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Cambodian Center for Human Rights

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Cambodia: Land in Conflict

An Overview of the Land Situation



Cambodian Center for Human Rights

The Cambodian Center for Human Rights (“CCHR”) is a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia (“Cambodia”). CCHR’s vision is of a non-violent Cambodia in which people can enjoy their fundamental human rights, are empowered to participate in democracy, and share equally the benefits of Cambodia’s economic development. CCHR promotes the rule of law over impunity, strong institutions over strong men, and a pluralistic society in which variety is welcomed and celebrated rather than ignored and punished. CCHR’s logo – a dove flying in a circle of blue sky – represents the twin principles of peace and freedom.

This Report – “Cambodia: Land in Conflict” (the “Report”) – is an output of CCHR’s Land Reform Project (“the Project”) and draws an overview of the land conflict affecting Cambodia, from its root causes to the forms it takes and its impact on the population. The Report uses data and case studies gathered by CCHR staff.

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Definitions & Acronyms

ADHOC	The Cambodian Human Rights and Development Association
Cambodia	Kingdom of Cambodia
CCHR	Cambodian Center for Human Rights
CESCR	UN Committee on Economic, Social and Cultural Rights
COHRE	Center for Housing Rights and Evictions
Constitution	Constitution of the Kingdom of Cambodia, 1993 (as amended)
CPP	Cambodian People's Party
CSO	Civil Society Organization
Directive 1	Order on the Strengthening Measure and Effectiveness of Economic Land Concession Management No. 01BB
ELCs	Economic Land Concessions
Expropriation Law	The Law on Expropriation 2010
HRP	Human Rights Party
ICCPR	International Covenant on Civil and Political Rights
ICESC	International Covenant on Economic, Social and Cultural Rights
Land Law	Land Law 2001
LICADHO	Cambodian League for the Protection and Defense of Human Rights
MAFF	Ministry of Agriculture, Forestry, and Fisheries
MOE	Ministry of the Environment
MLMUPC	Ministry of Land Management, Urban Planning and Construction
MOI	Ministry of Interior
MRD	Ministry of Rural Development
NGO	Non-Governmental Organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
Phanimex	Phanimex Company
Pinheiro Principles	The Principles on Housing and Property Restitution for Refugees and Displaced Persons
PRK	People's Republic of Kampuchea
The Project	CCHR's Land Reform Project

Report	This Report entitled “ <i>Cambodia: Land in Conflict</i> ”
RGC	Royal Government of Cambodia
SLCs	Social Land Concessions
Special Rapporteur	Special Rapporteur on the situation of human rights in Cambodia
Sub-Decree 19	Sub-Decree on Social Land Concession No.19
Sub-Decree 83	Sub-decree on the Procedures of Registration of Land of Indigenous Communities No. 83
Sub-Decree 129	Sub-Decree on Rules and Procedures on Reclassification of State Public Properties and Public Entities No. 129
Sub-Decree 146	Sub-Decree on Economic Land Concessions No.146
UDG	Union Development Group
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UNTAC	United Nations Transitional Authority in Cambodia
VRG	Vietnam Rubber Group

Executive Summary

As noted by the Special Rapporteur on the situation of human rights in Cambodia (the “Special Rapporteur”) last August at the United Nations (“UN”) Human Rights Council, “*Land rights continue to be a major issue in this country.*”¹ Conflict over land – combined with the widespread and systematic violation of land rights – is one of the most prominent human rights problems faced by Cambodians throughout the country, one whose roots can be traced to the abolition of private ownership when the Khmer Rouge took over power in 1975.

More than two decades after the end of the civil war, the impact of these policies is still being felt. Despite a relatively protective legal framework, insecurity of tenure is one of the greatest fears for many Cambodians. Instead of restoring land security after years of forced displacement, the current policies of the Royal Government of Cambodia (the “RGC”) take advantage of the population’s lack of land titles in order to make way to deregulated development projects. These policies – combined with a total disregard of the law and a lack of political will to implement it – have turned land disputes into a land conflict where forced evictions are rife. Today, the despair of the affected population has grown so deep that protests and objections to land grabbing and forced evictions are rapidly intensifying.

In light of the increasingly volatile nature of the land conflict in Cambodia, this Report aims to describe the sources, forms and impact of the conflict throughout the country. The Report offers an overview of the land conflict throughout the country and provides recommendations to the RGC.

Chapter 1 (Introduction) provides a brief overview of the status of land rights and the different ownership system throughout Cambodia’s history and of the land situation in today’s Cambodia, before discussing the scope, methodology and purpose of this Report.

Chapter 2 (The Theory: a Protective Legal Framework) provides an overview of the international and domestic rights and obligations related to land and housing rights applicable in Cambodia.

Chapter 3 (The Practice: Lawlessness) discusses how the poor implementation of the laws described in Chapter 2 facilitates insecurity of tenure, opaque deregulated development and violent forced evictions. It also looks at the lack of dispute resolution mechanisms and remedies in cases of land disputes and right’s violations.

Chapter 4 (The Consequences: Impact Assessment of the Land Conflict) emphasizes the devastating socio-economic impact of forced evictions on the population, the particular impact of the land conflict with regards to women, children, and indigenous people and its disastrous impact on the environment.

Chapter 5 (Conclusions and Recommendations) concludes that the land conflict in Cambodia is violent, widespread and with no end in sight and further provides recommendations to the RGC in order to bring about positive changes.

¹ Surya P. Subedi, 'Report of the Special Rapporteur on the situation of human rights in Cambodia', (5 August 2013), <http://bit.ly/17G77ox>

1 Introduction

Cambodia's tumultuous political history has contributed in many aspects to today's unsettled land situation: every political regime, from feudalism to colonialism and communism, established its own system of ownership rights. For a better understanding of the current land conflict affecting the country, this Chapter provides an overview of the different land ownership regimes throughout Cambodia's history and of their legacies in today's current land conflict, as well as provides an overview of the current situation with regards to land rights in Cambodia and of the methodology utilized in the Report.

1.1 Land rights throughout Cambodian history

Cambodia has been the scene of significant political changes throughout its history, changes which have resulted in frequent changes in the land rights framework. From traditional feudalism to French colonialism, from the radicalism of the Khmer Rouge to the communist years following the Vietnamese invasion in 1979, and finally the capitalist driven free-market economy that exists today, ownership rights have greatly varied.

In pre-colonial Cambodia, the King retained ownership rights over all of the land in the country and Cambodia operated under a traditional feudal system in which the majority of Cambodian citizens were peasants living in rural areas and subsisting on rice farming. This feudal system continued until the French Protectorate of Cambodia was established in 1863. During the colonial period, which lasted until 1953, the French attempted to replace the “*use-based*” system of land possession with a more formalized “*title-based*” system of ownership. However, many Cambodian farmers resisted this transition and consequently, the primary piece of legislation that was intended to achieve the overhaul of property rights – the Land Act of 1884 – was not fully implemented until 1912.² In 1920, the French concept of ownership was further entrenched when the 1920 Civil Code was adopted, which defined ownership as “*the law that permits the use of properties of one's own without any prohibitions by the law.*”³

In 1953, Cambodia gained independence from France, and between 1953 and 1970, was known as the Kingdom of Cambodia. During this period, the French system of property rights continued and rates of property ownership increased. In 1970, a coup d'état removed Prince Norodom Sihanouk as head of State and resulted in the installment of a pro-western government headed by General Lon Nol, marking the beginning of the era known as the Khmer Republic, which lasted until 1975. While no legal changes were implemented in terms of land and property management during the period of the Khmer Republic, there was a shift in the distribution of the population as many rural farmers abandoned their fields and fled to the cities to escape American bombing campaigns that targeted rural Cambodia. Throughout this time, civil war raged as the Khmer Rouge clashed with Lon Nol forces.

² Sik Boreak, 'Land Ownership, Sales and Concentration in Cambodia: A Preliminary Review of Secondary Data and Primary Data from Four Recent Surveys' (September 2000) Cambodia Development Resource Institute Working Paper No. 16, 3, <http://bit.ly/18AWa17>

³ Civil Code of Cambodia 1920, Article 644, cited in Hel Chamroeun, 'Introduction to the Land Law of Cambodia' in Hor Peng, Kong Phallack, Jörg Menzel (eds), Introduction to Cambodian Law, (2012), 316, <http://bit.ly/18AYchV>

After the Khmer Rouge defeated the Lon Nol regime and seized Phnom Penh on 17 April 1975, Pol Pot and his radical government declared “Year Zero” and renamed the country Democratic Kampuchea. The Khmer Rouge sought to create an agrarian society and, in trying to achieve this aim, abolished money, embarked on the forced eviction of people from the cities, and brutally purged the intellectual and educated classes. The Khmer Rouge regime quickly started to implement radical changes, and urban areas were almost entirely evacuated as people were forcibly moved into the countryside to work the land. Rice production was deemed to be the highest priority of the people; rice fields were redesigned and agriculture was intensively collectivized. The regime set about systematically destroying all property records and annulling ownership rights; all housing, property and land then belonged to “*Angkar*” (the “organization” or the “State”). Those who were experts in land law, land management or land administration were relocated, or, like so many others who had a formal education, executed.

In 1979, the People’s Republic of Kampuchea (the “PRK”) was established by the Vietnamese after their troops invaded Cambodia, removing the Khmer Rouge from power. But rather than restoring any kind of private ownership system, the 1981 Constitution stated that the land and other natural resources were property of the State.⁴ Families were given usufruct rights (the right to use and derive profit from property belonging to someone else) to rural land and urban residents were discouraged from returning to the cities. Instead, prime urban real estate was frequently allocated to the PRK’s senior officials.⁵ From the mid-1980s onwards, land and property rights were gradually and informally de-collectivized, and the PRK delegated the administration of de-collectivization to local officials. Since there was no formal structure or legal framework in place, the implementation of this scheme was haphazard and tended to be influenced by patronage ties.

In 1989, the PRK was renamed the State of Cambodia and the ruling party was rebranded as the Cambodian People’s Party (the “CPP”). The country began to shed its communist past and the government embarked upon a transition to a free-market economy. Foreign investment was welcomed and private property rights were once again recognized and reintroduced. Although under the State of Cambodia, land remained the property of the State, legal foundations for ownership of land were advanced with the passage of the Land Law of 1992. Nevertheless, the scope of ownership rights granted under the Land Law of 1992 was still narrow and ill-defined, with the rights arguably more akin to temporary possession than actual ownership.⁶

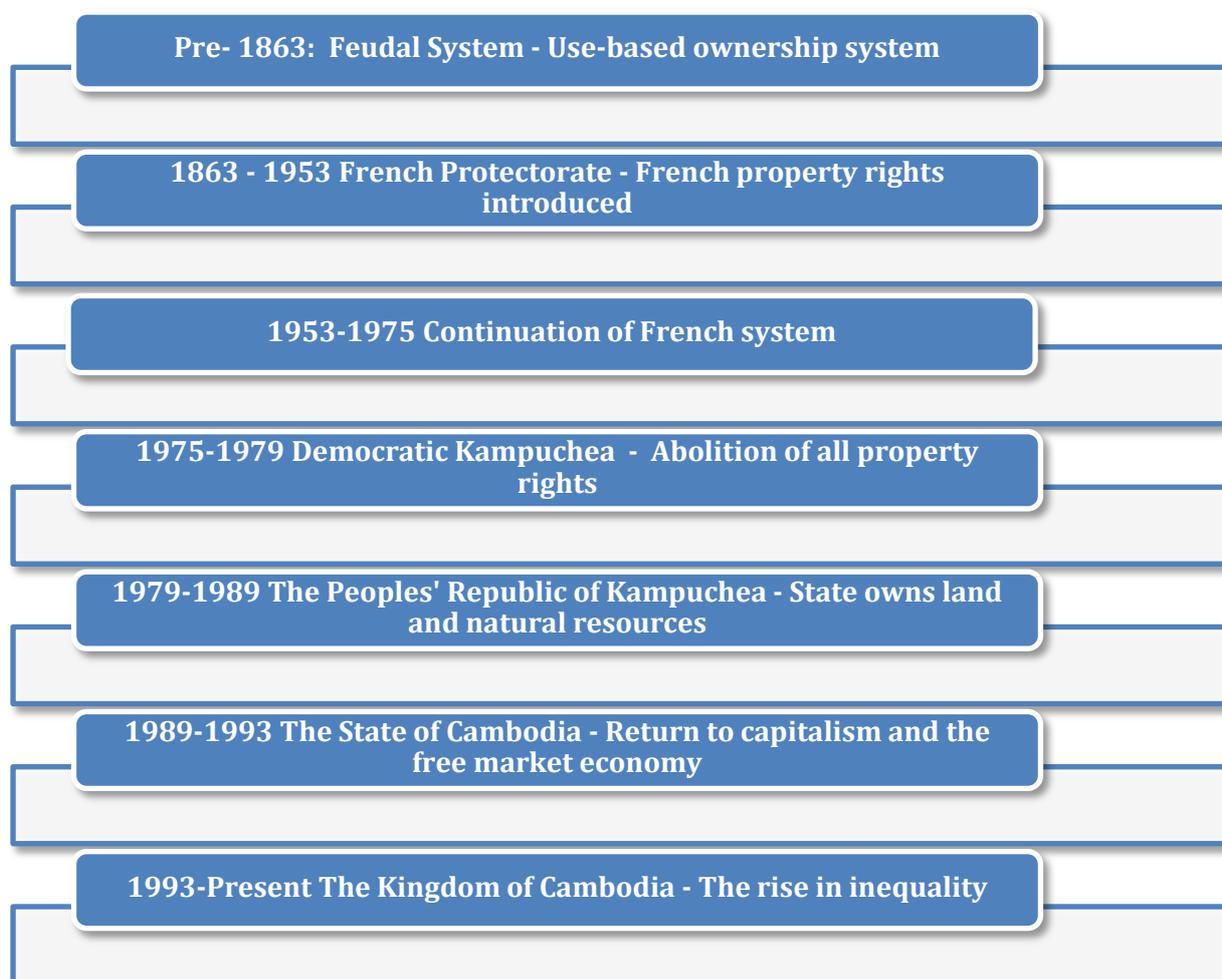
In 1991, the decade-long armed conflict came to an end with the signature of the Paris Peace Agreements, which provided the framework for democracy, rule of law, and human rights in Cambodia. Under the terms of the Paris Peace Agreements, the UN established the United Nations Transitional Authority in Cambodia (“UNTAC”), a peacekeeping mission that would prepare the country for a new constitution and oversee free and fair elections.

