then filed a complaint to ADHOC, which started to investigate the case in December 2012. ADHOC also provided legal advice to the community and sought the intervention of the District Land Management Committee, with which it conducted a survey that determined that the 104 families had lived in a state forest area covering 520 hectares since 2008/2009.*

*In the framework of the Prime Minister's new land titling scheme, implemented by youth volunteers, measurement of the land of the 104 families started. However, they stopped*

112 Instruction 020-SNN/KKD dated 26 July 2012 on the implementation of RGC Order 01BB dated 7 May 2012 in relation with areas of indigenous communities

as soon as the company intervened with local authorities. People were told by the youth volunteers that they longer had the support of local authorities in the land measurement process.

The villagers filed a complaint with the leader of the youth volunteers, Mr. Hun Maneth, son of Prime Minister Hun Sen, and national authorities, including the National Assembly and the Prime Minister's cabinet, which transmitted a report to the Provincial Governor, asking for intervention. A resolution was promised to the people after the National Election in July 2013. In August, however, inaction by authorities led to the submission of a letter of intervention and petitions, and the organization of further protests, including a march by around 100 members of the community to Phnom Penh. The Prime Minister's cabinet once again assured them a timely resolution. Meanwhile the company placed security guards on the road to the plantation, preventing access to the village and to the fields. ADHOC facilitated a meeting between the community representatives and the Cambodian Human Rights Committee (CHRC), which started an investigation in October 2013. A letter to the Provincial Governor was sent. As a result, while no agreement could be reached between the parties, the company unblocked the road, allowing the villagers to temporarily cultivate the land. On the 22 January 2014, the Provincial Governor and a representative of the Ministry of Agriculture led by Yem Chaily, the Prime Minister's Deputy, met with the community, and offered 100 hectares, less than 1 hectare per family. The villagers filed a further complaint with ADHOC on the 11 February 2014. Letters of intervention and a petition to the Prime Minister's cabinet, the CHRC and Yem Chaily's cabinet were sent. As a result, on the 28 February 2014, the District Governor and the company's representative met again with the community, offering to provide 250 hectares to the 104 families. This time, the people agreed. On the 3 March 2014, local authorities proceeded with the measurement of the land; however, as of March 2014, the 104 families had not yet received land titles..

#### **CASE STUDY: KANAT TALOA COMMUNE, ANDONG MEAS DISTRICT, RATTANAKIRI PROVINCE**

More than 400 hectares of Kachok ethnic minority land have been grabbed by four companies - Krongpok Ratanakiri Development Co Ltd, Veasna Investment Company, CRD Company, and Heng Brother Company - operating in Kanat Taloa commune, Andong Meas district, Rattanakiri province. Despite complaints filed at the provincial and national level, a solution could not be found. Fearing being left without any land, some of the Kachok people ceded to the companies' pressure and decided to sell most of their land in exchange for land titles to secure ownership over the remaining part. The villagers now claim to have been tricked into the deal. ADHOC is providing legal advice to the community.

#### **CASE STUDY: BOR LOY VILLAGE, KECHONG COMMUNE, BORKEO DISTRICT, RATTANAKIRI**

191 families have been peacefully living since 2006/2007 on an area of approximately 400 hectares in Bor Loy village, Kechong Commune, Borkeo district, Rattanakiri province, where they moved to look for gold. A land dispute erupted as local authorities decided to no longer tolerate the presence of the 191 families, claiming that the villagers were illegally encroaching on state land. Nevertheless, before the elections, the dispute was put on a hold and the authorities further provided legal identification documents to the

families with the aim of canvassing for their votes. After the elections, however, authorities refused to measure the land and provide land titles to the families. The community filed a complaint directly to the National Assembly and to the Prime Minister's cabinet with no results. ADHOC conducted investigations and provided legal education related to the case to the 191 families and is supporting the community in the filing of a complaint to the provincial court. ADHOC also provided legal assistance to the community representative, who was summoned to court for interrogation in March 2014 in relation to charges of illegal encroachment on government land.

#### **Recommendations:**

- **Implement official land titling program and tackle land disputes as a matter of priority;**
- **Accelerate the registration of indigenous communities as legal entities and prioritize the registration of their lands in accordance with the Land Law; Ratify the ILO convention 169 on Indigenous People; Allow NGOs, media and donor partners to monitor and evaluate the operations Collective land titling registration.**

## LAND GRABBING & LAND DISPUTES

According to figures gathered by ADHOC, more than 770,000 people (equal to almost 6% of the total populations) have been adversely affected by land grabbing since 2000.

Land grabbing takes different forms. The International Land Coalition (ILC) defines large-scale land grabbing as “acquisitions or concessions that are i) in violation of human rights, particularly the equal rights of women; ii) not based on a thorough assessment, or are in disregard of social, economic and environmental impacts, including the way they are gendered; (iv) not based on transparent contracts that specify clear and binding commitments about activities, employment and benefits sharing, and (v) not based on effective democratic planning, independent oversight and meaningful participation<sup>113</sup>”. In a broader sense, land grabbing refers to the acquisition of power to control land and other associated resources like water, minerals or forests. Therefore, land grabbing occurs when affected populations effectively lose the control of the land, not necessarily involving the expulsion of such populations from the land. In Cambodia, it is linked to different phenomena such as the granting of ELCs, SLCs and forced evictions. Land grabbing can also be carried out at a local level, as a consequence of the actions of local authorities, powerful local elites, private land owners and army units. In its daily work, ADHOC uses the expression “land grabbing” restrictively in this last sense, referring to the dispossession of land involving an imbalance of power between the parties.

