

# Land and Natural Resource Alienation in Cambodia

*Shalmali Guttal, Focus on the Global South, December, 2006.*

Land is the repository of memory and keeps traces of the past in the absence of a strong written tradition. It is perceived as an open book from which anyone can read and learn about local history: place names, old roads, legends and stories attached to places. For local people, bulldozing the landscape is seen as erasing their history, and disturbing social organisations and traditions.<sup>1</sup>

Ask any Cambodian what s/he considers to be the foundation of society and life in Cambodia and the answer is likely to be “land.”<sup>2</sup> As in most other places, land is an extremely important economic resource or asset in Cambodia. Land is livelihood. But equally, land is valued as an emblem of rootedness, belonging and stability, and is widely regarded as the very basis of social organisation in the country. A family's attachment to its piece of land has particular significance in a society that over the past hundred years has hurtled through successive periods of civil conflict, war, massive displacement, forced collectivisation and genocide, and finally into an unregulated, capitalist, market economy.

Today, at least a third of Cambodia's peoples—rural and urban--are being systematically alienated from their lands, homes and livelihoods. In many instances communities are losing lands and access to natural resources because of economic and demographic pressures. But equally, people are being dispossessed from their lands by those with political power and money. This is made possible by a combination of factors: economic opportunism by the country's elites and their external allies and their impunity from legal action; ambiguous land laws; a judicial system that is hostage to political and financial power and unable to protect the rights of citizens; short-sighted economic development plans that seek to usher in private capital at any cost, and; shocking apathy by bilateral and multilateral donors and creditors, who are willing to turn a blind eye to massive land and resource thefts.

This paper attempts to provide an overview of the growing crisis of land and resource alienation in Cambodia. The paper is based on secondary data, travel and observation in the Cambodian countryside, and personal interviews with representatives from rural communities, Non-Governmental Organisations (NGOs) and research organisations.<sup>3</sup>

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1 *Land concessions for economic purposes in Cambodia, A human rights perspective.* Page 27. United Nations Cambodia Office of the High Commissioner for Human Rights. November 2004.

2 See for instance, *Making the Poor More Visible, Landlessness and Development Research Report.* Where Has All the Land Gone, Volume 4. Robin Biddulph. Oxfam GB Cambodia Land Study Project. September 2000.

3 Information sources have been cited wherever possible; however, several interviewees from NGOs and rural communities requested that their names be kept confidential.

## Land Tenure and Ownership

Cambodia has a total territory of 18.1 million hectares of which at least 6.5 million hectares is considered arable. Over 80 % the country's population lives in rural areas and depends on land, forests, rivers and other natural resources for its livelihood. Subsistence agriculture, fisheries and foraging in surrounding forests and woodlands are the main sources of food, employment and income for Cambodia's rural communities. Typically, a rural family would have a small plot of land for its house and small parcels of land around the village (from 1-3 hectares) for cultivating rice. Cambodia's terrain allows for both sedentary and shifting (swidden) cultivation; whatever the mode of cultivation, rural communities rely greatly on surrounding woodlands, forests and water bodies for food and non-timber forest products for household use and income. Loss of agricultural land and/or loss of access to natural resources directly translate into hunger, cash-poverty, poor health and destitution for rural communities. The poorest in any village are usually those without land and in fact, not having agricultural land or the means to purchase land can be considered a reliable indicator of poverty in Cambodia.<sup>4</sup>

Land ownership in Cambodia has historically been tied to land use. For hundreds of years and up till the mid twentieth century, land was acquired “by the plough” although it theoretically belonged to the country's ruling sovereign power. The value of land lay in its use and cultivation was accepted as a form of ownership.<sup>5</sup> As recently as up to the 1960-s, population density in much of rural Cambodia was low and there was an abundance of land compared to population size. Agricultural production was largely small-holder and labour-intensive, with possibilities to expand land under cultivation as family size grew. In the 1960-s, it was estimated that 73 % of Cambodia's territory was covered with forests<sup>6</sup> and rural communities could clear forests as needed to bring more land under cultivation without significant ecological impacts. Land was not traded, there were no formalised land markets and those who actually used the land also defined ownership and control.<sup>7</sup> The most common pattern of establishing ownership was by clearing forests and using the cleared land for agriculture.

Attempts by French colonists (1800-s to 1930) and the post colonial government (1953-1975) to introduce formal private property ownership regimes were only partially successful in the rice growing plains and not at all successful in upland and forest areas. One reason for this may be that both colonial and post colonial governments sought to collect taxes from those with formal land titles; given that peasants already had few means of production and lived literally from season to season, such taxes placed additional and heavy financial burdens on them. Another reason may be

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4 See for instance, *Making the Poor More Visible, Landlessness and Development Research Report*. Where Has All the Land Gone, Volume 4. Robin Biddulph. Oxfam GB Cambodia Land Study Project. September 2000.

5 *Land concessions for economic purposes in Cambodia, A human rights perspective*. United Nations Cambodia Office of the High Commissioner for Human Rights. November 2004.

6 Ibid.

7 *Social Assessment of Land in Cambodia, A Field Study*. So Sovannarith, Real Sopheap, Uch Utey, Sy Rathmony, Brett Ballard, Sarthi Acharya. Cambodia Development Research Institute, Phnom Penh, July 2001.

that in areas where shifting cultivation was practiced (generally more remote and distant from administrative centres) land administrators found it difficult to keep track of which family “owned” which parcel of land. Even today, privatised property regimes stand in stark contrast to traditional land use and ownership practices in both, shifting and extensive cultivation systems in Cambodia and elsewhere.

The above situation started to change rapidly with the advent of the civil war in the 1960-s and 1970-s, the take over of the country by the Khmer Rouge (KR) from 1975-1979, and modernisation and population growth from the 1980-s on. As fighting intensified in the countryside during the late 1960-s and 1970-s, thousands of rural people abandoned their lands and sought refuge in Phnom Penh, the nation's capital. When the KR took full control of the country in 1975, they moved majority of the country's population into rural agricultural production camps, uprooted rural communities from their traditional lands, expropriated all property, destroyed most land records and collectivised all the lands.<sup>8</sup> Both during and after the KR period, a large number of people fled to refugee camps in Thailand or sought asylum overseas.