⁴ Hel Chamroeun, ‘Introduction to the Land Law of Cambodia’ in Hor Peng, Kong Phallack, Jörg Menzel (eds), Introduction to Cambodian Law, (2012), 316, <http://bit.ly/18AYchV>

⁵ Sik Boreak, ‘Land Ownership, Sales and Concentration in Cambodia: A Preliminary Review of Secondary Data and Primary Data from Four Recent Surveys’, (September 2000), Cambodia Development Resource Institute Working Paper No. 16, 3, <http://bit.ly/18AWa17>

⁶ Hel Chamroeun, ‘Introduction to the Land Law of Cambodia’ in Hor Peng, Kong Phallack, Jörg Menzel (eds), Introduction to Cambodian Law, (2012), 316, <http://bit.ly/18AYchV>

Figure 1: Cambodia Land Ownership Timeline



On 24 September 1993, the State of Cambodia was succeeded by the Kingdom of Cambodia (“Cambodia”), with a new constitution – the Constitution of the Kingdom of Cambodia (the “Constitution”) – which attempted to set out a more comprehensive recognition of private ownership rights to land. However, by the turn of the millennium, the land rights situation in Cambodia was dominated by widespread insecurity of tenure. Rather than providing citizens with a foundation for secure housing and productive land through the implementation of a protective legal framework, privatization had created a marked rise in inequality.⁷

1.2 Overview of the land situation in Cambodia today

Cambodia is an emerging market dominated by a government that has sought to increase exports and exploit its natural resources for the purposes of national development. Throughout the past decade, a rising global demand for land, accompanied by a rapid economic expansion, has had disastrous effects on the security of land tenure for many of the country’s poorest people.

⁷ The current legal framework and loopholes in its implementation are further developed in Chapter Two of the Report.

Through the allocation of economic land concessions (“ELCs”), beneficiaries are given the right to lease State-owned land for a maximum of 99 years, for the purposes of industrial agricultural use.⁸ The RGC has previously claimed that ELCs are vital to the economic growth of the country, and bring numerous social and economic benefits.⁹ However, as noted by the Special Rapporteur, “*no comprehensive evidence-based report has been officially published about the benefits of land concessions.*”¹⁰

On the contrary, despite numerous legal safeguards,¹¹ the past decade has seen the number of land related conflict dramatically increase. The number of ELCs granted on land, which is either disputed, or inhabited, including protected areas and forests, has continuously grown.¹² Over three million hectares of land – approximately 16.6% of the total 181,035 km² of land in Cambodia – have been granted through ELCs to foreign and domestic companies, as well as to wealthy political elites, for industrial development.¹³ Consequently, the communities living on the land are frequently subjected to forced eviction, involuntary resettlement or relocation, which are often poorly planned and implemented with little respect for due process of law and for basic human rights. It is estimated that since 2000, some 700,000 Cambodians have been adversely affected by ELCs throughout the country.¹⁴

Land and property rights are perhaps the most important human rights, protecting the economic welfare of rural communities for whom land is often their primary source of income. In Cambodia, agriculture accounts for 36% of gross domestic product and provides employment for 55.8% of the labor force.¹⁵ However, despite international and national laws that protect the right to own property and to have access to adequate housing, land rights violations are one of the most prominent and significant form of human rights abuse throughout Cambodia.

Ambiguous land policies, and weak implementation of laws due to corruption, cronyism, and a lack of real political will, has led to a substantial increase in conflicts between Cambodian citizens and land concessionaires. The lack of procedural and legal safeguard when implementing some projects has led to an environment of unregulated development characterized by a lack of transparency,

⁸ Land Law, NS/RKM/0801/14, (20 July 2001), Article 61, <http://bit.ly/1dGTrbO>

⁹ Address by Samdech Akka Moha Sena Padei Techo Hun Sen Prime Minister of the Kingdom of Cambodia on "Rectangular Strategy" for Growth, Employment, Equity and Efficiency - Phase II At the first Cabinet Meeting of the Fourth Legislature of the National Assembly Phnom Penh, (26 September 2008), <http://bit.ly/HpfSqY>

¹⁰ Surya P. Subedi, ‘Report of the Special Rapporteur on the situation of human rights in Cambodia, Addendum: A human rights analysis of economic and other land concessions in Cambodia’, A/HRC/21/63/Add.1/Rev.1, (10 October 2012), <http://bit.ly/17FL8bq>

¹¹ For a detailed description and analysis of land related laws and regulations please refer to Chapter Two of the Report.

¹² LICADHO / Cambodia Daily Analysis, ‘Carving up Cambodia: One Concession at a Time’, (11-12 March 2012), <http://bit.ly/Hpgih2>

¹³ CCHR, ‘Land Reform Policy Report: Findings from Roundtable Discussions and Policy Platforms’, (July 2013), <http://bit.ly/1inGTWX>

¹⁴ Human Rights Watch, ‘Cambodia: Land Titling Campaign Open to Abuse’, (12 June 2013), <http://bit.ly/17FLZsD>

¹⁵ United States of America Central Intelligence Agency, ‘The World Factbook’, Cambodia: Economy, <http://1.usa.gov/HpceNG>

consultation and planning.¹⁶ This is intensified by a politically dependent judiciary,¹⁷ which fails to provide fair and prompt resolutions for many land conflicts.

Abundant examples of land evictions across the country demonstrate the severity of the situation. In 2013, the Office of the UN High Commissioner for Human Rights (“OHCHR”) assisted on 74 ongoing and unresolved land disputes between affected communities, authorities and businesses in both rural and urban areas combined,¹⁸ and in 2012, the Cambodian Human Rights and Development Association (“ADHOC”) handled 70 cases and followed up on 62 cases left unsolved from previous years.¹⁹ Forced evictions have also become increasingly violent in recent years, with homes bulldozed or burnt down.

Communities who are evicted often lose much more than their homes. Evictions, whether forced or not, “*violate a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement.*”²⁰ Forced evictions intensify socio-economic inequality, social conflict, and segregation and invariably affect the poorest, most socially and economically vulnerable and marginalized sectors of society, especially women, children, minorities and indigenous peoples.²¹

Land disputes have led to a turbulent socio-political atmosphere fueling despair among affected communities and leading people to campaign for the recognition of their rights and the compensation packages owed to them. Demonstrations and rallies are held with increasing frequency, both in the provinces and in Phnom Penh. They often become confrontational and are met with an excessive use of force by authorities²² and the unjustified arrest and charges of land rights activists.²³

As is demonstrated in the following Chapter, land rights are currently relatively protected under international and domestic law (Chapter Two). However, the protection remains theoretical. In practice, the poor implementation of the law allows insecurity of tenure, deregulated development and forced evictions (Chapter Three), creating a conflict impacting a growing number of victims (Chapter Four).

¹⁶ OHCHR, ‘Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights,’ (21 September 2011), <http://bit.ly/1iteXBc>

¹⁷ CCHR, ‘Judicial Reform,’ (Briefing Note), (February 2013), <http://bit.ly/1bo6GdM>

¹⁸ OHCHR, ‘Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights,’ (19 September 2013), <http://bit.ly/1itfzXq>

¹⁹ ADHOC, ‘A Turning Point? Land, Housing and Natural Resources Rights in Cambodia 2012,’ (February 2013), <http://bit.ly/1eFH8wu>

²⁰ UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, Annex 1 of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18, (2007), <http://bit.ly/HbSJfE>

²¹ Ibid.

²² OHCHR, ‘Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights,’ (19 September 2013), <http://bit.ly/1itfzXq>

²³ CCHR and Article 19, ‘Defending the Defenders: Security for Cambodian Human Rights Defenders,’ (2013), 29, <http://bit.ly/HrQfWL>

1.3 Purpose, scope & methodology

Aware of the growing need for immediate and fundamental land policy reforms in Cambodia, CCHR has produced this Report in order to provide an overview of the land rights situation as it developed in Cambodia throughout 2012 and in the first half of 2013. The Report provides an introduction to the legal, institutional and policy framework related to land and an overview of the root causes and impact of the land conflict affecting the country. The Report also formulates concrete recommendations for the improvement of the land situation in Cambodia and will be used as an advocacy tool to engage with the Cambodian people, national and international organizations, donors, embassies, and of course, with the new RGC.

This Report identifies patterns of violations of the right to adequate housing and security of tenure and suggests solutions to combat these violations. It is important to note that the Report does not claim to provide an exhaustive account of all such violation; instead, the Report provides examples which best exemplify the general trends in attempting to abuse people's rights in Cambodia and the possible reasons for these trends.

In order to compile information for this Report, CCHR conducted a number of focus group discussions with relevant stakeholders throughout Cambodia. CCHR also collected important information regarding the land rights violations through six roundtable discussions and two policy platforms held by CCHR in various Cambodian provinces between September 2012 and June 2013 that gathered relevant groups, community representative, and representative from NGOs and political parties. CCHR also organized field research missions in November 2012 and May and October 2013 in 15 provinces. CCHR monitored the situation of land rights through compiling cases reported in the media and cases reported directly to CCHR. In addition, CCHR carried out extensive research using a wide variety of sources including national and international NGOs, academic experts, international bodies and national and international media outlets.

2 The Theory: A Protective Legal Framework

A significant proportion of the population of Cambodia relies on the land as their primary source of income. Accordingly, the importance of a comprehensive system of legal protections for land rights cannot be overstated. The Constitution, together with the Land Law of 2001 (the “Land Law”) and related sub-decrees, to a large extent codify international legal standards in relation to land rights and should, in theory, provide relatively adequate formal protections to the Cambodian population. However, despite the existing comprehensive set of legal safeguards, these protections are rarely upheld in practice.

This Chapter sets out an overview of the legislative context regarding the land situation in Cambodia by looking at the relevant provisions in both international and domestic law, while Chapter Three will look at the implementation of these laws and the diverse array of rights abuses which have resulted.

2.1 Protection of land rights under international law

Article 31 of the Constitution enshrines international human rights obligations into Cambodian domestic law and policy.²⁴ Thus, international human rights norms are directly applicable in Cambodian courts, as confirmed by a decision of the Constitutional Council in 2007.²⁵

The Universal Declaration of Human Rights (the “UDHR”), the milestone document in the history of human rights, states in Article 17 that “*everyone has the right to own property alone as well as in association with others (and) no one shall be arbitrarily deprived of his property.*”²⁶ It also guarantees in Article 25 the right to adequate housing²⁷ which encompasses the right to security of tenure and the protection of individuals against forced evictions.

UDHR - Article 25 (1) (The Right to Adequate Housing)

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

2.1.1 The right to adequate housing

Article 11 of the International Covenant on Economic, Social and Cultural Rights (the “ICESCR”), ratified by Cambodia in 1992, guarantees the right to adequate housing.²⁸ The right is also guaranteed in the Convention on the Elimination of All Form of Discrimination against Women²⁹ and the Convention on the Right of the Child,³⁰ and mentioned in the International Convention on the

²⁴ The Constitution, Article 31: ‘*The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights*,’ <http://bit.ly/1hcJqYV>

²⁵ Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007, (10 July 2007)

²⁶ The UDHR, (10 December 1948), Article 17, <http://bit.ly/1808qrH>

²⁷ Ibid., Article 25 (1)

²⁸ ICESCR, (16 December 1966), Article 11 (1), <http://bit.ly/15WUwtO>

²⁹ Convention on the Elimination of All Form of Discrimination against Women, (18 December 1979), Article 14, <http://bit.ly/180arEj>

³⁰ Convention on the Right of the Child, (20 November 1989), Article 27, <http://bit.ly/180atMv>

Elimination of all Forms of Racial Discrimination, which prohibits racial discrimination in the enjoyment of the rights to housing.³¹

The UN Committee on Economic, Social and Cultural Rights (the “CESCR”), the body in charge of monitoring the implementation of the ICESCR by the States which are party to it, further detailed that the right to adequate housing entails: (1) legal security of tenure, (2) availability of services, materials, facilities and infrastructure; (3) affordability; (4) habitability; (5) accessibility; (6) location; and (7) cultural adequacy.³²

2.1.2 The right to security of tenure

The first element of the right to adequate housing, as listed by the CESCR, is security of tenure.

Regarding legal security of tenure, the CESCR states that:

*“All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected parties and groups.”*³³

In other words, individuals must have a legal guarantee that they will not be forced to leave their home and lands. Without this guarantee people would fear that they could be evicted at any time. Thus, the right to security of tenure is a way to protect families and households against forced evictions. This is particularly relevant in the context of Cambodia where, as seen in Chapter One, many families lack land titles and thus lack legal protection in front of forced evictions.

2.1.3 The right to not be subject to forced evictions

Forced evictions are a gross violation of human rights.³⁴ They are a violation of the right to adequate housing, the right to security of land tenure and a wide range of internationally recognized human rights standards.³⁵

According to the CESCR, instances of forced evictions are “*prima facie incompatible*” with the [ICESCR].³⁶ To be legal, evictions must be used as a last resort, and only in exceptional circumstances.³⁷ In addition, should an eviction be allowed because it is absolutely necessary, the government must still respect international rules before, during and after the eviction.

CESCR General Comment No.7

“Forced evictions are 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 or other protection”

³¹ International Convention on the Elimination of all Forms of Racial Discrimination, Article 5 (e), <http://bit.ly/180azUe>

³² CESCR General Comment No. 4, ‘The right to adequate housing (Art.11 (1))’, (13 December 1991), <http://bit.ly/15WViHa>

³³ Ibid., § 8(a)

³⁴ Commission on Human Rights resolution 1993/77, (10 March 1993), §.1, <http://bit.ly/1af2DiE>

³⁵ UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, Annex 1 of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18, (2007), <http://bit.ly/HbSJIF>

³⁶ CESCR, General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, E/1998/22, (20 May 1997), § 3. <http://bit.ly/HbQDIV>

As elaborated by the CESCR, before any eviction there should be (1) an opportunity for consultation with the proposed evictees; (2) adequate notice for the evictees; (3) the dissemination of information regarding alternative land available for the evictees; (4) adequate compensation.³⁸ During the eviction, (5) government workers should be present at the eviction; (6) persons carrying out the eviction must be properly identified; (7) evictions must not take place in bad weather or at night. Finally, after the eviction, (8) legal remedies should be provided with legal aid to the affected communities;³⁹ and (9) evictions should also not render individuals homeless.⁴⁰

2.1.4 International principles and guidelines protecting land rights

In addition to the rights developed in the International Bill of Human Rights,⁴¹ the UN independent experts known as the Special Rapporteurs have developed a series of principles and guidelines that frame the practice of evictions and guide States to respect and protect human rights.

- The Basic Principles and Guidelines on Development-based Displacement and Evictions of 2007 developed by the Special Rapporteur on adequate housing sets minimum standards related to relocation;⁴²
- The Minimum Human Rights Principles Applicable to Large Scale Land Acquisitions or Leases⁴³ developed by the Special Rapporteur on the right to food set a number of requirements to address the human rights challenges of large scale land acquisitions;
- The Principles on Housing and Property Restitution for Refugees and Displaced Persons, also known as the “Pinheiro Principles”⁴⁴ developed by the Special Rapporteur on Housing and Property Restitution were also relevant to the Cambodian context when refugees returned the country; and
- The Guiding Principles on Business and Human Rights⁴⁵ include the (1) State duty to protect against human rights abuses by business enterprises; (2) the corporate responsibility to respect human rights; and (3) the need for great access to remedy for victims of business-related abuses, both judicial and non-judicial.⁴⁶

³⁷ UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, Annex 1 of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18, <http://bit.ly/HbSJIF>

³⁸ General Comment No. 7 § 13, 14 and 15

³⁹ Ibid., § 15

⁴⁰ Ibid., § 16

⁴¹ The International Bill of Human Rights consists of the UDHR, the ICESCR, and the ICCPR and its two Optional Protocols, <http://bit.ly/1afhCcc>

⁴² UN Basic Principles and Guidelines on Development-Based Evictions and Displacement, Annex 1 of the Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, A/HRC/4/18, (2007) <http://bit.ly/HbSJIF>

⁴³ Minimum Human Rights Principles Applicable to Large-Scale Acquisitions or Leases, annexed in the Report of the Special Rapporteur on the right to food, A/HRC/13/33/Add.2, (28 December 2009), <http://bit.ly/HbTgIk>

⁴⁴ Principles on Housing and Property Restitution for Refugees and Displaced Persons, Special Rapporteur on housing and property restitution, E/CN.4/Sub.2/2005/17, (28 June 2005), <http://bit.ly/1afgYM9>

⁴⁵ The Guiding Principles on Business and Human Rights, Annex to the Report of the Special Representative’s on the issue of human rights and transnational corporations and other business enterprises, A/HRC/17/31, (12 March 2011), <http://bit.ly/HbVg5A>

⁴⁶ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, ‘Protect, Respect and Remedy’ a framework for business and human rights’, A/HRC/8/5, (7 April 2008), <http://bit.ly/HbWayZ>

The international rights and protection of land rights described above are directly applicable in Cambodian courts but, for most of them, have also been codified in Cambodian law.