In 2013, ADHOC handled a total of 135 land disputes affecting a total of 36,864 hectares and 6,488 families. The conflicts were mostly concentrated in the north and north-east of the country, with Rattanakiri, Preah Vihear and Siem Reap provinces most affected. Out of these 135 cases, 97 cases were land grabbing cases, 29 were related to ELCs<sup>114</sup>, 2 to SLCs, 6 to forced evictions and one related to fisheries. ADHOC registered a 48 per cent increase of land conflicts compared to 2012 (when ADHOC handled 70 cases of land disputes affecting a total of 101,408 hectares and 10,689 families). This indicates that victims of land rights abuses are less afraid of speaking out and are more willing to approach NGOs to seek assistance. However the total size of disputed land was smaller than previous year. This could be due to the fact that ADHOC handled a high number of cases related to disputes between private parties or between private citizens and various public authorities; the fact that no new large-scale concession was granted could also explain the reduction of land size. In the first three months of 2014 ADHOC registered 37 new land disputes, affecting 2,617 families equal to at least 6,470 individuals for a total land size of 5,451.516 hectares.

ADHOC has achieved significant success in resolving small-scale land grabbing cases. Cases involving powerful individuals or related to ELCs or SLCs are harder to resolve given power imbalances between conflicting parties. Authorities are less collaborative

113 International Land Coalition, *Tirana Declaration: Securing land access for the poor in times of intensified natural resources competition*, 4, 26 May 2011

114 These cases are related to ELCs granted prior to 2013. However they were classified under “new cases” as the affected communities filed a complaint with ADHOC in 2013.

and courts less likely to process complaints or lawsuits when it comes to cases involving concessionaires or wealthy elites, which is symptomatic of the widespread corruption that plagues Cambodia’s institutions and judicial system. Land disputes involving the military are also particularly difficult to solve. In the past five years, the Royal Cambodian Armed Forces (RCAF) have evicted nearly 1,000 families in 14 provinces - especially in border provinces such as Preah Vihear, Oddar Meanchey, Pailin, Pursat, Battambang and Koh Kong - to build military bases. There have been reports of villagers who received death threats and were pressured into giving up their land for fear of reprisals. In some instances, the military have allowed the communities to grow crops, only to violently take possession of the land during the harvesting period. Authorities are reluctant to take any action as they do not dare to confront the military. As a result, most of these disputes are deadlocked, without much chance of a just resolution for the affected communities.

In conjunction with its efforts to provide assistance to the victims in their quest for justice, ADHOC works extensively on the empowerment of communities through the organization of workshops, trainings and facilitating community networking activities. Communities are increasingly aware of their rights and are more willing to denounce abuses when they occur. Civic participation and solidarity between communities has been strengthened. For example, on the occasion of the 65<sup>th</sup> International Human Rights Day in December 2013, hundreds of people from various provincial locations took part in a 10-day march to Phnom Penh in order to protest against human rights violations -including land rights violations - carried out by the government. On 19 March 2014, 11,000 families, supported by ADHOC, initiated a nationwide campaign to put pressure on the government to resolve long-running land disputes. 105 complaints were filed to competent authorities in order to remind the authorities to comply with their obligations under the law and finally resolve their cases, some of which have been dragged on for more than 10 years.

Enhancing dialogue and cooperation with institutions is also critical. Since 2012, ADHOC has been conducting joint investigations into cases of human rights abuses, including land-related cases, with the Cambodia Human Rights Committee (CHRC). ADHOC strongly welcomes such cooperation, which however could not be fully implemented due to a certain reluctance of the CHRC to investigate cases involving powerful people. Nevertheless, ADHOC will continue to work to improve collaboration and dialogue with the CHRC.



People and monks protesting during the Human Rights Day

**CASE STUDY: SRE NOY COMMUNE, VARIN DISTRICT, SIEM REAP**

A land dispute has been ongoing between families from Choup Kon Pleng, Prime Kong and Tropaing Krasaing villages, Sre Noy commune, Varin district, Siem Reap province and the Royal Cambodian Armed Forces (RCAF) since 2010. The dispute is over more than 320 hectares of land. The families claim to have lived in the area since 2005.

In 2010, a military division was mobilized to Put Ta Sok, Sre Noy commune, from the nearby camp of Oubay Tab to set up a military base, affecting the land of 95 families. According to the military, the land was state-owned and intended to be donated to the military. Authorities allegedly had allowed the 95 families, mostly from Kampong Chhnang - to farm the land until this was needed for a base. However, there is no document proving that the land was meant for the military. Eventually, the families had settled and built villages around the agricultural land, and cleared the forest to plant fruit trees and other food crops.

According to community representatives, the military unlawfully occupied their land, and banned villagers from farming it. Villagers were forced to give up the land for fear of reprisals. Eventually, around 40 families returned to the area and cultivated land 2 km away from the original villages. The military re-occupied the land during the harvest, and placed armed guards around the fields in order to prevent them from accessing fields and harvesting crops.

Despite repeated requests sent by the villagers to the Provincial Governor to seek intervention, no action has been taken. On the contrary, the authorities have been trying to push villagers into accepting resettlement at a much smaller area, which will be difficult to cultivate as the land is of poor quality.