After the ouster of the Khmer Rouge in 1979, rural communities returned to their villages and resumed farming on whatever lands were available, but all land was still considered state property. In many areas, farmers were organised into small state led collectives (called *krom samaki* and different in nature from the KR labour camps) and households were allocated residential use rights based on actual occupation. Those who spent the KR years in refugee camps along the Thai-Cambodian border also started to return in the 1980-s, many to their original villages of birth, looking for agricultural lands to start life anew. Recognition of private property (i.e., ownership of land by families and individuals) began again in the mid 1980-s and was formally introduced in 1989 after the departure of Vietnamese troops.<sup>9</sup> In 1989, the Government of the State of Cambodia (SOC) started to allocate agricultural land to rural communities and established ownership rights for residential land up to 2000 square metres and possession rights for cultivated land of less than five hectares.<sup>10</sup> Although pre-1975 land claims by returnees were not recognised, policy analysts generally agree that land distribution in rural areas during that period was relatively equal.

In the 1990-s, Cambodia was catapulted into a free market economy, private property regimes started to define land use and ownership, and an unregulated land market started to burgeon. The Constitution that the new Royal Kingdom of Cambodia (RCG) adopted in 1993 provided for legal private and public (state) state ownership of land, and a Land law introduced in 1992 extended private property rights to Cambodian citizens. Through this law, people could apply for land certificates to confirm occupancy and use rights in rural areas and for ownership rights for dwellings in Phnom Penh. However, according to the Department of Cadastre and Geography,

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8 The Khmer Rouge (KR) period witnessed possibly the largest population displacement in human history. Millions of Cambodians were forced to move to labour camps in the Cambodian countryside as part of the KR's plans to build an 'agrarian utopia.'

9 *Social Assessment of Land in Cambodia, A Field Study*. So Sovannarith, Real Sopheap, Uch utey, Sy Rathmony, Brett Ballard, Sarthi Acharya. Cambodia Development Research Institute, Phnom Penh, July 2001.

10 *Land tenure database development in Cambodia*. Brett M. Ballard, Acting Research Director, Cambodia Development Resource Institute, 2006. Phnom Penh, Cambodia.  
<http://www.fao.org/docrep/009/a0306t/A0306T08.htm>.

only about 14 percent of an estimated 4.5 million applicants have received formal land certificates since the early 1990-s.<sup>11</sup>

Also in the 1990-s, the RCG introduced a number of private investment incentives through an economic reform agenda to promote economic and social development. Agricultural development was claimed as a priority with the aim of ensuring food security, providing raw materials for industry, increasing exports and creating employment. During this time, the RCG also started to grant economic concessions on forest and state lands to private companies (see below for a discussion on concessions). These concessions were outside existing laws and served to dispossess rural communities from farm and forest lands.

## **How People Lose Their Lands**

Landlessness and inequalities in land holdings are growing rapidly in Cambodia among both rural and urban communities. Landlessness is higher among female headed households compared to male headed households.<sup>12</sup> Rural landlessness went from 13 percent in 1997 to 20 percent in 2004;<sup>13</sup> although 2006 figures are yet unavailable, some Cambodia based analysts believe that current landlessness is likely to be close to 30 percent. Reports of land losses are coming in from every province. Added to this are growing numbers of “near landless,” i.e., those with plots of land too small to eke a living out of.

One reason for growing landlessness and land inequality is increase in demographic pressures on small land areas. Cambodia's population grew rapidly from the 1980-s on, but the areas under agricultural cultivation grew at a much slower rate. In 2001, the total area under agricultural cultivation was actually less than that in the 1960-s.<sup>14</sup> A lot of agricultural and forest area was covered with land-mines starting from the KR period in 1975, making both cultivation and forest clearing risky. After lands started to be cleared of land-mines in the 1990-s, some of the most fertile and plum agricultural and forest lands were immediately claimed by wealthy businessmen and their political allies in Phnom Penh. Unbridled foreign investment in areas such as tourism, manufacturing and agri-processing, and unregulated forest and land concessions further limited the agricultural land available to rural communities. Even when communities did try to expand their farmlands by clearing new forests, chances were that they would be dispossessed of them by businessmen from outside colluding with local and provincial authorities.

At the same time, the population dependent on agriculture has continued to increase and many more people have had to be accommodated in either the same, or even smaller areas of agricultural land.

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11 Ibid.

12 *Social Assessment of Land in Cambodia, A Field Study*. So Sovannarith, Real Sopheap, Uch utey, Sy Rathmony, Brett Ballard, Sarthi Acharya. Cambodia Development Research Institute, Phnom Penh, July 2001.

13 *Cambodia, Halving Poverty by 2015? Poverty Assessment 2006*. Page 85. Prepared by the World Bank for the Consultative Group Meeting. Phnom Penh, February 2006.

14 *Social Assessment of Land in Cambodia, A Field Study*. So Sovannarith, Real Sopheap, Uch utey, Sy Rathmony, Brett Ballard, Sarthi Acharya. Cambodia Development Research Institute, Phnom Penh, July 2001.

Demographic pressure also increased in the 1980-s and 1990-s because of large numbers of people returning from refugee camps along the Thai-Cambodian border. Upon return to their original villages or arrival in resettlement areas many did not receive land because it was either already in use by another family, or covered by land-mines, or contested by multiple claimants. While many families sub-divided their lands for relatives and offspring—thus resulting in smaller plots and greater inequalities in land holdings—many also sold their lands and sought other employment in commercial plantations, nearby towns or Phnom Penh.

One of the main causes of land loss is distress sale of land because of ill health, rising medical costs and indebtedness. Health related indebtedness has been cited in several rural communities as the most important cause of distress land sales.<sup>15</sup> Since public health systems are poor, people are forced to use private health services which are expensive. To raise money for medical care they either sell part of their land or borrow from local moneylenders. Rural communities by and large do not have access to affordable credit in times of sickness, crop failure or other unforeseen emergencies. Despite a surge in NGO run rural micro-credit programmes and privately run micro-finance institutions, rural families are usually unable to access emergency loans or loans for agricultural production with low interest rates and favourable repayment terms.<sup>16</sup> Some families even take on second loans to repay the first loans and fall into classic debt traps where most of their incomes go towards repaying old debts. Crisis struck families either sell parts or all of their lands to better off families in their areas, or to business entities from Phnom Penh.