2.2 Protection of land rights in domestic law

The legislative framework addressing land and property in Cambodia is comprised primarily of the principles set out in the Constitution, developed in the Land Law and various instruments of delegated legislation.

Article 44 of the Constitution guarantees the right of Cambodian citizens to private and collective property, and provides for protection against arbitrary expropriation, requiring that property can only be seized if doing so is in the public interest, and even then only on the condition of fair and just compensation.

The protection of rights to land and property enshrined in the Constitution are further developed in the Land Law.⁴⁷ The purpose of adopting the Land Law was twofold: (1) to provide security of tenure for Cambodians, and (2) to facilitate Cambodia's participation in the global economy using the land concession system.

It is the provisions of the Land Law that have provided the most significant legal developments towards the protection of land rights in Cambodia. The legislation establishes three primary categories of land and corresponding ownership regimes: State land, private land and collective land. Broadly speaking, the State owns all land in Cambodia that has not been properly privately appropriated or allocated as collective land.⁴⁸ State land is further divided into State public property (land that can be used by the public or has a general public benefit) and State private property (all other land owned by the State), and collective land is further divided into monastery property and the property of indigenous communities (see Figure Two below).

Constitution - Article 44:

All persons, individually or collectively, shall have the rights to own property. Only natural persons or legal entities of Khmer nationality shall have the rights to own land.

Legal private ownership shall be protected by law.

Expropriation of ownership from any persons shall be exercised only in the public interest as provided for by law and shall require fair and just compensation in advance.

⁴⁷ Land Law, Article 1

⁴⁸ Ibid. Article 12

Figure 2: Land Classification⁴⁹



It is important to understand the different classifications of land as it determines who can own the land and what purposes the land may be used for.

2.2.1 Private property

There are two regimes of private property rights under the Land Law: ownership rights and possession rights. Private owners and possessors can enter, stay, use, transfer or exclude people from their land, as long as they do not break any laws.⁵⁰

Land Law – Article 5:

“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.”

Someone has ownership rights over a land if it has been registered and he or she has a valid land title issued by the Cadastral Commission.⁵¹ Someone has possession rights over a land even though he or she has no title if the possession is deemed legal.⁵² For possession to be legal, certain criteria must be met: the possession must have started before August 2001, and it must have been unambiguous, non-violent, known to the public, continuous and in good faith.⁵³ Legal possessors can better protect themselves and obtain ownership rights and be issued a title by applying to the Cadastral authorities.

Privately owned land is protected against eviction. Both the Constitution and the Land Law⁵⁴ state that the eviction of those with hard land titles is illegal unless it is carried out in the public interest, and only if the evictee receives fair and just compensation in advance of land deprivation. The Land Law also prescribes that evictions of those

⁴⁹ Bridges Across Borders, Center for Housing Rights and Evictions (“COHRE”), International Accountability Project, ‘A Cambodian Guide to Defending Land and Housing Rights,’ Volume 1, Part II, (October 2009), <http://bit.ly/Hrafs4>

⁵⁰ Land Law, Article 85

⁵¹ Ibid., Glossary (‘Ownership’).

⁵² Ibid., Article 30

⁵³ Ibid., Article 38

⁵⁴ Land Law, Article 5

persons without title to their land must be ordered by a court or by competent State authorities.⁵⁵ A court-ordered eviction may be suspended if it is *“likely to give rise to instability or to have serious social repercussions.”*⁵⁶ The Land Law does not provide a detailed legal framework in which evictions should be conducted; thus, in 2010, the Law on Expropriation (the “Expropriation Law”)⁵⁷ was adopted. However, it only refers to evictions for a public purpose (such as public infrastructure).⁵⁸ It describes the conditions in which expropriation in the public interest is acceptable,⁵⁹ and the procedures that ensure it is a fair and just process.⁶⁰ Yet, a similar eviction law does not exist for instances of land deprivation as a result of land concessions, the lack of which presents vast problems in guaranteeing that affected people will receive sufficient compensation in a timely manner.

2.2.2 Collective property

Because of their distinct cultures, identities and ways of life, indigenous peoples across the world face discrimination and often experience the consequences of incursion on their territories. In 2009, it was estimated that 23 different indigenous ethnicities lived in Cambodia comprising between 1% and 1.9% of the total population of the country.⁶¹ They are a uniquely vulnerable minority since they often live outside the mechanisms of the State, being denied social security and State education. Thus, indigenous communities need specific protection.⁶²

Cambodia voted in favor of the UN Declaration on the Rights of Indigenous Peoples (“UNDRIP”),⁶³ which provides a foundation to the RGC’s legal framework on the recognition and registration of indigenous peoples, and their right to own, use and develop their traditional collective lands and to have traditional land tenure systems recognized. The Land Law and the Sub-decree No.83 on the Procedures of Registration of Land of Indigenous Communities (“Sub-Decree 83”),⁶⁴ which sets out the procedure for indigenous land titling and registration, are the two core legal instruments protecting indigenous people’s rights to land in Cambodia.

Definition of Indigenous Community, Land Law, Article 23:

“An indigenous community is a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use.”

⁵⁵ Land Law, Article 35.

⁵⁶ Ibid., Article 36.

⁵⁷ Expropriation Law, (26 February 2010), <http://bit.ly/1dKukog>

⁵⁸ Ibid., Article 3

⁵⁹ Ibid., Articles 7 to 11.

⁶⁰ Ibid., Articles 15 to 29.

⁶¹ Stefan Ehrentraut, ‘Decentralization and the Promise of Indigenous Peoples’ Empowerment: The Case of the World Bank in Cambodia, 2009,’ The Pacific Review Vol.24, No.1, (March 2011) 90.

⁶² Franke Wilmer, ‘The Indigenous Voice in the World Politics’, (1993), 97, quoted in Soth Sang-Bonn, ‘The Rights of Indigenous Peoples in Cambodia’ (2008), 413.

⁶³ The United Nation Declaration on the Rights of Indigenous Peoples, General Assembly Resolution 61/295, (13 September 2007), <http://bit.ly/1h1SfDS>

⁶⁴ Sub-decree No.83 on the Procedures of Registration of Land of Indigenous Communities, ANK/BK, (09 June 2009), <http://bit.ly/17FKSZV>

One of the advances of the Land Law and Sub-Decree 83 is the recognition of the right to collective ownership of indigenous communities.⁶⁵ However, communities have to register with the Ministry of Interior (“MOI”) to become legal entities before being able to apply for registration of collective land title.⁶⁶

Sub-Decree 83 further defines indigenous community land and states that it can be of five types: (1) residential land; (2) cultivated land; (3) reserve land necessary for shifting cultivation; (4) spiritual forest land; and (5) burial ground forest land.⁶⁷ The first two categories (residential land and cultivated land) may only be land that has already been registered with the State as State private land.⁶⁸ The other three categories may include land that has been registered as State public land. Both this requirement and the underlying assumption that land used by indigenous communities is State land, and not land that belongs to the indigenous communities, put such land at risk of being taken by the State. This means that up until they are registered as indigenous community land, these kinds of land are classified as State property and thus can be granted as ELCs. However, indigenous communities have the right to continue to manage and use the land according to their customs.⁶⁹

Therefore, from a purely legal perspective, indigenous Cambodian populations are provided with a number of protections for the rights to their land. Despite these formal protections however, indigenous peoples are still the victims of forced evictions and other related human rights violations in Cambodia, as discussed in greater detail in Chapters Three and Four.

2.2.3 State property

The division of State-owned land into State public land and State private land is another key feature of the legal framework in relation to land in Cambodia. The classification in either of these categories is important as it defines how the land may be utilized.

The Land Law and the 2006 Sub-Decree No.129 on Rules and Procedures on Reclassification of State Public Properties and Public Entities (“Sub-Decree 129”)⁷⁰ characterize State public land as land with public interest use, such as land that contains natural resources like lakes, rivers, forests, designated nature reserves, and archaeological, cultural and historical patrimonies, as well as land allocated to render a public service, such as hospitals, schools, or administrative buildings.⁷¹ They further define State private land as any State land that does not provide a public service or come under any of the other categories of State public land.⁷²

While State private land can be subject to sale, transfer, lease, or other legal contractual transactions, including ELCs or social land concessions (“SLCs”),⁷³ State public land is not.⁷⁴ This

⁶⁵ Ibid., Article 26

⁶⁶ Surya P. Subedi, ‘Report of the Special Rapporteur on the situation of human rights in Cambodia, Add: A human rights analysis of economic and other land concessions in Cambodia’, A/HRC/21/63/Add.1/Rev.1, (10 October 2012), <http://bit.ly/17FL8bq>

⁶⁷ Sub-Decree 83, Article 4

⁶⁸ Ibid., Article 6

⁶⁹ Land Law, Article 23

⁷⁰ Sub-Decree on Rules and Procedures on Reclassification of State Public Properties and Public Entities No. 129, ANKr.BK, (27 November 2006), <http://bit.ly/1hcMicc>

⁷¹ Land Law, Article 15.

⁷² Ibid., Article 12 and 15; Sub-Decree 129, Article 3

⁷³ Ibid., Articles 17 and 58

distinction between State public and private land is therefore of particular importance for the granting of leases of land to companies for commercial and development purposes through ELCs and SLCs. ELCs and SLCs can only be granted on State private land to ensure, at least in theory, that economic development does not proceed at the expense of public interest.⁷⁵ In addition, State public land can be leased for a maximum of only 15 years, while State private land can be leased for up to 99 years.⁷⁶

However, this protection can ultimately be undercut by the ability of the RGC to reclassify State public land as State private land. According to the Land Law, such reclassification of State public land should be governed by a law passed by the National Assembly.⁷⁷ However, the RGC often issues only decrees to reclassify State land and thus disregarding the legal requirement to go through the National Assembly.⁷⁸ In addition, in Sub-Decree 129, the procedures for reclassification are not very detailed and include no provisions for disclosures of reclassification requests or requirements of public consultations. This has led to abusive reclassification of land in Cambodia, with many examples of State public land being converted into State private land and subsequently granted to private companies for development purposes.⁷⁹

2.2.4 Land concessions

“Cambodia is not going to be bought by anyone” – Cambodian Prime Minister Hun Sen

A concession is a legal right established by an official document granted by the RGC for an individual, group of individuals, or legal entity to occupy and develop State private land.⁸⁰ This right is subject to restrictions imposed by the Land Law, relevant sub-decrees, and the terms of the specific concession contract. According to the Land Law, there exist two distinct types of land concessions:⁸¹ ELCs and SLCs.⁸² ELCs allow beneficiaries to clear land for “industrial agricultural” use of land such as tree plantations (rubber, teak, etc.) or large scale production of food (rice, corn, etc.). SLCs, by contrast, are supposed to serve a social rather than economic purpose. For instance SLCs can be used to grant State private land to poor landless families for residential or agricultural purposes.

SLCs are regulated by the Sub-Decree No.19 on Social Land Concessions (“Sub-Decree 19”).⁸³ SLCs may only be granted for social purposes but also to “*facilitate economic development; facilitate ELCs by providing land to workers of large plantations for residential or family farming purposes; and develop areas that have not been appropriately developed.*”⁸⁴ The last three purposes mainly focus on general economic development and thus, give an incredible breadth of discretion to the

⁷⁴ Ibid., Article 16

⁷⁵ Ibid., Article 16

⁷⁶ Ibid., Article 61

⁷⁷ Ibid., Article 16 and 17

⁷⁸ Surya P. Subedi, ‘Report of the Special Rapporteur on the situation of human rights in Cambodia, Add: A human rights analysis of economic and other land concessions in Cambodia’, A/HRC/21/63/Add.1/Rev.1, (10 October 2012), <http://bit.ly/17FL8bq>

⁷⁹ Further detailed in Chapter Three

⁸⁰ Land Law, Article 48

⁸¹ Outside of the jurisdiction of the Land Law are concessions for mining, industrial development, and fishing concessions (licenses).

⁸² Land Law, Article 49

⁸³ Sub-Decree No.19 on Social Land Concession, ANK/BK, (19 March 2003), <http://bit.ly/17FLTRS>

⁸⁴ Ibid., Article 3

government in determining how SLCs can be utilized; namely, as an urban and rural planning tool as well as a means of supporting the economic policies of the government. These last few broadly stated goals seem to circumvent the purpose of designating a land concession scheme for social purposes, and make this program vulnerable to abusive power that serves commercial interests.

Unlike ELCs, SLCs can be granted free of charge and can lead to eventual ownership by the concessionaires. If the conditions of the concession contract are complied with for a period of five years, then the recipient is entitled to have the SLC converted to ownership and may request an ownership title.⁸⁵ During that five-year period, the SLC land and the SLC itself cannot be sold, rented or donated.⁸⁶

ELCs are regulated by Sub-Decree No.146 on Economic Land Concessions⁸⁷ (“Sub-Decree 146”). It is estimated that since 2000 some 700,000 Cambodians have been adversely affected by ELCs throughout the country.⁸⁸ Over three million hectares of land, approximately 16.6% of the total 181,035 km² of land in Cambodia, have been granted through ELCs to foreign and domestic companies as well as wealthy political elites for industrial development.⁸⁹ According to CCHR’s research, over one million hectares of land was granted through ELCs during the fourth mandate of the National Assembly.

ELCs do not entail ownership, but rather a lease of State-owned land, which can be awarded for a maximum of 99 years.⁹⁰ Furthermore, ELCs may be no greater than 10,000 hectares, and no person or legal entity may be granted multiple ELCs that total more than 10,000 hectares.⁹¹ This also applies to ELCs granted to distinct legal entities that are owned by the same individual. Only the RGC, through the Ministry of Agriculture, Forestry, and Fisheries (the “MAFF”), holds the power to grant ELCs.⁹²

According to Sub-Decree 146, there are five qualifications that must be met before a plot of land is to be granted as an ELC:⁹³ (1) the land has been classified and registered as State private land; (2) a land use plan must be submitted to and approved by the Provincial-Municipal State Land Management Committee,⁹⁴ and actual land use must be consistent with the submitted plan; (3) environmental and social impact assessments must have been completed; (4) there must exist solutions for resettlement issues and there shall be no involuntary resettlement; and (5) public consultations with stakeholders such as local residents and territorial authorities has taken place.