**FORCED EVICTIONS**

Forced evictions constitute gross violations of a range of internationally recognized human rights norms, including the right to adequate housing, food, water, health, education, work, security of person, security of the home and freedom from cruel, inhuman and degrading treatment and freedom of movement.

Forced evictions affect hundreds of communities across Cambodia. Despite possessing legal documents proving possession rights or fulfilling the criteria for requesting definitive titles of ownership<sup>115</sup>, thousands of individuals face the threat of eviction or have been evicted without adequate compensation (if any) to make way for city beautification projects, development schemes and large scale infrastructure projects, in addition to land and extractive industry concessions.

Eviction should be "carried out lawfully, only in exceptional circumstances, and in full accordance with relevant provisions of international human rights and humanitarian law"<sup>116</sup>. However, the Cambodian government has failed to respect these provisions. Affected persons have rarely been provided with appropriate notice and opportunities to challenge the eviction decision; authorities have failed to disseminate relevant information in advance and to hold public consultations with the affected communities<sup>117</sup>. Evictees have often been "rendered homeless or vulnerable to the violation of other human rights"<sup>118</sup>. When relocation measures were taken, evictees have been relocated to isolated areas kilometres away from their original settlements. The isolation of these sites prevented access to jobs, education and income-generation activities. Relocation sites often resemble slums, lacking basic services such as clean water, sanitation, electricity, schools and health centres. Diseases are more likely to spread among residents, as sanitation is poor or non-existent. In some cases, many years after the eviction, and despite repeated requests to the government, some evicted communities are still without access to basic services and "promises by the companies involved and municipal governments have many times not materialized"<sup>119</sup>. This is the case, for example of residents of Phnom Penh's Borei Keila community, who were violently evicted from their houses to make room for a residential development project by Phanimex company - owned by well-connected businesswoman Suy Sophan - more than two years ago and are still waiting for the company to provide the promised relocation sites. Communities

115 A survey by the Housing Rights Task Forces (HRTF) interviewing communities facing forced eviction in Phnom Penh showed that 85.3% of the households in threatened communities had bought their house from other person and had been living there more than 11 years. HRTF, *Socio Economic Impact of Forced Eviction*, 2011, p. 5

116 UN Basic Principles and Guidelines on Development Based Evictions and Displacement, p. 4

117 According to the UN Basic Principles and Guidelines on Development Based Evictions and Displacement, "Urban or rural planning and development processes should involve all those likely to be affected and should include the following elements: (a) appropriate notice to all potentially affected persons that eviction is being considered and that there will be public hearings on the proposed plans and alternatives; (b) effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups; (c) a reasonable time period for public review of, comment on, and/or objection to the proposed plan; (d) opportunities and efforts to facilitate the provision of legal, technical and other advice to affected persons about their rights and options; and (e) holding of public hearing(s) that provide(s) affected persons and their advocates with opportunities to challenge the eviction decision and/or to present alternative proposals and to articulate their demands and development priorities"

118 *Ibid.*, p. 10

119 Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, 5 August 2013, para. 51, p.15

have to rely on the help of NGOs or religious organizations.

The UN Basic Principles and Guidelines on Development Based Evictions and Displacement underline that “evictions shall not be carried out in a manner that violates the dignity and human rights to life and security of those affected<sup>120</sup> [...] Any legal use of force must respect the principles of necessity and proportionality<sup>121</sup>”. However, there have been many cases of violence used against communities refusing to leave their homes. Tear gas, fires, rubber bullets and live ammunition have been used in forced evictions, in some cases with fatal consequences, such as the killing of 14 year old Heng Chantha, shot to death by security forces during a land grab in Kratie province in 2012. Nobody has ever been held to account for her death. Moreover, the emotional and psychological impact of forced evictions is devastating to individuals, families and communities: “immediately following forced eviction, residents are traumatized. In many cases, families remain on the eviction site without water, electricity or shelter for days, uncertain as to what to do, and where to go. In most instances they have lost their homes, including all of the investments they made in it, as well as their personal possessions – clothing, furniture, valuables and cherished heirlooms. [...] Entire communities are destroyed, family members are separated, a way of life destroyed<sup>122</sup>”.

With regard to remedy, states should “ensure that adequate and effective legal or other appropriate remedies are available to all those who undergo, remain vulnerable to, or defend against forced evictions<sup>123</sup>”. However, Cambodians still have few meaningful avenues of recourse when they face eviction, due to the wealth, power, political-connections, and/or the corrupt interests of those involved. Evictees who seek remedies are often threatened, harassed or coerced to accept sub-standard compensation, or are prosecuted through specious criminal charges, most typically criminal incitement, defamation and disinformation. Peaceful protests and demonstrations against the government’s failure to compensate victims of forced evictions have been suppressed by police and district security guards. Violence has been repeatedly used against evicted community members exercising their rights to freedom of expression and assembly. For instance, on the night of 23 September 2013, police and thugs dressed in civilian clothes attacked about 30 anti-eviction activists, mostly from Phnom Penh’s Boeung Kak and Borei Keila communities, who were peacefully protesting in front of Wat Phnom. They were attacked with batons, electric prods and slingshots, and at least six were injured. Journalists were also targeted. Activists are under constant threat of being arrested and imprisoned; Yorm Bopha, a Boeung Kak community activist was convicted on fabricated charges in May 2012 and only released in November 2013 after having served over a year in prison. The charges against her have not been dropped; instead, the Supreme Court has sent the case back to the Court of Appeal for a retrial, which is now hanging like a sword of Damocles over her head.