Another important cause of growing land inequalities and landlessness is speculative purchases by those with extra cash. It is widely acknowledged that the benefits of Cambodia's transition to a market economy have gone primarily to those based in Phnom Penh and other large towns. Given that options for cash investment are limited and that land values are rising as a result of de-mining and transportation infrastructure, it is common for the newly rich to invest in land and sell it a later time for a higher price. Speculative purchases are also made by private companies with the ostensible purpose of developing tourist resorts and infrastructure, and by companies that win economic concessions for plantations (see the section below on concessions).

One of the most common ways for rural communities to lose their lands is through land grabbing by wealthy and powerful individuals and private companies. According to Chan Sophal, a well respected researcher and analyst in the country, “From 1992-2003, rich people seized forests and sold timber; now they are seizing land and selling it.”<sup>17</sup> Most rural families do not have legal land titles or certificates that assure them of security of tenure. Individuals and families with money and political connections are able to purchase fake and backdated land titles and certificates that “prove” their legal claims to specific plots. Often, the person making the claim is a person in authority such as the village or commune chief, or a well connected functionary from the district or province, and is supported by the local police and courts. Although Battambang and Banteay

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15 See for instance, *Making the Poor More Visible, Landlessness and Development Research Report*. Where Has All the Land Gone, Volume 4. Robin Biddulph. Oxfam GB Cambodia Land Study Project. September 2000.

16 In recent years, several NGO run micro-credit programmes have been severely criticised by researchers and local/national activists as deepening rather than alleviating rural poverty because of extremely high interest rates and other unfavourable conditions.

17 Personal interview with Mr. Chan Sophal, Cambodia Development Research Institute (CDRI).

Meanchey provinces are considered to be “hot-spots,” land grabbing is happening all over the country and many researchers believe that the situation is as bad in Pursat, Kompong Cham, Rattanakiri, Mondulakiri, Sihanoukville and Phnom Penh.

A particularly shocking case of land grabbing is that of Kbal Spean village in Poipet Commune in Banteay Mancheay Province, near the Thai-Cambodian border. In 1999, a person who identified himself as the headman of the village claimed ownership of 51,214 square metres of land in and around the village. He said that he had cleared and cultivated the land and that current village residents had occupied the area illegally. Despite the fact that none of the villagers even recognised this man and the fact that his claims contradicted existing laws on land use and the size of land-holdings, he was granted possession of the land by the Provincial Court. The ensuing conflict resulted in the deaths of five villagers in March 2005, who were shot by armed security forces instructed to evict the villagers and implement the court's verdict.<sup>18</sup> To date, the criminal case about the killings is still languishing in the provincial court, the land conflict has yet to be resolved and community residents have been given lots of land too small to make a living by.

Land grabbing is also common in areas given over to economic land concessions, most of which are granted without clear demarcations between concession and village lands. Over time, concessionaires start encroaching onto village agricultural lands and claiming them as part of the concession agreement. Since villagers do not actually know how much land has actually been allotted to the concessionaires and many do not have titles to prove their use and occupancy rights, they are easily robbed of their lands. Reports have also started to come in from across the country that Forestry Authorities are “reclaiming” forest lands that have been converted to agricultural lands for several years now. It is evident to villagers and local observers that forests will not grow back on these lands anymore. The common wisdom is that the Forestry Authorities will hand this “reclaimed” land over to private companies as economic concessions.<sup>19</sup>

Land is also being lost by the urban poor at alarming rates. Despite the fact that many families living in Phnom Penh's squatter communities have legal papers that permit them to occupy these lands, they are now being evicted. The most well known of these evictions are in the riverside settlements of Sambok Chab and Village 78 along the Tonle Bassac river in Phnom Penh. The area has been declared “state public land” by the Municipal Authorities and all residents are being resettled to two areas 22 km outside the city. The evicted communities were not consulted about the change in classification of the lands they have been living on for years, nor were they offered adequate and fair compensation. Human rights organisations claim that the area in question has high real estate value and will be handed over to private developers for luxury housing and recreation facilities. By declaring the area as “state public land,” the government and private developers will be able to squirrel out of paying the residents the market price of the lands, which is their due.

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18 The Kbal Spien case is a complex and long-standing one. For details about the case and the current situation of the dispute, the reader is advised to refer to the report: *The High Price of Land: The Deadly Eviction of Kbal Spean*. Report by CHRAC-Cambodian Human Rights Action Committee, A Coalition of 18 NGOs. August 2005.

19 Personal interviews with village residents in Stung Treng and Kratie provinces.

These evictions and resettlements are being carried out with a tremendous amount of intimidation and violence. The Sambok Chab evictions were carried out by hundreds of police and military police forces with automatic weapons, electric batons and tear gas. The evicted residents were moved to a water logged site 22 km away with minimal shelter, no electricity, and no water, sanitation and other essential facilities. Evicted families have been severed from their jobs and livelihoods in Phnom Penh and now have to travel large distances for health and education services. Some of those evicted are HIV-positive patients and need to take regular anti-retroviral drugs which they are now unable to get because of the distance they have to travel to the hospitals where they are being treated. Reports have even started coming in of deaths among the elderly and sick because of hunger and malnourishment.<sup>20</sup>

In most cases of urban evictions and rural land-grabbing, there is clear evidence of collusion among highly placed government officials, law enforcement authorities and business elites. However, no legal action is taken against them because of their political connections. In fact, those who make decisions about so-called economic development in the country are also the main land and estate speculators. Despite the tag of “development” that often accompanies these take-overs, there is little evidence of development several years down the road.<sup>21</sup>

## The Curse of Concessions

Since over a decade, large tracts of land in Cambodia have been given away to private companies for economic land concessions. Economic concessions are contractual agreements between the government and private entities for commercial exploitation of land, mainly for commercial/industrial forestry and agriculture, mining, oil exploration, fishing and tourism. Many of the companies awarded these contracts are joint ventures between foreign and Cambodian companies but some contracts are held solely by foreign companies. According to some researchers, while it is difficult to identify the actual “owners” of many these companies, it is clear that officials and politicians from the highest levels of government are involved.<sup>22</sup>

Although economic concessions originated in the late 19<sup>th</sup> century under French colonial rule (mostly for rubber plantations), their recent resurgence was in the early 1990-s, when the RCG started to grant forest and land concessions to private companies ostensibly to stimulate private enterprise, contribute to state revenues and reduce poverty in rural areas. These concessions, however, were outside of existing laws and regulations, including the 1992 Land Law, and it is estimated that by the end of the 1990-s, more than a third of Cambodia's rural communities were alienated from their lands because of land and forest concessions.<sup>23</sup>

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20 Urban evictions are regularly reported in the Cambodia Daily and Phnom Penh Post. For example, see *More Bassac squatters face eviction*. Phnom Penh Post, June 16-29. And *Misery, disease and death pursue victims of evictions*. Phnom Penh Post, August 11-4, 2006.