⁸⁵ Sub-Decree No.19, Article 18

⁸⁶ Ibid.

⁸⁷ Sub-Decree No.146 ANK/BK on Economic Land Concessions, (27 December 2005), <http://bit.ly/17FLWgi>

⁸⁸ Human Rights Watch, ‘Cambodia: Land Titling Campaign Open to Abuse,’(12 June 2013), <http://bit.ly/17FLZsD>

⁸⁹ CCHR, Land Reform Policy Report: Findings from Roundtable Discussions and Policy Platforms, (July 2013), <http://bit.ly/1eFH2Fc>

⁹⁰ Land Law, Article 61

⁹¹ Ibid., Article 59

⁹² Sub-Decree 146, Article 29

⁹³ Ibid., Article 4.

⁹⁴ ELC may now be granted only by the Central Government. See Sub-Decree No.131 ANK/BK, on modification of the Sub-Decree on Economic Land Concessions 15 September 2008

3 The Practice: Lawlessness

As seen in the previous Chapter, the legal framework related to land rights in Cambodia is relatively protective on paper. However, as noted by the Special Rapporteur, “*Given the relatively well-developed legal and policy framework [...] it is difficult to reconcile the current practice.*”⁹⁵ While there are certain criticisms to be made of the actual content of the Land Law, in reality the problems concerning the existing legal framework are minimal in comparison to the overall problem of its poor implementation. Indeed, during a recent series of roundtable discussions hosted by CCHR on land reform, the RGC’s failure to implement the existing laws was an issue that was consistently raised as the source of the land conflict.⁹⁶

Poor implementation of the law has led to insecurity of tenure and opaque, deregulated development, resulting in an environment which facilitates land grabs and renders people more vulnerable to evictions and violence. This Chapter, using concrete cases, sheds the light on the discrepancies between the law and the practice with regards to security of tenure (Section 3.1), land concession (Section 3.2) and forced evictions (Section 3.3).

3.1 Insecurity of tenure

As noted earlier, the Khmer Rouge dissolved all private ownership and to this day, much of rural Cambodia continues to rely on the use-based approach to ownership, where common understandings between neighbors and villagers are believed to be sufficient in demarcating boundaries. As a consequence, millions of Cambodians still lack documentation and the full recognition of their rights that comes with a land title.⁹⁷

Definition of Land Grabbing: (Tirana Declaration)

Large-scale land acquisitions or concessions are defined as land grabs if they are one or more of the following:

- Violations of human rights, particularly the equal rights of women;
- Not based on free, prior and informed consent of the affected land user;
- Not based on a thorough assessment or are in disregard of social, economic and environmental impacts, including the particular impact on women;
- Not based on transparent contracts that specify clear and binding commitments about activities, employment and benefit sharing; and
- Not based on effective democratic planning, independent oversight or meaningful participation.

⁹⁵ Surya P. Subedi, ‘Report of the Special Rapporteur on the situation of human rights in Cambodia, Add: A human rights analysis of economic and other land concessions in Cambodia’, A/HRC/21/63/Add.1/Rev.1, (10 October 2012), <http://bit.ly/17FL8bq>

⁹⁶ CCHR, ‘Land Reform Policy Report: Findings from Roundtable Discussions and Policy Platforms’, (July 2013), <http://bit.ly/1inGTWX>

⁹⁷ Surya P. Subedi, ‘Report of the Special Rapporteur on the situation of human rights in Cambodia, Add: A human rights analysis of economic and other land concessions in Cambodia’, A/HRC/21/63/Add.1/Rev.1, (10 October 2012), <http://bit.ly/17FL8bq>

Lacking a hard title of ownership over land creates greater insecurity and vulnerability to land grabbing and forced evictions. With no land titles, populations are left defenseless when authorities or companies come to claim their land. Problems associated with the common absence of hard land titles amongst residents were also consistently raised in the roundtable discussions; and, during two recent policy platforms hosted by CCHR, many political opposition candidates included in their policy lists the need for hard land titles.⁹⁸

3.1.1 Sporadic and systematic land registration programs

In recognition of the necessity to offer greater security of tenure to better protect the people of Cambodia, the RGC established two land titling programs: (1) the systematic land registration program; and (2) the sporadic land registration program.

According to the RGC, as of September 2013, the programs have led to the issuance of over three millions land titles.⁹⁹

While the programs have been successful in quantitative outputs, with many land titles issued throughout the country, it has been proven to have had poor quality impact in terms of offering greater stability and protection to people more at risk of land conflict.¹⁰⁰ Moreover, the costs endured coupled with the State decision to exclude disputed land from the titling programs has seriously limited its effect.

Sporadic land registration is initiated at the request of a landowner who wants to apply to obtain and register a title.

Systematic land registration is initiated by the State which determines an area where land will be adjudicated and titled.

According to the Ministry of Land Management, Urban Planning and Construction (the “MLMUPC”), the official cost for sporadic land registration is between \$12.5 (for rural land) and \$87.50 (for urban land in Phnom Penh, Sihanoukville¹⁰¹ and Siem Reap)¹⁰² and the cost of adjudication, survey, and systematic registration is approximately \$10 per parcel¹⁰³ (without including the cost for demarcation). While these costs in themselves may provide an unmanageable burden to many Cambodian citizens, they are the smaller of the fees that must be born. Officials often demand that applicants pay bribes to have their application approved, meaning that in reality the amount that applicants end up paying can potentially exceed 25% of the value of the land.¹⁰⁴

In addition, parcels of lands have been excluded from the systematic land registration program for being “too complex” or with an “unclear status” (such as, for instance, parcels bordering State land not yet demarcated or where more than one entity claim rights over the land). There is no provision

⁹⁸ CCHR, ‘Land Reform Policy Report: Findings from Roundtable Discussions and Policy Platforms’, (July 2013), <http://bit.ly/1inGTWX>

⁹⁹ Address by Samdech Akka Moha Sena Padei Techo Hun Sen Prime Minister of the Kingdom of Cambodia on “Rectangular Strategy” for Growth, Employment, Equity and Efficiency Phase III of the Royal Government of Cambodia of the Fifth Legislature of the National Assembly, (25 September 2013), <http://bit.ly/HxsV9U>

¹⁰⁰ Bridges Across Borders Cambodia, COHRE, Jesuit Refugee Service, ‘Untitled: Tenure Security and Inequality in the Cambodian Land Sector’, (2009), <http://bit.ly/1inMtbK>

¹⁰¹ Currently named Preah Sihanouk province

¹⁰² MLMUPC ‘Inter Ministerial Prakas On Determination of the revenues from the Cadastral Service Fee,’ No. 377 SHV/, (28 May 2002), <http://bit.ly/1bU3wQH>

¹⁰³ Professional Surveyor Magazine, ‘Around the Globe: Land Administration in Cambodia’, (November 2012), <http://bit.ly/1inM2hN>

¹⁰⁴ ‘Housing and Land Rights Issues in Cambodia, Annex to Parallel Report Submitted to the Committee on Economic, Social and Cultural Rights Concerning Article 11 of the Covenant’, (April 2009), <http://bit.ly/1inHyl7>

in the law that either defines what is considered as a land “too complex” or with an “unclear status” or that stipulates that such lands should be excluded from the registration process, leaving it to the discretionary interpretation of the State. For instance, families living in areas claimed by the State or by a company cannot secure their rights over this land and be issued ownership title because the State claims their land has an “unclear status” and therefore excludes them from the registration program. As a consequence, families already more vulnerable to evictions and land conflict are left out of the titling program and remain exposed to human rights violations.¹⁰⁵

Boeng Kak Lake, Phnom Penh¹⁰⁶

The systematic land registration program was originally run under the Land Management Administration Project mainly funded by the World Bank. The program ran from 2002 up until it ended in 2009 following a complaint by residents of the Boeng Kak Lake. Boeng Kak residents have legal rights to their land but were excluded from the systematic registration program when it was carried out in their neighborhood in 2006 because the land had an “unclear status.” Not long after, the RGC granted a 99-year lease over the area to *Shukaku Inc*, a company chaired by Lao Meng Khim, a CPP Senator and close associate of Prime Minister Hun Sen. Residents living in the area covered by the lease were then accused of being illegal squatters on State-owned land. Following a complaint filed with the World Bank and the subsequent freezing of the Bank’s program in Cambodia, the RGC set aside 12.44-hectare for 800 families. This was a landmark victory for the residents. However 96 families were excluded from this deal and eight of them were violently evicted on 11 September 2011. Some of the excluded families have stayed in Boeng Kak Lake, calling for their land to be measured and to receive titles. In November 2013, authorities started demarcating land as a step towards distributing titles.¹⁰⁷

Tumnu Village, Sangkat Phnom Penh, Thmei Khan Sen Sok, Phnom Penh¹⁰⁸

After 2009 the systematic land registration program continued to be active in 15 provinces and the city of Phnom Penh. A research conducted by the NGO Forum on Cambodia found that disputed land continued to be excluded from the systematic registration process, especially in urban areas. For instance, in Tumnu Village Phom Penh, 80% of the parcels remain untitled. While 861 families live in the village, only 195 parcels were adjudicated and only 41 titles issued, which means only one in five of the total adjudicated plots were registered. The report further explains that most of the families found out that they were denied land titles after they heard that the systematic registration process had already concluded.

In 2012, the systematic land registration program was halted and replaced by the Heroic Samdech Techo Volunteer Youth land registration campaign.

¹⁰⁵ Bridges Across Borders Cambodia, COHRE, Jesuit Refugee Service, ‘Untitled: Tenure Security and Inequality in the Cambodian Land Sector’, (2009), <http://bit.ly/1inMtbK>

¹⁰⁶ Equitable Cambodia, ‘Cambodia: Boeung Kak Lake Evictions,’ (Website), <http://bit.ly/16HLjpr>

¹⁰⁷ The Phnom Penh Post, ‘Boeung Kak Lake villagers closer to land titles,’ 7 November 2013, <http://bit.ly/1eh8Olb>

¹⁰⁸ The NGO Forum on Cambodia, ‘Access to Land Title in Cambodia, A Study of Systematic Land Registration in Three Cambodian Provinces and the Capital’, (November 2012), <http://bit.ly/HoeO6M>

3.1.2 Heroic Samdech Techo Volunteer Youth registration campaign

*“This land is being measured so that it can be titled to the authorities, the rich, or their proxies”
– Community member, Mondulsei District, Koh Kong Province*

On 14 June 2012, Cambodian Prime Minister Hun Sen launched a new accelerated land titling campaign to be implemented by youth volunteers. The program covered areas where families live without proper legal documentation on State land granted as economic or forestry concessions. According to the MLMUPC, as of 20 June 2013, 380,000 land titles were delivered. This new campaign halted on 11 June 2013 ahead of the national election of 28 July. It remains unclear whether the campaign will resume now that the elections are over.

Numerous concerns have been raised concerning this titling campaign called the “*Heroic Samdech Techo Volunteer Youth*” (in reference to Hun Sen’s honorific title). The program started in late June 2012, with youth volunteers deployed in provinces to demarcate land. As noted by the Special Rapporteur, instructions and policy documents were published only after the demarcation started,¹⁰⁹ suggesting “*a lack of comprehensive planning and harmonization with the existing legal framework and land titling system.*”¹¹⁰ The program seemed to be highly politically influenced as youth deployed were reportedly recruited among CPP supporters and conducted their work wearing military uniforms, were transported in government military vehicles and were hosted by local CPP authorities.¹¹¹ The project was also out of the legal framework, and subsidized by the Prime Minister’s personal funds.¹¹² The RGC also instructed NGOs to not intervene in its implementation program, leaving many communities and families unaware of their rights.

The campaign also excluded disputed areas and indigenous collective land (see Section 3.1.3 below), once again not including the most vulnerable populations in the titling program. For instance, in Botum Sakor and Kiri Sakor districts, where 300 families have been in conflict with the *Union Development Group* (“UDG”), the youth volunteers refused to measure individual plots, alleging that they are located in disputed areas.¹¹³

CCHR has also serious concerns regarding the effectiveness of this land titling campaign. In October 2013, CCHR interviewed members of Pursat village in Kbal Trach commune, Krako district. According to the interviewees, even though 10 families were granted land title following demarcation by the youth volunteers in December 2012, *Phea Phimix Company* continued to occupy their land. When in May 2013 the families decided to build pillars to protect their land, the company representative said that he does not recognize their land titles. Meanwhile, Kuch Veng, member of the Community Peace Network, was arrested and charged on 23 May 2013 after visiting the affected

¹⁰⁹ Letter of the Council of Ministers No.666, Sor.Cho.Nor, (26 June 2012); Council for Land Policy, No.015, (4 July 2012); The Council for Land Policy, Instructions No.018, (20 July 2012)

¹¹⁰ Surya P. Subedi, ‘Report of the Special Rapporteur on the situation of human rights in Cambodia, Add: A human rights analysis of economic and other land concessions in Cambodia’, A/HRC/21/63/Add.1/Rev.1, (10 October 2012), <http://bit.ly/17FL8bq>

¹¹¹ Human Rights Watch, ‘Cambodia Land Titling Campaign Open to Abuse’, (12 June 2013), <http://bit.ly/17FLZsD>

¹¹² Human Rights Watch, ‘Cambodia Land Titling Campaign Open to Abuse’, (12 June 2013), <http://bit.ly/17FLZsD>

¹¹³ For further example see, ADHOCH, ‘A Turning Point? Land, Housing and Natural Resources Rights in Cambodia in 2012’, (February 2013), 35, <http://bit.ly/1eFH8wu>

communities.¹¹⁴ The RGC can claim it has distributed thousands of new land titles through this campaign, it is effect less if there is no implementation and activists helping communities to claim their legally recognized land are arrested.

The new RGC land registration program was extra-legal, non-transparent and unmonitored. It remains unclear whether the campaign will resume now that the elections are over, raising serious doubts that it was nothing more than an attempt at gaining votes for the national election.

3.1.3 Registration of indigenous peoples collective title

As explained in Chapter Two, the Land Law recognizes the right for indigenous communities to register their land and to obtain a collective land title.¹¹⁵ In order to get this title, the community itself must first be officially registered, before the community's land can be registered. However, the distribution of collective titles has been almost chimerical, with only five communities, out of 114¹¹⁶ who have applied, having completed the full process.¹¹⁷

A lack of political will to protect indigenous people's rights (who often live in resource-rich areas) and a poor implementation of the law are the two main reasons why such a small number of collective land titles have been awarded. Guidelines on how indigenous communities could be provided a collective title were only issued in 2009,¹¹⁸ eight years after the adoption of the Land Law. As noted by recent research,¹¹⁹ this lost time was critical: in the period between the implementation of the Land Law in 2001 and the issuance of the Sub-Decree in June 2009, more than 2,106,343 hectares of Cambodian land were granted via ELCs.¹²⁰

In addition, the process for registration of collective land title is lengthy and extremely complex. In practice, there are 11 steps required for a community to first register itself and then be able to apply for land title, and the process involves three government ministries. It begins with the community's formal identity determination as a "traditional culture" by the Ministry of Rural Development (the "MRD"). Then, the community needs to apply for recognition as a "legal entity" with the MOI. Finally, once registered as a legal entity, the indigenous community has to file a request with the MLMUPC for the issuance of a collective title.¹²¹ The current process also does not guarantee security of tenure during the application process, which is of serious concern considering the time it takes to obtain a collective title.