120 UN Basic Principles and Guidelines on Development Based Evictions and Displacement, IV, 47, p. 10

121 UN Basic Principles and Guidelines on Development Based Evictions and Displacement, IV, 48, p. 10

122 UN Habitat, *Forced Evictions: global crisis, global solutions*, 2004, p.68

123 UN Basic Principles and Guidelines on Development Based Evictions and Displacement, p. 7



House burned in Koh Kong province

#### CASE STUDY: PHNOM PENH INTERNATIONAL AIRPORT

On 25 July 2012, eviction notices were delivered to at least 370 households living in Thmor Korl, Prey Chisak and Cham Bok communities (Sangat Cham Choa commune, Khan Pour Senchhey district), located around the perimeter of the International Airport of Phnom Penh. The eviction notice, without mentioning any eventual compensation, ordered the families to remove houses and other structures within 10 m of the wall of the airport (later reduced to 5 m) in order to build a security buffer zone around the airport. The families were told that their houses were located within the airport security zone, potentially in violation of international airport security and safety regulations set by the International Civil Aviation Organization (ICAO). The households facing eviction claim to have legally purchased the land, and have documents relevant to establishing legal possession rights. The development project is implemented by Société Concessionnaire de l’Aéroport (SCA), a joint venture between Vinci Airports and Mahibbadh Masteron Cambodia and is financed by the International Finance Corporation (IFC), the private investment arm of the World Bank.

In November 2012, eight members of the community were arrested, and then released, for having painted an “SOS” sign on their roof to ask for help from United States’ President Barack Obama, who was among leaders gathering in Phnom Penh for an ASEAN summit. On 22 May 2013, villagers staged a protest blocking the road to the Phnom Penh airport, complaining they had not received information relating to compensation and resettlement options. Furthermore, authorities allegedly had not prevented new households from purchasing plots of land around the airport, despite having knowledge of the airport development plans. Eventually, local authorities and the chief of Phnom Penh International Airport met with the people in order to explain that international security standard required 5 m around the airport and invited the people to cooperate with authorities. In June 2013, some of the affected families lodged a complaint with the SCA’s Compliance

Advisor Ombudsman (CAO) mechanism, raising issues around compensation, community consultations and due process.

Immediately after the National Election in July 2013 - despite the conditions for compensation having not been agreed by the community - the company began to build demarcation pillars. In January 2014 NGOs and other parties involved met again in Phnom Penh. The airport representatives agreed to engage in consultations with the people and to disclose information on the project before proceeding with the eviction. The people agreed to an eventual relocation but only after an assessment of the number of the affected families, and an evaluation of the price of the properties that would be destroyed. A working group was created in order to set standards for compensation and to create a committee to which the families could lodge complaints. In February 2014, all sides involved in the dispute agreed to let the IFC ombudsman mediate negotiations.

#### **CASE STUDY: CHAM RAING, KEOPHOS COMMUNE, STUNG HAO DISTRICT, PREAH SIHANOUK**



A bulldozer destroying a home during the eviction

In March 2013, 21 families from Cham Raing, Keophos commune, Stung Hao district, Preah Sihanouk province, were forcibly evicted from an area of 36 hectares where they had been living since 2000. The families were embroiled in a land dispute with Beer Leo Company, owned by tycoon Cheam Pehn, which claimed ownership over the land. Police officers and local officials armed with machetes and guns violently forced out the families, destroying houses and properties. Three people were detained while trying to protect their houses. The provincial court's verdict, ordering to carry out the eviction, was implemented while the case was still pending at the Appeal Court, in breach of the provisions set out by law. Prime Minister Hun Sen, in a public speech held on the 19th of March 2013 - less than two months before the National Election - condemned the eviction, asked the villagers to move back to their land and ordered the destroyed houses to be rebuilt at his own expenses<sup>124</sup>.

124 The Phnom Penh Post, Channyda C., 'Tearful family, pics' moved PM to action, 20 March 2013, <http://www.phnompenhpost.com/national/%E2%80%98tearful-family-pics%E2%80%99-moved-pm-action>

#### **Recommendations:**

- **Adopt the draft National Housing Policy, making sure it is in line with international human rights standards. In this regard, as requested by the UN Special Rapporteur on the Right to Adequate Housing, carry out a mapping of the housing needs of the country;**
- **Adopt an Evictions Act in line with international human rights law. In the meantime, institute a moratorium on evictions in urban and rural areas until the process of land titling has been completed;**
- **Recognize possession rights of people living in informal settlements, giving special attention to informal urban settlements;**
- **In relocation sites for evictees, build basic electricity and water/sanitation infrastructure and provide public education, health and security services, as mandated under international law.**

## NATURAL RESOURCES

Natural resources in Cambodia are disappearing at an alarming rate. Since 1973, Cambodian forestry cover has dramatically been reduced from 72 per cent to 46 per cent, with the percentage of dense forests cover having dropped from 42 per cent in 1973 to 11 per cent in 2013<sup>125</sup>. According to a recent report, Cambodia has the fifth-fastest deforestation rate in the world<sup>126</sup>.