21 Personal interview with Ms. Naly Pilorge, LICADHO, Phnom Penh.

22 Personal interview; respondents requested that their names not be revealed.

23 *Land concessions for economic purposes in Cambodia, A human rights perspective*. Page 27. United Nations Cambodia Office of the High Commissioner for Human Rights. November 2004.

The RCG has either granted or is negotiating over 60 economic land concessions to private companies, which are awarded “on the basis of unsolicited bids with little or no prior consultation with local authorities or people living in villages that may be adversely affected.”<sup>24</sup> Many of these concessions are in areas where the land is already being used by village residents for agriculture and foraging, who have legally recognised claims to these lands through ownership via occupation. Consequently, when companies move in to concession areas and start felling trees, bulldozing forests and closing local peoples' access off to forests and water bodies, they face tremendous resistance from local residents who often have no prior information that their lands and forests are about to be taken over by outsiders. In some cases, company representatives try to placate village protests by bribing village leaders and promising services such as roads, health centres and schools but these promises are rarely kept. Most often though, resistance from local residents is met by a display of power and authority from local police, military and private armed security guards.

In 2004, it was estimated that about 2.7 million hectares of land were under concession contracts. Economic concessions include industrial tree plantations of mainly rubber, pine, acacia, oil palm, teak, coconut and eucalyptus, and agro-industrial production of cash crops such as cassava, corn, sugarcane and soybeans. They provide investors with exclusive rights over land in the concession areas for up to 99 years in exchange for land rental fees and taxes on revenues. However, contracts are not publicly disclosed and there is little information available on the fees and taxes that the government is supposed to receive, or of the contractual obligations of the concessionaires. At present, Cambodia has several laws relevant to economic concessions, for example the 2001 Land Law, the 2002 Forestry Law and the 1996 Law on Environmental Protection and Natural Resource Management. Clearly, current laws are being violated; for example, although the 2001 Land law limits the size of economic concessions to 10,000 hectares in all but exceptional circumstances (which are not elaborated), most concessions greatly exceed this limit.<sup>25</sup>

Concessions are also being granted for the extraction of gems, gold, sand and minerals, and so called “eco-tourism” in which large tracts of indigenous peoples' lands and wildlife sanctuaries are being cordoned off (at places with electrified fences) to make ethnic minority inspired resorts, safari parks, theme parks, spas, etc. None of these concessions are covered by the existing land and forest laws and all of them result in alienating local communities from their lands and forests.

Economic concessions have shown to have extremely serious negative impacts on local communities in and around the concessions areas. In some areas, communities have been evicted to make way for plantations and companies have bulldozed the forests on which communities depend for their livelihoods. Even where communities are permitted to remain in their villages, they have been forcibly deprived of access to agricultural and grazing lands, and forests that they have used for several years (if not generations) for collecting food and non-timber forest products.

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24 *Land tenure database development in Cambodia*. Brett M. Ballard, Acting Research Director, Cambodia Development Resource Institute, 2006. Phnom Penh, Cambodia.  
<http://www.fao.org/docrep/009/a0306t/A0306T08.htm>.

25 *Fast-wood Plantations, Economic Concessions and Local Livelihoods in Cambodia. Field Investigations in Koh Kong, Kampong Speu, Pursat, Kampong Chhnang, Mondulhiri, Prey Veng and Svay Rieng Provinces*. The NGO Forum on Cambodia, Phnom Penh.



In both indigenous and non-indigenous areas, there are reports that sacred spirit sites and ancestral burial grounds have been violated by concession company workers. Village residents living in areas adjacent to concession areas in Kratie, Stung Treng and Mondulakiri provinces (among others) reported that they are not permitted to use the forests and so called “wastelands” now included in the concession areas despite the fact these lands have been under their stewardship for generations, are home to their spiritual and sacred sites, and are crucial sources of food and income for them. Communities adjacent to many concession areas also report that companies have expanded the areas claimed in their contracts and encroached on village lands and commons.<sup>26</sup>

Plantations are mono-cultures of specific tree or crop species and repeated planting of the same crop/tree in close cycles requires intensive use of chemical fertilisers, pesticides and herbicides, which leach into the soil and ground water, reduce the fertility of surrounding areas, contaminate the soil and lead to illness among village residents. Eucalyptus plantations have created aridity, depleted the soil of moisture and nutrients, and contributed to the lowering of underground water and drying up of streams. The clearing of forests for plantations has destroyed local bio-diversity and eco-systems, including precious primary forests, water sources, fish and wildlife. The Tonle Sap lake in northwest Cambodia is one of the most important freshwater eco-systems in the country and supports millions of Cambodians through its aquatic biodiversity. The lake is threatened by pulp mills that release toxins and chemicals into water bodies that drain into the lake. In Koh Kong and other areas forested by deciduous trees, the planting of mono-culture trees such as acacia and pine destroy spawning grounds for fish in what are locally called “flooded forests” during the monsoons.

In addition to economic and ecological damage are human rights abuses. Village residents are routinely intimidated by armed security guards hired by concessionaires if they try to enter into forest and other commons areas, or protest against encroachment. In several areas, the actions of armed guards have resulted in violence, injury and death of village residents.<sup>27</sup> There are also reports of armed guards indulging in extortion, logging and land-grabbing.<sup>28</sup> In many areas—for example, Pursat, Stung Treng, Kompong Speu, Mondulakiri and Koh Kong—communities have organised themselves to protest the loss of their lands and natural resources and the actions of concessionaires. They have appealed to local, provincial and national authorities for help, which unfortunately has not been forthcoming. Instead, public officials have generally shown a bias in favour of companies and have attempted to intimidate village residents to stop making complaints.

A notable point here is that in many of these concession areas, while the forests have been cleared

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26 Personal interviews with village residents in Stung Treng and Kratie provinces.