More recently, the new youth land registration campaign instructed local authorities to not demarcate the land of indigenous peoples.¹²² In addition, there have been reports of indigenous

¹¹⁴ Lawyers' Rights Watch Canada, 'Cambodia: Arbitrary Detention of Human Rights Defenders Mr. Kuch Veng' (Letter), (15 August 2013), <http://bit.ly/173SecM>

¹¹⁵ Land Law, Article 26

¹¹⁶ Franz-Volker Müller & Günther Zülsdorf, 'Old Policies – New Action: A Surprising Political Initiative to Recognize Human Rights in the Cambodian Land Reform,' Annual World Bank Conference on Land and Poverty 2013, 11-8 April, 2013

¹¹⁷ OHCHR, '3 indigenous communities to receive communal land titles', (14 December 2001), <http://bit.ly/Hxp24M>

¹¹⁸ Sub-Decree 83

¹¹⁹ Jeff Vize and Manfred Hornung, Heinrich Böll Foundation, 'Indigenous People and Land Titling in Cambodia', Annual World Bank Conference on Land and Poverty 2013, (8-11 April 2013), <http://bit.ly/HxqbcD>

¹²⁰ LICADHO, 'The Great Cambodian Giveaway: Visualizing Land Concessions over Time,' (1 March 2013), <http://bit.ly/HxpSOV>

¹²¹ Sub-Decree 83

¹²² Council for Land Policy, Instruction No.20 on the implementation of the Royal Government Directive No.1 Bor.Bor., (26 July 2012), <http://bit.ly/1hcN4lm>

communities being pressured to accept private land titles rather than collective ones.¹²³ This is concerning because under Cambodian law, once indigenous peoples accept private titles, they can no longer apply to receive collective titles.¹²⁴ For instance, Human Rights Watch reported cases of an indigenous community in Thporng district of Kampong Speu Province being pressured by the youth volunteers to accept individual ownership titles rather than a communal title:

*“The students said we had to accept what they were ordered to do by the provincial cadastral officials who are acting on written orders from the ministries in Phnom Penh [...] If not, there could be trouble, and we would get nothing.”*¹²⁵

While the law provides mechanisms for people to obtain land titles and to overcome the legacy of the Khmer rouge, in practice, many communities, especially those more vulnerable to land grabbing and in need of a secured title, are not protected. They are purposely excluded from the legal framework and the protection it offers. Title-less, these peoples’ land is easier to grab and use for commercial purposes in the name of development.

3.2 Opaque and deregulated development

Cambodia’s economic development is marred by a lack of transparency. The licenses given by RGC officials over concessions on large areas of land, which in many occasions contravene the laws or ignore laws designed to protect both human rights and the environment, have met a rising global demand for land. There remains no complete and accessible list of land concessions and access to information surrounding land deals and bidding processes, land investment, review of land concessions, and the decision-making criteria continues to be elusive. The lack of transparency facilitates an environment of corruption, where both the authorities and businesses ignore the human rights of the Cambodian citizens.

3.2.1 Government officials and land concessions

Several private companies that are at the heart of the land conflict in Cambodia are tied, directly or indirectly, to the RGC. A series of reports by Global Witness revealed a sophisticated web of subsidiary companies and questionable relationships between officials and the recipients of land concessions. It is estimated that 20% of the total land that has been allocated through concessions is held by five senior CPP Senators.¹²⁶

For example, *Green Sea Company*, which is owned by Cambodian Senator Oknha Mong Reththy in Stung Treng Province is listed as holding a concession area of 100,852 hectares.¹²⁷ Another example is that of *Pheapimex*, Cambodia’s largest concession holder. *Pheapimex* is co-owned by the Cambodian Senator Lao Meng Khin, and is a company that has long been involved in land conflicts in

¹²³ Jeff Vize and Manfred Hornung, Heinrich Böll Foundation, ‘Indigenous People and Land Titling in Cambodia’, Annual World Bank Conference on Land and Poverty 2013, (8-11 April 2013), <http://bit.ly/HxqbcD>

¹²⁴ Ibid.

¹²⁵ Human Rights Watch, ‘Cambodia Land Titling Campaign Open to Abuse’, (12 June 2013), <http://bit.ly/17FLZsD>

¹²⁶ Global Witness, ‘Rubber Barons, How Vietnamese Companies and International Financiers are Driving a Land Crisis in Laos and Cambodia’, (May 2013), <http://bit.ly/1ar7lKn>

¹²⁷ Surya P. Subedi, ‘Report of the Special Rapporteur on the situation of human rights in Cambodia, Addendum: A human rights analysis of economic and other land concessions in Cambodia’, A/HRC/21/63/Add.1/Rev.1, (10 October 2012), <http://bit.ly/17FL8bq>

Cambodia.¹²⁸ In 2000, *Pheapimex* received a land concession of 315,208 hectares in Pursat and Kampong Chhnang Provinces. There are some estimates that, in Pursat Province alone, 8,200 families have been affected by the land disputes with *Pheapimex*.¹²⁹ Through its logging, land and mining concessions it is reported that *Pheapimex* controls over 7% of Cambodia's total land area.¹³⁰ Lao Meng Khin is also a director of *Hongfu-Try Pheap Mining Development Construction Co. Ltd*, and as previously mentioned, *Shukaku Inc.* a company that was involved in the infamous Boeng Kak Lake development in central Phnom Penh, which saw some 3,000 people forcibly evicted.¹³¹

The *Seng Keang Company* and Mr. Seng Kok Heang, have reportedly engaged in timber logging in Dong Phu's and Dong Nai's land concession areas.¹³² Mrs. Seng Keang (the owner of *Seng Keang Company*), her brother Seng Kok Heang, and her ex-husband Dy Chouch (a first cousin of Prime Minister Hun Sen) together constitute Cambodia's "*premier logging syndicate*" with significant influence over Cambodia's timber industry.¹³³ Moreover, a number of senior government officials, including the Minister of Land, have visited the concessions and encouraged the villagers to "*sacrifice*" the land to the companies.¹³⁴

3.2.2 Lack of consultations and assessments

"Everyone got really, really scared, but they did not get any information out to the people" - Alex Gonzales Davidson, NGO Mother Nature Cambodia, about the construction of a Chinese hydropower dam in the Areng Valley

As previously mentioned, State public land can be reclassified as State private land if the land no longer serves the public interest, has lost its originally intended function, or is no longer used directly by the public.¹³⁵ However, it is well documented that authorities often arbitrarily re-classify plots of land from State public land to State private land.¹³⁶ Research by CCHR shows that, since 2008, a total of 855,612.84 hectares of State public land has been reclassified to State private land. As the number of rural Cambodians who possess land titles remains quite low, the reclassification of land has occurred in many areas that were already occupied or utilized by local or indigenous communities.

¹²⁸ Global Witness, 'Cambodia for Sale: How Cambodia's Elite has Captured the Country's Extractive Industries.' (February 2009), <http://bit.ly/1c3N3cG>

¹²⁹ The Phnom Penh Post, 'New land titles not recognized: villagers,' (27 March 2013), <http://bit.ly/1c3OSGm>

¹³⁰ Global Witness, 'Cambodia for Sale: How Cambodia's Elite has Captured the Country's Extractive Industries.' (February 2009), <http://bit.ly/1c3N3cG>

¹³¹ Ibid.

¹³² Global Witness, 'Rubber Barons, How Vietnamese Companies and International Financiers are Driving a Land Crisis in Laos and Cambodia,' (May 2013), <http://bit.ly/1ar7lKn>

¹³³ Ibid

¹³⁴ Ibid

¹³⁵ Royal Decree on Provisional Guidelines and Principles Regarding the Re- classification of State Public Properties and of Public Entities NS/RKT/0806/339, (8 August 2006),

¹³⁶ See example; ADHOC, A Turning Point? Land, Housing and Natural Resources Rights in Cambodia in 2012, (February 2013) <http://bit.ly/1eFH8wu>

Before an ELC can be granted, Sub-Decree 146 states that environmental and social impact assessments must be completed and that public consultations with territorial authorities and local residents have taken place.¹³⁷

Despite these legal safeguards, large areas of land have been granted with either no or unsatisfactory consultation. CCHR has found several instances of communities that were unaware that the land they depend on for their basic needs has been granted as a land concession. One example is Kam village in Rattanakiri province,¹³⁸ where neither the affected indigenous people nor the local authorities were given prior notice that a Vietnamese rubber plantation company was awarded an ELC on land utilized by the indigenous group. In this case, as appears to be often the case, the first notification received by the affected people was when the companies' workers arrived to bulldoze the land.

When consultations do take place, they can be poorly organized, hurried and intimidating, with authorities putting pressure upon communities to conform to their wishes. For instance, CCHR recently investigated at Sre Khtum in Mondulakiri province¹³⁹ where the community alleged that over several meetings the authorities reiterated that they would not receive land titles for any of their land if they did not contribute a large portion of forestry land for the development of privately owned cassava plantation.

The lack of genuine environmental and social impact assessments is a grave cause for concern. Often, companies begin clearing lands and forestry areas before sub-decrees have been issued and the relevant contracts signed.¹⁴⁰ A recent report stated that approximately 10% of protected conservation areas under the control of the Ministry of the Environment ("MOE") have been granted as land concessions to private companies.¹⁴¹ The three protected areas of Snoul Wildlife Sanctuary, Preah Vihear Protected Area and Peam Krasob Wildlife Sanctuary have been entirely reclassified to State private land.¹⁴²

3.2.3 Overall poor regulation of concessions

As explained above, no person or legal entity may be granted multiple ELCs that total more than 10,000 hectares.¹⁴³ Nevertheless, several sources suggest that there are several violations of this criterion. Numerous reports indicate cases where the same person or group of people has interests in land concession, often occurring under different names and on adjoining land. For example, in February 2010, the Cambodian Senator Ly Yong Phat and his wife, Mrs. Kim Heang, were both awarded concessions for sugar cane plantations in Kampong Speu province. The concessions were granted to *Phnom Penh Sugar Company*, receiving 8,506 hectares, and *Kampong Speu Sugar Company*, which received 8,245 hectares.

¹³⁷ Sub-Decree 146, Article 4 (3), (5)

¹³⁸ Full address: Kam Village, La Ak Commune, O.Chum District, Rattanakiri province

¹³⁹ Full address: Sre Khtum Village, Sre Khtum Commune, Keo Seyma District, Mondulakiri Province

¹⁴⁰ ADHOC, 'A Turning Point? Land, Housing and Natural Resources Rights in Cambodia in 2012' (February 2013)

<http://bit.ly/1eFH8wu>

¹⁴¹ LICADHO / Cambodia Daily Analysis, 'Carving up Cambodia: One Concession at a Time' (11-12 March 2012)

<http://bit.ly/Hpgih2>

¹⁴² ADHOC, 'A Turning Point? Land, Housing and Natural Resources Rights in Cambodia in 2012' (February 2013)

<http://bit.ly/1eFH8wu>

¹⁴³ Land Law, Article 59

Another serious cause for concern is companies' inadequate implementation of their contract or business plan. Prime Minister Hun Sen previously noted in 2008 that "*land concentration and landless people are on a rising trend, adversely impacting on the equity and efficiency of land use. On the other hand, large areas under economic land concessions have not been utilized efficiently as targeted, needing strict government measures to tackle them.*"¹⁴⁴ Nonetheless, some ELCs still appear to be purely speculative. Indeed, a recent report claimed that according to MAFF officials, some companies lacked the required capital to transform their ELCs into agricultural enterprises.¹⁴⁵

Employment creation and the promotion of living standards of the people are an important aim of ELCs.¹⁴⁶ However, it is abundantly clear that for many, ELCs have led to the deterioration of living standards, especially in cases where local populations lose access to the land that they relied on for residential, cultivation and agricultural use.

3.2.4 Real reform?

On 7 May 2012, the RGC set about to rectify existing problems surrounding concessions, and issued a moratorium on ELCs known as "Directive 1."¹⁴⁷ The Directive calls for the prohibition of new ELCs, the evaluation of all existing ELCs, and the revocation of ELCs found to breach legal and contractual provisions.¹⁴⁸ The land activist community initially lauded this decision.

However, a crucial loophole exists within the moratorium. ELCs that were under consideration when the moratorium was announced are excluded from its application.¹⁴⁹ This was exacerbated by the fact that the RGC failed to provide information on how many ELCs were under consideration when the moratorium was announced.¹⁵⁰ Soon after the moratorium was in place, CCHR found that the RGC granted 66,314 hectares of land as ELCs to nine private companies. Since the order was issued, a total of 188,749.49 hectares of land were granted through land reclassification, making up over half of the total land granted through land reclassification in 2012.¹⁵¹

Indeed, there have been many inconsistent practices surrounding the implementation of Directive 1, including, for instance, within the new land management and titling scheme, where there remains a lack of transparency in the selection and investigation process of inactive or improperly developed concessions.¹⁵² For example, two rubber plantations belonging to a Mr Roth were approved in

¹⁴⁴ Address by Samdech Akka Moha Sena Padei Techo Hun Sen Prime Minister of the Kingdom of Cambodia on "Rectangular Strategy" for Growth, Employment, Equity and Efficiency Phase II First Cabinet Meeting of the Fourth Legislature of the National Assembly at the Office of the Council of Ministers Phnom Penh, (26 September 2008), <http://bit.ly/HpfSqY>

¹⁴⁵ The NGO Forum on Cambodia, 'Economic Land Concessions and Local Communities' (2010), <http://bit.ly/16LhDb5>

¹⁴⁶ Sub-Decree 146, Article 5

¹⁴⁷ Order on the Strengthening Measure and Effectiveness of Economic Land Concession Management No. 01BB (May 2012) ("Directive 1"), <http://bit.ly/1hcN4lm>

¹⁴⁸ Ibid.

¹⁴⁹ ADHOC, A Turning Point? Land, Housing and Natural Resources Rights in Cambodia in 2012' (February 2013), <http://bit.ly/1eFH8wu>

¹⁵⁰ Ibid.

¹⁵¹ CCHR Mini-Report: CCHR's Monitoring of Land Concessions in Cambodia in 2012, 14 February 2013, <http://bit.ly/1eFH9Rh>

¹⁵² See for example; Surya P. Subedi, 'Report of the Special Rapporteur on the situation of human rights in Cambodia, Add: A human rights analysis of economic and other land concessions in Cambodia', A/HRC/21/63/Add.1/Rev.1, (10 October 2012), <http://bit.ly/17FL8bq>

Lumphat Wildlife Sanctuary after the announcement of Directive 1, despite these holdings being contrary to laws limiting the size of concessions and their situation within a protected area.¹⁵³

3.3 Forced evictions and associated violence

Deregulated development without transparency combined with a lack of land title make people more vulnerable to land grabbing and forced evictions. Whether it is to make way for an ELC, an SLC, a military base or other projects, forced evictions are conducted with no due process of law and in some cases with violence. In reaction to widespread land grabbing, unlawful forced evictions and the absence of effective and independent dispute mechanisms, opposition has grown within the population.