Land clearing in Siem Reap province

Over the past few years, huge areas of formerly protected sanctuaries have been reclassified and allocated as ELCs. For instance 60 per cent of Kratie's Snoul Wildlife Sanctuary has been cleared by the numerous companies operating in the area. The unprecedented rate of newly granted SLCs has further exacerbated the problem. In 2013, the government issued 86 reclassifying protected areas to state private land for 'provision of right of ownership to citizens', for a total of 93,143.093 hectares of land. Phnom Oral Wildlife Sanctuary was the most encroached area with 26,893.90 hectares being seized. As a consequence, wildlife and biodiversity are endangered. Indigenous peoples' cultural and religious heritage is under attack as a result of the destruction of their sacred forests.

Furthermore, protected areas and community forests are under increasing threat from

125 Open Development Cambodia, <http://www.opendevdevelopmentcambodia.net/maps/>

126 Study published by the journal *Science* and conducted by researchers at the University of Maryland, news reported by The Cambodia Daily, Zsombor P., *Loss of Forest in Cambodia Among Worst in the World*, 19 November 2013

illegal logging. Measures taken by the government in order to halt what has become an outright sack of Cambodian forests have proven to be ineffective. Villagers have been left with no other choice but to protect their land through self-organised and self-funded patrols, exposing their communities to threats and intimidations, as those orchestrating illegal logging activities are often powerful and well-connected, and in collusion with local authorities. Instead of taking action to immediately stop the illegal decimation of the forests, the government is actively facilitating their destruction by granting exclusive licenses and concessions to powerful businessmen implicated in illegal logging activities. A well-known logging tycoon, Try Pheap, was awarded an exclusive license to buy thousands of cubic meters of confiscated luxury timber throughout the country<sup>127</sup>, in addition to the exclusive right to buy all the timber harvested on ELCs operating in Rattanakiri<sup>128</sup>. It will be practically impossible to determine whether the logs are cut within or outside the boundaries of the concessions and ascertain where the luxury wood actually comes from.

Reports from the Ministry of Planning show that 26% of the total population underwent permanent internal migration in recent years<sup>129</sup>, with most of internal migrants moving to areas in the border provinces of Mondulakiri, Rattanakiri, Pailin, Battambang, Bantey Meanchey, Oddar Meanchey, Preah Vihear where most of the country's forests are concentrated. New settlers, in many cases not understanding the importance of preserving natural resources for present and future generations, and moved by need, encroach on forests to cultivate the land and build homes, contributing to deforestation. It should be the government's role to educate the population to respect and protect their land, and this could be done in the first place by leading by example, instead of selling the Cambodian people's land to the highest bidder and tolerating illegal logging activities.

ADHOC received reports that in some cases the land was cleared by people in the attempt to appear as legitimate residents of the land and secure land titles. This operation is often carried out by migrant workers and poor local residents with the aim of obtaining land for investors and speculators in exchange for money. Migrant workers and poor local residents are also hired to illegally cut luxury timber, without fully knowing or understanding the risks that these activities involve, especially when they have to venture across the borders to look for luxury trees. In 2013, in the forests located along the Thai-Cambodian border - particularly rich in rosewood, sold mainly to the Chinese market via Vietnam and for which prices can hit as much as US\$50,000 per cubic meter - at least 69 Cambodian loggers found cutting trees on Thai territory were killed by Thai forces, according to statistics provided by the Cambodian government. ADHOC registered 129 killings since 2008, 38 in 2013; in 2011 the death toll was 15 people<sup>130</sup>. Whatever the numbers, the killing should be stopped immediately and

127 "The deal gives Try Pheap permission to collect up to 4,871 cubic meters of luxury wood seized from illegal loggers by forestry officials in Phnom Penh and all 24 provinces, Mr. Sarath said, adding that Try Pheap is allowed to sell the timber to any local or international buyers the company desires". The Cambodia Daily, Pheap A., Woods, B., *Try Pheap Given Exclusive Rights to Seized Wood*, 26 November 2013

128 It was reported that Try Pheap was "preparing to expand cross-country with a scheme that already gives him exclusive rights to buy all the wood felled on economic land concessions (ELCs) in Ratanakiri province". The Cambodia Daily, Zsombor P., Pheap A., *Try Pheap Firm in Talks to Replicate Timber Deal*, 4 December 2013

129 General Population Census of Cambodia 2008, National Institute of Statistics (NIS), Ministry of Planning, 2009

130 The Phnom Penh Post, Sokheng V., *Blood on the border*, 20 February 2014, <http://www.phnompenhpost.com/national/blood-border>

thorough investigations by both Cambodia and Thailand should be urgently carried out.

Cambodia's natural resources are further threatened by the implementation of large scale dam projects that besides contributing to forced evictions and to the destruction of protected areas – as it would be the case of the proposed Stung Cheay Areng hydropower dam in Koh Kong province – threatens fish supplies. As fish is the main source of protein in the Cambodian diet, the food security of millions of people would be adversely affected.

In order to circumscribe the severe damages that decades of overexploitation of Cambodia's natural resources have caused, the Cambodian government should urgently take measures to preserve Cambodia's unique natural resources and make serious efforts to combat deforestation. Furthermore, an analysis of specific supplies and nutrition loss should be taken into account when conducting environmental impact assessment studies for large-scale infrastructure projects.