27 Some examples: In April 1997, a village resident was shot dead by a private security guard in the Tum Ring concession area in Kompong Thom when he tried to stop loggers from cutting down resin trees; on November 13 2004, a grenade was thrown into a makeshift camp of villagers protesting the Pheapimex plantation in Pursat; on March 21, 2005, five village residents were killed and 40 others injured by when police fired into a crowd of protestors in Kbal Spien village in Banteay Mancheay; on June 16, 2005, local police fired water cannons at villagers protesting the Wuzhishan concession in Mondulakiri and knocked two women unconscious; many cases of violence and deaths go unreported because village residents are scared to report them or because they are hushed up through compensation payments and bribes.

28 *Land concessions for economic purposes in Cambodia, A human rights perspective*. Page 27. United Nations Cambodia Office of the High Commissioner for Human Rights. November 2004.

for timber extraction, little land has been actually brought under cultivation, for example as in the Green Sea and Flour Manufacturing concessions in Stung Treng province, the Pheapimex concession in Pursat province, the Green Rich concession in Koh Kong province, and eight concessions in Kompong Speu province. According to some NGOs and human rights organisations, land speculation may well be the motivating force behind the granting of such large concession areas for such long periods of time. Land in Cambodia is increasing in market value and sole use rights over concession lands for periods as long as 99 years give the concessionaires a free hand to sublease land parcels to needy village residents or other private companies, or even sell the contract to a third party to take advantage of increasing land prices.

Local and national media, human rights organisations and several local, national and international NGOs have attempted to draw national and international attention to the environmental damage, economic distress and human rights abuses associated with economic concessions. NGOs have repeatedly raised the importance of full disclosure by the government of data about economic land concessions. However, there are few indicators that the RCG will review its concessions policies or reign in the concessionaires. The Sub-Decrees on State Land Management and Economic Concessions--both which are important if land is to be redistributed to the poor--have been passed in the National Assembly, but have not yet been implemented.<sup>29</sup>

## **The Legal Morass**

Many Cambodian laws governing the use and ownership of lands by private entities (which include rural and urban families) are actually quite progressive. However, the Cambodian legal system is extremely confusing and makes implementation of laws difficult. Current Cambodian law still recognises 'use rights' and in a rare example of fashioning modern law to respond to local realities, Cambodian law recognises claims to land by families and communities who have cleared and used land for agricultural and livelihood purposes. But the law is rarely able to protect the rural and urban poor in their struggles to retain their lands and resources. The legal and judicial systems are habitually abused by those with political power and money, who subvert the systems to gain control over land and other important assets.

In August 2001, the Cambodian National Assembly enacted a new Land Law aimed at regulating a wide range of areas such as economic land concessions, indigenous community lands, cadastral surveys, land titles, dispute resolution, etc. The Law suggests a comprehensive system of land classification and ownership rights under two main categories: 1) "State Property" which includes "State Public Property" such as forests and protected areas (where the state seeks to conserve these resources and does not permit them to be exploited for commercial purposes) and "State Private Property" such as land designated for economic and social development (and allowed for both, commercial exploitation and redistribution for social purposes), and; 2) Private Property which includes land that is permitted to be owned by individuals and communities. The Law also provides guidelines for demarcation between state public, state private and private lands. Extremely important, the Law sets limits on the amount of land that can be given to private companies as economic land concessions, and protects the lands and territories of the country's

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<sup>29</sup> See for example, the NGO Forum on Cambodia's statements, at [www.ngoforum.org.kh](http://www.ngoforum.org.kh)

indigenous peoples. Not only does the Law prevent the sale and transfer of indigenous lands but also, it allows for communal land titles rather than individual titles in a bid to ensure the territorial integrity of indigenous areas.

Legal and policy analysts and NGOs monitoring land and environmental issues have welcomed the new Land Law as progressive and responsive to Cambodia's demographic diversity. However, the Law has yet to be fully implemented. Most of the law's most progressive provisions require the passing of several sub-decrees, which are in the hands of the government and have not been passed for five years after the Law itself was enacted. Trends suggest that politicians and government officials have deliberately delayed the passing of these sub-decrees in order to consolidate their hold on potentially high value lands before these lands come under the jurisdiction of the Land Law.

Another important feature of the Land Law is the provision for social concessions, which entails distributing vacant state private lands to people with little or no land for farming and residential purposes. In March 2003, a Social Concessions Sub-Decree that created the mechanisms for such transfers was adopted. Since then, however, little land has actually been distributed and in fact little arable land even appears to be available for distribution to the poor. Only two plots of degraded land have been identified in Kratie and Kompong Cham provinces as part of a pilot project that has fared poorly. According to some analysts, when the social concessions programme was first conceived, there was actually a lot of land available for redistribution and there was tremendous optimism among government officials and donors supporting the programme. Unfortunately, land grabbing proved faster than getting the details of the programme worked out and running. Shortly after the Land Law was passed, the most arable lands had miraculously become the private property of wealthy individuals and companies. Much of the land grabbing in the country is said to be initiated by those who knew that these lands would be distributed to the poor. Now the government is hard put to find arable land for distribution that is not already claimed by powerful political families, the military or a private concessionaire.<sup>30</sup>

Similar to the Land Law, the RCG has also passed a Forestry Law which creates a classification scheme for forest lands in the country. These include: Permanent Forest Estate (all forests within the country including forests on private land and flooded forests); Private Forest (forested areas located on private property); Permanent Forest Reserve (forests located on State Public Property); Production Forest (those permitted for the extraction of timber and non-timber forest products); Protection Forest (those areas designated for protecting forest eco-systems including watershed and catchment areas, wildlife and fish habitats, etc.), and; Conversion Forest (idle state forest land covered mainly by secondary vegetation, with the potential for being reclassified as State Private Property and allowable for economic land concessions).<sup>31</sup>

This classification system, however, overlaps and at times competes with land areas covered under

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30 Personal interviews with Mr. Chan Sophal, Cambodia Development Research Institute (CDRI) and Mr. Chhith Sam Ath, NGO Forum on Cambodia, Phnom Penh

31 *Legal Analysis of Forest and Land Laws in Cambodia*. Robert B. Oberndorf, JD. Community Forestry International. 2006.

the Land Law and the Environmental Protection and Natural Resources Management Law. More important, the legislation does not actually define what constitutes as “forest,” which is left open for interpretation.<sup>32</sup> Considered along with other laws that are expected to govern lands and territories, the Forestry Law adds to the confusion that prevails when demarcating the types of lands that can be legally given away for private investment and brought into land markets, and those that should be preserved as public goods. It would appear that the RCG has either unwittingly bound itself in a mass of overlapping legalities, or knowingly created a legal morass, both of which serve to permit the unregulated exploitation of lands and forests by private companies and elites.