3.3.1 Forced evictions conducted with no due process of law

Forced evictions mainly occur following the granting of an ELC by the State to a company. To grant the land to an ELC the State claims that the disputed land is State private property rather than individual private property.¹⁵⁴ The State bases his claim on the fact that evictees often lack documentation or title to the land even though they have legal possession rights,¹⁵⁵ and thus consider them as illegally occupying State land or “squatting” on it, or having only recently arrived on the land. As we have seen in Section 2.2 land that is not allocated as individual private property is de facto considered State land.¹⁵⁶ Therefore, according to the State, if people don’t have a land title it implies that the land is owned by the State and it can lease it as ELC to company and evict the communities living on the land. Two factors facilitate the claiming of a land as State land. First, as seen in Section 3.1.1¹⁵⁷ the State discretionally excludes from the land titling program communities living on land that the RGC wants to grant as an ELC. Second, there is no public inventory or map of State land, meaning there is no means to verify the boundaries, limits, and cadaster of State land. This allows the State to unlimitedly declare a parcel of land as State land.

Many examples of evictions being conducted as a result of ELCs can be found in the extensive documentation gathered by human rights organizations throughout the country. Among the more recent examples are the Boeng Kak Lake case¹⁵⁸ and the eviction of around 1,100 families in Koh Kong Province, forced to relocate to make way to a tourist project by the Chinese UDG. The project includes a resort and casino along the coast.¹⁵⁹ Forced evictions linked to ELCs will continue despite the announcement of a moratorium on ELCs. As explained above¹⁶⁰ the moratorium does not include ELCs already granted or that were under consideration at the time of the announcement. Thus for instance, thousands of people will have to evacuate their homes, or otherwise be submerged, to make way for the controversial Se San 2 Lower Dam – this despite global warning against the

¹⁵³ Global Witness, ‘Rubber Barons, How Vietnamese Companies and International Financiers are Driving a Land Crisis in Laos and Cambodia,’ (May 2013), <http://bit.ly/1ar7lKn>

¹⁵⁴ See Section 2.2 of the Report.

¹⁵⁵ CCHR, ‘Business and Human Rights in Cambodia: Constructing the Three Pillars,’ (November 2010), 26, <http://bit.ly/16EB5Gq>

¹⁵⁶ Land Law, Article 12

¹⁵⁷ See Case study: Boeng Kak Lake in Section 3.1.1 the Report.

¹⁵⁸ See Case study: Boeng Kak Lake in Section 3.1.1 of the Report.

¹⁵⁹ Voice of America, ‘Some Return After Eviction From Coastal Resort Development,’ (27 July 2013) <http://bit.ly/1hiivuP>

¹⁶⁰ See Section 3.2.4 of the Report

potentially disastrous impact of the dam on the environment, and livelihood such as fisheries and deforestation.¹⁶¹

Recently, there have been more cases of forced evictions as a result of SLCs. As documented by ADHOC in 2012, the RGC granted 38 SLCs (more than twice the area granted under the SLC scheme in 2011). Out of the 38 SLCs granted in 2012, as many as 13 gave rise to conflicts leading ADHOC to believe that it may indicate a change in policy.¹⁶² In Kulen district in Preah Vihear Province, 400 villagers allege authorities and armed forces have been burning their houses and clearing farmland to create a 5,557 hectare SLC supposed to house the families of 160 disabled soldiers.¹⁶³ In October 2013, Preah Vihear Deputy Governor said to 50 representatives of families from Rovieng district that the land they live on will be cleared to make way for a SLC adjacent to an important rubber plantation.¹⁶⁴ In Bakan District, around 300 families are facing eviction due to a SLC. According to the families they have been living on the land since 2002. In 2011 a SLC was granted apparently for handicapped and retired soldiers.¹⁶⁵ Evictions also sometimes take place to make way for the establishment of military bases. For instance, in May 2012, 1000 families in Kratie province were violently evicted from their home to make way to Unit 9 of the Royal Cambodian Armed Forces.¹⁶⁶

Often the victims of evictions have had no opportunity for genuine participation and consultation beforehand.¹⁶⁷ Information on planned evictions and on resettlement packages is often incomplete and inaccurate.¹⁶⁸ Often families receive evacuation notice only a few days before the deadline. For instance in the Boeng Kak Lake case, families received notice giving them seven days only to dismantle their houses and the agreement to grant the ELC was done without any consultation with the affected population.¹⁶⁹ CCHR conducted a study in March 2013 and interviewed 23 persons from Sambok Chab Village in Phnom Penh who were evicted in 2006. According to the interviews, 10 of the 23 interviewees were not even informed that the eviction was going to take place. In addition, as documented by Amnesty International, in instances where there has been a resemblance of consultation it appeared that authorities had already taken decisions on eviction and relocation.¹⁷⁰

3.3.2 Forced evictions conducted with violence

The Land Law contains penalty provisions for the use of violence or other force to evict an occupant. Article 254, for example, prohibits the use of private force in “*any circumstance*” to forcibly remove an occupant (even pursuant to a court order), providing a maximum sentence of two years imprisonment for such a violation. Further protection for occupants is provided in Article 253, under which it is an offense to use violence against “*a possessor in good faith of immovable property*;

¹⁶¹ Voice of America, ‘Work Begins on Controversial Cambodian Dam,’ (7 May 2013), <http://bit.ly/1hij4oe>

¹⁶² ADHOC, ‘A Turning Point? Land, Housing and Natural Resources Rights in Cambodia in 2012’ (February 2013) <http://bit.ly/1eFH8wu>

¹⁶³ The Phnom Penh Post, ‘Preah villagers protest soldiers,’ (7 August 2012), <http://bit.ly/1hil93t>

¹⁶⁴ The Cambodia Daily, ‘Preah Vihar Families Ordered To Make Way for Bulldozers,’ (30 October 2013) <http://bit.ly/1arOm45>

¹⁶⁵ The Phnom Penh Post, ‘Land titles denied, villagers in Pursat claim,’ (20 February 2013), <http://bit.ly/1hikMGd>

¹⁶⁶ The Phnom Penh Post, ‘Separatist farms replaced by RCAF base,’ (6 February 2013) <http://bit.ly/1ar1NQ1>

¹⁶⁷ Amnesty International, ‘Rights Razed, Forced Evictions in Cambodia,’ (11 February 2008) <http://bit.ly/1ar2w3Q>

¹⁶⁸ For more detail see Section 3.2.2. of the Report

¹⁶⁹ Amnesty International, ‘A further 160 families in Cambodia face forced eviction,’ (13 August 2009), <http://bit.ly/1bcHugB>

¹⁷⁰ For concrete examples see Ibid.

*whether or not his title has been established or it is disputed.*¹⁷¹ Further penalty provisions are also provided for authorities or any kind of armed personnel who seize immovable property from peaceful occupants, whether “*wrongfully,*” or through “*abuse of powers;*”¹⁷² and for authorities “*who ignore or allow private individuals to act wrongfully against the rights of owners, possessor, or peaceful occupants.*”¹⁷³

Despite the legal protection, the land conflict in Cambodia is marred by violence. Ahead of evictions, companies often deploy security personal or use State security forces to protect their concession, often leading to intimidation and extortion of the local communities. Villagers protesting their eviction are more and more confrontational and State security forces have increasingly use force against them and sometimes lethal force. Evictions themselves in some cases have been carried out with excessive use of force.

“Demonstrations and protests by affected communities in the capital and provinces are increasing and have become more violent” – Surya P. Subedi, Special Rapporteur on the situation of human rights in Cambodia

The Cambodia-based member companies of the *Vietnam Rubber Group* (“VRG”) have reportedly been employing soldiers or military police to protect their land concessions. According to the international NGO Global Witness, soldiers and military police patrol the boundaries of the land concessions and maintain checkpoints. At one concession, the guards reportedly carry AK-47 assault rifles.¹⁷⁴ In addition, one VRG member company, *Tan Bien*, regularly resorts violence to remove people from land the company obtained by concession in 2008. Villagers, including young girls, have been threatened, beaten, detained, and arrested. Armed local officials and security forces have blocked access roads, preventing the villagers from accessing food, materials, and other assistance. In December 2009, company representative, local authorities, and armed forces forcibly evicted the villagers from their households at gunpoint.¹⁷⁵

Even more worrying is the deployment of State security forces to protect concessions, leading State armed personal to use violence against the population. For instance, in Oddar Meanchey province, the *Angkor Sugar*, *Tonle Sugar Cane*, and *Cane and Sugar Valley* companies employed the services of Battalion 42 of the Royal Armed Forces of Cambodia to set up road blocks, burn and bulldoze villages, destroy homes, kill livestock, loot crops, and beat, threaten, intimidate, and arrest villagers.¹⁷⁶

¹⁷¹ Land Law, Article 253

¹⁷² Ibid., Articles 261-262

¹⁷³ Ibid., Articles 263

¹⁷⁴ Global Witness, ‘Rubber Barons, How Vietnamese Companies and International Financiers are Driving a Land Crisis in Laos and Cambodia,’ (May 2013), 26, <http://bit.ly/1ar7lKn>

¹⁷⁵ Ibid.

¹⁷⁶ LICADHO and Equitable Cambodia, ‘Petition about Cambodian sugar concessions filed with the Thai National Human Rights Commission, Cambodian NGOs allege serious abuses linked to Thai sugar giant, Mitr Phol Sugar Corporation’ (Press Release) (Phnom Penh, 30 May 2013), <http://bit.ly/1asDi57>

News of protests in land dispute cases in Phnom Penh or in the provinces make the headlines of local English newspapers every day. Often protests end in clashes with the police. For instance, in October 2013, clashes between the police and Borei Keila activists left three women unconscious.¹⁷⁷

More concerning is the increase in the use of lethal force against villagers protesting their evacuation. In January 2012, two armed guards employed by *TTY Corporation Co., Ltd.* were arrested on suspicion of using AK-47 assault rifles to shoot four villagers who were part of a group of 400 villagers protesting alleged land grabbing by the company in Kratie province.¹⁷⁸ In December 2011, a military officer in Battambang, who was acting as a security guard for the *Soun Mean Sambath Company*, shot at a group of villagers, injuring three of them. In February 2012, during a protest at *Heng Brother*, a subsidiary of a Vietnamese rubber company in Rattanakiri Province military police reportedly fired live rounds at the villagers.¹⁷⁹ In May 2012, a teenage girl was shot dead in Kratie province by State armed forces while she was demonstrating against a rubber plantation.¹⁸⁰ More recently, in March of this year, in Koh Kong province's Smach Meanchey district, military and police officers fired shots at villagers protesting their eviction.¹⁸¹

Two of the most infamous examples of excessive use of violence to evict families have taken place in Phnom Penh. The Borei Keila and Boeng Kak Lake cases have been widely documented. Borei Keila is a 14.12 hectare area of land located in central Phnom Penh that was previously home to 1,776 families. In 2003, a SLC was granted by the RGC to the *Phanimex Company* ("Phanimex"), over 4.6 hectares in Borei Keila. Under the agreement, *Phanimex* was contracted to build ten buildings on two hectares of the land for social purposes – to house the residents of Borei Keila – and, in exchange, received development rights for the remaining 2.6 hectares of the concession area. In April 2010, after having built only eight of the ten residential buildings, *Phanimex* requested permission from the RGC to forego construction of the two remaining buildings, claiming a lack of funds to build them, and requested that it be granted the land earmarked for these two buildings. Failing to build the remaining two buildings left between 300 and 400 families without permanent housing. On 3 January 2012, many families still residing in Borei Keila were violently evicted from their homes by a combined force of over 100 police officials, military police, company employees and security guards. More than 200 homes were demolished. The state forces also clashed violently with members of the community. Some police and community members were reportedly injured, while some residents were arrested and detained.¹⁸² The eviction led families to face a humanitarian crisis in resettlement site.¹⁸³

¹⁷⁷ The Phnom Penh Post, 'Police beat Borei Keila activists,' (18 October 2013), <http://bit.ly/16HM55V>

¹⁷⁸ The Cambodia Daily, 'Police Arrest TTY Manager Over Shooting' (5 March 2012), <http://bit.ly/1asDGR6>; LICADHO, 'Military Shoot Land Protesters in North-eastern Cambodia,' (Video) (21 January 2012), <http://bit.ly/1asFWHS>

¹⁷⁹ Global Witness, 'Rubber Barons, How Vietnamese Companies and International Financiers are Driving a Land Crisis in Laos and Cambodia,' (May 2013), 16, <http://bit.ly/1ar7lKn>

¹⁸⁰ BBC, 'Teenager girl shot dead in Cambodia land protest,' (16 May 2012), <http://bbc.in/1asEipQ>

¹⁸¹ The Phnom Penh Post, 'Shots fired as families evicted,' (7 March 2013), <http://bit.ly/1asEFRi>

¹⁸² Article 19, 'Borei Keila – Unedited Footage,' (Video), (18 January 2012), <http://bit.ly/16HGTis> ; LICADHO, 'Borei Keila, Broken Promises,' (Video), (12 January 2013), <http://bit.ly/1asHxO7>

¹⁸³ CCHR, 'The continuing Borei Keila Tragedy,' (May 2012), <http://bit.ly/17G2dbc>

Boeng Kak Lake case families were violently evicted.¹⁸⁴ On 16 September 2011 a 100 anti-riot police officers and security guards surrounded the lake residents. Two excavators, protected by the armed officers, proceeded in destroying homes. Later in the afternoon, activist Suong Sophorn was assaulted with bricks and batons by a mob of intervention police officers.¹⁸⁵

The Borei Keila and Boeunk Kak Lake cases are also an illustration of the more systematic criminalization of land rights activists. On 24 May 2012, 13 female representatives of the evicted communities at Boeng Kak were charged, tried, sentenced and imprisoned over the course of a single day to two years and six months in prison.¹⁸⁶ Similarly, on 4 September 2012, Yorm Borpha, a Boeng Kak Lake activist, was arrested on charges of intentional violence.¹⁸⁷ This was followed by the arrest and detention of Ms. Tim Sakmony, a land activist from Borei Keila community, on the charge of making a false declaration.¹⁸⁸ Another example is the case of sugar cane plantations in Kampong Speu Province where at least 16 community members have been summoned to the Provincial Court for questioning and several have been charged. Despite their release after a week of the arrest, two of them are required to appear at court twice a month.¹⁸⁹

3.3.3 No end in sight: no dispute resolution mechanisms

There are five conflict resolution mechanisms in existence in Cambodia: the Commune Councils, the Administrative Committees, the Cadastral Commission, the National Authority for Land Conflict Resolution, and the judiciary. The Administrative Committees operate when there is a dispute arising during the land registration process but has no power to make binding decisions. If the Administrative Committee does not manage to settle the dispute, the conflict goes to the Cadastral Commission, which can only hear disputes related to unregistered land. In those cases, if a land dispute arises, it has to go first through the District Cadastral Commission, then the Provincial Cadastral Commission and finally the National Cadastral Commission as a last resort. In case of dissatisfaction with the decision of the National Cadastral Commission, an appeal must be lodged within the court system. Disputes related to registered land must be heard by the judiciary directly. Finally, in 2006, the National Authority on Land Dispute Resolution was established by a Royal Decree.¹⁹⁰ Unfortunately, its role, mandate, and functioning remain unclear and very little information about proceedings are available to the public.