#### **CASE STUDY: LUMPHAT AND ANDONG MEAS DISTRICTS, RATTANAKIRI**

*On 15 March 2011 two Vietnamese companies – Vietnam Rubber Group, and Hoang Anh Gia Lai Group (HAGL) – were granted ELCs totalling 9785 hectares in Rattanakiri province to grow rubber and cashew trees. The districts of Koum Mom, Ochhum, Lumphat, and Andong Meas were affected by the concession, however there were only disputes within the Lumphat and Andong Meas districts.*

*The company began to clear the land in early 2013, seizing the inhabitant's community forestland. 19 families within the community lodged a complaint with ADHOC. The immediate intervention of local authorities was required, however the provincial governor informed ADHOC that the decision to grant the concession was made at the national level and as such, he had no jurisdiction to change it.*

*ADHOC provided legal advice to the community members to assist the provision of documents outlining all the details of their complaint, including specific details of land that had been taken, and trees that had been destroyed.*

*ADHOC's findings were provided to the provincial level, and ADHOC then established a public forum, inviting all parties involved to participate. ADHOC formulated a strategy to pressure the governor to take immediate action by releasing the complaint and relevant information to the local media. A meeting between provincial authorities, the companies involved, and various NGOs, including ADHOC, was organised, and the parties agreed to conduct a joint investigation.*

*The investigation found that more than 10,000 trees which had belonged to the communities, covering an area of 43 hectares, had been illegally destroyed. It further determined that the land had been illegally seized.*

*HAGL eventually agreed to compensation of between 2,000 and 10,000 riels for every tree that was logged. They also agreed to cut 34 hectares from the concession in order to give it back to the villagers. The Vietnamese companies, having already destroyed 10,000*

*trees, agreed to cease all logging. The companies are still working in the area, but since the communities have been compensated and granted their land back, the dispute has ended.*

#### **CASE STUDY: STUNG CHEAY ARENG HYDROPOWER DAM**

*In February 2014 the government granted approval for "extensive drilling, geological mapping and prospecting<sup>131</sup>" in Koh Kong's province's Areng Valley in preparation of the construction of a controversial hydropower dam. The project is to be implemented by Chinese company Sinohydro, which has among the members of its governing board CPP Senator Lao Meng Khin and his wife Cheung Sopheap, owner of the Pheapimex Group<sup>132</sup>. The project was labeled as "not economically viable" by the previous concession holder, China Guodian.*

*The dam's reservoir, if built, would inundate the land of 1500 families, including sacred forests and burial grounds of Khmer Daeum and Chorng indigenous groups living in the area. The impact on the valley's unique ecosystem and wildlife would be devastating and the food security of thousands of people would be seriously threatened.*



*Local resident and monks are strenuously resisting the access of the company's employees to the area; peacefully protesting and blocking the road to the concession in order to prevent the company from transporting machinery and other equipment to start the drilling. As for now, the constant patrolling proved to be effective. Areng Valley's community representative further brought their complaint to Phnom Penh where a petition was delivered to the Ministry of Industry, Mines and Energy (MIME), the Ministry of Environment (MoE) and the Ministry of Culture and Fine Art (MCFA).*

131 The Phnom Penh Post, Pye, D., Areng Valley mining may unseat the dam, 25 March 2014

132 The Phnom Penh Post, Pye, D., Power couple linked to Sinohydro project, 17 March 2014

**Recommendations:**

- **Demarcate and publish information about protected areas and their internal zones. Seek technical assistance from development partners with a view to putting an end to ELC or other harmful activities in areas that fulfil the criteria of the “core” and “conservation” zones;**
- **Prioritize conservation of primary and evergreen forests and enforce environmental laws and regulations;**
- **Systematically assess the environmental impact of large development projects such as dams and land concessions prior to their implementation and re-assess their impact whilst they are being built;**
- **Punish local administration officials and forestry officials who engage in illegal logging and other offenses pursuant to Article 100 and 101 of the Forestry Law (2002)**

## EXISTING MEANS OF DISPUTE RESOLUTION

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A number of mechanisms and remedies exist under Cambodian law to solve land ownership and land use conflicts, including mediation, administrative bodies, and the judiciary. Parties involved in land disputes can seek intervention from local authorities - that may act as facilitators - and from upper level institutions such as the Council of Ministers, the National Assembly, the Senate and the Prime Minister’s cabinet. ADHOC supports the victims of land rights violations by providing assistance with the drafting and filing of letters of intervention and complaints and by advocating on their behalf to the authorities. Under the Land Law 2001, the results of investigations into disputes over unregistered land are submitted to the Cadastral Commission<sup>133</sup> which also has the responsibility to solve disputes arising within adjudication areas that cannot be conciliated by the Administrative Commission<sup>134</sup>. Cadastral Commission decisions are legally binding. However, if the disputants are still unsatisfied they may complain to the courts<sup>135</sup>. In 2013, ADHOC collaborated with the Cadastral Commission, to jointly investigate land disputes. The results were disappointing. This could be partly due to the fact that during the National Election the Cadastral Commission temporarily suspended its operations; however ADHOC noticed a widespread lack of cooperation and commitment surrounding the implementation of this partnership. Moreover, technical staff of the Cadastral Commission supported the youth volunteers in the registration of land titles as part of Directive 001. As a consequence, time and financial resources for other investigations were limited.

Conflicts over registered lands, as well as disputes related to forced evictions, fall under the jurisdiction of the court. In first instance, Municipal and Provincial Court have the jurisdiction to rule on the dispute on the basis of the Land Law and other relevant legislation. Parties may take their case to the Appeal Courts. ADHOC employs five lawyers to assist victims gather and prepare legal documents and to file complaints with the courts. Free legal representation is also provided by ADHOC.