Equally confounding is the array of institutions authorised to govern land. Primary responsibilities for land management and cadastral affairs rests with the Ministry of Land Management, Urban Planning and Construction (MLMUPC). These responsibilities include the development of land policy, land registration, management of state land and oversight of the granting of social concessions. Then there is the Council for Land Policy (CLP), an intergovernmental body that was created to coordinate and strengthen the formulation, implementation and monitoring of land management policies and includes representatives from various sectors concerned with land policy and management. However, many researchers think that the CLP is ineffectual and many of its responsibilities have been transferred to a Technical Working Group on Land (please see the last section for information on Technical Working Groups). Land management is also handled by the Ministry of Agriculture, Forestry and Fisheries (MAFF) which has primarily responsibility for agricultural development including economic land concessions. The Ministry of Environment (MoE) is responsible for managing and protecting environmentally sensitive areas such as national parks. Also in the picture is the military, which controls large areas of land in “military development zones” some of which are intended for demobilized soldiers and some already granted to private companies as economic land concessions.<sup>33</sup> Not only does this result in confusion over who has final decision making authority over land issues but also, it creates competition among Ministries and Departments jockeying for power and resources. Adding to the confusion are provincial and local authorities that enter into parallel agreements with private companies on land concessions, or authorise land transactions with multiple claimants and dubious paperwork.<sup>34</sup>

This legal morass makes it additionally difficult for poor communities to use the law and judicial system to protect their lands and access to natural resources.

## **Indigenous Peoples and Land**

Indigenous peoples are possibly the most disenfranchised and vulnerable groups in Cambodia. Indigenous peoples have historically inhabited sparsely populated upland and forested areas in the North and Northeast of Cambodia although some indigenous communities also live in the northwest region of the country. Most are concentrated along the Cambodia-Laos-Thailand-

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32 Ibid.

33 *Land concessions for economic purposes in Cambodia, A human rights perspective*. United Nations Cambodia Office of the High Commissioner for Human Rights. November 2004.

34 *Land tenure database development in Cambodia*. Brett M. Ballard, Acting Research Director, Cambodia Development Resource Institute, 2006. Phnom Penh, Cambodia. <http://www.fao.org/docrep/009/a0306t/A0306T08.htm>.

Vietnam borders with kinship and cultural ties to communities across these borders.

Most indigenous communities practice swidden (shifting) cultivation which is extensive in nature and requires that fields under cultivation are rotated and each field left fallow for a specified time to regenerate fertility. With small field sizes and low population density, clearing forests to bring land under cultivation did not—at least in the past—result in significant negative ecological impacts. In such areas demarcations between forest and agricultural lands were often blurred and fields that were not farmed for a few seasons return to forests. Indigenous communities in Cambodia are extremely dependent on natural resources and have much deeper cultural, ecological and economic ties with their lands, forests, water bodies and rivers than do other groups. Land is an integral part of composite territories and not a resource that can be parceled out.<sup>35</sup> The loss of traditional/local territories among indigenous communities results in extremely severe consequences including sickness, destitution and even death.

Cambodia's indigenous peoples—as those elsewhere-- are marginalised in several ways. Since they are a minority, they are disadvantaged by language, cultural and social barriers. Because they live in relatively remote areas, they have little access to health and education services. Many are not able to communicate in the national language and are relatively removed from the administrative and social systems of the modern nation state that they are nonetheless part of. Perhaps more than other communities, indigenous people are not always aware of the rights, entitlements and protections extended to them by national and international laws. As a result, they are more easily exploited by outsiders who take advantage of their isolation from mainstream society to intimidate, trick or manipulate them.

One of the most urgent and serious threats to indigenous communities in Cambodia is loss of their lands and territories because of land grabbing, economic concessions and trickery. Indigenous peoples inhabit some of the most coveted lands in the country-- those that are forested, located in beautiful and climatically pleasant areas, and have been assessed to possess rich mineral deposits. In the Northeastern provinces of Ratanakiri and Mondulakiri, lands occupied and stewarded for hundreds of years by indigenous communities are being lost to provincial elites (some of who are indigenous peoples themselves), urban elites from Phnom Penh and private companies for cassava, cashew nut, rubber and pine tree plantations. In the northwest regions of the country, land is being lost to tourism projects, commercial infrastructure, plantations and again, urban elites mostly from Phnom Penh. Even portions of flooded forests in the Tonle Sap (Great Lake) area in the northwest are being grabbed or illegally traded.

Some of the most blatant cases of land alienation through land grabbing and illegal transactions have been recorded in Ratanakiri Province, which is home to more than half of the country's indigenous population. Over the past 6 years, the transfer of lands from indigenous and other local communities to Provincial and Phnom Penh based elites has risen alarmingly. Most sales and land transfers in indigenous areas are actually illegal since the 2001 Land Law was passed. The Law

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<sup>35</sup> See for example, *Land Alienation in Indigenous Minority Communities – Ratanakiri Province, Cambodia*. NGO Forum on Cambodia, August 2006.

recognises collective land ownership by indigenous communities and requires that indigenous peoples continue to manage their community lands according to traditional customs, pending the issuing of collective titles. The Law also states that no outside authority may acquire any rights to lands that belong to indigenous communities. Further, the Law prohibits the sale of any land of which the seller is not the legal owner; in the case of collective ownership, no individual is the legal owner of the land and the land can only be sold or transferred if the entire community agrees to the sale.