¹⁸⁴ See Section 3.1.1 of the Report

¹⁸⁵ Radio Free Asia, 'Boeng Kak Lake eviction on 16 September 2011: RFA Story Behind the Story,' (Video), (22 September 2011) <http://bit.ly/16HKddx>; LICADHO 'Boeng Kak Lake Activist Savagely Beaten by Mob of Police Officers during Forced Eviction' (Video), (17 September 2011), <http://bit.ly/16HKpJR>

¹⁸⁶ CCHR, 'Legal Analysis of the charging and sentencing of 13 Boeung Kak community representatives on 24 May 2012,' (11 June 2012), <http://bit.ly/16HN5XP>

¹⁸⁷ CCHR, 'Free Yorm Bopha,' (Webpage), <http://bit.ly/16HNKIK>

¹⁸⁸ Asian Human Rights Commission, 'Two land rights activists imprisoned for their involvement in protests' (12 September 2012), <http://bit.ly/16HNnOT>

¹⁸⁹ Equitable Cambodia, 'Bitter Sweet, A Briefing Paper on Industrial Sugar Production, Trade and Human Rights in Cambodia,' (September 2010), <http://bit.ly/1bcEUkw>

¹⁹⁰ Royal Decree on the Establishment of National Authority for Solving Land Disputes NS/KT/0206/097, (26 February 2006)

As noted by the Special Rapporteur, “the time consuming administrative and procedural burden, financial costs associated with submitting a complaint, and a lack of faith in the system amount to these system being used inconsistently.”¹⁹¹ Complainants have reported that decisions are often subject to political interferences. According to the NGO Forum Cambodia, the number of unsolved disputes has been continuously increasing. Between 2007 and 2011, only 31% of the total land disputes have gone through the resolution process, while 57% have never been through any formal resolution process, despite complaints being raised to the authorities or courts. In addition, out of the 87 land dispute cases which entered a dispute resolution process, only 46% of the cases recorded were fully resolved by November 2011.¹⁹²

The lack of an effective and independent dispute resolution mechanism and access to remedy is also affected by rampant impunity¹⁹³ and the lack of independence of the judiciary. Authorities wrongfully granting ELCs and violating people’s land ownership and right to adequate housing, police officers beating up protesters, and private security personal looting crops and extorting local population are at no risk of arrest, and even rarely investigated. This culture of impunity only perpetuates the conflict; with perpetrators of human rights abuses never being held to account, violations will continue unabated.

Chikor Leu commune, Sre Ambel District, Koh Kong Province¹⁹⁴

In August 2006, two adjoining ELCs were granted to *Koh Kong Plantation Co. Ltd.* and *Koh Kong Sugar Industry Co. Ltd.* over approximately 20,000 hectares in Botumsakor and Sre Ambel districts in Koh Kong Province. The ELC was for commercial sugar cane production and was granted without prior public consultation.

It was reported that the company staff and security forces destroyed livestock, crops and killed animals, intimidated villagers, and extorted money from them. On 19 September 2006 demolition workers and armed military police arrived and forcibly evicted 250 families with bulldozers. No prior notice was given and the eviction was carried out without a court order. The police also brutally attacked the villagers who resisted the eviction. Five villagers were injured following assaults and two others were injured by police gunfire. On 15 December 2006, Mr. An In, a community activist was found murdered with three axe blows to the back of his head. Nobody has been charged for his murder.

The Sre Ambel families have appealed to the government many times unsuccessfully; they sent a petition to the local authorities, the National Assembly, Prime Minister Hun Sen, different ministries but no action was ever taken. After holding demonstrations, a representative of the MOI came to help find a solution but the authorities and the company ignored his instructions. They also pursued

¹⁹¹ Surya P. Subedi, ‘Report of the Special Rapporteur on the situation of human rights in Cambodia, Add: A human rights analysis of economic and other land concessions in Cambodia’, A/HRC/21/63/Add.1/Rev.1, (10 October 2012), <http://bit.ly/17FL8bq>

¹⁹² ‘Joint NGO Submission to the 2nd Cycle of the Universal Periodic Review of Cambodia’, (June 2013), <http://bit.ly/1bFGb5n>

¹⁹³ Peter Leuprecht, UN Special Rapporteur on the situation of human rights in Cambodia, ‘Continuing patterns of impunity in Cambodia,’ (October 2005), <http://bit.ly/1a7tba0>

¹⁹⁴ For the full account of the case see: Equitable Cambodia and Inclusive Development International, ‘Bitter Sweet Harvest: A Human Rights Impact Assessment of the European Union’s Everything But Arms Initiative in Cambodia,’ (2013), <http://bit.ly/17G5OpH>

their case in the Cambodian courts. The villagers filed civil and criminal complaints against the companies. The Court took no action on the complaints for over five years, and then dismissed the criminal complaint. In 2012, the Court referred the civil complaint back to the Cadastral Commission, ignoring the families' challenge of the legality of the concession itself.

As will be explained in the following Chapter, the disregard of the law and protections against forced evictions, and associated human rights abuses has had disastrous consequences on the situation of the affected population and the environment.

4 The Consequences: Impact Assessment of the Land Conflict

The RGC claims that ELCs have had a positive impact on Cambodia, contributing to the major development of the country, despite no concrete evidence or data about the benefits of ELCs having ever been officially published. In contrast, the negative impacts of evictions, which result most often from economic concessions, have been well documented across the country. The following Chapter provides an overview of the impact that the land conflict has had socially and economically on the population of Cambodia, including the specific impacts it has on the most vulnerable populations – women, children and indigenous communities. The Chapter concludes with a brief discussion of the irreparable environmental damage the land conflict has caused.

4.1 Socio-economic impact on affected populations

Forced evictions often result in a number of other violations of economic, social and cultural rights, such as violations of the rights to access to food, water, health, and education, as well as a number of violations of civil and political rights, such as the rights to freedom of expression, assembly and association. The impact of evictions is not limited to the loss of someone's home. It often leads, but is not limited, to an increase in poverty, limited access to an income, debts, lack of access to water, sanitation and livelihoods, physical and mental health problems, disintegration of the family cell, social stigmatization, disruption of community cohesiveness and further marginalization. In late 2012 and early 2013, CCHR conducted research to collect overall data on the social and economic impacts of forced evictions.

Sambok Chab village eviction and Andong resettlement site

Andong village, in Sangkat Kok Rokar, Khan Pur Sen Chey, is located 25 km away from Phnom Penh and is one of 54 relocation sites in and around Phnom Penh. When, in 2006, 1,554 families were violently expelled from their homes in Sambok Chab village, Tonle Bassac commune, Khan Chamkar Mon, Phnom Penh, by police and military police armed with guns, tear gas and electric shock batons, they were forced onto trucks and forcibly relocated to Andong. No evictees at Andong have been given land titles, despite promises made by the authorities.¹⁹⁵ Less than 500 families have officially received plots of land at the relocation site.¹⁹⁶

At the time, Andong was just an open and flooded field, and the families relocated there found themselves with no infrastructure that could permit them to rebuild their lives. As Amnesty International describes it, the evictees found “*no shelters, no sewage system, no safe water supply, no electricity, no access roads, no schools, no clinics and no markets.*”¹⁹⁷ Having been given no other choices, the evictees started building simple shelters but soon found themselves living in ankle-deep contaminated water. To this day, the families living in Andong are faced with a myriad of health

¹⁹⁵ CCHR, ‘Contempt Shown for The Universal Declaration of Human Rights as Andong Community Faces its Second Forced Eviction Without Compensation’ (Media Comment) (2 October 2012) www.cchrcambodia.org/media/files/press_release/294_210mcafee_en.pdf.

¹⁹⁶ LICADHO, ‘Two Years After their Eviction from the Center of Phnom Penh Villagers are Still Living in Squalor,’ (6 June 2008), <http://bit.ly/1athCWm>

¹⁹⁷ Amnesty International, ‘Cambodia: Urban Development or Relocations Slums?’ (May 2009) <http://bit.ly/17GoXYr>.

problems, including malnutrition, typhoid, dengue fever, respiratory tract infections, and gastrointestinal illnesses, as well as mental health issues such as depression and anger management problems.

Miscarriages are prevalent, as pregnant women receive little to no pre-natal care and often give birth in Andong, as they cannot afford the transportation costs to get to a hospital. Children are heavily affected by easily-treatable medical issues, such as pneumonia, bronchitis, tuberculosis, diarrhea, dysentery, malnutrition, and skin diseases.¹⁹⁸

In March 2013, CCHR interviewed 23 people who had been relocated from Sambok Chab to Andong. One of the key issues raised was the significant decrease in salaries after the relocation to Andong: the average daily salary of the evictees dropped from \$5.78 to \$3.24. The drop in income has been compounded by higher transportation costs due to the isolation of the resettlement site. Moreover, the people interviewed by CCHR reported significant increases in physical and mental health problems, including episodic insomnia, post-thrombotic syndrome, memory loss and high levels of stress. With their income considerably diminished, most of the people were not able to afford the full cost of their treatment, which, for most of them, was higher than their income. For those who could afford the cost of treatment, the isolation of the resettlement site and the consequent high costs for transportation to health facilities – especially for those with chronic conditions which require regular consultations with health professionals – made the end cost of treatment prohibitively expensive.

The socio-economic issues faced by the residents of Andong are not unique. Throughout the country, victims of forced evictions interviewed by CCHR related similar stories and were equally impacted by the violations of their land rights. In Chhouk village, Chikor Leu commune, Sre Ambel District, Koh Kong Province,¹⁹⁹ the average yearly income of victims of forced evictions had dropped from \$1,083.82 to \$484.92; in Prek Chik village, Chi Khor Kroum commune, Sre Ambel district, Koh Kong province, the evictees' average yearly income dropped from \$2,070.31 to \$315.89. As with the evictees residing in Andong, large decreases in income in these communities severely impact access to healthcare, which can result in malnutrition and many other issues.

The land conflict has also had a significant impact on the type and quality of employment opportunities available for victims of land grabbing. Many of the evictees interviewed by CCHR were self-employed before the evictions, farming their own plots of land. Land grabs have meant, however, that the land they farmed was either completely lost or so significantly reduced by encroachment from concessions that it became too small to support the household. As a result, many of the people interviewed were forced to take up employment as manual or unskilled labor – in some cases, far away from their families – in order to make a living. For most people, this change has been the direct cause for the decrease in income.

¹⁹⁸ LICADHO, 'Two Years After their Eviction from the Center of Phnom Penh Villagers are Still Living in Squalor,' (6 June 2008), <http://bit.ly/1athCWm>

¹⁹⁹ See Case Study in Section 3.3.3 of The Report

4.2 Impact on women and children

Although land is immeasurably important to both men and women in Cambodia, women, as the primary caretakers of the household, are one of the most vulnerable groups in the context of land and housing rights, and are the most heavily impacted by the land grabbing epidemic in Cambodia. The Constitution guarantees Cambodian women equal rights to land and property, rights which are echoed in international human rights law and standards. Nevertheless, women face significantly more difficulties with regards to property registration and land titles, causing a high level of tenure insecurity and making them more vulnerable to land concessions granted over their land.²⁰⁰ As noted in an October 2012 ActionAid report,

*“gendered tenure insecurity [in Cambodia] manifests itself in three ways: poverty and landlessness undercut women’s land rights; traditional practices and cultural norms mean women’s land rights are marginalised in the family unit; and women are not aware of their rights.”*²⁰¹

More vulnerable to land grabs, women are also often more vulnerable to suffer from its consequences. In 2013, research conducted by Strey Khmer Organization found that women experience significantly worsened standards of living as a result of land evictions.²⁰² After the land eviction, most of them lose their means of living, especially in rural areas. In the resettlement areas, they are no longer able to contribute to the family income in order to make ends meet, to the detriment of the welfare of the whole family, making them fearful about their future. Many women who have been relocated in isolated areas far from the city are left alone to provide for their children as their husbands and others relatives often head to the cities in search of work.²⁰³ As a consequence, several cases of general anxiety disorders, post-traumatic stress disorders and depression have been reported.²⁰⁴

The economic impact on women differs for urban and rural women. For many women from urban communities who are facing residential land loss, their monthly expenses are substantially increased as they are forced to rent temporary accommodation or pay for transportation when going to the city from relocation areas, which are often in the outskirts of Phnom Penh. Resettlement areas are often so isolated that women are incapable to find jobs and must go to Phnom Penh to find employment. On the other hand, women from rural communities earn their lives as farmers and find themselves very limited in terms of skills and job opportunities. When they lose their land, they are

²⁰⁰ Surya P. Subedi, ‘Report of the Special Rapporteur on the situation of human rights in Cambodia, Add: A human rights analysis of economic and other land concessions in Cambodia’, A/HRC/21/63/Add.1/Rev.1, (10 October 2012), <http://bit.ly/17FL8bq>

²⁰¹ ActionAid, ‘Lay of land: Improving land governance to stop land grab,’ (October 2012), <http://bit.ly/17Gk0yM>

²⁰² Strey Khmer Organization, ‘They took my land, they took my life: Report on Psychosocial impacts of land evictions on women in Cambodia,’ (February 2013), <http://bit.ly/17GkqFD>

²⁰³ Surya P. Subedi, ‘Report of the Special Rapporteur on the situation of human rights in Cambodia, Add: A human rights analysis of economic and other land concessions in Cambodia’, A/HRC/21/63/Add.1/Rev.1, (10 October 2012), <http://bit.ly/17FL8bq>

²⁰⁴ Ibid.

no longer able to generate income from their own property, as a result incurring high debts and becoming unable to afford to feed their children and to pay for basic services.²⁰⁵

Hoy Mai and Oddar Meanchey Province²⁰⁶

Hoy Mai's family and 118 other households in Bos village, Oddar Meanchey province, were forcibly evicted in October 2009 as part of an ELC granted to *Angkor Sugar Company*. Their homes were burnt down and they lost all of their belongings and farmland. Despite promises that she would receive another plot of land, she received neither land nor compensation, leaving her and her children homeless and destitute. Hoy Mai, at the time five months pregnant, was charged with violation of the Forestry Law and jailed for eight months after trying to appeal to the authorities in Phnom Penh.

She went into labor in the prison where she was forced to stay for three days and two nights until she was taken to the hospital. Only a few hours after she gave birth to her baby she was taken back to jail. For two months, she nursed her son in the prison with terrible sanitary condition and sharing the cell with seven other women. Eight months after her detention, Mai was brought before a judge. Instead of a fair trial the court told Mai that she would be released only when she signed an agreement to withdraw all claims to her land in Bos village and accepted replacement land.

Women are also uniquely impacted by domestic violence²⁰⁷ and gender-based violence – both in the context of forced evictions and in general. A October 2009 Issue Brief by The Centre on Housing Rights and Evictions (“COHRE”) notes that their research has *“consistently shown that women face additional violence in the home in the context of strained living conditions and psychological impact of eviction on family members, which may also at times aggravate problems of substance abuse and social isolation.”*²⁰⁸ Safety in resettlement sites can also be an issue for women, as robberies and sexual violence, including rape, are commonplace, including at the hands of people working for the concession companies.