In 2006, a National Authority for Land Dispute Resolution (NALDR), which decides on cases that are beyond the jurisdiction of the Cadastral Commission, was established. However, its role, mandate and activities remain unclear. As put by the UN Special Rapporteur on the situation of human rights in Cambodia Surya Subedi, “the institution, which was not envisaged when the Land Law was drafted, does not have a clear place within the existing institutional framework for land dispute resolution. [...] Little information is available about the functioning of this body, and it is not known how many cases it has received and resolved<sup>136</sup>”.

<sup>133</sup> Article 47, Land Law, 2001

<sup>134</sup> Article 3, Chapter 2, Sub-decree no. 47 on Organisation and Functioning of the Cadastral Commission, 2002

<sup>135</sup> Article 47, Land Law, 2001

<sup>136</sup> Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi - A human rights analysis of economic and other land concessions in Cambodia (Addendum), 24 September 2012, 59, p. 24

### a. UNFAIR PROCESSES, LACK OF EFFECTIVE REMEDIES AND HARASSMENT OF ACTIVISTS

The year 2013 has seen little progress with regard to access to justice for victims of land rights violations. Land conflicts have been marked by court processes biased towards the interests of the wealthiest party; the destruction of villagers' property and fields; intimidation, and spurious convictions of community representatives and human rights activists.

In cases involving significant imbalances of power between the land grabbers and their victims, the latter's attempts to seek justice have been systematically obstructed by the courts. In many instances, the courts have rejected or refused to process villagers' complaints on procedural grounds and/or the inability of complainants to pay official and non-official fees to initiate proceedings, which in some cases amounted to tens of thousands of dollars. As a consequence, the people do not trust the courts. The multiplication of traditional ceremonies organised by victims of land grabbing and forced evictions to course land grabbers is symptomatic of a widespread distrust of the people in the judicial system<sup>137</sup>.

Land activists live under constant threat of arrest and/or detention, most typically on charges of destruction of private property, intentional violence, defamation, disinformation or incitement. Community representatives, who in many instances have had to serve long periods in prison, are particularly vulnerable. Their households, besides being deprived of labour force and/or source of income for long periods of time, are often left without other option than to get into debt in order to pay court fees.

Moreover, it emerged from interviews conducted by ADHOC with community representatives that, on more than one occasion, in relation to the arrests, property such as ploughs and livestock have been confiscated.

Pre-trial detention is used in order to detain activists and frighten communities, contrary to Article 204 of the Code of Criminal Procedure of 2007 which limits the circumstances in which provisional detention can be used to i) stop the offense or to prevent the offense from happening again, ii) prevent the harassment of witnesses or victims, or prevent any collusion between the charged person and accomplices; iii) preserve evidence or exhibits; iv) protect the charged person's security or; v) preserve public order.

In 2013 ADHOC registered a decrease in the number of people detained in connection to land disputes: 109 persons were charged, 43 arrested and 19 imprisoned. In 2012, 232 people had been arrested. This may indicate an attempt of the government to increase its popularity during the electoral campaign and ADHOC will continue to closely monitor the situation. In the first three months of 2014, at least 50 people were charged and arrested and 12 were jailed.

At the time of the writing of this report, the Ministry of Justice announced that the Law on the Organisation and Functioning of the Courts and the Law on the Status of Judges and Prosecutors were under review, and to be implemented by mid 2014<sup>138</sup>. These laws,

137 For example, The Phnom Penh Post, Titthara, M., *Sick of course, villages course*, 10 January 2014

138 The Phnom Penh Post, White, S., *Judicial draft laws still unseen: rights groups*, 11 March 2014, <http://www.phnompenhpost.com/national/judicial-draft-laws-still-unseen-rights-groups>

which have been in the pipeline since 2005, "are necessary to ensure the independence both of those institutions and of individuals in the judiciary as well as to take disciplinary action against judicial malpractices, and corrupt and incompetent judges<sup>139</sup>".

Threats and intimidations against community representatives and human rights activists are not limited to judicial harassment. ADHOC received reports of villagers injured, having been attacked by security forces using guns or batons. Sok Ratha, ADHOC provincial coordinator in Mondulkiri, together with two of his colleagues, was victim of an attack perpetrated by an employee of the company they were investigating. The employee tried to run them down at high speed.

Especially towards the end of 2013, there has been a "worrying change from a tolerant to a repressive response of the government to public protests<sup>140</sup>", which reached its peak in January 2014 when at least four protesters were killed by police forces during a garment workers demonstration; 23 people were also arrested, and at the time of the drafting of this report, 21 were still in prison. The right to peaceful assembly and association is constitutionally protected, however the continuous crackdowns on demonstration and the mass arrests show that space for free expression is shrinking. The blanket ban on public assemblies ordered by the government in early 2014 is a further indication of the growing intolerance of dissent. Moreover, in 2013, ADHOC witnessed with extreme concern an alarming increase in the employment of untrained district security guards to police demonstrations, violently disperse protesters and carry out arrests. This in violation of Article 19 of the Peaceful Assembly Law which holds that "competent authorities designated to maintain security, safety and public order at venues of peaceful assembly shall wear proper uniforms and display name plates and identity codes on the front parts of their uniforms and adhere to the attitude of absolute patience<sup>141</sup>". The use of hired security guards in motorcycle helmets wielding electric batons as often happened during last year clearly does not adhere to the description of "[c]ompetent authorities [...] [in] proper uniforms." Nor does the use of smoke grenades and excessive force suggest an "attitude of absolute patience."