Although indigenous lands and territories are protected by Cambodian law, the law is not being faithfully implemented and in many cases it is even being manipulated. Fake land certificates and transaction papers dating back to before the 2001 Land law was passed have been miraculously produced by local officials and business entities from outside the communities, who claim that specific parcels of land belong to them “legally.”<sup>36</sup> Often, individuals, families and entire communities are being coerced and bullied by powerful Provincial authorities to either sell land or simply hand it over. Local communities report that the worst offenders are people in local/provincial government, police and military, who are creating a climate of fear through threats, pressures and other forms of intimidation. Instead of upholding the law, they are creating an environment that facilitates land alienation.<sup>37</sup> Increasingly, as families and communities fear that their land will be seized by the state or powerful outsiders anyhow, they agree to sell so that they can get at least some monetary compensation for their loss. In some cases, influential figures within the community are bought over by outsiders and convince the communities to sell the land.<sup>38</sup>

The other major threat to indigenous peoples' territories is economic concessions for industrial tree plantations, cash crop production, extractive industry and tourism. Forest concessions for timber extraction have already depleted many of the forest areas that indigenous peoples depend on. Although there is now a moratorium on forest concessions, logging continues in economic concession areas, many of which are on forest lands in any case. In all cases, economic concessions either sever or restrict the access of indigenous peoples to forests and woodlands, which are the main sources of non timber forest products such as fire-wood, food, medicinal plants, honey, wild grasses, rattan, resin, etc. Further, indigenous communities are routinely intimidated by local authorities and private security guards employed by concessionaires when they attempt to resist or protest the takeover of their territories through concessions.

In 2004, the RCG agreed to give Wuzhishan L.S. Group, a Chinese-Cambodian private company, 199,000 hectares of land in Monduliri for a pine tree plantation. The concession's size is 20 times what is allowed under Cambodian law and the concession is located on lands inhabited by the Phnong indigenous communities. Community residents have complained to the provincial Government that the company has encroached on their grazing lands and company workers have desecrated their religious sites including burial grounds and spirit forests. Cattle, domestic animals, fruits and vegetable owned by community residents have been stolen by company workers and the

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36 Personal interviews with community residents in Ratanakiri province and Chhith Sam Ath, NGO Forum on Cambodia.

37 See for example, *Land Alienation in Indigenous Minority Communities – Ratanakiri Province, Cambodia*. NGO Forum on Cambodia, August 2006.

38 Personal interviews with community residents in Ratanakiri province.

company has sprayed a strong and toxic herbicide in the concession area, contaminating the communities' agricultural lands.<sup>39</sup> Affected communities have made several complaints about the concession to Provincial authorities but have yet to receive justice. Instead, they continue to be at the receiving end of threats and other forms of intimidation by the company and local authorities.<sup>40</sup>

A relatively recent but growing threat to indigenous communities is mining concessions for gems and minerals. On October 11, RCG representatives signed agreements with BHP Billiton from Australia and Mitsubishi Corps from Japan for permission to explore for bauxite, gold and copper on up to 1 million hectares of “available land” in Monduliri and Ratanakiri provinces. If bauxite is discovered, the RCG is willing to give permission for the construction of facilities to produce aluminium,<sup>41</sup> Meanwhile other companies have also negotiated smaller scale mining concessions with the RCG. For example, in September this year, Southern Gold Ltd from Australia has been permitted to search for gold in a 959 square km zone that stretches from eastern Kratie to western Monduliri. On August 26 (also this year), the Gold Metal Group Co Ltd. signed a Memorandum of Understanding allowing it to search for gold in a 204 square km area in southeastern Monduliri. The concession area lies inside the boundaries of the protected forest in Pech Chreada district in Monduliri.<sup>42</sup>

## Development, Rights and Resistance

Testimonies from rural communities, reports from district and province based NGOs and researchers, and information compiled by human rights and environmental organisations show that the loss of lands, loss of access to natural resources and forced evictions are accelerating a livelihood and economic crisis of grave proportions among Cambodia's poor and vulnerable communities. Cambodia's rural poor have benefited little from the country's economic growth, or from the huge amounts of money that pour into the country every year in the form of development aid. Not only is poverty *not* being alleviated, on the contrary, more people are becoming impoverished and economically vulnerable. The destruction of bio-diversity and loss of access to forest products, fish and other aquatic sources are severely compromising food security at local levels. Distress migration from rural to urban centres—especially Phnom Penh—is increasing. But those who find their way to cities do not find secure employment or shelter; many live on the streets or in squatter settlements and continue to remain vulnerable to further eviction and displacement.

According to many human rights and development NGOs and researchers, the most comprehensive way to approach land and livelihood issues in the country is to locate them in a human rights

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39 *Human Rights in Cambodia: The Facade of Stability*. LICADHO. Report May 2006. Phnom Penh, Cambodia.

40 For comprehensive analyses of industrial tree plantations in Cambodia, see: *The Death of the Forest, A Report on Wuzhishan's and Green Rich's tree plantation activities in Cambodia..* World Rainforest Movement, December 2005. And *The Pulp Invasion, The International Pulp and Paper Industry in the Mekong Region* by Chris Lang, World Rainforest Movement. December, 2002.

41 *Two Firms Land Million-Hectare Exploration Deal*. The Cambodia Daily. Monday, October 16, 2006. Phnom Penh, Cambodia.

42 *More Companies Look to Mine Cambodia's Wealth*. The Cambodia Daily. Monday, September 27, 2006. Phnom Penh, Cambodia.

framework that challenges the RCG, international donors, multilateral institutions and Cambodian society to honestly examine the unfolding land crisis and take urgent steps to address it.

Many human rights activists claim that most cases of human rights violations are land related. The victims are always urban or rural poor residents and the offenders are usually politically connected, wealthy private and business entities. It is extremely difficult for victims to get legal redress since the legal process takes a long time, laws and rules are very complicated, legal procedures and institutions are easily manipulated by those with money and power, and verdicts in favour of the victims are rarely implemented. As a result, victims of land related abuses are resorting to other means to secure their rights.<sup>43</sup> There are also reports of land related conflicts in “military development lands,”<sup>44</sup> but possibly because of the continuing fear among rural communities of armed forces, these incidents are rarely brought up for legal resolution. Statistics compiled by LICADHO, a Cambodian NGO that monitors human rights issues, show that land related human rights violations are increasing. From January-September 2006, from a total of about 250 cases of human rights violations that were brought to LICADHO for assistance, at least 106 were those of land grabbing. Figures of such violations compiled for every quarter by LICADHO show an increase in land grabbing.<sup>45</sup>

From this perspective, the violations of peoples' rights to lands and livelihoods are violations of their most fundamental human rights. Since the 1991 Paris Peace accords and the adoption of the 1993 constitution, the RCG has acceded to all major international human rights treaties and numerous optional protocols. In fact, the 1993 Constitution incorporates into domestic law the Universal Declaration of Human Rights and other international human rights treaties to which the country is now theoretically bound. These include the right to an adequate standard of living, right against deprivation of property, the right to life, liberty and security of person, the right to freedom of association and expression, etc.<sup>46</sup> But these have little meaning when the Government not only does not meet its human rights obligations, but also, is often itself party to violating the basic rights of its peoples.