Land evictions also have a significant impact on children. When families are relocated to resettlement areas, children are often forced to leave school or families have to separate in order to keep the children near the eviction site so that they can finish the academic year. In some cases, families have to pay fees in order to be able to transfer the children to a different school, which further impacts the families' economic situation.²⁰⁹ Child labor is also a great concern: children are sometimes pulled out of school in order to work and raise money for their families after the evictions, as families are often unable to pay their debts.²¹⁰ For instance, CCHR Project officer met in

²⁰⁵ Strey Khmer Organization, 'They took my land, they took my life: Report on Psychosocial impacts of land evictions on women in Cambodia,' (February 2013), <http://bit.ly/17GkqFD>

²⁰⁶ Amnesty International, 'Eviction and resistance in Cambodia: Five women tell their stories,' (November 2011), <http://bit.ly/17GIPfp>

²⁰⁷ COHRE, 'Living under threat but with nowhere to go: a survey on the impact of forced evictions on women in Phnom Penh,' (November 2011), <http://bit.ly/17GkBk6>

²⁰⁸ COHRE, 'Women and Housing Rights' (Issue Brief) (2009) www.cohre.org/sites/default/files/issue_brief_1_forced_eviction.pdf.

²⁰⁹ Surya P. Subedi, 'Report of the Special Rapporteur on the situation of human rights in Cambodia, Add: A human rights analysis of economic and other land concessions in Cambodia', A/HRC/21/63/Add.1/Rev.1, (10 October 2012), <http://bit.ly/17FL8bq>

²¹⁰ APRODEV, 'Stolen land, stolen future: a report on land grabbing in Cambodia,' (December 2011), <http://bit.ly/17Gmg9k>

January 2013 with 10 years old Touch Pheara, at Pish village, Omlaing commune, Thpong district, in Kampong Speu province. Touch Pheara dropped his studies at grade 2 and started working to cut sugar cane on one of the *Phnom Penh Sugar company* of Ly Yong Path's plantation after his family was evicted. He works almost 10 hours per day to earn only 7000 riel (about \$1.75). He started working because of his family's lack of farm land at the relocation site. Overall, children often suffer from the disintegration of the family cell.

Over the years, the harmful impact of forced evictions on the welfare of women has led to the emergence of an activism movement where women have taken the frontline of protests and demonstrations. Of particular prominence is the case of women involved in the Boeng Kak Lake evictions, who, assuming that women and children would be less likely to be targeted by the authorities, have initiated an opposition movement to their eviction.²¹¹ Today, they are an example for women from other communities that have faced illegal evictions. However, according to the Special Rapporteur this can be an additional negative impact on women already affected by evictions: *"women activists involved in land disputes report harassment and intimidation to themselves and their families, which has taken a toll on their families relations and psychological welfare."*²¹²

4.3 Impact on indigenous peoples

"Land is culture for Cambodia's indigenous peoples" – Jeff Vize and Manfred Hornung

Land concessions, land disputes and evictions threaten the existence of indigenous communities in Cambodia, affecting their traditional life in many ways. This is primarily due to the fact that indigenous communities do not use a system of individual property but rather own the land collectively. Although indigenous communities' rights to collective ownership are theoretically protected under international and national laws (see Chapter 1), the constant encroachment on their land by ELCs is increasingly weakening the chances of indigenous communities to receive collective ownership titles over their traditional land. According to the Special Rapporteur, there have already been several cases where concessions are being developed directly on indigenous land so that by the time the community tries to register their land, there is little or none left.²¹³

Exacerbating the problem is the fact that many indigenous communities live on natural resource-rich land, where there are significant interests in starting mining and logging activities. Their land often has great potential for industrial agriculture, such as rubber plantations. In addition, agro-industry techniques and manufacturing development pose a threat to traditional indigenous agricultural and farming system. Indigenous communities have recently reported difficulties with the new farming techniques introduced on their land as well as communication problems with foreign companies.

²¹¹ Amnesty International, 'Eviction and resistance in Cambodia: Five women tell their stories,' (November 2011), <http://bit.ly/17GIPfp>

²¹² Surya P. Subedi, 'Report of the Special Rapporteur on the situation of human rights in Cambodia, Add: A human rights analysis of economic and other land concessions in Cambodia', A/HRC/21/63/Add.1/Rev.1, (10 October 2012), <http://bit.ly/17FL8bq>

²¹³ For more details on the registration process to collective land please see Section 3.1.3 of the Report.

Moreover, local tensions related to the expropriation of land and management of plantations has arisen.²¹⁴

Perhaps most importantly, land concessions and development projects have a particularly high impact on traditional indigenous cultures and ways of life. For indigenous communities in Cambodia, land is central to their way of life and to their culture: in addition to being the main food source, land is also used for burial sites and has spiritual meaning, such as the “*spirit forest*” where religious ceremonies are practiced. Land grabbing on indigenous land thus has impacts far beyond the socio-economic ones; there have been reports of concessions desecrating and even destroying indigenous burial grounds and spirit forests. For instance, in early 2013, the *Phnom Penh Post* reported that a community of approximately 100 ethnic Jarai families in Rattanakiri province rejected attempts by the local authorities to measure their land: “*In our village, there is no forest anymore for our ancestor spirit, so we wish to preserve it for them and for our ethnic identification.*”²¹⁵

4.4 Impact on the environment

Environmental destruction is one of the most serious concerns today in Cambodia. According to a study carried out for the European Union Delegation in 2012,²¹⁶

“Environmental and natural resources in Cambodia are threatened by short-sighted overexploitation on an increasing and threatening scale. This reduces the country’s overall natural capital, yet whilst great benefits flow to the few; equally great burdens fall on the many.”

The study identifies four main issues regarding environment and natural resources: (1) surface water management because of planned and actual infrastructure building on the Mekong River; (2) land allocation and use, especially on forested State land; (3) depletion of forests through logging and concessions for resource extraction; and (4) degradation of soil driven by unsuitable agricultural practices.

The continued illicit logging and the development of large hydropower dams are a great concern in terms of their considerable impacts on the environment. The designation of protected areas was one of the tools used to limit the environmental degradation in the country. Protected areas are divided into four categories:²¹⁷ (1) core zone; (2) conservation zone; (3) sustainable use zone; and (4) community zone. Development can take place in the last two zones if an environmental and social impact assessment has taken place.²¹⁸ Recently, a large number of sub-decrees have been issued to designate land in protected areas as sustainable zones and to approve development projects, such

²¹⁴ Surya P. Subedi, ‘Report of the Special Rapporteur on the situation of human rights in Cambodia, Add: A human rights analysis of economic and other land concessions in Cambodia’, A/HRC/21/63/Add.1/Rev.1, (10 October 2012), <http://bit.ly/17FL8bq>

²¹⁵ Phak Seangly, ‘Jarai ethnic group takes stand on spirit forest’ *The Phnom Penh Post* (19 February 2013) <http://www.phnompenhpost.com/national/jarai-ethnic-group-takes-stand-spirit-forest>.

²¹⁶ Steffen Johnsen (Nordeco) and Greg Munford (Baastel), European Union Delegation in Cambodia, ‘Country Environment Profile,’ (April 2012), <http://bit.ly/17HJa03>

²¹⁷ Protected Areas Law, (February 2008), <http://bit.ly/1hPQmc7>

²¹⁸ Ibid. Article 44

as agro-industrial projects,²¹⁹ thus further harmfully impacting the environment and nullifying the impact of the adoption of protected areas.

Many agro-industrial projects involve the logging of wide areas of forest in order to clear land for planting sugar, cassava, rubber, and other crops. As a result, forest areas have been significantly degraded, with severe impacts on biodiversity. A research led by the University of Maryland and released in November 2013 shows that Cambodia has lost more than 7% of its forest cover over the past 12 years.²²⁰ Tropical forests such as those in Cambodia provide a range of ecosystem services that are seriously impacted by widespread deforestation, resulting in, for instance, increased flooding, and altered habitat conditions for wildlife species.²²¹ Flooding is also a major concern in urban areas, where poor urban planning and thoughtless property development projects have led to poor drainage.²²² The consequences of the filling of the Boeng Kak Lake are already felt in Phnom Penh, with increased flooding in dense urban areas.

Prey Lang Forest²²³

Prey Lang is thought to be the largest lowland evergreen forest on the Indochinese peninsular. Located between the Mekong and Stung Sen Rivers, the vast forest spans over four provinces and contains seven distinct eco-systems which are home to over 40 endangered plant and animal species. Prey Lang is also considered to be the most substantial intact area of indigenous land that remains in Cambodia, and over 200,000 indigenous Kuy people live in hundreds of villages surrounding the forest. These people depend upon Prey Lang not just for their livelihoods, but also for their social and spiritual traditions.

During the 1990s, the entire was carved up into logging concessions after the government reclassified the area from State Forest to State Private Land. After sustained public outcry and donor pressure, the logging concessions were suspended in 2002. However, Prey Lang is now subject to new and arguably more damaging dangers. Many dozens of agro-industrial plantations (primarily for rubber production) and mining concessions (primarily for iron and gold extraction) have been granted. The plantations and mines have engulfed agricultural land on which the indigenous population depend for their survival, and destroyed hundreds of thousands of highly important resin trees. The industrial mines are also displacing small-scale mining communities who have practiced their environmentally-friendly technique for generations. Although hugely destructive in themselves, these concessions have also necessitated the building of a large network of roads and fences throughout the forest, destroying trees and inhibiting the movement of wildlife and people. The new roads have also improved access for illegal loggers, miners and poachers.

²¹⁹ Surya P. Subedi, 'Report of the Special Rapporteur on the situation of human rights in Cambodia, Add: A human rights analysis of economic and other land concessions in Cambodia', A/HRC/21/63/Add.1/Rev.1, (10 October 2012), <http://bit.ly/17FL8bq>

²²⁰ The Cambodia Daily, 'Loss of Forest in Cambodia Among Worst in the World,' (19 November 2013), <http://bit.ly/HYlubu>

²²¹ Ibid.

²²² Surya P. Subedi, 'Report of the Special Rapporteur on the situation of human rights in Cambodia, Add: A human rights analysis of economic and other land concessions in Cambodia', A/HRC/21/63/Add.1/Rev.1, (10 October 2012), <http://bit.ly/17FL8bq>

²²³ The Threat, Prey Lang Forest, (Website), <http://bit.ly/1hPRa0H>

Under the Land Law, all development projects must be subjected to an environmental impact assessment, which must include consultations with affected communities. So far as the Prey Lang land rights activists and forest community members are aware, no such assessments have been carried out for any of the development projects in Prey Lang. They also report that no affected communities have been consulted.

Access to safe drinking water is also becoming an issue. For instance, in August 2006, the RGC granted ELCs in Koh Kong Province to two Cambodian sugar companies. Affected communities claim chemical waste from the plantation has poisoned local water sources killing fishes their most important mean of sustenance. In January 2010 an ELC was granted to *HHL Group* to produce and process genetically modified corn. The company diverted water to construct its irrigation system, causing farms to flood. Villagers have reported cases of water turning various colors and animal getting sick and die because of the water.²²⁴

Witnessing the degradation of their environment, and the greedy use of Cambodia's natural resources, environmental rights activists have increasingly become vocal and active in defending their land. However, protecting Cambodia's environment can carry high costs, as raising awareness about extensive logging and environmental destructions comes in the way of powerful developers and threatens their profit. Most exemplary of this danger is the case of Chut Wutty, a prominent grassroots environmental activist, who was fatally shot in April 2012 in Koh Kong Province by military police while photographing illegal logging.²²⁵

Moreover, the work undertaken by environmental activists is often difficult as little or no information is available regarding projects. For instance, in the Areng Valley, Koh Kong Province, uncertainty as to whether a Chinese mega hydropower dam will go on leaves the local population with nothing else but worries. No environmental impact assessment has been done in the area, while organizations have already raised serious concerns regarding the impact of the dam on local communities, wildlife, and the forest. Organizations that have been questioning the dam have been warned they could be evicted from the country.²²⁶

²²⁴ Surya P. Subedi, 'Report of the Special Rapporteur on the situation of human rights in Cambodia, Add: A human rights analysis of economic and other land concessions in Cambodia', A/HRC/21/63/Add.1/Rev.1, (10 October 2012), <http://bit.ly/17FL8bq>

²²⁵ Article 19 and CCHR, 'Defending the Defenders : Security for Cambodian Human Rights Defenders,' (2013), <http://bit.ly/HrQfWL>

²²⁶ The Phnom Penh Post, 'Monks enter the forest fray,' (08 November 2013), <http://bit.ly/17HNVXx>

5 Conclusion and Recommendations

5.1 Conclusion

The land conflict in Cambodia is due to a complex history and an important number of different actors. However, the RGC has a clearly established responsibility in the intensification of the land disputes throughout the country. In order to make way to development and ELCs benefiting only the political elite of the country, the RGC operates under a veil of secrecy, violates the law and uses violence against its population with total impunity.

The immunity with which the RGC, its officials, and connected developers have been operating in the country has had no other consequences than making the poorer poorest and the most vulnerable more marginalized. If the RGC does not take concrete and immediate actions to respect people's right, and halt detrimental development projects and violence, the land disputes will turn into a nationwide land conflict with irreparable consequences for the Cambodian population and for the environment. It is in the hands of the new RGC to make the appropriate decisions and to take measures to finally put an end to the land conflict of Cambodia.

5.2 Recommendations

Considering the current situation of land rights in Cambodia, CCHR makes the following recommendations to the new RGC. Some recommendations are short-term while some are on a medium or long-term basis. Some of the recommendations included were put forward by communities affected by land conflict who attended CCHR's land policy platforms and roundtables held between September 2012 and June 2013.²²⁷

Overall, the RGC should ensure that existing laws are properly implemented, including by state authorities and the private sector. CSOs and the RGC should also closely collaborate to work together towards the implementation of all the following recommendations but primarily to:

- Inform and educate communities about their rights;
- Produce detailed and concrete proposition for land reforms, developed in consultation with civil society actors and affected communities; and
- Investigate independently, thoroughly and without bias cases of land disputes.

5.2.1 Concerning Transparency

The RGC and relevant ministries, including the MLMUPC, MOE and MAFF, should:

- Make all information on existing and cancelled land concessions available and publicly accessible;
- Make publicly available information on the mapping, classification and registration of State public and private land as well as information regarding reclassification;
- Make publicly available an updated list of protected areas;

²²⁷ CCHR, 'Land Reform Policy Report: Findings from Roundtable Discussions and Policy Platforms' (July 2013) <http://bit.ly/1inGTWX>

- Ensure that reclassification of State public land and sustainable use zones is transparent and open;
- Ensure the land concession bidding process is competitive and transparent;
- Extend the moratorium on the granting on new ELCs and publicly disclose how many ELCs were in process on 7 May 2012 and make the review of the concession system public; and
- Adopt a Law on Access to Information to enhance transparency and public participation.

5.2.2 Concerning Security of Tenure

The RGC and relevant ministries, including the MLMUPC, MOE and MAFF, should:

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

5.2.3 Concerning Consultations

The RGC and relevant ministries, including the MLMUPC, MOE and MAFF, should:

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

5.2.4 Concerning forced evictions

The RGC and relevant ministries, including the MLMUPC, MOE and MAFF, should:

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

5.2.5 Concerning access to an effective remedy

The RGC and relevant ministries, including the MLMUPC, MOE and MAFF, should:

- Strengthen the existing dispute resolution mechanisms;

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

5.2.6 Concerning the right to freedom of expression, assembly and association

The RGC and relevant ministries, including the MOI, MLMUPC, MOE and MAFF, should:

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

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