139 Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, 16 September 2010, para. 66, p. 16

140 Statement by the United Nations Special Rapporteur on the situation of human rights in Cambodia, Surya P. Subedi, 16 January 2014, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14175&LangID=E>

141 Article 19, Law on Peaceful Demonstration, 2009



Monks staging a sit-in on Sisowath Quay, Phnom Penh



Armed forces deployed during a garment worker protest on 3 January 2014

### **CASE STUDY: JUDICIAL HARASSMENT OF KUCH VENG**

On 19 May 2013, Kuch Veng, a well-known community representative and land activist working on land and forestry issues in Krakor district, Pursat province, was arrested on charges of fraud while he was visiting families embroiled in a land conflict with Pheapimex Group, and detained at the Pursat provincial prison. Pheapimex is owned by Choeung Sopheap, wife of CPP senator Lao Meng Khin, who holds several ELCs around the country,

including a 315,000 hectare concession in Pursat, affecting thousands of families in Angsa Chambok commune, Krakor district.

Kuch Veng was arrested after a complaint was lodged by Um Theavy, living in Khsach Lor Et village, Angsa Chambok commune, Krakor district, Pursat province. Um Theavy complained that Kuch Veng had promised her husband a position in the police for which she gave him \$4500 on 15 November 2010. As a result, she wanted the money repaid, with an additional ten million riel in compensation.

ADHOC and the Cambodian Legal Education Center (CLEC) provided legal assistance to Kuch Veng. Long Lun (ADHOC) and Chan Socheat (CLEC), represented Kuch Veng and acted as counsel during his provisional detention at Pursat provincial prison. The lawyers requested his release on judicial supervision on 27 May 2013. On 20 August 2013, the Pursat provincial court handed down a guilty verdict with a one-year sentence, then suspended nearly three quarters of that term. Kuch Veng was released on 4 September after 3 months and 15 days in prison.

### **Recommendations:**

- **Strictly limit the use of pre-trial detention to the exceptional circumstances set out under the Code of Criminal Procedure of 2007;**
- **Urgently adopt a Law on the Organisation and Functioning of the Courts and the Law on the Status of Judges and Prosecutors;**
- **Carry out timely and thorough investigations into human rights abuses committed by security forces against human rights activists;**
- **Stop employing untrained municipal security guards to police protests and conduct arrests.**

## CONCLUSIONS

Despite efforts made by the government towards the implementation of Directive 001 - which resulted in the suspension of the granting of new ELCs and the enhancement of land tenure security for thousands of people through the delivery of SLCs and land titles - the question of whether it is really possible to speak of long-term land tenure "security" in Cambodia remains. Thousands of Cambodians are locked in land disputes, some of which have been ongoing for over a decade. Directive 001 failed to address this problem and in some cases made matters worse, with land titles often granted in favor of the strongest party in the dispute, for example. The entire titling process is opaque and insufficiently monitored, and the fact that it came the year before the national election, directly under the order of Prime Minister Hun Sen, raises questions as to whether the scheme is a long-term solution or a populist stunt. Even when people's land property rights are effectively secured through land titles, there is concern that this will not suffice to ensure strong protection against land grabbing and unlawful dispossession. Legal certainty does not exist in Cambodia and it is likely that powerful interests will prevail over people's rights. The truth is that Cambodians still have little protection against arbitrary and corrupt judicial and governmental systems; as such, the extent to which government promises to truly ensure land security to the most poor and vulnerable and give these people effective remedies against land rights violations, is uncertain. ELCs have secured few tangible benefits for the people; instead they have enriched corrupt elite and crony capitalists that have not equally distributed the spoils of Cambodia's natural resources. A vicious cycle of corruption and greed by officials makes it difficult to confidently assert that the government's moratorium on ELCs is a serious measure to address land rights abuses, or a response to its unpopularity as a result of them. The government's plan to redistribute land to the people through SLCs is welcome. However, serious issues related to SLCs need to be urgently addressed and measures have to be taken to monitor the implementation and effectiveness of this initiative. Large portions of protected land have been seized to be redistributed to the people, who will clear the land for agricultural and residential purposes. However, protected areas should be kept intact for present and future generations. Instead, a comprehensive and transparent review of existing ELCs - as promised by Directive 001 - should be carried out, and land should be seized mainly from concessions that have not complied with legal and contractual obligations or that have been granted illegally. Illegal logging continues unabated often with the acquiescence by or active participation of the authorities meant to tackle the problem. Large swathes of Cambodia have been logged and as long as the government and officials continue to ignore the issue Cambodia's forests remain under threat. Those responsible for the outright pillage of Cambodia's natural resources should be held accountable under law, and wealth generated by natural resources should benefit all Cambodians instead of being concentrated in the hand of a powerful few. Cambodia's institutions have proven ineffective at protecting people from land grabbing. As a result, Cambodians are increasingly taking action to protect their land and forests themselves. Despite judicial harassment of human and land rights activists, and the violent repression of protests by the government, people are increasingly aware of their rights and less afraid to speak out. Now it is time for the government to start listening.

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