However, protecting and upholding rights is not simply a matter of how many treaties a nation signs on to; more important are the economic, political and social systems that it adopts to allow for the progressive realisation of the rights enshrined in these treaties. An issue that frequently escapes attention in the rights discourse is the development model that Cambodia has adopted since the start of its “reconstruction” phase. In the international development world, Cambodia is regarded as a post-conflict country now in an era of peace, stability and economic and social development,

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43 Personal interview with Ms. Naly Pilorge, LICADHO. October 28, 2006, Phnom Penh.

44 These are areas that were formerly under KR control and are now claimed by the government military for varying purposes. In many cases, “re-integration” zones are carved out in these areas to rehabilitate former KR soldiers and others soldiers demobilised because of injury, ill health, age, etc.

45 For statistics, contact LICADHO (Cambodian League for the Promotion and Defense of Human Rights) in Phnom Penh. Email: [licadho@camnet.com.kh](mailto:licadho@camnet.com.kh); website: <http://www.licadho.org>

46 *Human Rights in Cambodia: The Facade of Stability*. LICADHO. Report May 2006. Phnom Penh, Cambodia. And *Land concessions for economic purposes in Cambodia, A human rights perspective*. Page 5. United Nations Cambodia Office of the High Commissioner for Human Rights. November 2004.



which broadly translate for much of the development establishment as an absence of war and the adoption of an economic policy package aimed at facilitating market capitalism. In its 2006 report to the Consultative Group (CG) of donors, the World Bank claims that “Starting from a base of very low output and very high poverty at the start of the 1990-s, peace and economic liberalisation have made possible a decade of rapid economic growth and relatively rapid poverty reduction.”<sup>47</sup> But the growing number of land conflicts and increasing alienation of communities from their lands and resources can hardly be considered indicators of peace, stability or well being. While most bilateral donors (and even the World Bank) acknowledge that Cambodia's rapid economic growth is coupled with massive economic inequalities, there is little critical reflection among them about their own failure to pull together a reconstruction model based on domestic equality and equity. Later in the same report the World Bank claims, “As with inequality, a trend to rising landlessness is inevitable given Cambodia's transition from a socialist to a market economy since 1989;”<sup>48</sup> Although Cambodia's donors may not be held directly responsible for land grabbing and dispossession, they certainly are culpable in financing a flawed development model and an authoritarian political regime.

Cambodia receives millions of dollars in aid and loans from international donors and creditors, all of who claim to promote good governance, human rights and sustainable development. Donors frequently refer to problems related to corruption, absence of the “rule of law” and the need for more “capacity building” to promote good governance. However, a simple and clear indicator of genuine good governance—protection of the rights of vulnerable and marginalised sections of the population—receives little attention from donors. According to Naly Pilorge from LICADHO, “when donors say they are interested in human rights, look at what they fund.”<sup>49</sup> Like several other human rights monitors, Pilorge believes that donors have little leverage over the RCG, no consensus among themselves about how to promote sustainable development and are more concerned with protecting their own investment interests.

Representatives from many donor agencies claim that they do not have any power over the RCG and its high level politicians and that policies are more or less just paper, with no real positive impacts. In an ostensible attempt to influence government policies and performance indirectly, donors and creditors have formed “Technical Working Groups” (TWGs) with the RCG that are supposed to ensure that donor priorities in various sectors are maintained in national development plans (which also are donor/creditor driven in any case). The TWG on land focuses on technical issues of land management such as the multi-donor Land Management and Administration Project (LMAP), the Land Allocation for Social and Economic Development (LASED), the development of the Sub-Decree on State Land Management and the Sub-Decree on Economic Land Concessions. It never addresses land conflicts, violations of indigenous community rights, or any “political” issues for that matter; these are passed on to the World Bank led Consultative Group of Donors and the RCG. According to Anne Ernst who is monitoring donor responses to land conflicts, “Donors mainly concentrate on achieving the goals and

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47 *Cambodia, Halving Poverty by 2015? Poverty Assessment 2006*. Executive Summary. Prepared by the World Bank for the Consultative Group Meeting. Phnom Penh, February 2006.

48 *Cambodia, Halving Poverty by 2015? Poverty Assessment 2006*. Page 85. Prepared by the World Bank for the Consultative Group Meeting. Phnom Penh, February 2006.

49 Personal interview with Naly Pilorge, LICADHO. October 28, 2006, Phnom Penh.

objectives of their projects and want to avoid their projects getting stuck or even failing.”<sup>50</sup> Donors claim that if they try to address the issue of land conflicts (or any conflicts for that matter) in the TWGs, the RCG will stop working with them and they would have to close their programmes. “Donors do not want to face the criticisms they got in the 1990-s that they spent a lot of money but did not respond to local and nationally expressed needs. Many international agencies have deleted land and forestry issues from their roster of issues because they are scared the Cambodian Government will stop cooperation.”<sup>51</sup>

Clearly, keeping their programmes alive and running are more important to most donors than examining how their funds are contributing towards the systematic disenfranchisement of the country's rural population. Many donors and international NGOs also use the growing power of China as a donor and the discovery of oil deposits as reasons why they need to maintain good relations with the RCG in order to maintain a presence in the country so that they can influence the RCG. Many local and national NGOs on their part depend on international NGOs and donors for survival and are unwilling to take up contentious issues-- such as land conflicts-- that their funders have more or less removed from their funding rosters.

Despite this, however, rural and urban communities are organising, linking with each other and resisting the takeover of their lands and resources in every way possible. Several local, national and international NGOs, legal aid and advocacy organisations are providing strong support to affected communities. This support takes many forms and includes extending legal aid to those involved in land conflicts, addressing rural indebtedness to money lenders and micro-finance institutions, collating information about the negative impacts of economic concessions, and drawing national and international attention to the situation.

Progress is slow but in some places land-grabbing and concessions have been slowed down or even halted. In the words of a village elder from from Osvay commune in Stung Treng, “we will never let them take our lands.”

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50 Personal interview with Anne Ernst, Advisor to Star Kampuchea, December 5, Phnom Penh.

51 Ibid.